

# EMPLOYMENT ALERT

## LET OUR STRIKE GUIDELINES BE THE STARTING POINT FOR YOUR STRIKE STRATEGY

At Cliffe Dekker Hofmeyr we pride ourselves in providing our clients with practical solution driven information in line with the current challenges faced by our clients.

Due to the increase in strikes and strike violence in South Africa, our employment practice developed useful strike guidelines for our clients' benefit. These guidelines will provide clients with practical information about strikes, lock-outs and picketing and answer some of the more complex questions around these topics. The guidelines are definitely the starting point when considering a strike strategy and when preparing for industrial action. Our strike guidelines can be accessed on our website.

## IN THIS ISSUE

### EMPLOYMENT EQUITY CRACKDOWN: A WAKEUP CALL TO EMPLOYERS

The Department of Labour has announced that a National Director General Review has been initiated whereby 72 JSE listed companies are to be inspected to ensure that they have complied with the preparation of an Employment Equity Plan between the periods of July to December 2017. The Department of Labour's Inspection and Enforcement Services has declared that six JSE listed companies have already been found to be non-compliant and have been referred for prosecution for failing to prepare Employment Equity Plans and other offences.

# EMPLOYMENT EQUITY CRACKDOWN: A WAKEUP CALL TO EMPLOYERS

*Section 20(1) of the Employment Equity Act requires a designated employer to prepare an employment equity plan which will achieve reasonable progress towards employment equity in that employer's workforce.*

*Non-compliance with the provisions of the Employment Equity Act is monitored by complaints by any employee or trade union representative, the employment equity registry, Labour inspections and Director General Reviews.*



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Section 20(1) of the Employment Equity Act requires a designated employer to prepare an employment equity plan which will achieve reasonable progress towards employment equity in that employer's workforce. This employment equity plan must include the affirmative action measures to be implemented, the procedures used to monitor and evaluate the implementation of the plan, the timetable setting out the plan, objectives, duration, procedures and internal management of disputes regarding the plan and the numerical goals to be achieved of the appointment of underrepresented persons from designated groups ("black people, women and people with disabilities") in order to achieve equality in the workplace.

A designated employer, who is obliged to comply with the abovementioned, section includes employers who employ more than 50 employees; or those employers with a total annual turnover equal to or above the annual turnover of a small business as prescribed, a municipality, an organ of state and employer bound by a collective agreement. A designated employer is required to report to the Director General on progress made in implementing their employment equity plan.

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union representative, the employment equity registry, Labour inspections and Director General Reviews.

The National Director General Review involves the interrogation of company's employment equity plans to ensure compliance with legislation and whether these plans result in transformation when the plan is implemented. Director General Review consists of a Department of Labour Inspectorate led compliance audit and may involve a documentary audit, as well as interviews with all stakeholders and the objective is to establish whether the employer is compliant and/or making genuine progress towards employment equity, over and above procedural compliance.

In terms of s20(7), the Director-General may apply to the Labour Court to impose a fine in accordance with Schedule 1 if a designated employer fails to prepare or implement an employment equity plan in terms of this section. For a first time offence, an employer will be subject to a fine, the greater of R1 500 000 or 2% of the employer's turnover. If the employer has contravened the provision once before the fine shall be the greater of R1 800 000 or 4% of the employer's turnover. The fine increases depending on the repetition of the contravention.

# EMPLOYMENT EQUITY CRACKDOWN: A WAKEUP CALL TO EMPLOYERS

CONTINUED

*Companies who qualify as designated employers must be forewarned to be diligent in their compliance with Employment Equity legislation.*



The Department of Trade and Industry's Broad-based Black Economic Empowerment Commission has also recently announced that they intend to initiate an investigation against specific entities for possible violation of the B-BBEE Act. The penalty for violations of this Act includes fines up to 10% of annual turnover and individuals can be fined or imprisoned for up to 10 years. They can also be barred from contracting with state-owned entities for 10 years.

It is evident that the recent announcements and inspections by these National Departments show that transformation in the workplace is not merely an aspiring paradigm that employers must attempt to comply with,

but that it is an objective that must be at the forefront of employer's priorities which must be strictly enforced.

Companies who qualify as designated employers must be forewarned to be diligent in their compliance with Employment Equity legislation. Non-compliance with the provisions of the EEA could have serious ramifications for the company.

CDH is able to assist employers with checking their compliance against the provisions of the EEA and in preparing and advising on the implementation of an employment equity plan.

*Michael Yeates and Ashleigh Gordon*



[CLICK HERE FOR THE LATEST SOCIAL MEDIA AND THE WORKPLACE GUIDELINE](#)





## Employment Strike Guideline

Find out what steps an employer can take when a strike is unprotected.

 [Click here to find out more](#)

CHAMBERS GLOBAL 2014 - 2017 ranks our Employment practice in Band 2: Employment.

Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2017 in Band 2: Employment.

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Michael Yeates named winner in the **2015** and **2016 ILO Client Choice International Awards** in the category 'Employment and Benefits, South Africa'.



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### BBBEE STATUS: LEVEL THREE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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