

# EE AMENDMENTS: UPDATE



**BEECHAMBER**  
DIVERSITY & INCLUSION

# TOPICS COVERED

1. Major Proposed Amendments.
2. Amendments Implementation Timeframe.
3. Compliance Certificate.
4. EEA17 Sectors.
5. Draft Sectoral Targets.
6. Sectoral and EE Plan Targets: Justifications.
7. What About EAP Targets?
8. What Now?



# EE AMENDMENT BILL: LATEST UPDATES



**BEECHAMBER**  
DIVERSITY & INCLUSION

# MAJOR PROPOSED AMENDMENTS

## President has signed into law. Effective date to be gazetted.

Turnover thresholds to be omitted for determining “**designated employer**”. **Effective date** to be gazetted.

Tenders to be accommodated either by a **certificate** issued by the Minister of Labour or a declaration of **compliance**.

Change to **People with Disabilities** definition.

**Sectoral Targets**, which could be different per EE level and/ or region and/ or other relevant factors, according to EEA17 sectors.

**Draft Sectoral Target Gazetted.**

**Final Sectoral Target Gazetting:** only after 30-day public comment on Draft Targets, then review of public comment, then finalised and gazetted.

# MAJOR PROPOSED AMENDMENTS

**Timeframe:** In 2022 indicated that all current Plans were to become redundant by August 2023 – from September 2023 onwards, supposed to implement new Plan aligned to Sectoral Targets. **Timeframe now seems unlikely.**

**Psychometric Assessments:** do not have to be HPCSA certified.

**Consultation:** if there are unions “must” only consult with them – not also other employees. “Where there is a representative trade union, the designated employer must only consult with that trade union.” (Section 2.5: Memorandum on the Objects of the EE Amendment Bill, 2020)

# IMPLEMENTATION TIMEFRAME



# COMPLIANCE CERTIFICATE

## CRITERIA FOR EE COMPLIANCE CERTIFICATE

- Criteria for non-designated employers (0-49 employees):
  - Comply with the NMW/ exemption granted not to pay NMW (previous 12 months)
  - No CCMA Unfair discrimination Award against employers (previous 12 months)
- Criteria for non-designated employers (50 or more employees):
  - Submit Annual EE Report (EEA2 & EEA4 forms);
  - Comply with Annual EE Targets towards the 5 – year Sectoral EE Target or justify if not met
  - Comply with the NMW/ exemption granted not to pay NWM (previous 12 months)
  - No CCMA Unfair discrimination Award against employers (previous 12 months)

# COMPLIANCE CERTIFICATE (2018 DRAFT REGULATIONS: EEA16A)

## Certificate of Compliance

Issued in terms of Section 53(2) is valid for 12 months from the date of issue as per the Regulations made in terms of the Employment Equity Act 55 of 1998 as amended

to

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*NAME OF ORGANISATION*

Deemed to be a

*DESINAGTED EMPLOYER*

and

is hereby certified to have complied with the relevant provisions of the Employment Equity Act, 1998 as amended

- Chapter II on the prohibition of unfair discrimination and Chapter III on the implementation of affirmative action measures; and
- National Minimum Wage Act, 2017.

Any fraudulently obtained certificate of compliance shall constitute a criminal offence. The Department of Labour shall institute criminal proceedings against any persons who unlawfully alter a certificate.

SIGNATURE :

\_\_\_\_\_  
MINISTER OF LABOUR

**Unfair Discrimination  
Duties**



**ECONOMIC SECTORS AND SUB-SECTORS IN LINE WITH THE STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODES**

**EEA17**

NO.	SECTORS	SUB-SECTORS (DIVISIONS)
1.	AGRICULTURE, <u>FORESTRY &amp; FISHING</u>	1. <u>Crop and animal production, hunting and related services activities</u> 2. <u>Forestry and logging</u> 3. <u>Fishing and aquaculture</u>
2.	MINING AND QUARRYING	1. <u>Mining of coal and lignite</u> 2. <u>Extraction of crude petroleum and natural gas</u> 3. <u>Mining of metal ores</u> 4. <u>Other mining and quarrying</u> 5. <u>Mining support service activities</u>
3.	<u>MANUFACTURING</u>	1. <u>Manufacturing of food products: beverages and tobacco products</u> 2. <u>Manufacturing of textile; wearing apparel; leather and related products</u> 3. <u>Manufacturing of wood and product of wood: furniture; cork; articles of straw; plaiting materials; paper and paper products</u> 4. <u>Manufacture of printing: reproduction of recorded media; computer; electronic and optical products</u> 5. <u>Manufacture of coke; refined petroleum products; chemicals; chemical products; pharmaceuticals; medicinal chemical; botanical products; rubber; tyres and tubes; plastic products and non-metallic mineral products</u> 6. <u>Manufacture of basic metals; fabricated metal products; except machinery and equipment</u> 7. <u>Manufacture of electrical equipment; machinery; equipment; motor vehicles; trailers; semi-trailers; transport equipment; installation of machinery and equipment</u>
4.	<u>CONSTRUCTION</u>	1. <u>Construction of buildings</u> 2. <u>Civil Engineering</u> 3. <u>Specialised construction activities</u>

5.	<u>FINANCIAL AND [BUSINESS SERVICES] INSURANCE ACTIVITIES</u>	1. <u>Financial service activities, except insurance and pension funding</u> 2. <u>Insurance, reinsurance and pension funding, except compulsory social security</u> 3. <u>Activities auxiliary to financial service and insurance activities</u>
6.	<u>TRANSPORTATION AND[,] STORAGE [AND COMMUNICATION]</u>	1. <u>Land transport and transport via pipeline</u> 2. <u>Water transport</u> 3. <u>Air transport</u> 4. <u>Warehousing and support activities for transportation</u> 5. <u>Postal and courier activities</u>
7.	<u>[TRANSPORTATION, STORAGE AND] INFORMATION AND COMMUNICATION</u>	1. <u>Publishing activities</u> 2. <u>Motion picture, video and television programme production, sound recording and music publishing activities</u> 3. <u>Programme and broadcasting services</u> 4. <u>Telecommunications</u> 5. <u>Computer programming, consultancy and related activities</u> 6. <u>Information services activities</u> 7. <u>Publishing activities</u>
8.	<u>[ELECTRICITY, GAS AND] WATER SUPPLY, SEWERAGE, WASTE MANAGEMENT AND REMEDIATION ACTIVITIES</u>	1. <u>Water collection, treatment and supply</u> 2. <u>Sewerage</u> 3. <u>Waste collection, treatment and disposal activities; materials recovery</u> 4. <u>Remediation activities and other waste management services</u> 5. <u>Water collection, treatment and supply</u>
9.	<u>ELECTRICITY, GAS [AND WATER], STEAM AND AIR CONDITIONING SUPPLY</u>	1. <u>Electricity, gas, steam and air conditioning supply</u>
10.	<u>HUMAN HEALTH AND SOCIAL WORK ACTIVITIES</u>	1. <u>Human health activities</u> 2. <u>Residential care activities</u> 3. <u>Social work activities without accommodation</u> 4. <u>Human health activities</u>
11.	<u>ARTS, ENTERTAINMENT AND RECREATION</u>	1. <u>Creative, arts and entertainment activities</u> 2. <u>Libraries, archives, museums and other cultural activities</u>

		<ul style="list-style-type: none"> <li>3. <u>Gambling and betting activities</u></li> <li>4. <u>Sports activities and amusement and recreation activities</u></li> <li>5. <u>Other amusement and recreation activities</u></li> </ul>	15.	<u>[CATERING,] ACCOMMODATION AND [OTHER TRADE] FOOD SERVICE ACTIVITIES</u>	<ul style="list-style-type: none"> <li>1. <u>Accommodation, Short term accommodation activities</u></li> <li>2. <u>Camping grounds, recreational vehicle parks and trailer parks</u></li> <li>3. <u>Food and beverage service activities: Restaurants and mobile food service; Event catering another food service activities</u></li> </ul>
12.	<u>REAL ESTATE ACTIVITIES</u>	<ul style="list-style-type: none"> <li>1. <u>Real estate activities with own or leased property</u></li> <li>2. <u>Real estate activities on a fee or Contract basis</u></li> </ul>			
13.	<u>PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES</u>	<ul style="list-style-type: none"> <li>1. <u>Legal and accounting, bookkeeping and auditing activities, tax consultancy</u></li> <li>2. <u>Activities of head office; management consultancy activities</u></li> <li>3. <u>Architectural and engineering activities: technical testing and analysis</u></li> <li>4. <u>Scientific Research and experimental development on natural science and engineering; and social sciences and humanities</u></li> <li>5. <u>Advertising and market research and public opinion</u></li> <li>6. <u>Specialised design and Photographic activities</u></li> <li>7. <u>Veterinary activities</u></li> </ul>	16.	<u>[COMMUNITY, SPECIAL AND PERSONAL SERVICES] PUBLIC ADMINISTRATION AND DEFENCE; COMPULSORY SOCIAL SECURITY</u>	<ul style="list-style-type: none"> <li>1. <u>Administration of the state and the economic and social policy of the community and provision of services to the community as a whole at National, Provincial and Local government levels</u></li> <li>2. <u>Compulsory social security activities</u></li> </ul>
			17.	<u>EDUCATION</u>	<ul style="list-style-type: none"> <li>1. <u>Pre – primary and primary education and activities of after-school centres; Primary education</u></li> <li>2. <u>Secondary; Technical and vocational education</u></li> <li>3. <u>Higher education</u></li> <li>4. <u>Other education</u></li> <li>5. <u>Educational support activities</u></li> </ul>
14.	<u>[RETAIL AND MOTOR TRADE AND REPAIR SERVICES]</u>  <u>[WHOLESALE TRADE, COMMERCIAL AGENTS AND ALLIED SERVICES]</u>  <u>WHOLESALE AND RETAIL TRADE; REPAIR OF MOTOR VEHICLES AND MOTORCYCLES</u>	<ul style="list-style-type: none"> <li>1. <u>Wholesale and retail trade and; repair of motor vehicles and motorcycles, including sales of motor vehicles; wholesale of motor vehicles; retail of new and used motor vehicles; sale and maintenance of repair of motor vehicles and motorcycles and related parts and accessories; retail of automotive fuel in specialised stores</u></li> <li>2. <u>Wholesale trade of motor vehicles and motorcycles, including wholesale of agricultural raw materials and live animals, food, beverages, tobacco, household goods, machinery, equipment and supplies and other specialised wholesale such as solid, liquid and gaseous fuels, metals and metal ore, construction materials, hardware, plumbing and heating equipment and supplies, waste and scrap, trade in diamonds, pearls and other precious and semi-precious stones</u></li> <li>3. <u>Retail trade of motor vehicle and motorcycles, including retail sale in non-specialised stores with food, beverages, retail sale of food, beverages, tobacco information and communications equipment, cultural and recreation goods, and other goods such as clothing, footwear and leather, pharmaceutical and medical goods, cosmetics and toilet articles and jewellery in specialised stores,</u></li> </ul>	18.	<u>ADMINISTRATIVE AND SUPPORT ACTIVITIES</u>	<ul style="list-style-type: none"> <li>1. <u>Renting and leasing of motor vehicles (with or without driver)</u></li> <li>2. <u>Renting and leasing of personal and household goods</u></li> <li>3. <u>Renting and leasing of other machinery, equipment and tangible goods</u></li> <li>4. <u>Activities of employment placement agencies</u></li> <li>5. <u>Temporary employment agency activities; and other human resources provision</u></li> <li>6. <u>Travel agency, tour operator, reservation service and related activities</u></li> <li>7. <u>Security and investigation related to private security activities; security systems service activities</u></li> <li>8. <u>Services to buildings such as cleaning, landscape care and maintenance service activities</u></li> <li>9. <u>Office administrative, office support and other business support activities such as photocopying, document preparation</u></li> <li>10. <u>Activities of call centres</u></li> </ul>

# SECTORAL TARGETS

10. HUMAN HEALTH AND SOCIAL WORK ACTIVITIES													
A. TOP MANAGEMENT						B. SENIOR MANAGEMENT							
NATIONAL & PROVINCE	GENDER	POPULATION GROUP					NATIONAL & PROVINCE	GENDER	POPULATION GROUP				
		A	C	I	W	BLACK			A	C	I	W	BLACK
National	Male	21,7%	2,5%	0,7%	4,5%	25,0%	National	Male	26,1%	3,0%	0,9%	4,5%	30,0%
	Female	21,7%	2,5%	0,7%	3,5%	25,0%		Female	26,1%	3,0%	0,9%	3,5%	30,0%
	Total	43,5%	5,1%	1,5%	8,0%	50,0%		Total	52,2%	6,1%	1,8%	8,0%	60,0%
SECTOR TARGETS FOR PROVINCES						SECTOR TARGETS FOR PROVINCES							
Eastern Cape	Male	21,6%	3,2%	0,2%	2,8%	25,0%	Eastern Cape	Male	25,9%	3,8%	0,3%	2,8%	30,0%
	Female	21,6%	3,2%	0,2%	2,2%	25,0%		Female	25,9%	3,8%	0,3%	2,2%	30,0%
	Total	43,2%	6,3%	0,5%	5,0%	50,0%		Total	51,9%	7,6%	0,6%	5,0%	60,0%
Free State	Male	23,8%	0,7%	0,5%	3,7%	25,0%	Free State	Male	28,6%	0,9%	0,6%	3,7%	30,0%
	Female	23,8%	0,7%	0,5%	3,6%	25,0%		Female	28,6%	0,9%	0,6%	3,6%	30,0%
	Total	47,6%	1,5%	0,9%	7,3%	50,0%		Total	57,2%	1,7%	1,1%	7,3%	60,0%
Gauteng	Male	23,3%	0,7%	1,0%	6,4%	25,0%	Gauteng	Male	28,0%	0,8%	1,2%	6,4%	30,0%
	Female	23,3%	0,7%	1,0%	4,6%	25,0%		Female	28,0%	0,8%	1,2%	4,6%	30,0%
	Total	46,6%	1,3%	2,0%	11,0%	50,0%		Total	56,0%	1,6%	2,4%	11,0%	60,0%
KwaZulu-Natal	Male	22,8%	0,3%	1,9%	2,2%	25,0%	KwaZulu-Natal	Male	27,4%	0,3%	2,3%	2,2%	30,0%
	Female	22,8%	0,3%	1,9%	1,9%	25,0%		Female	27,4%	0,3%	2,3%	1,9%	30,0%
	Total	45,6%	0,6%	3,8%	4,1%	50,0%		Total	54,7%	0,7%	4,6%	4,1%	60,0%
Limpopo	Male	24,9%	0,0%	0,1%	1,2%	25,0%	Limpopo	Male	29,8%	0,0%	0,1%	1,2%	30,0%
	Female	24,9%	0,0%	0,1%	1,2%	25,0%		Female	29,8%	0,0%	0,1%	1,2%	30,0%
	Total	49,7%	0,1%	0,2%	2,4%	50,0%		Total	59,7%	0,1%	0,2%	2,4%	60,0%
Mpumalanga	Male	24,8%	0,1%	0,1%	4,0%	25,0%	Mpumalanga	Male	29,8%	0,1%	0,1%	4,0%	30,0%
	Female	24,8%	0,1%	0,1%	3,2%	25,0%		Female	29,8%	0,1%	0,1%	3,2%	30,0%
	Total	49,7%	0,2%	0,2%	7,2%	50,0%		Total	59,6%	0,2%	0,2%	7,2%	60,0%
North West	Male	24,5%	0,3%	0,2%	2,8%	25,0%	North West	Male	29,3%	0,4%	0,3%	2,8%	30,0%
	Female	24,5%	0,3%	0,2%	1,6%	25,0%		Female	29,3%	0,4%	0,3%	1,6%	30,0%
	Total	48,9%	0,6%	0,5%	4,4%	50,0%		Total	58,7%	0,8%	0,6%	4,4%	60,0%
Northern Cape	Male	15,8%	9,1%	0,1%	6,4%	25,0%	Northern Cape	Male	19,0%	10,9%	0,1%	6,4%	30,0%
	Female	15,8%	9,1%	0,1%	4,5%	25,0%		Female	19,0%	10,9%	0,1%	4,5%	30,0%
	Total	31,6%	18,1%	0,2%	10,9%	50,0%		Total	38,0%	21,8%	0,3%	10,9%	60,0%
Western Cape	Male	11,4%	13,4%	0,2%	7,2%	25,0%	Western Cape	Male	13,7%	16,1%	0,3%	7,2%	30,0%
	Female	11,4%	13,4%	0,2%	6,1%	25,0%		Female	13,7%	16,1%	0,3%	6,1%	30,0%
	Total	22,8%	26,8%	0,5%	13,3%	50,0%		Total	27,3%	32,1%	0,6%	13,3%	60,0%
Workforce Profile 2022 (All employers)	Male	10,5%	2,5%	7,0%	37,5%	20,0%	Workforce Profile 2022 (All employers)	Male	14,9%	2,8%	4,2%	14,9%	21,9%
	Female	9,1%	3,4%	5,9%	21,2%	18,4%		Female	20,5%	5,6%	6,9%	27,2%	33,0%
	Total	19,6%	5,9%	12,9%	58,7%	38,4%		Total	35,4%	8,4%	11,1%	42,1%	54,9%

# SECTORAL TARGETS: JUSTIFICATION (2018 DRAFT REGULATIONS: S16)

- Insufficient recruitment opportunities.
- Insufficient promotion opportunities.
- Insufficient target individuals from the designated groups with the relevant qualification, skills and experience.
- Court Order.
- Transfer of business.
- Mergers/ Acquisitions.
- Impact on Business Economic circumstances.

# EAP REMAINS ULTIMATE BENCHMARK (S42)

**Section 42 will now read:**

## **42. Assessment of compliance**

(1) In determining whether a designated employer is implementing employment equity in compliance with this Act, the Director-General or any person or body applying this Act may, in addition to the factors stated in section 15, take the following into account:

(a) 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 relation to the demographic profile of the **National and Regional Economically Active Population**;

**(b) Whether or not the employer has complied with any Sectoral Target ...**

**Sector Targets will determine the pace at which the Sector must achieve EAP.**



**QUESTIONS**

