



# Employment Equity Amendment Act 2023: “Transformation Targeting or Quotas”

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The Employment Equity Act 55 of 1998 (EEA Act) was first introduced in South Africa in 1998 to give effect to section 23 of the Bill of Rights. The purpose of this act was to address social and historic inequalities and prohibit discrimination against employees in the workforce of South Africa. In essence, the EEA Act of 1998 was enacted to give effect to substantive equality. On the 12th of April 2023, the President of the Republic signed into law the Employment Equity Amendment Act 4 of 2022 (EEAA Act).

The new amendments were introduced in response and redress to the findings of the report of the Commission for Employment Equity in 2020. The report specifically takes issue with the reported slow rate of in transformation that reflected in staffing equity of the top management structures of South African Companies; a key finding states that only one in three people in top management positions in South African Companies were classified as black. The amendments obligate employers to revisit, and review set targets and goals for transformation.

## **THE KEY QUESTION IS, DOES WILL THE EEAA ACT ACHIEVE ITS GOAL OR MORE IMPORTANTLY WHAT DO THE AMENDMENTS SEEK TO ACHIEVE?**

The EEAA Act was introduced into parliament in 2020 with the aim of expedient expediting transformation in the workforce. The simple answer is that the EEAA amendments seeks to achieve transformation in terms improve representation of designated groups, these are the historically disadvantaged groups (Africans, Indians, Coloureds, Women and people with disabilities) by increasing their access to employment opportunities and ensuring fair treatment in the workplace. The EEAA's mandate is to advance the occupational transformation by setting equity targets in various sectors determined by the Minister.

The EEAA amendments introduced can be read in two critical sections of the newly enacted Act. The first key amendment is drafted in section 15A and the second critical amendment to be highlighted is section 20(2A). Section 15A grants the Minister the authority to determine sectoral numerical targets. Section 20(2A) regulates the numerical goals, functioning as compliance criteria, that are set by the Minister which an employer is obligated to comply with within the Employers sector. The newly amended EEAA will apply to and thus affect all employers except for some state employers. Employers that do business with the government will be most affected. Employers that do not comply will not be issued with a certificate of compliance by the Minister in terms of section 53. Consequently, this will disallow non-compliant Employers' ability to do business with the state.

### **THE NEXT IMPORTANT QUESTION IS, DOES THIS NEW AUTHORITY GRANTED TO THE MINISTER BY THE EEAA ACT EXPEDITE THE ADVANCEMENT OF TRANSFORMATION OR DOES IT CREATE QUOTAS IN EACH SECTOR THAT MIGHT HINDER JOB EMPLOYMENT?**

The effectiveness of the amendments can only be judged on the implementation of the new regulations imposed by the EEAA. For instance, if the new regulations are implemented to drive new job opportunities or increase transformation targets, then the objective of the EEAA will be achieved. If the new amendments are to be implemented in a manner that amounts to job reservation, this would then amount to quota with various ramifications. A fundamental risk to manage in achieving the objectives of the EEAA, is ensuring that jobs are safeguarded, whilst also ensuring that the implementation of the EEAA is not conducted in a manner that stagnates economic growth and job creation.

### **EFFECTS OF THE AMENDMENTS ON EMPLOYERS**

Certain employers will be exempted from compliance in terms of section 53, these are small businesses, that employ less than 50 people in a company. Employers with less than 50 employees will be exempted from developing and setting employment equity plans. This exemption elevates the regulatory burden to small medium and micro enterprises. The employment equity amendments will be truly defined by the method and manner that the Minister of Labour implements the above amendments.