

# Unpacking the Diagnostics for Employment Equity Compliance



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**The Secret of Integrated  
Business and Human Capital  
Management**

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*The conundrum is when is enough, enough?*

*How will I be measured relating to compliance to Employment Equity?*

*Section 42 of the amended Employment Equity Act, No 55 of 1998, and (EEA), as amended by the Employment Equity Amendment Act, No 47 of 2013, and addresses is how a designated employer may be assessed in terms of compliance with employment equity.*

The Employment Equity Act (EEA) places a positive duty on a designated employer to take steps to eliminate unfair discrimination in the workplace.

In terms of S42, the Director-General of the Department of Labour, (dept. Labour), is empowered to determine whether a designated employer is implementing employment equity in accordance with the EEA.

The following factors may be assessed:

1. **Demographic Representivity:** the extent to which suitably qualified people from and among the different designated groups, as defined in the EEA, are equitably represented within each occupational level in that designated employer's workforce. With reference to the demographic profile of the national and regional economically active population;

*The apparent shift in approach is from monitoring, discussion and patient enabling to assessment of compliance and enforcement*

2. **Strategic Training and Development** : the implementation of reasonable steps (no longer 'efforts') by a designated employer to train suitably qualified people from the designated groups;
3. **EE Implementation**: the reasonable steps taken by the designated employer to implement its employment equity plan;
4. **Elimination of Employment barriers** i.e. the extent to which the designated employer has made progress in eliminating employment barriers that adversely affect people from designated groups; and
5. **Appointments** In accordance with EE and the application of Affirmative Action the reasonable steps taken by an employer to appoint and promote suitably qualified people from the designated groups and any factor that may be prescribed.
6. **Gap Closure**: The focus is on actions and achievement rather than mere efforts to comply with the EEA.

If the Dept. Labour views that the employer is not in compliance with the EEA and or its employment equity plan .Application may in terms of s20(7) be made to the Labour court for a sanction to be imposed on the allegedly non-compliant designated employer . An employer may, in an assessment or in any court proceedings, raise any reasonable grounds to justify its failure to comply. These grounds may include any Labour market related conditions, such as skills-shortage.

Irrespective of the outcome any such outcome will incur cost. Should the matter be adjudicated in favour of the applicant (Dept. Labour) penalties will be allocated.

Employers need to be alert and monitor their compliance in order to mitigate the risk of exposure to the penalties of non-compliance.

Contact MNA consulting for any enquiries regarding your companies Employment Equity requirements

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