

Call for comment on sectoral targets in EEA amendment draft

On 1 February 2024, the Minister of Employment and Labour issued new draft regulations concerning sectoral targets (draft regulations), providing a 90-day window for interested parties to comment.

By [Lizle Louw](#) 8 Feb 2024



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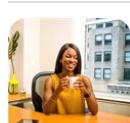
Amendments to the Employment Equity Act, 1998 (EEA) were enacted in April 2023 which grant the Minister of Employment and Labour the authority to establish numerical targets for employment equity in each national economic sector. The amendments were originally accompanied by two sets of draft regulations published in 2018 and 2023, respectively.

The draft regulations published in 2018 were largely administrative insofar as the provisions related to the EEA Amendment Act. The draft regulations published on 12 May 2023 however, contained the proposed numerical targets for each sector. On 2 November 2023, the Minister confirmed that revised draft regulations on the proposed targets would be issued with a new period for public comment following the procedural complaints levelled against the 2023 draft regulations which arose during the first round of public comment.

In Item 3, the draft regulations offer guidance on interpreting and applying sectoral targets. These guiding principles are likely borne out of the queries that arose from stakeholder engagement.

General principles governing the lawful application of employment equity are reiterated in Item 4, which reflects the terms of the settlement agreement concluded in the CCMA between Solidarity and the Minister of Employment and Labour on 28 July 2023.

The principles give effect to the imperative that affirmative action must be applied in a nuanced way and that no absolute barrier to employment may be imposed on persons from any group and no terminations of employment may be effected as a consequence of affirmative action - read more about the terms of the [settlement agreement](#) in an article previously published by Webber Wentzel.



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In examining the data set out in the newly proposed targets, some notable changes include:

- Targets for individual racial population groups such as African, Coloured, Indian and White have been removed. The new proposed targets introduce a combined target for designated groups as defined in the EEA. However, specific targets based on gender are set out within each sector.
- The above notwithstanding, the guiding principles state that designated employers are still required to set targets for separate population groups where they are under-represented in the top four occupational levels when compared to applicable economically active population (EAP) in the sector.
- The requirement that designated employers set targets for the separate population groups will remain in place for skilled and unskilled occupational levels.
- Only national targets remain as provincial targets have been removed.
- Designated employers must select either the national or provincial EAP on which to base their EE Plans. Where an employer operates across provinces and does not elect to use the national EAP, the EAP of the province where the majority of employees are based may be used.
- If an employer operates across multiple sectors, the EAP of the sector in which the majority of employees are employed may be used.
- There have been minimal changes to numerical data. The only sector where adjustments have been made is the Financial and Insurance activities sector. The below significant changes to the targets for the top three occupational levels have been proposed:
 - top management targets have decreased from 51.3% to 46%;
 - senior management targets have decreased from 57% to 48%; and
 - professionally qualified and middle management targets have decreased from 70% to 64%.

This is unsurprising given the quality and degree of public participation from this sector during the period for public comment, wherein Webber Wentzel played an active role in representing clients.



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- Designated employers with foreign nationals in their employ will need to consider the proposed targets in conjunction with the provisions of the draft National Labour Migration Policy (Draft Policy) and Employment Services Amendment Bill (amending the current Employment Services Act, 4 of 2014) (Draft Bill) which seeks to, among other things, specify maximum quotas for the employment of foreign nationals by employers in any sector. However, the Draft Policy, Draft Bill, and sectoral quotas are yet to be finalised.

The deadline for public comment on the draft regulations is 30 April 2024. During the 90-day window for engagement, it is advisable for designated employers to review the proposed sectoral targets and, to the extent that the proposed targets do consider unique sector dynamics and challenges, consider submitting their representations.

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