
EMPLOYMENT

ALERT

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THE GENDER EQUITY BILL - EMPLOYERS TO TAKE STEPS TO BREAK THE GLASS CEILING

The Women Empowerment and Gender Equality Bill (Bill) has been passed by the National Assembly and is now awaiting approval by the National Council of Provinces.

The implications of the Bill, if passed, will require employers' decision making bodies to be comprised of a minimum of 50% female representation. While employers may want to pre-emptively ready themselves for this possible new legislation, it may be in vain, even if the Bill is promulgated.

If the Bill is enacted, not all of its provisions will apply to every employer. The provisions may only apply to employers with 150 or more employees and employers with fewer than 150 employees, but which have a turnover above the thresholds set Schedule 1 of the Bill. Depending on the sector, this can range from R6 million to R75 million. Even if the employer meets the required criteria, the Bill may still not apply to them because there is no blanket application. Instead, the Bill empowers the Minister for Women, Children and People with Disabilities (Minister) to designate public and private organisations to which the Bill will apply, as well as which provisions are applicable to each employer.

Equal representation is merely one objective of the Bill while the general objective is to compel employers to identify gender gaps and make gender concerns integral to their internal policy considerations; a process the Bill refers to as 'gender mainstreaming'. Designated employers would need to introduce policies to invest in and develop their female employees so as to enable them to achieve the progressive realisation of the Bill. It goes further to require social development, thus a designated employer may have to provide some form of gender related public education.

By progressive realisation, the Bill merely requires the designated employer to have policies in place, to address particular gender issues within the stipulated time (one year to address equal representation and socio-economic issues and two years for eliminating discrimination and economic empowerment issues).



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The Bill itself is not prescriptive and affords the Minister much discretion and power. It allows the Minister to request and review reports and policies from the designated employees and empowers the Minister to make further recommendations. These recommendations may have significant impact as failure to follow them may, after dispute resolution processes have been followed, result in a fine or up to five years imprisonment for the accounting officer (public body) or responsible director (private body) of the designated employer. The fine could be as high as 10% of the employer's turnover.

All designated bodies will have to appoint suitable personnel to be the point of call in the implementation of the Bill. In public bodies the accounting officer is held responsible for the implementation of the Bill while in private bodies the responsibility lies with the directors.

Employers may want to begin reviewing their policies on gender issues so that, if the Bill were to come into effect, they do not have to read the Government Gazette in the anxious enquiry of whether or not they have been designated by the Minister.

Lauren Salt and Richard Chemaly



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2012
1st by M&A Deal Flow
1st by General Corporate Finance Deal Flow
1st by General Corporate Finance Deal Value
1st by Unlisted Deals-Deal Flow

2011
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