

on the **shop floor****Whats happening to employment**

With all the talk of black economic empowerment, what is happening to employment equity? The **Labour Department** outlines what is happening to ensure compliance with the Employment Equity Act.

Figure 1: Compliance model



The Employment Equity Act (EEA) differs from other labour legislation in that employers have to submit reports to a Registry, which becomes a public document. The Act provides for a number of monitoring mechanisms to prevent non-compliance. These mechanisms include:

- The empowerment of employees or their representatives to be consulted (Section 16) and to monitor (Section 34) employment equity progress in organisations.
- The public registry of employers that reported to the Department of Labour. By publishing this registry, all stakeholders (employees, trade unions, etc.) will have immediate insight into whether an employer has complied with the administrative or procedural requirements of the Act.
- Public companies have to publish a summary of their employment equity reports with the annual financial report.

- Government departments also report to Parliament on employment equity.

It is the Department of Labour's policy to adopt a multi-faceted approach to the enforcement of labour laws. This policy requires that advocacy be the primary enforcement mechanism applied by labour inspectors. It is only when this approach does not show the required results that the inspector embarks on legal proceedings.

Figure 1 shows the compliance model that underpins the EEA. All employers in South Africa have to comply with Chapter II of the Act (prohibiting discrimination in the workplace). Designated employers (more than 50 employees) or those meeting the turnover criteria in Schedule 4 of the Act. Non-compliance is monitored through a variety of mechanisms, including:

- Complaints by any employee or trade union representative
- The employment equity registry
- Labour inspections

- Director General (DG) Reviews

The Department of Labour has got a two pronged enforcement levels viz:

- Procedural compliance
- Substantive compliance

**PROCEDURAL INSPECTIONS**

There are two types of inspections: reactive (in response to complaints received) and pro-active (planned inspections, informed by the registry information). These inspections will follow much the same procedure as those conducted for other labour legislation and will indeed be covered by a portion of the integrated checklist for inspections. Non-compliance following an inspection will lead to advocacy, a written undertaking issued, followed by a compliance order and finally the Labour Court where an employer could be fined. Following are areas to be considered during procedural inspections:

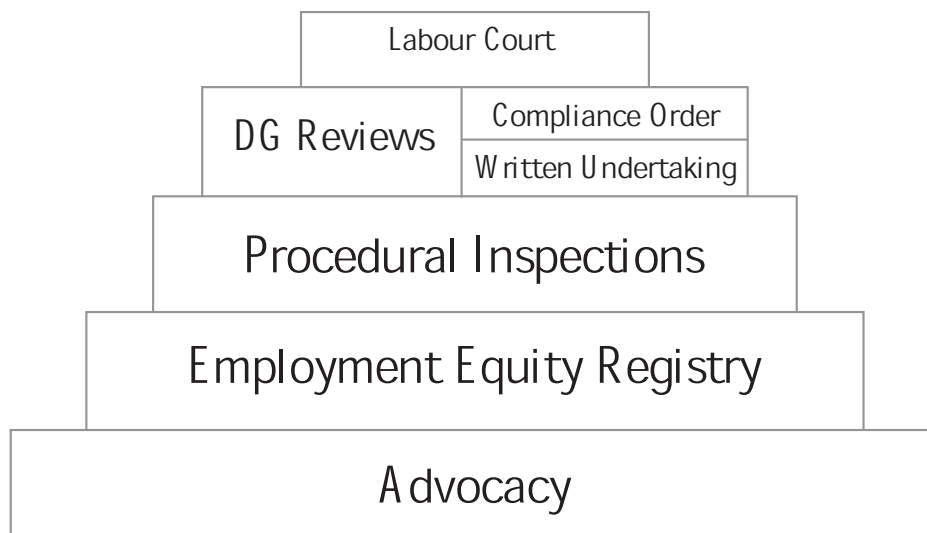


Figure 2: the enforcement model

- Whether there is consultation with employees
- Whether the employer have conducted a workplace analysis
- Whether the employer did prepare an employment equity plan
- Whether the employer did report to the employment equity registry of the department
- Whether there is an assigned senior manager responsible for employment equity

#### DG REVIEW/SUBSTANTIVE AUDIT

Director General (DG) Review is a full scale investigation of the employer's employment equity implementation. The DG Review relates only to employment equity and will be a thorough investigation of all the compliance issues. The DG Review includes interviews with all stakeholders and the objective is to establish whether the employer is making real progress towards

employment equity, over and above procedural compliance. DG Reviews can also be re-active, in response to non-compliance detected during a procedural inspection, or pro-active as part of a planned DG Review schedule. In the case of a DG Review, should the employer not comply with the recommendations of the review, these recommendations can become a court order through the Labour Court.

The Department of Labour and the Minister have actively pursued all issues of employment equity compliance. Where these commenced firstly by creating awareness and thereafter followed by enforcing against non-complying employers. The development of this system is underway

#### INSPECTIONS CONDUCTED

During November 2003, labour department inspectors, throughout the country, visited employers to check if they complied with the EEA. These inspectors conducted

procedural inspections since substantive enforcement is still underway.

Of 4069 employers that were inspected during the blitz campaign, our inspectors has secured 1361 written undertakings form, and served 63 compliance orders to non-compliant employers.

The blitz reports suggest that the remaining balance of employers were found to be complaint and some not designated at all.

Upon follow up inspections on those who where issued with compliance orders, of the 58 that have failed to comply after follow-up inspections, preparations are being made to refer 9 employers to the labour court. Only 2 employers have complied since follow-up inspection has been conducted. Ten (10) employers have been granted extensions to comply beyond October. Follow-up inspections are still to be conducted on 37 employers.