



 **Acronyms / Abbreviations**

CCMA: Commission for Conciliation, Mediation and Arbitration

D-G: Director-General

DoL: Department of Labour

EEA: Employment Equity Act

LRA: Labour Relations Act

NEDLAC: National Economic Development and Labour Council

PAJA: Promotion of Administrative Justice Act

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Definitions

“Designated Groups”

- **Background**
 - To focus on people who were affected by the apartheid era, i.e. prior to 1994
 - The Broad Based Black Economic Empowerment Act definition of designated groups also changed.
- **Definition**
 - Restricted to **citizens** prior to 1994 or to persons who could not get citizenship because of apartheid laws.

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Psychometric Testing

Section 8

- **Background**
 - A need to standardize psychometric tests used by employers.
 - DoL received queries about the some psychometric tests that employers use.
- **Amendment**
 - Psychometric testing may only be used if it has been certified by the Health Professions Council of South Africa or another body in terms of law.

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Unfair Discrimination

Section 6

- **Background**
 - Aimed at giving expression to the prohibition of unfair discrimination as contained in section 9 of the Constitution in the employment context
- **Amendment**
 - To clarify that there may be other grounds of discrimination that are not listed (i.e. arbitrary grounds)
 - To align with section 187 LRA terminology that prohibits discriminatory dismissal

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Unfair Discrimination

Section 6

- **Amendment continues**
 - New section 6(4):
 - Provides explicit basis for equal pay claims
 - Employer will have to show that a difference in wages/conditions of employment for same or similar work justified based on fair criteria (i.e. experience, skill, responsibility)
 - Section 27 amendment
 - Consequential amendment
 - Principle carried through to reporting i.r.o conditions of employment

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Unfair Discrimination

Section 11

- **Background**
 - provides clarity as to which party must persuade the court in the case of discrimination disputes
- **Amendment**
 - Regulating the onus of proof
 - Agreement in NEDLAC
 - Onus
 - Employer on listed grounds
 - Employee on arbitrary grounds

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Disputes / Discrimination

Section 10

- **Background**
 - Currently all disputes about sexual harassment and unfair discrimination must be dealt with by the Labour Court unless parties agree to arbitration.
 - Not everyone can access the labour court, fees etc and vulnerable workers rights are disregarded

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Disputes / Discrimination

Section 10

- **Amendment**
 - All sexual harassment cases can now be arbitrated by the CCMA
 - All employees who earn below the earnings threshold can have any unfair discrimination dispute heard before the CCMA.
 - A party can appeal against a CCMA arbitration in respect of sexual harassment or other disputes (below earnings threshold) within 14 days.

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Arbitration proceedings

Section 48

- **Background**
 - Because unfair discrimination and sexual harassment cases may now be arbitrated by the CCMA, the scope of the awards made by a commissioner must be clarified.
- **Amendment**
 - The Commissioner may now award the same as the labour court in terms of section 50(2)(a)-(c) of the Act.
 - The Commissioner may award-
 - Payment of compensation
 - Payment of damages
 - That the employer must take steps to prevent the same unfair discrimination from occurring in future.

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Employment Equity Plan

Section 20

- **Background**
 - The Act requires designated employers to prepare employment equity plans for a 1 to 5 year period.
 - The Act does not provide for recourse against an employer who fails to prepare an employment equity plan.

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Employment Equity Plan

Section 20

- **Amendment**
 - The Amendment allows the D-G (DoL) to apply to the Labour Court to impose a fine on an employer who fails to prepare an employment equity plan.
 - The possible fines are set out in Schedule 1 of the Act.

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Reporting

Section 21

- **Background**
 - Gives guidance to designated employers as to their reporting duties
- **Amendment**
 - Technical amendments addressing reporting issues
 - streamline online reporting
 - uniform reporting dates
 - user friendly forms
 - Aimed at making it easier for employers to comply

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Employer Undertakings

Section 36

- **Background**
 - A labour inspector was previously obliged (must) to request a written undertaking from an employer. The undertaking is for compliance with employment equity matters such as section 22: Summary of the Employment Equity Plan must form part of financial reporting.

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Employer Undertakings

Section 36

- **Amendment**
 - Makes it discretionary (may) for a labour inspector to request a written undertaking of compliance. It is designed to eliminate adversarial nature of undertakings.
 - If the employer does not comply with the written undertaking within the time frame set in the undertaking, the D-G (DoL) can approach the Labour Court to make the undertaking an order of court.

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Compliance Order

Section 37

- **Background**
 - Compliance orders issued by labour inspectors could be “objected to” by employers. This caused delays in compliance matters relating to employment equity matters (section 36).
- **Amendment**
 - An employer must comply with a compliance order within the time frame set in the compliance order.
 - D-G can apply to Labour Court to have the compliance order made an order of court.

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Assessment of compliance

Section 42:

- **Background**
 - The factors that the D-G must take into account when assessing compliance by an employer with implementing employment equity plans has been revised.

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Assessment of compliance

Section 42

- **Amendment**
 - An employer must take reasonable steps to appoint and promote suitably qualified people from the designated groups.
 - The Minister may make regulations that must be taken into account by a person who assesses whether a designated employer is implementing an employment equity plan.
 - The grounds upon which an employer may dispute non-compliance is not limited (any ground may be raised in court proceedings).

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Failure of employer to comply

Section 45

- **Background**
 - When the D-G reviews an employer's Employment Equity Act compliance, the D-G may make a request or recommendation to the employer.
 - If the employer the employer does not comply with the request or recommendation by the D-G, the D-G may refer the matter to the labour court.

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Failure of employer to comply

Section 45

- **Amendment**
 - The amendment introduces that if the employer fails to comply with the request of recommendation, the D-G may apply to Labour Court for compliance order. The D-G must institute proceedings within 90 days(request) days and 180 (recommendation) days respectively.
 - If the D-G does not institute proceedings within the days allowed, the matter lapses.

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Review

Section 50

- **Background**
 - Outlined the powers of the Labour Court in enforcing the provisions of the EEA
- **Amendment**
 - To address issues highlighted by the courts in judgments
 - To align EEA with PAJA
 - So clarified the power of the Labour Court to review of administrative actions (i.e recommendations by the D-G)

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Fines

Fines for specific offences adjusted: R30 000

- Sections 59: Breach of confidentiality
- Section 61: Obstruction, undue influence and fraud

Schedules 1 & 4

- Sets maximum fine for contravention of the EEA
- Reflects change in value of money
- Turn-over consideration (discretionary)
 - Substantive failures
- Fines will be levied by Court
 - Employer entitled to state his/her case to the Court

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