Implications for ESG Practices in Ghana

THE NEW AFFIRMATIVE ACTION (GENDER EQUITY) ACT, 2024 (ACT 1121)

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Introduction

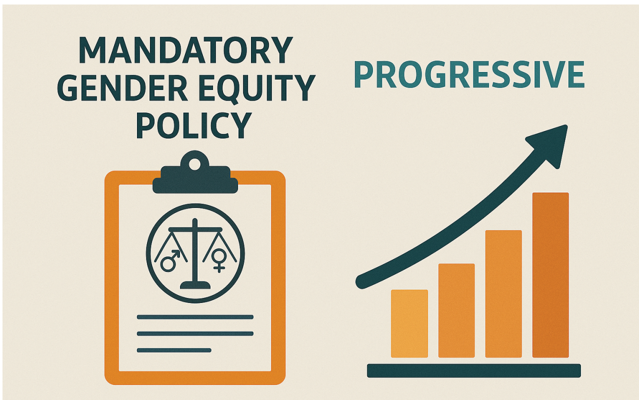
The Affirmative Action (Gender Equity) Act, 2024 (Act 1121) (the **"Affirmative Action Act"**) marks a significant step towards achieving gender equity and social inclusion across public and private sectors in Ghana. This legislation charges stakeholders to take proactive and progressive measures to ensure increased participation of women in decision-making, equal economic opportunities, and fair treatment in workplaces. For companies operating in Ghana, this Act has direct implications for Environmental, Social and Governance (**"ESG"**) practices. This article explores five (5) key implications of the Affirmative Action Act.

Some Key Changes introduced by the Affirmative Action Act

(1) Introduction of a new regulatory agency:

The Act establishes a Gender Equity Committee (the **"Committee"**) which is mandated to receive and analyze reports on gender equity and empowered to make recommendations to the Minister responsible for Gender, Children and Social Protection (the **"Minister"**) for the issuance of a Gender Equity Compliance Certificate (**"GECC"**). Additionally, the Committee is mandated to receive and mediate complaints of non-compliance; receive and investigate complaints about gender discrimination and make appropriate recommendations for redress. Although companies may not be excited to have yet another regulator, employers can take comfort in the fact that the Ghana Employers Association is represented on the Committee.

(2) Mandatory Gender Equity Policy and Progressive plans:



The Act requires private sector employers to, in consultation with employees, develop and implement a Gender Equity Policy which shall be incorporated into a company's strategic plan and reviewed at least every four (4) years to ensure continued relevance and effectiveness. In this regard, targets have now been set against which companies must measure their progress. The targets are as follows:

· thirty percent (30%) of employees by 2026;
· thirty five percent (35%) of employees by 2028; and
· fifty percent (50%) of employees by 2034.

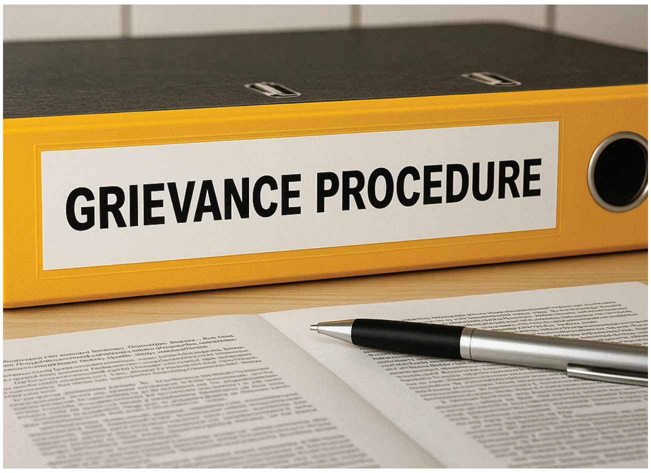
The Act further requires that companies should submit plans to the Committee for the progressive achievement of the targets within twelve (12) months of the coming into force of the Act with an evaluation to be undertaken every four (4) years. The Gender Equity Policy must demonstrate measures to be taken to ensure equitable participation and treatment of both men and women in the workplace. In this respect, companies must adopt gender equity policies and update existing policies to incorporate gender equity requirements.

(3) Annual Reporting and Compliance Audits:
Private sector employers are required by Act 1121 to submit an annual report on gender equity to the Committee. Additionally, the Committee is expected to conduct compliance audits every four (4) years. It will therefore be best ESG practice for companies to undertake internal audits to assess their gender equity efforts. Where the Committee determines that an employer has failed to comply with a gender equity policy, the Committee can require that employer to provide a written obligation to comply within six (6) months.

(4) Incentives for Gender Equity Compliance:

The Act introduces tax benefits for companies that actively implement gender equity measures. The Act provides that businesses demonstrating compliance with gender equity standards may apply for preferential tax treatment. Additionally, businesses demonstrating strong gender equity policies and practices will receive preferential treatment in government contracts under the Public Procurement Act, 2003 (Act 663), as amended. Procurement-wise, the GECC is literally a green card that can push companies to the front of the line.

(5) Oversight and grievance procedures:



Act 1121 grants the National Labour Commission (NLC) the authority to investigate gender-based inequity complaints in the workplace and to settle grievances and complaints. This provision strengthens the enforcement of labour-related gender equity protections. The Committee may use Alternative Dispute Resolution measures to address issues of non-compliance with the Act.

The grievance mechanism under the Act has also been time bound. The NLC is required to investigate and settle complaints using mediation within six (6) months of receipt of the complaint. Where the complaint remains unresolved after the six (6) month period or either party is dissatisfied with the outcome, the aggrieved party may submit the complaint to the High Court and notify the Committee of the complaint submitted. These timelines should protect employers from being subjected to lengthy or protracted dispute resolution procedures. Internally, companies must ensure robust internal grievance mechanisms and gender-sensitive workplace policies to prevent and address complaints of gender discrimination.

The Affirmative Action Act imposes an obligation on employers in the private sector to take measures to ensure progressive gender equity of employees. Thus, a person who seeks to disqualify a candidate on the grounds of gender commits an offence. What this means with respect to recruitment, is that companies may not be able to place advertisement for specific genders for a job role.

To be aligned with the "S" in ESG, and to comply with the Affirmative Action Act, employers are advised to adopt policies and processes that promote gender diversity and equal opportunities in hiring, promotions, and leadership roles. Organizations must also assess gender ratios at all levels and take intentional steps to close gaps, particularly in management and board appointments.
Relevant measures should be adopted to ensure equal pay for equal work and to create safe, inclusive workplaces free from discrimination and harassment. This can be realized by undertaking unconscious bias training as well as training programs for employees and leadership on gender equity principles geared towards influencing an office culture compliant with the Act.

To be aligned with the "G" in ESG, companies need to establish clear policies that align with the Act's provisions and demonstrate accountability via gender equity reporting in annual sustainability or corporate governance reports. Companies should also set measurable targets for gender-balanced boards and staff and conduct periodic diversity audits to assess workforce composition and leadership representation. Additionally, we recommend that companies strengthen internal compliance mechanisms to mitigate the risk of non-compliance.

Conclusion

The new Affirmative Action Act presents a pivotal moment for businesses in Ghana to embed equity, and inclusion into their ESG frameworks. By proactively adopting its provisions, companies can enhance workplace culture and strengthen governance structures. Beyond compliance, prioritizing affirmative action fosters long-term business resilience and a more sustainable corporate ecosystem. As the regulatory landscape evolves, businesses that embrace these changes will position themselves to attract investors, customers and talent who value ESG-driven enterprises. Incorporating gender equity into ESG policies is no longer optional, it is a business imperative.

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