

## DEPARTMENT OF LABOUR

### IMPACT OF CONSULTANTS/SERVICE PROVIDERS POSING AS CEO/ACCOUNTING OFFICER AND EE MANAGER

**Section 61 (1) (b) of the Employment Equity Act No. 55 of 1998 as Amended (EEA)** criminalizes obstruction of justice, undue influence and fraud and makes it a punishable offence. **Section 61 (1) (b)** states the following:

*'No person may knowingly give false information in any document or information provided to the Director-General or a labour inspector in terms of this Act.'*

- ❖ Employers may not therefore allow their service providers/consultants to replace information on the prescribed forms EEA2 and EEA4 pertaining to the Chief Executive Officer/Accounting Officer and those for the Senior Assigned EE Manager with those of their consultants.
- ❖ The **Employment Equity Amendment Act No. 47 of 2013** imposes a maximum fine of **R30 000** as a form of punitive sanction. The new provision also states that a person who contravenes a provision of this section commits an offence and may be sentenced to a fine not exceeding R30 000.
- ❖ Employers may be referred to Court for providing false information to the Director-General and the above-mentioned fine becomes enforceable as a means of deterrence.
- ❖ **Section 24 of the EEA** makes it obligatory for employers to assign one or more senior managers to take responsibility for monitoring and implementing employment equity plans. This provision refers to managers that are currently employed by the designated employers concerned and not part-time service providers/consultants. Arrangements that lead to the violation of this provision may have dire legal consequences as they are contrary to what the law requires. It is therefore, a criminal offence for employers and consultants to conduct unlawful arrangements by providing false information.
- ❖ It should be noted that employers are registered with the Department of Labour (DoL) for EE reporting purpose and therefore, consultants who violate the provisions of section 61 of the EEA and deregister employers on behalf of their clients may be fined.

**The following are the implications for allowing consultants/service providers to change employer's details:**

- ❖ Employers do not receive reminder letters with login and activation details
- ❖ Employers do not receive acknowledgement letters for EE reports submitted to the Department of Labour
- ❖ Employers do not receive copies of their EEA2 and EEA4 reports submitted on behalf of them by the service providers
- ❖ Employers do not receive information or notices from DoL on any developments pertaining to employment equity
- ❖ Data security is compromised
- ❖ The relationship between DoL and employers is broken and is replaced by consultants/service providers
- ❖ CEO s'/Accounting Officer are replaced by consultants in violation of section 21 that places an obligation on the CEO to submit EE Reports.

**NB: Further guidelines may be obtained on the EE login Homepage by clicking on “Organizational changes” tab to view guidelines on “how to request changes to organizational details” and “how to apply for deregistration from the EE Public Register”.**

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**NB: An Accounting Officer/Chief Executive Officer (CEO) is not equivalent to the Chief Financial Officer (CFO). It is equivalent to the Municipal Manager/ Director-General and it can be equated to Managing Director. A Chief Financial Officer cannot sign on behalf of the CEO. An Accounting Officer (AO) is therefore equivalent to the Chief Executive Officer (CEO).**