

INTRODUCING THE EQUALITY ACT

As South Africans, our rights are entrenched and protected by the South African Constitution and its Bill of Rights. In turn, laws give effect to the various rights. The right to equality, as one of these rights, is protected by law in the Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000 and the Employment Equity Act, No. 55 of 1998. The two acts work in synergy.

It should be noted, however, that the Promotion of Equality and Prevention of Unfair Discrimination Act, also referred to as the Equality Act, does not apply to any person to whom the Employment Equity Act applies, or to the same extent. The Employment Equity Act applies to all employers and employees, as defined by the Act, except the members of the National Defence Force, the National Intelligence Agency and the South African Secret Service. The Equality Act provides for those excluded from the Employment Equity (EE) Act, thereby including the unemployed and members of the aforementioned governmental agencies. The Equality Act can also be used by all the people of South Africa, including employers and employees, for disputes not provided for in the EE Act, such as hate speech.



PURPOSE OF THE ACT

The Equality Act aims to:

- prevent and prohibit unfair discrimination and harassment;
- promote equality;
- eliminate unfair discrimination; and
- prevent and prohibit hate speech.

The Act also makes provision for:

- remedies for victims of any of the above;
- compliance with international law obligations, including treaty obligations; and
- measures to educate the public and raise public awareness on equality.

The Equality Act endeavours to facilitate the transition to a democratic society that is united in its diversity and guided by the principles of equality, fairness, equity, social progress, justice, human dignity and freedom. It places a positive duty and responsibility on the state, non-governmental organisations, community-based organisations, traditional institutions and all persons to promote equality.

In addition, all ministers must implement measures aimed at achieving equality in their areas of responsibility by:

- eliminating any form of unfair discrimination and making sure inequality in any law, policy or practice, for which they are responsible, is not continued; and
- preparing and implementing equality plans for submission to the South African Human Rights Commission.

Equality, in terms of the Act, includes the full and equal enjoyment of rights and freedoms as contemplated in the Constitution, in all respects.

WHEN TO USE THE ACT

In disputes not covered by the EE Act

Persons who are excluded from the Employment Equity (EE) Act in respect of labour matters will be able to use the Equality Act in disputes regarding unfair discrimination, harassment. Furthermore, anyone, including all employers and employees, will be able to use the Act for disputes not covered by the Employment Equity Act, such as hate speech.

If any conflict arises between the Equality Act and another law, other than the Constitution, the former will prevail over the provisions of any other law. The State and all persons are bound to the Equality

Act, which clearly states that neither the State nor any person may unfairly discriminate against any person. Discrimination is defined in the Equality Act as:

- any act or omission, including a policy, law, rule, practice, condition or situation;
- which directly or indirectly imposes burdens, obligations or disadvantages on;
- or withholds benefits, opportunities or advantages;
- from any person on one or more of the prohibited grounds.

In cases of unfair discrimination on certain grounds

The Equality Act prohibits unfair discrimination on certain grounds, which can either be listed or unlisted. The prohibited listed grounds are race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. Hate speech, harassment and the publication and dissemination of information, which unfairly discriminate, is also prohibited by the Act.

Unlisted grounds can include HIV/AIDS status, socio-economic status, nationality, family responsibility and family status. In such cases, the person lodging the complaint must prove that:

- the specific ground causes or perpetuates a disadvantage inherent in the system; or
- undermines human dignity; or

- adversely affects the equal enjoyment of rights and freedoms.

The following provides a brief description of some of the listed grounds that are prohibited by the Act:



Unfair discrimination on the grounds of race

This includes:

- spreading any propaganda or idea, claiming the superiority or inferiority of any person, that may incite or result in any form of racial violence;
- any activity intended to promote and maintain exclusivity based on race;
- the provision of inferior services to any racial group;
- the denial of access to opportunities, including access to services; or
- failing to take steps to reasonably accommodate the needs of such persons.

Unfair discrimination on the grounds of gender

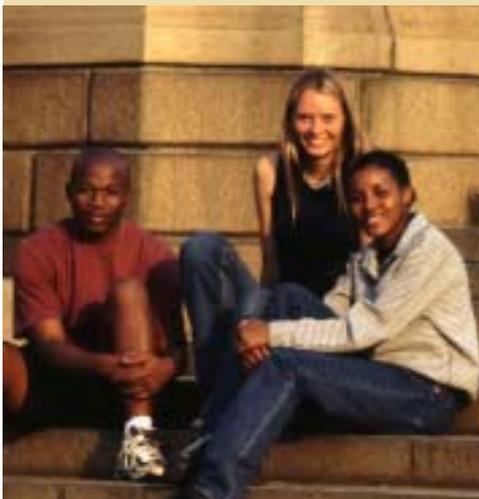
This includes:

- gender-based violence;
- female genital mutilation;
- preventing women from inheriting family property;
- any practice which impairs the dignity of women and undermines equality between men and women;
- any policy or conduct that unfairly limits the access of women to land rights, finance and other resources, or access to social services or benefits;
- discrimination on the grounds of pregnancy; or
- inequality of access to opportunities by women as a result of the sexual division of labour.

Unfair discrimination on grounds of disability

This includes:

- denying or removing from any person who has a disability, any facility that supports or helps them function in society;



- contravening the code of practice or regulations of the SABS that govern environmental accessibility;
- a failure to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities; or
- failing to take steps to reasonably accommodate the needs of the disabled.



Harassment

Section 11 of the Act states that no person may subject any person to harassment.

Harassment is defined as:

- unwanted conduct which is persistent or serious, and
- demeans, humiliates or creates a hostile or intimidating environment, or is calculated to induce submission by actual or threatened adverse consequences, and
- which is related to sex, gender or sexual orientation, or a person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such a group.

Dissemination and publication of information that unfairly discriminates

Section 12 of the Equality Act provides that no person may disseminate or broadcast any information, or publish or display any advertisement or notice that could reasonably be understood to demonstrate a clear intention to unfairly discriminate against any person. This does not, however, apply to valid engagement in artistic creativity, academic, or scientific inquiry, fair or accurate reporting in the public interest, or publication of any information, advertisement or notice, in accordance with section 16 of the Constitution of the Republic of South Africa, 1996, as amended, that deals with freedom of speech.

Hate speech

No person may publish, propagate, advocate or communicate words - based on one or more of the prohibited grounds - against any person, that could reasonably be construed to demonstrate a clear intention to be hurtful, harmful or incite harm or promote or propagate hatred.

The Equality Court has the authority to order the referral of cases involving hate speech to the Director of Public Prosecutions, who will consider the institution of criminal procedures.

List of unfair practices

The Schedule to the Equality Act contains a list of unfair practices that is intended to illustrate and emphasise some practices that may be unfair, are widespread and need to be addressed. The State must, where appropriate, ensure that legislative and other measures be taken to address these practices. The list is not conclusive and needs to be considered and revised by the Equality Review Committee on a continuous basis.

For each practice on the list, specific conditions and principles must exist, as prescribed by the Act.

The practices on the list pertain to:

- labour and employment;
- education;
- health care services and their benefits;
- housing accommodation, land and property;
- insurance services;
- pensions;
- partnerships;
- professions and bodies;
- provision of goods, services and facilities; and
- clubs, sport and associations.

THE ACT IN ACTION

The following should serve as a guiding principle, as regards the application of the Act:

- the existence of systemic discrimination and inequalities brought about by colonialism, the apartheid system and patriarchy; and
- the need to take measures at all levels to eliminate such discrimination and inequalities.

If the complainant makes out, what at first sight appears to be, a case of discrimination, the burden of proof lies with the respondent who must prove, on the facts before the court, that either:

- the discrimination did not take place as alleged; or
- the conduct is not based on one or more of the prohibited grounds.

If the discrimination took place on a listed ground, then it is presumed to be unfair, unless the respondent proves that the discrimination is fair. If the discrimination is based on an unlisted ground, it is considered unfair if one or more of the conditions are established, unless the respondent proves that the discrimination is fair. For instance, it is not considered unfair discrimination to take measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination. This, however, does not apply in cases of hate speech and harassment.



INSTITUTION OF PROCEEDINGS IN THE EQUALITY COURT

Every High Court serves as an Equality Court for the area of its jurisdiction and the Magistrates Courts are designated by the Minister of Justice and Constitutional Development, after consultations with the Heads of Administrative Regions, as Equality Courts. Judges President and the Heads of Administrative Regions designate, in writing, judges and magistrates who have attended the training as Presiding Officers of the Equality Courts in the High Courts and Magistrates Courts respectively.

Certain steps have to be taken if a person decides to institute proceedings in terms of or under the Equality Act:

- The clerk of the equality court must be informed in the prescribed manner, of the person's intention to do so.
- In turn, the clerk must refer the matter to the presiding officer of that particular equality court, within the prescribed period of time.
- The presiding officer must decide, within the prescribed period, if the matter should be heard in the equality court or referred to an alternative institution, body, tribunal, court or forum.
- If the matter is referred, the presiding officer must take all relevant circumstances into account, such as the personal circumstances of the complainant

and the needs and wishes of the parties involved.

- With a referral, the presiding officer must make an order in the prescribed manner, directing the clerk of the equality court to transfer the matter to the alternative forum as mentioned in the order. The presiding officer can attach any comments deemed necessary, to the order.
- The clerk must transfer the matter and notify the parties accordingly in the prescribed manner.
- The alternative forum must deal with the matter as speedily as possible in terms of its functions and powers.
- If the matter is not dealt with in a reasonable period or is not resolved to the satisfaction of one or both of the parties, the matter can be referred back to the equality court for adjudication, if so requested by one or more of the parties within a set period of time.
- If the presiding officer decides the matter should be heard in the equality court, he/she must refer the matter to the clerk of the equality court to assign a date of hearing for the matter.

The court may, in any proceedings in terms of or under the Act, at the request of either party or of its own accord, and if the presiding officer considers it to be in the interest of justice, appoint two persons as assessors. These assessors are then considered members of the court.

REPRESENTATION

Proceedings under the Equality Act may be instituted by:

- any person acting in his/her own interest;
- any person acting on behalf of another person who cannot act in his/her own name;
- any person acting as a member of, or in the interest of, a group or class of persons;
- any person acting in the public interest;
- any association acting in the interests of its members; or
- the South African Human Rights Commission or the Commission for Gender Equity.

It is the duty of the State and constitutional institutions to assist any person who wishes to institute proceedings in terms of, or under the Equality Act. Regulations must be made with regard to the appearance of persons on behalf of the parties to the proceedings in court. This may include suitable persons other than attorneys or advocates.

Specific duties are placed on the South African Human Rights Commission and other constitutional institutions to:

- assist complainants in instituting proceedings in an equality court;
- conduct investigations into cases and make recommendations; and
- request regular reports from the Department of Justice regarding the number of cases, their nature and outcome.

APPEALS AND REVIEWS

Any person who is dissatisfied by an order made by the equality court may appeal against such order in the required manner and time to either the High Court or the Supreme Court of Appeal, as the case may be. An appeal can also be made directly to the Constitutional Court.

Whenever conflicting decisions are made by presiding officers in respect of matters relating to unlisted prohibited grounds, the Minister may refer the specific case to the Supreme Court of Appeal or the Constitutional Court. If a presiding officer in a Magistrate's Court rules on a ground of discrimination not listed by the Act, the decision must be submitted to the relevant High Court for review, once the proceedings have been finalised, in the prescribed manner. After consideration, the High Court must make a decision on the matter as it seems fit, within the scope of the Act.

THE POWERS OF THE EQUALITY COURT

It is the duty of the equality court to determine whether unfair discrimination, hate speech or harassment, as the case may be, has taken place as alleged. After holding the enquiry, the court may make an appropriate order in view of the circumstances.

Besides an interim or declaratory order, this may include a court order for:

- settlement between the parties;
- the payment of damages;
- restraining unfair discriminatory practices or directing that specific steps be taken to stop the unfair discrimination, hate speech or harassment;
- making specific opportunities and privileges, unfairly denied in the circumstances, available to the complainant;
- the implementation of special measures to address the unfair discrimination, hate speech or harassment;
- directing the reasonable accommodation of a group or class of persons by the respondent;
- an unconditional apology;
- requiring the respondent to undergo an audit of specific policies or practices as determined by the court;
- directing the clerk of the equality court to submit the matter to the Director of Public Prosecutions for the possible institution of criminal proceedings; and
- complying with any provisions of the Act.



The equality court can also issue:

- a directive requiring the respondent to make regular progress reports to the court or the relevant constitutional institution regarding the implementation of the court's order;
- an appropriate order of a deterrent nature; and
- an appropriate order of costs against any party to the proceedings, or an order to comply with any provisions of the Act.

An order made by the equality court has the same effect as an order made by the said court in a civil action.

The court may, during and after an enquiry, refer its concerns in any proceedings before it to any relevant constitutional institution for further investigation in the case of:

- persistent contravention or failure to comply with a provision of the Act; and
- systematic unfair discrimination, hate speech and harassment.

The equality court may also refer any proceedings before it to any relevant constitutional institution for mediation, conciliation or negotiation.

LIST OF CENTRES

LIST OF IDENTIFIED 60 EQUALITY COURTS (FIRST PHASE) AND THE CONTACT NUMBERS FOR THE COURT MANAGERS

PROVINCE	COURT	TELEPHONE
LIMPOPO	<ol style="list-style-type: none">1. Mapulaneng2. Mokerong3. Warmbaths4. Ritavi5. Louis Trichardt6. Pietersburg	<p>(013) 799 0211 (015) 483 0302 (014) 736 2231 (015) 303 1721 (015) 516 0181 (015) 291 2804</p>
GAUTENG	<ol style="list-style-type: none">1. Pretoria2. Wonderboom3. Johannesburg4. Kempton Park5. Germiston6. Randburg	<p>(012) 319 4001 (012) 521 1000 (011) 491 5000 (011) 975 0313 (011) 873 0500 (011) 789 2600</p>
MPUMALANGA	<ol style="list-style-type: none">1. Nsikazi2. Eerstehoek3. Evander4. Middelburg5. Baberton6. Nelspruit7. Witbank8. Mdutjana	<p>(013) 796 0261 / 5 (017) 883 0090 (017) 632 2204 (013) 282 5345 (023) 712 2104 (013) 753 2574 (013) 656 2221 (013) 973 1311</p>
NORTH-WEST	<ol style="list-style-type: none">1. Potchefstroom2. Bafokeng3. Vryburg	<p>(018) 293 0701 (014) 565 4206 (053) 927 3841</p>
NORTHERN CAPE	<ol style="list-style-type: none">1. Fraserburg2. Springbok3. Kuruman4. De Aar5. Kimberly6. Upington	<p>(023) 741 1008 (027) 712 1215 (053) 712 1081 (053) 631 2184 (053) 832 2201 (054) 331 1007</p>
WESTERN CAPE	<ol style="list-style-type: none">1. Kuils River2. Worcester3. George4. Atlantis	<p>(021) 903 1161 (023) 342 2325 (044) 802 5800 (021) 572 1003</p>

PROVINCE	COURT	TELEPHONE
EASTERN CAPE	1. Port Elizabeth	(041) 586 4923
	2. Somerset East	(042) 243 1107
	3. Zwelitsha	(040) 654 2255
	4. Aliwal North	(051) 633 2173
	5. Umzimkhulu	(039) 259 0309
	6. Elliotdale	(045) 931 1013
	7. Ngqeleni	(047) 568 0002
FREE STATE	1. Bethlehem	(058) 303 5386
	2. Odendaalsrus	(057) 354 1294
	3. Kroonstad	(056) 212 4161
	4. Jagersfontein	(051) 724 0002
	5. Bloemfontein	(051) 506 1389
	6. Botshabelo	(051) 534 1078 /9
	7. Edenburg	(051) 743 1102
	8. Phuthaditjaba	(058) 713 0071 /2
	9. Ladybrand	(051) 924 3210
	10. Thaba Nchu	(051) 873 2242
	11. Rouxville	(051) 663 0003
	12. Harrismith	(058) 623 0627/8
	13. Ficksburg	(051) 933 2201
KWAZULU-NATAL	1. Hlanganani	(039) 832 0016
	2. Newcastle	(034) 312 1166
	3. Pietermaritzburg	(033) 345 8211
	4. Ngutu	(034) 271 0045
	5. Ladysmith	(031) 302 4111
	6. Durban	(031) 302 4111
	7. Nongoma	(035) 831 0302

CONTACT NUMBERS FOR THE REGISTRARS OF THE HIGH COURTS

HIGH COURTS OF S.A.

1. Bisho	(040) 609 9111
2. Bloemfontein	(051) 447 8837
3. Cape Town	(021) 480 2411
4. Durban	(031) 362 5800
5. Grahamstown	(046) 622 9333
6. Johannesburg	(011) 332 8391
7. Kimberly	(053) 833 1441
8. Mmabatho	(018) 387 5360 / 2
9. Pietermaritzburg	(033) 345 8211
10. Port Elizabeth	(041) 502 6600
11. Pretoria	(012) 315 7711
12. Thohoyandou /Venda	(015) 962 0348
13. Umtata	(047) 531 2441

Information on the project will be updated regularly on the Departmental website: <http://www.doj.gov.za>

NATIONAL ALTERNATIVE FORUMS

NAME	TELEPHONE	FACSIMILE	POST	EMAIL / WEBSITE
SA Human Rights Commission	(011) 484-8300	(011) 484-1360	Private Bag 2700 Houghton 2041	sahrcinfo@sahrc.org.za http://www.sahrc.org.za
Commission for Gender Equality	(011) 403-7182	(011) 403-7188	PO BOX 32175 Braamfontein 2017	cgeinfo@cge.org.za http://www.cge.org.za
Independent Electoral Commission	(012) 428-5700	(012) 341-5292	PO BOX 7943 Pretoria 0001	iec@elections.org.za http://www.elections.org.za
Public Protector	(012) 322-2916	(012) 322-5093	Private Bag X677 Pretoria 0001	publicprotector@hotmail.com http://www.polity.org.za
Pan South African Language Board	(012) 341-9638 (012) 341- 9651	(012) 341-5938	Private Bag X08 Arcadia 0007	christa@pansalb.org.za http://www.pansalb.org.za
National Youth Commission	(012) 325-3702	(012) 324-4759	Private Box 938 Pretoria 0001	mkalipim@nyc.pww.gov.za http://www.nyc.gov.za



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