

**NORTHWEST PROVINCE:
DEPARTMENT OF COMMUNITY SAFETY AND TRASPOT MANAGEMENT
HUMAN RESOURCES POLICY**

**POLICY NO : HR2020
NAME OF POLICY : EMPLOYMENT EQUITY POLICY
EFFECTIVE DATE : SEPTEMBER 2020
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PREAMBLE

The North West Department of Community Safety and Transport Management, in its attempt to empower its employees, deemed it necessary to formulate the Employment Equity Policy to enable it to manage equity amongst its employees.

The Constitution guarantees to everyone the fundamental right of equality. The right to equality includes the equality in the social, political and economic spheres of all persons and groups in society. Legislative and other measures have been implemented with a view to eradicating systematic and structural inequalities in society, including inequalities public service employment with a focus on race, gender and disability based disparities.

Despite the removal of the statutory and other formal barriers to entry and advancement within the Public Service since 1994, there are groups of people whose ability to thrive continues to be hampered by this legacy of past discrimination. These groups constitutes of black people, women and people with disabilities. The Employment Equity Act, 1998 was enacted in order to ensure the achievement of employment equity through the elimination of unfair discrimination and the implementation of Affirmative Action measures to advance black people, women and people with disabilities who were marginalized and discriminated against with regard to employment opportunities, earning levels, benefits and service conditions.

The Department of Community Safety and Transport Management in the North West Provincial Government ("the Department") accordingly adopts this policy as a framework for:

A review and renewal of its employment equity programme with a view to accelerating progress towards the realization of a discrimination free workplace where no one is denied opportunity for reasons other than ability, and transforming the Department into an employer of choice where women, men and People with Disabilities from diverse racial and other backgrounds enjoy equal chances to serve the nation and are equitably represented in all structures and at all levels.

1. PURPOSE AND OBJECTIVES

1.1 The purpose of this policy is to guide Managers and employees in the Department in the implementation of measures aimed at giving effect to the right to equality as entrenched in the Constitution and legislation by:

(a) Eliminating all forms of unfair discrimination in employment practices; and

- (b) Implementing affirmative measures that seek to proactively equalize employment opportunities for black people, women and persons with disabilities as a means of eliminating their systematic unfair discrimination and inequality due to historical injustices.

1.2 The policy objectives include:

- (a) Prohibiting and eliminating all forms of unfair discrimination in employment within the Department,
- (b) Recommitting the Department to the implementation of affirmative action and elaborating the Department's holistic approach to affirmative action;
- (c) Ensure accountability for the elimination of discrimination and implementation of affirmative action;
- (d) Providing for internal redress for violations of rights relating to non-discrimination, harassment and other equality elements; and
- (e) Providing a framework for:
 - (i) Identifying and eliminating persisting forms of discrimination and inequality in the Department as a work place;
 - (ii) Reviewing current affirmative action measures with a view to implementing a comprehensive affirmative action programme that goes beyond numbers and accelerates the realization of employment equity goals in the Department;
 - (iii) Aligning skills development measures with employment equity objectives;
 - (iv) Enhancing departmental compliance with national and international obligations on the promotion of workplace equality and decent work; and
 - (v) Ensuring that all managers and personnel involved in human resources practices that have an impact on workplace equality are held accountable for their action.

2. SCOPE OF APPLICATION

2.1 This policy is applicable to all employees and prospective employees of the Department, subject to the proviso that employees that are excluded from the Labour Relations Act and the Employment Equity Act may, after exhausting internal remedies, take their cases to the Equality Court.

2.2 Rights relating to affirmative action only apply to Women and People with Disabilities whereas rights relating to unfair discrimination apply to all employees.

3. LEGISLATIVE FRAMEWORK

3.1 International laws/standards that influence and regulate equality and human dignity in the workplace include the following:

3.1.1 Convention on the Elimination of all Forms of Racial Discrimination (CERD);

3.1.2 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW);

3.1.3 UN Convention for the Rights of Persons with Disabilities (CRPD);

3.1.4 ILO Code of Practice on HIV/AIDS and the World of Work (2001); and

3.1.5 ILO Convention 111 (Discrimination), Convention 156 (Workers with Family and Responsibilities) and Convention 183 (Maternity Protection).

3.2 South African laws and policy frameworks that underpin employment equity include the following:

3.2.1 Constitution of the Republic of South Africa, No. 108 of 1996;

3.2.2 Public Finance Management Act, No. 1 of 1999;

3.2.3 Public Service Act, No. 103 of 1994, as amended;

3.2.4 Basic Conditions of Employment Act, No. 75 of 1997;

3.2.5 Public Service Regulations, 2001;

3.2.6 White Paper on Transforming the Public Service;

3.2.7 White Paper on Affirmative Action in the Public Service;

3.2.8 Code of Good Practice on Integrating Employment Equity into Human Resources Practices and Policies, 2005;

3.2.9 NW Government Employment Equity Policy (Policy No. NWPG 10);

3.2.10 NW Government Integrated Provincial Gender Strategy;

3.2.11 Code of Good Practice: Key Aspects on the Employment of People with Disabilities, 2002;

3.2.12 Code of Good Practice on Key Aspects of HIV/AIDS and Employment;

3.2.13 Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace, 2005;

3.2.14 Promotion of Equality and Prevention of Unfair Discrimination Act, 2000;

3.2.15 PSCBC Resolutions 1 and 2;

4. DEFINITIONS

4.1 AIDS "Acquired Immune Deficiency Syndrome;

4.2 DCP "Disciplinary Code and Procedures for the Public Service;

4.3 EAP "Employee Assistance Programme;

4.4 EEP "Employee Equity Plan;

4.5 HDIs "Historically Disadvantaged Individuals;

4.6 HIV "Human Immunodeficiency Virus;

4.7 **ILO** "International Labour Office;

4.8 **WSP** "Workplace Skills Plan;

5. DEFINITIONS

5.1 **Affirmative Action** "Systematic employment measures that seek to redress systematic inequalities experienced by black people, women and persons with disabilities in employment opportunities and include preferential treatment of suitably qualified black people, women and persons with disabilities; in regard to recruitment, skills development, advancement, selection and retention.

5.2 **Department** means "the Department of Community Safety and Transport Management;

5.3 **Head of Department** "means the Head of the Department, him/herself or his delegated authority or his designated office responsible for leave related matters and/or investigation;

5.4 **Employee**" means all employees of the Department employed in terms of the Public Service Act of 1994, the Basic Conditions of Employment Act of 1998, as amended and includes contract workers, interns, volunteers and prospective employees;

5.5 **Black People** "is a generic term which means Africans, Coloured, Indian men and women;

5.6 **Disability** "means a physical or mental impairment which is long-term or recurring, and which substantially limits a person's prospect of advancement in employment,

5.7 **Employment Equity,**" means the achievement of equal opportunities in the workplace through the elimination of unfair discrimination and the implementation of remedial measures aimed at eradicating existing inequalities and advancing black people, women and persons with disabilities, collectively referred to in the Employment Equity Act, as Designated Groups;

5.8 **Employment Equity Plan** "means a plan drawn in compliance with the Employment Equity Act as a framework for proactive elimination of unfair discrimination and implementation of affirmative measures to advance black people, women and persons with disabilities in response to barriers identified through an Employment Equity Audit and to ensure their equitable representation;

5.9 **Historically Disadvantaged Individuals** "in this context it refers to black people, women and people with disabilities;

5.10 **Reasonable accommodation** "means any modification or adjustment to a job or to the working environment that will enable the person from designated group to have access to or participate or advance in employment;

5.11 **Suitably Qualified person** "means a person who has any one of, or a combination of the following: formal education, prior learning, relevant experience, or capacity to acquire the ability to do the job;

5.12 Unfair Discrimination, "occurs when an employee is unfairly accorded less favourable treatment with regard to employment opportunities or benefits on the basis of one or more grounds that are prohibited by law.

6. PRINCIPLES

6.1 The principles that underpin this policy and which should inform its implementation, include the following:

- 6.1.1 The right to equality, which incorporates employment equity or equality in the workplace, is a fundamental human right that is guaranteed in the Constitution of South Africa, National Legislation and the Provincial policy Framework;
- 6.1.2 The social consequences of previously legalized historical injustices underpin entrenched systemic structural inequalities that continue to disadvantage women and people with disabilities in employment, skills acquisition and other areas of life;
- 6.1.3 Giving meaning to the right to equality requires the elimination of unfair discrimination and remedial measures like affirmative action that seek to advance those that continue to be disadvantaged, as a means of equalizing opportunities;
- 6.1.4 Affirmative action or remedial measures as expected in the Constitution and equality laws such as the Employment Equity Act, include but transcend the preferential treatment of suitably qualified women and persons with disabilities, in employment practices such as recruitment, development and promotion;
- 6.1.5 The Employment Equity refers to a combination of non-discrimination, affirmative action and it should enhance effective service delivery;
- 6.1.6 Proper implementation of employment equity necessitates the understanding of skills development as a critical part of affirmative action;
- 6.1.7 The experiences of women, people with disabilities and people affected by HIV/AIDS need to be considered/factored into employment equity planning, implementation and enforcement, and
- 6.1.8 No act of unfair discrimination, sexual harassment or any violation of this policy or applicable equality laws should be treated with impunity.

7. POLICY STATEMENT

7.1 The Department commits itself to the realization of employment equity goals as envisaged in Employment Equity Act and the achievement of substantive compliance with all equality laws and policies relating to work place equality;

- 7.2 All employees of the Department have a right to equality, which includes freedom from unfair discrimination and sexual harassment, and incorporates the responsibility of the Department to implement affirmative action measures aimed at advancing historically disadvantaged individuals in order to equalize all employment opportunities;
- 7.3 All managers and human resources personnel have a duty, to eliminate unfair discrimination and to implement affirmative measures to eliminate unfair discrimination, advance HDI's (Historically Disadvantaged Individuals) and achieve workplace that reflects the human diversity in the NW Province and broader society;
- 7.4 The duty referred to in paragraph 6.3 above includes preferential measures in employment practices such as recruitment and selection, acting appointments, training and development promotion and retention strategies targeting suitably qualified women and people with disabilities;
- 7.5 All employment decisions in the Department, including decisions relating to recruitment and selection, job assignments, development, promotion and retention shall, forth with, be subjected to an employment equity compliance test, based on the provisions of this policy and relevant laws;
- 7.6 Memoranda or submissions dealing with appointments shall always indicate the employment equity implications of an appointment, and if employment shall be undermined by such an appointment, justify such an appointment and outline future remedial measures;
- 7.7 All structures responsible for making employment related decisions such as recruitment, development and promotion shall have equitable representation of groups designated by the Employment Equity Act as beneficiaries of affirmative measures (Designated Groups);
- 7.8 Departmental Employment Equity Plans and reports, as envisaged in the Employment Equity Act, shall always be up to date and displayed as prescribed;
- 7.9 Consultation and cooperation with employee representatives is a fundamental pillar of this policy. The Workplace Forum will be the main avenue for such consultation and cooperation; and
- 7.10 The Workplace Forum membership and participation in decision-making should reflect equitable representation of all Designated Groups.

8. STATUTORY AUTHORIZATION

- 8.1. The purpose of the Employment Equity Act, No. 55 of 1998, is to achieve equity in the workplace by:
 - (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 workplace.

9. POLICY MATTERS

9.1 EMPLOYMENT EQUITY GOALS

- 9.1.1 Promotion of equal opportunity and fair treatment in employment.
- 9.1.2 No discriminatory practices shall exist anywhere in the department.
- 9.1.3 All forms of harassment shall be eliminated.
- 9.1.4 All barriers shall be removed that unfairly restrict employment and promotion opportunities of designated groups.
- 9.1.5 The department shall provide a grievance procedure to ensure that complaints of harassment are dealt with sensitively and effectively.
- 9.1.6 Enhanced representation of currently under represented categories of people, with the emphasis on blacks, women and people with disabilities in all occupational categories and levels.
- 9.1.7 The department is expected to conduct an organizational climate assessment to test the perceptions of employees with regard to discrimination, barriers of advancement, the accommodation and advancement of diversity.
- 9.1.8 The department shall conduct a demographic profile of its workforce in each occupational category and level, focused on its core business/mandate to determine the level of under representation of blacks, women and people with disabilities.

9.2 EMPLOYMENT EQUITY PLAN

In terms of Section 20 of the Employment Equity Act, 1998 all departments, as designated employers, must prepare and implement an employment equity plan, which will achieve reasonable progress towards employment equity.

The Employment Equity Plan will address the following:

- The objectives to be achieved for each year of plan.
- The employment barriers that adversely affect the employment opportunities and the advancement of black, women and people with disabilities.
- A timetable for each year of the plan for the achievement of the employment equity objectives.
- Numerical goals to achieve an equitable representation of black people, women and people with disabilities as measured against the demographics of the country's population, within each occupational category and level.
- Non-numerical goals, by auditing the departmental policies, practices and conducting organizational diagnostics and environment/climate survey for the purpose of identifying and correcting any covert or overt practices hindering the achievement of equity.

- The duration of the plan, which will be between one (1) and five (5) years.
- Procedures to monitor and evaluate the implementation of the plan.
- Procedure to resolve any dispute about the interpretation and implementation of the plan.
- The establishment of Employment Equity steering Committee which will be responsible for implementing and monitoring the plan.
- Any other matter prescribed by the Employment Equity Act, 1998.

9.3 EMPLOYMENT EQUITY REPORT

Each department shall prepare and submit an Employment Equity report to the Department of Labour as stipulated in Section 21 of the Employment Equity Act, 1998.

Such Employment Equity report must be signed by the Head of Department and must contain the prescribed information on progress made in achieving the goals of the employment equity plan and reasons why any aspects of the plan has not been achieved.

The department is required by Section 22 of the Employment Equity Act, 1998 to publish a summary of their reports in their annual financial reports.

10. PREVENTION AND ELIMINATION OF UNFAIR DISCRIMINATION

10.1 Duty to Eliminate Unfair Discrimination

Every manager must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice within their sphere of authority.

10.2 Prohibition of Unfair Discrimination

- a. All forms of unfair discrimination, whether direct or indirect, are prohibited and it is the responsibility of all employees to inform themselves about and refrain from perpetrating unfair discrimination.
- b. Prohibited grounds of unfair discrimination, include one or more of the following:
Race; gender; sex; pregnancy; marital status; family responsibility; ethnic or social origin; colour; sexual orientation; age; disability; religion; HIV status; conscience; belief; political opinion; culture; language and birth.
- c. In line with the Department's conviction that no individual should be denied any employment opportunity for reasons other than ability, unfair discrimination on the

basis of other human qualities that may not be in the above list (extracted from the Employment Equity Act) is also prohibited.

10.3 Prohibition of Unauthorized Medical Testing

Medical testing is prohibited unless authorized by and conducted in accordance with the provisions of Section 7 of the Employment Equity Act and the provisions of the Departmental policy on HIV/AIDS.

10.4 Prohibition of Sexual and other Forms of Harassment

a. All employees of the Department are required to:

- i. Refrain from racial harassment, disability harassment, harassment based on HIV status and any other form of harassment.
- ii. Report acts of harassment; and
- iii. Undergo sensitization training on non-discrimination, racism, disability, HIV/AIDS and gender equality.

11. AFFIRMATIVE ACTION PLANNING

1 Responsibilities

- a. The MEC and the HOD have overall responsibility for achieving employment equity in the Department and for ensuring employment equity compliance throughout;
- b. The HOD must appoint an Employment Equity Officer at SMS level, and with adequate authority and reporting to the HOD, to facilitate employment equity implementation;
- c. It is the responsibility of each SMS level manager to conduct a workplace analysis or audit and to prepare and implement an Employment Equity Plan (EEP) for his or her component;
- d. Each component's Employment Equity Plan (EEP) shall be disseminated to all employees in that component and the Department's Employment Equity Plan (EEP) shall be displayed as prescribed in the Employment Equity Act;
- e. The Human Resources Manager and the Employment Equity Officer in consultation with the line managers shall compile a Workplace Profile and a departmental Employment Equity Plan (EEP) in response to all barriers identified in a departmental Employment Equity Audit;
- f. The Department's Employment Equity Plan (EEP), including targets, shall be revised annually in response to employment shifts and to address barriers identified through a regular analysis of all employment practices,

- g. The HOD shall sign the EEP and ensure that each manager is held accountable for employment equity delivery, through the individual and Departmental performance management processes; and
- h. Employment Equity Reports shall be prepared quarterly and annually by each SMS manager, feeding to quarterly and annual reports to be prepared by the Employment Equity Officer.

2. Policy and Practice Analysis

- (a) Managers should develop holistic and realistic EEP's that respond to each barrier or form of unfair discrimination identified in a comprehensive audit and analysis of all employment practices to identify existing and potential barriers to the achievement of equality in employment opportunities and benefits, particularly for HDIs; and
- (b) The outcomes of the audit should be communicated to all employees.

3. Developing or Updating a Workforce Profile and Numerical Targets

- a. A Workforce Profile, indicating the extend of representation for each Designated Group, shall be regularly developed and/or updated for the Department and each unit, in the prescribed format;
- b. The Workforce Profile for each unit and the Department shall be displayed for all to see; and
- c. Numerical Targets for each unit and the Department shall be displayed for all to see, and should be integrated in organizational performance review mechanisms.
- d. The Department must achieve 2% of people with disability and 50% of women at SMS level.

i. Consultation

- a. The Department's EEP and those of constituent units must be products of an inclusive consultative process that involves employee representatives under the auspices of the Workplace Forums.
- b. In addition to the consultation of Trade Unions, measures will be put in place to ensure that the views of non-unionized employees are also taken into consideration.
- c. Final decisions regarding employment equity planning remain a management prerogative and responsibility.

12. APPLICATION OF EMPLOYMENT EQUITY IN ALL HUMAN RESOURCES EMPLOYMENT PRACTICES AND PROCESS

12.1 General Statement

- a. All employment practices and human resources processes should promote an affirming non-discriminatory environment that fosters respect for dignity of all while ensuring that each employee's potential is fully realized in the interests of service excellence.
- b. All employment practices and human resources processes shall be regularly aligned with employment equity requirements and objectives.
- c. The alignment will be facilitated by periodic audits and reviews aimed at identifying and eliminating barriers that undermine equal enjoyment of workplace opportunities by women, black people, people with disabilities, people living with HIV and any other group.
- d. Human resources research and data management shall be adapted to support regular monitoring of all aspects of employment equity.

12.2 Human Resources Planning

- a. All human resources planning processes and plans shall aligned to and contribute to the achievement of employment equity goals and objectives.
- b. Human resources planning shall include succession planning and a retention strategy to ensure that there is always a pool of suitably qualified HDI's from which senior and scarce skills appointments that promote equality may be made.
- c. Succession planning does not mean reserving or promising a job to any person.

12.3 Discipline, Grievance and Dispute

- a. All disciplinary and grievance procedures shall be reviewed regularly to identify and eliminate unfair discrimination, whether direct or indirect, and to ensure that processes facilitate swift, effective and responsive resolution of employment equity disputes.
- b. The manner in which discipline and grievance are managed can generate conflict in a workplace and may undermine employment equity achievements and policies.
- c. Employers should ensure that their disciplinary and grievance policies are consistently and impartially applied.
- d. The existing grievance, discipline and dispute resolution procedures must be conducive in dealing with unfair discrimination.

13.2 HOD (Head of Department)

- a. The Head of the Department bears ultimate responsibility for employment equity compliance, including the achievement of a representative workforce.

13.3 Employment Equity Officer and Employment Equity Committee

- a. The HOD shall designate or appoint an SMS manager who participates in all employment decision-making structures as an Employment Equity Officer, as prescribed in the Employment Equity Act (EEA).
- b. The Employment Equity Officer shall advise on and monitor the implementation of employment equity and shall be granted sufficient authority to discharge his/her responsibility effectively.
- c. A broadly representative Employment Equity Committee, which is a sub-committee of the Workplace Forum and chaired by the Employment Equity Officer, shall be established to advise on and monitor the implementation of employment equity.

14. DISPUTE RESOLUTION

14.1 General Statement

- a. Employment equity cases relating to sexual harassment and HIV/AIDS will be dealt with in accordance with procedures stipulated in the Sexual Harassment and the HIV/AIDS policies.
- b. All employment equity disputes will be dealt with expeditiously and with due regard to fairness (procedural and substantive) and human dignity.

14.2 Disciplinary Action

- a. The Department reserves the right to take disciplinary action, in accordance with the Labour Relations Act 1998 (as amended) and Resolution 2 of 1999 as amended by Resolution 1 of 2003, against any person who violates any provision of this policy.
- b. The procedure to be followed in dealing with employment equity violations will be as stipulated in Resolution 1 of 2003 (Disciplinary Code and Procedures for the Public Service (DCP)).
- c. Sanctions may range from requiring an apology, being ordered to undergo appropriate training, losing merits points, warnings to sanctions such as suspension, demotion and dismissal for gross violations.

15. MONITORING, EVALUATION AND REVIEW

- 15.1 The Employment Equity Officer shall, with the assistance of the Workplace Forum and the Employment Equity Committee, monitor, evaluate and advise on the implementation of the Employment Equity Policy.
- 15.2 All Performance Agreements of managers shall contain applicable employment equity obligations and failure to comply shall attract possible disciplinary action and/or a reduction in the performance bonus.
- 15.3 The Employment Equity Officer, who is directly accountable to the HOD, shall cooperate with all equality officers, including the Gender Focal Point, Disability Officer or Focal Point and the HIV/AIDS Coordinator.
- 15.4 A monthly Employment Equity Report shall be prepared by each SMS manager for their unit and integrated in their performance review.
- 15.5 A departmental Employment Equity Report that is signed by the HOD shall be prepared quarterly and annually by the Employment Equity Officer with the help of the Human Resources Director. Such report is to be summarized in the annual report and submitted to the Department of Labour, as prescribed.
- 15.6 The Department's Human Resources Strategy, Planning and Information Management Sub-Directorate is responsible for communicating the document within the Department and all managers and supervisors are responsible for the implementation thereof.

16. RELATED POLICIES

- 16.1 Effective implementation of this policy requires that it be read together with departmental policies on HIV/AIDS, Training and Development, Sexual Harassment and other HR policies.
- 16.2 Other policies to be given consideration include departmental policies on Gender, Disability and Older Persons.

17. COMMENCEMENT OF THE POLICY

This policy shall be implemented by the Department with effect from the date of approval and signature by the HOD.

APPROVED



**BOTLHALE MOFOKENG (MS)
HEAD OF DEPARTMENT**

SIGNED THIS DAY 28th **OF** OCTOBER **2020.**