

REPUBLIC OF SOUTH AFRICA

EMPLOYMENT EQUITY AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. XXXX)*

(The English text is the official text of the Bill)

(Ms NL Hlazo-Webster, MP)

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.

BILL

To amend the Employment Equity Act, 1998, so as to amend certain definitions and to insert new definitions; to provide that the Act must be interpreted in compliance with international law obligations contained in the International Labour Organisation Convention (No. 100) concerning Equal Remuneration; to promote remuneration transparency; to prohibit an employer from enquiring into, or requiring, past or current remuneration information from an applicant for employment in recruitment or appointment practices; 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, section 25 of Act 52 of 2003, section 1 of Act 47 of 2013 and section 1 of Act 4 of 2022

1. Section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998) (hereinafter referred to as the principal Act) is hereby amended—

(a) by the substitution for the definition of “Constitution” of the following definition:

“ ‘**Constitution**’ means the Constitution of the Republic of South Africa, 1996 [(Act No. 108 of 1996)];”;

(b) by the insertion after the definition of “Constitution” of the following definition:

“ ‘**current remuneration**’ means the remuneration of a person in their current employment;”;

(c) by the substitution for the definition of “Director-General” of the following definition:

“ ‘**Director-General**’ means the Director-General of the Department [**of Labour**] responsible for employment and labour;”;

(d) by the substitution for paragraphs (b) and (c) in the definition of “employment policy or practice” of the following paragraphs:

“(b) offers of employment, appointments and the appointment process;

(c) job classification, [**and**] grading and evaluation;”;

(e) by the insertion after paragraph (c) in the definition of “employment policy or practice” of the following paragraph:

“(cA) salary benchmarking and remuneration ranges for a job or position;”;

(f) by the insertion after the definition of “employment policy or practice” of the following definition:

“ ‘**enquiring**’ means any attempt to gather information, directly or indirectly, either personally or through an agent;”;

(g) by the substitution for the definition of “Minister” of the following definition:

“ ‘**Minister**’ means the [**Minister of Labour**] minister responsible for employment and labour;”;

(h) by the insertion after the definition of “organ of state” of the following definition:

“ ‘**past remuneration**’ means the remuneration of a person in any of their past employment;” and

(i) by the insertion after the definition of “remuneration” of the following definitions:

“ ‘**remuneration information**’ means any information or records relating to or showing a person’s remuneration, including salary records and proof of payment of remuneration;

‘remuneration range’ means the range of remuneration that an employer currently pays for a job or position, or intends in good faith to pay for a job or position upon hire;

Amendment of section 3 of Act 55 of 1998

2. Section 3 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) in compliance with the international law obligations of the Republic, in particular those contained in the International Labour Organisation Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation and the International Labour Organisation Convention (No. 100) concerning Equal Remuneration.”.

Insertion of sections 6A and 6B in Act 55 of 1998

3. The following sections are inserted into the principal Act after section 6:

‘Promotion of remuneration transparency

6A. (1) An employer must —

(a) when conducting job classification, grading or evaluation, determine the remuneration or, where applicable, the remuneration range for each job or position subject to section 6(4) and any criteria and methodology prescribed in terms of section 6(5);

(b) disclose the remuneration or, where applicable, the remuneration range for a job or position —

(i) before appointing, promoting or transferring an employee into that job or position; and

(ii) when advertising or recruiting for that job or position; and

(c) on request, provide an employee with the remuneration or, where applicable, the remuneration range for a job or position in which they are currently employed, or for which they have applied or wish to apply.

(2) Every employee has the right to discuss an offer of employment, remuneration or remuneration range for a job or position with another employee.

Prohibition of using past or current remuneration information

6B. (1) In the process of recruiting, selecting or appointing an applicant for a job or position, an employer is prohibited from —

(a) enquiring into the applicant’s past or current remuneration or requiring their past or current remuneration information; and

(b) determining the remuneration or terms and conditions of employment for the job or position based on their past or current remuneration,

unless an offer of employment has already been made to the applicant and the applicant makes a request in writing that their past or current remuneration be considered.

(2) An employer may, without enquiring into past or current remuneration, discuss an applicant’s remuneration expectations with reference to the remuneration or remuneration range disclosed in terms of section 6A(1)(b) or (c).

(3) Any past or current remuneration will not justify any income differential or unfair discrimination.

Substitution of section 9 of Act 55 of 1998

4. The following section is hereby substituted for section 9 of the principal Act:

“Applicants

9. For purposes of sections 6, 6A, 7 and 8, “employee” includes an applicant for employment.”.

Short title and commencement

5. This Act is called the Employment Equity Amendment Act, 2026, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE EMPLOYMENT EQUITY AMENDMENT BILL, 2026

1. BACKGROUND

- 1.1 Section 23(1) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”) entrenches the right of everyone to fair labour practices. Further, the purpose of the Employment Equity Act, 1998 (Act No. 55 of 1998) (“the Act”), is to, *inter alia*, achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination. Thus, promoting “fair pay”; “pay equity” or “equal pay” in recruitment processes is in line with the constitutional protection of the rights to fair labour practices and equality.
- 1.2 However, currently in South Africa, it is common for employers to request past remuneration information relating to past or current remuneration during the recruitment process, particularly when negotiating salary. Given South Africa’s history of pay discrimination across racial and gender lines, this employment practice disproportionately affects black people, women and people with disabilities and it continues to perpetuate pay gaps for them. The use and consideration of past remuneration information, contaminated by past pay bias, entraps such people to low wages in each successive job. Job applicants are thus unable to escape the impact of past pay discrimination if their current job applications are evaluated based on what they earned in the past.
- 1.3 To date, a growing number of countries have passed and implemented legislation that forces companies to be transparent about how much they pay their employees – the aim being to expose and eliminate salary disparities between different race and gender groups.¹ Many cities in the USA, have also passed laws designed to tackle wage discrimination at recruitment stage by making it illegal for employers to ask potential candidates about their salary history.²

¹ Tshwane, T. 2019. Calls for income transparency in recruitment ads. MoneyWeb [Online]. Available at: <https://www.moneyweb.co.za/news/south-africa/calls-for-income-transparency-in-recruitment-ads/> (Accessed: 19 July 2025).

²

PayAnalytics. 2024. US Pay Transparency Laws by State 2025. [Updated June 30, 2025]. Available at: <https://www.payanalytics.com/resources/articles/us-pay-transparency-laws-by-state>. (Accessed: 19 July 2025).

- 1.4 The Employment Equity Amendment Bill, 2026 (“the Bill”) thus, *inter alia*, seeks to prohibit the use of past or current remuneration information in recruitment or appointment practices to determine remuneration for prospective employees.
- 1.5 In addition to the prohibition on the use of past remuneration, the Bill introduces a statutory obligation on employers to publish the applicable salary or salary range for any advertised vacancy, internal promotion, or transfer opportunity, thereby promoting remuneration transparency. The absence of salary disclosure in job advertisements, especially in the private sector, gives employers an information advantage that can be used to underpay candidates, particularly those from historically disadvantaged groups. This lack of transparency contributes to entrenched wage gaps, limits applicants’ ability to negotiate fairly, and can deter qualified candidates from applying where remuneration is uncertain. Mandatory disclosure will create a more competitive and equitable job market by levelling the playing field, reducing information asymmetry, and helping to address persistent gender and race-based pay disparities.

2. PURPOSE OF THE BILL

- 2.1 The Bill responds to a persistent and harmful set of recruitment practices which, although not explicitly prohibited in current labour legislation, undermine the constitutional and statutory objectives of equality and fair labour practice. The first is the widespread reliance on an applicant’s past remuneration to determine starting pay in a new role. This practice anchors future earnings to salaries often shaped by discriminatory factors, thereby perpetuating historical wage gaps between men and women, and between black and white South Africans.
- 2.2 The Bill also responds to the lack of pay transparency in recruitment processes, particularly in the private sector, where vague terms such as “market-related” or “competitive” are used in place of clear remuneration figures. This information imbalance favours employers, allows for arbitrary or biased pay-setting, and denies job applicants, particularly previously disadvantaged groups, the ability to negotiate from an informed position. The combination of these practices not only entrenches inequality but also diminishes trust in the labour market, reduces mobility for talented individuals, and perpetuates cycles of economic exclusion.
- 2.3 The purpose of the Employment Equity Amendment Bill, 2026 (“the Bill”) is to amend the Act so as to address these current practices.

3. CONTENT OF THE BILL

- 3.1 Clause 1 of the Bill seeks to amend the Act by amending certain definitions and inserting new definitions into the Act.
- 3.2 Clause 2 of the Bill amends section 3 of the Act to provide that the Act must also be interpreted in compliance with the International Labour Organisation Convention (No. 100) concerning Equal Remuneration.
- 3.3 Clause 3 of the Bill inserts new sections 6A and 6B into the Act to provide that an employer must, when advertising a position or when promoting or transferring an employee, disclose the remuneration or the remuneration range that the employer anticipates paying for the position. This clause also prohibits an employer from enquiring into, or requiring remuneration information, on past or current remuneration from an applicant for employment during the recruitment, selection and appointment process; and determining the applicant's remuneration based on such applicant's past or current remuneration.
- 3.4 Clause 4 of the Bill amends section 9 of the Act so that the newly inserted section 6A is made applicable to applicants for employment.
- 3.5 Clause 5 of the Bill provides for the short title and the commencement date of the Amendment Act.

4. DEPARTMENTS, INSTITUTIONS AND STAKEHOLDERS CONSULTED

4.1 The following stakeholders and organisations were consulted:

- Mr Ulrich William Lekay – Founder of Lekay Reward Consultancy;
- Just Share NPC; and
- Centre for Transformative Regulation of Work – Faculty of Law, University of the Western Cape.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

5.1 There may be a need for additional commissioners to be appointed to the Commission for Conciliation, Mediation and Arbitration and for additional inspectors to be employed in the Department of Employment and Labour.

6. FINANCIAL IMPLICATIONS FOR THE STATE

6.1 Funds will be required for the employment of additional commissioners and inspectors.

7. PARLIAMENTARY PROCEDURE

7.1 The Member is of the opinion that the Bill be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in sections 74, 76 or 77 of the Constitution applies.

7.2 The Member is of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain any provisions pertaining to customary law or customs of traditional or Khoi-San communities, nor does the Bill deal with a matter referred to in section 154(2) of the Constitution.