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## GOVERNMENT NOTICES

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### DEPARTMENT OF LABOUR

No. 733

14 July 2009

#### EMPLOYMENT EQUITY ACT, 1998 (ACT 55 OF 1998) REPEAL OF THE EMPLOYMENT EQUITY REGULATIONS

I Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, in terms of section 55 (1) of the Employment Equity Act, 1998 (Act No 55 of 1998), and on the advice of the Commission for Employment Equity, hereby repeal the regulations made in terms of the Employment Equity Act, Act 55 of 1998, regulations published in notice R841 in Government Gazette 29130 of 18 August 2006. This notice will be effective from the date of publication.



**M M S MDLADLANA, MP**  
**MINISTER OF LABOUR**

**No. 736****14 July 2009****EMPLOYMENT EQUITY ACT, 1998****GENERAL ADMINISTRATIVE REGULATIONS, 2009**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby under section 55(1) of the Employment Equity Act, 1998 (Act No. 55 of 1998), make the regulations in the Schedule.

**SCHEDULE**

1. Definitions
2. Collecting information and conducting an analysis
3. Duty to prepare and implement an Employment equity plan
4. Duty to report
5. Duty to inform
6. Income differentials
7. Securing an undertaking
8. Compliance order
9. Objections to compliance order
10. Repeal
11. Short Title

**FORMS AND ANNEXURES**

1. EEA1 Employee declaration in terms of Section 19 (1) of the Act
2. EEA2 Report to Director-General in terms of Section 21 of the Act
3. EEA3 Summary of the Act in terms of Section 25(1) of the Act
4. EEA4 Statement of income differentials in terms of Section 27 of the Act
5. EEA5 Securing an Undertaking in terms of Section 36 of the Act
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7. EEA7 Objection against Compliance Order in terms of Section 39 (1) of the Act
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10. EEA10 Annexure 3 : Summary of the employment equity progress report
11. EEA11 Annexure 4 : Request for employer's employment equity report

## Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Act, has the meaning so assigned and, unless the context otherwise indicates –

**“large employers”** mean designated employers who employ 150 or more employees;

**“small employers”** mean designated employers who employ fewer than 150 employees;

**“temporary employees”** mean workers who are employed to work for three consecutive months or less; and

**“the Act”** means the Employment Equity Act, 1998 (Act No. 55 of 1998).

## Duties of a designated employer

### Collecting information and conducting an analysis

2. (1) When a designated employer collects information contemplated in section 19 of the Act, the employer must request each employee in the workforce to complete a declaration using the EEA1 form.

(2) An employee may add information to the EEA1 Form.

(3) Where an employee refuses to complete the EEA1 form or provides inaccurate information, the employer may establish the designation of an employee by using reliable historical and existing data.

(4) A designated employer must use section B of the EEA2 form to develop the profile of the employer's workforce as required by section 19(2) of the Act.

(5) When a designated employer conducts the analysis required by section 19(1) of the Act, the employer may refer to –

- (a) Annexure 1 (EEA8), for demographic data; and
- (b) Annexure 2 (EEA9), which contains the definitions of occupational levels.

(6) A designated employer must refer to the relevant Codes of Good Practice issued in terms of section 54 of Act as a guide when collecting information and conducting the analysis required by section 19 of the Act.

(7) A designated employer must conduct the analysis required by section 19 of the Act by reviewing its employment policies, practices, procedures and the working environment in order to identify employment barriers which adversely affect people from designated groups.

### Duty to prepare and implement an employment equity plan

3. (1) A designated employer must refer to the relevant Codes of Good Practice issued in terms of section 54 of the Act when preparing an employment equity plan contemplated in section 20 of the Act.

(2) A designated employer must retain the employment equity plan for a period of three years after the expiry of the plan, unless the employer employs fewer than 150 employees, in which case the plan must be retained for two years.

(3) The employment equity plan must contain a description of the measures taken by the designated employer to eliminate unfair discrimination in that employer's workplace.

#### **Duty to report**

4. (1) A designated employer must submit a report in terms of section 21 of the Act using the EEA2 form to the Director General, which report must be addressed to the Employment Equity Registry, Department of Labour, Private BagX117, Pretoria, 0001.

(2) A large employer must submit its first report within six months of being designated, and thereafter annually on the first working day of October; and a small employer must submit their first report within twelve months of being designated, and thereafter on the first working day of October of every year that ends with an even number.

(3) A large employer must complete the entire EEA2 reporting form.

(4) A small employer must only complete areas of the EEA2 form that apply to it.

(5) A designated employer whose operations extend across different geographical areas or workplaces may choose to submit a separate report for each registered entity or submit a consolidated report.

(6) An employer who submits a consolidated a report contemplated in subregulation (5) must have a consolidated plan with individual employment equity plans and relevant information for each entity or workplace that has been included in the consolidated report.

(7) The consolidated report, the individual employment equity plan and relevant information must be made available at each entity or workplace.

(8) An employer must inform the Department immediately of any changes to its trade name or when an employer is no longer designated in terms of the Act.

(9) The method of reporting should remain for the period of the plan and must be consistent from year-to-year and from reporting period to reporting period.

(10) A large employer must retain a copy of the report for a period of three years after it has been submitted to the Director-General.

(11) A small employer must retain a copy of the report for a period of two years after it has been submitted to the Director-General.

#### **Duty to inform**

5. The notice contemplated in section 25(1) of the Act must be in the form of the EEA3 form.

#### **Income differentials**

6. (1) A designated employer must submit a statement of income differentials required by section 27 of the Act in the form of the EEA4 form.

(2) When completing the EEA4 form, a designated employer must refer to the EEA9 form for guidance on occupational levels.

(3) A designated employer must submit an Income Differential Statement in terms of section 27 of the Act using the EEA4 form to the Employment Conditions Commission, which must be addressed to the Employment Equity Registry, Department of Labour, Private BagX117, Pretoria, 0001.

(4) A large employer must retain a copy of the statement of income differentials contemplated in subregulation (1) for a period of three years after it has been submitted to the Employment Conditions Commission.

(5) A small employer must retain a copy of the statement for a period of two years after it has been submitted to the Employment Conditions Commission.

### **Enforcement**

#### **Securing an undertaking**

7. A labour inspector must request and obtain a written undertaking using the EEA5 form.

#### **Compliance order**

8. A labour inspector may issue a compliance order to a designated employer using the EEA6 form.

#### **Objections to compliance order**

9. A designated employer may object to a compliance order by making a representation to the Director-General using the EEA7 form.

#### **Repeal of laws**

10. The Employment Equity Regulations, 2006 as published in *Government Gazette* Regulation Notice No. R. 8531 of 18 August of 2006 is hereby repealed.

#### **Short Title**

11. These Regulations are called the General Administrative Regulations, 2009.



labour  
Department  
Labour  
REPUBLIC OF SOUTH AFRICA

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EEA1

## DEPARTMENT OF LABOUR

### DECLARATION BY EMPLOYEE (Confidential)

#### PLEASE READ THIS FIRST

#### Purpose of this form

This form is used to obtain information from employees for the purpose of assisting employers with conducting an analysis on the workforce profile. Employers should use this form to ascertain which employees are from designated groups in terms of the Employment Equity Act, 55 of 1998.

#### Who fills in this form

Employees should fill in this form.

#### Instructions

Employers must ensure that the contents of this form remain confidential, and that it is only used to comply with the Employment Equity Act, 55 of 1998.

'People with disabilities' are defined in the Act as people who have long-term or recurring physical or mental impairments, which substantially limits their prospects of entering into, or advancement in employment.

Please note that people have the right to disclose or not to disclose their disability.

1. Name of employee: \_\_\_\_\_

2. Employee workplace No: \_\_\_\_\_  
(This is the number that an employer/company/organization uses to identify an employee in the workplace.)

3. Please indicate to which categories you belong with an 'X' below:

Male	Female
<input type="checkbox"/>	<input type="checkbox"/>

African	Coloured	Indian	White
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Foreign National ☐

If you are not a citizen by birth, please indicate the date you acquired your citizenship: .....

☐ Person with a disability ☐

If yes, specify nature of disability:

\_\_\_\_\_

4. I verify that the above information is true and correct.

Signed: \_\_\_\_\_  
Employee

Date: \_\_\_\_\_



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EEA2

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**PLEASE READ THIS FIRST****PURPOSE OF THIS FORM**

This form enables employers to comply with Section 21 of the Employment Equity Act 55 of 1998.

This form contains the format for employment equity reporting by employers to the Department of Labour. Both small employers (i.e. employers employing fewer than 150 employees) and large employers (i.e. employers employing 150 or more employees) are required to use this form.

Those employers who are not designated, but wish to voluntarily comply, must also use this reporting form.

Although all sections of this form apply to large employers, small employers are not required to complete Section F of the form.

**WHO SHOULD COMPLETE THIS FORM?**

All designated employers that have to submit a report in terms of the Employment Equity Act, 55 of 1998. Employers who wish to voluntarily comply with the reporting requirements of the Act are also required to complete this form.

**WHEN SHOULD EMPLOYERS REPORT?**

Large employers must submit their first report within six months of being designated, and thereafter annually on the first working day of October; and small employers must submit their first report within twelve months of being designated, and thereafter on the first working day of October of every year that ends with an even number.

**ESSENTIAL REQUIREMENTS**

Large employers, i.e. employers with 150 and more employees, must complete the entire EEA2 reporting form. Small employers, i.e. employers with fewer than 150 employees, must only complete areas of the EEA2 form that apply to them.

Guidance to overcome difficulties in order to complete the form properly must be obtained from the Department prior to completing and submitting the report.

**SEND TO:**

Employment Equity Registry  
The Department of Labour  
Private Bag X117  
Pretoria 0001

Online reporting: [www.labour.gov.za](http://www.labour.gov.za)  
Helpline: 0860101018

**SECTION A: EMPLOYER DETAILS & INSTRUCTIONS**

Trade name	
DTI registration name	
DTI registration number	
PAYE/SARS number	
UIF reference number	
EE reference number	
Seta classification	
Industry/Sector	
Telephone number	
Fax number	
Email address	
<b>Postal address</b>	
Postal code	
City/Town	
Province	
<b>Physical address</b>	
Postal code	
City/Town	
Province	
<b>Details of CEO at the time of submitting this report</b>	
Name and surname	
Telephone number	
Fax number	
Email address	
<b>Details of Employment Equity Senior Manager at the time of submitting this report</b>	
Name and Surname	
Telephone number	
Fax number	
Email address	
<b>Business type</b>	
<input type="checkbox"/> Private Sector	<input type="checkbox"/> Parastatal
<input type="checkbox"/> National Government	<input type="checkbox"/> Provincial Government
<input type="checkbox"/> Local Government	<input type="checkbox"/> Educational Institution
<input type="checkbox"/> Non-profit Organization	
<b>Information about the organization at the time of submitting this report</b>	
Number of employees in the organization	<input type="checkbox"/> 0 to 49 <input type="checkbox"/> 50 to 149 <input type="checkbox"/> 150 or more
Is your organization an organ of State?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is your organisation part of a group / holding company? If yes, please provide the name.	<input type="checkbox"/> Yes <input type="checkbox"/> No _____
Date of submitting this report	DD / MM / YYYY

**Please indicate below the period the report covers (in the case of large employers the preceding twelve months and for small employers twenty-four months, except for first time reporting where the period may be shorter):**

**From (date):** \_\_\_\_/\_\_\_\_/\_\_\_\_ **To (date):** \_\_\_\_/\_\_\_\_/\_\_\_\_  
DD / MM / YYYY DD / MM / YYYY

**Please indicate below the duration of your current employment equity plan:**

**From (date):** \_\_\_\_/\_\_\_\_/\_\_\_\_ **To (date):** \_\_\_\_/\_\_\_\_/\_\_\_\_  
DD / MM / YYYY DD / MM / YYYY

**Please read this first**

- a. The method of reporting should remain for the period of the plan, and must be consistent from reporting period to reporting period.
- b. Employers must refrain from leaving blank spaces or using a dash (-) when referring to the value "0" (Zero) or the word "No". All relevant areas of the form must be fully and accurately completed by employers. Designated employers who fail to observe this provision will be deemed not to have reported.
- c. "Temporary employees" mean workers who are employed to work for three consecutive months or less.
- d. The **Numerical goal** is the workforce profile the employer projects to achieve at the end of the employer's current employment equity plan (EE Plan). The numerical goals of the employer must be the same for the entire duration of the EE Plan.
- e. The **Numerical target** is the workforce profile the employer projects to achieve by the end of the next reporting period.
- f. Large employers, i.e. employers with 150 and more employees, must complete the entire EEA2 reporting form. Small employers, i.e. employers with fewer than 150 employees, must only complete areas of the EEA2 form that apply to them. Areas that only apply to small employers shall be made available by the Department of Labour in a separate form as well.
- g. The alphabets "A", "C", "I", "W", "M" and "F" used in the tables have the following corresponding meanings and must be interpreted as "Africans", "Coloureds", "Indians", "Whites", "Males" and "Females" respectively.



1.1 Please report the total number of **employees** (including employees with disabilities) in each of the following **occupational levels**: Note: A=Africans, C=Coloureds, I=Indians and W=Whites

1.2 Please report the total number of **employees with disabilities only** in each of the following occupational levels:  
Note: A=Africans, C=Coloureds, I=Indians and W=Whites

[illegible]

2.1 Please indicate the total number of employees (including people with disabilities), that are involved in **Core Operation Function** positions at each level in your organization only. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
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>											
Temporary employees											
<b>GRAND TOTAL</b>											

[illegible]



## 5. Termination

5.1 Please report the total number of terminations in each occupational level, including people with disabilities. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

[illegible]

5.2 Please report the total number of terminations, including people with disabilities, in each **termination category** below. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

[illegible]

## SECTION D: SKILLS DEVELOPMENT

## 6. Skills Development

- 6.1 Please report the total number of people from the designated groups, including people with disabilities, who received training **solely** for the purpose of achieving the numerical goals, and not the number of training courses attended by individuals. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

[illegible]

- 6.2 Please report the total number of **people with disabilities only** who received training **solely** for the purpose of achieving the numerical goals, and not the number of training courses attended by individuals. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

[illegible]

7.1 Please indicate the numerical goals (i.e. the workforce profile) you project to achieve for the total number of employees, including people with disabilities, at the end of your current employment equity plan in terms of occupational levels. Note: A=Africans, C=Coloureds, I=Indians and W=Whites:

7.2 Please indicate the numerical goals (i.e. the workforce profile) you project to achieve for the total number of **employees with disabilities only** at the end of your current employment equity plan in terms of occupational levels.

[illegible]

Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
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>											
Temporary employees											
<b>GRAND TOTAL</b>											

[illegible]

**SECTION F: MONITORING & EVALUATION** *(This section is not applicable to small employers)***9. Disciplinary Action**

9.1 Disciplinary action: (report the total number of disciplinary actions during the twelve months preceding this report).  
Report on formal outcomes only. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

DISCIPLINARY ACTION	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	

**10. Awareness of Employment Equity**

10.1 Please indicate which of the following awareness measures were implemented by your organization:

	Yes	No	No. of employees covered
Formal written communication			
Policy statement includes reference to employment equity			
Summary of the Act displayed			
Employment Equity training			
Diversity management programmes			
Discrimination awareness programmes			

**11. Consultation**

11.1 Please indicate which stakeholders were involved in the consultation process when developing and implementing your employment equity plan and when preparing this Employment Equity Report:

	Yes	No
Consultative body or employment equity forum		
Registered trade union (s)		
Employees		



## 12. Barriers and affirmative action measures

12.1 Please indicate in which categories of employment policy or practice barriers to employment equity were identified. If your answer is 'Yes' to barriers in any of the categories, please indicate whether you have developed affirmative action measures and the timeframes to overcome them.

Categories	BARRIERS		AFFIRMATIVE ACTION MEASURES		TIMEFRAME FOR IMPLEMENTATION OF AA MEASURES	
	YES	NO	YES	NO	START DATE	END DATE
Recruitment procedures						
Advertising positions						
Selection criteria						
Appointments						
Job classification and grading						
Remuneration and benefits						
Terms & conditions of employment						
Job assignments						
Work environment and facilities						
Training and development						
Performance and evaluation						
Promotions						
Transfers						
Succession & experience planning						
Disciplinary measures						
Dismissals						
Retention of designated groups						
Corporate culture						
Reasonable accommodation						
HIV&AIDS prevention and wellness programmes						
Appointed senior manage(s) to manage EE implementation						
Budget allocation in support of employment equity goals						
Time off for employment equity consultative committee to meet						

## 13. Monitoring and evaluation of implementation

13.1 How regularly do you monitor progress on the implementation of the employment equity plan? Please choose one.

Weekly	Monthly	Quarterly	Yearly

13.2 Did you achieve the annual objectives as set out in your employment equity plan for this period?

Yes	No	Please explain

**SECTION G: Signature of the Chief Executive Officer****Chief Executive Officer**

I hereby declare that I have read, approved and authorized this report.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_ year \_\_\_\_\_

At place: \_\_\_\_\_

\_\_\_\_\_  
Chief Executive Officer (Full Name)

\_\_\_\_\_  
Chief Executive Officer (Signature)

**SUMMARY OF THE EMPLOYMENT EQUITY ACT, 55 OF 1998, ISSUED IN TERMS OF SECTION 25(1)****1. Chapter 1 – Definition, purpose, interpretation and application****Purpose of the Act: Section 2**

The purpose of this act is 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 designated groups to ensure their equitable representation in all occupational categories and levels in the workforce.

**Application of the Act: Section 4**

- (a) Chapter II (section 5-11) applies to all employers and employees.
- (b) Chapter III (section 12-27) applies to designated employers and people from designated groups.
- (c) A designate employer means an employer who employs 50 or more employees, or has a total annual turnover as reflected in Schedule 4 of the Act, municipalities and organs of State. Employers can also volunteer to become designated employers.
- (d) A designated group means black people, women and people with disabilities.
- (e) The South African National Defence Force, National Intelligence Agency, and South African Secret Services are excluded from this Act.

**2. Chapter II – prohibition of unfair discrimination**

No person may unfairly discriminate, 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.

It is not unfair discrimination to promote affirmative action consistent with the Act or to prefer or exclude any person on the basis of an inherent job requirement.

**Medical testing**

- (a) Medical testing of an employee is permissible only when legislation requires testing or when this is justifiable for various reasons.
- (b) HIV testing is prohibited unless such testing is determined to be justifiable by the Labour Court.

**Psychological testing: Section 8**

Psychological testing and similar assessments are prohibited, unless the test is scientifically valid and reliable, can be applied fairly to all employees, and is not biased against any employee or group.

**Disputes concerning this Chapter: Section 10**

- (a) An employee, or applicant for employment, may refer a dispute concerning alleged unfair discrimination (or medical or psychological testing) to the CCMA for conciliation. This must be done within six months of the alleged discrimination (or testing).
- (b) If a dispute is not resolved at conciliation, a party may refer it to the Labour Court for adjudication. The parties to a dispute may also agree to refer the dispute to arbitration.
- (c) Unfair dismissal disputes in which unfair discrimination is alleged must be dealt with in terms of the Labour Relations Act. The dismissal must be referred to the CCMA within 30 days.

### **3. Chapter III – Affirmative Action**

#### **3.1 Duties of a designated employer**

- (a) A designated employer must implement affirmative action measures for designated groups to achieve employment equity.
- (b) In order to implement affirmative action measures, a designated employer must
  - I. Consult with employees;
  - II. Conduct analysis;
  - III. Prepare an employment equity plan; and
  - IV. Report to the Director-General on progress made in the implementation of the plan.

#### **3.2 Affirmative action**

- (a) Affirmative action measures are measures intended to ensure that suitably qualified employees from designated groups have equal employment opportunity and are equitably represented in all occupational categories and levels of the workforce.
- (b) Such measures must include:
  - I. Identification and elimination of barriers with an adverse impact on designated groups;
  - II. Measures which promote diversity
  - III. Making reasonable accommodation for people from designated groups;
  - IV. Retention, development and training of designated groups (including skills development); and
  - V. Preferential treatment and numerical goals to ensure equitable representation, which exclude quotas.
- (c) Designated employers are not required to take any decision regarding an employment policy or practice that would establish an absolute barrier to prospective or continued employment or advancement of people not from designated groups.

#### **3.3 Consultation: section 16 and 17**

A designated employer must take reasonable steps to consult with representatives of employees representing the diverse interests of the workforce on the conducting of an analysis, preparation and implementation of a plan, and on reporting to the Director-General.

#### **3.4 Disclosure of information: Section 18**

To ensure meaningful consultation, the employer must disclose relevant information to the consulting parties, subject to section 16 of the Labour Relations Act 66 of 1995.

#### **3.5 Analysis: Section 19**

A designated employer must conduct an analysis of employment policies, practices, procedures and the work environment so as to identify employment barriers that adversely affect members of the designated groups. The analysis must also include the development of a workforce profile to determine to what extent designated groups are under-represented in the workplace.

#### **3.6 Employment Equity Plan: Section 20**

A designated employer must prepare and implement a plan to achieve employment equity, which must

- a) Have objectives for each year of the plan;
- b) Include affirmative action measures;
- c) Have numerical goals for achieving equitable representation;
- d) Have a timetable for each year;
- e) Have internal monitoring and evaluation procedures, including internal dispute resolution mechanisms; and
- f) Identify persons, including senior managers, to monitor and implement the plan.

**3.7 Report: Section 21**

- (a) An employer who employs fewer than 150 employees must submit its first report to the Director-General within 12 months after commencement of the Act, and thereafter every two years on the first working day of October.
- (b) An employer who employs 150 or more employees must submit its first report six months after the commencement of the Act, and thereafter every year on the first working day of October.

**3.8 Designated employer must assign a manager: Section 24**

A designated employer must assign one or more senior managers to ensure implementation and monitoring of the employment equity plan and must make available necessary resources for this purpose.

**3.9 Income differentials: Section 27**

A statement of remuneration and benefits received in each occupational category and level of the workforce must be submitted by a designated employer to the Employment Conditions Commission (ECC).

Where there are disproportionate income differentials, a designated employer must take measures to reduce it progressively. Such measures may include collective bargaining, compliance with sectoral determinations (Section 51 of the Basic Conditions of Employment Act, 1997); the application of norms and benchmarks recommended by the ECC, relevant measures contained in skills development legislation and any other appropriate steps.

**4. Chapter v - Monitoring, Enforcement and Legal Proceedings****4.1 Monitoring: Section 34**

Employee or trade union representatives can monitor contraventions of the Act and report to relevant bodies.

**4.2 Powers of the Labour Inspector: Section 35**

Labour Inspectors are authorised to conduct an inspection as provided for in section 65 and 66 of the Basic Conditions of Employment Act, 1997.

**4.3 Undertaking to comply: Section 36**

If the inspector has reasonable grounds to believe a designated employer has failed to comply with its obligations in terms of the Act, the inspector will obtain a written undertaking to comply within a specified period.

**4.4 Compliance Order: Section 37**

If the designate employer refuses to comply with the written undertaking, the inspector will issue a compliance order.

**4.5 Review by Director-General: Section 43**

The Director-General may conduct a review to determine whether an employer is complying with the Act. On completion of the review, the Director-General may make recommendations for compliance within certain frames.

**4.6 Powers of the Labour Court: Section 50**

The Labour Court has the powers to make any appropriate orders, award compensation or impose fines.

**4.7 Protection of employee Rights: Section 51**

The Act protects employees who exercise their rights and obligations under the Act against victimisation, obstruction and undue influence.

**5. Chapter VI – General Provisions****5.1 State contracts: Section 53**

Designated employers and employers who voluntarily comply with Chapter III, and who seek to do business with any organ of state, will have to apply for a certificate from the Minister confirming their compliance with chapter II and III of the Act. Non-designated employers' compliance certificate will pertain to chapter II.

**5.2 Liability of Employers: Section 60**

Should employees contravene any provision of this Act while performing their duties; the employer will be liable, unless the employer can prove that it did everything in its power to prevent the undesired act.



PAGE 1 OF 4

EEA4

1 of 4 EEA4

**PLEASE READ THIS FIRST****PURPOSE OF THIS FORM**

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This form contains the format for employment equity reporting by employers to the Department of Labour. Both small employers (i.e. employers employing fewer than 150 employees) and large employers (i.e. employers employing 150 or more employees) are required to use this form.

Those employers who are not designated, but wish to voluntarily comply, must also use this reporting form.

Although all sections of this form apply to large employers, small employers are not required to complete Section F of the form.

**WHO SHOULD COMPLETE THIS FORM?**

All designated employers that have to submit a report in terms of the Employment Equity Act, 55 of 1998. Employers who wish to voluntarily comply with the reporting requirements of the Act are also required to complete this form.

**WHEN SHOULD EMPLOYERS REPORT?**

Large employers must submit their first report within six months of being designated, and thereafter annually on the first working day of October; and small employers must submit their first report within twelve months of being designated, and thereafter on the first working day of October of every year that ends with an even number.

**ESSENTIAL REQUIREMENTS**

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Guidance to overcome difficulties in order to complete the form properly must be obtained from the Department prior to completing and submitting the report.

**SEND TO:**

Employment Equity Registry  
The Department of Labour  
Private Bag X117  
Pretoria 0001

Online reporting: [www.labour.gov.za](http://www.labour.gov.za)  
Helpline: 0860101018

**SECTION A: EMPLOYER DETAILS & INSTRUCTIONS**

Trade name	
DTI registration name	
DTI registration number	
PAYE/SARS number	
UIF reference number	
EE reference number	
Seta classification	
Industry/Sector	
Telephone number	
Fax number	
Email address	
<b>Postal address</b>	
Postal code	
City/Town	
Province	
<b>Physical address</b>	
Postal code	
City/Town	
Province	
<b>Details of CEO at the time of submitting this report</b>	
Name and surname	
Telephone number	
Fax number	
Email address	
<b>Details of Employment Equity Senior Manager at the time of submitting this report</b>	
Name and Surname	
Telephone number	
Fax number	
Email address	
<b>Business type</b>	
<input type="checkbox"/> Private Sector	<input type="checkbox"/> Parastatal
<input type="checkbox"/> National Government	<input type="checkbox"/> Provincial Government
<input type="checkbox"/> Local Government	<input type="checkbox"/> Educational Institution
<input type="checkbox"/> Non-profit Organization	
<b>Information about the organization at the time of submitting this report</b>	
Number of employees in the organization	<input type="checkbox"/> 0 to 49 <input type="checkbox"/> 50 to 149 <input type="checkbox"/> 150 or more
Is your organization an organ of State?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is your organisation part of a group / holding company? If yes, please provide the name.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Date of submitting this report	DD / MM / YYYY

**THE FOLLOWING MUST BE TAKEN INTO CONSIDERATION WHEN COMPLETING THE EEA4 FORMS**

1. Foreign nationals should be included when completing the EEA4 form in the appropriate space provided in the table below.
2. Temporary employees mean workers who are employed to work for three consecutive months or less;
3. The calculation of remuneration must include twelve months of a financial year that is in line with the period covered by the EEA2 reporting form. Where a person has not worked for a full twelve month period, the total remuneration worked should be included.
4. All payment amounts to be reflected in the table below must be rounded to the nearest Rand (R) and included as total remuneration for each group in terms of race and gender. No blank spaces, commas (,), full stops or decimal points (.) or any other separator should be included when capturing the payment amounts in each of the cells in the table below – for example R7 345 567.22 must be captured as 7345567 with no separators.
5. The payments below indicate what must be included and what must be excluded in an employee's remuneration for the purposes of calculating pay in order to complete the EEA4 form.
  - 5.1 Included
    - a) Housing or accommodation allowance or subsidy or housing or accommodation received as a benefit in kind;
    - b) Car allowance or provision of a car, except to the extent that the car is provided to enable the employee to work;
    - c) Any cash payments made to an employee, except those listed as exclusions in terms of this schedule;
    - d) Any other payment in kind received by an employee, except those listed as exclusions in terms of this schedule;
    - e) Employer's contributions to medical aid, pension, provident fund or similar schemes;
    - f) Employer's contributions to funeral or death benefit schemes.
  - 5.2 Excluded
    - a) Any cash payment or payment in kind provided to enable the employee to work (for example, an equipment, tool or similar allowance or the provision of transport or the payment of a transport allowance to enable the employee to travel to and from work);
    - b) A relocation allowance;
    - c) Gratuities (for example, tips received from customers) and gifts from the employer;
    - d) Share incentive schemes;
    - e) Discretionary payments not related to an employee's hours of work or performance (for example, a discretionary profit-sharing scheme);
    - f) An entertainment allowance;
    - g) An education or schooling allowance.
6. The value of payments in kind must be determined as follows –
  - a) a value agreed to in either a contract of employment or collective agreement, provided that the agreed value may not be less than the cost to the employer of providing the payment in kind; or
  - b) the cost to the employer of providing the payment in kind.
7. An employee is not entitled to a payment or the cash value of a payment in kind as part of remuneration if-
  - a) the employee received the payment or enjoyed, or was entitled to enjoy, the payment in kind during the relevant period; or
  - b) in the case of a contribution to a fund or scheme that forms part of remuneration, the employer paid the contribution in respect of the relevant period.
8. If a payment fluctuates over a period of 13 weeks or if an employee has been in employment for a shorter period, the actual amount for that period should be calculated.

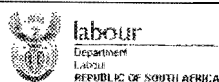


## INCOME DIFFERENTIALS STATEMENT

Please use the table below to indicate the number of employees, including people with disabilities, and their remuneration in each **occupational level** in terms of race and gender.

Occupational levels		MALE				FEMALE				FOREIGN NATIONALS		Total
		A	C	I	W	A	C	I	W	M	F	
Top Management	Number of workers											
	Remuneration											
Senior Management	Number of workers											
	Remuneration											
Professionally qualified and experienced specialists and mid-management	Number of workers											
	Remuneration											
Skilled technical and academically qualified workers, junior management, supervisors, foremen and superintendents	Number of workers											
	Remuneration											
Semi-skilled and discretionary decision making	Number of workers											
	Remuneration											
Unskilled and defined decision making	Number of workers											
	Remuneration											
TOTAL PERMANENT	Number of workers											
	Remuneration											
Temporary employees	Number of workers											
	Remuneration											
TOTAL	Number of workers											
	Remuneration											

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EEA5

## PLEASE READ THIS FIRST



## WHAT IS THE PURPOSE OF THIS FORM?

To record an Undertaking by the employer to comply with Section 36 of the Employment Equity Act, 55 of 1998.

## WHO FILLS IN THIS FORM?

The employer, assisted by the inspector.

## WHERE DOES THIS FORM GO?

This form goes to the inspector.

## INSTRUCTIONS

An **Undertaking** may be secured when an inspector has reasonable grounds to believe that a designated employer has failed to comply with one or more paragraph(s) of Section 36 of the Act.

Failure to comply with this undertaking will result in a Compliance Order (EEA6) being issued.

## DEPARTMENT OF LABOUR

## WRITTEN UNDERTAKING

Ref/Case No:.....

Employer's Enquiries:.....

Date of Undertaking: .....

I / We..... (Employer)

..... (Registration No.)

undertake to comply with the following provisions of the Act and its regulations below by: Date:.....

.....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 .....

ISSUED ON ..... DAY OF ..... YEAR.....

AT..... (PLACE)

.....  
 SIGNED: EMPLOYER

.....  
 SIGNED: LABOUR INSPECTOR

CONTACT DETAILS OF INSPECTOR: .....

WITNESSES 1. ....

2. ....



PAGE 1 OF 2

EEA6

**PLEASE READ THIS FIRST****WHAT IS THE PURPOSE OF THIS FORM?**

This form is issued in terms of Section 37 of the Employment Equity Act, 55 of 1998. The purpose of this form is to enforce compliance relating of Section 36 of the Act.

**WHO FILLS IN THIS FORM?**

An inspector fills this form.

**WHERE DOES THIS FORM GO?**

This form goes to the employer.

**INSTRUCTIONS**

- The inspector may issue a Compliance Order to a designated employer if that employer has refused to give a Written Undertaking (EEA5) in terms of Section 36.
- The employer must display a copy of this order prominently at a place accessible to the affected employees at each workplace named in it.
- An employer must comply within the time period stated unless the employer objects in terms of Section 39.
- Failure to comply could result in a referral to the Labour Court.

**DEPARTMENT OF LABOUR****COMPLIANCE ORDER**

Ref/Case No:.....

Enquiries:.....

Date of issue:.....

Provincial Office/Labour Centre:.....  
(Delete that which is not applicable)

1. Employer:.....

1. Registration No:.....

2. Workplace(s):.....

3. You have not complied with the following provisions of the Act and its regulations.

Provisions:.....  
.....

4. Details:.....

.....  
.....  
.....

AND / OR

5. You have not complied with your written undertaking to the following extent:

.....  
.....  
.....  
.....

AND

6. You are required to implement the following within \_\_\_\_ days of receipt hereof.

7.1 .....

7.2 .....

AND / OR

**7. Fines**

7.1 The Director General may recommend to the Labour Court to impose a fine in accordance with Schedule 1 of the Act.



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EEA6

**8. Objections**

You may object to this compliance order by making representations to the Director General within 21 days of receipt of this order.

SECURED ON .....DAY OF.....

YEAR .....AT ..... (PLACE)

.....  
**LABOUR INSPECTOR**



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of Labour  
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EEA7

**PLEASE READ THIS FIRST****WHAT IS THE PURPOSE OF THIS FORM?**

This form is issued in terms of Section 39 of the Employment Equity Act, 55 of 1998. A designated employer may lodge an objection to a compliance order by completing this form.

**WHO FILLS IN THIS FORM?**

The employer must fill in this form.

**WHERE DOES THIS FORM GO?**

To the Provincial Office of the Department from which the compliance order was issued.

**INSTRUCTIONS**

- This objection must be lodged to the office of the Provincial Director that issued the compliance order within 21 days of the date of receipt of the compliance order.
- The objection must include all relevant information.
- A copy must be delivered to the employee(s) affected by it, or if this is impractical to a representative of the employee(s), including a registered trade union.

**DEPARTMENT OF LABOUR****OBJECTION AGAINST A COMPLIANCE ORDER IN  
TERMS OF SECTION 39 OF THE ACT****NOTICE OF OBJECTION**

1. Employer:.....  
Registration No:.....  
Telephone No:.....  
Fax:.....  
Address:.....  
.....  
..... Postal Code.....
2. Quote the reference number and date of the compliance order against which the objection is lodged.  
Reference/Case No. .... Date.....
3. To which portion of the compliance order do you object?  
.....  
.....  
.....  
.....  
.....  
.....  
.....
4. State your full reason for lodging the objection:  
.....  
.....  
.....  
.....  
.....  
.....  
.....



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Any documentary evidence (or certified copies thereof) that you wish to submit in support of your contention(s) as stated in paragraph 4 should be attached and listed below:

Number	Title or description of document

Place:.....

Date:.....

.....  
Signature of objector / employer

.....  
Full name of objector / employer

.....  
Designation



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EEA8

## **ANNEXURE 1**

### **Demographic profile of the national and regional economically active population**

#### **WHAT IS THE PURPOSE OF THE DEMOGRAPHIC PROFILE OF THE NATIONAL AND REGIONAL ECONOMICALLY ACTIVE POPULATION AND WHERE TO FIND THEM?**

Statistics South Africa provides demographic data using Labour Force Surveys from time to time. The Labour Force Surveys (LFS) that is normally released quarterly provides statistics on the national and provincial Economically Active Population (EAP) in terms of race and gender. Employers can access this information directly from Statistics South Africa. This information must be used by employers when consulting with employees, conducting an analysis and when preparing and implementing Employment Equity Plans.





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EEA9

## ANNEXURE 2: Occupational Levels

PLEASE READ THIS FIRST ↓  <b>WHAT IS THE PURPOSE OF THIS ANNEXURE?</b>  Job evaluation or grading systems are used by many organizations to measure jobs according to their content and establish comparative worth between jobs.  This annexure provides a table of equivalent occupational levels that may be used by employers when completing the EEA2 and EEA4 forms.  <b>INSTRUCTIONS</b>  The table indicates the occupational levels within organizations as developed through the use of different job evaluation or grading systems. The table provides equivalent levels from each of these job evaluation systems.  Organizations that make use of neither one of the job evaluation systems in this table, nor a customized system linked to one of these, should use the Semantic Scale for guidance in determining occupational levels within the organization.	Equivalent occupational levels				
	Semantic Scale	Paterson	Peromnes	Hay	Castellion
Top management	F	F	1++ 1+		14
Senior management	E	E UPPER  E LOWER	1 2 3	1  2	13
Professionally qualified and experienced specialists and mid-management	D	D UPPER  D LOWER	4 5 6	3  4	12 11 13
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents	C	C UPPER  C LOWER	7 8 9 10 11 12	5 6 6A 7 8	9  8
Semi-skilled and discretionary decision making	B	B UPPER  B LOWER	13 14 15 16	9 10 11	7 6 5 4
Unskilled and defined decision making	A	A	17 18 19	12 13	3 2 1

[illegible]



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EEA11

**ANNEXURE 4: Application for Employment Equity Report**

Affix  
Revenue  
Stamp

**PLEASE READ THIS FIRST****WHAT IS THE PURPOSE OF THIS FORM?**

↓  
This form contains the format for requesting an employer's Employment Equity Report (Form EEA2) from the Department of Labour. This form is issued in terms of Section 21(6) of the Employment Equity Act, 55 of 1998.

**WHO FILLS IN THIS FORM?**

The applicant who is requesting this report.

**INSTRUCTIONS**

Complete this form and mail it to the Employment Equity Registry. Enclose revenue stamp to the value of R15 as well as self-addressed (postage paid) envelope.

**SEND TO:**

Employment Equity Registry  
(Application for EE Report)  
Department of Labour  
Private Bag X117  
Pretoria  
0001

**Section A: Applicant details:**

Name and Surname:	
ID Number:	
Organization:	
Address:	
Town / City:	
Postal Code	
Telephone No.:	
Fax No:	
E-mail Address:	
Date of application:	

**Section B: Reason for this request:**

--

**Section C: Report requested:**

Employer
1.