



## Inforcomm Consulting

Imagine if you could solve all your BEE, Skills Development and Employment Equity issues in one go! – that is Inforcomm Consulting, we provide an integrated approach to B-BBEE, Skills Development and Employment Equity compliance.

**Our mission is to help business leverage on compliance to deliver results**

**We provide advisory, ratings and compliance services on B-BBEE, Skills Development and Employment Equity**

## **Business Values**

Objective

Integrity

Impartial

## **B-BBEE on all gazetted sector codes**

B-BBEE ratings

B-BBEE advisor on implementation

B-BBEE strategy and implementation policy development

## **Skills Development**

WSP/ATR compliance

Project Management

Assist to earn BEE points on skills development

## **Employment Equity**

Employment Equity compliance

Succession planning and staff retention policies

Assist to earn BEE points on management control element

## **Contact us**

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# EXPERT

## B - B B E c o d e s &

### Sweeping changes to black economic empowerment

Mr. Andile Thloaele,

*Inforcomm, CEO*

The voluntary implementation of the amended generic Codes of Good Practice, the amended generic codes will soon be a thing of the past. From the 1st May 2015 it will be compulsory for companies to implement the amended generic codes. For companies who are reporting under the ICT Sector Code, the ICT codes. Government is going to decide on when the ICT codes are going to be aligned to the amended generic codes.

Broad-Based Black Economic Empowerment Amended Act, the amended act, which came into effect on the 24 October 2014 is aimed at speeding up transformation and closing loopholes created by the gaps in the old act and the old generic codes.

"The amended act requires public entities to implement BEE, consider BEE when they procure and enter into partnerships with the private sector, for example SETAs must now set a new criteria when awarding discretionary grants," says Inforcomm Chief Executive, Andile Thloaele.

Thloaele says the amended act affects MICT SETA in a number of ways. "MICT SETA must now develop a criterion that includes BEE when awarding discretionary grants to private companies. ICT companies must aim to achieve 17 points on the skills development element under the ICT codes.

Once the ICT codes are aligned to the amended generic codes the total leviable amount for skills development is likely to increase from 3 to at least 6 percent" he says.

"MICT SETA must undergo a B-BBEE rating similar to the rating that private companies undergo; and is now required to report the skills development spending annually to the BEE Commissioner."



# VIEWS ON

## EEA amendments

### Amendments to the Employment Equity Act Ring in Radical Changes

Mr. Shaun Gibson,  
*Inforcomm, Consultant*

Amendments to the 16 years old Employment Equity Act of 1998, came into effect on the 1st August 2014 and have introduced far-reaching changes around grounds of discrimination, burden of proof, reporting requirements, powers of labour inspectors and fines for noncompliance.

"The original reason for the Employment Equity Act was to rectify the wrongs of the past in terms of apartheid laws and other discriminatory laws and practices that were in place. A key theme running through the 2014 Amendment Act is the protection of vulnerable workers and access to the CCMA for arbitration of disputes which previously had to be dealt with by the Labour Court" says Inforcomm's Shaun Gibson.

"All employers, whether they are large or small, are all affected by these changes. The Act deals with basically two main issues. The one area is affirmative action and the other is the prohibition of unfair discrimination. The affirmative action provisions apply to employers who employ more than 50 employees or whose annual turnover is above a certain threshold depending on their industry sector. The prohibition of unfair discrimination applies to all employers irrespective of their size".

"The first key change is that discriminatory grounds have been expanded. The second relates to psychometrics tests. Previously in terms of the old Act, psychological tests could be used on existing and prospective employees, if the tests were shown to be scientifically valid and reliable, and could be applied fairly to all employees and were not biased against any employee or group of employees. Now, the new requirement is that only psychometric test that have been

certified by the Health Professional Council of South Africa, may be used," says Gibson.

"The third key change relates to CCMA jurisdiction. Previously, the adjudication of all unfair discrimination claims fell within the exclusive jurisdiction of the Labour Court which was expensive and time consuming. Now an employee would also be able to refer the dispute to the CCMA for arbitration if the employee complains about sexual harassment as a form of discrimination. Any other discrimination claims by lower-paid employees (less than the earnings threshold prescribed by the Basic Conditions of Employment Act, currently R 205 433 per year) may now be referred to the CCMA for arbitration. In the case of discrimination claims by higher earning employees, the parties may consent to the referral of a discrimination dispute to the CCMA for arbitration.

"Linked to that is a change related to the burden of proof in discrimination claims. Where an employee alleges one of the listed discriminatory grounds (race, gender, sex, pregnancy, etc), the onus is on the employer to prove that discrimination did not take place as alleged, or is rational and not unfair, or is otherwise justifiable. In the case of an allegation of unfair discrimination "based on any other arbitrary ground" the onus is entirely on the employee." he added.

"A newly introduced section deals explicitly with unfair discrimination by an employer in respect of wages and other terms and conditions of employment of employees doing the same or similar work or work of equal value," he says.

Employers who employ 50 or more employees have to comply with this Act as they are regarded as designated employers irrespective of their turnover. Smaller employers who employ less than 50 people but that have an annual turnover that is above the sector threshold will also have to comply.

"The annual turnover threshold for the ICT sector specifically, has been set at R30 million per year. So a business in the ICT sector that employs less than 50 people but has a turnover exceeding R30 million a year, is deemed to be a designated employer and would need to comply. In addition, there is a change regarding the annual reporting requirement. All designated employers are now required to submit a report every year irrespective of the number of employees that they have," says Gibson.

The new Act also gives labour inspectors expanded authority and enforcement procedures have been shortened to promote more effective and efficient enforcement. Linked to enforcement are increased fines. The maximum fines that may be imposed for contraventions of the Act have been increased threefold up to R 2.7 million. In addition, an employer's turnover could be taken into account in determining the maximum fine that may be imposed for substantive failures to comply with the affirmative action provisions of the Act.



## SOME OF OUR CLIENTS

