

The Mining Charter and employment equity

By [Johan Olivier](#)

12 Jul 2017

The latest version of the Mining Charter is much tougher on employment equity targets than its predecessor in seeking to "create a conducive environment to ensure diversity as well as participation of black people at all decision-making and core occupational categories in the mining industry".



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Every mining company is required to achieve the prescribed minimum levels of representation at the levels of executive/top management, senior management, middle management and junior management. The targets at these levels progress from 50% for top management to 88% at junior management level. The targets for female black persons at each of these levels also escalate from 25% of the minimum for top management to 44% of the minimum at junior management level.

In addition, the charter also provides for the appointment of a minimum of 3% employees with disabilities as a percentage of all employees and reflective of the national and/or provincial demographics.

It also requires the mining company to ensure that a minimum of 60% black people are represented in the core and critical skills and must be reflective of the national demographics.

The term "employee" is not defined in the document and it appears that the intention is to use the definition provided in the Employment Equity Act, 1998, and the associated regulations (EEA). This means that every mining right holder must directly employ the requisite number of persons to meet the prescribed thresholds and that the engagement of contractor personnel (defined as "employees" in the Mine Health and Safety Act) is not sufficient.

Employees with disabilities

The requirement of 3% employees with disabilities as a percentage of all employees, but that it must be reflective of national and/or provincial demographics, is vague and conflicts given that the targets for the other categories are required to be reflective of the national demographics.

The EEA defines "people with disabilities as people who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entering into or advancement in employment".

This will require practical adjustment of various occupational health and safety considerations including a formal determination of the job categories that can safely be filled by employees with disabilities, incorporation of this consideration into the assessments by Occupational Medical Practitioners and revisions of applicable risk assessment and codes of practice.

Similarly, when a mining right holder is required to identify and fast-track black persons to hold positions in respect of the company's "core and critical skills", an assessment of the minimum criteria for competency against such fast-tracking will need to be established.

Executive employees

The Companies Act does not require the appointment of executive directors to the board of a company. However, the *King IV Report* requires listed companies to have consideration for the appointment to executive director roles such as the chief executive officer, financial director as well as company secretary. Mining Charter III now places an obligation on a mining rights holder to employ a minimum of 50% black persons at the executive director level of which 25% must be female black persons.

As such, should a mining right holder appoint a white person as a chief executive officer at executive director level, then an additional executive director needs to be appointed who must be black and female. Non-executive board members are not employees of the company and do not fall within the scope of the EEA.

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