

Employment Equity compliance for non-designated employers: What you need to know



Although non-designated employers are not required to submit Employment Equity reports, they must still comply with Chapter 2 of the Employment Equity Act.

Many employers assume that Employment Equity obligations apply only to designated employers. However, this is not entirely correct.

While non-designated employers are exempt from the affirmative action provisions contained in Chapter 3 of the Employment Equity Act (EEA), they remain responsible for *complying with Chapter 2 of the EEA*.

Chapter 2 applies to all employers in South Africa and focuses on eliminating unfair discrimination and promoting equal opportunity and fair treatment in the workplace. Understanding these obligations is essential for meeting legal requirements, reducing workplace disputes and fostering an inclusive working environment.

In a previous article we explained *the importance of having an Employment Equity Committee*.

In this article we will outline the Employment Equity obligations of non-designated employers, provide practical steps for complying with Chapter 2, and consider when an Employment Equity Compliance Certificate may be required.

What is a non-designated employer?

A non-designated employer is generally an employer with fewer than 50 employees and which does not otherwise meet the requirements for designation under the Employment Equity Act. Although these employers are not required to implement affirmative action measures, prepare an Employment Equity Plan, or submit annual Employment Equity reports, they remain fully accountable for complying with the anti-discrimination provisions contained in Chapter 2 of the Act.

Understanding Chapter 2 of the Employment Equity Act

Chapter 2 prohibits unfair discrimination in any employment policy or practice. Employers must ensure that employees are treated fairly and have equal access to employment opportunities regardless of race, gender, disability, religion, age, sexual orientation, marital status, family responsibility or any other prohibited ground.

To assist employers in meeting these obligations and *maintaining EE compliance*, the following practical steps should be considered:

How to Comply with Chapter 2 of the Employment Equity Act in 10 Steps

1. Understand your legal obligations

The first step towards compliance is understanding what Chapter 2 requires. Employers should familiarise themselves with the provisions relating to unfair discrimination, harassment, equal opportunity and fair treatment in the workplace.

2. Develop and implement equal opportunity policies

Employers should establish workplace policies that clearly prohibit unfair discrimination, harassment, bullying and victimisation. These policies should be communicated to all employees and incorporated into relevant company procedures.

3. Review employment practices regularly

Recruitment, selection, promotion, remuneration, training, disciplinary and termination practices should be assessed regularly. This can help employers identify and eliminate barriers or practices that may unintentionally result in unfair discrimination.

4. Create employee awareness

Employees should understand their rights and responsibilities under the Employment Equity Act.

Employers can raise awareness through induction programmes, policy workshops, staff meetings and regular communication initiatives.

5. Establish reporting procedures

Employees should have access to a clear and *confidential process for reporting incidents* of discrimination, harassment or unfair treatment.

Complaints should be investigated promptly, fairly and consistently.

6. Promote diversity and inclusion

Although affirmative action measures are not mandatory for non-designated employers, creating a diverse and inclusive workplace remains sound business practice.

Employers should encourage equal participation, development opportunities and respect for individual differences.

7. Train managers and employees

Regular training on diversity, equality, *harassment prevention*, unconscious bias and fair employment practices can help build a respectful workplace culture.

Managers should be equipped to apply workplace policies consistently and fairly.

8. Maintain supporting documentation

Employers should retain records of employment policies, training initiatives, complaints received, investigations conducted and corrective actions taken.

Appropriate supporting documentation can assist employers in demonstrating Employment Equity compliance should a dispute arise or evidence of compliance be required.

9. Monitor workplace culture

Regular employee engagement and feedback can help identify concerns relating to workplace fairness, inclusion and respect. Monitoring workplace culture enables employers to address potential issues proactively before they escalate.

10. Stay informed about legislative changes

Employment legislation continues to evolve. Employers should stay informed about amendments to the Employment Equity Act and other relevant labour legislation. Regular compliance reviews can help ensure continued adherence to legal requirements.

Why Employment Equity compliance matters

Compliance with Chapter 2 of the Employment Equity Act offers benefits that extend beyond meeting legal requirements. Organisations that promote fairness, equality and inclusion often experience--

- o improved employee morale and engagement
- o reduced workplace conflict and grievances
- o increased productivity and collaboration
- o an enhanced organisational reputation
- o lower legal and compliance risks.

Creating an equitable workplace contributes to a positive organisational culture where employees feel valued, respected and empowered to perform at their best.

Employment Equity Compliance Certificate requirements for non-designated employers

An Employment Equity Compliance Certificate does not form part of the ordinary annual reporting obligations of a non-designated employer.

However, under section 53 of the Employment Equity Act, a non-designated employer that makes an offer to conclude an agreement with an organ of state must comply with Chapter 2 and attach a valid Employment Equity Compliance Certificate to that offer.

- o To request an Employment Equity Compliance Certificate, a non-designated employer must declare that it complies with Chapter 2 of the Employment Equity Act and the National Minimum Wage Act. The application is submitted on the Department of Employment and Labour's online system using the prescribed EEA15 form.
- o A certificate issued to a non-designated employer is valid for 12 months from the date of issue. Employers seeking to tender for state contracts or conduct business with organs of state should therefore review the applicable requirements in advance and ensure that their Employment Equity and minimum-wage compliance can be properly demonstrated.
- o Private-sector clients may also request evidence of Employment Equity compliance as part of their procurement, contractual or supplier due-diligence requirements. Employers should therefore distinguish between their ordinary Employment Equity obligations and any additional evidence required for a particular tender, procurement process or commercial arrangement.

How our Employment Equity experts can support employer compliance

Although non-designated employers are not required to implement affirmative action measures, prepare Employment Equity Plans or submit annual Employment Equity reports, they must still comply with Chapter 2 of the Employment Equity Act. Our *registered Skills Development Facilitators (SDFs)* are experienced *Employment Equity specialists* who help employers translate *these legal obligations into practical workplace measures*.

Our services include employee perception surveys, anti-discrimination assessments, policy reviews, workplace compliance assessments, and practical recommendations aimed at promoting fair and inclusive employment practices.

Where an Employment Equity Compliance Certificate is required, our *Skills Development Facilitators and Employment Equity specialists* can also help employers understand the requirements, identify potential compliance gaps, and prepare the relevant supporting information.

By promoting equal opportunity, eliminating unfair discrimination and maintaining appropriate documentation, employers can reduce compliance risks, strengthen workplace practices, and demonstrate EE compliance when responding to tenders, procurement processes or client requirements.

Contact us to determine the appropriate Employment Equity compliance support for your organisation.

About the author: Luelda Wagner joined SERR Synergy in 2021 and has been a registered Skills Development Facilitator since 2016. She currently serves as a Specialist Skills Development Facilitator at SERR Synergy's Pretoria branch, where she assists clients with practical Skills Development and Employment Equity compliance.

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