



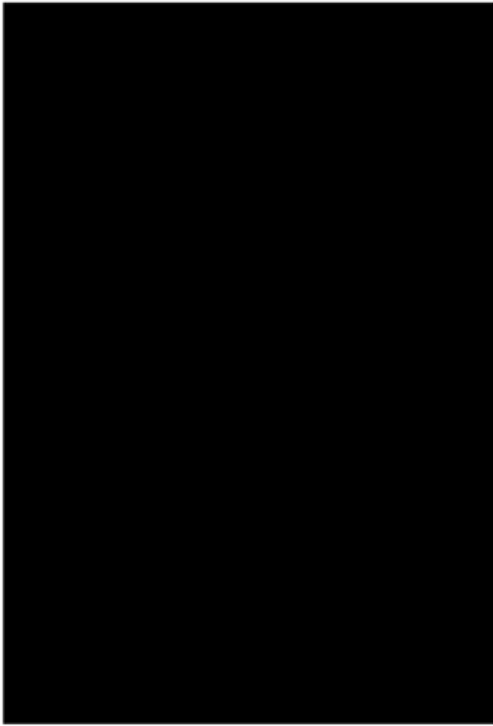
employment & labour

Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA

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25 November 2025



C/o: precious.mdlovana@labour.gov.za; Welile.Dlwengu@labour.gov.za and
Thembinkosi.Mkalipi@labour.gov.za

Dear 

**RE: EMPLOYMENT EQUITY REPORTING - RACIAL CLASSIFICATION GUIDANCE AND
LEGISLATED SECTORAL NUMERICAL TARGETS**

Your letter dated **25 November 2025** and received by this office via email on **25 November 2025** has reference.

The Department of Employment and Labour acknowledges receipt of your letter complaining about the accuracy of the information when your employee completes the EEA1 form and how the Racial classification is done.

Please note that all designated employers are therefore, required to conduct analysis of the workforce using the EEA1 form to identify the under and overrepresentation of designated group as per Section 19. The designated employer must ensure that their EE Plans and their 2025 EE reports are fully compliant with the revised EE legislative and regulatory requirements. This obligation remains central to the monitoring and enforcement of transformation objectives within the labour market.

Where employees elect not to self-classify, **Regulation 8(2)** unambiguously mandates that the designated employers must determine the employee's designation using reliable historic or existing data, and persons with disabilities have the right not to declare their disability. Compliance with this requirement is a statutory responsibility and not subject to employer discretion.

Your letter raises concerns about the constitutional basis for employers to classify individuals by race. The Department emphasises that the EE framework, including the requirement to report on race rests firmly within the parameters of the Constitution and established Constitutional Court jurisprudence.

Key judgments include ***South African Police Service v Solidarity obo Barnard 2014 (6) SA 123 (CC)***. The Court reaffirmed that properly designed and implemented employment equity measures are lawful and that representivity is a legitimate governmental objective. Again, in the case of ***Solidarity v Department of Correctional Services 2016 (5) SA 594 (CC)***, the Court recognised the importance of demographic targets but held that measures must be applied flexibly and contextually, reinforcing the need for accuracy in workforce profiling.

These court decisions above, collectively affirm that racial categorisation for the purposes of monitoring transformation is constitutionally recognised and forms part of the legitimate exercise of government to redress historical inequalities. Therefore, the Department maintains that the Employment Equity Act No. 55 of 1998 as amended's reporting requirements, including classification for workforce profiles are constitutionally sound and legally binding.

You have also raised concerns about the practicality and feasibility of the five-year sectoral numerical targets. Section 15A empower the Minister to prescribe sector targets, and these are binding on designated employers. Section 42(4) of the EEA read with regulation 16(5) of the Regulations published on 15 April 2025 under Government Gazette No. 52515 states that a designated employer may raise any reasonable grounds to justify its failure to comply if

operational constraints pose challenges. However, designated employers remain obliged to align their Employment Equity Plans with the gazetted targets.


We appreciate the constructive way you have raised these issues. The Department recognises the importance of collaboration with sector stakeholders to ensure that Employment Equity measures are implemented fairly, practically, and in a manner consistent with constitutional principles.

The Department further appreciates [REDACTED] for expediting its internal processes to finalise and align its EE Plan as we have noticed that you have already submitted your 2025 EE reports, and we are hoping that the data submitted is accurate.

Yours sincerely,

Ntsoaki

Mamashela

 Digitally signed by Ntsoaki
Mamashela
Date:2025.11.25 14:28:29 +02'00'

DIRECTOR: EMPLOYMENT EQUITY DIRECTORATE (HQ)
DEPARTMENT OF EMPLOYMENT AND LABOUR