

Amendment to EE Act seeks to address B-BBEE decline

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14 Aug 2020

The Broad-based Black Economic Empowerment (B-BBEE) Commission's latest report on trends shows an overall decline across almost all measured elements, despite SA's substantial legislative and regulatory framework, intended to ensure economic empowerment. Proposed amendments to the Employment Equity Act seek to introduce sectoral numerical targets for staffing as another means to foster economic inclusion. However, mere compliance box-ticking with these requirements will not produce an inclusive, thriving economy with sustainable empowerment. The precursor to this is quality education and skills development.



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The report provides a year-on-year comparison of available data, focusing on averages achieved in 2018 and 2019.

Organs of state and public entities have fallen woefully short of the required standards in the B-BBEE Codes according to the report and will be subjected to greater scrutiny in future. The B-BBEE Commission has called upon them to align requirements and processes for awarding contracts, licences and incentives, as well as other authorisations, with the requirements of the B-BBEE Act and it has confirmed that it must enforce adherence by organs of state and public entities.

There was an overall improvement in the average levels of black ownership of enterprises from 25% to 29%. However, on average, the other measured elements of B-BBEE, as in the B-BBEE Generic Codes of Good Practice and the various Sector Codes (B-BBEE Codes), either showed a decline or remained static from 2018 to 2019. These are management control, skills development, enterprise and supplier development and socio-economic development.

Black management control declined from an average score of 45% in 2018 to a 39% average score in 2019, indicating reduced control of local enterprises by black South Africans, despite the average increase in ownership by black people. Skills development of black people remained static at an average score of 49%.

Education and skills development

Education and skills development are critical ingredients for the successful transformation of the South African economy from one in which most of the population is excluded from the formal economy, to one with an inclusive, thriving market.

The skills development element of B-BBEE is earmarked in the B-BBEE Codes as a priority element, recognising that skills are essential for universal economic empowerment. If an enterprise fails to meet the sub-minimum target for skills development, as set out in the B-BBEE Codes, its overall B-BBEE recognition level will reduce by one level, no matter how compliant it is in relation to the other measured elements of B-BBEE. As such, the B-BBEE Codes have a weighted compliance incentive for the skills development element. Despite this, there is stagnation in skills development scores. The B-BBEE Commission maintains that the targets for skills development are high but emphasis should not only be on measurement of quantity of skills development spend, but also the nature and quality of the training interventions, with greater scrutiny of training initiatives and the role of intermediary skills development service providers.

Coupled to the B-BBEE Codes is the Employment Equity Act (EE Act), which prohibits unfair discrimination and also seeks to ensure inclusive participation of all South Africans in the formal economy by establishing minimum requirements for staffing at various levels within an enterprise, in terms of race and gender, as well as skills development.

Designated employers and designated groups

One of the main purposes of the EE Act is to implement affirmative action measures through the adoption and implementation of an employment equity plan by designated employers. Designated employers broadly include: employers with more than 50 employees; employers with fewer than 50 employees but with an annual turnover above a certain prescribed threshold; municipalities; organs of state; local spheres of government; and employers who are bound by a collective agreement in which they are appointed as designated employers to redress the disadvantages in employment experienced by black people, women and people with disabilities (designated group) and to ensure equitable representation in all occupational categories and levels (designated employers).

Designated employers are required to adopt and implement an employment equity plan to achieve equitable representation and fair treatment of designated groups in the workplace. In addition to an EE plan, designated employers are required to adopt affirmative action measures to retain and develop people from designated groups, such as training and skills development.

The Department of Employment and Labour recently published a notice indicating its intention to table the Employment Equity Amendment Bill, 2020 (Amendment Bill), which, if enacted in its current form, will empower the minister to prescribe criteria that must be taken into account in identifying national economic sectors for purposes of the administration of the EE Act and set numerical targets for equitable representation of persons from Designated Groups in the sectors identified. The numerical targets may vary between occupational levels, sub-sectors or regions within a sector.

The Amendment Bill intends to reduce the regulatory burden on small employers. Designated employers will exclude employers with fewer than 50 employees if they meet a prescribed turnover threshold. Non-designated employers will no longer be required to notify the director-general of their intention to voluntarily comply with Chapter III. Instead, a non-designated employer will obtain a certificate of compliance if it complies with applicable sectoral targets, or has a reasonable ground for non-compliance, or the employer has submitted its most recent employment equity report, and within the previous three years has neither breached the prohibition against unfair discrimination nor breached the minimum wage requirements.

Given the reported average decline in levels of compliance with the requirements for black economic empowerment, the proposed amendments to the EE Act which intend to introduce numerical representation targets in sectors may appear necessary. This could, however, lead to more compliance "box ticking", by filling positions rather than substantively empowering people through education and skills development.

Black economic empowerment cannot succeed without meaningful participation of designated groups in the economy. As a precursor to that, the critical focus must be on providing quality education and skills development from early childhood into productive adult years. Lifelong learning should be encouraged - knowledge is power. Not only will this enable economic inclusion on a sustainable and equitable basis, but it will also drive South Africa's ailing economy into a healthier future.

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