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WILL THE EMPLOYMENT EQUITY AMENDMENT BILL UNITE SOUTH AFRICA?

Article by CGF Research

In recent years, South Africa has been a country characterised as one which has had the incredible ability to change; and somehow our country and her people have been able to embrace some of the most difficult changes in very trying circumstances. Our country's democracy -- underpinned by what many believe to be one of the world's best Constitutions -- is just one example of the type of change we have undergone as a nation in order to ensure that there is *fairness* and *equality* amongst all its people. Accordingly, in 1990 the release of our iconic statesman -- Nelson Rolihlahla Mandela -- was significant in many respects. Not only was this extraordinary South African event significant from a political perspective, it was also symbolic of *forgiveness*, *fairness* and *freedom*. Mandela's release also personified the rights that *every* South African citizen should have, in particular the right to being treated equally and not discriminated against.

Expectedly change for some is not always easy to accept, neither embrace. Most often the reasons for delayed results, even after the change has been agreed, are often due to;

- poor processes to accommodate such change,
- poor policy and legislative frameworks, and
- people's lethargy where in some cases they 'hijack' the change or process because they do not support it.

Focusing then upon the South African workplace; and prior to the unbanning of 'apartheid' in 1995, most of the professional workplace was reserved for white people. People of colour, including women, were seldom afforded the opportunity to occupy any senior positions, let alone the chance for decent employment. Regrettably, the type and rate of change that was expected to occur across South Africa's business and industrial sectors -- where there is a more inclusive and representative sample of race, gender and skill -- has generally not been substantially adopted, and practices of unfair discrimination are still reported regularly.

Whilst the Employment Equity Act 55 of 1998 (EEA) intended to address workplace discrimination, the reality is that many companies in South Africa have cleverly 'dodged' its legal provisions and this has necessitated the changes now embodied in the new Employment Equity Amendment Bill, which was released in October 2012. While there are other labour laws such as the Labour Relations Act of 1995 and the Basic Conditions of Employment Act of 1997, the EEA has become an important part of labour law in South Africa. It offers employment policy that applies to all employers and workers, and protects both employees and job applicants from unfair discrimination. The EEA further provides a framework for implementing Affirmative Action (AA) measures which have been accepted into South African law. Whilst one of the main features of the EEA is the prohibition of unfair discrimination, it does not define the term "unfair discrimination" and it is therefore left to the discretion of the courts to resolve issues that are raised under the banner of discrimination.



Through the EEA, employees and trade union representatives can monitor an employer's contraventions of the EEA and report them to the relevant authorities. That said, labour inspectors are authorised to enter, question and inspect designated employers as outlined in the Basic Conditions of Employment Act to determine whether or not they are compliant with the EEA. If a designated employer fails to comply with their written undertaking of EEA compliance, labour inspectors can issue designated employers an order to comply within specific time limits, or face the penalties of fines and award compensation to the aggrieved employees. Expectedly, employees who exercise their rights and obligations under the EEA are protected against victimisation, obstruction and any undue influence.

The Employment Equity Act requires designated employers to submit Employment Equity Reports to the Department of Labour. Companies who employ more than 50 employees or who have an annual turnover of more than the amount that the EEA sets down for each industry, are obliged to draw up formal Employment Equity Plans.

Of course there are still the critics of the EEA, many of whom believe the Act -- by its very nature -- perpetuates racial tensions in the South African workplace and which has been likened to the day when the previous South African government -- through the National Party -- implemented their 'apartheid policies' as far back as 1948.

Whilst many South African companies have still not yet managed to fully integrate black people into our working society, they are still required to comply with a range of race-based questions and requirements which will be monitored by government who -- according to the National Economic Development and Labour Council (Nedlac) -- will focus on provincial targets instead of national demographic ones.

In concluding, the proposed changes to the EEA will severely penalise those companies who drag their feet to transform their workplace environments and who fail to include black people amongst their ranks. While there is always the threat of hefty fines upon companies who are not compliant with legislation, the EEA is one particular piece of legislation which must not be taken lightly. True to say, many South African companies have a long way to go to achieve greater representation in the workplace of black people, including women and people with disabilities. In the recent report released by the Commission for Employment Equity, white men still remain dominant in almost all the top management workplace levels, making up 65.4% of top management positions.

And as many people across South Africa may still not fully understand, nor support Affirmative Action which is intended to redress the imbalances of the past and achieve an equal society, it's crazy to think that at the end of 'apartheid', white South African people who accounted for only 13% of the country's population earned 59% of the country's income. Black people in South Africa, who at the time represented 76% of the population, only earned 29% of the income*. If South Africa continues to stay divided into distinctly rich and flagrantly poor areas; there will never be social peace, neither a strong, vibrant, sustainable economy and this dire situation will lead to our eventual demise.

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*Source: A Critical Analysis of Employment Equity Measures in South Africa

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