



37 Church Street
Wynberg
Cape Town, Western Cape
South Africa

PASSOP Guide to the Employment Equity Act 1998

The Employment Equity Act 1998 mandates all employers to ensure non-discrimination of workers and to prepare and implement an Employment Equity Plan that is submitted to, and monitored by, the Director General of the Department of Labour. This act sets out the rights of all employees to a discrimination-free environment, as well as what employees can reasonably expect of their employer to ensure this.

Chapter 2 – Prohibition of Unfair Discrimination

Section 5: Every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice

Section 6: 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. Harassment of an employee is a form of unfair discrimination and is prohibited on any one or a combination of grounds of unfair discrimination (as listed above)

Sections 7 & 8: Medical testing of employees is prohibited unless legislation permits or requires it, or is justifiable in the light of medical fact or due to the requirements of the job

- Psychometric testing is only permitted if it can be applied fairly to all employees, has been shown to be scientifically valid and reliable, and is not biased against any employee or group

Section 11: The burden of proof is on the employer accused to prove that any accusation of discrimination is in fact fair, **not on the employee to prove that they were unfairly discriminated against**

Chapter 3 – Affirmative Action

Section 15: Affirmative action to ensure employment equity (to all those with sufficient qualifications to undertake a position) and diversity in the workplace based on equal dignity and respect to all people, as well as equitable representation of suitably qualified people from designated groups, **MUST** be taken by an employer

Section 16: Aforementioned affirmative action **MUST** include analysis (Section 19), which includes consultation with employees about any areas of concern for discrimination in the workplace

Section 20: Employment Equity Plan – A designated employer must design and implement an Employment Equity Plan which will achieve reasonable progress towards employment equity in that employer's workforce

Section 21: A designated employer employing less than 150 people must submit an Employment Equity report to the Director General within 12 months of becoming a designated employer, and once every two years subsequently on the 1st October

- A designated employer employing more than 150 people must submit a report within six months of becoming a designated employer, and subsequently once per year submitted to the Director General on the 1st of October

Section 24: A designated employer must assign at least one manager to monitor and implement the employer's Employment Equity Plan

Section 25: The employer has a duty to ensure all employees are appropriately informed of the company's Employment Equity Plan

Chapter 5: Monitoring, Enforcement and Legal Proceedings

Section 34: Any employee or trade union representative may bring an alleged contravention of the Employment Equity Act to the attention of: (a) Another Employee (b) An Employer (c) A Trade Union (d) A Workplace Forum (e) A Labour Inspector (f) The Director General or (g) The Commission for Employment Equity

Chapter 5 Part C – Protection of Employee Rights

Section 51: No person may discriminate against any employee who exercises any right conferred by the Employment Equity Act

This includes offering favour, or promises to favour, an employee in exchange for that employee not exercising any right conferred by the Employment Equity Act or taking part in any proceedings in terms of the act

In terms of Section 51, 'employee' includes a former employee or an applicant for employment

Chapter 6: General Provisions

Section 61: No person may obstruct or attempt to improperly influence any person who is exercising a power or performing a function in terms of the Employment Equity Act

Section 62: **THE EMPLOYMENT EQUITY ACT BINDS THE STATE**

If you feel your rights under this act have been violated, or would like more advice on enforcing your rights or [taking a dispute to the CCMA](#), contact PASSOP on 021 762 0322, or alternatively visit us at our office in Wynberg

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