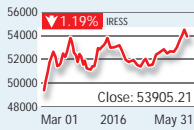


# BusinessDay



▼ 1.04	56000	9.39	▲ 0.21	15.69325	▼ 0.77	1216.25	▼ 0.62	17793.57	▼ 0.45
47974.10	54000	8.73	▲ 0.11	22.74045	▼ 1.73	121760	▲ 0.07	2095.53	▼ 0.17
▼ 0.98	52000	333.5663	▲ 0.00	17.4758	▼ 0.77	50.15	▼ 0.22	6270.79	▲ 0.00
76344.80	50000	5859	▼ 0.80	1.113515	▼ 0.02	979.82	▲ 1.38	17234.98	▲ 0.98
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## Economic reality and equity plan are irreconcilable

**H**OT on the heels of the Commission for Employment Equity's announcement about the disappointing absorption of black people into management positions in the private sector, very dismal unemployment figures were released by Statistics SA.

The unemployment rate has risen from about 25% to more than 27%. These figures do not include people who have given up on finding employment. If they were included, the unemployment figure would rise to 35%.

The youth are the hardest hit, while those who have qualifications and experience are least at risk of being unemployed.

Statistics from all quarters indicate that SA has an oversupply of unskilled workers, and an undersupply of scarce skills.

The employment equity figures and unemployment statistics were received with shock. It is amazing how South Africans tend to be "surprised" at what is to be expected.

If there are 500,000 new job seekers every year, the economy needs to grow at 5% annually to accommodate them. Instead, the economy has battled to achieve 2% growth on average in the past five years, and is now labouring along at less than 1%.

Faced with this, how surprising can an increase in unemployment figures possibly be?

The correlation between the increase in unemployment figures and the low levels of black people in management positions should also be fairly obvious. The economy is shedding jobs and management positions are not spared. Job cuts cannot take place without management positions being declared redundant.

Despite this, after the equity commission's announcement, Labour Minister Mildred Oliphant threatened businesses with the "full might of the law" if they failed to comply with employment equity legislation.



**Gideon Gerber**  
**BEE MATTERS**

The private sector has been given six months to comply or be whipped into submission.

It is interesting to note that Oliphant did not repeat this threat after the release of the unemployment figures. It is generally accepted that the government cannot compel employers by means of fines and other sanctions to employ more people. Incentives such as the Employee Tax Incentive, often referred to as a youth subsidy, are normally used to achieve this.

Beyond this, the employment of staff is based on a commercial rationale, which is within the ambit and discretion of the executive of a particular business.

Companies that employ too many people in relation to revenue and output will end up with a ballooning payroll — very similar to what the government is experiencing. Business that are understaffed will struggle to reach revenue and output targets, with an accompanying deleterious effect on the bottom line.

Both options are equally harmful. However, given SA's rising unemployment dilemma, would it not be prudent for Oliphant to use the law to force businesses to employ people in the same manner as it is doing with employment equity-related management positions?

How can you use the law to force employers to appoint more



**Labour Minister Mildred Oliphant has threatened businesses with the full might of the law if they failed to comply with the legislation on employment equity.** Picture: MARTIN RHODES

black managers, but you cannot do so with other potential job applicants? The answer goes to the very heart of the matter.

The existing legal framework does not make provision for legislation to be used to compel an employer to employ a job applicant in any category of position.

Employment equity legislation, therefore, protects incumbents. No one may be dismissed to make room for employment equity appointments, nor does the economy at this point allow for the luxury of an increase in positions.

Companies can fill positions only as and when they become available through natural attrition. The Companies Act clearly stipulates the fiduciary duties of directors — to protect the interests of the company and not any other interest.

Should a business be fined in the current economic environment for not having sufficient black representation at management level, the defence would be obvious: there are simply no management positions available.

The might of the law would

have no traction in resolving this problem, which can be tackled only through a partnership between the government and business.

While legal frameworks certainly have a place in society, in the context of equity, unemployment, and the current economic climate, they could serve as a recipe for failure.

■ Gerber is an attorney and the founder and director of Serr Synergy, specialising in BEE structuring and compliance.