

Gender empowerment and the consequences of EEA non-compliance

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The term "gender empowerment" was developed to describe the process of increasing the power and influence of women in society, while recognising the importance of including men and non-binary individuals in the process. People from marginalised genders, including women, non-binary individuals, and members of the LGBTQ+ community often face significant challenges in their professional lives.



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Women make up a large portion of the working-age population - exceeding that of the male population. Despite this, women and people from marginalised genders remain underrepresented in positions of authority and power. This disparity continues to be of great concern as women and non-binary individuals have a significant contribution to make to the economy. A report published in October 2022 by Statistics South Africa titled *Gender Series Volume IX: Women Empowerment, 2017–2022*, highlights the fact that women in South Africa still face big challenges, and empowerment remains a critical issue across all sectors in South Africa.

Challenges

The various challenges that women and non-binary individuals face in the workplace include discrimination based on their gender identity, which can take the form of prejudice, harassment, or unequal treatment. Pay disparity has also recently been highlighted as a major concern in this regard and it is compounded by unequal opportunities in the workplace.

People from marginalised genders are at a higher risk of violence and abuse, including sexual violence, domestic violence, and hate crimes. This can have significant physical, psychological, and emotional effects, and impacts on their ability to perform in the workplace. According to the StatsSA report, women are more likely to be unemployed than men and are less likely to participate in the labour market. This data confirms that, despite the Employment Equity Act 55 of 1998 (EEA) being in operation for more than 20 years, its primary objective of gender (and racial) equality in the workplace has a long way to go.

Employment equity legislation

The EEA imposes affirmative action obligations on employers which are aimed at promoting gender equality and eliminating gender-based discrimination in the workplace. Designated employers have a legal obligation to set employment equity targets, which include proportionate representation of women at all levels of the workplace. Job requirements must be continually assessed and elements that may discriminate against women and non-binary individuals must be removed.

Employment policies or practices cannot discriminate against marginalised gender groups. Given the historical background and socioeconomic landscape of South Africa today, it is not surprising that gender discrimination is often coupled with racial discrimination. To address this, employers should implement affirmative action measures that are based on multiple intersecting grounds, so that people from marginalised genders who are the least represented in the workplace, and who face both gender and racial discrimination, can participate meaningfully in the workplace.

Ensuring safe working environment

Goal 5 of the United Nation's Sustainable Development Goals promotes the attainment of gender equality in all spheres of life, including the workplace. Goal 8 calls for sustainable and inclusive economic growth through the provision of decent work to all individuals. In general, work is considered decent when: it pays a fair wage and it guarantees a secure form of employment and safe working conditions.

Employers have a responsibility to address gender-based violence and sexual harassment in the workplace in terms of the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, 2022. This involves creating a workplace culture that promotes respect and dignity for all employees and providing training and resources to help employees understand what constitutes gender-based harassment and sexual harassment. Employers should also have clear policies and procedures in place for reporting incidents where such harassment occurs and should take prompt and appropriate action to address any incidents that are reported.

This code of good practice also touches on the role employers can play in assisting employees dealing with domestic violence (a social ill that disproportionately affects women and non-binary individuals) through referrals to counselling networks and the possible provision of additional unpaid leave, among other measures. This demonstrates the drive towards promoting workplaces in which employers are alive to the obstacles people from marginalised genders face in society and the impact these have on their performance in the workplace.

Financial equality

Employers must promote an inclusive and supportive working environment to advance gender empowerment in the workplace. This can be done through policies which are effective in prohibiting gender-based harassment and sexual harassment, and through the promotion of equal pay for equal work. Differentiation in pay on the basis of gender is prohibited under section 6(1) of the EEA and employers are obliged to ensure at all times that they remunerate employees equally where such employees work is the same or substantially the same, or equal value is performed.

The provisions of the Code of Good Practice on *Equal Pay/ Remuneration for Work of Equal Value, 2015* defines work of equal value as work that is the same, similar, or comparable in terms of skill, effort, responsibility, and working conditions. It requires employers to conduct a job evaluation to determine the relative worth of different jobs, and to ensure that employees are paid fairly based on the results of that evaluation. The code also sets out specific steps that employers should take to address any disparities in pay that are identified, including providing training and education to employees, negotiating with unions, and adjusting pay levels as necessary.

Flexible working arrangements such as work-from-home policies, hybrid working arrangements, and part-time work can help women and non-binary individuals to balance their work and home responsibilities. Employers should promote gender equality by creating a workplace culture that values and respects differences. This can be achieved through initiatives such as diversity and inclusion training and mentorship programmes.

Consequences

Employers should take heed of the need to empower women not only because it is morally the right thing to do, but also because should an employer fall foul of any of the provisions of the EEA, they may be subject to fines and/or imprisonment depending on the infringement. Reputational damages arising from non-compliance is also a considerable risk. In January 2023, the chief director for statutory and advocacy services of the Department of Employment and Labour announced that JSE-listed companies would be inspected during the first quarter of this year to monitor their compliance with the EEA, with this year marking the five-year anniversary for the approval of their affirmative action plans.

The chief director warned that the minimum penalty that could be imposed on a non-compliant company is an amount which is the greater of R1.5m or 2% of the employer's turnover. This announcement is timely given the effective date of the Employment Equity Amendment Bill being September 2023. The Bill introduces measures to accelerate transformation in the workplace.

Gender empowerment in the workplace is a critical issue in South Africa, and employers play a crucial role in its advancement. By taking steps to comply with the affirmative action imperatives set out in the EEA and the codes of good practice, creating an inclusive and supportive working environment, promoting equal pay, providing opportunities for professional development, and addressing gender-based and sexual harassment, employers can help to break down the barriers that prevent women and non-binary individuals from achieving socio-economic empowerment and advancement.

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