



higher education  
& training

Department:  
Higher Education and Training  
REPUBLIC OF SOUTH AFRICA

## **IMPLEMENTATION OF EMPLOYMENT EQUITY**



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**TO: DEPUTY DIRECTORS-GENERAL  
CHIEF DIRECTORS  
REGIONAL MANAGERS  
PRINCIPALS OF TVET COLLEGES  
HUMAN RESOURCE MANAGERS**

## **HRM CIRCULAR NO 5 OF 2019**

### **PROCEDURE DIRECTIVE ON THE IMPLEMENTATION OF EMPLOYMENT EQUITY**

#### **1. INTRODUCTION**

The Department is committed to implement Employment Equity in terms of its Policy. This Procedure Directive provides standard guidelines on how to embrace Employment Equity and Affirmative Action provisions, and its implementation thereof.

#### **2. OBJECTIVE**

To provide clear guidelines with regard to implementation of Employment Equity in employment practices to eliminate and redress past unfair discrimination and specifically address historical imbalances in race, gender and disabilities that have been/are still existing.

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### **3. LEGISLATIVE FRAMEWORK**

The following legislation has been considered in developing this Directive:

- 3.1 Public Service Act No.103 of 1994, as amended
- 3.2 Labour Relations Act No. 66 of 1995, as amended
- 3.3 South African Constitution Act No.108 of 1996
- 3.4 Basic Conditions of Employment Act No.75 of 1997, as amended
- 3.5 Employment Equity Act No. 55 of 1998, as amended
- 3.6 Skills Development Act No. 97 of 1998, as amended
- 3.7 Public Service Regulations 2016, as amended
- 3.8 Broad-based Black Economic Empowerment Act No. 53 of 2003
- 3.9 White Paper on Transformation of the Public Service, 1997
- 3.10 White Paper on Affirmative Action in the Public Service, 1998

NB: Where this Directive and the Delegations of Authority of the DHET differ the Delegations shall take precedence.

### **4. SCOPE OF APPLICATION**

This Directive is applicable to all employees of the employer and the implementers of Employment Equity.

### **5. EMPLOYMENT EQUITY PROCEDURES**

#### **5.1 THE EMPLOYMENT EQUITY CYCLE**

##### **5.1.1 Consultation with Employees (Section 16)**

The designated employer must take reasonable steps to consult and attempts to reach agreement with:

- (a) representative trade union representing employees;

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- (b) employees from across all occupational categories and levels of the employer's workforce; and
- (c) employees from designated groups and those who are not.

#### **5.1.2 Matters for Consultation (Section 17)**

The designated employer must consult the parties concerning:

- (a) policies, practices; procedures and the working environment, in order to identify the employment barriers which adversely affect people from designated groups;
- (b) preparation and implementation of the Employment Equity Plan (EEP); and
- (c) the submission of the Employment Equity report to the Department of Labour (DOL).

#### **5.1.3 Disclosure of Information (Section 18)**

When the designated employer engages in consultation in terms of this Act, they must disclose to the consulting parties all relevant information in the *EEA2 and EEA4 forms* that will allow all parties involved to consult effectively.

#### **5.1.4 Analysis (Section 19)**

- (a) Must include a profile, of the designated employer workforce within each occupational category and level in order to determine the degree of underrepresentation of people from designated groups in various occupational categories and levels in that designated employer's workforce.

- (b) If an EEA1 form has been completed by the employer's workforce, the statistical information must be disclosed during consultation with employees. Alternatively the information can be drawn from the Z83 application form Refer to EEA12 form.

#### **5.1.5 The Employment Equity Plan (EEP) (Section 20)**

The EEP should articulate:

- (a) objectives to be achieved each year of the plan;
- (b) affirmative action measures to be implemented;
- (c) where underrepresentation of people from designated groups has been identified by the analysis, numerical goals to achieve the equitable representation of suitably qualified people from designated groups within each occupational category and level in the workforce;
- (d) timetable for each year of the plan (between 3 to 5 years) for the achievement of goals and objectives other than numerical goals;
- (e) strategies intended to achieve those goals;
- (f) procedures that will be used to monitor and evaluate the implementation of the EE plan and whether reasonable progress is being made towards implementation thereof;
- (g) internal procedures to resolve any dispute about the interpretation or implementation of the plan;
- (h) the workforce, including senior managers, responsible for monitoring and implementing the plan; and
- (i) any other prescribed matter.

The above information must be completed on the *EEA 13 form*.

### **5.1.6 Reporting – Time frame (Section 21)**

The designated employer is expected to report on EE to the DOL within the stipulated deadlines set by DOL from year to year:

- (a) EE submissions usually open beginning of September each year.
- (b) EE manual submissions usually close on 1 October of each year.
- (c) EE online submissions usually close mid January of the following year.

### **5.1.7 Reporting Access**

- (a) To access the EE online service a username and password is required.
- (b) The EEA2 forms are available online on the following link:  
<http://www.labour.gov.za/DOL/documents/forms/employment-equity/form-eea2-employment-equity-report>

### **5.1.8 Reporting Compliance**

Compliance is two-fold:

- (a) procedural in that all procedures in EE reporting have been properly followed; and
- (b) substantive in that the information reported is accurate and representative of status quo.

The following changes require a letter signed by the executive/delegated authority to the DOL:

- (a) changes in contact details of the executive/delegated authority and/or delegated EE manager;

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- (b) changes in the structure of the Departmental components; and
- (c) changes in the reporting processes within the DHET and/or Colleges.

#### **5.1.9 Publish Report (Section 22)**

The designated employer must:

- (a) publish summary of the EE report in their annual financial report; and
- (b) the executive authority must then table that report in Parliament. Every report prepared in terms of section 21 of the Act, is a public document.

#### **5.1.10 Successive EEP (Section 23)**

Before the end of the term of a current Employment Equity plan (EEP), the designated employer must prepare a subsequent Employment Equity Plan.

\*NB: Colleges who will be reporting for the first time must develop a 3 (three) year plan starting from 2016/17. Colleges whose existing plans are almost expiring must submit a successive plan to DHET: HRM&D at Head Office at least six (6) months before the existing ones expires.

*Refer to the EEA13.*

#### **5.1.11 Appointment of a Senior Manager (Section 24)**

The designated employer must:

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- (a) assign one or two senior managers to take responsibility for monitoring and implementing an Employment Equity Plan (EEP);
- (b) provide the manager with the authority to and means to perform their functions.

**5.1.12 Duty to inform (Section 25)**

- (a) A notice in the prescribed form, must be displayed at the workplace where it can be read by employees. It must be placed in prominent places that are accessible to all employees.
- (b) The most recent report submitted by the designated employer to the Director-General (DOL) should be made available to employees upon request.
- (c) Any compliance order, arbitration order of the labour court concerning the provisions of this act in relation to the designated employer should be made available to employees upon request.
- (d) A designated employer, who has an Employment Equity Plan, must make a copy of the plan available to its employees upon request.
- (e) Any other document concerning this act as may be prescribed should be made available to employees upon request.



### **5.1.13 Duty to keep records (Section 26)**

- (a) The designated employer must establish and, for a prescribed period, maintain records in respect of its workforce, its Employment Equity Plan and any other records relevant to its compliance with the act.
- (b) The designated employer has a duty to keep records, display and make accessible the provisions of the Employment Equity Act, 1998; the Employment Equity Plan and EE report to all its employees.

### **5.1.14 Income differentials (Section 27)**

The designated employer must also complete and submit the (*EEA4 form*) on the remuneration and benefits received in each occupational category and level of its workforce, if they are disproportionate.

\* *All forms referred to in the above sections are available on the Department of Labour's website. [www.labour.gov.za](http://www.labour.gov.za)*

\*\* *All designated employers under the DHET (i.e. DHET:HO and all Public Colleges) must comply with the Employment Equity cycle above.*

## **6. ROLES AND RESPONSIBILITIES**

### **6.1 Employment Equity Forum (EEF)**

The EEF shall have fair representation from all its components and categories (e.g. people with disabilities), in order to create a credible forum in which all representative groups become partners through participation and through which the Accounting Officer will consult from time to time on matters ensuring equity in each component.

*See Annexure A: Objectives, Composition and Functions of the EEF.*

## **6.2 Line Management**

- 6.2.1 Assists the responsible HR Unit in the drafting, and monitoring of progress of components on the EEP implementation.
- 6.2.2 Ensures subordinates are kept abreast of developments on issues of racial, gender and disability sensitivity in the workplace.
- 6.2.3 Provides two-way communication from EEF, responsible HR Unit to employees.
- 6.2.4 Minimises the possibility of discriminatory harassment in their Components.
- 6.2.5 Assists the responsible HR Unit and the EEF in the setting of numerical targets and devising appropriate EEP.
- 6.2.6 Provides Components' reports on Employment Equity upon request.
- 6.2.7 Oversees the implementation of appropriate Human Resource Strategies to facilitate the implementation of the EEP in their units.
- 6.2.8 Oversees the achievement of targets, in relation to Affirmative Action Measures and numerical goals, in terms of the EEP.

## **6.3 Responsible Human Resources Unit**

HRMA-HO shall provide guidelines and reporting checklists to all Departmental Components and responsible HR Units to ensure standardisation and understanding of expected requirements by all Components.

The responsible HR Unit shall act as facilitator, provide support and advise, with specific attention to:

- 6.3.1 advising relevant parties on the development and implementation of EEP and AA measures;
- 6.3.2 providing on-going advice on issues of racial, gender and disability sensitivity;

- 6.3.3 mediation of conflicts arising out of the implementation of this policy;
- 6.3.4 evaluating and improving grievance procedures to minimise the possibility of discriminatory harassment;
- 6.3.5 assist with national Human Resource Audits and Organisational Climate Assessment studies, consolidating the results thereof, facilitating feedback to the EEF. Manage and assist in the analysis and interpretation of the information;
- 6.3.6 the setting of numerical targets and devising appropriate EEP;
- 6.3.7 co-ordinating the annual consolidated reporting to the Director-General of the DOL via DHET: HO;
- 6.3.8 ensuring the creation and existence of the requisite capacity, including the provision of knowledge and skills to management at all levels, to ensure the successful implementation of the EEP;
- 6.3.9 devising and overseeing the implementation of appropriate Human Resource strategies to facilitate the implementation of the EEP;
- 6.3.10 ensure that the DHET complies with all applicable legislative requirements regarding Employment Equity and AA;
- 6.3.11 assist with the development and enhancement of induction, training, mentoring and other Human Resource Development programmes for the designated groups;
- 6.3.12 the achievement of targets, in relation to AA measures and numerical goals, in terms of the EEP, will form part of the key performance areas against which Component Heads will be evaluated; and
- 6.3.13 line managers will also be evaluated on their ability and efforts to develop and retain their employees.

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## **6.4 Senior Management Team**

- 6.4.1 Shall ensure that updates and amendments to the EEPs are effected immediately and that the availability of the updated EEP are communicated to all employees.
- 6.4.2 The Deputy Director-General and all Heads of Branches will also be responsible for the implementation of AA Measures and the achievement of numerical targets regarding the employment of designated groups.
- 6.4.3 The ultimate responsibility for the successful implementation of this Policy resides with the executive/delegated authority.

### **Colleges:**

The Deputy Principal: Corporate Services will be responsible for implementing all of the above at College level.

## **6.5 HRMA - Head Office**

- 6.5.1 Shall ensure that DHET: HO and all Colleges (as designated employers) develop EE plans and report to HRM&D:HO for onward consolidated reporting to the DOL.
- 6.5.2 The HRM&D shall timeously communicate any changes to Employment Equity reporting instructions given to its components and further monitor alignment of all components to DHET's EE practices.

## **6.6 The Employer**

Provide the following:

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### **6.6.1 Supportive Work Environment**

In order to create and maintain a supportive work environment, the designated employer shall:

- (a) demonstrate commitment on all levels to the objectives and goals of this Policy and the designated employer's EEP;
- (b) develop programmes designed to advance understanding and sensitivity of diversity;
- (c) establish a flexible and accommodating work environment and arrangements;
- (d) develop codes of conduct addressing issues of equity, discrimination and harassment; and
- (e) develop communication structures which will ensure effective communication by and consultation of all stakeholders and ensure compliance with the disclosure of information principle.

### **6.6.2 Reasonable Accommodation**

In keeping with the designated employers' commitment to diversity and EE, the designated employer shall make reasonable accommodation for people with disabilities, as well as applicants and employees from designated groups.

## **7. MONITORING**

The Executive/Delegated authority should monitor and ensure the adherence to the provisions of this policy;

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The designated employer shall:

- 7.1 assign one or two Senior Managers to take responsibility for monitoring and implementing an EEP;
- 7.2 provide the manager with the authority and means to perform their functions; and
- 7.3 take reasonable steps to ensure that managers perform their functions.

The assignment of responsibility to a manager in terms of subsection (5.1.1) does not relieve the designated employer of any duty imposed by the EE Act or any other law.

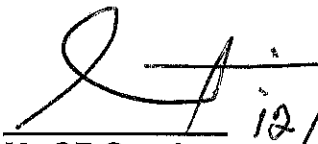
## 8. NON COMPLIANCE

A Labour Inspector may issue a compliance order to the designated employer if the designated employer:

- 8.1 refused to give a written undertaking in terms of Section 36 of the Act, when requested to do so; or
- 8.2 failed to comply with a written undertaking given in terms of Section 36 of the Act.

## 9. DISPUTE RESOLUTION

All disputes and grievances will be dealt with in accordance with the provisions of the DHET Labour Relations Manual.



12/05/2019

Mr GF Qonde

Director-General: Higher Education and Training Date:

## ANNEXURE A

### EE FORUM OBJECTIVES, COMPOSITION, FUNCTIONS AND MEETING PROCEDURES

#### 1. Objectives of the EEF

- 1.1 To conduct **an analysis** referred to in the Act.
- 1.2 To create a platform for previously disadvantaged Employees by establishing a bridging process thus enabling all employees to compete equally for opportunities that may arise from time to time.
- 1.3 To ensure the development and improvement of the skills and standards required for service delivery objectives of each component, so as to enhance entry opportunities for both the component and its employees.
- 1.4 To achieve acceptance of the Affirmative Action Measures within DHET by ensuring participation on all levels.
- 1.5 To implement a well-structured progression framework within the DHET line functions by ensuring that mentors/representatives are appointed and trained.
- 1.6 To play a monitoring role in the DHET's Components' Employment Equity targets that is established from time to time.

#### 2. Composition of the Employment Equity Forum

The EEF shall be composed of the following:

- 2.1 The Chairperson must be a member of the Senior Management Team assigned according to section 24(1)(a) of the Act to take the responsibility for monitoring and implementing the Employment Equity Plan of the DHET Component.
- 2.2 Employer representative(s): one of two Senior Management Employees, of which one must be the Deputy Director-General: Corporate Services.
- 2.3 The other Senior Management employee may be nominated or appointed by the Senior Management member.  
  
(Should an elected representative fail to perform his/her duties adequately, a by-election may be held to elect a new representative.)
- 2.4 Representatives from designated groups; and

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2.5 Representatives from undesignated groups.

The election of the EEF will take place every year commencing 1 January of a period under review.

**3. Functions of the Employment Equity Forum**

The Employment Equity Forum shall be responsible for:

- 3.1 monitoring of the implementation of Employment Equity and the adoption of appropriate initiatives, policies and procedures on a consultative basis with all relevant stakeholders;
- 3.2 making recommendations to the Director-General and/or Executive Management on procedures for the effective implementation of this Policy;
- 3.3 being transparent to all DHET employees with regard to Employment Equity related issues within the DHET;
- 3.4 acting cohesively as a team, and make decisions on the basis of consensus and engage in constructive debate in an attempt to provide transformational solutions for the DHET; and
- 3.5 any other duties as required by the Act and the DHET Employment Equity Policy.

**4. Terms of Office and Meeting Procedures**

- 4.1 The EEF's term of office shall be five years or a period as decided and agreed upon by the Senior Management.
- 4.2 The Chairperson and Deputy Chairperson shall not serve in that capacity for more than 3 years or if otherwise decided.
- 4.3 If the Chairperson or Deputy Chairperson is unable to attend a meeting, an Acting Chairperson will be appointed by the members present in the meeting.
- 4.4 Meetings shall take place at least once a quarter just before a Ministerial Management meeting or any other time as deemed necessary by the Forum.
- 4.5 All records of meetings shall be written in English and kept for a maximum period of 5 years.

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4.6 The quorum for each meeting shall be 50 percent+1 of total members.

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