

More workplaces to face DG reviews to enforce compliance with EE Act

Wednesday, March 30, 2022



A total of 60 percent of employers in the current financial year ending March 31 has been referred to prosecution for failure to comply with the employment equity (EE) legislation.

The Department of Employment and Labour Chief Director: Statutory and Advocacy Services, Fikiswa Bede, said that the department has noted with concern that there are more employers requesting settlement out of court.

She said this conduct indicates that employers were budgeting for fines therefore the department will from now on also force the employers to foot the court bills.

Bede was speaking at the department's breakfast advocacy session with stakeholders held on Tuesday at Lagoon Beach Hotel in the Western Cape on the subject of compliance with the EE Act.

The session held under the theme: "Transformation is a process and not an event" - follows several Director-General Reviews of designated employers in both the Private Sector and Public Sector that showed the need for advocacy.

It was attended by executives of companies, union representatives, academics, and government departments.

The Chief Director said in terms of the Director-General (DG) review process, there was a 94 percent non-compliance with the EE Act. She said in the year under review a total of 860 DG reviews were conducted nationally.

The most DG reviews were conducted in KwaZulu-Natal (269); Gauteng (213) and the least was North West (10).

"When one looks at the current DG Review data the situation in regards to non-compliance with EE can only get worse," she said.

A Director-General may conduct a review to determine whether an employer is complying with the EE Act of 1998.

The review involves requesting:

- the employer to submit a current analysis or employment equity plan;
- the employer to submit to the DG any book, record, correspondence, document or information that could reasonably be relevant to the review of the employer's compliance with this Act;
- a meeting with an employer to discuss its employment equity plan, the implementation of its plan and any matters related to its compliance with this Act; and
- a meeting with any employee or trade union consulted in terms of section 16, work forum or another person who may have information relevant to the review.

Failure to comply with DG's recommendations/request, the DG may refer the employer for non-compliance to the Labour Court.

According to Bede, the areas of non-compliance relate:

- to no proof of assignment of EE responsibility;
- EE managers not provided with the required resources and budget;
- attendance register not indicating the constituencies represented by the committee members;
- an analysis conducted post the development of the EE Plan; and
- barrier analysis not matching a true reflection of what is happening in the workplace, and EE plans not projecting reasonable progress towards transformation in line with the goals and numerical targets set by the designated employers.

“Transformation is a process, not an event. It begins with the will, desire and a decision to commit to transformation,” Bede said.

Department of Employment and Labour Inspector-General, Aggy Moiloa, said 24 years ago the EE Act was born, however, years later the legislation still displays the tendency of a newborn. Moiloa said it was worrisome that there was no will to implement the legislation.

Acting Director-General of the department, Marsha Bronkhorst, lamented the snail's pace of transformation of workplaces. She said the department does not need to police and enforce compliance.

She appealed to employers to transform as enforcement was costly and time-consuming.

“Employers need to inculcate a culture of self-regulation. Unfortunately, EE has been one of the legislation that has been flouted with impunity since its inception,” she said. – **SAnews.gov.za**