

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
EMPLOYMENT EQUITY
BILL**

[B 60-98]

(As agreed to by the Portfolio Committee on Labour (National Assembly))

[B 60A—98]

RIPHABLIKI RA AFRIKA DZONGA

**MIHUNDZULUXO YA KOMITI YA TA
MINTIRHO EKA
NAWUMBISI WA NDZINGANO
WA MINTIRHO/VUTHORI**

[N 60—98]

(Tani hi loko wu amukeriwile hi komiti ya ta mintirho (Huvo yo Ends Milawu ya Rixaka))

[N 60A—98]

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AMENDMENTS AGREED TO

EMPLOYMENT EQUITY BILL [B 60---98]

CLAUSE 1

- i. On page 6, in line 47, to omit “ a person” and to substitute “an employer”.
2. On page 6, from line 48, to omit paragraph (b) and to substitute:
 - (b) an employer who employs fewer than 50 employees, but has a total annual turnover that is equal to or above the applicable annual turnover of a small business in terms of Schedule 4 to this Act;
3. On page 8, after line 6, to insert the following paragraph:
 - (e) an employer bound by a collective agreement in terms of section 23 or 31 of the Labour Relations Act, which appoints it as a designated employer in terms of this Act, to the extent provided for in the agreement;
4. On page 10, in line 4, to omit “dependant children, or in relation to” and to substitute “spouse or partner, their dependant children or”.
5. On page 10, after line 5, to insert the following definition:

“HIV” means the Human Immunodeficiency Virus;
6. On page 10, in line 29, after “includes” to insert “intended pregnancy, termination of pregnancy and”.

CLAUSE 6

1. On page 14, in line 5, after “religion” to insert “, HIV status”.
2. On page 14, from line 13, to omit subsection (4).

CLAUSE 7

1. On page 14, after line 24, to add the following subsection:
 - (2) Testing of an employee to determine that employee’s HIV status is prohibited unless such testing is determined to be justifiable by the Labour Court in terms of section 49(4) of this Act.

CLAUSE 8

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 7:

Psychological testing and other similar assessments

8. Psychological testing and other similar assessments of an employee are prohibited unless the test or assessment being used—
 (a) has been scientifically shown to be valid and reliable;
 (b) can be applied fairly to all employees; and
 (c) is not biased against any employee or group.

CLAUSE 10

1. On page 16, in line 5, to omit all the words after “, chapter” up to and including “harassment,” in line 6.
2. On page 16, from line 8, to omit subsection (3).

CLAUSE 20

1. On page 22, from line 22, to omit subsections (3) and (4) and to substitute:

(3) For purposes of this Act, a person maybe suitably qualified for a job as a result of any one of, or any combination of that person’s—
 (a) formal qualifications;
 (b) prior learning;
 (c) relevant experience; or
 (d) capacity to acquire, within a reasonable time, the ability to do the job.

(4) When determining whether a person is suitably qualified for a job, an employer must—

(a) review all the factors listed in subsection (3); and
 (b) determine whether that person has the ability to do the job in terms of any one of, or any combination of those factors.

(5) In making a determination under subsection (4), an employer may not unfairly discriminate against a person solely on the grounds of that person’s lack of relevant experience.

CLAUSE 21

1. On page 24, after line 17, to insert the following subsection:

(5) An employer who becomes a designated employer in terms of this Act must—

- (a) report as contemplated in this section for the duration of its current employment equity plan; and
- (b) notify the Director-General in writing if it is unable to report as contemplated in this section, and give reasons therefor.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 26:

Income differentials

27. (1) Every designated employer, when reporting in terms of section 21(1) and (2), must submit a statement, as prescribed, to the Employment Conditions Commission established by section 59 of the Basic Conditions of Employment Act, on the remuneration and benefits received in each occupational category and level of that employer's workforce.

(2) Where disproportionate income differentials are reflected in the statement contemplated in subsection (1), a designated employer must take measures to progressively reduce such differentials subject to such guidance as may be given by the Minister as contemplated in subsection (4).

(3) The measures referred to in subsection (2) may include—

- (a) collective bargaining;
- (b) compliance with sectoral determinations made by the Minister in terms of section 51 of the Basic Conditions of Employment Act;
- (c) applying the norms and benchmarks set by the Employment Conditions Commission;
- (d) relevant measures contained in skills development legislation;
- (e) other measures that are appropriate in the circumstances.

(4) The Employment Conditions Commission must research and investigate norms and benchmarks for proportionate income differentials and advise the Minister on appropriate measures for reducing disproportional differentials.

(5) The Employment Conditions Commission may not disclose any information pertaining to individual employees or employers.

(6) Parties to a collective bargaining process may request the information contained in the statement contemplated in subsection (1) for collective bargaining purposes subject to section 16(4) and (5) of the Labour Relations Act.

CLAUSE 35

1. On page 30, in line 23, to omit "an" and to substitute "a designated".

CLAUSE 36

1. On page 30, in line 38, to omit “an” and to substitute “a designated”.
2. On page 32, in line 14, to omit “An” and to substitute “A designated”.
3. On page 32, in line 17, to omit “An” and to substitute “A designated”.
4. On page 32, in line 19, to omit the first “an” and to substitute “a designated”.

CLAUSE 38

1. On page 32, in line 30, to omit “An” and to substitute “A designated”,
2. On page 34, in line 2, to omit the first “an” and to substitute “a designated”.

CLAUSE 39

1. On page 34, in line 6, to omit “An” and to substitute “A designated”.
2. On page 34, in line 11, to omit the first “an” and to substitute “the designated”.

CLAUSE 41

1. On page 34, in line 24, after “from” to insert “and amongst the different”.

CLAUSE 49

1. On page 38, in line 21, to omit “Act;” and to substitute “Act,”.
2. On page 38, in line 33, to omit all the words from “employer” up to and including “employee” in line 34 and to substitute:

employee has been unfairly discriminated against
3. On page 38, in line 37, to omit “punitive”.
4. On page 40, in line 2, to omit “or” and to substitute “and”,

CLAUSE 53

1. On page 42, in line 32, after “may” to insert:

, on the advice of the Commission

CLAUSE 54

1. On page 44, in line 5, after “*Gazette*,” to insert:
and on the advice of the Commission

CLAUSE 55

1. On page 44, after line 21, to add the following subsections:
 - (4) The Director-General may delegate any power conferred, or assign any duty imposed, upon the Director-General in terms of this Act, to any employee in the Department,
 - (5) Subsections (2) and (3) apply with the changes required by the context to any delegation or assignment by the Director-General under subsection (4).

NEW CLAUSE

1. That the following be a new Clause:

Temporary employment services

57. (1) For purposes of Chapter **III** of this Act, a person whose services have been procured for, or provided to, a client by a temporary employment service is deemed to be the employee of that client, where that person’s employment with the client is of indefinite duration or for a period of three months or longer.

(2) Where a temporary employment service, on the express or implied instructions of a client, commits an act of unfair discrimination, both the temporary employment service and the client are jointly and severally liable.

CLAUSE 58

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Liability of employers

60. (1) If it is alleged that an employee, while at work, contravened a provision of this Act, or engaged in any conduct that, if engaged in by that employee’s employer, would constitute a contravention of a provision of this Act, the alleged conduct must immediately be brought to the attention of the employer.

(2) The employer must consult **all** relevant parties **and** must take the necessary steps to eliminate the alleged conduct and comply with the provisions of this Act.

(3) If the employer fails to take the necessary steps referred to in subsection 2, and it is proved that the employee has contravened the relevant provision, the employer must be deemed also to have contravened that provision.

(4) Despite subsection (3) an employer is not liable for the conduct of an employee if that employer is able to prove that it did all that was reasonably practicable to ensure that the employee would not act in contravention of this Act.

NEW SCHEDULE

- That the following be a new Schedule to follow Schedule 3:

SCHEDULE 4

Turnover threshold applicable to designated employers

Sector or subsectors in accordance with the Standard Industrial Classification	Total annual turnover
Agriculture	R 2,00 m
Mining and Quarrying	R 7,50 m
Manufacturing	R 10,00 m
Electricity, Gas and Water	R 10,00 m
Construction	R 5,00 m
Retail and Motor Trade and Repair Services	R 15,00 m
Wholesale Trade, Commercial Agents and Allied Services	R 25,00 m
Catering, Accommodation and other Trade	R 5,00 m
Transport, Storage and Communications	R 10,00 m
Finance and Business Services	R 10,00 m
Community, Social and Personal Services	R 5,00 m