

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

EMPLOYMENT AND LABOUR, DEPARTMENT OF

NO. R. 4295

1 February 2024

EMPLOYMENT EQUITY ACT, 1998 (ACT 55 OF 1998 AS AMENDED)

DRAFT REGULATIONS ON PROPOSED SECTORAL NUMERICAL TARGETS

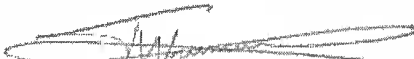
I, Thembelani Waltermade Nxesi, Minister of Employment and Labour in terms of Section 55(1) of the Employment Equity Act, 1998 (Act No 55 of 1998 as amended), and on the advice of the Commission for Employment Equity, hereby publish this notice on the proposed sectoral numerical targets for public comment in preparation for the commencement of Section 15A of the Employment Equity Amendment Act No 4 of 2022. This draft regulation on the proposed sector targets is republished in notice — in the Government Gazette — for further public comment for 90 days from the date of publication.

All public comment must be in writing and forwarded to:

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MR TW NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 21/12/2023

1. Legislative requirements for the setting of sectoral numerical targets

- 1.1 Section 15A of the Employment Equity Amendment Act, No. 4 of 2022 (EE Amendment Act, 2022) states that the Minister may identify national economic sectors having regard to any relevant code contained in the Standard Industrial Classification of all Economic Activities published by Statistics South Africa.
- 1.2 In terms of Section 15A of the EE Amendment Act, 2022, the Minister may, after consulting the relevant sectors and with the advice of the Commission for Employment Equity (CEE), for the purpose of ensuring the equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce, set numerical targets for any national economic sector identified.
- 1.3 A notice issued in terms of Section 15A (2) of the EE Amendment Act, 2022, empowers the Minister to set different numerical targets for different occupational levels, sub-sectors or regions within a sector or on the basis of any other relevant factor.

2. List of Economic Sectors (EEA17)

- 2.1 Agriculture, Forestry & Fishing
- 2.2 Mining and Quarrying
- 2.3 Manufacturing
- 2.4 Construction
- 2.5 Financial and Insurance Activities
- 2.6 Transportation and Storage
- 2.7 Information and Communication
- 2.8 Water Supply, Sewerage, Waste Management and Remediation Activities
- 2.9 Electricity, Gas Steam and Air Conditioning Supply
- 2.10 Human Health and Social Work Activities
- 2.11 Arts, Entertainment and Recreation
- 2.12 Real Estate Activities
- 2.13 Professional, Scientific and Technical Activities
- 2.14 Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles
- 2.15 Accommodation and Food Service Activities
- 2.16 Public Administration and Defence; Compulsory Social Security
- 2.17 Education
- 2.18 Administrative and Support Activities

3. Setting of 5-Year Sectoral Numerical Targets

- 3.1 When setting the proposed 5-year sectoral numerical targets, the following factors were taken into account:
 - 3.1.1 The extent to which suitably qualified people from and amongst the different designated groups are equitably represented within each occupational level in that employer's workforce (in this case the Sector Workforce was utilised or was considered) in relation to the demographic profile of the national and regional/provincial economically active population (EAP) as required by Section 42(1)(a) of the Employment Equity Act no 55 of 1998 (EEA).
 - 3.1.2 The latest 2022 EE workforce profiles of each economic sector in terms of race, gender and disability as reported by the designated employers in their 2022 EE reports submitted to the Department of Employment and Labour.
 - 3.1.3 The various Sector Codes and the Sector Charters published under the BBBEE Act.
 - 3.1.4 The unique sector dynamics (e.g. Skills availability, economic and market forces, ownership etc.) raised by Sector Stakeholders in their written submissions during the consultation process.
- 3.2 The proposed 5-year sectoral numerical targets are minimum targets and are key milestones towards achieving the equitable representation of the different designated groups within each occupational level in that employer's workforce in relation to the demographics of their applicable EAP.
- 3.3 The proposed 5-year sectoral numerical targets are not intended to add up to 100% like the EAP and the total workforce at each occupational level. For example, the proposed sectoral numerical target excludes the foreign nationals as part of the workforce profile.
- 3.4 When developing the EE Plans in terms of Section 20(2) of the EEA, the designated employers must take the following factors into account:
 - 3.4.1 Designated employers are those who employ 50 or more employees. **N.B** Employers with 1-49 employees are designated if they are an organ of state or if they are bound by a collective agreement.
 - 3.4.2 Designated employers must take their workforce profile, the relevant 5-year sectoral numerical targets and the applicable EAP into account when setting annual numerical targets in their workplace(s) as required by Section 20(2) of the EEA.
 - 3.4.3 Designated employers will be measured against the annual targets set towards meeting the relevant 5-year sectoral numerical targets.
 - 3.4.4 Employers should not set targets for those groups whose representation have already exceeded their EAP in a particular occupational level.
 - 3.4.5 Designated employers when determining their Annual EE targets towards achieving the minimum 5-year sectoral numerical targets, must set numerical targets for all population

groups in each of the four upper occupational levels where they are under-represented in relation to their respective EAP.

- 3.4.6 Where a designated employer has exceeded the set numerical target of a particular racial / gender group at an occupational level, such an employer may not regress in that particular racial/gender group but should set targets towards the EAP.
- 3.4.7 Designated employers are still required to set numerical goals and Annual EE targets for all population groups at Semi-Skilled and Unskilled occupational levels in their EE Plans in terms of Section 20(2) of the EEA taking into account their respective EAP. While these two levels are not included in the proposed sector numerical targets, it remains incumbent on the employer to set targets for these levels.
- 3.4.8 The National EAP shall apply to designated employers conducting their business / operations nationally, and the respective Provincial EAP shall apply to designated employers conducting their business / operations in a particular province. Designated employers cannot use the national and provincial demographics (EAP) at the same time. Designated employers must choose only one demographic (i.e. either national or provincial, based on their geographical presence within provinces) and utilise the chosen demographics for the entire duration of the EE Plan that is in line with the relevant 5-year sectoral numerical targets.
- 3.4.9 A designated employer who chooses to use the Provincial EAP and operates in more than one Province, may choose the EAP of the Province with the majority of the employees.
- 3.4.10 A designated employer who operates in more than one sector should choose the economic sector with the majority of the employees.

4. Implementation of Affirmative Action measures

- 4.1 Affirmative action is a coherent packet of measures, of a temporary nature in line with the Constitution, aimed specifically at correcting the position of members of a target group as defined in the Employment Equity Act in the workplace, in order to obtain effective equality.
- 4.2 Affirmative action shall be applied in a nuanced way (as outlined in 4.3 and 4.4 below) and the economically active population statistics will only be one of many factors that will be taken into account in the compliance analysis of affirmative action in any workplace as required by sections 15 and 42 of the EEA.
- 4.3 No absolute barrier may be placed upon any employment practices affecting any persons from any group as per section 15(4) of the EEA.
- 4.4 For the purpose of preparing and implementing an employment equity plan, reporting and compliance analysis of affirmative action in any workplace, the following criteria must be taken into account—
 - a) Inherent requirements of the job (section 6(2)(b) of the EEA);
 - b) The pool of suitably qualified persons (section 20(3) of the EEA);
 - c) The qualification, skills, experience and the capacity to acquire, within a reasonable timeframe, the ability to do the job (section 20(3) of the EEA);
 - d) The rate of turn-over and natural attrition within a workplace (Code of Good Practice on the preparation, implementation and monitoring of the EE Plan and HR Code); and

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- e) Recruitment and promotional trends within a workplace (Code of Good Practice on the preparation, implementation and monitoring of the EE Plan and HR Code).
- 4.5 In the compliance analysis of affirmative action in any workplace justifiable/reasonable grounds for not complying with the targets as set by the employer and/or any other targets set by any other party, may include (as already stipulated in Regulation 16(4) and in the EEA15 Form, Draft EE Regulation 2018):
- a) Insufficient recruitment opportunities;
 - b) Insufficient promotion opportunities;
 - c) Insufficient target individuals from the designated groups with the relevant qualification, skills and experience;
 - d) CCMA awards/Court Order;
 - e) Transfer of business;
 - f) Mergers/ Acquisitions; and
 - g) Impact on Business Economic circumstances.
- 4.6 The employer will incur no penalties or any form of disadvantage if in the compliance analysis of affirmative action in any workplace there are justifiable/reasonable grounds for not complying with the targets.
- 4.7 No employment termination of any kind may be effected as a consequence of affirmative action.

5. 5-Year Sectoral Numerical Targets for All Sectors

The table below contains the proposed 5-year sectoral numerical targets for the various population groups and gender (i.e., Top Management, Senior Management, Professionally Qualified and Skilled levels) and for employees with disabilities (* Please note Sec 3. when developing the EE Plan).

5-YEAR SECTORAL NUMERICAL TARGETS					
		1. AGRICULTURE, FORESTRY & FISHING	2. MINING AND QUARRYING	3. MANUFACTURING	4. CONSTRUCTION
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS
Top management	Male	20.0%	29,9%	25,0%	33,0%
	Female	15.0%	20,1%	15,0%	17,0%
	Total	35.0%	50,0%	40,0%	50,0%
Senior Management	Male	25.0%	35,0%	33,0%	40,0%
	Female	15.0%	21,0%	17,0%	20,0%
	Total	40.0%	56,0%	50,0%	60,0%
Professionally Qualified & Middle Management	Male	35.0%	41,0%	37,0%	50,0%
	Female	25.0%	24,0%	25,0%	25,0%
	Total	60.0%	65,0%	62,0%	75,0%
Skilled Technical	Male	50.4%	49,1%	50,0%	50,4%
	Female	27.6%	25,9%	34,0%	37,6%
	Total	78.0%	75,0%	84,0%	88,0%
Disability only	All	2% OF TOTAL WORKFORCE	2% OF TOTAL WORKFORCE	2% OF TOTAL WORKFORCE	2% OF TOTAL WORKFORCE

5-YEAR SECTORAL NUMERICAL TARGETS					
		5. FINANCIAL AND INSURANCE ACTIVITIES	6. TRANSPORTATION AND STORAGE	7. INFORMATION AND COMMUNICATION	8. WATER SUPPLY, SEWERAGE, WASTE MANAGEMENT AND REMEDIATION ACTIVITIES
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS
Top management	Male	26,0%	30,0%	28,0%	45,0%
	Female	20,0%	20,0%	22,0%	35,0%
	Total	46,0%	50,0%	50,0%	80,0%
Senior Management	Male	24,0%	38,0%	35,0%	50,0%
	Female	24,0%	22,0%	25,0%	38,0%
	Total	48,0%	60,0%	60,0%	88,0%
Professionally Qualified & Middle Management	Male	30,0%	48,0%	40,0%	50,4%
	Female	34,0%	27,0%	30,0%	40,8%
	Total	64,0%	75,0%	70,0%	91,2%
Skilled Technical	Male	47,4%	50,4%	48,0%	50,4%
	Female	40,8%	37,6%	37,0%	40,8%
	Total	88,2%	88,0%	85,0%	91,2%
Disability only	All	2% OF TOTAL WORKFORCE	2% OF TOTAL WORKFORCE	2% OF TOTAL WORKFORCE	2% OF TOTAL WORKFORCE

5-YEAR SECTORAL NUMERICAL TARGETS					
		9. ELECTRICITY, GAS STEAM AND AIR CONDITIONING SUPPLY	10. HUMAN HEALTH AND SOCIAL WORK ACTIVITIES	11. ARTS, ENTERTAINMENT AND RECREATION	12. REAL ESTATE ACTIVITIES
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS
Top management	Male	28,0%	25,0%	25,0%	25.0%
	Female	22,0%	25,0%	25,0%	20.0%
	Total	50,0%	50,0%	50,0%	45.0%
Senior Management	Male	39,0%	30,0%	45,0%	27.0%
	Female	26,0%	30,0%	30,0%	23.0%
	Total	65,0%	60,0%	75,0%	50.0%
Professionally Qualified & Middle Management	Male	47,0%	50,4%	50,4%	30.0%
	Female	33,0%	40,8%	40,8%	35.0%
	Total	80,0%	91,2%	91,2%	65.0%
Skilled Technical	Male	50,4%	50,4%	50,4%	33.0%
	Female	37,6%	40,8%	40,8%	37.0%
	Total	88,0%	91,2%	91,2%	70.0%
Disability only	All	2%OF TOTAL WORKFORCE	2%OF TOTAL WORKFORCE	2%OF TOTAL WORKFORCE	2%OF TOTAL WORKFORCE

5-YEAR SECTORAL NUMERICAL TARGETS					
		13. PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES	14. WHOLESALE AND RETAIL TRADE; REPAIR OF MOTOR VEHICLES AND MOTORCYCLES	15. ACCOMMODATION AND FOOD SERVICE ACTIVITIES	16. PUBLIC ADMINISTRATION AND DEFENCE; COMPULSORY SOCIAL SECURITY
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS	DESIGNATED GROUPS
Top management	Male	25,0%	25,0%	22,5%	50,4%
	Female	20,0%	15,0%	22,5%	40,8%
	Total	45,0%	40,0%	45,0%	91,2%
Senior Management	Male	27,0%	33,0%	28,0%	50,4%
	Female	23,0%	23,0%	30,0%	40,8%
	Total	50,0%	56,0%	58,0%	91,2%
Professionally Qualified & Middle Management	Male	33,0%	37,0%	33,5%	50,4%
	Female	32,0%	38,0%	37,5%	40,8%
	Total	65,0%	75,0%	71,0%	91,2%
Skilled Technical	Male	44,4%	47,2%	47,0%	50,4%
	Female	44,0%	40,8%	41,0%	40,8%
	Total	88,0%	88,0%	88,0%	91,2%
Disability only	All	2% OF TOTAL WORKFORCE	2% OF TOTAL WORKFORCE	2% OF TOTAL WORKFORCE	2% OF TOTAL WORKFORCE

5-YEAR SECTORAL NUMERICAL TARGETS			
		17. EDUCATION	18. ADMINISTRATIVE AND SUPPORT ACTIVITIES
DESCRIPTION	GENDER	DESIGNATED GROUPS	DESIGNATED GROUPS
Top management	Male	33,0%	30,0%
	Female	25,0%	20,0%
	Total	58,0%	50,0%
Senior Management	Male	31,5%	38,0%
	Female	29,5%	27,0%
	Total	61,0%	65,0%
Professionally Qualified & Middle Management	Male	35,0%	44,2%
	Female	35,5%	40,8%
	Total	70,5%	85,0%
Skilled Technical	Male	42,0%	50,4%
	Female	42,5%	40,8%
	Total	84,5%	91,2%
Disability only	All	2% OF TOTAL WORKFORCE	2% OF TOTAL WORKFORCE