



GLOBAL BUSINESS SOLUTIONS

future thinking, now

Use of National Demographics for Affirmative Action

The Constitutional Court on Friday the 15th July 2016 ruled in favour of Solidarity in their case against the Department of Correctional Services. The Department had denied a number of Solidarity members' promotions due to the application of the national racial demographics as part of their affirmative action policies.

Solidarity argued that the Department did not look at regional demographics when promoting people, but followed national demographics only. As certain provinces have a higher representation of certain race groups (Indians in KwaZulu Natal and Coloureds in the Western Cape), this led to unfair discrimination which is contrary to section 9 of the Constitution.

Justice Nkabinde said "*The decisions of the Department of Correctional Services not to appoint the individual applicants to the posts... constituted unfair discrimination and unfair labour practices and are set aside.*"

What impact does this have on Broad-Based Black Economic Empowerment (BEE)?

The new codes of good practice were issued in October 2013, and amended in May 2015. They require the application of demographics when determining BEE scores for Senior, Middle and Junior Management under the management control element and when determining points scored for a number of sub-elements under Skills Development.

There has been much discussion on which demographics to use. Must the National or Provincial demographics be applied when determining black representation in the Management categories, or in Skills Development? The draft Verification Manual states at Paragraph 5.1.10.9 to Appendix 4 that a company can use provincial demographics if the "*biggest portion of its employees are based in that province.*" Otherwise we default to National demographics.

The elements where demographics impact scoring make up 24 points out of the 109 points available on a company's BEE scorecard or 22% of the points. This is a significant portion of the scorecard. Does this judgement by the Constitutional Court mean that national demographics cannot be applied for BEE purposes and that the Department of Trade and Industry must revisit the formulas used for Management Control and Skills Development?

Many companies have already had verifications performed under the amended codes of good practice and their BEE levels have all dropped substantially. What impact will this judgement have on such certificates as the basis for a significant portion of the scoring has been questioned?

If you need assistance with questions on any B-BBEE related matter, including training courses and strategic sessions on the amended codes, please feel free to contact me on 083 440 2130 or by email on richard@globalbusiness.co.za.

Regards

Richard Ryding
Global Business Solutions
18 July 2016

EAST LONDON
JOHANNESBURG
CAPE TOWN
PORT ELIZABETH
DURBAN

T- 043 721 1030
T- 011 483 3722
T- 043 721 1030
T- 041 364 0472
T- 041 364 0472

F- 043 721 1027
F- 011 483 1650
F- 043 721 1027
F- 041 363 0043
F- 041 363 0043

elmarketing@globalbusiness.co.za
jhbmarketing@globalbusiness.co.za
ctmarketing@globalbusiness.co.za
pemarketing@globalbusiness.co.za
dbnmarketing@globalbusiness.co.za



GLOBAL BUSINESS SOLUTIONS
future thinking, now