

November 30, 2023

What can employers expect of an Employment Equity audit by the Department of Labour?



This article serves to inform employers of what to expect when faced with an Employment Equity Director General Review, also known as an Employment Equity audit, by the Department of Labour (DoL).

According to the Employment Equity Act, a designated employer is an employer who employs 50 or more employees or has a total annual turnover as reflected in Schedule 4 of the Act. If you have missed our previously published article about the *Employment Equity submission deadlines for 2023* - just click on the above link.

Employment Equity Industry Sector Thresholds

Please see below table with the various Industry Sector Thresholds in the context of Employment Equity:

EMPLOYMENT EQUITY INDUSTRY THRESHOLDS:	
INDUSTRY	THRESHOLD (ANNUAL TURNOVER)
Agriculture	R 6m
Mining and Quarrying	R 22,5m
Manufacturing	R 30m
Electricity, Gas and Water	R 30m
Construction	R 15m
Retail and Motor Trade and Repair Service	R 45m
Wholesale Trade, Commercial Agents and Allied Services	R 75m
Catering, Accommodation and other Trade	R 15m
Transport, Storage and Communications	R 30m
Finance and Business Services	R 30m
Community, Special and Personal Services	R 15m

In the event of an Employment Equity Director-General Review, an employer can expect to receive an *Employment Equity Act Notice of Inspection* as well as a document known as the Basic Info of the Employer from the Department of Labour.

What does an Employment Equity Notice of Inspection include?

The notice is intended to notify the selected Employer that a DoL Inspector will conduct an Employment Equity inspection at the company.

The DoL Inspector will request the company to prepare and submit the following documents within a specific timeframe:

- Proof that the responsibility for Employment Equity is assigned to one or more senior managers as required by **section 24**;
- Proof of consultation with employees as required by **section 16**, read with **section 17**: Copy of Minutes of the meeting / Copy of Agenda / Copy of signed attendance register;
- Proof of an analysis (EEA12) conducted as required by **section 19**;
- Copy of an Employment Equity Plan (EEA13) as required by **section 20**;
- Proof of submission as required by **section 21**: Acknowledgement Letter / Submitted EEA2 / Submitted EEA4;
- Proof of the publication of the reports as required by **section 22** (applicable only to public companies);
- Proof that those employees were informed **as required by section 25**: Is the summary of the Act displayed in prominent places? / Is the most recent report submitted to the Director-General displayed? / Is any compliance order, or order of the Labour Court displayed? / Is the EE Plan made available for copying and consultation?
- Proof of keeping of records as required by **section 26**: Proof of keeping records, as required by section 26 of the Employment Equity Act, entails maintaining records in their original form, in the form prescribed by the Commissioner by public notice, or in a form authorised by a senior SARS official.

Why is it important to ensure that specific stakeholders attend Employment Equity meetings?

It is important to ensure that stakeholders such as Trade Union / Shop Stewards, EE Committee Members, as well as the EE Manager form part of the meetings.

The Employment Equity Act states that an Employment Equity Committee should be diverse, representing all races, genders and occupational levels in the company. The committee's purpose is to ensure that sufficient consultation takes place on a quarterly basis with a holistic view from representatives of all employees in the company. Including more stakeholders in the decision-making process, makes it easier to gain their support and identify Employment Equity and Affirmative Action concerns by reviewing current company policies and procedures. It also provides an opportunity to reflect on what will and will not work, and why.

Once the Inspector has worked through the documentation provided, the company can expect a *Notice of Director-General Outcome* in terms of section 44 of the Employment Equity Act 55 of 1998 as amended.

What does the Notice of Director-General Outcome in terms of section 44 of the Employment Equity Act include?

Director-General's Recommendations - In terms of section 43 of the Employment Equity Act 55 of 1998 as amended ("the Act"), the Director-General may conduct a review to determine whether an employer is complying with this Act and then make recommendations.

A report with outcomes and recommendations stemming from the review that was conducted on the selected organisation in terms of section 44 of the Employment Equity Act, is provided and directed to comply with each of the recommendations within the prescribed timeframes. Failure to comply will result in your organisation being referred to the Labour Court in terms of section 45 of the Employment Equity Act.

The Director-General's Recommendations document includes the following:

- o **The overview of the Company:** Nature of the Business and Workforce Profile
- o **Background includes:** Purpose of the Employment Equity Act / Review by the Director-General (section 43 of the Act) / Outcome of the Director General's Review (section 44 of the Act) / Failure to comply with Director-General's recommendation (section 45 of the Act)
- o **A table that outlines the following in respect of the selected company:** *The duties of the designated employer* / The outcomes of the Director-General Review (Non-compliance) / Recommendations to address contraventions / The timeframes or due dates within which they must be met.

Director-General Review Assessment - The Director-General Review Assessment is simply a report on the review conducted in terms of section 43 of the Employment Equity Act as amended, based on the selected Designated Company, including the following:

- o The Entity Profile
- o Issues to be determined
- o Survey of Evidence
- o Evaluation of the Demographics as per section 42
- o Analysis and Observations on the Employment Equity Reports as submitted (based on all occupational levels including those employees with disabilities)
- o Analysis of Evidence and Argument: Assignment of EE Manager / Consultation process / EE Analysis / Report / EE Plan
- o Conclusion: Summary of Findings

In conclusion

It is of utmost importance to act immediately within the given timeframe set by the DoL Inspector to prevent non-compliance. *Non-compliance can lead to fines being issued by the DoL which could vary from R1,5 million or 2-10% of your annual turnover.*

Our *Skills Development Facilitation and Employment Equity services* are aimed at businesses that wish to align their employment equity to their strategic corporate objectives. We guide businesses through the process to ensure that equity in your organisation meets the requirements of the Employment Equity Act and supports the growth and success of your business. *SERR Synergy has a team of professional Skills Development Facilitators (SDFs) who assist and guide businesses to implement the correct procedures.* Your designated SDF will work closely with the Employment Equity Manager and provide the necessary guidance to ensure that all the required documentation is in place.

About the Author: Janine Lensley is a certified Skills Development Facilitator who obtained her SDF qualification in 2015. She joined SERR Synergy in 2019 and was promoted to Skills Development Facilitator Team Lead in 2021. She uses her Employment Equity expertise to lead her team of SDFs and ensure that all our Designated clients comply with the Employment Equity Act and Skills Development Act.

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