

**UNISA v REYNHARDT [2010] 12 BLLR 1272 (LAC): DOES AFFIRMATIVE  
ACTION HAVE A LIFECYCLE?**

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**SUMMARY**

The *Employment Equity Act* (EEA) was enacted to achieve equity in the workplace by prohibiting unfair discrimination and by requiring the implementation of affirmative action measures to ensure the adequate representation of designated groups. To ensure compliance with the EEA a designated employer must ensure that it formulates an affirmative action policy within which employment equity targets are stipulated and met. One of the on-going debates around affirmative action is whether it has a life-span. One school of thought argues that affirmative action requires a legislated sunset clause, in which considerations of race, gender and disability will no longer be implemented by employers, instead of which each employer will look to employ a candidate who is suitably qualified for the vacant post. The other school of thought argues that the need for affirmative action is two-fold: to redress past inequalities, but also to deal with existing inequalities within society. Having a sunset clause this would negate the aim of affirmative action to deal effectively with both kinds of inequalities and also the creation of a representative workforce. In the case of *UNISA v Reynhardt* it was held that once an employer has reached his employment equity targets it is no longer justifiable for it to apply affirmative action, but that the principle to be applied is that the most suitably qualified candidate is to be appointed. The non-application of affirmative action is subject to an employer's commitment to meeting employment equity targets and a recognition by the employer that once these targets are reached they must be maintained within the organisation. Consequently, once a disparity exists, affirmative action must again be applied, resulting in the imputation of a distinct lifecycle to affirmative action. Failure on the part of the employer to do this would have the potential of creating reverse discrimination against employees who are not the beneficiaries of affirmative action.

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**KEYWORDS:** Affirmative action; employment equity; designated employer; discrimination