

**Implications of the Employment Equity Act and other legislation for
human resource planning in Telkom, Western Cape.**

Barend Røges Odendaal



**Thesis presented in partial fulfilment of the requirements for the
degree of Master of Public Administration at the University of
Stellenbosch.**

Supervisor : Prof. E Schwella

Date : December 2000-11-27

Degree of confidentiality : Grade A

DECLARATION

I, the undersigned, hereby declare that the work contained in this thesis is my own original work and that I have not previously in its entirety or in part submitted it at any university for a degree.

Signature:.....

BR Odendaal

Date: 27 November 2000

ACKNOWLEDGEMENTS

I want to give praise and honour to God who is my Rock on whom I can always lean on at all times.

Thank you to Professor Erwin Schwella for being my study leader for his guidance, suggestions and academic insight.

Belinda van Wyk, my examiner, thank you that you always saw the potential in me and encouraged me to reach my set targets.

Baie dankie aan al die personeel van Bellvilleparkkampus Biblioteek en die Administratiewepersoneel vir hulle bereidwilligheid om altyd hulp en ondersteuning te gee.

I gratefully acknowledge the financial assistance of my employer, Telkom SA and the fact of allowing me to use them as the subject of my case study.

To my wife, Judy, for her love and many sacrifices.

My children, Jason and Kirsten, who often only saw the back of their Daddy's head.

To my furry children, our cats, Ruddy, Mickey and Sheena who always kept me company when I was burning the proverbial "midnight oil".

My cousin Jenny Coetzee for her support, input and continual encouragement.

To my friend and ex-colleague, Charl Fourie, who inspires me by seeing the humour in life.

Dr Edwin Hees, thank you for the friendliness and assistance in editing my thesis.

My sincere gratitude to everyone who encouraged and supported me during my studies.

My motto in life:

"Don't wait for your ship to come in – swim out to it."

Author unknown

SUMMARY

The affirmative action process has accelerated dramatically since the democratisation of South Africa. After the 1994 general election equity became entrenched in legislation. The employment equity legislation together with other labour legislation is there to undo long-standing segregation policies. The Employment Equity Act, 1998, holds unique challenges for organisations to reach their employment equity goals. A limited time period has also been set for organisations to apply a temporary intervention to endeavour to correct the imbalances caused by the apartheid regime. The apartheid legislation, which resulted in 45 years of racial separation, had the adverse effect of denying certain South Africans equal employment opportunities. This caused an imbalance in the labour demographics of South Africa.

This study focuses on the effects of the implementation of the Employment Equity Act, 1998, and other legislation on human resource planning within Telkom SA. Telkom SA, being the largest communications company in South Africa, has committed itself to employment equity and has already embarked on an affirmative action programme. However, the various pieces of legislation require certain criteria to be met. With the distortion of the labour demographics, Telkom SA finds has difficulty in finding suitably qualified candidates in certain race groups within the Western Cape. Perceptions of affirmative action have also been negative and this has led to resistance to the process. As soon as a commitment to the process occurs, then all human resources can be utilised effectively.

OPSOMMING

Regstellende aksie het dramaties versnel sedert die 1994 algemene verskiesing van Suid Afrika en gelykheid het deel begin vorm van alle wetgewing. Die wetgewing op gelyke geleentheid, tesame met ander arbeidwetsgewing is daarop gestel om rasse verwydering te beveg. Die Wet op Gelyke Geleenthede, 1998, vereis dat instansies hulle gelyksheid doelwitte bereik binne 'n gegewe tydperk. Die tydelike tussenkoms om die wanbalans te herstel, wat deur die ou regering veroorsaak is, is van kardinale belang. Die apartheids wetgewing het veroorsaak dat daar na 45 jaar steeds 'n negatiewe uitwerking is vir sekere rassegroepe. Dit het ook veroorsaak dat daar 'n wanbalans in die demografie van Suid Afrika is.

Hierdie studie is gemik daarop om die uitwerking van die verskeie wetgewing se uitwerking op die beplanning van die menslikehulpbronne van Telkom SA te ondersoek. Telkom SA, is tans die grootste kommunikasie maatskappy in Suid Afrika en hulle is daarop gemik om gelyke geleenthede te bevorder en het die nodige stappe alreeds geneem ten opsigte van die regstellende aksie plan. Die verskeie wetgewing stel sekere vereistes aan Telkom SA weens die feit dat hulle deel vorm van die aangewese maatskappye soos die wetgewing bepaal. Hulle vind dit moeilik om 'n geskoolde persoon uit sekere rassegroepe te kry, weens die feit dat hulle nie gelyke geleentheid gehad het om te ontwikkel nie. Regstellende aksie is ook negatief ontvang deur sekere werknemers en dit kan die proses vertraag. Sodra persone toegewyd word aan die voordele van so 'n proses, sal die dienste van alle Suid-Afrikaners effektief gebruik kan word.

CONTENTS

Chapter 1	INTRODUCTION	
1.1	Introduction	1
1.2	Objective	4
1.3	Problem statement	5
1.4	Hypothesis	7
1.5	Affirmative action defined	8
1.5.1	The role of affirmative action	8
1.5.2	Affirmative action vs. employment equity	9
1.5.3	Affirmative action legislation	9
1.5.4	Equality in societies	11
1.5.5	Narrow and wide connotations	12
1.6	Arguments in favour of affirmative action	13
1.6.1	Dismantling of discrimination	13
1.6.2	Reparation provided	15
1.6.3	Perceptions changed	16
1.7	Arguments against affirmative action	16
1.7.1	Lowering of standards	17
1.7.2	Labelling	18
1.8	Terminology	19
1.8.1	Inequality	19
1.8.2	Black people	20
1.8.3	Discrimination	21
1.8.4	Reverse discrimination	21
1.8.5	Historically disadvantaged	21
1.9	Equal employment opportunity	21
1.10	Conclusion	23
Chapter 2	AFFIRMATIVE ACTION: HISTORICAL AND SOCIAL CONTEXT	
2.1	Introduction	25
2.2	Historical context	26
2.2.1	Origins of affirmative action	29
2.3	The period before 1994	29
2.3.1	Sullivan code	30
2.3.2	Justifying affirmative action	31
2.3.3	Apartheid	32
2.4	The period after 1994	34
2.4.1	Chartering a new course	34
2.4.2	The South African workplace	35
2.5	Conclusion	35

Chapter 3**LEGAL FRAMEWORK**

3.1	Introduction	37
3.2	Background	37
3.3	Constitution of the Republic of South Africa, 1996	39
3.4	The Employment Equity Act, 1998	40
3.4.1	Preamble	41
3.4.2	Equity and fairness	42
3.4.3	Designated employers	43
3.4.4	Medical testing	45
3.4.5	Phase 1 – establishing the Commission of Employment Equity	45
3.4.6	Phase 2 – prohibiting unfair discrimination	46
3.4.7	Phase 3 – submitting equity plans	47
3.4.8	Final phase – state contracts	47
3.4.9	Implications of implementing the Employment Equity Act, 1998	48
3.5	Labour Relations Act, 1995	49
3.5.1	Freedom of Association	50
3.5.2	Unfair labour practice- the prohibition of discrimination	50
3.5.3	Code of good practice	51
3.6	Commission for Conciliation, Mediation and Arbitration (CCMA)	52
3.6.1	Dispute resolution	53
3.6.2	Unresolved disputes	53
3.6.3	Employment Equity Advisory Council	53
3.6.4	Monitor progress	54
3.7	Implications of implementing the Labour Relations Act, 1995	54
3.8	Conclusion	56

Chapter 4**TELKOM'S CURRENT REALITY**

4.1	Introduction	57
4.2	Background	57
4.3	Business plan	58
4.4	Problem areas	60
4.5	HR101 report	61
4.6	General lack of representation of Africans and females	62
4.7	Conclusion	63

Chapter 5 IMPLICATIONS OF EEA FOR HUMAN RESOURCE PLANNING IN TELKOM

5.1	Introduction	65
5.2	Objective of human resource planning	65
5.3	Background	66
5.4	Recruitment and selection	67
5.5	Issues to consider	70
5.6	Fair and equitable recruitment	71
5.7	Recruitment sources	72
5.8	Conclusion	73

Chapter 6**RECOMMENDATIONS**

6.1	Introduction	74
6.2	Affirmative action strategy	75
6.3	Strategies to address the lack of African/female representation	77
6.3.1	Internal recruitment	79
6.3.2	External recruitment	79
6.4	Accountability and planning	80
6.5	Assigning of Employment Equity Manager	81
6.6	The functions of the Employment Equity Manager	82
6.7	Reviewing current policies	83
6.8	Possible conclusion	84
List of sources		85
Annexures A - F		

CHAPTER 1

INTRODUCTION

1.1 Introduction

“Affirmative Action is corrective action. We shall not be discouraged by the sirens of self-interest that are being sounded in defence of the privileged and the insults that equate women, Africans, Coloureds and the disabled with a lowering of standards” – Nelson Mandela.

With these words, President Nelson Mandela, the first democratically elected president of the Republic of South Africa (RSA), signalled a new era in labour relations within the country. It had always been his desire to see South Africa adopt a policy of change that would promote equality and fairness, which could only to be achieved through democracy. Due to his political convictions, he was jailed by the previous apartheid government and served a jail sentence of 27 years. Upon his release, he continued with his mission to bring about a dramatic change in South Africa and, specifically, its labour force, where every citizen was to be treated fairly and on equal terms.

Incorporated in a speech that was delivered by President Nelson Mandela in 1993 was a statement that affirmative action must be rooted in the principles of justice and equality. Seen in this light affirmative action should be used as a tool to rebuild South Africa in a just and humane manner. Although inequalities of the past are addressed in affirmative

action, it can also be regarded as a strategy to fight poverty by providing employment for the previously disadvantaged groups.

According to Madi (1993: ix), President Mandela summed up the debates surrounding the explosive and highly emotive nature of affirmative action by describing it as a positive beacon to millions of South Africans. For others, affirmative action is seen as a threat to the integrity of public life and personal security. This change in the political life of South Africa brings great challenges to employers and employees alike.

It is against this background that the Employment Equity Act, 1998, Act 55 of 1998, was finally drafted in October 1998 as a primary piece of legislation that strove to bring about a paradigm shift in South Africa's labour relations, transforming them into a system based on equality. The Act requires designated employers to set employment equity goals and timetables for the elimination of barriers to employment and the advancement of designated employees. All employers in South Africa are affected by the significant challenges of the Employment Equity Act, 1998, and they are challenged to play an integral part in the change process.

Change has become the way of life in organisations today. At the same time they are also faced with maintaining their own identity in order to survive and reach their primary goals. It is very important for organisations that are managing change to deal with it very critically. According to Harvey and Brown (1996: 3), affirmative action can be viewed as part of the change management programme. Herbert (1994:10), who stated that

affirmative action terminology is open to interpretation, supports this view. To this he adds that, depending on the way in which it is viewed, affirmative action could mean the lowering of standards, tokenism and a new form of discrimination. This implies that adequate white employees are replaced by less adequate black employees in the workplace.

The public sector essentially employed white Afrikaners under the rule of the previous National Party government. When the African National Congress (ANC) was voted into government in 1994, they immediately endeavoured to establish a public sector that reflects the demographics of South Africa. Due to the fact that many white Afrikaners dominated the white-collar workforce, the need arose to reduce their number by retrenchments or offering severance packages. This in turn would allow the previously disadvantaged groups a chance to enter the workforce. The dilemma that was faced, and is being faced at present, is the fact that the newly appointed candidates often do not possess sufficient skills, qualifications or experience that is required to fulfil their work requirements effectively.

The retrenched employees are often re-employed as consultants to assist the newly appointed candidates by providing training and guidance. A fee that is approximately three times higher than the former salaries can be charged. The predicament with this situation is that it is not cost effective to employ the retrenched employees on a contract basis as well as paying the newly appointed candidates a full salary. The public in turn becomes irate when they require a service and they cannot be assisted as they might have

been used to in the past. They are not interested to hear that the newly appointed candidates are still in training and therefore might not have sufficient experience to take charge of a problem situation. They are paying for a service and would like to enjoy the benefits of it.

Against the above background, South Africa has had to face the challenge of making available the opportunity for all its citizens to be treated fairly and to compete on equal terms with each other. For moral reasons South Africa was obligated to eradicate all forms of discrimination and racism. South African citizens in turn are faced with the daunting task of allowing candidates from the previous apartheid regime to participate and be represented in the workplace. However, this level of equality cannot be achieved immediately, as those citizens who were advantaged by apartheid possess many years of experience and cannot simply be dismissed in order to provide employment for those disadvantaged. Therefore it was necessary for legislation to be drafted in order to provide employers with guidelines to achieve their employment equity plans. This situation of implementing employment equity legislation underlies the objective of this study.

1.2 Objective

The specific objective of this study is to gain an insight into the implications of the Employment Equity Act, 1998, Act 55 of 1998 and other legislation for human resource planning within Telkom SA, Western Cape. The present situation is that the employment equity plan has set a limited time period of 3 years for employers to address inequalities

within the company, but that there are insufficient numbers of suitable candidates available for employment in the required positions. Proposals will be made for the effective implementation of the legislation and for the process to follow to ensure that it will be fair in the sense that all employees can compete on equal terms. This will also ensure an available pool of candidates for the future. The problem statement will further outline the issue of eliminating the barriers to fair employment and the challenges this brings with it.

1.3 Problem statement

For the past 45 years black South Africans were denied opportunities and devalued due to discriminatory apartheid legislation. This is the reason why the Employment Equity Act, 1998, was introduced as a primary piece of legislation that will strive to bring about a paradigm shift among South Africa's workforce in order to transform it into one based on the principles of equality. The Act will require designated employers to set employment equity goals and timetables for the elimination of barriers to employment and the advancement of designated employees. The significant challenges of the Employment Equity Act, 1998, will affect all employers in South Africa and challenge them to play an integral part in the change process.

The Economist (1999: 45) stated that under the apartheid government most labour intensive and unskilled employment was reserved for black people. Throughout the past half-century skin colour was the single most important determinant of a person's future.

State-owned firms could guarantee secure positions for whites even if they were lazy or of lower intelligence. Blacks, on the other hand, were prohibited from certain desirable forms of employment, even if they were extremely bright or energetic. In the new South Africa the previously disadvantaged groups of people such as Africans, Coloureds, women and disabled people are being given preferential treatment in hiring, promotions, university admissions and the awarding of government contracts. The dilemma being faced at present, however, is that many black people are being recruited to positions that are far too advanced for their limited experience and they are left to cope with the responsibilities of the position. Whites often don't feel inclined to support them as their own positions are threatened.

Lyndon Johnson, who became the American president in 1963, stated that no one should take a person who has been crippled by chains and liberate him by placing him on the starting line and then expect him to compete with all the other trained athletes. In the light of what has previously been said about the inequalities in employment of the past, it is clear that the African National Congress (ANC) had to implement legislation prohibiting unfair discrimination. This was to enable those who were left out of the race to be given an equal opportunity to catch up and compete fairly.

It is therefore the central focus of this study to evaluate the literature available on the subject and then to find solutions to implement the employment equity legislation effectively in practice. The hypothesis indicates the manner in which this issue will be addressed.

1.4 Hypothesis

In terms of the guidelines provided by Brynard and Hanekom (1997: 12), this research was conducted as a literature review. Furthermore, it was set out as an inductive study of the current reality of the effect of the Employment Equity Act, 1998, and other legislation on human resource planning, specifically within Telkom SA. The problem that Telkom SA faces is achieving a level of representation in its workforce that reflects the demographics of the Western Region. There is a shortage of skilled staff to be placed in management positions and at the same time the criteria of the employment equity plan have to be met over a three-year period. The dilemma is that there is a large discrepancy between the existing vacancy and the suitability of candidates for the position. The lack of skilled, experienced and qualified black people in the Western Region leads to "head-hunting", where better remuneration packages are offered. This in turn leads to their salaries becoming very competitive and the organisation that originally recruited the candidate suffers huge financial losses, incurred by transfer costs. In addition to this there is the problem of having to deal with candidates who were previously advantaged by apartheid legislation who are now experiencing "white fears".

It is important to ensure that employers take up the challenge of ensuring that the employment equity legislation is implemented correctly. Before the implementation can be successful, it is important for employers and employees alike to understand the principles surrounding affirmative action. Insight into these issues can be gained by taking cognisance of the definitions provided on the topic.

1.5 Affirmative action defined

There are many definitions and viewpoints on affirmative action. Examining the possible definitions will provide an insight into the rationale behind affirmative action and the various motives for the implementing of the programme. According to Herbert (1994:10), the way in which affirmative action terminology is defined could lead to different interpretations of the process. By this he implies that, depending on the way in which affirmative action is viewed, it could mean that there is a reduction in standards, tokenism and a new form of discrimination. This could mean that able whites are replaced by less able blacks in the workplace. It is in view of this difficulty that the role and definitions of affirmative action are addressed and clarified.

1.5.1 The role of affirmative action

Affirmative action plays a vitally important role in South Africa for all employers. This is due to three primary reasons. The first is the history of economic and political marginalisation of the black majority in South Africa. Apartheid legislation enforced an economy that was biased towards the white population. The second issue is the under-education of black people, due to the fact that apartheid deprived them of a formal education. Finally, the introduction of the Employment Equity Act, 1998, Act 55 of 1998, projected the concept of employment equity to the forefront of the concerns of employers who are affected by the requirements of the legislation.

1.5.2 Affirmative action vs. employment equity

It is important to distinguish between employment equity and affirmative action, as these terms seem to be used interchangeably in South Africa. Employment equity is intended to achieve equity in the workplace through the elimination of unfair discrimination through affirmative action strategies. Affirmative action is therefore the targeted action that is taken to redress the disadvantages experienced by designated groups in the workplace.

Barker and Holthauzen (1996: 3) claim that affirmative action is a set of specific and results-orientated procedures aimed at redressing the historically generated imbalances of the past. This is achieved by creating appropriate opportunities through the education, training, development and advancement of Africans, Coloureds, Indians, women and disabled people to enable them to operate at all levels in the organisation.

It would be inappropriate to treat unequal people as if they are equals when they are still discriminated against. The process to achieve equality should entail action that is more than just gaining fair employment. The employer must facilitate the process in which to achieve equal representation at all levels within the organisation.

1.5.3 Affirmative action legislation

Affirmative action has been included in the Constitution of the Republic of South Africa, 1996, Act 108 of 1996 and it will therefore reflect on all people from all walks of life

living within the borders of South Africa. Section 9 of the Constitution of the Republic of South Africa, 1996, states that everyone has a right to be equal, share equal protection and not to be discriminated against on grounds of race, sex, creed and language.

The process of employment equity is enforced on the whole of South Africa. The public sector is more affected by the legislation than the private sectors due to its size. However, both private and public sectors have to abide by the legislation applied to them and their employees. It is with this in mind that Nzimande and Sikhosana (1996: 12) claim that affirmative action can also be seen as a strategy that is set to redress the inequalities brought about by past discrimination and to transform the socio-economic environment. Black people, females and the disabled form part of the previously disadvantaged group. This corrective process is often viewed as a short-term, immediate strategy that is one step in the longer process of social transformation.

The promulgation of employment equity legislation was introduced to redress the historical imbalances of the past for specific members of society. Affirmative action legislation was therefore promulgated, as part of the process towards achieving employment equity, in order to deal with imbalances and to repair the destruction that was caused by apartheid.

Israelstam (1999: 40) states that employment equity is based on achieving fairness in the workplace with regards to race, gender and the state of health of the employees. The Employment Equity Act, 1998, aims to address workplace equity and fairness by means

of legislation to act against discriminatory practices in situations such as wage disputes and the imposing of affirmative action requirements on all employers. The implementation of affirmative action is to introduce special measures to make up for the disadvantages that certain groups experienced due to apartheid legislation. These measures will aim at specific areas such as recruitment, selection, promotion, training and development.

Human (1993: 1-2) claims that affirmative action is intended to create equal opportunities in the workplace and not to introduce reverse discrimination, as perceived by many previously advantaged white South Africans. This temporary intervention proposes to achieve equal employment opportunities to bring about equality in society.

1.5.4 Equality in society

In its report on Group and Human Rights (1989:445) the South African Law Commission defined affirmative action to be a recognised way of promoting the principle of equality of opportunity in societies. This principle of equality had previously been violated as a result of discrimination, where less developed employees had to compete with more developed employees. Affirmative action is recognised in international law as being non-discriminatory, so long it is temporary and not enforced against the will of the minority. In appropriate cases this does not amount to discrimination, since the fact that those who have lost their positions in a programme of affirmative action properly executed do not actually lose anything they would have had in a fair race. Owing to the fact that

affirmative action terminology carries both narrow and wide connotations, great care must be taken if reverse discrimination is to be prevented.

1.5.5 Narrow and wide connotations

According to Maphai (1993: 6), affirmative action in South Africa carries both narrow and wide connotations. There seems to be a great deal of confusion at both levels. The narrow connotation involves the recruitment of members of designated groups into positions to which they previously had limited access. Traditionally this seldom went beyond a temporary process of repairing any possible damage. Affirmative action should be government's way to promote democracy. The wide connotation of affirmative action can be regarded as an instrument of national transformation, which should at least attempt to eliminate or reduce the inequalities that had been brought about by past discrimination. This strategy is aimed at alleviating poverty. Gerber *et al.* (1998: 154) also state that it seems that affirmative action will be an instrument of reconstruction in South Africa. Joubert (1992: 1) argues that if affirmative action is viewed as the substitution of white with black labour in order to redress the imbalances of the past, there will not be any chance of an improvement in South Africa's competitiveness.

Affirmative action candidates are often placed in positions that they are not qualified or trained for. This is due to the acceleration caused by the short-term strategy. If the candidates do not fulfil the duties for which they are employed, they might view themselves as failures and also be regarded as inadequate by the other employees. The

current employees in turn seem to lose their motivation as the promotional opportunities become reduced.

Although various viewpoints have been debated regarding the definitions of affirmative action, it can be concluded that affirmative action is intended to enhance equity, to correct past discrimination, and to develop and empower members of disadvantaged groups to create a diverse yet effective workforce which will strive to achieve the organisation's goals.

In the implementation of any programme there are often arguments in favour or against from the parties concerned. The following section will address the arguments in favour of affirmative action.

1.6 Arguments in favour of affirmative action

The arguments that mitigate the negative aspects of the implementation of affirmative action are presented in this section by discussing the dismantling of discrimination; the reparation provided and the way perceptions are to be changed.

1.6.1 Dismantling of discrimination

South Africa's political and economic history has been characterised by the marginalisation of the black population, women and the disabled. It is in the light of this

situation that the initial process of affirmative action was intended to dismantle and eradicate all forms of discrimination.

Against this backdrop Marshall *et al.* (1980: 528) state that discrimination cannot be dismantled instantly by simply getting rid of discriminatory legislation. Over a long period of time those who were discriminated against would have fallen far behind in terms of ownership of the wealth of the country and the filling of skilled occupations.

Goldstone (1989: 69) agrees with this argument by stating that he has no doubt it will take many decades to amend, let alone to demolish, the many negative consequences of centuries of racial oppression in South Africa. If positive steps to bridging the racial gap are not taken, then South Africans will never live in harmony with each other and the economy will not have the manpower so necessary to drive it efficiently.

In the light of what has been said above, South Africans need to embark on a process of reparation of the damage that was caused by apartheid legislation. This process is necessary to allow all South Africans the opportunity to face the hurts of the past and to take up the challenge of what the future holds for them. The following section takes this discussion further.

1.6.2 Reparation provided

The previous section discussed the dismantling of discrimination, which leads to the process of repairing the damage, inequalities and hurts that apartheid legislation had caused. In order to create a basis of equality, positive steps need to be taken towards allowing every South African the exact same opportunity, without discriminating against anyone on the grounds of race, sex or language.

Khoza (1986:19) states that all South Africans should be provided with the same boots and straps as was done for whites before anyone shouts to those who neither had been given boots nor straps that they must pull themselves up by their bootstraps. This implies that not everyone in South Africa had been given the same opportunities to develop and therefore it will be unjust to expect a person to achieve the same as someone who had been provided with better opportunities. Faundez (1994: 4) suggests that affirmative action is not a form of reverse discrimination, but a method of providing reparation to benefit members of a group that has been discriminated against on account of race.

In order to provide reparation to the previously disadvantaged groups, the perceptions of all South Africans need to be changed, as discussed by the following section.

1.6.3 Perceptions changed

The way in which affirmative action is perceived varies from person to person and negative perceptions need to be dealt with in order for affirmative action to be effective. To ensure that affirmative action is implemented successfully, a paradigm shift in their perceptions needs to take place amongst all South Africans. Barker (1999: 255) suggests that when affirmative action is seen from an economic point of view, the markets don't seem to be functioning as required. If discrimination is the result of, for instance, perceived reality, intervention by government in the form of affirmative action must bring about a change in employers' actions towards individuals from certain groups.

These arguments can be countered also by the debate that, although intervention to eliminate discrimination is necessary, this does not necessarily require affirmative action. It is in this light that the arguments in favour of the implementation of the affirmative action programme and the counter-arguments are addressed.

1.7 Arguments against affirmative action

The previous section dealt with the arguments in favour of implementing the affirmative action programme and justifying it. It is also necessary to take cognisance of the arguments against the implementation the affirmative action programme in order to build a better basis for argument. The latter arguments will be presented here in terms of the lowering of standards; increase in wages; racial criteria and labelling.

1.7.1 Lowering of standards

The first argument against the implementation of the affirmative action programme is that it entails the lowering of work standards.

Barker (1999: 255) implies that the implementation of affirmative action programmes reduces economic efficiency because the best person for the job is not necessarily appointed. This implies that recruitment standards are lowered and that competition, the basic principle of the market, is negated. On the other hand, if these standards are reduced only in the short term to enable the previously disadvantaged to compete on equal basis, this will not necessarily be detrimental to the economy. Depending on the period and manner in which standards are relaxed, it might even be beneficial, as the productive potential of the disadvantaged has not been unlocked.

According to Qunta (1995:21), business people argue that their employee numbers should reflect their client base instead of the population at large. Although affirmative action is often opposed, a limited number of business people would take a stand against its implementation. She further postulates that Judge Goldstone suggested at the 1991 Labour Law Conference that affirmative action should not be based on racial criteria, but on temporary and non-racial criteria.

If the implementation of affirmative action is to be successful, the aspects surrounding the reduction of standards need to be carefully dealt with and, at the same time,

employers need to participate wholly in the process in order to eliminate any form of labelling.

1.7.2 Labelling

A further possible detrimental effect might be that the previously disadvantaged groups might use affirmative action as a way of claiming entitlement, as in the past when the whites enjoyed privileges under the system of apartheid. Labelling could occur and those who actually deserve to be in the position will be seen as having been employed because of being black and not appointed on the grounds of merit. Their self-esteem will be undermined and the myth of racial inferiority will be reinforced.

Marshall *et al.* (1980: 529) suggest that affirmative action could give rise to problems when it is applied in such a way that individuals are deprived of existing rights, although there might be ways of avoiding this problem. This can occur when a black person might be given preference above an equally qualified white person. The white applicant should therefore not be deprived of pre-existing rights. As far as meeting quotas is concerned, where a person from a disadvantaged group must fill certain skilled positions, they don't always fulfil the requirement of possessing the correct qualifications nor do they have the necessary experience. In addition to this, the demographics of South Africa indicate that black people form the majority of the South African population, and so implementing the quota system would be an extremely difficult task.

Affirmative action in South Africa is viewed as an instrument of reconstruction and not just a superficial adaptation of the system. In whatever way the definitions of affirmative action are understood, they all refer to equal employment opportunities and the correction of past injustices. Different kinds of terminology were used in the definitions of affirmative action and this needs to be clarified.

1.8 Terminology

This chapter provides a review of the relevant literature on affirmative action and in doing so the different terminology related to affirmative action will be discussed.

1.8.1 Inequality

For approximately 45 years in South Africa black people were discriminated against in accordance with official government policy. This was done by way of legislation such as job reservation, which reserved jobs for whites only; influx control, which limited access to urban areas; the Group Areas Act, which limited the availability of housing for black people; and the restrictions on social interaction, which resulted in the entrenchment of discriminatory practices such as apartheid.

Barker (1999: 258) explains that until the early 1980s black people were excluded from the provisions of the Labour Relations Act, 1995. This meant that they could not even bargain for wages and conditions of employment. The largest inequalities being faced at

present is between those with work and those without; between persons of colour and whites; and between men and women. If these inequalities are not dealt with this could have major financial implications for an already overburdened and underperforming economy.

According to Israelstam (1999: 19), it seems that white males have become victims of the employment equity legislation. Although the majority realise that affirmative action is necessary, this still does not place food on the tables of the retrenched employees. Many whites leave South Africa to pursue their careers in other countries, where their expertise is given credit. Those who remain employed by the organisation might continue until retirement and secretly resist the implementation of the employment equity plan. This reaction might damage the goals of affirmative action and also affect the skills base of South Africa.

Care must be taken to reduce and not increase racial tension. For many decades to come whites will form a critical component of the labour force and any action aimed at reducing inequalities should not result in skilled whites leaving the country. If this happens, it will reduce the availability of human capital and consequently cripple the economic system.

1.8.2 Black people

The term black people refers to Africans, Coloureds and Indians collectively.

1.8.3 Discrimination

According to Stone ((1991: 3), discrimination can be defined as giving preference to a person over another. Conrad and Maddux (1988: 67) confirm this definition by stating that when favouritism or injustice is shown towards employees, this results in discrimination. Discrimination is therefore the restriction of opportunities based on race, gender, religion, sexual orientation, disabilities and political preference.

1.8.4 Reverse discrimination

According to Conrad & Maddux (1988: 67), reverse discrimination is the recruiting, promoting and selecting of unqualified candidates over white males, who might have been more qualified or experienced.

1.8.5 Historically disadvantaged

Africans, Coloureds, Indians, women and persons with disabilities form part of the historically disadvantaged group.

1.9 Equal employment opportunity

The main objective of employment equity is to take remedial action to offset past employment discrimination. Managers have an essential role to play in making

affirmative action effective. Good interpersonal skills and not being judgmental go a long way towards equipping managers for this important task. Where preference was given to whites in the past, the doors have now been opened to all races. Groups of employees across the spectrum of races and ranks in the organisation work their way past stereotyped beliefs about each other. In this way incorrect assumptions are broken down, which in turn paves the way to better relationships. This prejudice reduction process also results in better insight into and understanding of the cultures of other races, along with greater acceptance and respect of differences between people.

Innes *et al.* (1993:54) suggest that the effects of discrimination in terms of class, race and sex should be eradicated. Discriminatory obstacles should be removed, such as excluding certain race groups from training and development. This does not imply that race is the only determining factor, but also sex and class distinction.

Reducing prejudice, however, is only part of the solution. Managers do not automatically interact more effectively after going through such a process. Many still, without realising it, interact with their employees in ways that leave them feeling inadequate and unaccepted. Management must change their attitudes about protecting employees and assisting all employees to adjust to the changes that equal employment opportunities are bringing into the workplace.

Individuals within racial groups differ greatly in spite of their common culture. Understanding each other's cultures is not enough without individual understanding.

1.10 Conclusion

The Employment Equity Act, 1998, was drafted as a valuable tool for the reconstruction of a racially divided South Africa. Owing to the fact that South Africa was exposed to discriminatory apartheid legislation for 45 years, where the majority of the population were deprived of equal opportunities, it became necessary for a paradigm shift within its labour force. Nelson Mandela, after serving a jail sentence of 27 years for his political convictions, made it his life's ambition to see South Africa adopt a change in values. Although most organisations are not in favour of change, it has become crucial for organisations to manage change effectively and at the same time maintain their own identity. The pressures placed upon organisations to comply with the rules of the legislation have increased. They have to employ candidates from the previously disadvantaged groups and at the same time need to deal with the restructuring of employees who are currently employed. The implementation of affirmative action is intended to reflect the demographics of South Africa within organisations. The definitions of affirmative action, regardless of the terminology adopted, all refer to equal employment opportunities and the correction of past injustices to develop and empower members of the previously disadvantaged groups. Affirmative action is therefore a process to ensure that black people, women and anybody else who was previously discriminated against should be allowed to have a real chance in life. The following chapter will deal with the origins of affirmative action and the social context. It is important to follow the historical background that gave rise to affirmative action within

the South African context. This will be dealt with extensively in the following chapter, where the origins of affirmative action and the social context are discussed.

CHAPTER 2

AFFIRMATIVE ACTION: HISTORICAL AND SOCIAL CONTEXT

2.1 Introduction

South Africa's apartheid legislation deprived certain race groups of the opportunity to develop and compete fairly and on equal terms. As indicated in the previous chapter, President Nelson Mandela embarked on the process of instituting change and has seen South Africa enter into this new dimension. Affirmative action was defined in the previous chapter as the process of correcting past injustices and the provision of legislation that aims to prohibit any form of unfair discrimination. Although the various arguments for implementing affirmative action have been identified, the Employment Equity Act, Act 55 of 1998, compels designated employers to abide by its requirements. It is important to note the historical context in which apartheid developed in South Africa and how the sanctions imposed abroad, as requested by, among others, Reverend Sullivan in the Sullivan Code, led to the abolition of apartheid laws. The effects of the post-1994 changes in the South African workplace have already been drastic. It is, however, essential to understand the development of affirmative action and to justify its existence in the South African workplace.

2.2 Historical context

As discussed in the previous chapter, South Africa's political and economic history was characterised by a climate of apartheid, especially in the workplace. This is confirmed by the fact that Africans had been prevented from participating in the formal market economy throughout the apartheid period and therefore there is a condition of inequality today. The correction of the labour market to allow equal opportunities to develop will be the next major hurdle for South Africa to cross after finally closing the books on apartheid.

As far back as 1910, when South Africa became a Union, there was already a white minority government, who claimed their authority on racial grounds, who were biased in their approach and enjoyed greater privileges. When apartheid was officially instituted in 1948, laws were passed that forbade Coloureds and black people to vote. Positions were reserved for Afrikaans-speaking white males only and preference was given especially to them to be employed in desirable positions of their own choice. The restriction placed on black people resulted in their not enjoying equal schooling, socialising, training and development. Black people were given labour intensive employment mostly and were compelled by legislation to remain in certain areas only. They were restricted to living in native areas and were not permitted to reside in areas designated for white occupation. Black people were not permitted to purchase any property beyond the borders of their homelands (Schrire, 1992: 6). Another factor in this context was also the separation of black and white education. The white schools were given better privileges and white

children received better education from well-trained teachers. Lapping (1986: 155) adds that when Dr Verwoerd introduced the Bantu Education Act in 1955, he proclaimed that the Bantu should remain in the reserves, as there is no place for them in the European communities. Education should not be wasted on them, as they would not use a subject such as Mathematics outside of the educational institute. This was owing to the fact that Africans were solely used for intensive labour practices.

Dr Hendrik Verwoerd, the Prime Minister of South Africa from 1958 until 1966, propagated the policy of apartheid. This is why he thought that it would be in everyone's best interests for all groups to function independently of each other (Schrire, 1992: 7). The concept of the homelands developed, where black people were to govern themselves and function independently from the whites in South Africa, who were to rule themselves. These black people were not permitted to hold any form of South African citizenship. Under the National Party rule during 1950 to 1960 only white Afrikaans-speaking males were given privileged positions and they too received promotions on those grounds.

BJ Vorster took over as Prime Minister after Verwoerd. It was only during the presidency of PW Botha in the 1980s that sanctions were imposed on South Africa by companies abroad. These companies withheld certain goods and services in order to place an intense pressure on the government of the day with the hope that South Africa will abolish its segregation laws.

It must be mentioned that when former president FW de Klerk came into power, he made it his mission to see that apartheid be removed from the South African code of law. The unbanning of certain political organisations such as the African National Congress (ANC) and the Pan African Congress (PAC) lead to the dawning of a new era for the country and its people.

On the 27th of April 1994 South Africa held its first democratic elections and this was the final closing of the apartheid legislation books, when every person legally living in the country could cast their votes for the leader of their choice. It can therefore be concluded that with the new national coalition government, the request for equality has been granted and South Africa need never face the apartheid scourge again.

In short, apartheid and its laws have left South Africa with a legacy of inequality. It is therefore imperative that South Africa take the best possible solutions towards economic equalisation and this will determine the success or failure of the democratic transformation.

Although apartheid legislation is no longer in effect, the post-apartheid era has to face the challenges of the legacy of apartheid.

2.2.1 Origins of affirmative action

South Africa's political and economic history has been characterised by the discriminatory laws aimed at Africans and, to a lesser extent, other non-white groups.

According to Herholdt & Marx (1999: 2), affirmative action in the United States has been extensively debated. As far back as 1960 affirmative action was implemented in the United States to advance African Americans. Later other minority groups such as the American Indians, Hispanics and Asians were included in this process. Following the success of the women's liberation movement in the mid-1960s, women also for the first time became part of the group defined as disadvantaged, making them potential candidates for affirmative action. The casualties of the Vietnam War after 1975 added disabled persons to the affirmative action list.

2.3 The period before 1994

Before the 1994 democratic elections South Africa had been exposed to racial segregation under the apartheid banner, which denied certain race groups from entering the workplace and therefore depriving them of the opportunity of developing to their full potential. This led to drawing up of the Sullivan Code of Conduct, which served to draw the attention of foreign investors to the problem that Africans were facing in South Africa.

2.3.1 Sullivan code

In South Africa the first effects of the American moves to promote affirmative action were experienced in 1978, when the Sullivan Code of Conduct was imposed on South African companies. According to Herholdt and Marx (1999: 3), Reverend Leon Sullivan of the Zion Baptist Church in Philadelphia formulated the so-called Sullivan principles. These principles were aimed at reducing the racial inequalities that were associated with apartheid. American Companies operating in South Africa were urged to subscribe to the Sullivan signatories' programme. The principles stated that there will be no segregation of races in eating and recreational places; that there will be equal and fair employment for employees; everyone should receive equal pay; training must be provided; the management and supervisory pool must be enlarged; and benefits provided to enhance the quality of life.

Signatory companies were also expected to contribute towards improving living standards; education; training; housing and health care of black people in order to create opportunities for economic advancement. Companies were expected to report on their progress in this regard.

These measures did not have the anticipated effect, so in 1987 Reverend Sullivan called for sanctions to be imposed on South Africa. Many companies abroad withdrew their provision of goods and services. Only when affirmative action became part of the democratisation process did the drive for equal opportunities take off as originally

intended. Thomas and Robertshaw (1999: 2) argue that the Sullivan Code was responsible for ending unfair discrimination within the workplace. However, the significant initiatives that it encouraged should not be overlooked. During the period that the Sullivan Code was in effect, signatory companies spent R777 million in order to empower black people who had previously been denied representation in Parliament. South Africa has emerged out of the ashes of total isolation and been allowed to enter and compete on the global market.

The Sullivan Code was a step towards liberating the historically disadvantaged black majority. It is clear that it became necessary for South Africa to embark on an affirmative action programme, which would address the inequality of representativity of all races in the workforce. The reasons behind justifying affirmative action are the requirements of the employment equity legislation; employers who are measured by their employment equity track records; pressure on organisations to restructure their workforce; the shortage of skills in South Africa; and the fact that employers have an ethical obligation towards employees.

2.3.2 Justifying affirmative action

The previous section dealt with the Sullivan Principles that aimed at reducing the racial inequalities associated with apartheid. This section takes the debate further by justifying the reasons to embark on an affirmative action programme with specific reference to South African history and its context.

Herholdt and Marx (1999: 4) explain that the reasons for implementing affirmative action programmes in the workplace were mostly politically orientated before the 1994 democratic election. In the post-apartheid era certain areas were identified for implementing affirmative action. The first motivation was the implications of the employment equity legislation and their specific requirements. The second reason is the fact that there seems to be an assumption that an organisation's relations and interactions with the state will be measured by their employment equity track records. The third factor relates to the pressure on organisations to restructure their workforce in order to reflect its composition in relation to the changes of its customer profiles. The fourth area identified is the shortage of skills in South Africa and the need to develop all available skills. Black trade unions have increased their pressure for reconstruction and development, which represents the fifth reason. Finally, it is the employer's ethical obligation to assist in the abolition of injustices brought about by the apartheid era.

In the light of the reasons for justifying the implementing of affirmative action, it can be stated that the legislation to eradicate apartheid was required. The following section will take the concept and philosophy of apartheid further.

2.3.3 Apartheid

Apartheid has been viewed as a philosophy that was created by the National Party. This is, however, not completely true. Meiring and De Villers (1995: 10) address this issue by

pointing out that this racial separation had its origins in the traditional European colonial policy, Calvinist theology and the technical, as well as cultural advantages of white South Africans. The unequal treatment of underdeveloped people was accepted as self-evident by many nations across the world.

Anstey (1997: 5) states that apartheid was introduced only to avoid long-term racial conflict and, although it would be dealt with separately, equal development would take place within cultural groupings. The element of equality soon disappeared and white dominance was prevalent within the system, owing to an excess of racial laws. These laws led to large numbers of detentions without trial; people being banned or receiving detention orders; people being charged under security legislation; hundreds of deaths in detention; thousands of political deaths; vast numbers of pass law convictions and forced removals.

According to Schrire (1992: 21), the last president of the National Party government, namely President F.W de Klerk, gave a historical speech in 1990 that would change the history of South Africa from the previous apartheid regime to a new era, with the unbanning of certain organisations such as the African National Congress and the Pan African Congress. It must, however, be kept in mind that specific historical events brought into effect certain imbalances at different levels in South African society.

2.4 The period after 1994

The historical context of the previous sections dealt with the formulation of apartheid legislation and how sanctions from abroad lead to its removal. According to Meiring and De Villiers (1995: 14), the apartheid design of separate areas for separate people was faced with increasing resistance. The unequal treatment of underdeveloped people had been accepted in the past as self-evident by nations across the world. But the traditional support mechanisms such as the Afrikaans churches, the Afrikaans media and the business sector started defecting. Increasingly community leaders started to explore alternatives that previously had only been whispered in private conversations. The moral and strategic justification for apartheid crumbled. After the 1994 democratic elections South Africa was compelled to embark on chartering a new course in order to repair the damage that apartheid legislation had caused.

2.4.1 Charting a new course

Prior to 1994 international and home pressures built up, which initiated the process of change. After the first democratic election of 1994 South Africa embarked on a process of radical change. Originally international and home pressures required a process of change to be initiated within the labour force. South Africa has now charted a course to a new future built on the principles of fairness (equity and justice), integrity and honesty (trust), human dignity (all men are born equal with equal rights), service (contributing), quality and excellence and potential (growth, reconstruction and development). South

Africans need never to face the hurt and destruction of the apartheid scourge again within the workplace.

2.4.2 The South African workplace

According to Thomas and Robertshaw (1999: 3), indications that there are still adversarial relationships amongst colleagues in the South African workplace. There is a lack of trust, and the commitment of and the morale amongst whites have declined drastically. In a survey conducted by the International Survey Research it was found that out of a group of 23 000 employees attitudes have been influenced negatively since the 1994 democratic election. The problem is that if employees have a low morale, this will in the long run influence productivity negatively.

2.5 Conclusion

South Africa's historical past has been identified as periods of deprivation for certain race groups in terms of legislation by the apartheid regime. It is clear that there was a definite inequality for at least 45 years. Not everyone had the same opportunity to develop, as white males had a much better chance in life than other South African citizens. Political fighters, such as the Reverend Sullivan, called for sanctions to be instituted against South Africa in order to put pressures on the politicians to reduce racial inequalities. The period before 1994 was such that there was a need for affirmative action within the labour market. However, after the first democratic elections of 1994, the traditional barriers that

supported the apartheid system were demolished, which will ensure a peaceful and fair existence for all South Africans. In the following chapter the legal framework which deals with the relevant laws governing affirmative action strategies will be discussed.

CHAPTER 3

LEGAL FRAMEWORK OF AFFIRMATIVE ACTION

3.1 Introduction

The historical background and social context were dealt with above and it was concluded that before the 1994 democratic elections South Africans were not all treated equally. The fact that races were separated by apartheid legislation ensured that certain citizens were denied the right to enjoy freedom and association. This led to the promulgation of certain legislation in order to ensure fairness for all South Africans. The Constitution of the Republic of South Africa, 1996, which is the highest form of authority, constitutes legislation that aims to protect and promote equality in South Africa. The Constitution, 1996, is strongly supported by the Employment Equity Act, 1998, which aims to provide guidelines for workplace equity and is specifically aimed at designated employers. In conjunction with the Employment Equity Act, 1998, the Labour Relations Act, 1995, aims to guard against unfair discrimination for all employees.

3.2 Background

After South Africa became a democratic state a process had to be embarked upon of ensuring that those management positions, which was mostly dominated by white males, received attention. Although companies had already made progress in appointing black

people in order to restore the imbalances of the past, they seem to place them in positions, which have no real decision-making requirements, nor needing to take responsibility.

Adam (2000: 1) states that the 2000 National Statistics indicate that whites still dominate 96,4% of top managerial positions held in South Africa. There has only been an increase of 2,3% regarding the appointments of black people to senior management positions. South Africa has the most unequal distribution of income in the world. The bottom 20% of income earners receive 1,5% of national income and at the same time the wealthiest 10% earn 50%. Poverty is overwhelmingly concentrated in the African and Coloured population. Amongst the Africans 95% are poor and 33% of the Coloured population live in poverty.

Seen in this light, it was necessary to pass laws that prohibit any form of unfair discrimination. On 19 October 1998 the Employment Equity Act, 1998, Act 55 of 1998 came into effect to promote equal opportunity and fair treatment for all South Africans. In addition to the Employment Equity Act, 1998, another significant piece of legislation was drafted. The Constitution of the Republic of South Africa, 1996, Act 106 of 1996, was accepted as supreme and is relevant to all South African citizens. Any form of legislation must be read in conjunction with the Constitution of the Republic of South Africa, 1996.

3.3 Constitution of the Republic of South Africa, 1996

After the 1994 democratic elections a new constitution had to be drafted in order to accommodate the changes that South Africa had embarked on after the “walls of apartheid” had crumbled. The Constitution of the Republic of South Africa, 1996, Act 106 of 1996, is seen as the supreme piece of legislation. It is applicable to all South African citizens and not specifically aimed at the labour force only. Any legislation must be read in conjunction with the requirements of the Constitution, 1996, in order for it to be legitimate.

According to Van Wyk (1995:15 – 16), all constitutions aim at protecting and promoting equality as their guiding principles. With reference to South Africa’s history of inequality, the Constitution, 1996, gives top priority to addressing equality. Since affirmative action deals with different principles of equality, it is no surprise that it is part of the Constitution of the Republic of South Africa, 1996, Act 106 of 1996.

Section 8(3)(a) of the Constitution, 1996, describes affirmative action as the measures designed to achieve the adequate protection and advancement of people, groups and categories of people disadvantaged by unfair discrimination in order to enable their full and equal enjoyment of all rights and freedom.

South Africa has become a constitutional democracy that is based on principles of rights and equality. Section 9 of the Constitution, 1996, protects the rights of all South Africans

and promotes equality. Section 9(1) contains the equality clause, which indicates that everyone is equal before the law and therefore should receive equal protection. S 9(2) deal specifically with affirmative action, and provides that everyone living in South Africa should enjoy all rights and freedoms. This legislation aims to protect and advance those who were discriminated against under the previous apartheid regime. The final sections 9(3), 9(4) and 9(5) are specifically written to eradicate discrimination in terms of race, gender, marital status, age, pregnancy and religion.

Section 195 deals with the basic values and principles governing public administration. These include the promotion of professional ethics; efficient/economic use of resources; being development orientated; the provision of services without being biased; the public participation in policy-making; being accountable and transparent; having effective human resource management and the broad representivity of the South African people.

The Employment Equity Act, 1998, contributes to the legislation of the Constitution, 1996, in that it aims to bring equality to all South African citizens by eradicating all forms of discrimination.

3.4 The Employment Equity Act, 1998

The Employment Equity Act, 1998, Act 55 of 1998, was introduced to achieve workplace equity by means of promoting equal opportunity and fair treatment for all. The main objectives of the Act are to address the following:

1. To eliminate unfair discrimination;
2. Implementing affirmative action, which aims at redressing past discrimination; and
3. Ensuring designated groups such as black people (African, Coloured and Indian), people with disabilities and women are given equitable representation at all levels of the workforce.

The Employment Equity Act, 1998, apart from prohibiting any form of unfair discrimination in employment, directly affects employers by requiring them to prepare and implement employment equity plans to rectify imbalances between their current workforce profile and the demographic profile of the national and regional economically active population. Employment equity has thus become extremely important and an unavoidable part of the management's strategic planning agenda.

The preamble of the Act identifies the need to redress the inequalities left by apartheid and the way that the legislation should address these issues.

3.4.1 Preamble

The preamble to the Employment Equity Act, 1998, states that, as a result of apartheid and other discriminatory laws and practices, there are disparities in employment, occupation and income within the national labour market. This created such pronounced disadvantages for certain categories of people that they cannot be redressed simply by repealing discriminatory laws. Apartheid, with its related laws, created a legacy of

inequality within South Africa. It is in support of redressing this state of inequality that the Act is promulgated as there is no hope that a transformation of this nature will come about automatically. The only way to effect it is to legislate in favour of it, so that equity and fairness can be achieved.

3.4.2 Equity and fairness

The Employment Equity Act, 1998, aims to achieve workplace equity and fairness with regard to race, gender and health status. This is to be achieved by means of legislation against discriminatory practices, such as pay disparities, on the one hand and imposing affirmative action requirements on employers, on the other (Israelstam, 1999: 40).

Sections 5 to 11 of the Act state that no person may unfairly discriminate directly or indirectly against an employee in any employment policy or practice on grounds of race, sex, pregnancy, marital status, family responsibility, gender, colour, sexual orientation, disability, religion, political preference, culture, language and age. It is not unfair discrimination to take affirmative action measures in terms of this Act or to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.

The Act is, however, applicable to designated employees, as indicated by the requirements provided.

3.4.3 Designated employers

The Act applies to the so-called designated employers with more than 50 employees and those with less than 50 employees but with an annual turnover above a defined amount. It stipulates a duty to apply affirmative action, as well as introducing a process of ensuring over a certain period of time that improvement is shown with regard to employment equity. In the act a duty is placed on designated employers to introduce affirmative action measures to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce. The designated group consists of black people, women and disabled people. The Act requires these employers to make plans to achieve progress towards employment equity and this has to be submitted to the Department of Labour, which may assess the plans. This approach is intended to encourage transformation in the workplace.

The course of action for affirmative action as set out in the Act will have far-reaching effects on labour relations. Future labour relations will be extensively influenced by affirmative action (Nel, 1999: 283).

If an employer refuses to comply with the rules or certain other administrative obligations of the Act, a court of law can impose a heavy fine. Maximum fines for contravening these sections range from R500 000 for the first offence up to an amount of R900 000 for the

contravention of four offences within the period of three years (Herholdt & Marx, 1999: 82).

The Act is aimed at both the private and public sectors. It does not, however, apply to members of the National Defence Force, the South African Secret Service and the National Intelligent Agency. The Act is applicable to all employees who are employed by the state and who receive some form of remuneration. All employers and employees are required by the Act to comply with the sections that relate to unfair discrimination.

Section 13 of the Employment Equity Act, 1998, applies to any employer who has 50 employees or more or has fewer employees but has a specific annual turnover threshold. The thresholds of these sectors are indicated for agriculture at R2 million; mining and quarrying at R7.5 million; manufacturing at R10 million; electricity, gas and water at R10 million; construction at R5 million; retail, motor trade and repair services at R15 million; wholesale trade, commercial agents and allied services at R25 million; catering, accommodation and other trade at R5 million; transport, storage and communications at R10 million; finance and business services at R10 million; and community, social and personal services R5 million.

By 1 June 2000 all companies who employ 150 employees or more should have applied an EE plan and for companies who employ less than 150, the date will be 1 December 2000. The Employment Equity Act, 1998, was promulgated in four phases in order to allow employers the opportunity to apply the requirements of the Act progressively.

3.4.4 Medical testing

When it comes to medical testing, the Employment Equity Act, 1998, prohibits questioning and inquiring about an employee's medical condition. Only when legislation requires or permits it is it justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of the job. This could be a situation where the employee is to be exposed to high levels of noise, for example, and it would be in the interest of the employee to receive regular hearing tests in order to ensure employee wellbeing. A second scenario would be the case of a job requiring an employee to work on high scaffolding. Should the person have a seizure, his/her life could be in great danger and that of his fellow employees. The inquiry into the health of this prospective employee would not constitute discrimination.

3.4.5 Phase 1 – Establishing the Commission of Employment Equity

In phase 1, chapter 4 of the Act was implemented on 14 May 1999, which established the Commission of Employment Equity. This commission is different from the Commission for Conciliation, Mediation and Arbitration (CCMA) in that it plans to publish certain regulations. These regulations will include the reporting forms for employers; a summary of the Act for display at the workplaces; procedures for the conduct of an analysis; the preparation of a workplace profile and the Codes of Good Practice. Emphasis will be placed especially on the contents of an Employment Equity plan, how to deal with the

disabled and the treatment of employees who are infected with HIV/AIDS at the workplace.

3.4.6 Phase 2 – Prohibiting unfair discrimination

Phase 2 effected the provisions of chapter 2 of the Act, which deals with the prohibition of unfair discrimination, on the 9 August 1999. Section 7 prohibits medical testing unless it is permitted by law; employment conditions in the workplace; fair distribution of benefits or inherent requirements of the job. Protection is afforded to persons against being tested for the HIV/AIDS virus, unless it is justified by legislation (Section 50 (4) of the Act or Labour Court order). Section 8 covers the issue of psychometric testing and other similar assessments. This section prohibits such testing unless it is scientifically valid and reliable. It must be applied fairly to all employees and not be biased against any employee or group of employees.

The essence of employment equity is the eradication of all forms of unfair discrimination in terms of employment policies (this includes hiring, promotion, training, remuneration, benefits and retrenchment) and to initiate steps that will encourage employers to implement programmes to accelerate the training and promotion of historically disadvantaged people.

3.4.7 Phase 3 – Submitting equity plans

On 6 December 1999 phase 3 was implemented in terms of chapter 3 of the Act. This chapter deals with affirmative action and the submission of equity plans and reports. This means that employers are required to report on their plans to the Department of Labour. Employers who employ more than 150 employees are expected to report 6 months after the Act (i.e. June 2000). Section 27 of the Act covering the aspect of income differentials was also implemented. This section deals with the submission of a statement on the company's remuneration and benefits to the Employment Conditions Commission, which is established by section 59 of the Basic Conditions of Employment Act, 1997, Act 75 of 1997.

3.4.8 Final phase – State contracts

The final phase, which is related to section 53 of the Act and deals with the tendering of state contracts, came into effect at the beginning of September 2000. This in essence means that employers who employ more than 150 employees will be allowed 3 months after the submission of their required reports to comply to the provisions of the Act, should they wish to tender for state contracts.

3.4.9 Implications of implementing the Employment Equity Act, 1998

Chapter 1 of the Employment Equity Act, 1998, (Annexure A) indicates that only employers with 50 employees and under a certain minimum turnover are excluded from the Act. Local government bodies; the National Defence Force; the National Intelligence Agency and the South African Secret Service form part of the groups excluded from the Employment Equity Act, 1998. The Act is aimed specifically at black people (Africans, Coloureds and Indians), women and disabled people, who were previously neglected. The Act deals with the processes of recruitment and selection; job grading; training and development; performance appraisal; promotions and dismissals.

Designated employers are required by chapter 2 of the Act to implement affirmative action; consult on affirmative action issues; conduct an employment equity analysis; compile an employment equity plan and to report to the Director-General on their progress.

The Act sets out to eliminate discrimination in employment, as this is the cause of the lack of equality. However, this still leaves the effects of past discrimination unresolved. The further purpose of the Act is to correct the faults of the past by ensuring that the employment equity measures are implemented. Complementing the Constitution, 1996 and the Employment Equity Act, 1998, is the Labour Relations Act, 1995. As will be discussed in the following section, it sets the legal boundaries of discrimination.

3.5 Labour Relations Act, 1995

The Labour Relations Act, 1995, Act 66 of 1995, prohibits unfair discrimination for existing employees and for people seeking employment. All organisations and members of selection committees must have a thorough knowledge of the provisions of the Act, especially when it comes to the affiliation of employees to trade unions and workplace forums.

According to Gerber *et al.* (1998:157), the Labour Relations Act, 1995, embodies and states specific guidelines for the legal boundaries of discrimination as indicated in the Constitution, 1996. Unfair discrimination is best described by means of section 7 (a) to be either aimed directly or indirectly against an employee on grounds of race, age, gender, religion, disability and language. Section 7 (b) of the Act addresses the issue of unfair labour practice, which prevents an employer from exercising any right presented by its requirements.

The Labour Relations Act, 1995, is responsible for two major institutional innovations, namely the workplace forums and the Commission for Conciliation, Mediation and Arbitration (CCMA). Both of these institutions fulfil a major role when it comes to employment equity. The Act further extends protection to job applicants, which will be dealt with in the following sections.

The Labour Relations Act, 1995, contains valuable sections, such as chapter 2 that deals with freedom and association; schedule 7 that prohibits unfair discrimination; and schedule 8 that provides the guidelines for the Code of Good Practice with regards to dismissals. Chapter 2 of the Act allows for the freedom of employees to associate with any professional body they choose to.

3.5.1 Freedom of Association

Chapter 2 of the Labour Relations Act, 1995, prohibits employers from preventing employees from belonging (or not belonging) to any association, organisation or trade union. It also prohibits employers from prejudging a job applicant based upon their past, present or anticipated exercise of their right of freedom of association. This implies that any unfair labour practice will be prohibited as stipulated in schedule 7 of the Act.

3.5.2 Unfair labour practise – the prohibition of discrimination

Schedule 7 of the Labour Relations Act, 1995, provides the guidelines with regards to discriminatory labour practices, which indicates the importance of avoiding unfair discriminatory practices. The Labour Relations Act, 1995, covers both direct and indirect discrimination. This is defined as follows.

- a) Direct discrimination means that the criterion used to distinguish is in itself unfair (e.g. only men may apply for a certain position);

- b) Indirect discrimination implies that, although the criterion used may be fair in form, it is unfair in effect (e.g. an advertisement that requires a Grade 12 for a position of a cleaner). The implication is that a large segment of the employable population is effectively prevented from obtaining the position. It could be argued that setting the requirement of a certain educational level for a position that requires little formal education is a form of indirect discrimination.

The discrimination must be fair. This means that the employer must be able to justify the discriminatory criterion. Any discrimination based on an inherent requirement of the job does not constitute unfair discrimination. For example, an appropriate qualification is required such as a B.Comm for the position of an accountant. Seen in this light, it is crucial to develop employees from under-represented groups, as indicated by schedule 8 of the Act.

3.5.3 Code of Good Practice

Schedule 8 of the Labour Relations Act, 1995, deals with the code of good practice and states that affirmative action measures should be developed to improve the under-representation of designated group members. This should be achieved through training and development. The training and development should include on-the-job mentoring and coaching, internships and accelerated training for new recruits.

According to Nel (1999: 230), the key purpose of the Code of Good Practice is to ensure that the employer and the employees should have mutual respect for each other. Employees are protected from arbitrary action and employers are entitled to satisfactory conduct and work performance from their employers.

If there are any unresolved disputes that need to be dealt with, referral to the Commission for Conciliation, Mediation and Arbitration is possible, as required by Chapter 7 of the Labour Relations Act, 1995.

3.6 Commission for Conciliation, Mediation and Arbitration (CCMA)

The Labour Relations Act, 1995, is responsible for establishing the Commission for Conciliation, Mediation and Arbitration (CCMA), which will assist in resolving disputes rapidly. Nel (1999: 95) states that according to chapter 7 of the Labour Relations Act, 1995, the CCMA is an independent body with jurisdiction in all the provinces of the Republic of South Africa. The Minister, in consultation with the governing body, determines the location for the head office. The functions of the CCMA, such as dispute resolution; dealing with unresolved disputes; the establishing of the Employment Equity Advisory Council; and the monitoring of the process will be addressed here.

3.6.1 Dispute resolution

It is seen that the Commission for Conciliation, Mediation and Arbitration will play an important role in the anti-discrimination and employment equity aspects of the Employment Equity Act, 1998. Their primary function is to resolve disputes through conciliation, mediation and arbitration. They will also assist in the establishing of workplace forums. Any unresolved dispute can be directed to the CCMA for possible solutions.

3.6.2 Unresolved disputes

All employment equity disputes that cannot be resolved in the workplace will be referred to the Commission for Conciliation, Mediation and Arbitration for assistance. A party may only approach the Labour Court if they are dissatisfied with the outcome.

3.6.3 Employment Equity Advisory Council

Employment Equity will establish the Employment Equity Advisory Council (EEAC) as an advisory council for the Minister of Labour, who will appoint an independent chair. The Act will ensure adequate representation of stakeholders in the council.

3.6.4 Monitor progress

The EEAC will give expert advice on policy as well as monitor progress in attaining employment equity and representation.

Disputes regarding employment equity would first be forwarded for the attention of the CCMA and then to the Labour Court. If the relevant body decides that an employing organisation has violated employment equity requirements, it would take corrective action. For example, an employer might be required to promote an employee who was denied promotion on discriminatory grounds.

3.7 Implications of implementing the Labour Relations Act, 1995

Section 5 of the Labour Relations Act, 1995, (Annexure B) which deals with the protection of employees or potential employees, has certain implications for employers. All organisations have to be aware that employees' wishes must be respected, as per the provisions of the Act, to be affiliated to trade unions and to take part in workplace forums.

Section 14 of the Act indicates that trade union representatives are permitted to perform certain functions. They should be allowed the right to represent trade union members and at the same time be given the freedom to do so. Furthermore, trade union representatives have the authority to confront the employer if the requirements of the Act are not adhered

to. Section 16 of the Act obligates the employer to supply trade union representatives with the necessary information when in the process of consultation. This is supported by Sections 79, 84, 85, 86, 89 and 90, which permits employees to participate in workplace forums and allows them to consult with employers on issues affecting employees. The employer must consult with the workplace forum in the case of non-compliance with the requirements of the Act. This implies that members from designated groups are excluded from certain job requirements.

Education and training form part of the development programme and employers must consult the workplace forum on these issues. When it comes to joint decision making, the employer is obliged to supply the workplace forum with any information they might require that affects the decision-making process. All documents such as the employment equity plan and affirmative action policy must be made available to the workplace forum.

Schedule 7 of the Act, which deals with unfair labour practices, implies that all employees and employers must have a thorough insight into what constitutes unfair and discriminatory labour practices.

The requirements of the Labour Relations Act, 1995, enforce strong principles on employers and at the same time provides employees with certain guidelines to function within.

3.8 Conclusion

It can be concluded that not every South African enjoyed the same equality and therefore legislation had to be compiled in order to provide the necessary guidelines for workplace equity. The Constitution, 1996, provides the guidelines for addressing equality for all South African citizens. The Employment Equity Act, 1998, compliments the Constitution, 1996, in that it provides employees with regulations for workplace equity. The Labour Relations Act, 1995, continues supporting the equity process by guarding employees against unfair discrimination. These laws are binding and therefore place a legal responsibility on the employers within the public sector. It is against this background that the current reality of Telkom, with regards to the legislation, is addressed in the following chapter.

CHAPTER 4

TELKOM'S CURRENT REALITY

4.1 Introduction

The legal framework in the form of the Constitution, 1996; the Labour Relations Act, 1995 and the Employment Equity Act, 1998, gives clear guidelines for employers and employees to abide by and, in doing so, create a workforce that is representative of the demographics of South Africa. According to the requirements of the Employment Equity Act, 1998, (Annexure E) employers with more than 50 employees are legally bound by the criteria set out in the legislation and will have to abide by those requirements. It is important to understand the current situation of Telkom SA in order to find possible solutions to implement an employment equity plan.

4.2 Background

Owing to the fact that Telkom SA is endeavouring to provide South Africa with the telecommunication services they deserve, a substantial effort is being made in its striving to be a world class network operator by the year 2002 and a globally competitive operator by the year 2007. This is to enable present and future customers to communicate and exchange information, when and where they want to.

Telkom SA can be classified as the largest communication company in South Africa. On 1 October 1991 they became an independent company, previously known as the Department of Post and Telecommunications. Recently Telkom SA joined forces with SBC Communications International Inc. from America and Telecom Malaysia as their equity partners. There is a rapid growth in the use of new technology and global communication frameworks that are introduced on a daily basis to suit the needs of the customers. Seen in this light, Telkom SA forms part of the designated employer group and is expected to compile a business plan which will provide them with the necessary guidelines to apply the requirements of the Employment Equity Act, 1998.

4.3 Business plan

The business plan, as required by the Employment Equity Act, 1998, has to be an extremely thorough document. Planning and development are based on a careful analysis of both the existing workforce and the accepted employment policies, practices and the current working conditions in order to eradicate all barriers that hinder Africans, women and people with disabilities from gaining fair employment. Affirmative action constitutes a central part of the business plan of Telkom SA. It is a set of specific and results-orientated procedures aimed at redressing the historically generated imbalances of the past by creating appropriate opportunities through education, training, development and advancement of Africans, Coloureds, Indians, women and disabled persons to enable them to operate at all levels within the company. It is directed at improving the representation of racial, gender and disabled groups. This is achieved by addressing all

the functions at all levels throughout the company. Planning is carried out to ensure employee retention and to make provision for future recruitment.

The employment equity plan (Annexure F) sets out the company's employment equity objectives for the period 1 April 1999 to 31 March 2002, which include the targets for representation, promotion and recruitment of black people and women, as well as overall targets for people with disabilities. It aims at creating a more representative workforce with regards to race, gender and disability. The elimination of all forms of unfair discrimination and barriers to achieving equity are the main objectives of the plan.

Telkom has already implemented an employment equity reporting structure that conforms to legislative requirements. The company is regarded as one of the leaders in implementing affirmative action in South Africa, due to the fact that it had already embarked on the equity initiatives as far back as 1991.

The Group Executive of Human Resources is accountable and responsible for the implementation of the employment equity plan and he has to report to the Chief Executive Officer. Each Managing or Group Executive of Telkom is accountable to either the Chief Executive Officer or Chief Operating Officer for delivery of the plan to their respective service organisations. An Employment Equity Committee will also be established for Telkom managers to consult with organised labour on the implementation, monitoring and communication of the plan.

4.4 Problem areas

The Regional Executive has made it his objective to address the issues of equality in the Western Region. Telkom SA has a five-year plan set according to the requirements of the Employment Equity Act, 1998, to bring equality in the workforce. For him it is extremely important to balance the racial representation of the country within the workplace. With the implementation of the affirmative action programme certain problem areas were identified.

One of the largest problems that Telkom SA is facing at present is the fact that positions originally occupied by the previously advantaged cannot be made redundant to accommodate the previously disadvantaged. Many of the job applicants do not possess the appropriate qualifications and, if they do, they might lack work experience. The criteria that are set according to the job specification when it comes to advertising have to be adapted to suit these candidates. This in turn causes friction among those employees who have been employed in the company for many years and are fully qualified for a specific position, but due to affirmative action will not be considered. This unfairness, in the view of many, has led to dealing with grievances becoming part of each recruitment process.

The employees from the previously advantaged groups feel that Telkom SA is bringing about its own destruction for recruiting candidates to positions that they are not fully qualified for, but being employed on grounds of skin colour.

The demographics of the Western Region play an integral part when it comes to the balancing of the affirmative action plans. According to Kanya (2000: 48), there seems to be a scarcity of skilled black labour based on the population figures for the Western Region (Annexure D), which indicate that the Coloureds (54 %) are the majority, followed by the Africans and whites (both 21%), Indians (1%) and unspecified others (3%). The fact that Africans and females have been prevented from entering the labour market has resulted in the number of skilled and qualified candidates being very limited. Telkom SA in turn utilises a statistical report, namely HR101, which gives the users the current reality of the racial allocation and the targeted percentages to attain the affirmative action goals.

4.5 HR101 report

Owing to the fact that Telkom SA is committed to achieving and maintaining high levels of efficiency, quality and customer service, the affirmative action policy is consistent with the retention of all employees who add value to the company. By compiling a target report such as the HR101 report, the Regional Executive is able to plan ahead by recruiting suitable candidates who can be developed for future employment.

As part of their business plan, Telkom SA has embarked on a process of bringing equality to the workplace. Surveys and statistical reports such as the HR101 report (Annexure C) that are being used at present serve as measuring tools to ascertain desirable outcomes.

The report contains information such as the different race groups per job level and the desirable percentage is indicated per group. These reports are given to the respective line managers on a monthly basis, so that they can identify the areas that need to be addressed. The HR101 report is rather valuable when it comes to the recruitment process, as it provides the managers with a proper indication of how the specific position must be advertised. Each advertisement placed indicates that the advertised position is conducted according to Telkom SA's affirmative action policy. The report also assists them in a case where an employee requests a transfer to a specific manager. In doing this, the Regional Executive has the opportunity to acknowledge any shortcomings for certain employment categories and can enforce employment targets and decline employment in areas where there is already an excessive number of employees in certain race groups. The report clearly indicates that there is a lack of representation of Africans and females in most of the employment levels – something which needs to be addressed urgently.

4.6 General lack of representation of Africans and females

Apartheid legislation had created a skewed situation within the labour force, as Blacks and women were overlooked for employment in skilled vacancies. Although it is not written policy, preference is given to African males and women when it comes to the filling of vacancies. Positions that were originally male dominated, such as the technical officers, must be filled with white female applicants. White males hardly feature as part of any recruitment process. Coloureds in turn do not even form part of the black grouping, as they are well represented in the workplace. The Regional Executive of the

Western Region will not accept any approval of appointment letters that do not comply with the above-mentioned criteria. The researcher is of the opinion that this places a huge burden on the role-players in the human resource planning process. There are not sufficiently qualified African applicants who meet the necessary requirements, with the result that the exceptions to meeting the minimum work requirements are condoned. Other applicants have to meet all the criteria that are required as part of the job description of the position and will not be accepted if they don't have the correct qualifications or work experience. Africans comprise only 4% of all Telkom Western Region staff. There is no representation on the operational levels and none on management level. Only 1% is represented in junior management.

Females represent only 7% of Telkom's workforce in the Western Region. This is far below the set targets for all levels, starting from the assistant/auxiliary levels and extending to top management. In the junior management and operational levels only 1% female representation is found. No female employees are represented at the managerial levels.

4.7 Conclusion

Telkom SA has already embarked on a process of affirmative action as required by the Employment Equity Act, 1998, subsequently the Regional Executive has taken the necessary steps to appoint candidates from the previously disadvantaged groups. There is, however, a drastic need for Africans and females to be appointed within most of the job

levels within Telkom SA. By making use of the HR101 report, the various role-players can analyse the data and employ candidates according to the required vacancies. To maintain a balance between retaining highly skilled employees, on the one hand, and employing candidates from the previously disadvantaged groups, on the other, is a daunting task for the Executives of Telkom and this has to be done tactfully. The employment equity legislation in turn has set certain targets to be met and this enforces specific laws that have to be complied with. The implementation of the Employment Equity Act, 1998, has certain important implications for human resource planning.

CHAPTER 5

IMPLICATIONS OF EEA FOR HUMAN RESOURCE PLANNING IN TELKOM

5.1 Introduction

The previous chapter gave an indication, on the one hand, of the current reality that Telkom is facing. On the other hand the Employment Equity Act, 1998, provides for fairness with regards to human resource planning. This chapter will address the human resource planning process and how the Employment Equity Act, 1998, influences decision-making.

5.2 Objective of human resource planning

Human resource planning can be viewed as the process of developing and implementing plans and programmes to ensure that the right number and choice of employees are available at the right time and place to perform a specific task that will assist the organisation to reach its objectives. Swanepoel *et al.* (1998: 273) state that human resource planning addresses the major objectives of the organisation as an indication of the type of employees required in the future. This in turn must be directly linked to the strategic business plan. Strategic planning includes the formulation of strategies, goals and objectives for the organisation and this forms the foundation of human resource planning. French (1994: 131) emphasises the continuous nature of human resource planning within the context of strategic planning and the changing conditions both within

and outside the organisation. This implies that the structure of the organisation, the specific jobs to be performed, the financial and technological resources allocated and the number of employees must reflect the general strategies and goals of the organisation. Beach in Schwella *et al.* (1996: 35) defines human resource planning as a process that enables a business to gain access to an adequate number of qualified candidates who are available to be placed into positions as required and provides satisfaction to those candidates placed into those vacancies.

It can therefore be stated that human resource planning involves the process of forecasting the human resource requirements that will meet the organisation's needs and plan for the future and the number of employees required. The main element of human resource planning is the recruitment and selection of the correct candidates to fill possible vacancies. The issues surrounding recruitment and selection will be identified in the following section.

5.3 Background

Regarding the human resource planning process in Telkom SA, strict adherence to the Employment Equity Act, 1998, has to be followed. Owing to the fact that Telkom SA has 45 000 employees and is still partially state owned, the Act has to be enforced within the company.

The Chief Executive Officer, Sizwe Nxasana, stated at the launch of the Employment Equity awareness campaign that the leadership team of Telkom will have to work together in order to ensure that the company reflects the demographics of the country. They would have to be proactive in attracting, empowering and retaining people from diverse groups in order to ensure that the company is representative of the greater South Africa and to be a model for other companies

5.4 Recruitment and selection

With regards to the definition of human resource planning, the process of recruitment and selection is continued here. The objective of recruitment and selection is to attract, recruit and retain the right people with the right competencies (knowledge, skills and behaviour) at the right time. Recruitment furthermore involves the marketing of Telkom SA's careers in order to supply a sufficient number of potential employees for selection. These actions will ensure that a continuous supply of high-quality human material is available to meet the company's immediate and future human resource needs. It is also very important for Telkom SA to establish a positive image as an employer in the labour market.

According to Schwella *et al.* (1996:38), recruitment can be defined as the action taken to guarantee that the largest number of suitably qualified candidates apply for vacant posts. On the other hand, the selection process identifies the most suitable person to be employed in the available posts. Thomas and Robertshaw (1999: 89) state that the

recruitment initiatives seem to be the most obvious avenue available to companies to achieve employment equity. Personnel, including those at recruitment agencies, entrusted with the responsibility of recruitment and selection therefore need to be appraised of company policy with regards to employment equity to ensure that all screening and hiring decisions take heed of this policy. Managers should refer to the employment equity targets for their departments prior to making final employment decisions to ensure that they keep to such projected targets.

Selecting the right people is critical for the advancement or success of any company or business. However, on different occasions, selection decisions are made on the basis of inaccurate or incomplete information. In the short term the decisions can result in lawsuits and cost the company large sums of money. In addition to the cost factor, the other factor to consider is that the company's image can be negatively affected. In the medium or long term it can result in low productivity, absenteeism and labour turnover.

For Telkom SA in particular, selecting the right people is critical to enable the company to realise its vision of becoming a world-class communications company. It is therefore very important for human resources and line management involved in selection decisions to understand accurately the selection process and procedures in order to select the most suitable candidate for the required position. In addition to this, human resources and line management should become acquainted with the relevant company policies and applicable legislation as stipulated the Employment Equity Act, 1998 and the Labour Relations Act, 1995.

Human (1993:13) is of the opinion that affirmative action should take place at the recruitment and selection stage and should then be developed to suit the workforce requirements. The individual recruit should at least meet the minimum requirements.

In terms of the Employment Equity Act, 1998, there are issues that need to be kept in mind with regards to the recruitment of new employees. Good practices in this area (2, 4) include the following:

- a) Advertising internally before advertising externally;
- b) It is important to choose an advertising agency or media that are compatible with the employment equity principles;
- c) Competencies must be clearly defined. Added to this is the fact that the candidate should be able to achieve an expected standard within a reasonable time;
- d) Ensuring that selection panels are sufficiently diverse across a range of criteria such as race, gender and function, in order to fully capture the potential that a prospective candidate may have to offer the company;
- e) The targeting of people from designated groups;
- f) Avoidance of psychometric or psychological testing or other forms of assessment that may not be culturally fair.

Section 8 in chapter 2 of the Employment Equity Act, 1998, prohibits the administering of psychological tests or any other form of testing unless the assessment can be scientifically demonstrated to valid and reliable. Only if it is valid may it be applied to all

employees, as long as it is not biased against any employee or group. Where ability/aptitude tests are used, they should be administered before the interviews to predetermine whether or not the candidate has the required competencies for the job.

The costs involved in recruitment is very high as there are often hidden and unrecognised costs; it is estimated that it costs 1,8 times the annual salary of the employee. Against this background the emphasis on sound hiring policies and practices is extremely important to ensure the retention of the correct people.

5.5 Issues to consider

When the recruitment and selection process is to be followed, there are certain issues that have to be considered. Firstly, it is important to maintain a legally credible selection process or system. Secondly, when it comes to the selection of the correct candidate for the position, accurate decisions have to be made. Thirdly, the recruitment and selection process has to be speedy, flexible and effective. Finally, a cost-effective service has to be maintained.

The implications for recruitment are that records and documentation have to be carefully kept in order to record the process. Checks and balances must be carried out on a regular basis to find out if there are any shortcomings. It important to maintain a fair and equitable recruitment programme.

5.6 Fair and equitable recruitment

Recruitment must be undertaken in terms of Telkom SA's value system. This includes, inter alia, that candidates must be employed purely on the basis of job-related requirements, personal attributes, competencies and abilities and that individuals must be given equal opportunities to be recruited. This implies that recruitment actions should extend to all communities. However, affirmative action strategies and targets must be taken into consideration when recruiting candidates.

Herbert (1994: 58) states that recruitment, selection, training, development and appraisal policies should be formalised better, so that they are simple and crystal clear. Each and every employee should know what he or she is aiming at in his or her career. This assists them in realising their strengths and weaknesses, which in turn provides a realistic perception of how successful they are in their current positions.

Throughout the recruitment process the so-called "suitably qualified" must always be considered, in order to link the correct person to the vacancy. This implies that this person has one or a combination of formal qualifications, prior learning, relevant experience or that the person has the capacity to acquire within a reasonable time the ability required to do the specific job. The application of policies must be consistent to ensure fairness for all employees. Seen in this light, the most suitable employee must be recruited to a vacancy for which he/she meets the criteria completely and by using the

correct recruitment sources, it is possible to find the best experienced and qualified candidate from a pool of possible candidates.

5.7 Recruitment sources

In order to access a pool of available candidates, it is necessary to make sure that the available sources are found that could easily assist in the recruitment process. Firstly, the recruitment activities are dependent on the company's human resource requirements as identified through human resource business plans. Secondly, the choice of media for recruitment purposes should comply with the requirements of the Labour Relations Act, 1995. Thirdly, internal sources of recruitment must receive priority as this is cost effective and serves as a motivation for employees. Fourthly, external recruitment may be undertaken by means of advertisements. The use of employment agencies should be limited in view of the high costs involved. This avenue should therefore only be resorted to when all other sources have been fully exploited. Finally, career exhibitions and visits to schools, universities and other academic institutions can also be used as a source of recruitment, depending on the company's human resource needs and the target groups. Visits to schools should be limited, as they are time consuming and not cost effective. This should only be done on request.

5.8 Conclusion

The Act was introduced to provide measurable legislation for the rectification of past injustices as result of apartheid. Therefore Telkom SA is bound by the Act to promote the constitutional right of equality and to eliminate unfair discrimination within the workplace. Large penalties in the form of fines will be levied against those employers who deliberately choose not to follow the conditions that have been set out in the Act. This is the reason why it is important to compile a human resource plan that will assist the organisation to reach its employment equity targets. The recruitment and selection process will therefore benefit from a proper business plan. As required by the Labour Relations Act, 1995, unfair discrimination will be alleviated with the correct human resource employee forecasting. The various pieces of legislation discussed in Chapter 3 enforce laws to ensure that employment equity targets are met over a set period in order for organisations to avoid facing heavy penalties for not reaching their targets. The following and final chapter will deal with the recommendations that Telkom SA should consider in order to provide its employees with a fair and equitable process.

CHAPTER 6

RECOMMENDATIONS

6.1 Introduction

The previous chapters dealt with the legal requirements and the current situation within Telkom SA with regards to human resource planning. In this final chapter the researcher will endeavour to provide possible solutions and suggest a platform for policy making.

Selecting the right people is critical for the advancement or success of any company or business. Occasionally selection decisions are made on the basis of inaccurate or incomplete information. In the short term this can result in litigation and it could lead to high costs for the company. It could also adversely affect its image.

For Telkom in particular, selecting the right people is critical to enable the company to realise its vision of becoming a world-class communications company. Keeping this in mind, it is very important for Human Resources and line management involved in selection decisions to understand the selection process and procedures accurately and use these effectively to select a suitable candidate for any position. In addition, Human Resources and line management should become acquainted with the relevant company policies and applicable legislation, such as the Labour Relations Act, 1995 and the Employment Equity Act, 1998.

6.2 Affirmative action strategy

In order for Telkom to implement its affirmative action strategy, the following actions have to be taken into consideration:

- a) The promotion of equal opportunity and fair treatment in employment through the elimination of unfair discrimination;
- b) Implementing positive measures to redress the disadvantages in employment experienced by black people (African, Coloured and Indian), women and people with disabilities, in order to ensure their equitable representation at all occupations and levels in the Western Region;
- c) Giving special attention to gender and black African issues that have been neglected since the implementation of the affirmative action policy.

Telkom SA's employment equity plan sets out the company's employment equity objectives for the period 1 April 2000 to 31 March 2002, including targets for representation, promotion and recruitment of black people and women by level, as well as overall targets for people with disabilities. It aims at creating a more representative workforce with regards to race, gender and disability. All forms of unfair discrimination will be eliminated and the barriers addressed to achieve equity.

Telkom SA has already implemented an employment equity reporting structure that conforms to legislative requirements. The Group Executive of Human Resources, Victor Booysen, is accountable and responsible for the implementation of the employment

equity plan and he has to report on the overall progress to the Chief Executive Officer. Furthermore, each Managing or Group Executive in Telkom SA is accountable to the Chief Executive Officer or Chief Operating Officer for delivery on the plan within their respective service organisations. An Employment Equity Committee will also be established for Telkom SA management to consult with organised labour on the implementation, monitoring and communication of the plan.

On 31 May 2000, as required by the Employment Equity Act, 1998, Telkom SA submitted a detailed employment equity report to the Department of Labour. In preparing the report the company consulted extensively with employees at all levels of the organisation, including managers, staff in designated groups and non-designated employees. Telkom SA's employment policies, practices, procedures and working environment were reviewed to identify and eliminate any barriers that negatively impacted on persons from designated groups, including black people, women and disabled people.

Telkom SA had already been proactive in certain aspects to amend policies long before the advent of the Employment Equity Act, 1998, as there were certain barriers identified. A recent survey was conducted in the company in order for employees with disabilities to identify themselves. Only 142 people were identified as employees with disabilities. Telkom SA will undertake a further initiative to deal with the identification and sensitisation of disabled employees once the Code of Good Practice dealing with disability in the workplace is finalised.

Telkom SA established a workforce profile to determine the extent to which black people, women and disabled people are underrepresented in each occupational category and level. Women were identified as under-represented in the technical environment on all levels. This confronts Telkom SA with a challenge to be proactive in placing women in previously male-dominated positions and giving them sufficient opportunities to be trained and developed to function effectively in the technical environment.

6.3 Strategies to address the lack of African/female representation

In Chapter 3 the issue of African and female representation was discussed. Possible strategies are addressed in this section. It was made clear that the important areas for improvement are the current lack of representation of Africans and females in Telkom, Western Region. In order to address this issue it is important for line management and Human Resources to develop a co-ordinated approach and to seek opportunities to implement the correct strategies.

From the current diversity levels in the Western Region, it is clear that a definite effort is required to address the absence of Africans and females within the majority of the positions and job grades. Although males seem to dominate some areas, there are avenues of employment where female employees could be utilised effectively. This will not be a quick-fix strategy, but rather one entailing a phased approach that will give a balance to the Western Region in terms of the affirmative action targets. Concerted effort will have

to made in this financial year in order to move towards a truly representative workforce. It will not be possible to move from the current situation to that of the future scenario; therefore a two-stage approach will have to be adopted to resolve the problem. The first stage should be completed by December 2000. This will set the stage for future planning and strategizing to reach the required targets. The next stage should be reviewed at the end of December 2001.

The affirmative action strategy will be successfully implemented, provided that Telkom SA aggressively sources the appropriately skilled candidates from the various institutions with the first wave of implementation. The issues of African employment and gender inequality will be addressed as part of the second wave. All future appointments will be based on the required gender and race requirements. Natural attrition will further allow the region to balance its employees to the required targets.

The newly appointed employee should be given enough scope to develop and also receive support from the management team. This will ensure that a pool of available candidates can be selected for recruitment and placed in the appropriate vacancies. The experience that existing employees have gained can be of vital importance for the internal recruitment process, as they already know the policies and modus operandi of Telkom SA.

6.3.1 Internal recruitment

While implementing the recruitment process all concerned should make a definite effort to acquire successful African and/or female applicants. This includes shortlisting appropriate candidates from other regions. Once the standard procedures of recruitment has been exhausted and no appropriate candidate is found, headhunting of candidates should be considered in consultation with the Human Resources Department. Selecting candidates from within the organisation will assist the recruitment process by comparing experience and skills developed during the employment period. If there is a problem finding the correct candidates for appointment during the internal recruitment process, then the alternative of selecting candidates from external sources must be considered.

6.3.2 External recruitment

The entire recruitment process (including advertising media used) should be geared towards improving representation in terms of Africans and/or females. As there is currently a need for recently qualified candidates who possess technical diplomas, external recruitment will focus on attracting high-level technical/supervisory skills from universities, colleges and technikons. Recruitment of appropriately qualified technical staff, who need to be placed into the junior management and operational levels, will be focussed on especially. These employees should also have strong supervisory or management skills in order to strengthen the leadership cadre in the future. Ensuring that

the strategy for employment equity is attained will require a process of indicating who will be kept accountable and clarifying their role in the planning process.

6.4 Accountability and planning

In order for the affirmative action strategy to be successful, it is important to clarify the roles and the accountability of the role-players:

- a) The Executive is accountable to the Senior Executive for affirmative action delivery.
- b) The leadership teams, which include the supervisors, will be responsible for affirmative action outputs as part of their evaluation measurements.
- c) The centralised affirmative action department must give advice and support throughout Telkom.
- d) The Human Resources division must support the Executive in achieving appropriate affirmative action delivery.
- e) Organised labour will participate in the regional committees in order to develop, support and monitor affirmative action delivery.

It is recommended that all newly appointed candidates and other employees undergo a training workshop to deal with diversity and to learn how to respect one another's cultures. External consultants should be appointed to provide practical training in and ideas for dealing with diverse cultures, as the introduction of different cultures leads to conflict amongst employees in the workplace, if the right kind of awareness is not created

of each other. Seen in this light, the Employment Equity Manager should be assigned to oversee that the process is followed correctly and that the cultural divisions are bridged.

6.5 Assigning of the Employment Equity Manager

Telkom SA is committed to a conscious and deliberate effort to correct the imbalances of the past by building the capacity of black persons (African, Coloureds and Indians), women and disabled people. This will require the dedicated effort and support of everybody in the company to ensure success.

Victor Booysen, the Group Executive for Human Resources, who reports to the Chief Executive Officer, will be accountable and responsible for monitoring and implementing Telkom's employment equity plan. Wanda Miles-Davis has recently been appointed, as the Executive for employment equity and affirmative action and with the assistance of her team will have the task of ensuring compliance. The company will provide the appointee with the necessary means to perform the functions in this regard.

An Employment Equity National Committee will be established for Telkom's management to consult with organised labour on implementation, monitoring and communication of the company's employment equity plan and report, as required by the Act. This committee will meet on a quarterly basis and representation will be on a pro rata basis.

6.6 The functions of the Employment Equity Manager (EEM)

With regard to the role of the Employment Equity Manager, certain job functions are identified. These will be addressed under the following sub-sections:

- a) To chair the employment equity forum as leader and to co-ordinate the committee's delegation in it;
- b) To prepare and implement an employment equity plan, which will achieve reasonable progress towards employment equity in the employer's workforce;
- c) To analyse employment policies, practices, procedures and employment barriers which adversely affect people from designated groups;
- d) To compile a profile of each occupational category and level in order to determine the degree of under-representation;
- e) To consult and inform employees and unions;
- f) To establish and maintain records;
- g) To deal with disputes about the interpretation or application of the Act;
- h) To compile and submit a report to the Chief Executive Officer on an annual basis.

According to Thomas and Robertshaw (1999: 41), the EEM plays a fundamental role in the implementation of employment equity initiatives and therefore needs to have a broad understanding of the legislation and the way related interventions should be implemented. He/she has to facilitate the process, ensure the compilation of the employment equity plan, and promote the implementation of associated measures of affirmative action by monitoring and evaluating the initiative.

6.7 Reviewing current policies

A review and analysis of Telkom's Human Resources policies, procedures, practices and working environment has been conducted by Human Resources practitioners in the relevant disciplines. The Human Resources manual and other documents – e.g. remuneration policy 1999/2000, training and development policy and the evaluation documents – were reviewed by an employment equity task team that included organised labour. The finding was that none of the policies per se unfairly discriminated or adversely impacted on persons from the designated groups. However, the language in the policies could lead to different interpretations, therefore the policies will have to be re-written.

A further finding was that although the policies did not discriminate, certain concerns were raised by organised labour regarding the implementation of these policies. If continuous review and analysis identify any barriers, these, together with action steps, will be incorporated into the plan.

If affirmative action is correctly implemented, South Africa will be heading towards a better competitive market and the workforce will be equally representative of the population.

6.8 Possible conclusion

Telkom SA's Chief Executive Officer, Sizwe Nxasana, said in his address on the implementation of the Employment Equity Act, 1998, that the leadership will have to work together to make the company reflect the demographics of the country. This will only be achieved if the leadership team is proactive in attracting, empowering and retaining people from diverse groups, which is representative of the greater South Africa and in turn become a model for other companies to follow. Although Telkom SA had been proactive in embarking timeously on an affirmative action programme, there still remains the difficult task ahead of bringing unity to the organisation on all employment levels and assisting employees from the previously advantaged groups. Numerical goals and timetables must be continually revisited in order to assess whether Telkom is still on target in achieving equitable representation.

“Real equality is not to be decreed by law. It cannot be given and it cannot be forced”.

Raymond Moley

List of sources

- Adam, K. 2000. Affirmative action and popular perceptions: The case of South Africa. Society. January/February 2000. Vol.37. Issue 2. p.48.
- Anstey, M. 1997. Problems in developing an appropriate culture for affirmative action. Labour Relations Research and Topics series No.25. University of Port Elizabeth.
- Barker, F.S and Holtzhausen, M.M.E. 1996. South African labour glossary. Juta & Co., Cape Town.
- Barker, F.S. 1999. The South African Labour Market. 3rd edition. Van Schaik, Pretoria.
- Brynard, P.A and Hanekom, S.X. 1997. Introduction to research in Public Administration and related academic disciplines. 1st edition, J.L van Schaik Publishers, Pretoria.
- Conrad, P.J and Maddux, R.B. 1988. Guide to affirmative action. Crisp Publications, Menlo Park, California.
- Employment and Occupational Equity Statute and how it affects CCMA, Information Services, CCMA.
- Faundez, J. 1994. Affirmative Action: International perspectives. ILO report, Geneva.
- Gerber, P.D; Nel, P.S and Van Dyk, P.S. 1998. Human Resources Management. 4th edition. International Thomson Publishing. Halfway House, Johannesburg, South Africa.
- French, W. 1994. Human resource management. 3rd edition. Houghton Mifflin, Boston.
- Goldstone, R.J. 1989. Affirmative Action, Centre for International Affairs, Harvard University.
- Harvey, D.F and Brown, D.R. 1996. An experiential approach to organization development, 5th edition, Prentice-Hall, U.S.A.

- Herbert, T. 1994. Affirmative action in the South African work place. 1st edition. Salty Print, Salt River.
- Herholdt, W and Marx, M. 1999. Employment Equity in South Africa: A guide to Affirmative Action success. 1st edition. Prentice Hall, South Africa.
- Human, L. 1993. Affirmative action and the development of people. 1st edition. Juta & Co., Kenwyn.
- Israelstam, I. 1999. Why Affirmative Action and how to make it work for our businesses. People Dynamics. 17(5), May, 40 –42.
- Joubert, D. 1992. Affirmative action is the solution to South Africa's skills crisis. Paper.
- Kanya, A. 2000. Affirmative action and popular perceptions: The case of South Africa. Society, 37 (2), Jan/Feb, 48.
- Khoza, R. 1986. A Black management perspective of equal opportunity programmes. Labour organisation. IPM Journal, 5(2), June, 18-20.
- Lapping, B. 1986. Apartheid: A history. Paladin Books. London.
- Madi, P.M. 1993. Affirmative action in corporate South Africa. 1st edition. Juta & Co., Kenwyn.
- Maphai, V.T. 1993. One phrase, two distinct concepts. Die Suid-Afrikaan, May/June, no. 44, pp 6 –8.
- Marshall FR, King AG and Briggs CM, 1980, Labour economics: wages, employment and trade unionism, Homewood, Illinois.
- Meiring, M.H and de Villiers, P.F.A. 1995. Focus on change in the public sector: Contemporary issues.
- Nel, P.S. 1999. South African Industrial Relations. 3rd edition. Van Schaik, Pretoria.

- Nzimande, B and Sikhosana, M. 1996. Affirmative Action and transformation. Indicator Press. Durban
- Parliamentary Bulletin, No. 32, 20 April 1998, Employment Equity Bill.
- Qunta, C. 1995. Who's afraid of Affirmative Action: A survival guide for Black professionals. National Book Printers. 1st edition. Cape Town.
- Ralefeta, W. 1996. Summary of the Green paper, policy proposals for the new South Africa.
- Schrire, R. 1992. Adapt or die: The end to white politics in South Africa. Ford Foundation. Foreign Policy Association, Hurst, London.
- Schwella, E., Burger, J., Fox, W and Muller, J.J. 1996. Public Resource Management. 1st edition. Juta & Co., Kenwyn.
- South Africa (Republic). 1996. Constitution of the Republic of South Africa, Act 108, 1996. Pretoria: Government Printer.
- South Africa (Republic). 1998. Employment Equity Act, Act 55, 1998. Pretoria: Government Printer.
- South Africa (Republic). 1995. Labour Relations Act, Act 66, 1995. Pretoria: Government Printer.
- South African Law Commission. 1989. Project 58: Group and Human Rights, South African Law Commission. Pretoria.
- Stone, P. 1991. Cape Town City Council Industrial Relations audit: Equal employment opportunity and affirmative action programmes. Andrew Levy and Associates, Johannesburg.

Swanepoel, B.J., Erasmus, B.J., Van Wyk, M.W, and Schenk, H.W. 1998. South African human resource management: theory and practice. 1st edition. Juta & Co., Kenwyn.

The Economist. 1999. Race law and poverty in the new South Africa. Volume 353 (8139), 2 October, 47.

Thomas, A and Robertshaw, D. 1999. Achieving employment equity: A guide to effective strategies. 1st edition. Knowledge Resources, Pinetown.

Van Wyk, M.W. 1995. Affirmative action, equality and Section 8 of the Constitution. Unpublished LLM Research Report. University of South Africa, Pretoria.

ANNEXURE A

The Employment Equity Act (Act 44 of 1998)

SECTION	IMPLICATION FOR THE IMPLEMENTATION OF EMPLOYMENT EQUITY
<p>Chapter 1 – Definitions, Purpose, Interpretation and Application</p> <p>'designated employer' means:</p> <p>(a) an employer who employs 50 or more employees;</p> <p>(b) an employer who employs fewer than 50 employees, but has a total annual turnover that is equal to or above the applicable minimum annual turnover of a small business in terms of Schedule 4 to this Act;</p> <p>(c) a municipality, as referred to in Chapter 7 of the Constitution;</p> <p>(d) an organ of state as defined in section 239 of the Constitution, but excluding local spheres of government, the National Defence Force, the National Intelligence Agency and the South African Secret Service; and</p> <p>(e) An employer bound by a collective agreement in terms of section designated employer in terms of this Act, to the extent provided for in the agreement.</p>	<p>Employers / organisations excluded from the Employment Equity act include:</p> <ul style="list-style-type: none"> ▪ Employers employing less than 50 employees and whose annual turnover is less than the minimum annual turnover for small businesses as defined in Schedule 4 of the Employment Equity Act. ▪ Local government bodies ▪ The National Defence Force ▪ The National Intelligence Agency. ▪ The South African Secret Service
<p>'designated groups' means black people, women and people with disabilities</p> <p>'black people' is a generic term, which means Africans, Coloureds and Indians.</p>	<p>Employees covered by the Act are:</p> <ul style="list-style-type: none"> ▪ Black (including Africans, Coloureds and Indians) ▪ Women ▪ People with disabilities
<p>'employment policy of practice' includes, but is not limited to:</p> <p>a) recruitment procedures, advertising and selection criteria;</p> <p>b) appointments and the appointment process;</p> <p>c) job classification and grading;</p> <p>d) remuneration, employment benefits and terms and conditions of</p>	<p>Employment practices affected by the Act include:</p> <ul style="list-style-type: none"> ▪ recruitment, advertisement, and selection ▪ appointment / placement ▪ job classification and grading

<p>employment;</p> <ul style="list-style-type: none"> e) job assignments f) the working environment and facilities; g) training and development; h) performance evaluation systems; i) promotion; j) transfer; k) demotion; l) disciplinary measures other than dismissal; and m) dismissal 	<ul style="list-style-type: none"> ▪ remuneration, benefits, and conditions of employment ▪ job assignments ▪ the working environment and facilities ▪ training and development ▪ performance appraisal ▪ promotion, demotion, and transfer ▪ discipline and dismissal
<p>Purpose of this Act:</p> <p>2. The purpose of this Act is to achieve equity in the workplace by:</p> <ul style="list-style-type: none"> a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce. 	<p>The purpose of the Act is twofold, namely:</p> <ul style="list-style-type: none"> ▪ to promote equality by eliminating unfair discrimination ▪ to implement affirmative action measures to redress disadvantages in employment experienced by disadvantaged groups.
<p>CHAPTER II – PROHIBITION OF UNFAIR DISCRIMINATION</p> <p>Elimination of unfair discrimination</p> <p>5. Every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.</p> <p>Prohibition of unfair discrimination</p> <p>6. (1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds including race, gender ...</p> <p>(2) It is not unfair discrimination to:</p>	<p>Prohibition of unfair discrimination:</p> <ul style="list-style-type: none"> ▪ No employer or employee may discriminate against other people ▪ Unfair discrimination must be eliminated in all employment policies and practices ▪ Affirmative action is not regarded as unfair discrimination. ▪ Appointments that are made according to the inherent requirements of a job do not represent unfair discrimination.

<p>(a) take affirmative action measures consistent with the purpose of the Act; or</p> <p>(b) distinguish, exclude or prefer any person on the basis of an inherent of a job.</p>	
<p>Medical testing</p> <p>7. (1) Medical testing of an employee is prohibited, unless:</p> <p>(a) legislation permits or requires the testing; or</p> <p>(b) it is justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of a job</p>	<ul style="list-style-type: none"> ▪ Medical testing of current and future employees is unfair unless legislation permits or requires it, or if justified by the job requirements.
<p>Psychological testing and other similar assessments</p> <p>8. Psychological testing and other similar assessments of an employee are prohibited unless the test or assessment being used;</p> <p>(a) has been scientifically shown to be valid and reliable;</p> <p>(b) can be applied fairly to all employees; and</p> <p>is not biased against any employee or group</p>	<ul style="list-style-type: none"> ▪ Psychological testing and other similar assessments are unfair unless the tests are valid, reliable, culture-fair and unbiased. (A limited number of tests conform to these criteria).
<p>Burden of proof</p> <p>11. Whenever unfair discrimination is alleged in terms of this Act, the employer against whom the allegation is made must establish that it is fair.</p>	<ul style="list-style-type: none"> ▪ Should current and prospective employees allege that unfair discrimination has taken place, it is up to the employer to prove that this discrimination was indeed fair. Discrimination can only be justified by the inherent requirements of a particular job or by the active implementation of affirmative action.

<p>Chapter III – Affirmative action</p> <p>Application of this Chapter</p> <p>12. Except where otherwise provided, this Chapter applies only to designated employers.</p> <p>Duties of designated employers</p> <p>13. (1) Every designated employer must, in order to achieve employment equity, implement affirmative action measures for people from designated groups in terms of this Act.</p> <p>(2) A designated employer must:</p> <p>(a) consult with its employees as required by section 16;</p> <p>(b) conduct an analysis as required by section 19;</p> <p>(c) prepare an employment equity plan as required by section 20; and</p> <p>(d) report to the Director – General on progress made in implementing its employment equity plan, as required by section 21.</p> <p>Voluntary compliance with this Chapter</p> <p>14. An employer that is not a designated employer may notify the Director-General that it intends to comply with this Chapter as if it were a designated employer.</p>	<p>Implementing affirmative action:</p> <ul style="list-style-type: none"> ▪ The compulsory implementation of affirmative action only applies to designated employers. ▪ Designated employers are required to: <ul style="list-style-type: none"> ▪ Implement affirmative action ▪ Consult with employees on all affirmative action issues ▪ Conduct an employment equity analysis ▪ Prepare an employment equity plan ▪ Report to the Director-General on progress made. ▪ Non-designated employers may voluntarily comply with affirmative action regulations as detailed in Chapter III of the Act.
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Affirmative action measures

15. (1) Affirmative action measures are measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer.
- (2) Affirmative action measures implemented by a designated employer must include:
- (a) measures to identify and eliminate employment barriers, including unfair discrimination, which adversely affect people from designated groups,
 - (b) measures designed to further diversity in the workplace based on equal dignity and respect of all people;
 - (c) making reasonable accommodation for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented in the workforce of a designated employer;
 - (d) subject to subsection (3), measures to:
 - (i) ensure the equitable representation of suitably qualified people from designated groups in all occupational categories and levels in the workforce; and
 - (ii) retain and develop people from designated groups and to implement appropriate training measures, including measures in terms of an Act of Parliament providing for skills development.
- (3) The measures referred to in subsection (2)(d), include preferential treatment and numerical goals, but exclude quotas.
- (4) Subject to section 42, nothing in this section requires a designated employer to take any decision concerning an employment policy or practice that would establish an absolute barrier to the prospective or continued employment or advancement of people who are not from designated groups.

The scope of affirmative action measures:

- Designated employers must ensure that:
 - All suitably qualified designated employees are assured of equal employment opportunities;
 - Designated employees are equally represented in jobs on all levels within the organisation
- Affirmative action measures should include the following:
 - The identification and elimination of employment barriers;
 - The diversification of the workforce
 - The establishment of equal opportunities for designated employees;
 - Equal representation of suitably qualified designated employees in all job categories and on all hierarchical levels
 - The training and development of designated employees, taking into account the provisions of the Skills Development Act.
- Affirmative action measures include preferential treatment and numerical goals or targets, but not quotas.
- The Employment Equity Act does not require organisations to implement reverse discrimination in respect of people who are not from designated groups.

<p>Consultation with employees</p> <p>16. (1) A designated employer must take reasonable steps to consult and attempt to reach agreement on the matters referred to in section 17:</p> <p>(a) with a representative trade union representing members at the workplace and its employees or representatives nominated by them; or</p> <p>(b) if no representative trade union represents members at the workplace, with its employees or representatives nominated by them.</p> <p>(2) The employees or their nominated representatives with whom an employer consults in terms of subsections (1)(a) and (b), taken as a whole, must reflect the interests of:</p> <p>(a) employees from across all occupational categories and levels of the employer's workforce;</p> <p>(b) employees from designated groups; and</p> <p>(c) employees who are not from designated groups.</p> <p>(3) This section does not affect the obligation of any designated employer in terms of section 86 of the Labour Relations Act to consult and reach consensus with a workplace forum on any of the matters referred to in section 17 of this Act.</p>	<p>Parties to be consulted:</p> <ul style="list-style-type: none"> ▪ trade union representative(s); or ▪ people nominated by employees within the organisation (representing designated and non-designated employees), should no trade union exist; ▪ representative(s) of the workplace forum (if applicable).
<p>Matters of consultation</p> <p>17. A designated employer must consult the parties referred to in section 16 concerning:</p> <p>(a) the conduct of the analysis referred to in section 19;</p> <p>(b) the preparation and implementation of the employment equity plan referred to in section 20; and</p> <p>(c) a report referred to in section 21.</p>	<p>Matters to be consulted on:</p> <ul style="list-style-type: none"> ▪ the workforce and job requirement analysis; ▪ the preparation and implementation of the employment equity plan; ▪ the annual progress report (to be submitted to the Director-General)
<p>Analysis</p> <p>19. (1) A designated employer must collect information and conduct an analysis, as prescribed, of its employment practices, procedures and</p>	<p>The aim of an employment equity analysis is:</p> <ul style="list-style-type: none"> ▪ To identify barriers adversely affecting designated employees;

<p>the working environment, in order to identify employment barriers which adversely affect people from designated groups.</p> <p>(2) An analysis conducted in terms of subsection (1) must include a profile, as prescribed, of the designated employer's workforce within each occupational category and level in order to determine the degree of under representation of people from designated groups in various occupational categories and levels in that employer's workforce.</p>	<ul style="list-style-type: none"> ▪ To compile a profile of the workforce to determine under-representation of designated employees in all job categories and on all hierarchical levels.
<p>Employment equity plan</p> <p>20. (1) A designated employer must prepare and implement an employment equity plan, which will achieve reasonable progress towards employment equity in that employer's workforce.</p> <p>(2) An employment equity plan prepared in terms of subsection (1) must state:</p> <ul style="list-style-type: none"> (a) the objectives to be achieved for each year of the plan; (b) the affirmative action measures to be implemented as required by section 15 (2) (c) where under-representation of people from designated groups has been identified by the analysis, the numerical goals to achieve the equitable representation of suitably qualified people from designated groups within each occupational category and level in the workforce, the timetable within which this is to be achieved, and the strategies intended to achieve those goals; (d) the timetable for each year of the plan for achievement of goals and objectives other than numerical goals; (e) the duration of the plan, which may not be shorter than one year or longer than five years; (f) the procedures that will be used to monitor and evaluate the implementation of the plan and whether reasonable progress is being made towards implementing employment equity; (g) the internal procedures to resolve and dispute about the interpretation or implementation of the plan; (h) the persons in the workforce, including senior managers, responsible for monitoring and implementing the plan; and (i) any other prescribed matter; 	<p>The employment equity plan:</p> <ul style="list-style-type: none"> ▪ An employment equity plan must be prepared and implemented. It should include the following aspects: <ul style="list-style-type: none"> ▪ Employment equity objectives for each year; ▪ Affirmative action strategies to be implemented; ▪ Numerical goals to achieve equitable representation, a timetable, and strategies ▪ A timetable for each year; ▪ The plan must not be shorter than one year or longer than five years; ▪ Procedures to evaluate implementation progress and success; ▪ Internal dispute resolution procedures ▪ Applicants must be weighted in terms of competency-based criteria (i.e. qualifications, prior learning, relevant experience and the potential to master the job in a reasonable time.)

<p>(3) For the purposes of this Act, a person may be suitably qualified for a job as a result of any one of, or any combination of that person's:</p> <ul style="list-style-type: none"> (a) formal qualifications; (b) prior learning (c) relevant experience; or (d) capacity to acquire, within a reasonable time, the ability to do the job <p>(4) When determining whether a person is suitably qualified for a job, and employer must:</p> <ul style="list-style-type: none"> (a) review all the factors listed in subsection (3); and (b) determine whether that person has the ability to do the job in terms of any one of, or any combination of, those factors <p>(5) In making a determination under subsection (4), an employer may not unfairly discriminate against a person solely on the grounds of that person's lack of relevant experience.</p>	<p>Determining whether a person is suitably qualified: The factors to be taken into account are:</p> <ul style="list-style-type: none"> ▪ Formal qualifications ▪ Prior learning ▪ Relevant experience ▪ Ability <p>Organisations should take care to ensure that they do not discriminate against current or prospective employees who do not possess the relevant experience. One should rather determine whether people lacking the relevant experience have the potential to be developed.</p>
<p>Report:</p> <p>21. (1) A designated employer that employs fewer than 150 employees must:</p> <ul style="list-style-type: none"> (a) submit its first report to the Director-General within 12 months after the commencement of this Act or, if later, within 12 months after the date on which the employer became a designated employer; and (b) thereafter submit a report to the Director-General once every two years, on the first working day of October. <p>(2) A designated employer that employs 150 or more employees must:</p> <ul style="list-style-type: none"> (a) submit its first report to the Director-General within six months after the commencement of this Act or, if later within six months after the date on which the employer became a designated employer; and (b) thereafter, submit a report to the Director-General once every year on the first working day of October. 	<p>Reporting on employment equity progress:</p> <ul style="list-style-type: none"> ▪ Designated employers employing less than 150 employees must prepare written reports for submission to the Director-General: <ul style="list-style-type: none"> ▪ Within 12 months after the commencement of the Act, and ▪ Thereafter, every two years on the first working day of October. ▪ For designated employing more than 150 employees, written reports for submission to the Director-General must be prepared: <ul style="list-style-type: none"> ▪ Within six months after the commencement of the Act, and ▪ Thereafter, once a year on the first working day of October.

<p>Successive employment equity plans</p> <p>23. Before the end of the term of its current employment equity plan, a designated employer must prepare a subsequent employment equity plan.</p>	<p>Submission of subsequent plans:</p> <ul style="list-style-type: none"> ▪ Organisations should start preparing other plans when the time – frame of the current plan is nearing completion.
<p>Designated employer must assign manager</p> <p>24. (1) Every designated employer must;</p> <ol style="list-style-type: none"> (a) assign one or more senior managers to take responsibility for monitoring and implementing an employment equity plan; (b) provide the managers with the authority and means to perform their functions; and (c) take reasonable steps to ensure that the managers perform their functions. <p>(2) The assignment of responsibility to a manager in terms of subsection (1) does not relieve the designated employer of any duty imposed by this Act of any other law.</p>	<p>Duties of designated employers with regard to the implementation of an employment equity plan:</p> <ul style="list-style-type: none"> ▪ The organisation must assign one or more senior managers to manage the implementation and monitoring of its employment equity plan. ▪ Managers must be given official authority to implement the plan. ▪ Delegation of authority does not relieve the employer of accountability. ▪ Reasonable measures must be in place to ensure that managers adhere to the plan. ▪ All employees must be informed of the processes and progress regarding the implementation of employment equity in the organisation. A copy of the Employment Equity Act, the employer's employment equity plan, and the most recent report to the Director-General must be made available to employees for perusal and consultation. The same applies for any compliance order, arbitration award or order of the Labour court. ▪ The organisation must keep records (for a minimum of three years) of its: <ul style="list-style-type: none"> ▪ Workforce and job requirements analyses ▪ Employment equity plan ▪ Any other records which relate to compliance with the Employment Equity Act
<p>Duty to inform</p> <p>25. (1) An employer must display at the workplace, where employees can read it, a notice in the prescribed form, informing them about the provisions of this Act.</p> <p>(2) A designated employer must, in each of its workplaces, place in prominent places that are accessible to all employees;</p> <ol style="list-style-type: none"> (a) the most recent report submitted by that employer to the Director – General; (b) any compliance order, arbitration award or order of the Labour Court concerning the provisions of this Act in relation to that employer and; (c) any other document concerning this Act as may be prescribed. <p>(3) An employer, who has an employment equity plan, must make a copy of the plan available to its employees for copying and consultation.</p>	

<p>Duty to keep records</p> <p>26. An employer must establish and, for the prescribed period, maintain records in respect of its workforce, its employment equity plan and any other records relevant to its compliance with this Act.</p>	
<p>Chapter V – Monitoring, Enforcement and Legal Proceedings Undertaking to comply</p> <p>36. A labour inspector must request and obtain a written undertaking from an employer to comply with paragraphs (a) to (j) within a specified period, if the inspector has reasonable grounds to believe that the employer has failed to:</p> <ul style="list-style-type: none"> (a) consult with employees as required by section 16; (b) conduct an analysis as required by section 19; (c) prepare and employment equity plan as required by section 20; (d) implement its employment equity plan; (e) submit an annual report as required by section 21; (f) publish its report as required by section 22; (g) prepare a successive employment equity plan as required by section 23; (h) assign responsibility to one or more senior managers as required by section 24; (i) inform its employees as required by section 25; or (j) keep records as required by section 26 	<p>Issues to be addressed when implementing affirmative action in the organisation:</p> <ul style="list-style-type: none"> ▪ Consult with employees ▪ Conduct a workforce analysis ▪ Prepare an employment equity plan ▪ Implement the employment equity plan ▪ Submit an annual report ▪ Publish the annual report (in the case of a public company) ▪ Prepare a subsequent employment equity plan ▪ Assign responsibility to one or more senior managers ▪ Inform employees about all affirmative action matters ▪ Keep records
<p>Assessment of compliance</p> <p>42. In determining whether a designated employer is implementing employment equity in compliance with this Act; the Director-General or any person or body applying this Act must, in addition to the factors stated in section 15; take into account all of the following:</p> <ul style="list-style-type: none"> (a) the extent to which suitably qualified people from and amongst the different designated groups are equitably represented within each occupational category and level in that employer's workforce in relation to the: <ul style="list-style-type: none"> (i) demographic profile of the national and regional economically active population; 	<p>Aspects to be assessed when determining compliance with employment equity legislation:</p> <ul style="list-style-type: none"> ▪ There should be equal representation of members of designated groups within each job category and hierarchical level, in respect of the following <ul style="list-style-type: none"> ▪ The demographic profile of the economically active population; ▪ The pool of suitably qualified members of designated groups from which appointments or promotions will be made; ▪ The economic and financial factors impacting on the organisation;

<p>(k) pool of suitably qualified people from designated groups promote or appoint employees;</p> <p>(l) economic and financial factors relevant to the sector in which the employer operates;</p> <p>(m) present and anticipated economic and financial circumstances of the employer; and</p> <p>(n) the number of present and planned vacancies that exist in the various categories and levels, and the employer's labour turnover;</p> <p>(b) progress made in implementing employment equity by other designated employers operating under comparable circumstances and within the same sector;</p> <p>(c) reasonable efforts made by a designated employer to implement its employment equity plan;</p> <p>(d) the extent to which the designated employer has made progress in eliminating employment barriers that adversely affect people from designated groups and</p> <p>(e) any other prescribed factor</p>	<ul style="list-style-type: none"> ▪ The organisation's current and planned vacancies in the various job categories and levels; ▪ Labour turnover ▪ Employment equity implementation progress in other organisations operating under comparable circumstances and within the same sector. ▪ Reasonable efforts by the organisation to implement employment equity ▪ The elimination of employment barriers adversely affecting members of designated groups ▪ Any other prescribed factor.
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

ANNEXURE B	THE LABOUR RELATIONS ACT (ACT 66 OF 1995)	
SECTION	IMPLICATIONS FOR THE IMPLEMENTATION OF EMPLOYMENT EQUITY	
<p>5. Protection of employees and persons seeking employment</p> <p>(1) No person may discriminate against and employee for exercising any right conferred by this Act.</p> <p>(2) Without limiting the general protection conferred by subsection (1), no person may do, or threaten to do, any of the following:</p> <p>(a) require an employee or a person seeking employment;</p> <p>(e) not to be a member of a trade union or workplace forum;</p> <p>(iii) Not to become a member of a trade union or workplace forum or;</p> <p>(iv) To give up membership of a trade union or workplace forum;</p> <p>(b) prevent an employee or a person seeking employment from exercising any right conferred by this Act or from participating in any proceedings in terms of this Act; or</p> <p>(c) prejudice an employee or a person seeking employment because of past, present or anticipated:</p> <p>(f) membership of a trade union or workplace forum;</p> <p>(g) exercise of any right conferred by this Act; or</p> <p>(h) participation in any proceedings in terms of this Act.</p>	<p>Provisions relating to non-discriminatory employment:</p> <ul style="list-style-type: none"> ▪ Organisations (and members of selection committees) should be thoroughly aware of the provisions in the Labour Relations Act, particularly in respect of an employee's or applicant's affiliation or potential affiliation to trade unions and workplace forums. 	
<p>Schedule 7 Part B – Unfair labour practices</p> <p>2. Residual unfair labour practices</p> <p>(1) For the purposes of this item, an unfair labour practice means any unfair act or omission that arises between an employer and an employee, involving:</p> <p>(a) the unfair discrimination, either directly or indirectly, against an employee on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual</p>	<p>Unfair labour practice:</p> <ul style="list-style-type: none"> ▪ The organisation, including all employees and levels of management, should be thoroughly aware of what constitutes unfair labour practice, and specifically discriminatory practices. It is important to note that for the purposes of identifying unfair labour practice, potential employment applicant are regarded as employees. 	

<p>orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility;</p> <p>(b) the unfair conduct of the employer relating to the promotion, demotion or training of an employee or relating to the provision of an employee or relating to the provision of benefits to an employee; ...</p> <p>2. For the purposes of sub-item (1)(a):</p> <p>(a) 'employee' includes an applicant for employment;</p> <p>(b) an employer is not prevented from adopting or implementing employment policies and practices that are designed to achieve the adequate protection of persons or groups or categories of persons disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of all rights and freedoms; and</p> <p>(c) any discrimination based on an inherent requirement of the particular job does not constitute unfair discrimination.</p>	<ul style="list-style-type: none"> ▪ Sub item 2 (2)(c) of the same schedule is of equal importance. It stipulates that organisations be allowed to discriminate against people (favour other people), should be inherent requirements of a job disqualify such persons from being appointed. Discrimination in such cases is therefore not considered unfair.
<p>14. Trade Union representatives:</p> <p>(4) A trade union representative has the right to perform the following functions:</p> <p>(a) at the request of an employee in the workplace, to assist and represent the employee in grievance and disciplinary proceedings;</p> <p>(b) to monitor the employer's compliance with the workplace-related provisions of this Act, or any law regulating terms and conditions of employment and collective agreement binding on the employer.</p> <p>(c) To report any alleged contravention of the workplace-related provisions of this Act, any law regulating terms and conditions of employment and any collective agreement binding on the employer to:</p> <p>(i) the employer;</p> <p>(ii) the representative trade union; and</p> <p>(iii) any responsible authority or agency; and</p> <p>(d) to perform any other function agreed to between the representative trade union and the employer.</p>	<p>The rights of trade union representatives:</p> <ul style="list-style-type: none"> ▪ The union representatives have the right to represent and assist employees who are members of the trade union. ▪ Trade union representatives have the right to monitor procedures and processes (employment equity procedures) influencing the employees they represent, as well as the employer's compliance with the requirements of legislation. ▪ Trade union representatives have the authority to report the employer to the relevant authority should the employer not comply with the requirements of legislation.

<p>16. Disclosure of information</p> <p>(2) Subject to subsection (5), an employer must disclose to a trade union representative all relevant information that will allow the trade union representative to perform effectively the functions referred to in section 14 (4)</p> <p>(3) Subject to subsection (5); whenever and employer is consulting or bargaining with a representative trade union, an employer must disclose the representative trade union all relevant information that will allow the representative trade union to engage effectively in consultation or collective bargaining.</p>	<p>Supplying information to trade union representatives:</p> <ul style="list-style-type: none"> ▪ The employer is obliged to supply trade union representatives with the necessary information during the process of consultation.
<p>79. General functions of workplace forum</p> <p>A workplace forum established in terms of this Chapter:</p> <p>(a) must seek to promote the interests of all employees in the workplace, whether or not they are trade union members;</p> <p>(b) must seek to enhance efficiency in the workplace;</p> <p>(c) is entitled to be consulted by the employer, with a view to reaching consensus, about matters referred to in section 84; and</p> <p>(d) is entitled to participate in joint decision making about matters referred to in section 86.</p>	<p>Consultation and joint decision making with the workplace forum:</p> <ul style="list-style-type: none"> ▪ Employers should be aware of the functions of the workplace forum in instance where they exist. ▪ The workplace forum has the right to be consulted regarding matters that influence its members or any other employee in the organisation.
<p>84. Specific matters for consultation</p> <p>(1)a workplace forum is entitled to be consulted by the employer about proposals relating to any of the following matters:</p> <p>(e) exemptions from any collective agreement or any law;</p> <p>(f) education or training;</p> <p>(4) Any other law may confer on a workplace forum the right to be consulted about additional matters.</p>	<p>Matters on which the workplace forum must be consulted:</p> <ul style="list-style-type: none"> ▪ The employer is obliged to consult with the workforce forum in the case of non-compliance with the provisions of the Employment Equity Act (i.e. should be requirements of the job exclude the appointment of members of certain designated groups). ▪ The workplace forum should be consulted on issues relating to education and training of employees. The workplace forum should therefore be consulted with regard to upliftment and development programmes.

<p>85. Consultation</p> <p>(1) Before an employer may implement a proposal in relation to any matter referred to in section 84 (1), the employer must consult the workplace forum and attempt to reach consensus with it.</p> <p>(2) The employer must allow the workplace forum an opportunity during the consultation to make representations and to advance alternative proposals.</p> <p>(3) The employer must consider and respond to the representations or alternative proposals made by the workplace forum and, if the employer does not agree with them, the employer must state reasons for disagreeing.</p> <p>(4) If the employer and the workplace forum do not reach consensus, the employer must invoke and agreed procedure to resolve any differences before implementing the employer's proposal.</p>	<p>Reaching consensus with the workplace forum:</p> <ul style="list-style-type: none"> ▪ The Act stresses the importance of reaching consensus with the workplace forum on matters on which it should be consulted. ▪ Organisations should be aware of the procedures to be followed in instances when consensus cannot be reached.
<p>86. Joint decision making</p> <p>(1) an employer must consult and reach consensus with a workplace forum before implementing any proposal concerning:</p> <p>(c) rules relating to the proper regulation of the workplace in so far as they apply to conduct not related to the work performance of employees;</p> <p>(d) measures designed to protect and advance persons disadvantaged by unfair discrimination; and</p> <p>(2) Any other law may confer on a workplace forum the right to participate in joint decision making about additional matters.</p>	<p>Matters on which joint decision making with the workforce forum is required:</p> <ul style="list-style-type: none"> ▪ Joint decision making with the workforce forum is required in the case of procedures (affecting employees) that are not related to employees' performance. This could be associated with affirmative action / employment equity strategies, such as accelerated advancement for members of designated groups. ▪ The advancement of previously disadvantaged people is specifically identified as a matter on which the workforce forum should be consulted. This can be achieved by means of a process of joint decision making between the employer and the workforce forum.
<p>89. Disclosure of information</p> <p>(1) An employer must disclose to the workplace forum all relevant information that will allow the workplace forum to engage effectively in consultation and joint decision making.</p>	<p>Supplying information to the workforce forum:</p> <ul style="list-style-type: none"> ▪ Employers are obliged to supply the workplace forum with the necessary information to enable them take part in joint decision making.

90. Inspection and copies of documents

- (1) Any documented information that is required to be disclosed by the employer in terms of section 89 must be made available on request to the members of the workplace forum for inspection.
- (2) The employer must provide copies of the documentation on request to the members of the workplace forum.

Supplying documents to the workplace forum:

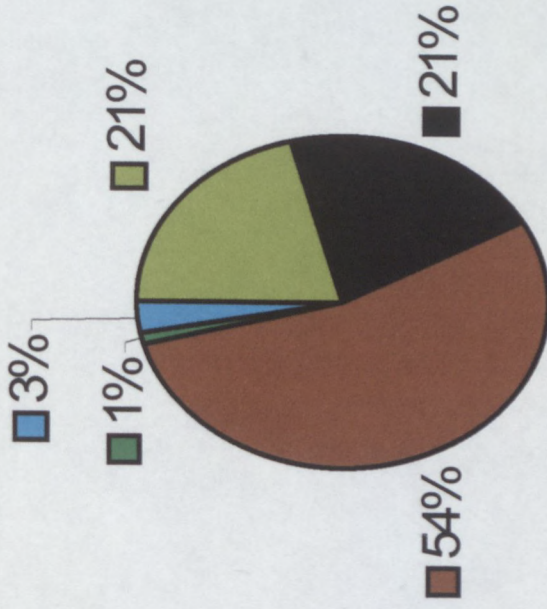
- The employer must, on request, supply copies of documents such as the affirmative action policy and the employment equity plan to the workplace forum.

(Herholdt & Marx, 1999: 52)

ANM WESTERN REGION**AA STATS: AUGUST 2000**

	Blacks		Whites		Grand Total	Blacks		Females	
	Males	Females	Males	Females		Target	Current Total	Target	Current Total
Grade 12/11	82	0	0	0	82	65.6	82	24.6	0
General assistants	100%	0%	0%	0%		80%	100%	30%	0%
Grade 10/9	81	4	4	1	90	36	85	22.5	5
Operational staff	90%	4%	4%	1%		40%	94%	25%	6%
Grade 8	7	0	5	0	12	4.2	7	1.44	0
Supervisory / Specialists	58%	0%	42%	0%		35%	58%	12%	0%
Grade 5	6	0	3	0	9	2.1	6	0.9	0
Management	67%	0%	33%	0%		23%	67%	10%	0%
Total	176	4	12	1	193		180		5
	91%	2%	6%	1%	100%		93%		3%

Demographics Distribution - Western Cape



■ African ■ White ■ Coloured ■ Indian ■ Unspecified Others

ACTIONS NECESSARY TO MEET EMPLOYMENT EQUITY ACT REQUIREMENTS

Requirement	Actions
<p>1. Elimination of unfair discrimination</p> <p>a) Promote equal opportunity by eliminating unfair discrimination</p> <p>b) Medical testing in line with legislation or job-related</p> <p>c) Validation of psychological testing as reliable, fair and unbiased</p> <p>d) The above apply to an applicant for employment as well</p>	<p>a) Review of policies and practices to eliminate any form of unfair discrimination is in progress</p> <p>b) Sexual harassment policy being finalised in line with NEDLAC code of good practice</p> <p>c) Medical tests conducted by company under review</p> <p>d) Psychometric tests under review</p>
<p>2. Consultation</p> <p>a) Take reasonable steps to consult and attempt to reach agreement with representative trade unions or employee representatives</p>	<p>a) Ongoing sensitisation of executives, line managers, HR practitioners, employees & organised labour about the Act through regional roadshows and presentations (40 Sessions held to date)</p> <p>b) Training of HR practitioners in how to implement aspects of the EE Act in their daily work is in progress</p> <p>c) An affirmative action task group and combined regional forums (CRF's) comprising of all relevant stakeholders have been established</p>
<p>3. Analysis</p> <p>a) Employment policies, practices, procedures & working environment to identify barriers for designated groups</p> <p>b) Workforce profile to determine under representation of designated groups</p> <p>c) Occupational categories classification</p>	<p>a) 6 working groups have been formed to analyse and review all employment policies, practices and procedures to ensure that they are EE friendly. Investigations are in progress</p> <p>b) A project team is dealing with the workforce profile by occupational categories as defined by the Department of Labour best practice survey to determine under-representation of designated groups</p>
<p>4. Employment Equity Plan</p> <p>a) Numerical goals, timetables and strategies for blacks, women and disabled to rectify under-representation</p> <p>b) Barriers identified in the analysis and steps and timetable to eliminate them</p> <p>c) Procedures to monitor and evaluate the implementation of the plan</p> <p>d) Internal procedures for resolving disputes about the interpretation and implementation of the plan</p>	<p>a) Targets for blacks, women and disabled have been recommended and will be approved by the Board</p> <p>b) A template for the plan is currently being designed</p> <p>c) Discussions are being held on the procedures to be used for monitoring and evaluation</p> <p>d) The existing dispute mechanisms will be utilised to handle any disputes that may arise</p>
<p>5. Women initiatives</p> <p>a) Formulation of targets and strategies to deal with female representation and other issues relevant to female employees</p>	<p>a) Actively involved with Department of Communications Gender desk as requested by the Minister</p> <p>b) Conducting a comprehensive gender audit and formulating gender strategies</p> <p>c) Establishment of a Telkom gender desk and regional women's forums to deal with women issues</p>
<p>6. Disability initiatives</p> <p>a) Setting of numerical goals and timetables for representation of disabled persons</p>	<p>a) Self-Identification of disabled persons is underway</p> <p>b) Creation of a data base of disabled persons in the company is in progress</p> <p>c) Procedure for evaluating requests for reasonable accommodation has been established</p> <p>d) Training of wellness centre employees, labour relations, line managers & organised labour to deal with disabled In progress</p>

Requirement	Actions
7. Reasonable accommodation a) Making reasonable accommodation for persons from designated groups	a) Procedures for determining need and providing reasonable accommodation have been implemented
8. Training measures a) Implement appropriate training measures	a) Provision of training and development opportunities is ongoing b) Programmes that are currently provided are <ul style="list-style-type: none"> ➤ Individual development programme ➤ Accelerated programmes ➤ Secretarial development ➤ Adult basic education and training ➤ Leadership development programme
9. Skills Act a) Include measures in terms of the Skills Development Act	a) Project team has been established to <ul style="list-style-type: none"> ➤ identify core critical skills ➤ determines skills levels based on competencies ➤ create skills data base ➤ institute quality assurance that Telkom unit standards are aligned to national standards
10. Suitably Qualified a) A person is suitably qualified for a job as a result of any one of, or combination of <ul style="list-style-type: none"> ➤ Formal qualifications; ➤ Prior learning; ➤ Relevant experience; or ➤ Capacity to acquire, within a reasonable time, the ability to do the job 	a) To ensure that Telkom is in line with legislation dealing with national qualifications the following steps have been taken <ul style="list-style-type: none"> ➤ Represented on the national standards body (NSB) dealing with the South African Qualifications Act (SAQA) ➤ Pioneering the standards generating body (SGB) for telecommunications and information technology to set up unit standards ➤ Sensitisation of employees and management on implications and implementation of all aspects pertaining to SAQA b) Process for measuring potential has been implemented c) Review of recruitment and selection processes is underway to include the suitably qualified provisions
11. Income differentials a) Must submit a statement to the Employment Conditions Commission on the remuneration & benefits received in each occupational category and level b) Determine income differentials and where disproportionate income differentials occur take measures to progressively reduce such differentials	a) Compilation of income of the different structures is in progress to determine if unacceptable differentials exist
12. Report to Director-General a) Report of EE plan to be submitted to the Director-General 6 months after the commencement of the Act	a) To commence when EE plan finalised and approved
13. Information disclosure a) Display at the workplace the provisions of the Act and the report submitted to the Director-General b) Make a copy of the plan available for employees to copy and consult c) Summary of Employment Equity plan must be included in the annual financial report	a) Initiative to have the Employment Equity Plan on Intranet underway b) Discussions have been held with Corporate Communications to include EE plan summary in annual report once the Act is implemented c) Identification of all workplaces through MSIS has commenced
14. Record keeping a) Must establish and maintain records of workforce, plan and other relevant records	a) Guidelines will be issued on the keeping of all relevant records
15. Temporary employment services a) If a persons services have been procured from a temporary employment service for an indefinite period or for a period of 3 months or longer, such a person is deemed to be an employee of the company	a) Formulating a policy around the use of temporary employment agencies b) Investigating the inclusion of temporary employees on MSIS for reporting and statistical purposes

Technology & Network Services

Proposed Affirmative Action Targets for 1 April 1999 to 31 March 2002

	Status - 31 December 1998										Female Total									
	Black			White			Grand Total	Black Total			Targets			Targets						
	Male	Female		Male	Female			31/03/2000	31/03/2000	31/03/2000	0		1		2					
			Female			Female	0				1	2	0	1	2					
11 + 12	10153 94%	468 4%	112 1%	24 0%	10757	10621 99%	86%	86%	86%	86%	86%	86%	86%	86%	86%	86%	86%	86%	86%	86%
9 + 10	12110 60%	1520 7%	4220 21%	2482 12%	20332	13630 67%	72%	76%	80%	76%	80%	80%	76%	80%	80%	76%	80%	80%	76%	80%
8	1595 24%	58 1%	4804 71%	305 5%	6762	1653 24%	33%	42%	50%	42%	50%	50%	42%	50%	50%	42%	50%	50%	42%	50%
6 + 7	1007 28%	46 1%	2342 66%	164 5%	3559	1053 30%	37%	44%	50%	44%	50%	50%	44%	50%	50%	44%	50%	50%	44%	50%
5	244 26%	9 1%	670 70%	28 3%	951	253 27%	37%	44%	50%	44%	50%	50%	44%	50%	50%	44%	50%	50%	44%	50%
4	30 24%	2 2%	92 74%	1 1%	125	32 26%	37%	44%	50%	44%	50%	50%	44%	50%	50%	44%	50%	50%	44%	50%
3	20 17%	2 2%	90 78%	3 3%	115	22 19%	30%	40%	50%	40%	50%	50%	40%	50%	50%	40%	50%	50%	40%	50%
1 + 2	4 22%	1 6%	13 72%	0 0%	18	5 28%	35%	43%	50%	43%	50%	50%	43%	50%	50%	43%	50%	50%	43%	50%
Total	25163 59%	2106 5%	12343 29%	3007 7%	42619	27269 64%														