

Unpacking employment equity, or consider boycotts carefully



By [Brandell Turner](#)

7 Oct 2012

The recent uproar over Woolworths' employment equity policies has brought to the fore several misconceptions about employment equity (EE). Contrary to what some (White) job candidates may think, employment equity is not designed to serve as racism in reverse. Those who feel the Employment Equity Act guarantees them top posts they are not qualified for, are wrong too.

The Act is intended to level the playing field and the law is clear on how it should be applied.

The Act neither is a punitive measure nor is it sanctioned racism. It is intended to afford historically disadvantaged South Africans the opportunity to compete meaningfully against their white, historically advantaged brothers and sisters. Unfortunately, some employers are misguided in their application of equity in the workplace.

Consider the scenario where Woolworths requires the services of a marketing manager and is battling to meet its equity targets. The proverbial Johan Buys has ten years' relevant experience and applies for the job. The proverbial Floyd Dlamini has five years' experience and does not have a Master's Degree in Marketing like Johan. You've guessed it ...Floyd is given the job.

Johan would have been given the job, had there not been a need to redress the wrongs of the past. His appointment should not be race-based only, but rather one needed to give Floyd an opportunity to compete for a post against the likes of Johan, who, if Verwoerd did not have his way, would not have been as qualified and therefore not have had the edge over Floyd.

Sadly though, even those employers who appoint the Floyds do not understand why they have appointed a less experienced and qualified black job applicant over Johan. Floyd is appointed not only because he is disadvantaged, but also because despite his "inferior" qualifications, he is, properly assessed, capable of meeting the job expectations or would be able to do so with a reasonable level of training by the employer.

Where EE is discriminatory

Scenario 2 is what gets Solidarity's knickers in a knot. The same Johan is again denied the job because Sipho was appointed. Sipho has no formal marketing qualification and was a call centre agent where he "marketed" mobile packages in his best whispering voice for the past three years. As much as the anti-colonial sloganisers hate to admit it, Afriforum and Solidarity have every cause to cry foul and spend their "white capital" donations on court actions in these cases.

In Scenario 2, Sipho is appointed only because he is black. There is very little prospect that he would meet the job expectations and, even with training, he would likely not remotely reach the professional standards on offer by Johan.

What the conduct of the Scenario 2 employer means is that white applicants are permanently barred from the advertised job. No matter what their qualifications or experience, it is obvious that they would never be appointed because they have previously been formally called Whites.

Whether or not the advertisement states that the job is reserved for 'Blacks, Africans or Coloureds', it would still amount to job reservation and not employment equity. The scenario would become even more ludicrous if no black applicants applied for a post but a white applicant was still not appointed. This practice is all too common in the public service.

Realistic view

We often impose anecdotal evidence to feed our own morbid desire for gloom and we should be careful not to use the Woolworths incident to portray White South Africans as becoming extinct in the workplace.

The equity statistics still show that Whites, and more so, White males, still share the lion's share of management posts. I would also bet that mainly Black people are still filling the queues at the UIF office.

So, employment equity is a useful (and not optional) tool to level the workplace playing fields. However, it is not meant to permanently deprive white job seekers of employment for which they are qualified.

Stating in a post advertisement that a post is reserved for Black candidates is unlawful. If a White candidate is better qualified than a Black candidate is, but the Black candidate also meets the job expectation and is adjudged to be reasonably close to the level of skill of the White candidate, the employer must appoint the Black candidate.

On the other hand, an employer must appoint a White candidate if his or her qualification and experience is far superior to that of Black candidate. That is the law. What is "far superior" is a matter, which must be considered in each instance.

ABOUT BRANDELL TURNER

Brandell Turner is Managing Director at Turner & Associates Attorneys. He is an admitted attorney and public service consultant. His primary focus presently is legislative and regulatory compliance in public service institutions. He is also a trainer offering basic legal training to senior and middle managers, aimed at increasing their legal savvy. Contact him on tel (0)21 712 9851 or email bturner@turnerlegal.co.za.
= Unpacking employment equity, or consider boycotts carefully - 7 Oct 2012

[View my profile and articles...](#)

For more, visit: <https://www.bizcommunity.com>