Employment equity

by Malcolm Ray

The final draft of the Employment Equity Bill has been welcomed by many and rejected by few.

It is too early to tell what the outcome will be. Though the principles of the final draft have been agreed by the parties, discussion in Nedlac on the finer details is expected to begin in May.

The *Bill* is expected to be enacted in July.

Objectives

The Bill has two principle purposes: to implement positive measures to eliminate discrimination in employment, and to provide guidelines for companies to promote occupational equity by encouraging the equal representation of black and women workers and the disabled.

Achieving these objectives means confronting a legacy of unequal education, job reservation, racism and discrimination in the workplace.

The Bill estimates that only 1% of disabled people are employed in the formal sector of the economy. Black women account for a disproportionately large percentage of the unemployed. Those who have jobs work at the lowest end of the labour market. Over one third of women are self-employed and 70% of women workers in the formal sector earn less than R500 a month. African workers comprise 70% of public sector workers, but only 30% of management.

Proposals

The Bill does not set out concrete remedies for traditional barriers to employment equity.

Described by the Department of Labour as "an enabling piece of legislation", it is based on the principle of voluntarism. Minimum requirements for a broad equity process are set out. These include:

- Companies with more than 50 workers will have to draw up 'equity plans' that reflect national or regional demographics. The plan should contain numerical goals (the Bill recommends a representative workforce consisting of 75% black, 52% women and 5% disabled), a timetable to remove discrimination, mechanisms to bring about equity and union-management consultation procedures.
- Management will have to provide annual reports to the Department of Labour on progress.
- A Department of Labour inspectorate will police the process.
- The onus to provide proof lies with employers. Failure to make 'sufficient progress' is punishable by fines of up to R500 000 for the first offence and R900 000 for the fourth.
- Equity goals should be achieved within a five-year period.

- A Commission on Employment Equity appointed by the Department of Labour will oversee the whole process.

Reaction

The Bill has not elicited the same degree of comment from labour as other labour legislation. Business, however, is guarded. Soon after the publication of the final draft, the Bill came under fire from Business South Africa (BSA) and traditionally white political parties. In its submission to the Department of Labour earlier this year, the BSA accepted the principle of eradicating inequalities caused by the apartheid system. But it argued against the "direct infringement of the government in the private sector."

The BSA's main concern relates to the Bill's enforcement of numerical goals to achieve equitable representation. "Instead of sweeping numerical goals," it argues, "an equity process should be underpinned by economically sustainable productivity considerations which enable companies to become competitive."

Another refrain from business is that the Bill discards merit and experience, and will lower standards in the production and service sectors. It proposes a 'code of best practice' as an alternative. For the BSA, the market, rather than state, should decide what is best for business.

COSATU's response was predictable. The federation said recently that it is not unexpected that organisations opposed to the Bill articulate the views of those whose privilege could be most affected. According to the federation, the Bill will go a long way towards deepening the social and economic transformation process.

Weaknesses

The Democratic Party's Tony Leon's statement that the Bill will not create employment opportunities for the millions of black and women workers has some merit. It raises a serious question: will the Bill seriously impact on inequalities?

The Bill can be criticised on several grounds. First, the measures to ensure employment equity are vague and ineffectual. There is no clarity on the steps employers need to take to implement equity targets. The Bill leaves this to 'consultation' between employers and unions. Companies with weak union organisation or no organisation at all might be able to slip through the process unaffected.

Secondly, employers will not be forced to employ 'unqualified' workers. Even though there is insistence on numbers to achieve sufficient equity, the skills base of black and women workers puts a spanner in the works of the equity process. Employers can easily justify their failure to achieve targets by raising the skills shortage among disadvantaged groups as a barrier.

Thirdly, the Bill fails to recognise that an equitable skills development process is a precondition for employment equity. It simply encourages employers to train, retrain and develop workers.

Finally, the exemption of companies with less than 50 workers might encourage employers to downscale or subcontract work.

The equity process is more likely to reinforce traditional barriers to fair employment opportunities. Vulnerable workers in the informal sector and unskilled and unemployed workers on the periphery of the formal sector will be excluded from the Bill's ambit. At best, the Bill can be expected to change the complexion and gender profile of a new breed of managers and skilled workers. ★