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No. 37238

THE PRESIDENCY

No. 16 16 January 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 47 of 2013: Employment Equity Amendment Act, 2013

HOFISI YA PRESIDENTE

No. 16 16 January 2014

Hi mi tivisa leswaku Presidente u amukerile nawu lowu wu phablixiweke ku andzisa vutivi bya n'wina:—

No 47 of 2013: Nawu wa Ndzingano wa Mitirho/Vuthori, 2013



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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 14 January 2014)

ACT

To amend the Employment Equity Act, 1998, so as to substitute or amend certain definitions; to further regulate the prohibition of unfair discrimination against employees; to further regulate the certification of psychometric testing used to assess employees; to provide for the referral of certain disputes for arbitration to the Commission for Conciliation, Mediation and Arbitration; to make further provision regarding the evidentiary burden of proof in allegations of unfair discrimination; to further regulate the preparation and implementation of employment equity plans and the submission of reports by designated employers to the Director-General; to further regulate undertakings by designated employers to comply with requests by labour inspectors; to further regulate the issuing of compliance orders; to provide afresh for the assessment of compliance by designated employers with employment equity and the failure of those employers to comply with requests and recommendations made by the Director-General; to extend the powers of commissioners in arbitration proceedings; to provide for that fines payable in terms of the Act must be paid into the National Revenue Fund; to extend the Minister's power to issue a code of good practice and to delegate certain powers; to increase and provide for the increase by the Minister of certain fines which may be imposed under the Act; and to amend and to provide for the amendment by the Minister of annual turnover thresholds applicable to designated employers; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 55 of 1998, as amended by section 40 of Act 65 of 2002, section 26 of Act 68 of 2002 and section 25 of Act 52 of 2003

1. Section 1 of the Employment Equity Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution in the definition of “designated employer” for paragraph (d) of the following paragraph:

“(d) an organ of state as defined in section 239 of the Constitution, but excluding [local spheres of government,] the National Defence 10

RITO RO HALMUSELA HI KU ANGARHELA:

[] Marito yo dzwihala lama nga eka swiangi swa xikwere ya komba leswi susiweke eka swinawana leswi simekiweke.
_____ Marito lama nga khwatihatiwa hi layini yo khomana ya komba leswi ngenisiweke eka swinawana leswi simekiweke.

(English text signed by the President)
(Assented to 14 January 2014)

NAWU

Ku antswisiwa Nawu wa Ndzingano wa Vuthori, 1998, ku endlela ku siva kumbe ku ngenisa tihlamuselo tin'wana; ku lawula ku alela ku hlawula ehenhla ka vathiri; ku lawula ku nyikiwa ka switifikheti swa nkambelo wa miehleketo lowu tirhisiwaka ku kambela vathiri; ku lulamisela ku hundziseriwa ka mikwetlembetano yin'wana eka Khomixini ya vulamuri ku va yi lamuriwa; ku luamisela ku boheka ku khorisa eka swihehlo swo hlawula hi ndlela yo ka yi nga ri kahle; ku lawula ku lulamisela na ku tirhisa tipulani ta ndzingano wa vuthori na ku yisa swiviko eka Mulawuri Jerala hi vathori lava hlawuriweke; ku lawula ku tiboha ka vathori lava hlawuriweke ku landzelela swikombelo na swibumabumelo leswi swa swipikitere swa vathiri; ku lawula ku nyikiwa ka swileriso swo landzelela; ku lulamisela ku kamberiwa hi vuntshwa ka ku landzelela hi vathori lava hlawuriweke ka ndzingano wa vuthori na ku hluleka ka vathori volavo ku swikombelo na swibumabumelo leswi endliweke hi Mulawuri Jenerala; ku ngetelela matimba ya vakhomixinara eka mafambiselo ya vulamuri; ku lulamisela leswaku tifayini leti faneleke ku hakeriwa hi ku landza Nawu ti fanele ku hakeriwa eka Nkwama wa Mali ya Tiko wa Rixaka; ku ngetelela matimba ya Holobye yo nyika khodi ya matirhele lamanene na ku rhumela matimba man'wana; ku tlakusa na ku lulamisela ku va Holobye a tlakusa tifayini tin'wana leti ti nga ha vekiwa ehangis ka Nawu; na ku antsiwa na ku lulamisela ku va Holobye a antsiwa mbuyelo wa lembe lowu tirhaka eka vathori lava hlawuriweke; na ku lulamisela timhaka leti yelanaka na swona.

AWU SIMEKIWI hi Palamende ya Riphabliki ra Afrika Dzonga hi ndlela leyi landzelaka:—

Ku antswisiwa ka xiyenge xa 1 xa Nawu wa 55 wa 1998, tanihilaha wu antswisiweke hi xiyenge xa 40 xa nawu wa 65 wa 2002, xiyenge xa 26 xa nawu wa 68 wa 2002 na xiyenge xa 25 xa Nawu wa 52 wa 2003

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1. Xiyenge xa 1 xa Nawu wa Ndzingano wa Vuthori, 1998 (lowu laha wu vuriwaka 'Nawunkulu'), xa antswisiwa hi—

(a) ku siviwa ka nhlamuselo ya "muthori loyi a hlawuriweke" ka ndzimana leyi landzelaka eka ndzimana ya (d):

“(d) xirho xa mfumo tanihilaha swi hlamuseriweke hakona eka xiyenge xa 239 xa Vumbiwa, kambe ku nga katsiwi [swiyenge swa mfumo

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- Force, the National Intelligence Agency and the South African Secret Service; and”;
- (b) by the substitution for the definition of “designated groups” of the following definition:
- “**‘designated groups’** means black people, women and people with disabilities who—
- (a) are citizens of the Republic of South Africa by birth or descent; or
- (b) became citizens of the Republic of South Africa by naturalisation—
- (i) before 27 April 1994; or
- (ii) after 26 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date but who were precluded by apartheid policies;”;
- (c) by the substitution for the definition of “labour inspector” of the following definition:
- “**‘labour inspector’** means a person appointed in terms of section [65] 63 of the Basic Conditions of Employment Act;”;
- (d) by the substitution for the definition of “serve” or “submit” of the following definition:
- “**‘serve’** or **‘submit’**, in relation to any communication, means either—
- (a) to send it in writing delivered by hand or registered post; **[or]**
- (b) to transmit it using any electronic mechanism as a result of which the recipient is capable of printing the communication; or
- (c) to send or transmit it in any other prescribed manner;”.

Amendment of section 2 of Act 55 of 1998

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:
- “(b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational **[categories and]** levels in the workforce.”.

Amendment of section 6 of Act 55 of 1998

3. Section 6 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, **[and]** birth or on any other arbitrary ground.”; and
- (b) by the addition of the following subsections:
- “(4) A difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in subsection (1), is unfair discrimination.
- (5) The Minister, after consultation with the Commission, may prescribe the criteria and prescribe the methodology for assessing work of equal value contemplated in subsection (4).”.

- wa muganga]** Vuthu ra Vusirheleri ra Rixaka, Ejensi ya Vunhlori ya Rixaka na Mitirho ya Xihundla ya Afrika Dzonga; na”;
- (b) ku siviwa ka nhlamuselo ya “mitlawwa leyi hlawuriweke” ya nhlamuselo leyi landzelaka: 5
“**‘mitlawwa leyi hlawuriweke’** swi vula vanhu va ntima, vavasati na vatsoniwa lava—
(a) va nga vaakatiko va Riphabliki ra Afrika Dzonga hi ku beburiwa kumbe hi ku ta etikweni; kumbe
(b) va nga va vaakatiko va Afrika Dzonga hi ku cinca vuakatiko— 10
(i) ku nga si fika 27 Dzivamusoko 1994; kumbe
(ii) endzhaku ka 26 Dzivamusoko 1994 lava a va fanerile ku kuma vuakatiko hi ku cinca vuakatiko loko ku nga si fika siku rolero kambe va aleriwa hi matirhele ya xihlawuhlawu xo ya hi Rixaka;”;
- (c) ku siviwa ka nhlamuselo ya “xipikitere xa vatrhi” hi nhlamuselo leyi landzelaka: 15
“**‘xipikitere xa vatrhi’** swi vula munhu loyi a thoriweke hi ku landza xiyenge xa [65] 63 xa *Basic Conditions of Employment Act*;”;
- (d) hi ku siviwa ka nhlamuselo ya “tirhela” kumbe “yisa” ya nhlamuselo leyi landzelaka: 20
“**‘tirhela’** kumbe **‘yisa’**, mayelana na ku vulavurisana kwihi kumbe kwihi, swi nga ha vula—
(a) ku yisa leswi tsariweke swi fambisiwa hi voko kumbe hi poso leyi rhijisitariweke; [kumbe]
(b) ku fambisa hi ku tirhisa endlelo ra elektironiki leswi endlaka 25
leswaku murhumeriwa a kota ku pirinta mbulavurisano; kumbe
(c) ku rhumela kumbe ku fambisa hi ndlela yin’wana na yin’wana leyi vuriweke;”.

Ku antswisiwa ka xiyenge xa 2 xa Nawu wa 55 wa 1998

2. Xiyenge xa 2 xa Nawunkulu xa antswisiwa hi ku siviwa ka ndzimana ya (b) ya ndzimana leyi landzelaka: 30
“(b) ku tirhisa maendlelo yo nyika nkarhi eka lava a va hlawuriwa ku lulamisa ku nga vanga na nkateko eka matholelo leswi mitlawwa leyi hlawuriweke yi hlanganeke na swona, ku endlela ku tiyisisa ku yimeriwa lo ku ringanaka eka [mikhetekanyo] hinkwanyo ya matholelo na swiyimo swa vatrhi.” 35

Ku antswisiwa ka siyenge xa 6 xa Nawu wa 55 wa 1998

3. Xiyenge xa 6 xa Nawunkulu xa antswisiwa—
(a) hi ku ngenisiwa ka swiyengetsongo leswi landzelaka: 40
“(1) ku hava munhu loyi a nga ta hlawuriwa hi ndlela yo ka yi nga ri kahle, hi ku kongoma kumbe ku nga ri hi ku kongoma, ehenhla ka mutirhi, eka pholisi yihi kumbe yihi ya matholelo kumbe ntolovelo, hi xivangelo xin’we kumbe swo tala, ku katsa rixaka, rimbewu, ku biha emirini, xiyimo xa vukati, vutihlamuleri bya ndyangu, rixaka kumbe vanhu lava munhu a sukaka eka vona, muvala, ku tihlawulela eka swa rimbewu, vukhale, vutsoniwa, vukhonger, xiyimo xa HIV, mapfalo, ku tshemba, mavonelo ya swa tipolitiki, mfuwo, ririmi, [na] ku velekiwa kumbe hikwalaho ka swivangelo swihi na swihi swo ka swi nga twisiseki.”; na 45
- (b) hi ku ngenisiwa ka swiyengetsongo leswi landzelaka 50
“(4) ku hambana ka swipimelo swa matholelo exikarhi ka vatrhi va muthori un’we lava tirhaka ntirho lowu fanaka kumbe ntirho wa nkoka wo ringana leswi simekiweke eka xin’we kumbe swo tala swa swivangelo leswi longoloxiweke eka xiyengetsongo xa (1), i ku hlawula hi ndlela yo ka yi nga ri kahle
(5) Endzhaku ko ti hlanganisa na Khomixini, Holobye a nga ha veka maendlelo na ku veka endlelo ra kahle na ku veka maendlelo yo kambela ntirho wa nkoka wo ringana lama langutisiweke eka xiyengetsongo xa (4).” 55

Amendment of section 8 of Act 55 of 1998

4. Section 8 of the principal Act is hereby amended by the deletion of the word “and” at the end of paragraph (b), the insertion of the word “and” at the end of paragraph (c) and the addition of the following paragraph:

“(d) has been certified by the Health Professions Council of South Africa established by section 2 of the Health Professions Act, 1974 (Act No. 56 of 1974), or any other body which may be authorised by law to certify those tests or assessments.”.

Amendment of section 10 of Act 55 of 1998

5. Section 10 of the principal Act is hereby amended—

(a) by the deletion in subsection (6) of the word “or” at the end of paragraph (a) and the insertion in that subsection after paragraph (a) of the following paragraph:

“(aA) an employee may refer the dispute to the CCMA for arbitration if—
(i) the employee alleges unfair discrimination on the grounds of sexual harassment; or
(ii) in any other case, that employee earns less than the amount stated in the determination made by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act; or”;

(b) by the substitution in subsection (6) for paragraph (b) of the following paragraph:

“(b) any party to the dispute may refer it to the CCMA for arbitration if all the parties to the dispute [may] consent to arbitration of the dispute.”; and

(c) by the addition of the following subsection:

“(8) A person affected by an award made by a commissioner of the CCMA pursuant to a dispute contemplated in subsection (6)(aA) may appeal to the Labour Court against that award within 14 days of the date of the award, but the Labour Court, on good cause shown, may extend the period within which that person may appeal.”.

Substitution of section 11 of Act 55 of 1998

6. The following section is hereby substituted for section 11 of the principal Act:

“Burden of proof

11. (1) If unfair discrimination is alleged on a ground listed in section 6(1), the employer against whom the allegation is made must prove, on a balance of probabilities, that such discrimination—

(a) did not take place as alleged; or
(b) is rational and not unfair, or is otherwise justifiable.

(2) If unfair discrimination is alleged on an arbitrary ground, the complainant must prove, on a balance of probabilities, that—

(a) the conduct complained of is not rational;
(b) the conduct complained of amounts to discrimination; and
(c) the discrimination is unfair.”.

Ku antswisiwa ka xiyenge xa 8 xa Nawu wa 55 wa 1998

4. Xiyenge xa 8 xa Nawunkulu xa antswisiwa hi ku susiwa ka rito “na” emakumu ka ndzimana ya (b), ku ngenisiwa ka rito “na” emakumu ka ndzimana ya (c) na ku hoxiwa ka ndzimana leyi landzelaka:

“(d) swi tiyisisiwile hi Huvo ya Vuthwaseri bya Rihanyu ya Afrika Dzonga leyi tumbuluxiweke hi ku landza *Health Professions Act*, 1974 (Nawu wa no. 56 wa 1974), kumbe huvo yihi na yihi leyi nga pfumeleriwaka hi nawu ku tiyisisa swikambelwana kumbe ku kambela.”.

Ku antswisiwa ka xiyenge xa 10 xa Nawu wa 55 wa 1998

5. Xiyenge xa 10 xa Nawunkulu xa antswisiwa— 10

(a) hi ku susiwa ka rito “kumbe” emakumu ka ndzimana ya (a) eka xiyengetsongo xa (6) na ku ngenisiwa ka ka xiyengetsongo lexi landzelaka eka xiyengetsongo xolexo endzhaku ka ndzimana ya (a) ya xiyengetsongo lexi landzelaka:

“(aA) mutirhi a nga hundzisela nkwetlembetano eka CCMA ku va wu lamuriwa loko— 15

(i) Mutirhi a hehla ku hlawuriwa hi ndlela yo ka yi nga ri kahle hi swivangelo swo xanisa eka swa masangu; kumbeEka xiyimo xo karhi, leswaku mutirhi; kumbe

(ii) u hola muholo wa le hansi ka lowu vuriwek muholo wa le hansi ka lowu vekiweke hi Holobyehi ku landza xiyenge xa 6(3) xa *Basic Conditions of Employment Act* kumbe”; 20

(b) hi ku siviwa ka ndzimana ya (b) ya ndzimana leyi landzelaka eka xiyengetsongo xa (6):

“(b) xiphemu xihi na xihi xa nkwetlembetano xi nga ha wu hundziselaeka CCMA ku va wu ahluriwa loko swiphemu hinkwaswo swa nkwetlembetano [swi nga ha] pfumelelana na vulamuri bya nkwetlembetano.”; na 25

(c) hi ku tatisiwa ka xiyengetsongo exi landzelaka:

“(8) Munhu loyi a khumbekaka hi leswi nyikiweke hi khomixinara wa CCMA leswi landzaka nkwetlembetano lowu langutisiweke eka xiyengetsongo xa (6)(aA) a nga ha apila eka Khoto ya Vatirhi ehenhla ka ku nyikiwa koloko eka nkarhi wa 14 wa masiku ku suka eka siku ra ku nyikiwa, kambe Khoto ya vatirhi yi nga ha lehisa nkarhi lowu munhu yoloye a nga apilaka ha wona loko ku nyikiwe xivangelo lexi twisisekaka.”. 30 35

Ku siviwa ka xiyenge xa 11 xa Nawu wa 55 wa 1998

6. Xiyenge lexi landzelaka xi siviwa eka xiyenge xa 11 xa Nawunkulu:

“Mpingu wo khorwisa

11. (1) Loko ku hehliwa ku hlawula loku nga riki kahle hi swivangelo leswi longoloxiweke eka xiyenge xa 6(1), muthori loyi xihehlo xi endlwaka ehenhla ka yena u fanele ku khorwisa leswaku ku hlawula koloko—

(a) a swi humelelanga tanihilaha ku hehliwaka hakona; kumbe

(b) swa twisiseka na ku va kahle, kumbe swa kota ku yimeleleka. 45

(2) Loko ku hlawula ko ka ku nga ri kahle swi hehliwa hi xivangelo lexi twisisekaka, muhlamuri u fanele ku nyika vumbhoni bya leswaku—

(a) matikhomele lawa ku vileriwaka ha wona ma twasiseka;

(b) matikhomele lawa ku vileriwaka ha wona ya na xihlawuhlawu; naswona 50

(c) matikhomele a ya kahle.”.

Amendment of section 15 of Act 55 of 1998

7. Section 15 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Affirmative action measures are measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational **[categories and]** levels in the workforce of a designated employer.”; and

(b) by the substitution in subsection (2)(d) for subparagraph (i) of the following subparagraph:

“(i) ensure the equitable representation of suitably qualified people from designated groups in all occupational **[categories and]** levels in the workforce; and”.

Amendment of section 16 of Act 55 of 1998

8. Section 16 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) employees from across all occupational **[categories and]** levels of the employer’s workforce;”.

Amendment of section 19 of Act 55 of 1998

9. Section 19 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) An analysis conducted in terms of subsection (1) must include a profile, as prescribed, of the designated employer’s workforce within each occupational **[category and]** level in order to determine the degree of underrepresentation of people from designated groups in various occupational **[categories and]** levels in that employer’s workforce.”.

Amendment of section 20 of Act 55 of 1998

10. Section 20 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) where underrepresentation of people from designated groups has been identified by the analysis, the numerical goals to achieve the equitable representation of suitably qualified people from designated groups within each occupational **[category and]** level in the workforce, the timetable within which this is to be achieved, and the strategies intended to achieve those goals;”;

(b) by the addition of the following subsection:

“(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.”.

Amendment of section 21 of Act 55 of 1998

11. Section 21 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) A designated employer **[that employs fewer than 150 employees]** must—

(a) submit its first report to the Director-General within 12 months after the commencement of this Act or, if later, within 12 months after the date on which that employer became a designated employer; and

Ku antswisiwa ka xiyenge xa 15 xa Nawu wa 55 wa 1998

7. Xiyenge xa 15 xa Nawunkulu xa antswisiwa hi—

(a) ku siviwa ka xiyengetsongo xa (1) xa xiyengetsongo lexi landzelaka:

“(1) Xendlo xo lulamisa swi vula matshalatshala lawa ya endleriwaka ku tiyisisa leswaku vanhu lava thwaseleke ku ringana ku suka eka mitlawwa leyi hlawuriweke va kuma nkateko wo ringana wo thoriwa naswona va yimeriwa ku ringana eka **[mikhetekanyo na]** swiyimo hinkwaswo swa vatrhi va muthori loyi a hlawuriweke.”; na

(b) hi ku siviwa ka ndzimanatsongo ya (i) ya xiyengetsongo xa (2)(d) xa ndzimanatsongo lexi landzelaka:

“(i) ku tiyisisa vuyimeri byo ringana bya vanhu lava thwaseleke ku ringana ku suka eka mitlawwa leyi hlawuriweke eka **[mikhetekanyo na]** swiyimo hinkwaswo swa vatrhi; na”.

Ku antswisiwa ka xiyenge xa 16 xa Nawu wa 55 wa 1998

8. Xiyengexa 16 xa Nawunkulu xa antswisiwa hi ku siviwa ka ndzimana ya (a) ya xiyengetsongo xa (2) xa ndzimana lexi landzelaka:

“(a) vatrhi ku suka eka **[mikhetekanyo na]** swiyimo hinkwaswo sa vatrhi va muthori;”.

Ku antswisiwa ka xiyenge xa 19 xa Nawu wa 55 wa 1998

9. Xiyenge xa 19 xa nawunkulu xa antswisiwa hi ku siviwa ka xiyengetsongo xa (2) xa xiyengetsongo lexi landzelaka:

“(2) Nxopaxopo lowu endliweke hi ku landza xiyengetsongo xa (1) wu fannele ku katsa phurofayili, ya vatrhi va muthori loyi a hlawuriweke eka **[mikhetekanyo na]** swiyimo, tanihi laha swi vekiweke, ku endlela ku kuma xiyimo xo ka ku nga yimeriwa ku ringana ka vanhu lava sukaka eka mitlawwa leyi hlawuriweke eka **[mikhetekanyo na]** swiyimo swo hambana eka vatrhi va muthori yoloye.”.

Ku antswisiwa ka xiyenge xa 20 xa Nawu wa 55 wa 1998

10. Xiyenge xa 20 xa Nawunkulu xa antswisiwa—

(a) hi ku siviwa ka ndzimana ya (c) ya xiyengetsongo xa (2) xa ndzimana lexi landzelaka:

“(c) laha ku yimeriwa ko ka ku nga ringananga ka vanhu vo suka eka mitlawwa leyi hlawuriweke swi kumiweke hi nxopaxopo, swikongomelo swo fikelela ku yimeriwa ko ringanela ka vanhu lava thwaseleke ku ringana ku suka eka mitlawwa leyi hlawuriweke eka **[mikhetekanyo na]** swiyimo swa vatrhi, nkarhi lowu leswi swi faneleke ku fikeleriwa, na maqhinga lawa ya lavekaka ku fikelela swikongomelo swoleswo,”; na

(b) hi ku tatisiwa ka xiyengetsongo lexi landzelaka:

“(7) Mulawuri Jenerala a nga ha endla xikombelo eka Khoto ya Vatrhi ku veka fayini hi ku landza Xedulu ya 1, loko muthori loyi a hlawuriweke a hluleka ku lulamisa na ku tirhisa pulani ya ndzingano wa vuthori hi ku landza xiyenge lexi.”.

Ku antswisiwa ka xiyenge xa 21 xa nawu wa 55 wa 1998

11. Xiyenge xa 21 xa Nawunkulu xa antswisiwa—

(a) hi ku siviwa ka xiyengetsongo xa (1) xa xiyengetsongo lexi landzelaka:

“(1) Muthori loyi a hlawuriweke **[loyi a tholaka vatrhi lava nga hansi ka 150]** u fanele—

(a) ku yisa xiviko xo sungula eka Mulawuri Jenerala eka nkarhi wa 12 wa tin’hweti endzhaku ko sungula ka Nawu lowu kumbe, loko kuri leti, eka nkarhi wa 12 wa tin’hweti endzhaku ka siku leri muthori yoloye a veke muthori loyi a hlawuriweke; naswona

- (b) **thereafter,**] submit a report to the Director-General once every **[two years]** year, on the first working day of October or on such other date as may be prescribed.";
- (b) by the deletion of subsection (2);
- (c) by the substitution for subsections (3) and (4) of the following subsections, 5
respectively:
- “(3) Despite **[subsections (1) and (2)]** subsection (1), an employer that becomes a designated employer **[that submits its first report in the 12-month period preceding]** on or after the first working day of **[October, should]** April but before the first working day of October, must only submit its **[second]** first report on the first working day of October in the following year or on such other date contemplated in subsection (1). 10
- (4) The **[reports]** report referred to in **[subsections (1) and (2)]** subsection (1) must contain the prescribed information and must be signed by the chief executive officer of the designated employer.”; 15
- (d) by the insertion after subsection (4) of the following subsections:
- “(4A) An employer that is not able to submit a report to the Director-General by the first working day of October in terms of subsection (1) must notify the Director-General in writing before the last working day of August in the same year giving reasons for its inability to do so. 20
- (4B) The Director-General may apply to the Labour Court to impose a fine in accordance with Schedule 1, if an employer— 25
- (a) fails to submit a report in terms of this section;
- (b) fails to notify and give reasons to the Director-General in terms of subsection (4A); or
- (c) has notified the Director-General in terms of subsection (4A) but the reasons are false or invalid.”; and
- (e) by the deletion of subsection (5). 30

Amendment of section 27 of Act 55 of 1998

12. Section 27 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
“**Income differentials and discrimination**”; and
- (b) by the substitution for subsections (1) and (2) of the following subsections, 35
respectively:
- “(1) Every designated employer, when reporting in terms of section 21(1) **[and (2)]**, must submit a statement, as prescribed, to the Employment Conditions Commission established by section 59 of the Basic Conditions of Employment Act, on the remuneration and benefits 40
received in each occupational **[category and]** level of that employer’s workforce.
- (2) Where disproportionate income differentials, or unfair discrimination by virtue of a difference in terms and conditions of employment contemplated in section 6(4), are reflected in the statement contemplated 45
in subsection (1), a designated employer must take measures to progressively reduce such differentials subject to such guidance as may be given by the Minister as contemplated in subsection (4).”.

- (b) **endzhaku ka sweswo**], a yisa xiviko eka Mulawuri Jenerala kan'we eka **[malembe mambirhi]** lembe rin'wana na rin'wana, hi siku ro sungula ra ntirho ra Nhlangua hi siku leri nga vekiwaka.".
- (b) hi ku susiwa ka xiyengetsongo xa (2);
- (c) hi ku siviwa ka swiyengetsongo swa (3) na 4 swa swiyengetsongo leswi landzelaka: 5
- “(3) Handle ka **[swiyengetsongo swa (1) na (2) xiyengetsongo xa (1), muthori loyi a vaka loyi a hlawuriweke [loyi a yisaka xiviko xo sungula eka nkarhi wa tin'hwetati ta 12 leti rhangela]** hi kumbe endzhaku ka siku ro sungula ra ntirho ra **[Nhlangua, u fanele ku] dzivamusoko kambe ku nga si fika siku ro sungula ro tirha ra Nhlangua, u fanele ku yisa [xa vumbirhi] xo sungula** hi siku ro sungula ra ntirho ra nhlangua eka lembe leri landzelaka kumbe hi siku rin'wana leri nga ha vaka ri vekiwile. 10
- (4) **[Swiviko]** xiviko lexi vuriweke eka **[swiyengetongo swa (1) na (2)] xiyengetsongo xa (1)** swi fanele ku va na mahungu lama hlamuseriweke naswona swi fanele ku sayiniwa hi mutirhela mfumo wa xiyimo xa le henhla wa muthori loyi a hlawuriweke.”; 15
- (d) hi ku ngenisiwa ka swiyengetsongo leswi landzelaka endzhaku ka xiyenge xa (4) 20
- “(4A) Muthori loyi a nga kotiki ku yisa xiviko eka Mulawuri Jenerala hi siku ro sungula ra ntirho ra Nhlangua hi ku landza xiyengetsongo xa 1 u fanele ku tivisa Mulawuri Jenerala hi ku tsala ku nga si fika siku ro hetelela ro tirha ra Mhawuri eka lembe rero a nyika swivangelo swo hluleka ka yena ku endla tano. 25
- (4B) Mulawuri Jenerala a nga ha endla xikombelo eka Khoto ya Vatrhi ku veka fayini hi ku landza Xedulu ya 1, loko muthori—
- (a) a hlulekaka ku nyika xiviko hi ku landza xiyenge lexi;
- (b) a hluleka ku tivisa na ku nyika swivangelo eka Mulawuri Jenerala hi ku landza xiyengetsongo xa(4A); kumbe 30
- (c) a tivisile Mulawuri jenerala hi ku landza xiyengetsongo xa (4A); kumbe swivangelo swi ri vunwa.”; na
- (e) hi ku susiwa ka xiyengetsongo xa (5).

Ku antswisiwa ka xiyenge xa 27 xa nawu wa 55 wa 1998

12. Xiyenge xa 27 xa Nawunukulu xa antsiwiswa— 35
- (a) hi ku siviwa ka nhlokomhaka ya nhlokomhaka leyi landzelaka: 35
- “**Ku hambana ka muholo na ku hlawula**”; na
- (b) hi ku siviwa ka xiyengetsongo xa (1) na (2) xa swiyengetsongo leswi landzelaka: 35
- “(1) Muthori un'wan na un'wana loyi a hlawuriweke, loko a vika hi ku landza xiyenge xa 21 (1) **[na (2)]**, u fanele ku yisa xitatimende, tanihilaha swi vekiweke hakona, eka Khomixini ya Swipimelo swa Matholelo leyi tumbuluxiweke hi xiyenge xa 59 xa *Basic Conditions of Employment Act*, eka muholo na ku vuyeriwa lo ku kumiweke eka matholelo **[nkhetelekanyo na]** xiyimo xin'wana na xin'wana xa vatrhi va muthori yoloye. 40 45
- (2) Laha ku hambana ka matholeleo kumbe ku hlawula hi ndlela yo ka yi nga ri kahle hikwalaho ko hambana mayelana na swipimelo swa matholelo tanihilaha swi langutisiweke hakona hi xiyenge xa 6(4) swa kombisiwa eka xitatimende lexi langutisiweke eka xiyengetsongo xa (1), muthori loyi a hlawuriweke u fanele ku teka magoza ku hunguta ku hambana koloko ku ya hi swiletelo tanihilaha swi nga ha nyikiwaka hi Holoby tanihilaha swi langutisiweke eka xiyengetsongo xa (4).” 50

Substitution of section 36 of Act 55 of 1998

13. The following section is hereby substituted for section 36 of the principal Act:

“Undertaking to comply

36. (1) A labour inspector [**must**] may request and obtain a written undertaking from a designated employer to comply with [**paragraphs (a) to (j)**] paragraph (a), (b), (f), (h), (i) or (j) within a specified period, if the inspector has reasonable grounds to believe that the employer has failed to—

- (a) consult with employees as required by section 16;
- (b) conduct an analysis as required by section 19;
- [(c) **prepare an employment equity plan as required by section 20;**
- (d) **implement its employment equity plan;**
- (e) **submit an annual report as required by section 21;**
- (f) publish its report as required by section 22;
- [(g) **prepare a successive employment equity plan as required by section 23;**
- (h) assign responsibility to one or more senior managers as required by section 24;
- (i) inform its employees as required by section 25; or
- (j) keep records as required by section 26.

(2) If a designated employer does not comply with a written undertaking within the period stated in the written undertaking, the Labour Court may, on application by the Director-General, make the undertaking, or any part of the undertaking, an order of the Labour Court.”.

Amendment of section 37 of Act 55 of 1998

14. Section 37 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) A labour inspector may issue a compliance order to a designated employer if that employer[—

 - (a) **refused to give a written undertaking in terms of section 36, when requested to do so; or**
 - (b) **failed to comply with a written undertaking given in terms of section 36]** has failed to comply with section 16, 17, 19, 22, 24, 25 or 26 of this Act.”;
- (b) by the substitution for subsection (3) of the following subsection:

“(3) A [**labour inspector who issues a compliance order must serve a]** copy of [**that**] the compliance order must be served on the employer named in it.”; and
- (c) by the substitution for subsections (5) and (6) of the following subsections, respectively:

“(5) A designated employer must comply with the compliance order within the time period stated in it [**, unless the employer objects to that order in terms of section 39.**]

(6) If a designated employer does not comply with an order within the period stated in it, [**or does not object to that order in terms of section 39,**] the Director-General may apply to the Labour Court to make the compliance order an order of the Labour Court.”.

Repeal of sections 39 and 40 of Act 55 of 1998

15. Sections 39 and 40 of the principal Act are hereby repealed.

Ku siviwa ka xiyenge xa 36 xa Nawu wa 55 wa 1998

13. Xiyenge lexi landzelaka xa siviwa hi xiyenge xa 36 xa nawunkulu:

“Ku tiboha ku landzelela

36. (1) xipikitere xa vতিরhi [u fanele] a nga ha kombela na ku kuma ku tiboha lo ku endliweke hi ku tsala ku suka eka muthori loyi a hlawuriweke ko landzelela [tindzimana ta (a) ku fika (j)] ndzimana ya (a), (b), (f), (h), (i) kumbe (j) eka nkarhi wo karhi, loko xipikitere xi ri na swivangelo swo twala swo tshembha leswaku muthori u hlulekile ku—
- (a) tihlanganisa na vতিরhi tanihlaha swi lavekaka hakona ku ya hi xiyenge xa 16;
- (b) ku endla nxopaxopo tanihilaha swi lavekaka hakona ku ya hi xiyenge xa 19;
- [(c) ku lulamisa pulani ya ndzingano wa matholeleo tanihlaha swi lavekaka hakona hi ku ya hi xiyenge xa 20;
- (d) Tirhisa pulani ya rona ya ndzingano wa matholelo;
- (e) yisa xiviko xa lembe tanihlaha swi lavekaka hakona hi ku ya hi xiyenge xa 21;]
- (f) hangalasa xiviko xa rona tanihlaha swi lavekaka hakona hi ku ya hi xiyenge xa 22;
- [(g) lulamisa pulani ya ndzingano wa matholeleo leyi yaka emahlweni tanihilaha swi lavekaka hakona hi ku ya hi xiyenge xa 23;]
- (h) ku ya vutihlamuleri eka un’we kumbe vo tala va vafambisi va xiyimo xa le henhla tani hlaha swi lavekaka hakona ku ya hi xiyenge xa 24; kumbe
- (i) ku tivisa vতিরhi va yena tanihilaha swi lavekaka hakona ku ya hixiyenge xa 26.
- (2) Loko muthori loyi a hlawuriweke a nga landzeleli ku tiboha loku endliweke hi ku tsala hi nkarhi lowu tsariweke eka ku tiboha koloko, kumbe xiphemu xin’wana na xin’wana xa ku tiboha, hi ku endla xikombelo eka Mulawuri Jenerala, Khoto ya vতিরhi yi nga ha endla xiboho, kumbe xiphemu xihhi na xihhi xa xiboho, xileriso xa khoto ya vতিরhi.”.

Ku antswisiwa ka xiyenge xa 37 xa Nawu wa 55 wa 1998

14. Xiyenge xa 37 xa Nawunkulu xa antswisiwa—

- (a) hi ku siviwa ka xiyengetsongo xa (1) xa xiyengetsongo lexi landzelaka:
- “(1) xipikitere xa mitirho xi nga ha nyika xileriso xo landzelela eka muthori loyi a hlawuriweke loko muthori yoloye [—
- (a) arile ku nyika xihlambanyo xo tsariwa Kunene hi ku ya hi xiyenge xa 36, loko a komberiwile ku endla tano; kumbe
- (b) a tsandzekile ku landzelela xiboho lexi endliweke hi ku tsala lexi nyikiweke hi ku ya hi xiyenge xa 36] a hlulekile ku landzelela xiyenge xa 16, 17 19, 22, 24, 25 kumbe 26 xa nawu lowu.”;
- (b) hi ku siviwa ka xiyengetsongo xa (3) xa xiyengetsongo lexi landzelaka:
- “(3) [xipikitere xa vতিরhi lexi nyikaka xileriso xo landzelela xi fanele ku yisa] khopi ya xileriso [xexo] xo landzelela xi fanele ku yisiswa eka muthori loyi a boxiweke endzeni ka xona.”; na
- (c) hi ku siviwa ka swiyengatsongo swa (5) na (60 swa swiyengetsongo leswi landzelaka:
- “(5) Muthori loyi a hlawuriweke u fanele ku landzelela xileriso hi nkarhi lowu vuriweke endzeni ka xona [, handlekaloko muthori a a lalalana na xileriso xolexo hi ku landza xiyenge xa 39];
- (6) Loko muthori loyi a hlawuriweke a nga landzeleli xileriso eka nkarhi lowu vuriweke endzeni ka xona, [kumbe a nga alalani na xileriso xolexo hi ku landza xiyenge xa 39,] Mulawuri Jenerala a nga ha endla xikombelo eka Khoto ya vতিরhi ku endla xileriso xo landzelela xileriso xa Khoto ya Vতিরhi.”.

Ku herisiwa ka swiyenge swa 39 na 40 swa Nawu wa 55 wa 1998

15. Swiyenge swa 39 na 40 swa Nawunkulu swa herisiwa.

Substitution of section 42 of Act 55 of 1998

16. The following section is hereby substituted for section 42 of the principal Act:

“Assessment of compliance

- 42.** (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 **[must]** may, in addition to the factors stated in section 15, take **[into account all of]** 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 **[category and]** level in that employer’s workforce in relation to the—
 - (i) demographic profile of the national and regional economically active population;
 - (ii) **pool of suitably qualified people from designated groups from which the employer may reasonably be expected to promote or appoint employees;**
 - (iii) **economic and financial factors relevant to the sector in which the employer operates;**
 - (iv) **present and anticipated economic and financial circumstances of the employer; and**
 - (v) **the number of present and planned vacancies that exist in the various categories and levels, and the employer’s labour turnover;**
 - (b) **[progress made in implementing employment equity by other designated employers operating under comparable circumstances and within the same sector]** reasonable steps taken by a designated employer to train suitably qualified people from the designated groups;
 - (c) reasonable **[efforts made]** steps taken by a designated employer to implement its employment equity plan;
 - (d) the extent to which the designated employer has made progress in eliminating employment barriers that adversely affect people from designated groups; **[and]**
 - (dA) reasonable steps taken by an employer to appoint and promote suitably qualified people from the designated groups; and
 - (e) any other prescribed factor.
- (2) The Minister, after consultation with NEDLAC, may issue a regulation in terms of section 55 which must be taken into account by any person who is required to determine whether a designated employer is implementing employment equity in compliance with this Act.
- (3) Without limiting subsection (1)(a), the regulation made in terms of subsection (2) may specify the circumstances under which an employer’s compliance should be determined with reference to the demographic profile of either the national economically active population or the regional economically active population.
- (4) In any assessment of its compliance with this Act or in any court proceedings, a designated employer may raise any reasonable ground to justify its failure to comply.”.

Ku siviwa ka xiyenge xa 42 xa nawu wa 55 wa 1998

16. Xiyenge lexi landzelaka xa siviwa hi xiyenge xa 42 xa Nawunkulu:

“Makambelelo ya ku landzelela

- 42.** (1) ku kumisisa loko muthori loyi a hlawuriweke a ri ku tirhiseni ka ndzingano wa vuthori hi ku landzelela Nawu lowu, Mulawuri Jenerala kumbe munhu wihi kumbe wihi kumbe nhlango lowu tirhisaka Nawu lowu **[wu/u fanele]** wu nga ha tekela **[lemuka hinkwaswo]** leswi landzelaka enhlokweni, hi ku tatisa eka swivangi leswi vuriweke eka xiyenge xa 15— 5
- (a) Xiyimo lexi vanhu lava thwaseleke ku ringana ku suka na le xikarhi ka mitlawa yo hambanahambana leyi hlawuriweke va yimeriwaka hi ku ringana eka **[Nkhetekanyo na]** xiyimo xa ntirho eka vatirhi va muthori yoloye hi mayelana na [—] 10
- (i) phurofayili ya tinhlayohlayo ta matshamelolo ya vanhu lava khumbekaka eka swa ikhonomi ya rixaka na ya xifundza 15
- (ii) **ntlawa wa vanhu lava thwaseleke ku ringana ku suka eka mitlawa leyi hlawuriweke, laha eka yona muthori a nga ha kota ku va a languteriwa ku tlakusa kumbe ku thola vatirhi hi ndlela leyinene;**
- (iii) **ikhonomi na swivangelo swa timali leswi fambelanaka na xiyenge lexi muthori a tirhelaka eka xona;** 20
- (iv) **swiyimo swa nkarhi wolowo ni leswi languteriwaka eka nkarhi lowu taka swa ikhonomi na timali ta muthori; na**
- (v) **nhlayo ya swivandla swa ntirho ya nkarhi wolowo na leswi languteriweke eka nkarhi lowutaka leswi nga kona eka mikhetekanyo yo tala na swiyimo, na mbuyelo wa vatirhi va muthori;** 25
- (b) **[ku humelela loku veke kona eka ku tirhisa ndzingano wa vuthori hi vathori van’wana lava hlawuriweke lava endlaka vubindzurisi eka matshamelolo lama pimanyisekaka na le ka xiyenge lexi fanaka]** magoza yo twisiseka lawa ya tekiweke hi muthori loyi a hlawuriweke ku letela vanhu lava thwaseleke ku ringana ku suka eka mitlawa leyi hlawuriweke; 30
- (c) **[matshalatshala lama endleke]** magoza lama tekiweke hi muthori loyi a hlawuriweke ku tirhisa pulani ya yena ya ndzingano wa vuthori; 35
- (d) xiyimo lexi muthori loyi a hlawuriweke a nga humelela eku heriseni swirhalanganyi swa ntirho leswi khumbaka vanhu lava sukaka eka mitlawa leyi hlawuriweke hi ndlela yo biha; **[na]**
- (dA) magoza yo twisiseka lawa ya tekiweke hi muthori ku thola na ku tlakusa vanhu lava thwaseleke ku ringana ku suka eka mitlawa leyi hlawuriweke; na 40
- (e) xivangi xihhi na xihhi lexi vekiweke.
- (2) Endzhaku ko tihlanganisa na NEDLAC, Holobye a nga ha nyika xinawana hi ku landza xiyenge xa 55 lexi faneleke ku tekeriwa enhlokweni hi munhu wihi na wihi loyi a faneleke ku vona loko muthori loyi a hlawuriweke a tirhisa ndzingano wa matholelo hi ku landzelela Nawu lowu. 45
- (3) Handle ko hunguta xiyengetsongo xa (1)(a), xinawana lexi endlaweke hi ku landza xiyengetsongo xa (2) xi nga ha boxa swiyimo leswi ku landzelela ka muthori swi faneleke ku langutisiwa mayelana na ndhawu ya vanhu lava nga na xiave eka swa ikhonomi ya rixaka kumbe vanhu lava nga na xiave eka ikhonomi ya xifundza. 50
- (4) eka nkambelo wihi na wihi wa ku landzelela Nawu lowu kumbe fambiselo rihi na rihi ra khoto, muthori loyi a hlawuriweke a nga ha nyika swivangelo swo twala swo tiyimelela eka ku hluleka ku landzelela.”. 55

Substitution of section 45 of Act 55 of 1998

17. The following section is hereby substituted for section 45 of the principal Act:

“Failure to comply with Director-General’s request or recommendation

- 45.** (1) If an employer fails to comply with a request made by the Director-General in terms of section 43(2) or a recommendation made by the Director-General in terms of section 44(b), the Director-General may **[refer the employer’s non-compliance]** apply to the Labour Court—
- (a) for an order directing the employer to comply with the request or recommendation; or
 - (b) if the employer fails to justify the failure to comply with the request or recommendation, to impose a fine in accordance with Schedule 1 on the employer.
- (2) If an employer notifies the Director-General in writing within the period specified in a request or recommendation that it does not accept the request or recommendation, the Director-General must institute proceedings in terms of subsection (1) within—
- (a) 90 days of receiving the employer’s notification, in the case of a request; or
 - (b) 180 days of receiving the employer’s notification, in the case of a recommendation.
- (3) If the Director-General does not institute proceedings within the relevant period contemplated in subsection (2), the request or recommendation, as the case may be, lapses.
- (4) Any challenge to the validity of the Director-General’s request or recommendation may only be made in the proceedings contemplated in subsection (1).”.

Amendment of section 48 of Act 55 of 1998

18. Section 48 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

- “(2) An award made by a commissioner of the CCMA hearing a matter in terms of section 10(6)(aA) or (b) may include any order referred to in section 50(2)(a) to (c), read with the changes required by the context, but an award of damages referred to in section 50(2)(b) may not exceed the amount stated in the determination made by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act.”.

Amendment of section 50 of Act 55 of 1998

19. Section 50 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (h) of the following paragraph:

“(h) reviewing **[the performance or purported performance of any function provided for in this Act or any act or omission of any person or body] an administrative action** in terms of this Act on any grounds that are permissible in law;”;
- (b) by the addition of the following subsection:

“(5) A fine payable in terms of this Act must be paid into the National Revenue Fund referred to in section 213 of the Constitution.”.

Ku siviwa ka xiyenge xa 45 xa Nawu wa 55 wa 1998

17. Xiyenge lexi landzelaka xa siviwa hi xiyenge xa 45 xa Nawunkulu

“Ku hluleka ku landzelela xikombelo kumbe xibumabumelo xa Mulawuri Jenerala

- 45. (1)** Loko muthori a hluleka ku landzelela xikombelo xa Mulawuri Jenerala hi ku landza xiyenge xa 43(2) kumbe xibumabumelo lexi endliweke hi Mulawuri Jenerala hi ku landza xiyenge xa 44 (b), Mulawuri Jenerala a nga ha **[kongomisa ku nga landzeleri ka muthori]** endla xikombelo eka Khoto ya Vathiri—
- (a) ku kuma xileriso lexi lerisaka muthori ku landzelela xikombelo kumbe xibumabumelo; 10
- (b) loko muthori a hluleka ku hlamusela ku hluleka ku landzelela xikombelo kumbe xibumabumelo, ku veka fayini hi ku landza Xedulu ya 1 eka muthori.
- (2) Loko muthori a tivisa Mulawuri Jenerala hi ku tsala eka nkarhi lowu vuriweke eka xikombelo kumbe xibumabumelo, Mulawuri Jenerala u fanele ku sungula mafambiselo hi ku landza xiyengetsongo xa (1) eka—
- (a) 90 wa masiku yo amukela xitiviso xa muthori, loko ku ri xikombelo; kumbe
- (b) 180 wa masiku yo amukela xitiviso xa muthori, loko ku ri xibumabumelo. 15
- (3) Loko Mulawuri Jenerala a nga sunguli mafambiselo eka nkarhi lowu faneleke lowu langutisiweke eka xiyengetsongo xa (20, xikombelo kumbe xibumabumelo xi fika emakumu.
- (4) Ntlhotlho wihi na whi w ova ntiyiso wa xikombelo kumbe xibumabumelo xa Mulawuri Jenerala wu nga ha endliwa ntsena eka mafambiselo lama langutisiweke eka xiyengetsongo xa (1).” 20 25

Ku antswisiwa ka xiyenge xa 48 xa Nawu wa 55 wa 1998

- 18.** Xiyenge xa 48 xa Nawunkulu xa antswisiwa hi ku tatisiwa ka xiyengetsongo lexi landzelaka, xiyenge lexi nga kona xi va xiyengetsongo xa (1): 30
- “(2) Nyiko leyi nga endliwa hi Khomixinara wa CCMA loyi a yingiselaka mhaka hi ku landza xiyenge xa 10(6)(aA) kumbe (b) yi nga ha katsa xileriso xihhi na xihhi lexi vuriweke eka xiyenge xa 50(2)(a) ku fika (c), lexi hlayiwaka na ku cinca loku faneleke ku ya hi xiyimo, kambe nyiko ya ku onhakeriwa leyi vuriweke eka xiyenge xa 50(2)(b) yi nga ha hundza ntsengo lowu vuriweke ku langutisisa loku endliweke hi Holoby e hi ku landza xiyenge xa 6(3) xa *Basic Conditions of Employment Act*.”. 35

Ku antswisiwa ka xiyenge xa 50 xa Nawu wa 55 wa 1998

- 19.** Xiyenge xa 50 xa Nawunkulu xa antswisiwa—
- (a) hi ku siviwa ka ndzimana ya (h) ya ndzimana leyi landzelaka eka xiyengetsongo xa (1): 40
- “(h) Ku kambisisa **[tirhele kumbe xikongomelo xa tirhele ra ntirho wihi na wihi lowu lulamiseriweke eka Nawu lowu kumbe nawu wihi na wihi kumbe ku tluriwa ka munhu wihi kumbe wihi kumbe nhlango]** xendlo xa vulawuri hi ku landza Nawu lowu eka swikongomelo swihi na swihi leswi pfumeleriwa hi nawu;”;
- na
- (b) hi ku tatisiwa ka xiyengetsongo lexi landzelaka; 45
- “(5) Ndziho lowu hakeriwa hi ku landza Nawu lowu wu fanele ku hakeriwa eka Nkwama wa Mali ya Tiko wa Rixaka lowu vuriweke eka xiyengexa 213 xa Vumbiwa.”. 50

Amendment of section 53 of Act 55 of 1998

20. Section 53 of the principal Act is hereby amended by the addition of the following subsection:

“(5) The Minister may in the code of good practice set out factors that must be taken into account by any person assessing whether an employer complies with Chapter II or Chapter III.”. 5

Amendment of section 55 of Act 55 of 1998

21. Section 55 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Minister **[must]** may by notice in the *Gazette* make a regulation providing for separate and simplified forms and procedures in respect of the obligations created by sections 19, 20, 21, 25 and 26 for employers that employ **[150 or]** fewer than 150 employees.”. 10

Amendment of section 56 of Act 55 of 1998

22. Section 56 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 15

“(1) The Minister may delegate any power conferred, or assign any duty imposed, upon the Minister in terms of this Act, except the powers and duties contemplated in sections 29(1), (5) and (7), **[53(2),]** 54, 55, 59(4) and 61(4).”.

Amendment of section 59 of Act 55 of 1998

20

23. Section 59 of the principal Act is hereby amended by the substitution for subsections (3) and (4) of the following subsections, respectively:

“(3) A person convicted of an offence in terms of this section may be sentenced to a fine not exceeding **[R10 000,00]** R30 000,00.

(4) The Minister may, **[with the concurrence of the Minister of Justice and]** by notice in the *Gazette*, amend the maximum amount of the fine referred to in subsection (3) in order to counter the effect of inflation.”. 25

Amendment of section 61 of Act 55 of 1998

24. Section 61 of the principal Act is hereby amended by the substitution for subsections (3) and (4) of the following subsections, respectively: 30

“(3) A person who contravenes a provision of this section commits an offence and may be sentenced to a fine not exceeding **[R10 000,00]** R30 000,00.

(4) The Minister may, **[with the concurrence of the Minister of Justice and]** by notice in the *Gazette*, amend the maximum amount of the fine referred to in subsection (3) in order to counter the effect of inflation.”. 35

Insertion of section 64A in Act 55 of 1998

26. The following section is hereby inserted in the principal Act after section 64:

“Amendment of annual turnover thresholds in Schedule 4

64A. The Minister may, after consultation with the Commission, by notice in the *Gazette*, amend the total annual turnover thresholds in Schedule 4 in order to counter the effect of inflation.”. 40

Ku antswisiwa ka xiyenge xa 53 xa Nawu wa 55 wa 1998

20. Xiyenge xa 53 xa nawunkulu xa antswisiwa hi ku tatisiwa ka xiyengetsongo lexi landzelaka:

“(5) Holoby, hi ku landza matirhelo ya kahle, a nga ha veka swivangi leswi faneleke ku tekeriwa enhlokweni hi munhu loyi a kambelaka loko muthori a landzelela Kavanyisa ka II kumbe Kavanyisa ka III.”. 5

Ku antswisiwa ka xiyenge xa 55 xa Nawu wa 55 wa 1998

21. Xiyenge xa 55 xa Nawunkulu xa antswisiwa hi ku siviwa ka xiyengetsongo xa (2) xa xiyengetsongo lexi landzelaka:

“(2) Lexi lulamiselaka ndlela yo hambana no olova mayelana na leswi bohaka leswi sunguriweke hi swiyenge swa 19, 20, 21, 25 na 26 eka vathori lava tholaka vatrhi va [150 kumbe] vantsongo.”. 10

Ku antswisiwa ka xiyenge xa 56 xa Nawu wa 55 wa 1998

22. Xiyenge xa 56 xa Nawunkulu xa antswisiwa hi ku siviwa ka xiyengetsongo xa (1) xa xiyengetsongo lexi landzelaka: 15

“(1) Holoby a nga ha rhumela matimba wahi kumbe wahi lawa ya nyikiweke, kumbe ku rhumela ntirho wihi kumbe wihi lowu nyikiweke Holoby hi ku landza Nawu lowu handle ka matimba na mitirho leyi hlaluseriweke eka swiyenge swa 29(1), (5) na (7), [53(2),] 54, 55, 59 (4) na 61(4).”.

Ku antswisiwa ka xiyenge xa 59 xa Nawu wa 55 wa 1998

20

23. Xiyenge xa 59 xa Nawunkulu xa antswisiwa hi ku siviwa ka xiyengetsongo xa (3) na (4) xa swiyengetsongo leswi landzelaka:

“(3) Munhu loyi a voniweke nandzu hi ku landza xiyenge lexi a nga ha gweviwa fayini leyi nga hundziki [R10 000,00] R30 000,00.

(4) [Hi ku pfumelelana na Holoby wa Vululami na], hi ku tivisa eka *Gazete*, Holoby a nga ha cinca ntsengo wa le maninginingini wa fayini leyi boxiweke eka xiyengetsongo xa (3) ku endlela ku fambisana na inifulexini.”. 25

Ku antswisiwa ka xiyenge xa 61 xa Nawu wa 55 wa 1998

24. Xiyenge xa 61 xa Nawunkulu xa antswisiwa hi ku siviwa ka xiyengetsongo xa (3) na (4) xa swiyengetsongo leswi landelaka: 30

“(3) Munhu loyi a tlulaka ku lulamisela ka xiyenge lexi u endla nandzu naswona a nga ha gweviwa fayini leyi nga hundziki [R10 000,00] R30 000,00.

(4) [Hi ku pfumelelana na Holoby wa Vululami na] hi ku tivisa eka *Gazete*, Holoby a nga ha cinca ntsengo wa le maninginingini wa fayini leyi boxiweke eka xiyengetsongo xa (3) ku endlela ku fambisana na inifulexini.”. 35

Ku ngenisiwa ka xiyenge xa 64 eka Nawu wa 55 wa 1998

26. Xiyenge lexi landzelaka xa ngenisiwa eka Nawunkulu endzhaku ka xiyenge xa 64:

“Ku antswisiwa ka masungulo kumbe mahetelelo ya mbuyelo eka Xedulu ya 4 40

64A. Endzhaku ko tihlanganisa na Khomixini, hi ku tivisa eka *Gazete*, Holoby a nga ha cinca ntsengo wa masungulo kumbe mahetelelo ya mbuyelo wa lembe eka Xedulu ya 4 ku endlela ku fambisana na inifulexini.”.

Substitution of Schedule 1 to Act 55 of 1998

27. The following Schedule is hereby substituted for Schedule 1 to the principal Act:

“Schedule 1

**MAXIMUM PERMISSIBLE FINES THAT MAY BE IMPOSED FOR
CONTRAVENING THIS ACT**

This Schedule sets out the maximum fine that may be imposed in terms of this Act for the contravention of certain provisions of this Act.

<i>Previous Contravention</i>	<i>Contravention of any Provision of sections 16 (read with 17), 19, [20, 21,] 22, 24, 25, 26 and [23] 43(2)</i>	<i>Contravention of any Provision of sections 20, 21, 23 and 44(b)</i>
No previous contravention	[R500 000] <u>R1 500 000</u>	The greater of <u>R1 500 000</u> or <u>2% of the employer's turn-over</u>
A previous contravention in respect of the same provision	[R600 000] <u>R1 800 000</u>	The greater of <u>R1 800 000</u> or <u>4% of the employer's turn-over</u>
A previous contravention within the previous 12 months or two previous contraventions in respect of the same provision within three years	[R700 000] <u>R2 100 000</u>	The greater of <u>R2 100 000</u> or <u>6% of the employer's turn-over</u>
Three previous contraventions in respect of the same provision within three years	[R800 000] <u>R2 400 000</u>	The greater of <u>R2 400 000</u> or <u>8% of the employer's turn-over</u>
Four previous contraventions in respect of the same provision within three years	[R900 000] <u>R2 700 000</u>	The greater of <u>R2 700 000</u> or <u>10% of the employer's turn-over</u> ”.

Ku siviwa ka xedulu ya 1 ya Nawu wa 55 wa 1998

27. Xedulu leyi landzelaka ya siviwa hi Xedulu ya 4 eka Nawunkulu:

“Xedulu ya 1

**TIFAYINI TA LE MANINGININGINI LETI PFUMELERIWAKA LETI NGA
NYIKIWAKA LOKO KU TLURIWA NAWU LOWU**

5

Xedulu leyi yi andlala fayini ya le maninginingini leyi nga nyikiwaka hi ku landza Nawu lowu loko ku tluriwa ku lulamisela kun’wana ka Nawu lowu.

<i>Ku tluriwa eka nkarhi lowu nga hundza</i>	<i>Ku tluriwa ka ku lulamisela kwihi na kwihi ka swiyenge swa 16 (swi hlayiwa na xiyenge xa 17), 19, [20, 21,] 22, 24, 25, 26 na [23] 43(2) nga hundza</i>	<i>Ku tlula ku lulamisela kwihi na kwihi ka swiyenge swa 20, 21, 23 na 44(b)</i>
Ku hava ku tluriwa eka nkarhi lowu nga hundza	[R500 000] <u>R1 500 000</u>	Vuhenhla bya <u>R1 500 000 kumbe 2% ya mbuyelo wa muthori</u>
Ku tluriwa eka nkarhi lowu nga hundza mayelana na ku lulamisela lo ku fanaka	[R600 000] <u>R1 800 000</u>	Vuhenhla bya <u>R1 800 000 kumbe 4% ya mbuyelo wa muthori</u>
Ku tluriwa eka nkarhi lowu nga hundza eka nkarhi wa 12 wa tin’hweti kumbe ku tluriwa ka mbirhi eka nkarhi lowu nga hundza mayelana na ku lulamisela lo ku fanaka eka nkarhi wa tin’hweti tinharhu	[R700 000] <u>R2 100 000</u>	Vuhenhla bya <u>R2 100 000 kumbe 6% ya mbuyelo wa muthori</u>
Ku tluriwa ka nharhu ka nkarhi lowu nga hundza mayelana na ku lulamisela lo ku fanaka eka nkarhi wa tin’hweti tinharhu	[R800 000] <u>R2 400 000</u>	Vuhenhla bya <u>R2 400 000 kumbe 8% ya mbuyelo wa muthori</u>
Ku tluriwa ka mune ka nkarhi lowu nga hundza mayelana na ku lulamisela lo ku fanaka eka nkarhi wa tin’hweti tinharhu	[R900 000] <u>R2 700 000</u>	Vuhenhla bya <u>R2 700 000 kumbe 10% ya mbuyelo wa muthori”</u> .

Substitution of Schedule 4 to Act 55 of 1998

28. The following Schedule is hereby substituted for Schedule 4 to the principal Act:

“Schedule 4

TURNOVER THRESHOLD APPLICABLE TO DESIGNATED EMPLOYERS

Sector or subsectors in accordance with the Standard Industrial Classification	Total annual turnover
Agriculture	[R2,00 m] R6,00m
Mining and Quarrying	[R7,50 m] R22,50m
Manufacturing	[R10,00 m] R30,00m
Electricity, Gas and Water	[R10,00 m] R30,00m
Construction	[R5,00 m] R15,00m
Retail and Motor Trade and Repair Services	[R15,00 m] R45,00m
Wholesale Trade, Commercial Agents and Allied Services	[R25,00 m] R75,00m
Catering, Accommodation and other Trade	[R5,00 m] R15,00m
Transport, Storage and Communications	[R10,00 m] R30,00m
Finance and Business Services	[R10,00 m] R30,00m
Community, Special and Personal Services	[R5,00m] R15,00m”.

Transitional provision

29. An employer who is a designated employer in terms of the principal Act 30 immediately before section 11 of this Act takes effect, must report for the duration of the designated employer’s current employment equity plan as if section 21 of the principal Act has not been amended by this Act.

Short title and commencement

30. This Act is called the Employment Equity Amendment Act, 2013, and comes into 35 operation on a date determined by the President by proclamation in the *Gazette*.

Ku siviwa ka Xedulu ya 4 eka Nawu wa 55 wa 1998

28. Xedulu leyi landzelaka ya siviwa hi Xedulu ya 4 eka Nawunkulu:

“Xedulu ya 4

MASUNGULO KUMBE MAHETELELO YA MBUYELO LOWU TIRHAKA EKA
VATHORI LAVA HLAWURIWEKE

5

Vandla kumbe vandlatsongo ku ya hi Ntlawa wa Mpimo wa Vuamaki	Ntsengo wa mbuyelo wa lembe
Vurimi	[2,00m] R6,00m
Migodi na Swicelwa	[R7,50m] R22,50m
Vutumbuluxi	[R10,00m] R30,00m
Gezi, Ghasi na Mati	[R10,00m] R30,00m
Vuaki	[R5,00m] R15,00m
Nxaviso wa Bindzu ra Mimovha na Mitirho yo Lunghisa	[R15,00m] R45,00m
Bindzu ra Holisele, Vayimeri va swa Bindzu na Mitirho yo Hlanganeriwa	[R25,00m] R75,00m
Vuphameri bya swakudya, Ndhawu yo tshama na Mabindzu man'wana	[R5,00m] R15,00m
Vutleketli, Vuhlayiselo na Mbulavurisano	[R10,00m] R30,00m
Timali na Mitirho ya Mabindzu	[R10,00m] R30,00m
Vaaki, Swa nkoka na Mitirho ya Vanhu	[R5,00m] R15,00m”.

Ku lulamisela ko hundzuluxa

29. Muthori loyi a hlawuriweke hi ku landza Nawunkuluxikan'wekan'we loko xiyenge xa 11 xa nawu lowu xi sungula ku tirha, u fanele ku vika pulani ya muthori loyi a hlawuriweke ya nkarhi wolowo ya ndzingano wa matholelo onge hiloko xiyenge xa 21 xa nawunkulu xi nga se cinciwa hi Nawu lowu. 25

Nhlokomhaka yo koma na ku sungula ku tirha

30. Nawu wu vuriwa *Employment Equity Amendment Act*, 2013, naswona wu sungula ku tirha hi siku leri vekiweke hi Puresidente hi ku tivisa eka *Gazete*. 30

