

BRIEFING NOTE ON: EMPLOYMENT EQUITY AMENDMENT BILL, 2017

1. INTRODUCTION

- 1.1 A task team has been established by NEDLAC to engage on the Employment Equity Amendment Bill, 2017 (“EEA Bill”).
- 1.2 The first task team meeting was held on 8 November 2017. At this meeting, Government presented the EEA Bill to Business and Labour.
- 1.3 On 17 November 2017, Government provided the task team members with a draft set of regulations to the EEA Bill.
- 1.4 On 22 November 2017, the Business task team attended a bilateral meeting with Government. The purpose of this meeting was for Government to present and explain the Regulations to the Business task team.

2. PURPOSE OF THIS BRIEFING NOTE

- 2.1 The purpose of this briefing note is to provide members of BUSA:
 - 2.1.1 with a concise summary of the proposed amendments;
 - 2.1.2 with the preliminary positions of the Business Task Team; and
 - 2.1.3 an opportunity to consider and comment on the proposed amendments so that BUSA may formulate a mandated position on behalf of its members.

3. EMPLOYMENT EQUITY AMENDMENT BILL, 2017

3.1 Briefly¹, some of the proposed amendments are:

3.1.1 To amend the definition of “*designated employer*” and to repeal Schedule 4 (sectors and annual turn-over). This is to exclude those employers with less than 50 employees, regardless of their turnover, from having to report on employment equity.

3.1.2 To allow the Minister of Labour to establish numerical targets for sectors.

3.1.3 To delete the option of an employer being able to provide a declaration that it complies with the EEA in order to do work for the State. Instead the proposed amendments make it mandatory for an employer who wants to do work for the State, to be in possession of a section 53 compliance certificate.

3.1.4 To delete the requirement that psychological testing and assessments must be certified by the Health Professions Council.

3.1.5 To allow employers to elect either the National OR Regional economically active population in assessment of compliance.

3.1.6 To repeal Schedule 4 which sets out the annual turn-over provisions within

3.2 **Numerical Targets:**

3.2.1 The most significant proposed amendment is the Minister’s power to establish numerical targets for sectors.

3.2.2 At the first NEDLAC meeting, Government explained that:

3.2.2.1 The numerical targets is a non-negotiable for Government and will go ahead.

3.2.2.2 The Department of Labour will, before any numerical targets are established, engage with the various sectors, including SETA’s.

¹ Not all of the proposed amendments have been included in this note. This is only a brief summary.

3.2.2.3 Employers will be given a reasonable period of time within which to comply with the numerical targets.

3.3 **Certificate of Compliance**

3.3.1 Another significant proposed amendment is the provision giving effect to the section 53 compliance certificate (in order for an employer to do work for the State).

3.3.2 At the first NEDLAC meeting, Government explained that:

3.3.2.1 Employers will be required to apply for a certificate online.

3.3.2.2 The online system will assess/calculate whether an employer is compliant with the EEA and in the case of a designated employer, whether the employer has achieved its sector' numerical targets.

3.3.2.3 If an employer has not achieved its sector targets, provision will be made for the employer to indicate whether there are any justifiable reasons therefore. If so, the certificate of compliance will be issued.

4. **DRAFT REGULATIONS**

4.1 Briefly, the Draft Regulations set out:

4.1.1 The criteria that will be taken into account when the numerical targets are determined.

4.1.2 The manner in which EE Reports must be submitted (either online or hand delivery).

4.1.3 The different types of letters that the Department of Labour will issue to employers upon receipt of reports and the consequences of each of those letters.

4.1.4 The manner in which an inspector may serve a compliance order on an employer.

4.1.5 The manner in which an employer may request a compliance certificate from the Department of Labour.

5. PROPOSED SCHEDULE OF SECTORS

- 5.1 The Minister will, for the purposes of establishing numerical targets for sectors, publish a list of economic sectors.
- 5.2 Government has prepared this list and is currently stands, 18 sectors have been identified in accordance with Standard Industrial Classifications.
- 5.3 It is important that BUSA members carefully consider the list of proposed Sectors so that if there are any gaps/concerns, these are raised at NEDLAC.

6. PRELIMINARY VIEWS OF THE BUSINESS TASK TEAM:

Set out below is a summary of the preliminary views of the Business Task Team which are subject to change as BUSA starts to engage its members on the proposed amendments:

- 6.1 There is an appreciation that transformation in the workplace has been slow since the commencement of the EEA in 1998.
- 6.2 Given the current economic climate in South Africa, the imposition of further regulatory burdens on employers may negatively impact business.
- 6.3 There is a concern that if the sector targets are unrealistic, that some employers may not receive a certificate of compliance. The “knock-on’ effect of this is that those companies that do work for the State, may lose their existing contracts or miss an opportunity to procure new work with the state. This in effect may lead to job losses.
- 6.4 Despite these concerns – the preliminary view of the Business task team is that instead of spending the majority of the time at NEDLAC resisting the numerical targets all together, that Business should focus its time and energy on ensuring that the Bill expressly reflects a fair, transparent and consultative process with employers before any numerical targets are established.
- 6.5 In addition to the above, the Business Task Team would like to focus on ensuring that:
 - 6.5.1 all relevant factors/criteria that will inform the setting of targets are reflected in the Bill and Regulations; and



6.5.2 the justifiable reasons an employer may rely on to explain its failure to achieve the numerical targets are adequately reflected in the Bill and Regulations.

6.6 The Business task team supports the proposed amendment of the definition of “designated employer” as this alleviates the burden of employment equity reporting on smaller businesses (employing less than 50 employees).

7. MANDATE/FEEDBACK FROM BUSA MEMBERS

7.1 Attached to this briefing note are the following three (3) documents:

7.1.1 The EEA Bill

7.1.2 The Draft Regulations

7.1.3 The list of proposed sectors.

7.2 Members of BUSA are requested to provide feedback on the proposed amendments so that a Business mandate may be formulated for the purposes of the NEDLAC engagements which will continue on **6 December 2017**.

7.3 Please send your feedback/comments to Ms Ditshego Tsebe (Ditshego.tsebe@busa.org.za), BUSA’s Social & Transformation Policy Director on or before **4 December 2017**. Alternatively, if you are attending BUSA’s SOCPOOL meeting on 29 November 2017, you may also provide feedback at that meeting.

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