
GENERAL NOTICE

NOTICE 1358 OF 2005

DEPARTMENT OF LABOUR

EMPLOYMENT EQUITY ACT, 1998 (ACT 55 OF 1998)

Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices.

Notice is hereby given that the Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices set out in the schedule is issued by the Minister of Labour on the advice of the Commission for Employment Equity, in terms of section 54 (1) (a) of the Employment Equity Act, 1998 (Act No 55 of 1998).



**MMS MDLADLANA, MP
MINISTER OF LABOUR**

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1. FOREWORD

The Employment Equity Act, 55 of 1998 ("the Act") imposes a duty on employers to eliminate unfair discrimination. It also provides a framework for the attraction, development, the advancement and retention of an employer's human resource talent. Research has shown that employers can increase productivity, motivation and resourcefulness in the workplace when they invest in their people and treat them with fairness and equity. This is secured by eliminating the historical barriers that prevent the advancement of the designated groups (Black people including African, Coloured and Indian, Women and People with Disabilities). This ensures that positive or affirmative action measures are in place to expedite their growth and advancement.

In the context of challenges of a compounded diverse global economy and constraints around infrastructure, skills, poverty, unemployment and service delivery, employers are increasingly aware that having racial, gender and disability diversity is key to business growth and development. Sustaining this growth requires ongoing commitment toward eliminating barriers, including skills development, in its general and specific forms. Some of the main challenges for employers include; attracting, managing, developing and retaining talent in the workforce through effective human resource management. In this context, the implementation of effective employment equity strategies will assist employers to maximise human resource development through the eliminating unfair discrimination and barriers and by promoting affirmative action. This Code provides guidelines to assist employers in implementing these initiatives.

2. OBJECTIVE

- 2.1. The objective of this Code is to provide guidelines on the elimination of unfair discrimination and the implementation of affirmative action measures in the context of key human resource areas, as provided for in the Act. This Code is not intended to be a comprehensive human resources Code, but rather an identification of areas of human resources that are key to employment equity and can be used to advance equity objectives.
- 2.2. The guidelines in the Code will enable employers to ensure that their human resource policies and practices are based on non-discrimination and reflect employment equity principles at the commencement of employment, during employment and when terminating employment.

3. SCOPE AND LEGAL PRINCIPLES

- 3.1. This Code is issued in terms of section 54 of the Employment Equity Act and must be read in conjunction with the Act and other Codes issued in terms of the Act¹.
- 3.2. The Code should also be read in conjunction with the Constitution of South Africa and all relevant legislation, including the following:
 - 3.2.1. the Labour Relations Act, 66 of 1995 as amended;

¹ Code of Good Practice on the Handling of Sexual Harassment Cases; Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity Plans; Code of Good Practice on the Employment of People with Disabilities and Code of Good Practice on Key Aspects of HIV/AIDS and Employment.

- 3.2.2. the Basic Conditions of Employment Act, 75 of 1997 as amended;
 - 3.2.3. the Skills Development Act, 97 of 1998;
 - 3.2.4. the Skills Development Levies Act, 9 of 1999; and
 - 3.2.5. the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000.
- 3.3. This Code applies to all employers and employees covered by the Act.
- 3.4. This Code is intended to be a tool to aid employers to implement employment equity by providing principles that should be incorporated into employment equity plans and that guide policies and practices. This Code is also intended to provide guidelines to employers to consider and apply as appropriate to their circumstances.

4. STRUCTURE OF THE CODE

- 4.1. The structure of this Code mirrors the life cycle of an employee in employment. It deals with possible barriers and unfair discrimination that could occur at each phase, including commencing employment, during employment and on termination of employment. It also describes affirmative action measures that could be used at each phase to advance the objectives of the Act.
- 4.2. Each topic focuses on the following areas:
- 4.2.1. **Scope.** This section provides a brief definition of the topic in the context of the employment life cycle.
 - 4.2.2. **Impact of employment equity.** This section deals with non-discrimination principles and affirmative action measures that are relevant to the topic.
 - 4.2.3. **Policy and practice matters.** This section provides information about the policy and practice matters that could arise, and makes suggestions regarding their implementation.
 - 4.2.4. **Link with other areas.** This section identifies cross-references to other key topics as well as other relevant Codes and legislation dealt with in the Codes.

5. IMPLEMENTING EMPLOYMENT EQUITY

5.1. SCOPE

- 5.1.1. Implementing employment equity involves two key initiatives:
- 5.1.1.1. Eliminating unfair discrimination in human resource policies and practices in the workplace; and

5.1.1.2. Designing and implementing affirmative action measures to achieve equitable representation of designated groups in all occupational categories and levels in the workplace.

5.1.2. This section provides a general outline of these areas and the different conceptual and methodological approaches used to deal with them in the workplace.

5.2. IMPACT ON EMPLOYMENT EQUITY

Eliminating unfair discrimination

5.2.1. Section 6 of the Employment Equity Act prohibits unfair discrimination² against employees or job applicants on one or more grounds of personal or physical characteristics like 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. These "prohibited" or other arbitrary grounds cannot be taken into account in employment decision-making. However, it is fair for them to be taken into account where they are relevant to either affirmative action measures or the inherent requirements of a job.

5.2.2. The Act prohibits both direct and indirect unfair discrimination. Direct unfair discrimination is easy to identify in the workplace because it makes a direct distinction on the basis of one or more of the prohibited grounds. Indirect unfair discrimination (often called adverse impact or systemic discrimination) on the other hand, is more difficult to recognise. Indirect unfair discrimination occurs when a policy and practice appears to be neutral but has a discriminatory effect or outcome for a particular group of employees and cannot be justified. The employer's motive and intent is generally considered to be irrelevant in determining whether unfair discrimination has occurred. In certain circumstances, the refusal to make reasonable accommodation of an employee's needs and circumstances, where this can be done without undue hardship to the employer, can constitute unfair discrimination.

5.2.3. Equality can involve a formal notion of treating everyone who is in a similar position the same. This can perpetuate unfairness when those who hold similar positions e.g. all senior managers have different needs and circumstances that impact on their ability to perform effectively. The Constitution requires employers to move beyond formal equality to substantive equality by acknowledging the differences between employees and treating them differently on the basis of those differences. This is necessary to ensure that all employees are treated fairly. Equity therefore invokes the requirement of "fair" treatment in order to achieve substantive equality as an outcome in the workplace. Equal treatment and equal opportunity, like equality, subjects everyone to the same rules without distinction. Equity requires changing the rules so that their application is fair.

² Unfair discrimination can take place by means of an action or an omission.

- 5.2.4. Unfair discrimination is prohibited in the workplace. In order for employers to execute one of their primary responsibilities of eliminating all forms of unfair discrimination in the workplace, it is recommended that all employers should conduct an audit and analysis of all their employment policies and practices, as well as the working environment and facilities. The audit should identify whether any of the policies or practices applicable in the workplace contain any unfair discrimination or barriers to the recruitment, promotion, advancement and retention of members of designated groups. Once the actual or potential barriers are identified, an employer should consult about the strategies for eliminating these barriers. These strategies should be incorporated into the development and implementation of the Employment Equity Plan for that workplace. Regular monitoring in the workplace should occur to ensure that the unfair discriminatory policies or practices do not recur or manifest themselves in different ways.

Implementing affirmative action measures to achieve employment equity

- 5.2.5. Removing barriers³ is only the first step towards ensuring fairness and equity in the workplace. In the context of historical disparities in South Africa, the Act requires employers, employees and representative trade unions to jointly develop strategies to advance designated groups by adopting appropriate affirmative action measures and incorporating them into formal Employment Equity Plans. Affirmative action measures are essentially remedial measures designed to redress the imbalances of the past. This is a mandatory strategy to achieve equity in employment as an outcome⁴.

5.3. POLICY AND PRACTICE

- 5.3.1. This section provides guidance in relation to the audit, analysis and consultation aspects of the employer's obligations⁵.
- 5.3.2. Under the Act every designated employer is required to undertake four processes when developing a strategy to implement employment equity:
- 5.3.2.1. consulting with its employees and representative trade unions;
 - 5.3.2.2. auditing and analysing all employment policies and practices in the workplace and developing a demographic profile of its workforce;
 - 5.3.2.3. preparing and implementing an employment equity plan; and
 - 5.3.2.4. reporting to the Department of Labour on progress made on the implementation of its employment equity plan.

³ A barrier exists where a policy and practice, which also includes procedures, guidelines or rules, or an aspect of it that limits the opportunities of employees.

⁴ This is covered in more detail in the Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity Plans.

⁵ The planning and reporting processes are dealt with in the Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity Plans.

The policy and practice analysis

- 5.3.3. Employers should develop realistic employment equity plans that are workplace specific and capable of measurement. This should be informed by conducting a comprehensive audit and analysis of all existing and potentially unfair discriminatory practices and barriers.
- 5.3.4. The analysis of policies and practices as well as other written documentation can be done through the collection of the information, listing what is applicable and identifying whether any documentation reflects direct or indirect unfair discrimination or barriers to the advancement of designated groups.
- 5.3.5. Practices are generally the informal or unwritten rules that prevail in the workplace and can be analysed through a combination of employee attitudinal surveys, individual interviews and focus groups to establish perceptions of their impact on achieving employment equity.
- 5.3.6. The relevant questions to be posed in the analysis would involve looking at whether the policy or practice is:
- 5.3.6.1. unfairly discriminatory;
 - 5.3.6.2. valid;
 - 5.3.6.3. applied consistently to all employees; and
 - 5.3.6.4. compliant with legislation.
- 5.3.7. An employer should formulate appropriate barrier removal measures for each of the forms of unfair discrimination identified in the audit of policies and practices. These mechanisms would also be the subject of consultation and should be incorporated into the Employment Equity Plan of that employer. Appropriate timeframes, strategies and responsibilities should be allocated for each barrier removal measure.
- 5.3.8. An employer should communicate the outcome of the audit and analysis to employees in as transparent a manner as possible. The method of communication will depend on the culture of the employer; the frequency and common terms of communication; and the role of the Employment Equity Forum or other consultative structure. The leadership of the employer should also receive feedback to be able to provide strategic input with regard to appropriate barrier removal.

Developing a workforce profile and setting numerical targets for equitable representivity

- 5.3.9. A workforce profile is a snapshot of employee distribution in the various occupational categories and levels. Under-representation refers to the statistical disparity between the representation of designated groups in the workplace compared to their representation in the labour market. This may indicate the likelihood of barriers in recruitment, promotion, training and development.

- 5.3.10. Collection of information for the workforce profile is done through an employee survey. It is preferable for employees to identify themselves to enable the employer to allocate them to a designated group. Only in the absence of an employee's self-identification, can an employer rely on existing or historical data to determine the employee's designated group status.
- 5.3.11. The workforce profile should indicate the extent to which designated groups are under-represented in that workforce in occupational categories and levels. This should be compared to the Economically Active Population at national, provincial or regional, or metropolitan economically active population or other appropriate benchmarks. Employers should set numerical targets for each occupational category and level informed by under-representation in the workforce profile and national demographics. The extent of under-representation revealed by the workforce profile represents the ideal goal reflected as the percentage for each occupational category and level for that workplace.
- 5.3.12. Employers, employees and trade unions should prioritise the least under-represented groups within the workforce. For example, an employer in the consultation process should focus more on the areas where the most imbalances appeared during the audit and analysis.
- 5.3.13. Numerical targets will contribute to achieving a critical mass of the excluded group in the workplace. Their increased presence and participation will contribute to the transformation of the workplace culture and to be more affirming of diversity. Employers are required to make reasonable progress towards achieving numerical targets to achieve equitable representation. This means that an employer should track and monitor progress on a regular basis and update its profile continuously to reflect demographic changes.
- 5.3.14. **Consultation**
- The success of employment equity depends largely on the efficacy of the consultation process. Employers, employees and trade unions must be willing to play a constructive role in the consultation process. Regular and meaningful consultation will contribute to a joint commitment to workplace transformation. It may also foster workplace democracy and productivity. Consultation will ensure that realistic employment equity plans are prepared which address the training and development of designated groups and the adaptation of the workplace to affirm difference.
- The involvement of trade unions in the consultation process is not enough. Employers must also consult with employees from across all occupational categories and levels.
- 5.3.15. It is essential to ensure that whatever form consultation takes, it does not undermine existing collective bargaining processes or existing relationships.
- 5.3.16. Transformation committees or other structures that already exist, which bring together employees and management, may need to be adopted in order to serve the consultation purposes of the Act. Necessary

adaptations may include bringing in representatives from segments of the workforce that do not already participate, including designated or non-designated groups or trade unions. Where workplace forums exist, there should be a vehicle for consultation, and attempts should be made to ensure that these are as representative as possible. Where no structures exist or current structures are impractical for employment equity consultation, the employer should initiate a process to establish a consultative structure and or support an employee initiative of this nature. Criteria for appointment of representatives to the structure, the number of representatives, their roles and responsibilities and mandates will have to be clearly set out. The representatives on the structure should be trained on understanding and implementing the key components of the Employment Equity Act.

- 5.3.17. Disputes will inevitably arise in the course of consultation. Employees may feel that they are not being sufficiently included in decision-making, or employers may grow frustrated at delays that are occasioned as a result of the need to consult.

5.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 5.4.1. **Performance management** – senior management performance should be, amongst others, measured against the extent to which they have achieved their numerical targets.
- 5.4.2. **Recruitment and selection** - an employer must take cognisance of numerical targets when offering employment to suitably qualified job applicants.
- 5.4.3. **Promotions** – succession planning and decisions on promotion must take account of an employer's numerical targets and ensure that under-represented groups in identified categories are developed and promoted.

PART A: COMMENCING EMPLOYMENT

An employer can use a number of outreach and proactive mechanisms to attract applicants from under-represented groups.

6. JOB ANALYSIS AND JOB DESCRIPTIONS

6.1. SCOPE

- 6.1.1. A job description outlines the role and duties of the job and consists of two components:
- 6.1.1.1. a description of the outputs of the job (what the job proposes to do). This description should provide an accurate and current picture of what functions make up a job, and should not include unrelated tasks. This should outline the job's

location, purpose, responsibilities, authority levels, supervisory levels and interrelationships between the job and others in the same area; and

- 6.1.1.2. a description of the inputs of the job (i.e. what the person doing the job is required to do). This description should provide details about the knowledge, experience, qualifications, skills and attributes required to perform the job effectively.
- 6.1.2. Employers should conduct a job analysis when developing a job description. A job analysis is the process used to examine the content of the job, breaking it down into its specific tasks, functions, processes, operations and elements.

6.2. IMPACT ON EMPLOYMENT EQUITY

Job descriptions may either advance or undermine employment equity depending on how they are written.

A job description should clearly state the essential or inherent requirements of the job. These are the minimum requirements that an employee needs in order to be able to function effectively in that job. These requirements should not be overstated so as to present arbitrary or discriminatory barriers to designated groups. However, in the interests of promoting the appointment of employees who may not meet all the essential or inherent job requirements, an employer may decide that an employee who has, for instance, six out of the ten threshold or essential requirements, will be considered to be suitably qualified, subject to obtaining the outstanding requirements within a specified time.

6.3. POLICY AND PRACTICE

- 6.3.1. In order to ensure that job descriptions refer only to the essential or inherent job requirements, they should comply with the following criteria:
 - 6.3.1.1. Each task or duty in the job description is essential to be able to perform the job and is not overstated;
 - 6.3.1.2. The job description is free of jargon and is written clearly;
 - 6.3.1.3. The competency specification includes only criteria essential to perform the duties. This should be objective and avoid subjective elements that can be interpreted differently;
 - 6.3.1.4. Experience requirements that are not essential, related or arbitrary to the job should be excluded; and
 - 6.3.1.5. Criteria do not disadvantage employees from designated groups.
- 6.3.2. An employer may also use job descriptions to promote affirmative action, for instance, by incorporating potential as a requirement and making

reference to development and training to acquire additional skills and competencies.

- 6.3.3. A job description should be capable of flexible interpretation in the interest of promoting affirmative action. In this regard, an employer may list all the minimum or essential requirements of the job.

6.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 6.4.1. **Recruitment and selection** - Job descriptions that are flexible may aid the recruitment of employees from designated groups in order to create equitable representation. Rigid job descriptions may operate as a barrier to attracting individuals from designated groups with potential.
- 6.4.2. **Performance management** – Specificity of job descriptions contributes to setting clear performance objectives in an employee's career development plan. This may avoid perceptions of unfair or discriminatory treatment in performance.
- 6.4.3. **Skills development** – A clear job description enables the identification of skills and competency gaps. These gaps could be closed through appropriate interventions like training and development.

7. RECRUITMENT & SELECTION

7.1. SCOPE

- 7.1.1. Recruitment and selection is the process that employers use to attract applicants for a job to determine their suitability. This involves various selection techniques such as short listing, scoring, interviews, assessment and reference checks.
- 7.1.2. This section identifies some of the strategies that can be used to attract a wide pool of applicants from designated groups.

7.2. IMPACT ON EMPLOYMENT EQUITY

Recruitment and selection processes should be conducted fairly and without unfair discrimination. One of the barriers in the recruitment process is the inability to attract sufficient numbers from the designated groups. Attracting as many applicants as possible from designated groups may ensure that a larger skills pool is available from which to recruit. Recruitment and selection is often the most important mechanism to achieve numerical targets and to increase the representivity of designated groups in the workplace.

- 7.2.1. A number of areas in recruitment and selection should be reviewed to eliminate unfair discrimination. These include:
- 7.2.1.1. Advertising and head hunting;

- 7.2.1.2. The job application form;
- 7.2.1.3. The short listing process;
- 7.2.1.4. Interviews;
- 7.2.1.5. Job offers;
- 7.2.1.6. Record keeping; and
- 7.2.1.7. Reference checking.

7.3. POLICY AND PRACTICE

- 7.3.1. The recruitment process should be informed by the employer's employment equity plan, including the recommended affirmative action provisions.
- 7.3.2. Employers should have written policies and practices that outline their approach to recruitment and selection. This document should:
 - 7.3.2.1. reflect the values and goals of the employer's employment equity policy or ethos; and
 - 7.3.2.2. include a statement relating to affirmative action and the employer's intention to redress past inequalities.
- 7.3.3. Where an employer utilises the services of recruitment agencies, it should make the recruitment agency aware of its employment equity policy.

Advertising positions

- 7.3.4. When advertising positions employers should refer to their employment equity policy or values and indicate their position on affirmative action.
- 7.3.5. Job advertisements should place emphasis on suitability for the job, and should accurately reflect the inherent or essential requirements (i.e. the core functions) of the job and competency specifications.
- 7.3.6. Employers may consider placing all advertisements for positions internally even if a job is being advertised externally. This will make current employees aware of the opportunities that exist within the workplace.
- 7.3.7. When advertising positions, employers may state that preference will be given to members of designated groups. However, this does not suggest that the process of recruitment excludes members from non-designated groups.
- 7.3.8. Where possible, employers should place their job advertisements so that it is accessible to groups that are under-represented.

- 7.3.8.1. Employees who are on maternity leave should be informed of positions advertised in the workplace.

Job Application Forms

- 7.3.9. A job application form is a mechanism that is used by an employer as part of selecting a suitable applicant for a position.
- 7.3.10. The purpose of a job application form is to:
- 7.3.10.1. standardise the information employers receive from job applicants. This should reduce the probability for unfair discrimination;
 - 7.3.10.2. ensure that the information received from job applicants focuses on the requirements of the job and does not result in indirect unfair discrimination.; and
 - 7.3.10.3. obtain biographical information to provide an employer with an easy mechanism for monitoring applications from various designated groups.

Short-listing of Job Applicants

- 7.3.11. Short listing is a process in which an employer considers all applications, including curriculum vitae and other relevant documents. An employer should place those job applicants who meet the criteria on a shortlist.
- 7.3.12. The process of short-listing job applicants should be standardized. Where no standards exist, an approach should be decided on before short-listing commences.
- 7.3.13. An employer should consider involving more than one person in the process of short-listing applicants to minimize individual bias.
- 7.3.14. The short-listing panel should be balanced in terms representivity.
- 7.3.15. Where an employer has outsourced the short-listing process, every effort must be made to ensure that the process is consistent with the recruitment and selection policies of the employer.
- 7.3.16. An employer should not rely on second hand knowledge or assumptions about the type of work the applicant may be able to do.
- 7.3.17. An employer should ensure that it short-lists as many suitably qualified applicants from designated groups as possible.
- 7.3.18. Suitably qualified⁶ applicants must meet the essential job⁷ requirements.
- 7.3.19. When short-listing, an employer could include applicants from designated groups who meet most but not all the minimum requirements. These applicants with potential could be considered for development to meet all the job requirements within a specified timeframe.

⁶ A suitably qualified person in the Act is defined as any one or any combination of a person's formal qualification, prior learning; relevant experience or the capacity to acquire within a reasonable time the ability to do the job.

⁷ An essential job requirement is the skills, knowledge or experience that are necessary to perform a job.

Interviews

- 7.3.20. An interview is a selection tool that provides an employer with the opportunity to meet a job applicant face-to-face.
- 7.3.21. Employers should use the same panel in the short-listing and interviewing process.
- 7.3.22. Employers should provide training and guidance to the panel conducting the interviews on:
- 7.3.22.1. interviewing skills;
 - 7.3.22.2. the measuring system;
 - 7.3.22.3. employment equity and affirmative action; and
 - 7.3.22.4. matters relating to diversity, including skills for recognizing different dimensions of merit.
- 7.3.23. Employers may develop a standard interview questionnaire. This is a questionnaire prepared before the interview listing a set of questions that will be asked of each applicant interviewed to determine the applicant's suitability for the job. The interview questionnaire should be based on the job description, particularly essential elements of the job and competency specifications. Employers should regularly audit their interview questionnaires to ensure that they do not contain questions that are potentially discriminatory.
- 7.3.24. An employer should consistently and objectively assess all applicants interviewed using as a basis the job description, competency specification and the measuring system. The same amount of time should be allocated for each candidate and the same or similar questions should be asked.
- 7.3.25. The measuring system should be standardized. An employer must allocate weightings to ensure that there is a balance between matching job requirements, numerical targets and the needs of the employer.

Making the job offer

- 7.3.26. Employers should ensure that a realistic job preview is provided to ensure that both the candidate and employer's expectations are congruent. This is to facilitate the retention of employees from designated groups by effectively managing expectations before the candidate accepts a position, i.e. it must be clear to the candidate on what their expectations are, lines of authority and specific responsibilities;
- 7.3.27. Where a candidate does not accept a job offer, an employer should conduct an "exit" type interview to establish the reasons for not accepting the offer. This will enable the employer to identify and remove existing barriers.

Record keeping

- 7.3.28. An employer should keep copies of all documents relating to each stage of the recruitment process for a reasonable period of time after the position has been filled. These documents will be important in the case where an applicant challenges the recruitment process and selection.
- 7.3.29. An employer may keep data on its recruitment processes to inform its employment equity strategy and for monitoring changes in attitudes and actions of managers. This information could include:
- 7.3.29.1. the demographic details of candidates who apply, those who are short listed, interviewed and those who are made offers;
 - 7.3.29.2. the demographic details of candidates in relation to short listing, interviewing and job offers made in each department to establish which sections within the workplace are advancing the employment equity profile of the employer. The employer can then focus attention on those departments that are not successful in advancing the employment equity objectives; and
 - 7.3.29.3. the persons who were involved in the short listing, interview and job offer process.

Reference checks of job applicants

- 7.3.30. The purpose of a reference check is to verify information provided by an applicant during the selection process.
- 7.3.31. Reference checks should not be conducted in a manner that unfairly discriminates. The same type of reference checks must be conducted on all short-listed applicants.
- 7.3.32. An employer should only conduct integrity checks, such as verifying the qualifications of an applicant, contacting credit references and investigating whether the applicant has a criminal record, if this is relevant to the requirements of the job.

7.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 7.4.1. **Implementing Employment Equity** - Recruitment and selection must be aligned to the employer's affirmative action strategy, as reflected in its Employment Equity Plan, which sets out the detail in relation to the numerical targets for each designated group by occupational categories and levels.
- 7.4.2. **Disability** – The employer should not unfairly discriminate on **the ground of disability**. In the context of disability, there are specific recruitment and selection issues that arise. In particular, an employer is required to make reasonable accommodation for the needs of applicants with disabilities. Employers should seek guidance from the Code of Good Practice on the Employment of People with Disabilities and the Technical Assistance Guidelines on the Employment of People with Disabilities.

- 7.4.3. **Attraction and Retention** - The ability of an employer to attract employees from designated groups will depend on a combination of factors, which include recruitment and selection practices, competitive benefits, career opportunities, an affirming environment, reputation and image of the employer.
- 7.4.4. **Assessments** - Where an employer makes use of assessments during the selection process, they should refer to the relevant section of this Code.
- 7.4.5. **HIV and AIDS Status** – An employer should not unfairly discriminate on the ground of HIV and AIDS. Employers could use the Code of Good Practice on Key Aspects of HIV/AIDS and Employment for guidance in this area.

INDUCTION

8.1. SCOPE

Induction refers to the process where an employer introduces a new employee. This includes familiarizing the new employee with the vision, mission, values, job requirements and the policies and practices, as well as colleagues and the workplace environment.

8.2. IMPACT ON EMPLOYMENT EQUITY

A carefully planned and implemented induction process will ensure that all new employees, and in particular designated groups, are effectively integrated into the workplace from the commencement of their employment. Proper induction can also function as a retention measure, since an employee who is properly integrated is less likely to be marginalized and more likely to thrive within the workplace.

8.3. POLICY AND PRACTICE

- 8.3.1. *The induction process is an opportunity to convey the employer's expectations and values and to indicate its commitment to equity and diversity. This can occur, not only at the level of introducing the new employee to policies that prohibit unfair discrimination, but also through ensuring that existing employees and leadership demonstrate the necessary supportive behaviour toward all employees.*
- 8.3.2. *The induction process can be useful in demonstrating the leadership's commitment to employment equity by creating an opportunity to send the appropriate message about zero tolerance for harassment and discrimination, as well as support for affirmative action. It can also serve to project senior role models from among the designated groups already employed.*

- 8.3.3. To ensure that the induction process contributes to the effective integration of new employees from designated groups in the workplace, the employer could ensure that managers and human resource staff receive training on the induction process. Managers could also receive training on avoiding stereotypes or assumptions about new employees based on their personal or physical or racial characteristics, ethnicity or other arbitrary criteria.
- 8.3.4. During the induction process, new employees should receive copies of the applicable policies. Such policies should include a grievance procedure and other dispute resolution mechanisms. Reasonable accommodation should be made for employees with disabilities.

8.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 8.4.1. **Training and development and work assignment** – Where gaps have been identified during the interview, a training and development plan should be prepared with the new employee and should be introduced during the induction process
- 8.4.2. **Elimination of barriers** – A successful induction will ensure that the employee does not experience barriers in socialising and networking, which would inevitably impact on prospects for advancement. The integration of employees from designated groups should be a conscious effort that extends beyond the induction process.
- 8.4.3. **Elimination of unfair discrimination** - The employment environment should be free from unfair discrimination and harassment and should also promote a common understanding of what discrimination means and how it will be dealt with.
- 8.4.4. **Grievance & resolution** - The grievance procedure should be conducive to raising issues that arise in the induction process.
- 8.4.5. **Performance Management** – All new employees should be provided with information of the work they are required to perform and the standard to which this work must be produced.

9. PROBATION

9.1. SCOPE

Probation involves the trial period for a new employee where the employer assesses the employee's ability and skills to function in the position in order to determine whether to offer the employee a permanent position.

9.2. IMPACT ON EMPLOYMENT EQUITY

The probation period can either undermine or support an employee from a designated group. An employer should provide the necessary organizational

support to ensure that the new employee is successful. An employer should consider the initial work allocation given to a probationary employee to ensure that the new employee can cope with the demands of the new workplace.

9.3. POLICY AND PRACTICE

- 9.3.1. An employer should ensure that probationary employees⁸ from designated groups are not subjected to unfair discrimination. This can be done by ensuring that managers treat them fairly and consistently. There should be a written probation policy that clearly sets out the roles and responsibilities of the employee and company policies and procedures. These could include the expected performance standards; the frequency and form of performance reviews; the procedures the probationary employee should comply with when raising problems or grievances; the nature of support, mentoring and training and development.
- 9.3.2. An employer should ensure that managers understand the need for consistent fair treatment of all probationary employees in order to avoid unfair discrimination and perceptions.
- 9.3.3. Where an employee from a designated group requests reasonable accommodation during the probationary period, the employer should, as much as possible, provide it. Failure to provide reasonable accommodation may be construed as unfair discrimination.
- 9.3.4. Managers should, where relevant and appropriate, provide regular supervision and guidance to probationary employees, including training and counseling, to improve performance. Managers should keep records of their discussions with probationary employees, as it may provide useful data about an employee's movement in the employment equity planning and measurement process. Information used to make decisions about employees should be reviewed, signed and dated by the employee. If the employer has a human resources department, this department should be informed of issues concerning the probationary employee's performance.
- 9.3.5. By conducting an audit of policies and practices, an employer may identify barriers in the probationary process that impact on designated groups. Strategies to remove these barriers may then be developed and incorporated into the Employment Equity Plan.
- 9.3.6. An employer may consider keeping a record of the number of employees from designated groups who are not appointed at the end of their probationary period and compare this to probationary employees from non-designated groups. This analysis may indicate the existence of problems in a particular department or with a particular manager. Corrective measures can then be undertaken. To the extent possible, exit interviews may be conducted of probationary employees who are not appointed in order to identify barriers in the process or perceptions of unfair discrimination. Record keeping can facilitate measurement of employment equity progress and may enable an employer to identify problems with retention of designated groups.

⁸ See Item 8 of Schedule 8 of the Labour Relations Act: The Code of Good Practice on Dismissal

9.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 9.4.1. **Induction** - The links mentioned in the induction section are equally applicable to probation.
- 9.4.2. **Performance management** - success during probation is often associated with meeting the employer's clearly specified and objective performance standards according to which regular evaluations of the employee 's performance are conducted.
- 9.4.3. **Mentoring and Development** – An employer may consider mentoring, coaching and training interventions to support employees from designated groups during the probationary period.

10. MEDICAL, PSYCHOLOGICAL AND OTHER SIMILAR ASSESSMENTS⁹

10.1. SCOPE

Appropriate medical, psychological and other similar assessments, if properly used by employers, could contribute positively toward the recruitment and development of suitably qualified applicants and employees. Assessments, whether medical, psychological or other similar assessments, should include rather than exclude individuals with potential and those suitably qualified.

10.2. IMPACT ON EMPLOYMENT EQUITY

- 10.2.1. **The Act prohibits medical testing, unless legislation permits or requires the testing; or it is justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of the job. Psychological and similar assessments are also prohibited by the Act, unless the assessment being used has been scientifically shown to be valid and reliable; can be applied fairly to all employees; and is not biased against any employee or group. Assessments are required to be free from unfair discrimination based on the prohibited grounds. Tests that directly or indirectly unfairly discriminate on these grounds are inappropriate and should be avoided.**
- 10.2.2. An assessment is seen to be directly unfairly discriminatory when it excludes employees from designated groups on the basis of one or more of the prohibited grounds. Indirect unfair discrimination, however, is the more likely outcome. This occurs when, on average, the majority of a particular group assessed scores below the minimum requirement compared to other groups or individuals.

⁹ Medical, psychological and other similar assessments are also covered in Section 7 of the Employment Equity Act as well as the Code of Good Practice on Key Aspects of HIV/AIDS and Employment and in the Code of Good Practice the Employment of People with Disabilities.

- 10.2.3. Assessments should be used to identify candidates with potential and persons who are suitably qualified. These assessments should then be followed-up by relevant intervention measures like appropriate training and development.

10.3. POLICY AND PRACTICE

- 10.3.1. An employer who uses medical, psychological and other similar assessments should develop a written policy for the workplace, which identifies the purpose, context, methods and criteria applicable to selecting and conducting assessments.
- 10.3.2. An employer should ensure that assessments used are valid, reliable and fair¹⁰, so that no group or individual is unfairly disadvantaged as a result of the assessment. Bias in the application of the assessment should be eliminated. The test should match the job in question and should measure the minimum level of the competencies required to perform the job, which must be based on the inherent requirements or essential functions of the relevant job. Tests should avoid arbitrary or irrelevant questions. Only assessments that have been professionally validated as reliable predictors of performance for a particular job, irrespective of race, gender or disability, should be used.
- 10.3.3. Administrators and users of medical, psychological and other similar assessments should be qualified and registered with the appropriate recognised professional body of South Africa. Assessors should be trained to understand, evaluate and interpret the evidence or outcomes of the assessment objectively against the skills and abilities required for the job and must be able to justify their decisions. The assessment process should also minimise the opportunity for assessors to make subjective or arbitrary judgments that could, deliberately or inadvertently, work to the advantage of one group over another. Assessors should make sure they assess against the competencies for the job.
- 10.3.4. Special care should be taken to ensure that the language used is sensitive and accessible to those who are being assessed.
- 10.3.5. All employees or applicants for a particular job should be assessed against the same criteria. The process should make accommodation for diversity and special needs.
- 10.3.6. An employer should keep assessment records for at least one year¹¹.
- 10.3.7. Employers should ensure that reasonable accommodation is made for employees or applicants where required, and that unfair discrimination

¹⁰Validity is the extent to which a test measures what it is intended to measure and indicates the degree of accuracy of either predictions or inferences based upon the test score. Reliability is the extent to which a test is dependable, stable and consistent when administered to the same individuals on different occasions. Fairness relates to how the results of the assessments are applied: it is the total of all the variables that play a role or influence the final decision of an employer. This can include the assessment, integration of data, recommendations based on these data or the final decision made by the employer.

¹¹ Psychological assessment are valid for 1 year