



Employment Equity Amendment Bill

Verbal Presentation of the SAMED submission to the Portfolio Committee on Employment and Labour

April 2021

What we will cover

- Introduce the SAMED team
- About the South African Medical Technology Industry Association
- SAMED comment on the Employment Equity Amendment Bill
 - Setting sectors and sub-sectors
 - Setting targets
 - The employer's own targets
 - Compliance with targets
 - Other aspects of the Amendment Bill



The South African Medical Technology Industry Association - SAMED

- SAMED is a not-for-gain industry association
- Founded in 1985
- Grown significantly > 200 members
 - Diverse membership reflective of highly complex industry: multinationals, distributors, local manufacturers and wholesalers
 - Association (MDMSA, SALDA) and Associate members
- Voice of the South African medtech and in-vitro diagnostics industry
- Member of
 - Health Sector Anti-Corruption Forum (HSACF)
 - Business Unity South Africa (BUSA)
 - Business for South Africa (B4SA)
 - NAPPI Advisory Board (NAB)
 - Industry Task Group (ITG) for medtech and pharma industries' liaison with SAHPRA)
 - Global Harmonization Working Party (GHWP, previously AHWP)
 - Global Medical Technology Alliance (GMTA)



Voice of SA medtech



Increase the visibility of medtech Industry



Advocacy to inform healthcare policy and improve healthcare delivery



Share latest market trends and promote industry best practices



Networking platform



Work with international best practice for global harmonisation

Our Vision & Mission



Our vision

SAMED is committed to enabling a sustainable, ethical and transformed medical technology industry that ensures patient access to quality technologies and innovative solutions



Our mission

Our mission is to provide the industry with a collective, objective and credible platform for engaging with all stakeholders

Transformation Statement

SAMED regards transformation as an economic and social imperative. We are committed to transformation and believe we can drive meaningful and sustainable change as an industry body. We strive to create an eco-system that gives our members tools to enable them to transform their companies. We call on our members and partners to participate in our transformation journey.

Aspects of the Amendment Bill that we Support



These amendments are supported by SAMED

Section 1: Definition “people with disabilities” amended to include “intellectual or sensory” impairment. The disability therefore is no longer required to be the only barrier, nor must it be proven that it had hampered access, the fact that it “may” would be adequate

Section 8: Various elements that are required to be adhered to before psychological assessment is done are now connected by “and”, meaning that all four criteria must be in place before these assessments can be lawfully done on employees

Section 36 allows an inspector to instruct an employer to prepare an employment equity plan, and the employer must issue a written undertaking to that effect

On designated employers, the thresholds per sector is repealed and only employers with more than 50 employees have to comply with the affirmative action provisions of the EEA



Proposal #1

Consider more refined SIC Class levels to ensure similar employers in the medical technology sector face similar regulatory and other requirements

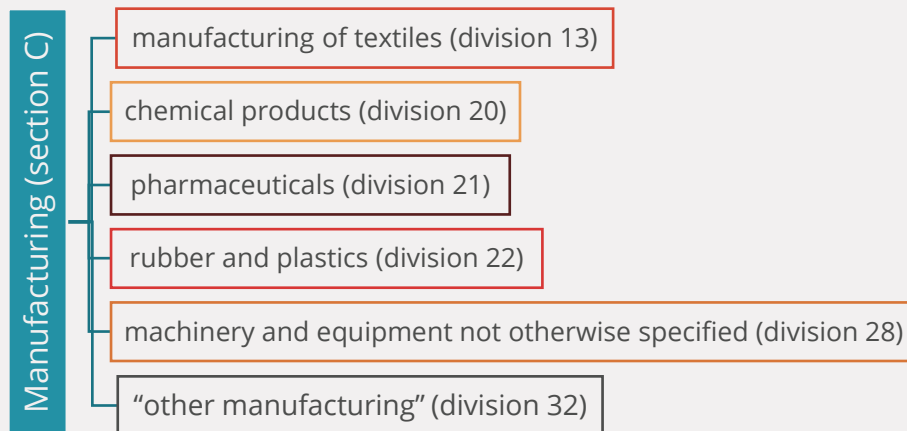
- This will influence the pools of available candidates and whether skills can be acquired or not at a new workplace, some of which are due to regulatory requirements

Proposal reference: Section 15

Setting sectors and sub-sectors

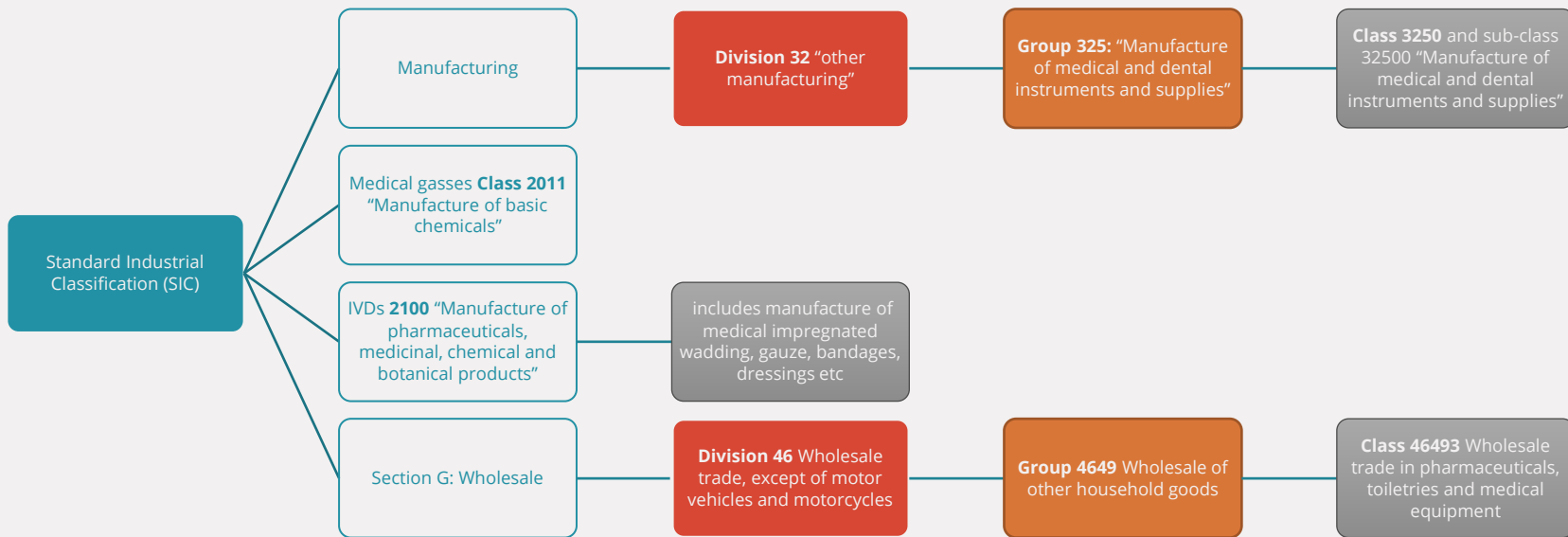
Standard Industrial Classification (SIC) – inconsistencies and not always to medtech companies EE report classifications

Given the diversity of the medtech sector, sub-targets would have to be set up per division, and such sub-targets have to relate to the medical technology industry specifically



Setting sectors and sub-sectors

Medical technology companies may fall under different categories and therefore be required to meet vastly different targets, and are different to other employers in that category (e.g. general textiles vs medical textiles)



Many medical technology companies may also fall within the retail space



Proposal #2



More than 30 days to engage on the targets required

Methodology to how targets are set, to be published

Minister to consult with the relevant sector, recognising SIC groups sectors together, whereas specific and separate consultation with health sector players, such as SAMED, would be required

Arbitration where agreement cannot be reached

Setting targets



Legislation should allow for a consultative approach for setting sector targets

- Adequately consult sectors
- Consensus on sector targets with the respective industry bodies



Significant differences between medtech companies and between medtech companies and non-health sector companies should be recognised

- Small single-owner business to large, multinational entities



A “one size fits all” targets unlikely to achieve effective and positive results and may entail challenges further in implementation phase



Proposal #3

Practicalities of timing of setting targets to be addressed in the law

Level of compliance be set out in the Act

Proposal reference: section 20 (2a)

Setting targets: uncertainties in current wording

Employment Equity Act works on targets to be achieved each year

- Single target for a single year?
- Multiple targets for subsequent years?
- Deadline for targets to be set and achieved?
- Effect of no or little staff turnover in a particular year?

Method for issuing compliance certificate

- Some or complete achievement required to obtain the certificate?
- Will partial achievement on some targets lead to non-compliance?
- If set for multiple years, how will it be measured in first and second years upon achieving a target?



Proposal #4

Process of Compliance Certificates,
challenges thereto, the issuing authority and
the timelines to be set out in the Act

Proposal reference: Section 42(1)a and Section 53

The employer's own targets



The employer still sets its own targets, but does so that it “complies” with “any sectoral target that applies to that employer”

- These prescribed numerical targets will effectively override the targets contained in a designated employers’ Employment Equity Plan (EEP)
- What is implication: currently targets (not quotas) are set, to be achieved over time, e.g. 3 years?



In terms of the Employment Equity Act: designated employers are legally required to consult with their employees (through an employment equity committee) on the content and implementation of their EEPs (including targets)

- Will amendment obligate the employer to use the sectoral targets as fixed by the Minister – thereby rendering consultation with employees meaningless?

Compliance with targets

- It seems possible to justify non-compliance, which supposes a draft process, whereafter the employer could provide justifications – how will such a process work, given the need for compliance certificates to be available timeously for tenders, etc.?
- The timelines and process of applying for certificates are not stipulated
- Suggests a burden on Minister, or his/her designate
- Submission may be under review/appeal
- The effect of the amendments (and any processes to justify non-achievement of targets), will exclude bidders from bidding for government projects and could affect access to healthcare
- Targets as set by the Minister will become a minimum requirement for participating in a bid
 - Currently BBBEE status is part of the overall evaluation (either 10% or 20% of the total score)

Summary Points

- SAMED regards transformation as an economic and social imperative and is committed to transformation
- Consider more refined SIC Class levels
- Minister to consult with the relevant sector and sector associations such as SAMED
- Provide more than 30 days to engage on the targets required and publish the methodology to how targets are set
- Practicalities of timing of setting targets to be addressed in the law
- Level of compliance be set out in the Act
- Process of Compliance Certificates, challenges thereto, the issuing authority and the timelines to be set out in the Act

Get in touch



www.samed.org.za

SAMED Office

- 011 704 2440
- info@samed.org.za

Transformation Committee

- transformation@samed.org.za

Tanya Vogt – Executive Officer

- 083 601 0343
- tanya@samed.org.za