The Employment Equity Act

Preparing for change

There are those who say that the old South Africa is alive and well in the workplace. The upper levels of many organisations remain white- and male-dominated. Left to market forces, 'transformation' proceeds at a snail's pace.

COMMUNITY LAW CENTRE
University of the Western Cape

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South African Local Government Association

Local Government Law Bulletin is published by the Community Law Centre of the University of the

1999 sees the end of this chapter in our history. On 9 August – Women's Day – Chapter II of the Employment Equity Act 55 of 1998 comes into force, prohibiting unfair discrimination against any employee. And in December, Chapter III takes effect, requiring positive steps by medium and large employers to transform their workforce in a planned and systematic way.

Municipalities will be fully subject to the Act. Following is a brief preview of what will be required. Extensive changes and far-reaching measures, which could contribute significantly to the organisational effectiveness of municipalities, are called for. Preparing for this major transformation cannot start too soon.

Unfair discrimination

Chapter II of the Act prohibits unfair discrimination in much the same terms as the Labour Relations Act 66 of 1995 (LRA) does at present. It is by definition unfair to discriminate directly or indirectly in any employment policy or practice on the grounds of race, gender, disability, religion, political belief, HIV status or a series of other grounds mentioned in section 6, unless it can be shown that such discrimination is fair.

The list is not exclusive – discrimination is also prohibited on any other grounds which are shown to be unfair. For example, a requirement that employees should be above a certain height might be unnecessary or unjustified, and therefore unfair.

Discrimination on the listed grounds (eg race) is permissible only if it is (a) an affirmative action measure consistent with the purpose of the Act, or (b) based on 'an inherent requirement of a job'. Harassment of any kind is tantamount to unfair discrimination.

Complaints about alleged unfair dis-

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Local Government Law
BULLETIN

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Subscription
The *Local Government Law Bulletin* is a quarterly publication with an annual subscription fee of R96,00. All subscription enquiries must be directed to Johann Mettler.

The Bulletin
This publication was produced with financial assistance from Austrian Development Cooperation. The views expressed herein do not necessarily reflect the views of Austrian Development Cooperation, the editorial board, the South African Local Government Association or any of its provincial affiliates.

Production
Design and DTP: Mega Design cc
Reproduction: Mega Pre-Press cc
Printing: Mega Print cc

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crimination must be referred to the Commission for Conciliation, Mediation and Arbitration (CCMA). If conciliation fails, matters may be referred to the Labour Court, unless both parties agree to arbitration by the CCMA.

In such disputes, the employee or workseeker complaining of unfair discrimination has only to establish that an act of discrimination has taken place. It is then up to the employer to prove that such discrimination was fair.

Employment equity plans

The Act not only prohibits future discrimination; it sets about undoing the results of past discrimination by requiring all 'designated employers' to draw up and implement 'employment equity plans'. Designated employers include medium and large employers in the private sector, as well as municipalities.

Employment equity plans must include 'affirmative action measures', designed to ensure that 'suitably qualified people from designated groups' are 'equitably represented in all occupational categories and levels in the workforce'. 'Designated groups' mean black people (ie, those formerly classified as African, Coloured or Indian), women and disabled people.

The Act spells out the process for drawing up and implementing an employment equity plan. The main features are -

1. Transparency. There must be consultation with representative trade unions, as well as employees from all occupational categories or their representatives, about the steps outlined below. All relevant information must be disclosed by the employer subject to the limitations of confidentiality as laid down in the LRA.
2. An organisational analysis. The employer must draw up (a) a profile of the workforce at each level, and (b) an analysis of all employment policies and practices as well as the working environment, to identify barriers to the employment or advancement of black people, women and disabled people.
3. A plan with deadlines. The plan should be based on the analysis and address the problems which have been identified. The Act sets out in detail what it must contain – for example, numerical targets for the employment of people from designated groups. Such targets are set by the employer in consultation with its employees, in contrast to quotas imposed by the state.
4. Reporting. Reports on progress must be submitted regularly to the Department of Labour. Municipalities with over 150 employees must report six months after Chapter III takes effect (ie in June 2000) and thereafter on 1 October of each following year.

Enforcement

The Act aims at promoting compliance rather than punishing non-compliance. The main trigger of enforcement will be complaints from trade unions or employees, which could lead to an inspection by the Department of Labour. If a complaint is found to be justified, a compliance order can be issued against the employer, subject to a right of appeal to the Director-General of Labour and the Labour Court.

Penalties of up to a maximum of R900 000 may be imposed for repeated failure to comply with the various requirements of drawing up and implementing an employment equity plan. The Director-General also has the right to review an employer's compliance with the Act.

Taking a broader view, however, the Act is more than a series of new duties. It is also an opportunity to engage in a process of organisational development which can reshape relationships among management and staff, unleash new synergies and lead to more effective service delivery.

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The Employment Equity Consortium can assist municipalities to comply with the Act. The Consortium combines expertise in labour law, organisational development and human resource development. It offers a structured process based on each municipality's unique situation for designing and implementing an employment equity plan.
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