

# TECHNICAL ASSISTANCE GUIDELINES

ON THE EMPLOYMENT OF PERSONS WITH DISABILITIES



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## TECHNICAL ASSISTANCE GUIDELINES

ON THE EMPLOYMENT OF PERSONS WITH DISABILITIES

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## FOREWORD

Inequality and discrimination in the workplace are some of the key elements of the legacy of Apartheid in South Africa. Persons with Disabilities have been excluded from the mainstream of society and experience difficulty in accessing fundamental rights. Legislation has in the past also contributed to the social and economic exclusion of Persons with Disabilities.

Under our new democracy, the rights of the Persons with Disabilities are now protected in the Constitution. Using the Constitution as a foundation, the South African government introduced the Employment Equity Act, 1998 (the Act) to redress inequalities and discrimination in the workplace. To further ensure that the rights of Persons with Disabilities are protected in the workplace, my Department, on the advice of the Commission for Employment Equity published the Code of Good Practice on the Employment of Persons with Disabilities (Code) in 2015. The aim of the Code is to guide, educate and inform employers, employees and trade unions to understand their rights and obligations, to promote and encourage equal opportunities and fair treatment of Persons with Disabilities.

These Technical Assistance Guidelines on the Employment of Persons with Disabilities (TAG) is intended to complement the Code published in November 2015 to assist with the practical implementation of aspects of the Act relating to the employment of Persons with Disabilities in the workplace. It builds on the Code to set out practical guidelines and examples for employers, employees and trade unions on how to promote equality, diversity and fair treatment in employment through the elimination of unfair discrimination.

In essence, the TAG should therefore be seen as part of a broader equality agenda for Persons with Disabilities to have their rights recognised in the labour market where they experience high levels of unemployment and often remain in low status jobs or earn lower than average remuneration. This is particularly important since disability is a natural part of the human experience and in no way diminishes the rights of individuals to belong and contribute to the labour market.

In conclusion, I wish to express my sincere gratitude to the Commission for Employment Equity for the TAG. I also take this opportunity to thank the Employment Equity Directorate for providing support and technical assistance during the process of the development of the TAG.



MN Oliphant, MP  
Minister of Labour

# CHAPTER 1

## 1.1 PURPOSE

The purpose of the Technical Assistance Guidelines on the Employment of Persons with Disabilities (Disability TAG) is to assist employers, employees, trade unions and organisations with expertise on disability, including Disabled People's Organisations (DPOs), to understand the Employment Equity Act of 1998 (the Act) as amended and its Code of Good Practice on the Employment of Persons with Disabilities (Code). This includes the elimination of unfair discrimination and affirmative action measures in the workplace and provides guidelines on how to implement them.

## 1.2 TARGET GROUP

The TAG is targeted at employers, employees, trade unions and Persons with Disabilities, including job applicants, so that they can understand their rights and responsibilities under the Act and the Code.

## 1.3 REALITY AND CONTEXT OF DISABILITY DISCRIMINATION

### PERSON FIRST

Persons with Disabilities should not be viewed as objects of charity, medical treatment and social protection, but as full and equal members of society with human rights. For example, a person is not an epileptic or a victim of AIDS but rather a person who has epilepsy or a person who has AIDS. First and foremost they are persons who may in addition have one or more disabling conditions. Hence, they prefer to be referred to in the media, such as in newspapers or on television or by anybody else, as Persons with Disabilities.

A disability is a condition caused by an accident, trauma, genetics or a disease which may limit a person's mobility, hearing, vision, speech, intellectual or emotional functioning. Some Persons with Disabilities have one or more disabilities, which may vary in their severity.

### EXAMPLE

Some Persons with Disabilities use wheelchairs. Stairs, narrow doorways and curbs are barriers to Persons with Disabilities who use wheelchairs.

Many persons who are blind use Braille to read and they may also use screen reading and voice recognition software on a computer or even tapes to listen to what others read in printed media. Not having the facility to use one or more

of these to reasonably accommodate an employee constitutes a barrier towards accessing equal opportunity.

Persons with intellectual disabilities may learn vocational skills through observation, role-play and breaking a complex job down into small steps, which can be mastered, one or more at a time. Insisting that all employees learn the in the same way, through printed material or formal classroom training, may be a barrier for such Persons with Disabilities.

A number of persons, who have a sensory impairment (hearing), communicate effectively through sign language. However, many who experience sensory impairments (hearing) do not make use of signed language, but use spoken communication and the support of lip speakers, note takers, assistive devices, etc.

## 1.4 PREVALENCE OF DISABILITY

The number of Persons with Disabilities varies **significantly** from country to country with disability being strongly influenced by the social, economic and political conditions within that country, including the effectiveness of the health care system. Across the world, the **prevalence** of disability ranges from between 10% to 26%. In South Africa the exact number of Persons with Disabilities is not known, however, a minimum of 10% (World Health Organisation estimates for developing countries) can be considered a reasonable estimate for purposes of employment equity planning. According to the 2015-2016 Commission for Employment Equity Report Persons with Disabilities represented 1.2% of the workforce of designated employers in terms of the Employment Equity Act.

## 1.5 EXPERIENCE OF DISCRIMINATION

Historically, throughout different societies Persons with Disabilities have been discriminated against. This has varied from extinction and euthanasia to banishment and segregation, the vestiges of which create conditions of ignorance and prejudice towards Persons with Disabilities. This marginalisation and ignorance also results in the systematic under representation of Persons with Disabilities in the key areas of social, economic and political life of any country. In particular, their access to education, employment as well as health and welfare services is severely restricted, resulting in widespread poverty and illness. There is also stigma related to specific invisible functional impairments, including epilepsy, autism and other similar conditions.

In South Africa, the apartheid system and history had a debilitating impact of further marginalisation, segregation (isolated residential institutions, special schools, etc.) and exclusion of Persons with Disabilities. All these factors contributed to the reality that in employment, South Africans with disabilities are both under-represented and under-utilised in the workforce.

## 1.6 ECONOMIC MOTIVATION AND OPPORTUNITY

The process of integrating Persons with Disabilities into the workplace should be motivated from a strategic business or management perspective, rather than an ad hoc activity in reaction to the requirements of the Act.

### According to the Code of Good Practice

*“When opportunities and reasonable accommodation are provided, Persons with Disabilities can contribute valuable skills and abilities to every workplace, and contribute to the economy of our society.”*

If the integration of Persons with Disabilities into the workforce is recognised as a strategic intervention that is likely to add value to the company, then employers will approach employment equity for Persons with Disabilities from a very different perspective. The benefits of approaching it from this perspective include:

- **Hiring the right person for the job**

If a suitably qualified person for the job also happens to be a person with a disability, then reasonably accommodating that person within the workplace is recognised as important for securing and developing the right person for the job. It is not seen as an additional burden that has to be taken on in order to meet the requirements of the Act.

- **Equitable and fair treatment for all within a diverse workforce**

Creating opportunities for all employees to work to their full potential increases morale and develops an ethos of respect among all employees. The provision of reasonable accommodation for a particular employee, not only ensures equitable treatment for employees with disabilities, but also contributes to improvements in morale and increased respect for diversity within the workplace.

- **A marketing, public and customer relations advantage**

The employment of Persons with Disabilities is seen to improve the internal morale and public image of the company by denoting it as a socially responsible employer and responsive to diversity within the population.

## **1.7 LEGAL AND HUMAN RIGHTS—DISABILITY IS A NATURAL PART OF HUMAN EXPERIENCE**

Persons with Disabilities in South Africa and throughout the world are demanding and exercising their human rights. Central to their struggle is the need to overcome the handicapping conditions of society and the environment. Increasingly, this development is linked with a basic appreciation of the fact that disability is a routine and normal part of the human experience. South Africa's new Constitution and employment legislation reflect this principle, including the White Paper on the Rights of Persons with Disabilities (WPRPD).

## **1.8 GUIDELINES FOR PERSONS WITH DISABILITIES**

### **1.8.1 UNDERSTANDING DISABILITY**

Disability should be understood within the South African context, namely the difference between the “medical” and “social model” of disability. The medical model focuses on the diagnosis and the curing of disability, with disability placed as the centre of the problem. While the social model expresses the view that the disability is not the problem, but rather the negative attitudes of some people.

### **1.8.2 SUITABLE PERSON FOR THE JOB**

Persons with Disabilities should be allowed to be equipped with the necessary skills and support to convince the employer of their suitability for the position as the best candidate who happens to have a disability.





## **2.1 EMPLOYMENT EQUITY ACT (THE ACT)**

The Act seeks to eliminate all forms of discrimination. It protects persons who have been historically discriminated against in the workplace from unfair discrimination and directs employers to implement affirmative action measures to redress such discrimination. The Act recognises Black people, women and Persons with Disabilities as those groups of persons who have been historically unfairly discriminated against, and require employers to implement affirmative action measures (i.e. positive measures) to ensure their equitable representation across all occupational levels in the workplace.

## **2.2 THE CODE OF GOOD PRACTICE ON THE EMPLOYMENT OF PERSONS WITH DISABILITIES (CODE)**

The Code is a guide for employers, employees (both applicants and existing employees), trade unions and organisations with expertise on disability, including Disabled Person's Organisations (DPOs), on promoting equal opportunities and fair treatment for Persons with Disabilities as required by the Act.

## **2.3 AIMS OF THE TAG FOR EMPLOYERS AND FOR PERSONS WITH DISABILITIES**

### **2.3.1 EMPLOYERS**

The TAG aims to assist employers by helping them to understand:

- Their obligation to eliminate unfair discrimination and implement affirmative action measures in respect of Persons with Disabilities in the workplace
- Their right to generate economically viable enterprises and/or organisations which effectively provide services and products without discriminating against Persons with Disabilities
- The opportunities that are afforded to them and their enterprises/organisations through the employment of Persons with Disabilities
- Practical ways to move forward that are relevant to their business and that ensure the application of non-discrimination and affirmative action measures for potential and existing employees with disabilities.

### **2.3.2 PERSONS WITH DISABILITIES**

The TAG aims to assist Persons with Disabilities by helping them to understand:

- Their right not to be discriminated against in all aspects of employment
- The affirmative action measures to which they may be entitled to through the provisions of the Act
- Their obligation in participating as an informed partner with the employer in the process of employment
- Their right to reasonable accommodation if required
- Opportunities that exist to prepare for entering and advancing in the workplace
- Practical ways to move forward in preparing for and accessing employment opportunities that may exist.

### **2.4 GUIDELINES FOR PERSONS WITH DISABILITIES**

- Persons with Disabilities should familiarize themselves with the content of the Act, the Code and the TAG
- They should clearly be able to understand the relationship between the Act, the Code and the TAG
- They should know that the Code and the TAG form the basis for the implementation of the provisions of the Act. That is, they are the documents that will be used to guide employers in the implementation of the Act and, most importantly, they will be used to guide the courts where disputes arise.

The Code of Good Practice on the Employment of Persons with Disabilities, is not an authoritative summary of the law, nor does it create additional rights and obligations. It does however obligate employers with the responsibility to affirm the rights of Persons with Disabilities in the workplace and further serves as a guide for any Court or tribunal to consider when interpreting or applying the Act.

The Code should be read in conjunction with the Act, its regulations and any other relevant Codes of Good Practice issued by the Minister of Labour. The Code is intentionally general because every person and situation is unique and departures from the guidelines in the Code may be justified in appropriate circumstances. Employers, employees, trade unions and organisations with expertise on disability, including Disabled People's Organisations (DPOs), should use the Code to develop, implement and refine disability equity policies and programmes to suit the needs of the workplaces.

### **3.1 LEGAL AND PRACTICAL USE OF THE TAG**

This TAG should be read and used in conjunction with the Act, the Disability Code, other relevant Codes of Good Practice and other TAGs that have been issued by the Minister of Labour, as well as other related labour legislation and policies, including the UN Convention on the Rights of Persons with Disabilities (UNCRDP) and the White Paper on the Rights of Persons with Disabilities.

The TAG is intended to be used as a practical guide to provide information and advice for employers, employees, trade unions and organisations with expertise on disability, including Disabled Persons Organisations (DPOs), in understanding and implementing the Act and the Code.

## United Nations Convention on the Rights of Persons with Disabilities, 2007 (UNCRDP)

### **Article 27 - Work and employment**

*“States Parties recognise the right of Persons with Disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to Persons with Disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:*

- *Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;*
- *Protect the rights of Persons with Disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;*
- *Ensure that Persons with Disabilities are able to exercise their labour and trade union rights on an equal basis with others;*
- *Enable Persons with Disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;*
- *Promote employment opportunities and career advancement for Persons with Disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;*
- *Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;*
- *Employ Persons with Disabilities in the public sector;*
- *Promote the employment of Persons with Disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;*
- *Ensure that reasonable accommodation is provided to Persons with Disabilities in the workplace;*
- *Promote the acquisition by Persons with Disabilities of work experience in the open labour market;*
- *Promote vocational and professional rehabilitation, job retention and return-to-work programmes for Persons with Disabilities.”*



## LEGAL FRAMEWORK AND KEY GUIDING PRINCIPLES

# CHAPTER 4

### 4.1 SOUTH AFRICAN LEGAL CONTEXT

The Code is issued in terms of section 54(1) (a) of the Employment Equity Act, No. 55 of 1998 as amended and is based on the Constitutional principle that no one may unfairly discriminate against a person on the grounds of disability - section 9(3) of the Constitution Act, No.108 of 1996.

#### **According to section 9(3) of the Constitution**

*“The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”*



## 4.2 KEY GUIDING PRINCIPLES<sup>1</sup>

- Human rights and the respect for inherent dignity
- Independence and autonomy of individuals
- Non-discrimination
- Effective participation and inclusion in society
- Respect for difference and diversity
- Equality of opportunity; including equitable representation
- Accessibility
- Gender equality
- Mainstreaming
- Health and safety.

## 4.3 INTERNATIONAL BEST PRACTICE AND EXPERIENCE

The Code and TAG have been developed with reference to the experience of employers, employees, trade unions and organisations with expertise on disability, including Disabled Person's Organisations (DPOs), throughout South Africa in creating employment opportunities. Therefore, the international experience and national, including the UN Convention on the Rights of Persons with Disabilities<sup>2</sup> (UNCRDP), White Paper on the Rights of Persons with Disabilities (WPRPD), laws and similar policy guidelines have been taken into consideration.

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1. See Article 3 on general principles from the UN Convention on the Rights of Persons with Disabilities, 2007.

2. The purpose of the **UN Convention on the Rights of Person with Disabilities** is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all Persons with Disabilities, and to promote respect for their inherent dignity.

### 5.1 DEFINITION OF PERSONS WITH DISABILITIES AND CONCEPTS FOR THEIR PARTICIPATION IN BROADER SOCIETY

The UN Convention on the Rights of Persons with Disabilities (UNCRPD) of 2007 provides guidelines on a broad definition and interpretation for general international guidance to ensure the full, equal and effective participation of Persons with Disabilities in society.

#### Article 1: UNCRPD

*“Persons with disabilities” include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. “*

#### WPRPD

*“Persons with disabilities” include those who have perceived and or actual physical, psychosocial, intellectual, neurological and/or sensory impairments which, as a result of various attitudinal, communication, physical and information barriers, are hindered in participating fully and effectively in society on an equal basis with others.*

## 5.2 THREE BASIC CRITERIA COVERED UNDER THE ACT IN RELATION TO DISABILITY AND EMPLOYMENT

**Persons with disabilities is defined by Section 1 of the Act**

*“People who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in, employment.”*

The Code interprets this definition by explaining each of the qualifying criteria underlined above in order to assist in making decisions about who qualifies under the Act (Code, Paragraph 5).

The three basic criteria in the Act, as explained in the Code, must all be met if a person is to be covered under the Act. The TAG provides the necessary guidelines to assist in the application of these concepts in practice.

### 5.2.1 FIRST, A PERSON MUST HAVE AN IMPAIRMENT

An impairment may either be physical or mental or a combination of both.

A physical impairment means “a partial or total loss of a bodily function or part of the body. It also includes sensory impairments, such as hearing and visual impairments (Code, Paragraph 5).

A mental impairment is a clinically recognised condition or illness that affects a person’s thought processes, judgement or emotions. Neurological and intellectual impairments may be confused with mental impairments due to negativity publicity, exclusion and stigma. For reasons of public policy, certain conditions or impairments may not be considered disabilities (Code, Paragraph 5.3.1.)

### 5.2.2 SECONDLY, THE IMPAIRMENT MUST ALSO BE LONG-TERM OR RECURRING

Long-term means the impairment has lasted or is likely to persist for at least twelve months. Recurring means the impairment is one that is likely to happen again and to be substantially limiting (see Paragraph 5.2.3. below). The condition can go away for a period of time and return again but it is never cured. It includes a constant chronic condition, even if its effects on a person fluctuate, such as some forms of multiple sclerosis.

Progressive conditions are those that are likely to develop or change or recur. Persons with progressive conditions or illnesses are considered as Persons with Disabilities once the impairment starts to be substantially limiting. Progressive or recurring conditions which have no overt symptoms or which do not substantially limit a person are not disabilities - for example, a person with cancer, tuberculosis or HIV would not be covered under the Employment Equity Act until the symptoms are substantially limiting the person’s ability to perform their job.

### 5.2.3 THIRDLY, THE IMPAIRMENT MUST BE SUBSTANTIALLY LIMITING

The impairment is substantially limiting if its nature, duration or effects substantially limit a person’s ability to perform essential functions of the job for which s/he is being considered. If the effects of the impairment are not substantially limiting (i.e. functionally limiting), even if they are physical and/or mental, are long-term or recurring, then the person is not covered under the Act. Where the impairment is not evident, existing or historical information or qualified expertise may be used to ascertain impairment and functional limitations.

#### 5.2.3.1 TWO CATEGORIES OF IMPAIRMENTS ARE EXCLUDED

The first category are impairments, which are so easily controlled, corrected or lessened, that they have no limiting effects. For example, a person who wears spectacles or contact lenses does not have a disability unless even with spectacles or contact lenses the person’s vision is substantially impaired. An assessment to determine whether the effects of impairment are substantially limiting, must consider if medical treatment or other devices would control or correct the impairment so that its adverse effects are prevented or removed.



The second category refers to what are called public policy exclusions. This means that for reasons of public policy certain conditions or impairments may not be considered disabilities. These include but are not limited to

- Sexual behaviour disorders that are against public policy
- Self-imposed body adornments such as tattoos and body piercing
- Compulsive gambling, tendency to steal or light fires
- Disorders that affect a person’s mental or physical state if they are caused by current use of illegal drugs or alcohol, unless the affected person is participating in a recognised programme of treatment
- Normal deviations in height, weight and strength; and conventional physical and mental characteristics and common personality traits.

### 5.3 CHECKING THE THREE CRITERIA IN PRACTICE

A person with a disability must meet all three of the qualifying criteria in the sequence as set out in the definition.

A practical way of determining this is to ask and seek answers to targeted questions to decide between the employer and the applicant/employee if someone fits the definition. Following is a checklist with two examples which serve as a practical tool to determine the existence of a disability.

This task should be conducted if it is obvious that the person has a disability or the person has indicated their disability on the application form. It can also be done if the person in your employ indicates that s/he has a disability for the purpose of seeking reasonable accommodation. It is very important to remember, however, that one is not allowed to give this information to any third party such as medical aid schemes and insurance companies without the consent of the person affected (see Paragraph 14 and 15 of the Code).

#### EXAMPLE ONE

This example involves a person who has cerebral palsy and also epilepsy, who is applying for a position as an accountant.

| CRITERIA                    | QUESTION   | YES | NO  | COMMENTS  |
|-----------------------------|--|-----|---|---|
| <b>Physical impairment</b>  | Do you have a physical impairment that may limit your ability to perform the essential functions of the job?   | ✓   |   | This includes sensory impairments.  |
| <b>Mental impairment</b>    | Have you ever being diagnosed with a mental disability (psycho-social or intellectual disability)?<br>Can this disability be easily corrected” to “Can the debilitating effects of this disability be significantly reduced or eliminated through the use of a device”                 |     | ✓   | If yes to either of these or similar mental or emotional conditions, has a professional identified this as a clinically recognised condition? |
| <b>Long-term</b>            | Have you had this physical condition for more than 12 months?  | ✓   |   | Long-term is defined for the purpose of this exercise as 12 months or longer.   |
| <b>Recurring</b>            | Is this impairment a once off occurrence or does it fluctuate?   | ✓   |   | Recurring means that the impairment is likely to occur again and includes chronic conditions even if its effects on the person fluctuate.     |
| <b>Substantially limits</b> | <ul style="list-style-type: none"> <li>• Can the effect of your disability be easily controlled with medication?</li> <li>• Can this disability be easily corrected, e.g. with a device?</li> <li>• Can the effect of the disability be reduced by, e.g. medical treatment?</li> </ul> |     | <ul style="list-style-type: none"> <li>✓</li> <li>✓</li> <li>✓</li> </ul> |   |

The above assessment determined that this person has a disability under the definition of the Act and Code.

## EXAMPLE TWO

This example involves a person who has a broken ankle who uses crutches temporarily and is applying for a position as an accountant.

| CRITERIA                    | QUESTION  | YES | NO | COMMENTS  |
|-----------------------------|---|-----|----|---|
| <b>Physical impairment</b>  | Do you have a physical impairment that may limit your ability to perform the essential functions of the job?  |     | ✓  | This includes sensory impairments.  |
| <b>Mental impairment</b>    | Have you ever being diagnosed with a mental disability (psycho-social or intellectual disability)?” Should include the person’s support needs i.e. job coach and include aspects of symptom management, endurance, ability to focus and concentration span, tolerance for environmental factors i.e. noise levels, effects of medication, understanding of abstract language/signs in the workplace, supervision style and adaptations needed, etc. |     | ✓  | If yes to either of these or similar mental or emotional conditions, has a professional identified this as a clinically recognised condition? |
| <b>Long-term</b>            | Have you had this physical condition for more than 12 months?   |     | ✓  | Long-term is defined for the purpose of this exercise as 12 months or longer.   |
| <b>Recurring</b>            | Is this impairment a once off occurrence or does it fluctuate?  |     | ✓  | Recurring means that the impairment is likely to occur again and includes chronic conditions even if its effects on the person fluctuate.     |
| <b>Substantially limits</b> | <ul style="list-style-type: none"> <li>• Can the effect of your disability be easily controlled with medication?</li> <li>• Can this disability be easily corrected, e.g. with a device?</li> <li>• Can the effect of the disability be reduced by, e.g. medical treatment?</li> </ul>  | ✓   |    |   |

The assessment above determined that this person does not have a disability under the definition of the Act and Code, but reasonable accommodation measures would have to be considered to enable the accountant to physically access the infrastructure to perform his/her job.

The above examples indicate that it is necessary to do a careful, case-by-case analysis to determine whether the impairment substantially limits a person’s “prospects of entry into, or advancement in employment” as stated by the Act. This analysis will provide clarity on whether or not a person fits/complies with the definition of a person with a disability in terms of the Act.

It is necessary to carry out such analysis if a question arises as to whether someone is considered to be a person with a disability throughout the employment process - during the recruitment and selection process, in the working environment, in the way work is usually done, evaluated and rewarded, and in determining the benefits and conditions of employment. This analysis focuses on the person in question and analyzes whether the impairment is substantially limiting for the job that the person is being considered for, or is currently doing.

## 5.4 IMPORTANT CONCEPTS FOR THE IMPLEMENTING THE ACT, DISABILITY CODE, DISABILITY TAG AND THE UNCRDP

### Article 2: UN Convention on the Rights of Persons with Disabilities

- *“Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;*
- *“Language” includes spoken and signed languages and other forms of non-spoken languages;*
- *“Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;*
- *“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to Persons with Disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;*
- *“Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of Persons with Disabilities where this is needed.*

## 5.5 THE LINK BETWEEN DISABILITY AND REASONABLE ACCOMMODATION AT THE RECRUITMENT PHASE

The next step is to ascertain from the applicant or employee if s/he will need reasonable accommodation in the recruitment phase. In the event where the applicant indicates the need for reasonable accommodation, the employer should proceed to make the necessary accommodation to ensure the person's active involvement in the recruitment process.

After concluding the recruitment phase, and if the person is selected, the next step may be to make a conditional job offer to the selected candidate. Only once you have made the conditional job offer to the applicant, you can discuss how his/her disability substantially limits the performance of the essential functions of the job and what reasonable accommodation is necessary.

However, should a person wish to be favourably considered on the ground of disability, a disclosure should be made during the recruitment phase?

## 5.6 GUIDELINES FOR PERSONS WITH DISABILITIES

Persons with disabilities should:

- Familiarize themselves with the qualifying criteria for the definition in the Code;
- Be able to describe their disability in their own words in relation to the qualifying criteria; and
- Be able to explain the factors that limit their entry into, participation and advancement in the workplace.

# REASONABLE ACCOMODATION FOR PERSONS WITH DISSABILITIES

## CHAPTER 6

### 6.1 WHAT IS REASONABLE ACCOMMODATION AND HOW DOES IT WORK<sup>3</sup>?

All designated employers under the Act and Code, “should reasonably accommodate the needs of Persons with Disabilities.” This is both an elimination of unfair discrimination requirement and an affirmative action requirement. For employers who are required to develop employment equity plans, reasonable accommodation is an effective affirmative action measure. The aim of reasonable accommodation<sup>4</sup> is also to remove barriers impacting on the person’s capacity to fulfil the essential functions of a job. However, nothing in law stops an employer from providing support to a person with a disability that exceeds the requirements for providing reasonable accommodation, but nevertheless remains free from unfair discrimination in terms of its reach and application.

Reasonable accommodation, which is modifications or alterations to the way a job is normally performed, should make it possible for a suitably qualified person with a disability to perform as everyone else. The type of reasonable accommodation required would depend on the job and its essential functions, the work environment and the person’s specific impairment.

Adopting ‘Universal Design<sup>5</sup>’ where an employer would allow for all to participate with very little or no adaptation in the workplace.

3. *UNCRRD Article 2 “Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to Persons with Disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;*

4. *WWRPD “Reasonable accommodation” refers to necessary and appropriate modification and adjustments, as well as assistive devices and technology, not imposing a situation, where needed in a particular case, to ensure Persons with Disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.*

5. *“Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design. “Universal design” shall not exclude assistive devices for particular groups of Persons with Disabilities where this is needed.*

## SAHRC: ADVOCATE MALATJIE

*“Nothing in law stops an employer from providing more than is required in terms of the essential functions of the job, as long as it does not unfairly discriminate and is fairly applied.”*

### Examples of reasonable accommodation

Reasonable accommodation measures may include:

Assistance in making the workplace more accessible depending on the kind of person's limitations and needs - for example, amongst others, removal of physical barriers and access to information and technology (equipment and software);

- Workstation modifications
- Adjustment to work schedules
- Adjustment to the nature and duration of the duties of the employee at work, either on a temporary or permanent basis
- The reallocation of non-essential job tasks and any other modifications to the way the work is normally performed or has been performed in the past
- A person with intellectual or emotional disability may require support and reasonable accommodation that may include access to a job coach, more frequent rest periods, considering the side effects of medication, possible adjustment of the work hours, effect/tolerance of the environmental factors such as noise levels and interruptions and how it could be managed best
- The opportunity for Persons with Disabilities who depend on the support of care-givers, particularly in cases of severe disability, to have the care-giver accommodated in the workplace.

The following are examples of situations that employers might be confronted with and the solutions that might be implemented based on actual South African employment workplace experiences. What is common to all these situations, accommodation is always made according to the particular needs of the individual concerned and the nature of the essential requirements of the job.

#### Situation

A call centre consultant with a physical disability is exposed to functional impairments of the upper limbs and has difficulty typing with his/her hands at great speed.

#### Solution

The consultant is allowed to type with a mouth stick or use voice input/output depending on preference, both of which allow the consultant to fall within the acceptable typing speed range.

#### Situation

A radio broadcaster/announcer who is blind is required to read the news wire material.

#### Solution

The employer purchased a high speed Braille printer that allowed the news wire material to be read by the announcer.

#### Situation

An administrative assistant in a government department has a physical disability (i.e.) functional impairment to lower limbs) that causes difficulty with filing and carrying heavy reports on an occasional basis.

#### Solution

Accommodation included re- allocating these non-essential tasks to the other team members, while the worker concentrates on doing the essential job functions.

**Situation**

A bookkeeper with a sensory impairment (hearing) has difficulty speaking on the telephone.

**Solution**

The bookkeeper's colleagues were sensitised to the disability. The bookkeeper may communicate via email, faxes or written messages with colleagues. The use of assistive communication technology may be necessary and/or the assistance of communication facilitators may be required for the purposes of performing the essential functions of the job.

**Situation**

A highly skilled computer technician who has a sensory impairment (hearing) needs to communicate telephonically with others.

**Solution**

The phone systems at the work environment, along with portable earphones for the computer technician's cell phone, were furnished with appropriate devices to amplify the sound.

**Situation**

A recruitment consultant who has an emotional disability frequently becomes impatient when the workload is consistently high.

**Solution**

The supervisors are sensitised on how to more appropriately interact with the consultant and how to space the workload.

**Situation:**

A control room operator has epilepsy.

**Solution**

Colleagues are sensitised to the operator's disability. Team members are trained on how to assist the operator during a seizure at an acceptable medical standard and arrangements are made to ensure that someone is always available when the need arises.

**Situation**

A highly skilled and competent call centre manager with a physical disability (i.e. impairment to upper limbs) has difficulty opening doors around the premises.

**Solution**

When the company was in a position to purchase and design their new offices, the call centre manager was consulted and care was taken to provide an accessible building with several features as an accommodative measure.

**Situation**

A University lecturer with a visual impairment has difficulty with access to written research information.

**Solution**

The University employed a reader as a research assistant to remove this barrier.

**Situation**

A highly skilled and competent corporate lawyer with a sensory disability is required to compose messages and other written documents.

**Solution**

This portion of the workload is re-distributed to the company secretary who dictates all messages to the corporate lawyer.



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### Situation

A competent and experienced attorney with a visual impairment (sensory impairment) has difficulty with transport and accessing courts, as well as carrying materials.

### Solution

The employer employs a personal assistant who doubles up as a driver and accompanies the attorney to inaccessible courtrooms.

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## 6.2 CRITERIA FOR REASONABLE ACCOMMODATION

The criteria for reasonable accommodation include three interrelated factors:

- First, the reasonable accommodation must remove the barriers to performing the essential-functions-of the job for a person who is suitably qualified<sup>6</sup>. The employer must take steps to mitigate the effect of an individual's disability to allow him or her to fully participate in the workplace in order to achieve his or her full potential
- Secondly, it must allow the person with a disability to enjoy equal access to the benefits and opportunities of employment. All staff must have equal rights to promotion. The employer must take all reasonable steps to ensure that the working environment does not prevent Persons with Disabilities from accessing or retaining positions for which they are suitably qualified
- Thirdly, employers can adopt the most cost-effective means consistent with the above two criteria.

If the individual cannot perform the essential job functions with reasonable accommodation, the employer may not employ the person. An employer may be required to restructure a job by reallocating non-essential, marginal job functions, but only if the applicant or employee with a disability can perform the essential functions of the job, with or without reasonable accommodation.

## 6.3 REASONABLE ACCOMMODATION THAT APPLY TO APPLICANTS AND EMPLOYEES THROUGHOUT THE PERIOD OF EMPLOYMENT

The issue of reasonable accommodation starts before the person with a disability is employed and continues throughout the employment process. The following are important stages through which reasonable accommodation measures should be considered.

### 6.3.1 JOB PROFILING

An employer should analyse the job functions to determine the inherent requirements, basic qualifications and competencies required to perform the essential functions of the job. Job specifications must be drafted to ensure that they do not unnecessarily exclude Persons with Disabilities. As Persons with Disabilities, either individually or as a group, express their needs for modifications and adjustments, the employer should consider the kinds of accommodation proposed to ensure that performance standards will be met.

### 6.3.2 JOB ADVERTISEMENTS AND APPLICATIONS

Information about vacancies must be made available in an appropriate format. This may include the use of Braille, audio and video devices, large print or appropriate language and other accessible universal design electronic media. Application forms should focus only on asking how an applicant is suitably qualified to perform the essential functions of the job (Code, Paragraph 7.1.3). Person with Disabilities should also be made aware of employment opportunities by also forwarding the advertisements to training centres and other places of convergence for access and in job preparation for prevocational /vocational training and are supported to access employment.

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<sup>6</sup> Section 20 (3) of the Act, "a person may be suitably qualified for a job as a result of any one of, or any combination of the person's formal qualification; prior learning; relevant experience; or capacity to acquire, within a reasonable time, the ability to do the job."

The following are examples of situations that employers might be confronted with and the solutions that might be implemented based on actual South African employment workplace experiences:

#### **Situation**

A personnel agency had difficulty finding blind persons for positions in a technology company because print and other visual media did not work.

#### **Solution**

The national organization with provincial links was contacted by the personnel agency to relay advertisements to blind persons using various media e.g. telephone, e-mail and their Braille magazines.

### **6.3.3 INTERVIEW PROCESS**

Shortlisted applicants with disabilities must be guaranteed an interview at a location, which will be fully accessible. When individuals are invited to come in for interviews, they must be provided with the opportunity to voluntarily disclose their requirements for reasonable accommodation during the interview and/or employment.

Since the employer may not know if the short-listed candidate has any reasonable accommodation requirements for the interview, creating an opportunity for voluntary disclosure of such needs should be something that is afforded to all potential interviewees. Applicants with self-evident or disclosed disabilities must be given the opportunity to provide, in advance, information on their requirements during the interview.

The following are examples of situations that employers might be confronted with and the solutions that might be implemented based on actual South African employment workplace experiences:

#### **Situation**

A person with a visual impairment attends an interview at a government department without prior disclosure of disability. At the interview, this person is required to sit on a chair facing windows without curtains and was unable to contend with the sunlight coming through. This person alerted the panel carrying out the interview of the disturbance the light was causing.

#### **Solution**

Arrangements were made for this person to sit facing away from the window.

#### **Situation**

A person using a wheelchair discloses disability to a company prior to the interview. The company has no lifts in its three-story building.

#### **Solution**

The company moved the interview from the third floor to the ground floor.

#### **Situation**

A person with a sensory impairment (hearing) applied for a job at an organization. The organization was unable to afford the cost of an interpreter for the interview due to budgetary constraints.

#### **Solution**

The interviewer typed the questions on computer and the interviewee responded via the same medium. Other freely available electronic messaging services may also be used.

### **6.3.4 ASSESSMENTS OR SKILLS TESTING**

Medical and psychological testing and other similar assessments should be free of bias and fairly applied, should not be discriminatory. If the assessment of certain skills is imperative, accommodation must be made for applicants with disabilities.

### **6.3.5 PLACEMENT AND WORKPLACE DIVERSITY**

Staff of an organisation must be sensitised and made aware of diversity in the workplace. The following are examples





of situations that employers might be confronted with and the solutions that might be implemented based on actual South African employment workplace experiences:

#### **Situation**

A person with a sensory impairment (hearing) is employed in a division of a company. Some employees in this division were not able to fully understand the difficulties faced by this person and were becoming frustrated with a shortfall in communication.

#### **Solution**

The management of this organization arranged for all employees in this division to put synthetic wax into each of their ears for an entire day. Employees, although able to note and appreciate that they were able to remove the wax at the end of the day, were now able to have some empathy with their colleague who is deaf.

### **6.3.6 TRAINING AND CAREER ADVANCEMENT**

Employees with disabilities should be consulted in order to ensure input specific to their career advancement. In terms of the career of a person with a disability, determination should be made on where the person with a disability is presently; where the person wants to be; and the career path to be followed to get there. Appropriate interventions, training or any other, should be identified and a plan of action developed and implemented.

Training, including materials, facilities, work organisation and recreation should be accessible to Persons with Disabilities. For example, where reasonably possible, voice synthesis should be a pre-requisite for any computer training involving totally blind persons; venues of workshops and seminars should have accessible toilets for persons on wheelchairs; and lectures should have a sign language interpreter, or alternatively, presentations should also be captured visually if persons with hearing impairments are involved.

### **6.3.7 RETENTION**

The employer is required to ensure through rehabilitation, training or any other appropriate measure the retention of existing staff with disabilities. Where an existing employee becomes disabled, the employer must ensure that the employee remains in their job before considering alternatives, for example, re-deployment.

Based on operational requirements, the employer must give objective consideration to requests from employees with disabilities for reduced, part-time or alternative duties.

Where an existing employee becomes disabled, the employer should maintain contact with the employee and, where reasonable, encourage early return to work. This may require vocational rehabilitation, adjustment to work arrangements, transitional work programmes and, where appropriate, temporary or permanent flexible working times.

### **6.3.8 HEALTH AND SAFETY**

According to the Occupational Health and Safety Act, the employer is obligated to provide and maintain a working environment that is safe to all employees. As part of any on-going health and safety audit, the needs of employees with disabilities must be included. Evacuation procedures should take into account any specific or additional measures to ensure that an employee with a disability is safely evacuated from a building or work site during emergencies.

### **6.3.9 WORKING ENVIRONMENT**

The employer must take all reasonable steps to ensure that the working environment does not prevent Persons with Disabilities from accessing or retaining positions for which they are suitably qualified. The employee with the disability must be consulted on any proposed changes to the working environment. For example, in the case of an employee who is blind or visually impaired, the employer must ensure that the employee receives orientation training related to any change in the environment.

The employer must encourage the participation of employees with disabilities to ensure that, wherever possible, employment practices recognise and meet their needs. When the employer buys new buildings, reasonable effort should be made to provide for the needs of Persons with Disabilities. Unless it creates unjustifiable hardship to the employer, the employer must install facilities for Persons with Disabilities in existing premises.

### 6.3.10 PERFORMANCE MANAGEMENT AND REWARDING OF PERFORMANCE

Systems and practices to evaluate work performance should clearly identify, fairly measure and reward performance of the essential functions of the job. Work that falls outside the essential functions of the job should not be evaluated. Therefore, key performance or measurable output indicators should be identified between the employer and employee with a disability prior to the job-taking place. Assessment of performance should be done only on key performance areas or output indicators that were initially identified. Additional areas must be assessed only if agreed upon by both parties.

Assessment of performance should give an indication of the performance gaps that may exist; help identify the appropriate intervention measures to close these gaps; and establish the appropriate reward or recognition for actual performance.

Any performance processes involving interventions or reward or recognition, must not unfairly discriminate on the basis of disability. In many instances, employees are rewarded on criteria such as efficiency, which is often limited to perceptions of “getting a job done as quickly as possible”. Efficiency and other criteria used to evaluate performance should be developed from a holistic perspective where attention is given, among others, to objective performance standards, effectiveness and quality of output.

## 6.4 WHEN IS AN EMPLOYER OBLIGED TO PROVIDE REASONABLE ACCOMMODATION?

According to Paragraph 6.4 of the Code

*“The obligation to make reasonable accommodation may arise when an applicant or employee voluntarily discloses a disability related accommodation need or when such a need is reasonably self-evident to the employer.”*

Applicants with disabilities must be given the opportunity to voluntarily disclose their reasonable accommodation requirements during recruitment, interviewing and any subsequent phase of employment. Where it is self-evident during the interview and selection process that an applicant or employee requires reasonable accommodation (e.g. ramps into the building), the employer should enquire and reasonably respond to such requests.

Detailed request for information on their requirements, however, can only be sought after a decision has been taken that they are suitably qualified for the job and a conditional job offer has been made. If reasonable accommodation is discussed before the job offer is made and in any other detail other than that noted in Chapter 7, it may be difficult to prove that there was no discrimination on the basis of disability. More specifically, if an employer discusses with a potential employee their reasonable accommodation requirements before a conditional offer is made and the offer is then withdrawn, the withdrawal may be seen to relate to the employers possible reluctance to provide reasonable accommodation. The courts could regard such reluctance as discrimination on the basis of the person’s disability.

Following are examples of appropriate requests for reasonable accommodation based on objective facts:

- An employee tells her supervisor “I’m having trouble getting to work at my scheduled starting time because I’m having trouble walking from the train station to my office on crutches”
- An employee with a hearing impairment tells his supervisor “I need assistance (e.g. Sign Language interpreter) to communicate with my colleagues during business meetings”
- An employee tells her supervisor, “As a result of my psychosocial disability, I have learned from working with my mental health therapist to inform you that I cannot handle stressful and confrontational situations”
- An employee tells his supervisor, “As a result of Retinitis Pigmentosa, my sight is deteriorating. I cannot read written material even with a magnifying glass.”

## 6.5 REASONABLE ACCOMMODATION OBLIGATION WHEN CHANGES TO WORK, ENVIRONMENT OR THE IMPAIRMENT OCCUR

Following are two examples of such situations:

- When the employee tells her supervisor, “I now have only the use of my left arm since my condition is deteriorating, so I am having difficulty typing huge volumes of documents for that new project”

- The employee who uses a wheelchair tells his supervisor, “Someone has blocked the only accessible entrance to my office.”

## **6.6 CONSULTATION WITH THE EMPLOYEE/APPLICANT WITH A DISABILITY AND USE OF TECHNICAL EXPERTS**

**According to paragraph 6.6 of the Code**

*“The employer should consult the employee and, where reasonable and practical, technical expertise to establish appropriate mechanisms to accommodate the employee”.*

Reasonable accommodation requirements should be identified and developed through a process that involves the individual employee with a disability and the employer. This process should focus on establishing the particular accommodation that is required for the individual employee to effectively perform the work for which the individual was employed - i.e. reasonable accommodation is required to perform the essential functions of the job. Most often, Persons with Disabilities have the most knowledge of their requirements in relation to reasonable accommodation.

However, additional technical expertise may be required, especially if the job situation includes aspects that are unfamiliar to the person with the disability. In such instances, it is very important that the technical expert develop recommendations in consultation with the employee with a disability and the employer. This will ensure that the solutions developed and the reasonable accommodation that is made is acceptable and supportive to both the employee and the employer.

## **6.7 CONDITIONS THAT MAY AFFECT REASONABLE ACCOMMODATION**

Each individual’s impairment, degree and nature of impairment, requirements and choice of accommodation will vary. In addition, the job, the nature of the job and the working environment at each workplace will also vary. As a result, reasonable accommodation that is made should be conducive to conditions that positively impact on both the employer and the employee with the disability.

## **6.8 REASONABLE ACCOMMODATION MAY BE TEMPORARY OR PERMANENT, DEPENDING ON THE NATURE AND EXTENT OF THE DISABILITY**

Progressive impairments, such as HIV&AIDS and intermittent conditions may require temporary or permanent reasonable accommodation. For instance, a person with HIV&AIDS or even psychiatric disabilities may need flexible leave time to undertake tests or treatment for a temporary period. Likewise, a person with multiple sclerosis may require the use of a wheelchair for a period and then, after some time, may no longer need such reasonable accommodation.

## **6.9 REPRESENTATIVE LIST OF EXAMPLES OF REASONABLE ACCOMMODATION**

The Code provides a list of representative but not exhaustive examples of reasonable accommodation. When reading this list, bear in mind that any reasonable accommodation must meet certain criteria (e.g. removal of barriers, accessibility and cost effectiveness) and should not constitute an unjustifiable hardship (explained below and in Paragraph 6.11 of the Code) These include but are not limited to:

- Adapting existing facilities to make them accessible, e.g., building a ramp to ensure wheelchair access and making toilets accessible
- Adapting existing or acquiring new equipment, e.g. computer hardware and software, including voice input/output software for persons with sensory impairments
- Re-organizing workstations to ensure that Persons with Disabilities can work effectively and efficiently
- Changing training and assessment materials, processes and systems, e.g. providing training materials on request in electronic format, Braille or on tape for persons with visual disabilities; identifying and hiring venues that are accessible to Persons with Disabilities for training sessions that are held outside the company
- Restructuring jobs so that non-essential functions are re-assigned; e.g. taking routine but physically

demanding filing tasks if they are non-essential from the duties of a person who uses a wheelchair and reassigning them on a rotational basis among other workers

- Adjusting working time and leave; e.g. in cases of cyclical, but non-predictable impairments such as progressive health conditions (HIV/AIDS, cancer) and emotional disabilities
- Providing specialized supervision, training and support in the workplace, e.g., interpreters or other assistance for the persons with hearing impairments, readers for the blind, job coaches for persons with intellectual disabilities or personal assistants for persons with physical disabilities. Depending on the requirements of the individual, support might be temporary or permanent.

## 6.10 EVALUATING PERFORMANCE AND REASONABLE ACCOMMODATION

Employees with disabilities should only be measured on essential job functions. The employee cannot be penalised for low performance on non-essential job functions. The nature of the impairment and disability may require an employer to adapt the way performance is measured.

### Example

A supervisor complained that an employee with a physical disability was taking long breaks. Upon closer examination, it was found that the only accessible toilet was on the other side of the building. It was often occupied by inconsiderate colleagues, which meant that the person had to wait and was late returning to work.

## 6.11 EMPLOYERS ARE NOT OBLIGED TO PROVIDE REASONABLE ACCOMMODATION IF IT CREATES AN UNJUSTIFIABLE HARDSHIP

### According to paragraph 6.11 of the Code

*“The employer need not accommodate a qualified applicant or an employee with a disability if this would impose an unjustifiable hardship on the business of the employer.”*

After setting aside detailed inquiries related to any specific reasonable accommodation, their effectiveness and costs, and making a conditional job offer, the employer may conclude after an objective assessment that the reasonable accommodation creates an unjustifiable hardship on the business. This is a higher standard than in some other countries, where the phrase “undue hardship” is used, because in the case of South Africa where there has been so little employment and accommodation of Persons with Disabilities, the Code encourages employers to make more effort to reduce and eliminate discrimination and/or promote affirmative action.

## 6.12 DEFINING UNJUSTIFIABLE HARDSHIP

### According to Paragraph 6.12 of the Code

*“Unjustifiable hardship’ is action that requires significant or considerable difficulty or expense. This involves considering, amongst other things, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the business.”*

Using unjustifiable hardship as a reason not to provide a specific reasonable accommodation must involve an objective process. This may involve identifying and determining the effectiveness of the reasonable accommodation and whether its implementation will create difficulty or expense that will seriously disrupt the operation of the business. The assessment should also take into account the impact of providing or failure to provide reasonable accommodation to the employee and the systemic patterns of inequality in society. The objectives of the Act and the Constitution should also be considered.

## **6.13 UNJUSTIFIABLE HARDSHIP CANNOT BE GENERALIZED TO OTHER EMPLOYERS OR TO THE FUTURE**

**According to paragraph 6.13 of the Code**

*“An accommodation that imposes an unjustifiable hardship for one employer at a specific time may not be so for another or for the same employer at a different time.”*

Disabilities or impairments, jobs, equipment and technology and work design are dynamic in nature, i.e. they are changing all the time. As a result, reasonable accommodation may also be dynamic in nature in order to suit the requirements of a person with a disability at any given point in time to perform the essential functions of the job in an ever changing environment. Both employers and employees with disabilities must continuously monitor developments and, where relevant, make appropriate adjustments and arrangements necessary to maintain and improve performance.

Therefore, an unjustifiable hardship in one organisation may not apply to another or, an unjustifiable hardship that was identified previously should not influence current or future reasonable accommodation decisions.

## **6.14 FREQUENTLY ASKED QUESTIONS ABOUT REASONABLE ACCOMMODATION**

### **6.14.1 WHAT COSTS ARE ASSOCIATED WITH REASONABLE ACCOMMODATION?**

Although employers are not required to provide accommodation that poses an “unjustifiable hardship”, it is a well-known fact that employing the wrong person for the job results in greater expense in the long run. Employers often report that the benefits to employing Persons with Disabilities often outweigh the cost of reasonable accommodation.

### **6.14.2 HOW DO EMPLOYERS PAY FOR REASONABLE ACCOMMODATION?**

Employers must pay for reasonable accommodation, unless it creates an unjustifiable hardship, from their own operating budgets. Many large employers have found it helpful to create a central fund for financing reasonable accommodation to ensure that consistency of criteria is maintained for all employees requiring accommodation and, at the same time, efficiency is optimised.

## **6.15 EXAMPLES WHERE REASONABLE AND UNJUSTIFIABLE CRITERIA MIGHT NOT BE OBJECTIVELY DETERMINED**

The following examples are indicative of some employers' lack of information or knowledge about how to appropriately respond to accommodation requirements that may constitute discrimination under the Act:

- A large commercial bank refused to promote a call centre operator who is blind because he needs a screen reading or text-to-speech software to access clients' information electronically
- A company refused to employ a highly skilled information systems specialist because he cannot do the filing due to a physical impairment
- A large financial concern refused to employ a receptionist with motor co-ordination impairment because she walks too slowly when she meets clients
- A large retailer refused to employ a client service consultant with cerebral palsy because it is degenerative and they fear that the individual might have a high absenteeism rate
- A national garden refused to employ a receptionist who has a physical disability because they feared the premises did not connect to major transport routes and the person would have a problem with punctuality.

## **6.16 BEST PRACTICE —CORPORATE LEVEL REASONABLE ACCOMMODATION—“HIRE THE PASSION AND TRAIN THE SKILL”**

This is a best practice of how reasonable accommodation is being implemented from within a major South African

corporation at a Telecommunications Centre.

The corporation's core business is to provide the network for cellular communication in South Africa and certain parts of Africa. The company started its operations in 1993. One of its most important services is a customer service call centre. The call centre handles inbound and outbound calls, service calls, and marketing and general information enquiries. The call centre employs 15 persons with physical disabilities.

The company made a commitment to employ Persons with Disabilities. In line with this commitment, the building was designed to guarantee access to Persons with Disabilities. According to management and human resource personnel, employees are recruited on the basis of "hire the passion and train the skill."

Employees are recruited and assessed in a way that does not discriminate on the basis of their disability. The company uses competency-based assessments, which measure their level of competency. New employees are trained in telephone skills, listening skills, computer skills, analytical skills, and product knowledge and customer service skills. Great care is taken to ensure that the training is made accessible to all employees.

The company reasonably accommodates Persons with Disabilities in the following ways:

- Changes to workstations: Desks are designed to accommodate wheelchairs. The passages are wide enough to allow free and easy movement. The toilet doors are automatic and open when approached from either side
- Changes to equipment: Speech recognition software is used based on the individual's needs. A computer mouse may be in the form of a ball rather than the traditional design, to facilitate use. A remote keyboard and a tracker ball are used by one of the employees who cannot type otherwise
- In the work environment: Team members and other colleagues support employees with disabilities on an on-going basis
- Career advancement: Promotion is based on competency
- Employee benefits: All staff should have equal access to medical insurance
- Ensuring accessibility: Staff with disabilities should be instrumental in designing the centre's new building.

## **6.17 BEST PRACTICE FOR USING THE-SUPPORTED EMPLOYMENT MODEL - INTELLECTUAL AND OTHER DISABILITIES**

### **The Supported Employment Model:**

Supported employment is becoming an option in South Africa, based on its wide and successful practise in the United States of America, Ireland, the Netherlands and the United Kingdom. The concept is based on the belief that individuals with disabilities, including those with significant disabilities, have the right to be employed in real jobs and in regular settings where training and other support is provided on an on-going basis. Supported employment often applies to persons who have severe intellectual disabilities and/or multiple disabilities.

The following are examples of Persons with Disabilities, although aliases are used to protect the identities of those who have accessed the open labour market through supported employment in South Africa.

Sarah has a hearing impairment and a physical disability, along with a visual impairment. She communicates through finger-play and is employed in the surgery unit of a clinic.

David has a profound hearing impairment, a visual impairment and speech impairment. He is employed as a laundry assistant in a clinic.

### **Finding a job match from the assets of the individual:**

The job coach extensively researches organisations where these individuals could possibly add value. The research includes gathering information about the employer and interviewing the management and staff about core business activities. Observation of the job site is critical to determine the sequence of job duties. Included is an environmental analysis based on observing all work and non-work areas. Potential for interacting with co-workers is assessed through observing co-workers performing the job.

### **What is a job coach or employment specialist?**

A job coach can be defined as a person who provides individualised, one-on-one assistance to the individual who is placed in an organisation. The job coach could for example, as an option provide on the job training, assist with travel arrangements, skills training at the job site, on-going assessments and evaluation and long term support. The job coach is expected to gradually withdraw assistance over time, as the individual becomes better-adjusted and more independent at work.

Successful employment using the supported employment model depends more on the match between the person and their environment, rather than on the personal characteristics of the individual.

## **6.18 GUIDELINES FOR EMPLOYERS**

Employers should:

- Become familiar with reasonable accommodation and how it can assist both the employee and employer—this section truly summarises what an employer must be prepared to consider doing in case someone is considered as having a disability under the Employment Equity Act (from previous Section)
- Use the criteria for reasonable accommodation either in policy or in your own decision-making—it must remove barriers for an individual with a disability, it must assure equal access and the employer may choose the more cost-effective option
- Prepare to respond to requests for reasonable accommodation at any time in an employee's relationship with work—in selection, training, placement, through promotion and job changes, and changes in the environment, the impairment and the person him/herself. Experience from other countries shows that the most common initial source of requests for reasonable accommodation will come from existing workers—be prepared to listen to and respond to those requests. This is actually an opportunity for employers to openly engage in the process—with employees they already know
- Treat the person with a disability as a primary partner in the process of selecting reasonable accommodation—and only consult with experts when needed, but make sure that the experts are familiar with best practices in equity based disability employment
- Performance evaluation needs to be conducted without respect to the reasonable accommodation that may be required. A person's performance must be evaluated on how they perform the essential functions of a job, not non-essential functions
- A reasonable accommodation is also one that does not create an unjustifiable hardship for the employer. Unjustifiable hardship is defined as an action that requires significant or considerable difficulty or expense. This involves considering, amongst others, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the business. If an employer can make the case for an unjustifiable hardship, it cannot generalise that to other applicants/employees or workplaces. However, expense should not be used as a shield not to provide reasonable accommodation.

## **6.19 GUIDELINES FOR PERSONS WITH DISABILITIES**

Persons with disabilities should:

- Familiarize themselves with the term “Reasonable Accommodation”
- Be able to explain in their own words the type of reasonable accommodation they may require relating to their specific nature, degree and severity of their disability
- Take responsibility to ask for reasonable accommodation if they should require any, and be in touch with organisations in the field for guidance, including for coaching where applicable
- Know that they have the right to ask for reasonable accommodation at any stage of the employment process
- Make the final decision about the type of accommodation they may require, but be responsible enough to know that it must be a “viable” option for both themselves and the employer.

### 7.1 RECRUITMENT

The employment of Persons with Disabilities should not be viewed as a social responsibility. It should also not be seen purely as a legislative obligation and neither should it be separated from the normal diversification of the workforce as is determined by the Employment Equity Act. Instead, it should be viewed as a business opportunity and imperative. It makes good economic sense to employ Persons with Disabilities both for the business, as well as the country as a whole.

### 7.2 RECRUITMENT PROCESS

The first step in this process is to draw up job profiles and specifications that clearly identify the inherent requirements and essential functions of the job, as well as the skills and capabilities required to perform the job. The following steps are examples to follow when developing a job profile and job specification.

#### Example One

| Position                | Tasks   | Essential Functions  | Skills and Capabilities   |
|-------------------------|---|--|---|
| <b>Division Manager</b> | <ul style="list-style-type: none"> <li>• Programme management</li> <li>• Budget management</li> <li>• Resource management</li> <li>• Staff &amp; client management</li> </ul> | <ul style="list-style-type: none"> <li>• Design programmes/action plans</li> <li>• Draw up budgets</li> <li>• Manage conflict</li> <li>• Manage client relationships</li> <li>• Writing reports</li> <li>• Reporting</li> <li>• Managing meetings</li> </ul> | <ul style="list-style-type: none"> <li>• Good communication</li> <li>• Effective writing skills</li> <li>• Interpersonal skills</li> <li>• Ability to meet deadlines</li> <li>• Work in a team</li> <li>• Work independently</li> <li>• Leadership skills</li> <li>• Computer literacy</li> <li>• Ability to work under pressure</li> </ul> |



## Example Two

| Position  | Tasks  | Essential Functions  | Skills and Capabilities   |
|-----------|--|--|---|
| Head Chef | <ul style="list-style-type: none"><li>• Cooking</li><li>• Presentation &amp; serving of food</li><li>• Developing menus</li><li>• Staff management</li><li>• Costing &amp; budgeting</li><li>• Purchasing</li><li>• Inventory management</li></ul> | <ul style="list-style-type: none"><li>• Plan menus &amp; functions</li><li>• Do costing of menus &amp; functions</li><li>• Develop budgets</li><li>• Prepare meals</li><li>• Develop recipes</li><li>• Supervise other chefs</li><li>• Draw up budgets</li></ul> | <ul style="list-style-type: none"><li>• Good planning &amp; organizing</li><li>• Good communication</li><li>• Interpersonal skills</li><li>• Ability to meet deadlines &amp; work under pressure</li><li>• Work in a team</li><li>• Leadership skills</li><li>• Computer literacy</li></ul> |

## 7.3 APPLICATION FORMS

### According to paragraph 7.1.3 of the Code

*“Application forms should focus on identifying an applicant’s ability to perform the essential functions of the job.”*

A brief statement regarding the non-discrimination and affirmative action practices of the company consistent with the Act could assure applicants with disabilities that the employer is aware of and attempting to comply with the Act and Code.

## 7.4 THE ADVERTISEMENT

The purpose of the job advert is to attract the most suitably qualified persons from whom to make a selection for a particular vacant position. For this reason, the advert should be clear and concise, but contain enough detail about the inherent requirements of the job so that the potential applicant can make an informed decision.

Adverts should not contain any unnecessary criteria that do not pertain to the essential functions of the job, as this may unfairly exclude Persons with Disabilities. It is therefore important to draw up a job profile and a job specification (previous Paragraph) before developing an advert, as it will enable the employer to clearly identify the inherent requirements and essential functions of the job as well as the skills and capabilities needed to perform the job. The following are examples of advertisements consistent and inconsistent with the Code and TAG.

| Example One (consistent)   | Example One (inconsistent)  |
|--|---|
| Division Manager wanted to manage the Training Division of the Organisation.   | Division Manager wanted to manage the Training Division of the Organisation.  |
| Applicant will be responsible for programme, budget, resource, staff and client management.  | Applicant will be responsible for programme, budget, resource, staff and client management.                                       |
| The essential functions of this job are to design programmes and action plans, draw up budgets, manage conflict and client relationships, write reports, do reporting and manage meetings.   |   |
| <p>In order to be effective and efficient in this job the applicant must have the following skills and capabilities:</p> <ul style="list-style-type: none"> <li>Good communication</li> <li>Effective writing skills</li> <li>Interpersonal skills</li> <li>Ability to meet deadlines</li> <li>Work in a team</li> <li>Work independently</li> <li>Leadership skills</li> <li>Computer literacy</li> <li>Ability to work under pressure</li> </ul> | The applicant must have relevant skills and capabilities.   |
| The successful applicant should have a tertiary qualification or relevant work experience. Knowledge of the field is advantageous but not essential.   | The successful applicant must have a degree and be able to travel long distances.   |
| <p><b>Contact details</b><br/>Please send your CV to NAME at ADDRESS or fax it to NUMBER or E-mail it to ADDRESS. The telephone number is NUMBER. This advert is available in alternative formats upon request.</p>  | <p><b>Contact details</b><br/>Please send your CV to NAME at ADDRESS or e-mail it to ADDRESS. The telephone number is NUMBER.</p> |

| Example Two (consistent)   | Example One (inconsistent)  |
|--|---|
| Head Chef wanted for beachfront hotel.   | Head Chef wanted for beachfront hotel.  |
| Applicant will be responsible for preparing, presentation and serving of meals, developing menus, staff management, costing and budgeting, purchasing and inventory management.  | Applicant will be responsible for preparing, presentation and serving of meals, developing menus, staff management, costing and budgeting, purchasing and inventory management. |
| The essential functions of this job are to develop budgets, prepare meals, develop recipes, supervise other chefs, draw up budgets, plan menus and functions and do costing of menus and functions.  |   |
| In order to be effective and efficient in this job the applicant must have the following skills and capabilities. Good planning and organising, communication and Interpersonal skills as well as the ability to meet deadlines and work under pressure, work in a team, have leadership skills and must be computer literate. |   |
| The successful applicant should have a tertiary qualification or relevant work experience. Knowledge of the field is essential.  | The successful applicant must have a degree and be able to drive.   |
| <p><b>Contact details</b><br/>Please send your CV to NAME at ADDRESS or fax it to NUMBER or E-mail it to ADDRESS. The telephone number is NUMBER.</p>  | <p><b>Contact details</b><br/>Please send your CV to NAME at ADDRESS or e-mail it to ADDRESS. The telephone number is NUMBER</p>  |



## 7.5 SELECTION

After receiving applications, the employer must engage in a selection process through short-listing applicants using selection criteria that are fair and non-discriminatory. The employer must use the same criteria to test the ability of Persons with Disabilities as applied to applicants without disabilities.

The employer should carefully document the selection process to ensure that they are in a position to prove that they did not discriminate against applicants with disabilities.

Discrimination in selection criteria relating to a functional impairment is reasonable when the impairment makes it impossible to perform the inherent requirements of the job. For example, when a blind person applies for a job as a driver, it would be fair discrimination to exclude the applicant on the basis of not being able to perform the inherent requirements of the job.

### 7.5.1 INTERVIEWS

According to the Code, interviews should be objective and unbiased. Interviewers should avoid assumptions about the abilities of Persons with Disabilities. In order to achieve this, the TAG sets out the following guidelines:

- Once an applicant has been short-listed through a selection process, the employer invites the applicant for a face-to-face interview
- If on the CV of the applicant a disability is disclosed, the employer may enquire from the applicant on the type of reasonable accommodation that is required to participate equitably in the interview. For example, if the applicant disclosed visual impairment, the employer may enquire whether assistance is required to fill in forms, documentation should be in large print or will the applicant be accompanied by a sighted guide or a guide dog
- When the applicant arrives at the venue, the employer must orientate the applicant in relation to seating arrangements, toilet facilities and exits from the building
- Another example, involves an applicant who has a hearing impairment where the employer must enquire whether the applicant will require an interpreter or any other type of assistance
- In the event of an applicant with a disability arriving at the interview with the employer not having any prior knowledge of disability, flexibility should be exercised. For example, if the applicant has mobility impairment and the interview venue is on the second floor where there is no lift, the employer could agree either to move the venue or reschedule the interview in order to make reasonable accommodation available. This principle should be applied irrespective of the nature, degree or severity of the impairment or disability.

Following are some further examples of reasonable accommodation that may apply when interviewing applicants with various types of disabilities:

| Types of disability     | Possible reasonable accommodation  |
|-------------------------|--|
| Physical                | <ul style="list-style-type: none"><li>• Buildings more than one story high should have a lift</li><li>• Buildings that have stairs should have ramps to accommodate the needs of persons with mobility impairments</li><li>• Accessible toilet facilities should be close to the interview venue</li><li>• In the case of older building where there are no lifts, interviews should be on the ground floor.</li></ul> |
| Hearing impairments     | The interview panelists should address the interviewee and not the interpreter, including eye contact.   |
| Totally blind           | The interview panelists should not engage in non-verbal gestures or whispers.  |
| Partially sighted       | The employer should enquire as to the degree of lighting needed by the interviewee during the interview.   |
| Intellectual disability | <ul style="list-style-type: none"><li>• Interviews could be conducted on a one-to-one basis as opposed to a panel of persons</li><li>• Interview questions should be kept short and simple</li><li>• Interviewers should exercise patience</li><li>• Where relevant, persons with psychosocial and intellectual disabilities may require the support of a job coach.</li></ul>   |

## Focus of the interview

Interviews should focus on the applicant's ability to perform the essential functions of the job irrespective of the nature, degree or severity of the disability.

### According to Paragraph 7.3.3. of the Code

*"Interviewers should ask applicants who have disclosed a disability or has a self-evident disability to indicate how they would perform the essential functions and if accommodation is required."*

No further detailed discussion should be entered into regarding the need for or costs of reasonable accommodation to perform the essential functions of the job at this stage of the recruitment process. The employer should rather focus on the provision of reasonable accommodation to enable the applicant to participate equitably during the interview.

## 7.5.2 CONDITIONAL JOB OFFER

A conditional job offer may only be made to one person at a time, and not to all applicants with disabilities that may have applied for the job.

The purpose of a conditional job offer is to allow the employer to assess neither the ability of the applicant with a disability to perform the essential functions of a specific job, with or without reasonable accommodation, and not to assess the medical condition nor the nature of the disability.

Any assessment or testing must comply with the statutory requirements and should determine if the applicant is able to perform the essential functions of the job, with or without reasonable accommodation. The assessment or test should focus on ascertaining whether the applicant has the ability to perform the job and, if necessary, the type of reasonable accommodation that would assist performance. The employer may assess or test applicants with disabilities for a specific job and not require all other applicants to undergo the same assessment or testing.

### According to Paragraph 7.4.5 of the Code,

*"The employer may withdraw the job offer if the testing shows that:*

- *Reasonable accommodation requirements would create unjustifiable hardship; or*
- *There is an objective justification that relates to the inherent requirements of the job;*  
*or*
- *There is an objective justification that relates to health and safety."*

## 7.6 TIPS FOR JOBSEEKERS WITH DISABILITIES

If you have a disability, you know it will more than likely affect a potential employer's attitude towards you. Even if your disability has no bearing on your ability to do the job, most employers will have some concerns. It is up to you to show prospective employers that, despite your disability, you are suitably qualified for the job. Tips to keep in mind when searching for work:

- Use a variety of job-seeking techniques
- Research prospective employers
- Role-Play
- Know your own capabilities and limitations, what the job you want entails, what you can contribute to the job, and how to present yourself in the most positive manner
- Prepare well for the interview
- Find out where the company is situated well in advance
- Dress appropriately
- Arrive 15 minutes earlier
- Confidence is everything
- Know what technologies can help you work effectively; how much they cost and where it can be obtained
- Decide when to disclose your disability
- Make the interview easy for the employer
- There are several types of employment interviews. Being familiar with each type will enable you to better prepare yourself for the interview
- Be honest
- Know your rights and familiarize yourself with current legislation
- Don't let past failures affect you negatively.

## 7.7 GUIDELINES FOR PERSONS WITH DISABILITIES

### Persons with disabilities should:

- Know and describe what accommodation would be required to participate effectively and equitably in the recruitment process
- Ask for a description of the inherent requirements and/or essential functions of the job if it was not clear in the advert
- Know that it is their choice to disclose their disability in the application process
- Inform the employer of the type of accommodation they may require in the interview, without disclosing detailed information regarding the nature, degree or severity of the disability
- Not have to answer questions related to the nature of their disability in the interview
- Example- "How much can you see?"
- Example- "When and how did you become disabled?"
- Know that the employer may however ask questions such as "How will the inherent requirements or essential functions of the job be performed"
- Example – "As a researcher you would have to do a lot of reading and writing--how do you intend to achieve this requirement?"
- Know that they don't have to discuss any accommodation in detail, which is required to perform the inherent requirements of the job, until the employer has made a conditional job offer in writing.

# MEDICAL AND PSYCHOLOGICAL TESTING AND OTHER SIMILAR ASSESSMENTS

## CHAPTER 8

Medical and other testing is important because historically these types of assessments have been used to rationalise discrimination of Persons with Disabilities and therefore, they need to be used carefully. At the same time, there are genuine medical and other concerns that warrant the correct use of these assessments which are for the benefit of the employer, the applicant and the employee.

### 8.1 MEDICAL TESTING

Subject to the provisions of the Act, an employer may require a medical examination or make a disability-related inquiry of an employee as long as the inquiry or exam is relevant and appropriate to the kind of work for which the applicant or employee is being tested. Any medical information obtained from a disability-related inquiry or exam, as well as any medical information voluntarily disclosed by an employee must be treated as a confidential medical record.

#### **What exactly is a disability-related inquiry?**

A disability-related inquiry is a question (or series of questions) that is likely to elicit information about disability. This would include direct questions about disability, such as whether a person has or has ever had a disability, how they became disabled, or details about the nature or severity of their disability. In addition, questions about genetic information, prior workers' compensation history, past or current prescription medications, or a broad inquiry about medical impairments (e.g., "tell me about every medical problem you have"), would also be restricted because they are likely to yield information about disability. Restrictions on this type of inquiry apply both to questions asked of the person and questions asked of any other third party, such as a co-worker or doctor. Note that questions about illegal drug use or whether someone has been drinking are not disability-related enquiries.

In general, medical examinations would include the following:

- Full or partial (e.g., back only) physical exam by a doctor or other medical professional
- Vision tests conducted and analysed by an ophthalmologist or an optometrist
- Blood, urine, and breath tests to check for alcohol use, urine, saliva, and hair analyses to detect disease or genetic markers
- Blood pressure and cholesterol screening
- Nerve conduction tests
- Range of motion tests that measure muscle strength and function

- Pulmonary function tests
- Psychological tests designed to measure a mental disorder or impairment
- Diagnostic procedures such as x-rays, CAT scans, and MRIs (Magnetic Resonance Images).

Once a conditional offer is made, the employer may require a medical exam or ask disability-related questions. If the job offer is subsequently withdrawn because of medical information, the employer must show that the reason for doing so was relevant and appropriate to the kind of work for which the applicant or employee is being tested.

## 8.2 TESTING AFTER ILLNESS OR INJURY

The same principles noted above apply to a situation where an existing employee is injured, either on-the-job or off-the-job, and the testing is needed to assist in the decision as to whether and how the individual should be accommodated, if necessary.

## 8.3 HEALTH SCREENING AND SAFETY

Health screening and safety procedures, in general, should apply to all persons regardless of whether they have a disability.

## 8.4 PRE-BENEFIT MEDICAL EXAMINATIONS

Any examinations related to membership in a benefit scheme must be undertaken separately from the employment and/or accommodation process.

## 8.5 PSYCHOLOGICAL TESTING OF EMPLOYEES AND OTHER SIMILAR ASSESSMENT OF EMPLOYEES WITH DISABILITIES

**According to section 8 of the Employment Equity Act, 1998**

*Psychological testing and other similar assessments of an employee are prohibited unless the test or assessment being used*

- *has been scientifically shown to be valid and reliable;*
- *can be applied fairly to all employees; and*
- *is not biased against any employee or group; and*
- *has been certified by the Health Professions Council of South Africa established by section 2 of the Health Professions Act, 1974 (Act No. 56 of 1974), or any other body which may be authorized by law to certify those tests or assessments.*

### **8.5.1 WHY EMPLOYERS USE ASSESSMENTS?**

Since the interview as an effective measurement tool is being questioned, more employers are looking at psychometric or personality tests to measure key competencies for the job.

Psychological testing has also been the target of extensive scrutiny, criticism, and debate both outside and within the professional testing community. The most frequent criticisms are that tests play too great a role in the lives of employees and those tests may be biased and exclusionary.

When employers assess either an individual with a disability or a group of individuals, they must carefully consider the test selection. If a test screens out or tends to screen out an individual with a disability or a class of such individuals on the basis of disability, it must be job-related and consistent with business necessity.

### **8.5.2 QUESTIONS ABOUT PSYCHOMETRIC ASSESSMENTS**

The employer needs to ask the following questions:

- Does the prospective instrument address the assessment's suitability for use with Persons with Disabilities?
- Were individuals with like disabilities included in the normative and validation samples?
- Were there specialized administrative procedures and forms, such as large-print test forms for individuals with visual disabilities or untimed administration for individuals with learning disabilities?
- Are there parallel interpretive guides for evaluating the assessment results for those with specific disabilities and for those who have taken specialised administration of the assessment?
- Finally, are these specialized interpretive guides, if available, based upon empirical reliability and validation research?
- If positive answers to the above questions are not found, the employer must consider whether the use of an invalidated instrument is justified. The psychometric test as an assessment tool must then be waived.

### **8.5.3 ADAPTING EXISTING PSYCHOMETRIC TESTS**

When an employer adapts a measure themselves (e.g., reading an assessment to a test taker when normal administration calls for the test taker to read the test questions), they are essentially using an invalidated instrument.

### **8.5.4 WHO HAS THE BURDEN OF PROOF?**

If an employee or job applicant claims discrimination on the basis of disability during the testing phase, then the burden of proof lies with the employer.



## 8.6 GUIDELINES FOR EMPLOYERS WHEN ADMINISTERING PSYCHOMETRIC TESTS

- Responsibility for test use should be assumed by or delegated to only those individuals who have the training and experience necessary to handle this responsibility in a professional and technically adequate manner
- Test users should periodically review their procedures to verify that changes in populations of test takers, objectives of the testing process, or changes in available techniques have not made their current procedures inappropriate
- Many test manuals point out variables that should be considered in the interpretation of a test score, such as clinically relevant history, school record, vocational status, and examiner-test taker differences. Influences associated with variables such as socio-economic status, ethnicity, cultural background, language, age, or gender may also be relevant. In addition, medication, visual impairments, or other disabilities may affect a test taker's performance on, for example, a paper-and-pencil test of mathematics
- Such alternate explanations for a test taker's level of performance should be considered before interpreting the test taker's score as reflecting ability level with respect to the skills tested
- In all cases, however, the goal is to obtain an accurate assessment of the attribute(s) under consideration. To obtain such an assessment, modifications in standard tests or testing procedures may be necessary
- The necessity for and the nature of the modifications made will depend on such factors as: the nature of the test, the nature of the attribute being assessed, the purpose for which the test is administered, and the nature of the disability
- The particular modifications made, if any, must also take into account more specific aspects of the disability
- Given the variations between and within disability, the particular modifications which may be made to standard tests and testing procedures are numerous
- For example, persons with visual impairments may be tested individually rather than in a group and such testing may occur in a setting with special accommodation (e.g., altered lighting, large font and /or extended time)
- With respect to the mode of response, the visually impaired person may respond orally to the test administrator or may record his or her answers using a tape-recorder
- Test content may be read to the test taker or may be presented in Braille, large print or tape-recorded formats
- Additionally, certain items or item types involving visual stimuli (e.g., block design) may have to be deleted and substituted with other items or item types
- Time limits may or may not be modified. Time limits are generally extended to varying degrees when administering Braille, large print or tape-recorded tests. Time limits may not be modified on skill tests such as typing when the specified speed and accuracy requirements are to be met
- For example, if a standard paper-and-pencil test cannot be appropriately modified, the attribute may be assessed by such means as a structured performance task, a questionnaire, and a simulation of the job function or an interview
- A wide variety of modifications may be made when testing persons with other disabilities. The testing of hearing impaired persons may involve the use of an interpreter and certain types of verbal test content may have to be eliminated or simplified for pre-lingual (persons who have limited or no speech) deaf persons
- Because there is such diversity in disability, and the modifications that may be made to tests and testing procedures, professionals must consult relevant experts on that particular type of disability as well as adopt a case-by-case approach in reaching decisions on the particular modifications, which may be made in any particular case.

## 8.7 GUIDELINES FOR PERSONS WITH DISABILITIES

Persons with disabilities should:

- Refuse to be tested if the test is exclusively for them, unless it is for the purpose as outlined in 7.4.3 of the Code
- Establish the different purposes of tests and request the necessary accommodation to enable them to participate in the testing process, if they are obligated to undergo the particular test.

## 9.1 INTRODUCTION

The Employment Equity Act, No 55 of 1998 protects Persons with Disabilities against unfair discrimination during all employment practices and activities. The preceding chapters have explained these requirements as they apply to recruitment, selection and psychological assessments and medical testing. This chapter discusses the application of non-discrimination requirements to the placement of an employee with a disability.

## 9.2 ORIENTATION AND INITIAL TRAINING

Placement is the process through which the person with a disability is appointed to a job within an organisation. The employer on its own and/or with the assistance of an external placement agency can manage and facilitate the placement process.

- **Assignment:** An individual with a disability should not, because of a disability, be assigned to a job with less favourable conditions than that of an able-bodied colleague
- **Job classification:** An employer may not limit, segregate, or classify an individual with a disability in any way that negatively affects the individual in terms of job opportunity and advancement
- **Compensation:** Rates of pay or any other form of compensation must be the same as that of the able-bodied colleague(s)
- **Training:** The placement of Persons with Disabilities into the workplace must be followed by comprehensive orientation and induction training that must include disability sensitisation training. Very few persons have had the opportunity to work with Persons with Disabilities. Therefore, they might perceive the new team member with a disability as being different. Being different can be difficult, and for the sake of business, it is essential that the new employment relationship deals with prejudices and stereotypes, which might exist. The induction training is therefore an opportunity to guarantee that all the stakeholders are given the skills to succeed in this new relationship, which must be based on mutual, respect, understanding and trust.

### 9.3 INDUCTION TRAINING FOR EMPLOYEES WITH DISABILITIES

Induction is defined by Hall and Goodale (1986:275) as the process through which a new employee learns how to function efficiently within a new organisational culture by obtaining the information, values and behavioural skills associated with their new role in the organisation.

The induction-training programme must be accessible and make provision for reasonable accommodation.

The aim of the induction-training programme must enable the employee to reach productivity standards more rapidly. It must provide the employee with enough information to understand what is expected and how the tasks must be performed. It must make a positive contribution towards reducing staff turnover during the early stages of employment. It must assist in creating a positive attitude towards the employer.

### 9.4 EXAMPLES OF WHAT TO DO AND WHAT TO AVOID

#### The induction programme:

The following are suggestions as to what this process should include:

#### Checklist

- *Inform the persons who need to know about the appointment and make sure that arrangements have been made for someone to meet the new employee*
- *Arrange for reasonable accommodation in order to ensure that the training material is accessible to all employees*
- *The employer needs to consult with the employee on what type of reasonable accommodation might be needed during the induction training.*

Example 1: An employee who is blind arriving on the first day might request a professional to assist with workplace orientation training. The employer needs to arrange for a professional person to do workplace orientation training to familiarise the new employee with the environment.

Example 2: An employee who has a hearing impairment might request a sign-language interpreter to be present during the induction training. Please note that if someone is hearing impaired, he may need the assistance of a Lip Speaker Practitioner, Whisper Interpreter, a Note Taker, captioning of audio-visual material or assistive devices. The employer needs to arrange for a sign-language interpreter to assist the employee during the induction training since this will directly impact on the employee's productivity.

Example 3: The new employee who has a mental disability might need to have certain concepts simplified or repeated. The employer must reasonably accommodate this request by e.g. providing individualised training.

Example 4: An employee who has a visual impairment might need reading materials to be available in large font. The employer must reasonably accommodate this request. Brief someone to act as a guide and mentor during the first few weeks to accompany the new recruit to lunch breaks and, perhaps, answer informal queries.

**The Induction-training programme should not exclude any new recruit on the basis of disability and should address the following:**

- An overview of the organisation
- An overview of policy and procedures
- Compensation and Fringe benefits
- Safety regulations
- Labour relations
- Facilities
- Functions of the department/section
- Tasks and responsibilities
- Policy procedures, rules and regulations
- Viewing of the workplace
- Introduction to employees
- Accessibility to all Persons with Disabilities
- Braille and large font(s) for persons with visual impairments, physical access for persons on wheelchairs, and simple, repetitiveness and certain other adaptations for persons with a mental disability.

## **9.5 EXAMPLES OF EQUAL TREATMENT SUBJECT TO REASONABLE ACCOMMODATION**

### **9.5.1 COMPENSATION**

Compensation for a specific job must be the same for all employees regardless of disability.

#### **Example**

A Data-Capturer may not be able to speak on the telephone, even with assistive devices. This has been identified as not an inherent job requirement. This person cannot be penalised and must receive exactly the same remuneration as an employee in that job category.

### **9.5.2 TERMS AND CONDITIONS OF EMPLOYMENT**

A person with a disability must not be employed on less favourable terms than able-bodied colleague(s) in the same job category.

A receptionist who is an amputee (upper limbs) does not type at a fast and accurate speed. This does not mean that the person should be employed on less favourable terms and conditions than other\_team-member(s).

### **9.5.3 TRAINING AND CAREER ADVANCEMENT**

Persons with disabilities must be placed where there are equal opportunities and access to training and career advancement programmes.

### **9.5.4 BENEFITS AND PRIVILEGES**

Equal opportunities and access to leave, canteen facilities, medical aid or unemployment insurance, employee well-being programmes or recreational facilities must be equally accessible to employees with disabilities.

## 9.6 HOW TO INCLUDE APPROPRIATE DISABILITY SENSITIZATION IN ORIENTATION/ INDUCTION AND OTHER TRAINING

### A disability sensitisation programme must:

- Through the process of adult education, interaction and group participation, raise awareness of disability
- Sensitize co-workers to the type of disability and whether assistance should be provided
- Equip able-bodied employees with the tools and skills to overcome attitudinal and communication barriers
- Create an open environment to address and transform stereotypes and prejudices
- Guarantee that enough knowledge is present in the organisation to allow everyone to communicate effectively and understand each other.

## 9.7 GUIDELINES FOR EMPLOYERS

- Planning for successful placement is critical for starting the job correctly and in the right mood for both the employer and employee. Employers should plan carefully, with the person with a disability as a partner and external expertise if required, to anticipate any issues that might arise
- The areas to plan for, amongst others, include assignment of duties, job classification, compensation, training (accessibility and provision of reasonable accommodation), terms and conditions of employment and training and career advancement.

## 9.8 GUIDELINES FOR PERSONS WITH DISABILITIES

Persons with disabilities must be prepared to talk about their personal experiences of living with their disability and also explain their disability specific requirements to their employer and co-workers.

- This, however, must happen in an enabling environment that will allow them to freely disclose information
- Persons with disabilities should know that they have the right to be treated equally in the placement process, but be responsible enough to ask for accommodation to enable them to participate equitably
- Persons with disabilities should be prepared to take a leading role in disability awareness programmes
- Persons with disabilities should have a clear understanding of the difference between incapacity to do the essential functions of the job and disability.



## CHAPTER 10

### **10.1 PERSONS WITH DISABILITIES SHOULD BE CONSULTED IN RELATION TO CAREER ADVANCEMENT**

Whatever disability an employee may or may not have, they should be actively engaged in planning their own career development.

### **10.2 ACCESSIBILITY OF FACILITIES AND MATERIALS - EXAMPLES AND ADVICE**

The training policy should mirror the Employment Equity plan. It should support the aims and objectives of the company. It should cater for the needs of all employees, including staff with disabilities. The company's training programme should offer clear well-defined career paths for all employees. These should be formulated according to the guidelines provided in the Skills Development Act, the South African Qualifications Authority Act, the Employment Equity Act and the Labour Relations Act which legislates against discrimination in the workplace so that all training plans and courses are fair and without discrimination.

### **10.3 TRAINING TO INCREASE JOB PERFORMANCE**

The employer must ensure that all training courses are fair and without discrimination. Training courses must be accessible to employees with disabilities. In order to make the training courses accessible, the employer must take into account the particular needs of employees who have a disability.

## Examples

The following scenarios with possible solutions outline the special needs of employees with disabilities during training.

### Situation

Peter is blind and needs to use the company's new in-house computer programme.

### Solution

The employer provides individual training for Peter to use any adaptations or special equipment used in the workplace.

### Situation

Vuyo has chronic back pain and needs to attend a long training programme.

### Solution

The trainer allows him to take frequent breaks.

### Situation

An employee with an intellectual disability requires medication at a certain time of the day. This person also requires a minimum period of rest during the day.

### Solution

The training course is run for a limited number of hours per day.

### Situation

An employee who has a profound hearing impairment needs to attend a training programme

### Solution

A Communications Facilitator like a Sign Language Interpreter, Lip Speaker Practitioner, Whisper Interpreter, a Note Taker, captioning of audio-visual material or assistive devices is provided during the training programme. When audio-visual materials are used, captions are provided.

### Situation

An employee with a reading disability needs to attend a training programme

### Solution

The trainer ensures that concepts are sequenced, clarified and simplified.

### Situation

An employee with a physical disability needs to attend a training course.

### Solution

The trainee is allowed to bring a personal care attendant on a course.

### Situation:

An employee with a mental disability needs to attend a training programme on the company's health and safety procedures.

### Solution

Individualised training is provided and it is ensured that the training materials are accessible to the individual. Home language of the individual was taken into consideration, which made communicating easier and more understandable.

### **Situation**

An employee with a visual impairment needs to attend a training course.

### **Solution**

The training material is made available in large print.

## **10.4 IF THE EMPLOYER IS USING AN EXTERNAL TRAINING PROVIDER**

The employer is required by law to ensure that the training is made accessible to all its employees, including staff with disabilities. If an employer contracts for training with a training company, or contracts for training facilities such as hotels or conference centres, the employer is responsible for ensuring accessibility and other needed reasonable accommodation.

It is advisable that any contract with a company or facility used for training includes a provision requiring the other party to provide needed reasonable accommodation. However, if the contractor is unable to provide the necessary reasonable accommodation, the employer remains responsible for providing the reasonable accommodation, unless it would cause an unjustifiable hardship.

The employer must retrain employees who have become disabled to allow them to remain in their present job or take a different job

## **10.5 TRAINING TO ENSURE CAREER ADVANCEMENT**

Employees with disabilities must be provided with equal and preferential access to participate in training. Training opportunities cannot be denied because of the need to make reasonable accommodation, unless the reasonable accommodation would constitute unjustifiable hardship.

Persons with disabilities should be consulted during the career and succession process.

## **10.6 HOW DO I ENSURE THAT EMPLOYEES WITH DISABILITIES ARE NOT DISCRIMINATED AGAINST IN CAREER ADVANCEMENT?**

- Introduce clear, well-defined and well-structured routes of training that take into account the desired career paths of the employee as well as the functional limitations of the individual
- Introduce a standardised method of assessing trainees' potential for management development in order to identify "high potential" candidates
- Institute a mutually agreed upon career and succession plan with the individual
- Identify suitable, accredited training programmes inside and outside the company
- Ensure that the training is made accessible
- Provide on the job coaching
- Develop mentorships
- Recognise and reward achievements
- Provide on-going support and feedback.



## **10.7 AWARENESS AND SENSITISATION TRAINING FOR EXISTING STAFF ON THE EMPLOYMENT EQUITY ACT**

It is important for all staff members to be trained on how to understand the Employment Equity Act and its implications. Employers should ensure that their employees are able to:

- Comply with the Act
- Train other staff to understand the company's policy towards Persons with Disabilities
- Fulfil their obligation as trainers to make adjustments for employees with disabilities
- Reflect the values and commitments of the organisation on disability
- Serve as examples of good practice by setting standards within the organisation.

## **10.8 FOCUS ON THE SKILLS DEVELOPMENT ACT**

### **10.8.1 INTRODUCTION**

The Skills Development Act, (no 97 of 1998) is tied to the capacity building strategy encapsulated in the Employment Equity Act.

### **10.8.2 PURPOSE OF THE ACT**

The Act aims to provide opportunities for new entrants to the labour market to gain work experience, and to provide opportunities to employ persons who find it difficult to be employed, such as Persons with Disabilities. Since the majority of employable Persons with Disabilities have little or no skills, employers must consider offering learnerships or additional training to "high potential" candidates.

### **10.8.3 ALIGNING SKILLS DEVELOPMENT WITH EMPLOYMENT EQUITY**

The Skills Development Act simplifies the development of Persons with Disabilities. As a result, it also facilitates the achievement of equity targets. The training function of the company must be aligned to the employer's Employment Equity Plan. Therefore, it must cater for the needs of all company employees, including those with disabilities.

### **10.8.4 HOW CAN EMPLOYERS WHO TRAIN EMPLOYEES WITH DISABILITIES BENEFIT?**

Affirmative action measures should allow Persons with Disabilities to be given preference in the implementation of staff training programmes. Employers can be reimbursed by their respective Sector Education and Training Authority (SETA) for training Persons with Disabilities. Employers, on making a claim, may also receive discretionary grants from the SETA. There are grants for learnerships, skills programmes and project skills plans.

### **10.8.5 WHAT IS A LEARNERSHIP?**

A learnership is a vocational education and training programme that combines structured workplace and institutionalised learning in terms of a contract between the employer, the training provider and the learner. At the end of the programme the learnership will culminate in an end qualification registered on the National Qualifications Framework (NQF).

To address the shortage of skills among Persons with Disabilities, the learnership principle offers a worthwhile window of opportunity to employers who are serious about employing Persons with Disabilities.

## 10.9 BEST PRACTICE

### **An Internet online service company story--“The Fight Against Unemployment”**

This organisation has a call centre that employs about 300 people. It has completed various projects to address the shortage of skills among designated individuals. In 2001, the organisation embarked on a project that was aimed at putting unemployed applicants with disabilities in a better position to equally compete during the assessment process.

They identified a group of candidates with disabilities and offered to provide specific, focused training at the company's expense in order to develop core competencies related to various positions in the call centre. Some of the candidates had limited or no previous work experience in the labour market.

The company provided some of the training themselves and also outsourced part of the training. The company sponsored the training and provided transport to the group of trainees. There was a mutual understanding that the company was only to provide the training without creating expectations of a consequent job offer.

The organisation provided specific, focused training in areas like Computer Networking, Communications training, Computer literacy, Basic keyboard skills and an A+ course (a course designed to understand computer hardware). The training programme was run over a period of eight weeks. When positions became available, these candidates were assessed on the inherent job requirements, and 80% of the group met the assessment criteria and were successfully placed. Those who were found to be suitably qualified were employed. Those who were not employed by this company have found alternative employment in the telecommunications industry.

## 10.10 GUIDELINES FOR PERSONS WITH DISABILITIES

- Persons with disabilities must be aware that they have the same right to access training as their able-bodied co-workers
- Persons with disabilities have the responsibility to familiarise themselves with the relevant legislation that governs training in the workplace, such as the Skills Development Act, the Skills Levies Act and the Skills Development Strategy
- Persons with disabilities must explain their disability specific reasonable accommodation requirements during the orientation and induction process to their employer
- Persons with disabilities must articulate their staff development needs to the employer. They have the same rights as their co-workers, to request training or any other staff development activity during the employment period
- Persons with disabilities must explain their disability specific reasonable accommodation requirements to enable them to participate in recreational/social activities
- Persons with disabilities must be treated in the same way as their co-workers in the performance assessment process. They must, however, know that they have the right to ask for reasonable accommodation
- Persons with disabilities have the right to refuse to be evaluated on non-essential job functions during the performance assessment process.

# CHAPTER 11

### 11. 1 EMPLOYEES WHO BECOME DISABLED

When employees leave work as the result of a disabling injury or illness, it is not simply a matter of adding up the medical bills and income replacement costs to determine the impact of disability on the workplace. Essentially, knowledge and experience are lost, workplace efficiency decreases, customer relations suffer and productivity declines. In fact, with the skills shortage in South Africa, no employer can afford to lose even one valued employee due to health or disability being poorly managed.

Some employers have embraced a disability management strategy. The field of Disability Management (DM) has evolved and undergone unprecedented change and growth since the mid-1980's. Disability Management is and should continue to be a workplace prevention and remediation strategy. It seeks to prevent disability from occurring, and when necessary, to intervene early following the onset of a disability by using co-ordinated, cost-conscious, quality case management and rehabilitation services that reflect an organization's commitment to continued employment of those experiencing functional work limitations.

The concept of DM is a simple one if all the individual care, benefit and case management components are connected so that they are able to complement each other. In its simplest form, integrated disability management coordinates occupational and non-occupational disability benefits, for example absence and paid leave programmes, with a focus on early return to work. Increasingly, DM programmes also co-ordinate health and behavioural health care, health promotion, disease management, medical case management services and employee assistance programme (EAP). These are all aimed at improving overall workforce health, easing the administrative burden, and providing a seamless set of benefits for workers with disabling injuries and illnesses.

Following are the primary DM functions that intersect with Employment Equity Act (the Act) compliance:

- Access to benefits: Many DM programs co-ordinate access for employees to disability/income replacement benefits. When an employee is injured or becomes ill, such person should be directed to the DM programme to determine which of the disability benefit options (e.g. sick leave, salary continuance, workers' compensation, short term or long term disability, retirement disability) are reasonable and appropriate
- Compliance with the Act: Compliance with the Act can be enhanced through reasonable and flexible benefit and sick leave management. Employees are assured immediate and seamless access to benefits through personal contact, phone lines, or on-line connections. Planned descriptions and information are also readily available if questions concerning coverage arise. The effective and efficient processing of leave and benefits means that return to work and accommodation efforts begin as soon as medically feasible

- Identification of essential job functions: The Act and Code state that an individual with a disability must be suitably qualified (i.e. a person may be suitably qualified for a job as a result of any one of, or any combination of that person's – formal qualifications; prior learning; relevant experience, or the capacity to acquire, within a reasonable time, the ability to do the job) to perform the "essential job functions" of the position which a person holds or seeks in order to seek reasonable accommodation
- The essential job functions are the foundation upon which the qualifications and competencies of employees with disabilities are evaluated to determine whether reasonable accommodation options exist. An essential job function is a set of tasks that comprises the most important activities of a job - they are not job skills, individual job tasks, or job descriptions. Therefore, in making return-to-work recommendations, a person must determine which essential job functions must be accomplished in order for modified work to be successful and productive
- Clarification of work limitations: DM programs serve a critical function in linking physicians, employees with disabilities and the company in developing return-to-work plans. Normally, companies acquire the services of nurses/case managers, either internally or externally contracted, to communicate with respective physicians regarding recuperation of employees with disabilities and their return to work. Their job is to ensure that employees receive appropriate treatment and that any resulting work limitations are stated unambiguously, clearly and in such a manner as to facilitate the modification of work and/or return-to-work process
- Even before issues of permanent accommodation arise, transitional job assignments must take into consideration the nature and extent of limitations experienced by employees recovering from injuries or illnesses. Should limitations persist, employer DM efforts to verify and understand restrictions as they change over time places the company in a stronger position to develop permanent reasonable accommodation where necessary?
- Development of job modification and return-to-work options: One of the core functions of the DM is to facilitate an employee's return to work as soon as medically appropriate. Not only does the employer regain the services of a trained employee, but with the employee back in the working environment, this often further speeds recovery. Non-discrimination under the Act is also achieved by providing reasonable accommodation for disability-related limitations that restrict employees' ability to work. Most companies develop human resource policies and supervisory training materials to reinforce and support the return-to-work process with guidance from the DM programme.

## **11.2 CONSULTATION WITH EMPLOYEES**

Engaging employees with disabilities in meaningful discussion of their work options is a basic tenet. Supervisors must feel comfortable that they understand the nature of an employee's work limitations. Both parties must have a stake in the success of any job modification and/or return-to-work plans. The earlier the dialogue between the two parties after an employee's disability becomes evident, the better. The DM programme should provide the link between employees, physicians and line supervisors to facilitate the discussion and resolve any issues that may arise in the course of developing a return-to-work plan.

## **11.3 EARLY RETURN-TO-WORK**

Return-to-work or reasonable accommodation options, amongst others, include transitional work (temporary changes in job duties or techniques during periods of recuperation); modified work (changes in work tasks, schedules, methods, or equipment); or alternate work (reassignment to a different job if accommodation cannot be made in the original position). The reasonable accommodation process should be followed, even if restrictions are expected to be temporary, in order to make appropriate return-to-work decisions.

The job should be analysed to determine the essential job functions. This will identify and clarify any disability-related restrictions, which will assist to generate a set of return-to-work options that will meet the work restriction requirements of the employee with a disability. Thereafter, the option that best balances the employee's needs and the company's expectations for productive work assignment and their business needs will be selected.

Termination of employment must be fair both in terms of labour practice and employment equity.

### 12.1 RIGHT TO TERMINATE

If an employer is unable to retain the employee who becomes disabled or who is no longer able to do the job, they may consider terminating the employment relationship in accordance with Schedule 8 of the Labour Relations Act 66 of 1995 (Code of Good Practice: Dismissal). Dismissal based on disability and not incapacity is automatically unfair. Special attention should be given to paragraph 10 and 11 below:

#### According to paragraph 10

- *Incapacity on the grounds of ill health or injury may be temporary or permanent. If an employee is temporarily unable to work in these circumstances, the employer should investigate the extent of the incapacity or the injury. If the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employer should investigate all the possible alternatives short of dismissal. When alternatives are considered, relevant factors might include the nature of the job, the period of absence, the seriousness of the illness or injury and the possibility of securing a temporary replacement for the ill or injured employee. In cases of permanent incapacity, the employer should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the employee to accommodate the employee's disability*
- *In the process of the investigation referred to in subsection (1) the employee should be allowed the opportunity to state a case in response and to be assisted by a trade union representative or fellow employee*
- *The degree of incapacity is relevant to the fairness of any dismissal. The cause of the incapacity may also be relevant. In the case of certain kinds of incapacity, for example alcoholism or drug abuse, counselling and rehabilitation may be appropriate steps for an employer to consider*
- *Particular consideration should be given to employees who are injured at work or who are incapacitated by work-related illness. The courts have indicated that the duty on the employer to accommodate the incapacity of the employee is more onerous in these circumstances."*

### According to paragraph 11 (“Guidelines in cases of dismissal arising from ill health or injury”)

*“Any person determining whether a dismissal arising from ill health or injury is unfair should consider:*

- *whether or not the employee is capable of performing the work*
- *if the employee is not capable:*
  - » *the extent to which the employee is able to perform the work*
  - » *the extent to which the employee’s work circumstances might be adapted to accommodate disability, or, where this is not possible, the extent to which the employee’s duties might be adapted*
  - » *the availability of any suitable alternative work.”*

## 12.2 DISMISSALS BASED ON OPERATIONAL REQUIREMENTS

The selection criteria used in dismissing employees for operational reasons must be examined to ensure that it does not unfairly discriminate against Persons with Disabilities. Where possible, every attempt should be made to retain Persons with Disabilities.

## 12.3 GUIDELINES FOR PERSONS WITH DISABILITIES

- Persons with disabilities should familiarise themselves with the relevant legislation that governs dismissal procedures in the country, especially Chapter VIII and Schedule 8 of the Labour Relations Act 66 of 1995, as amended
- Persons with disabilities must request reasonable accommodation during any of the processes related to termination or application for benefits in respect of the Unemployment Insurance Act or the Compensation for Occupational Diseases and Injuries Act or any other related legislation
- Persons with disabilities must know that they cannot be dismissed on any grounds of disability without the employer first having followed the statutory procedures that must precede such a dismissal.

### 13.1 EMPLOYERS SHOULD ASSIST WITH WORK RELATED COMPENSATION

Anytime an employee sustains an injury or falls sick, the provisions of the Employment Equity Act (the Act) may come into play, especially in terms of reasonable accommodation. For instance, an employee may sustain a partial, temporary or permanent disability and may require assistance from the employer to access compensation. Such an employee may be entitled to compensation in terms of the Compensation for Occupational Injuries and Disease Act (COIDA), Occupational Disease and Injuries Mine Workers Act (ODIMWA), Road Accident Act (RAA), Unemployment Insurance Act (UIA) and/or in terms of rules governing retirement funds (pension, provident and retirement annuities).

#### **According to provisions of COIDA:**

Compensation is money that is paid by the Compensation Office to employees who were injured on duty to replace loss of wages and/or to pay medical expenses.

#### **According to the provisions of the UIA:**

The government (namely the Department of Labour) has established the Unemployment Insurance Fund (UIF) in order to provide short-term relief to employees when they become unemployed, or are unable to work because of illness, maternity or adoption leave and also to provide relief to the dependents of the deceased contributor.

#### **According to the rules that govern a number of retirement funds:**

Provisions are made to compensate employees for death or disability. Insurance companies usually underwrite such provisions for a premium that is normally paid by these funds. A lump sum benefit is normally paid when death occurs, and a monthly payment is usually made to a member who is boarded from work on grounds of disability.

The Code of Good Practice on the Employment of Persons of Disabilities encourages employers, where possible, to reintegrate workers who acquire disabilities later in their lives into the workforce, rather than terminate employment.

### 13.2 GUIDELINES FOR PERSONS WITH DISABILITIES

- Persons with disabilities should familiarise themselves with the relevant legislation that governs Compensation for Occupational Injuries and Diseases, Occupational Disease and Injuries Mine Workers Act (ODIMWA), Road Accident Act (RAA) and Unemployment Insurance applications
- Persons with disabilities must request reasonable accommodation when making application in terms of Compensation for Occupational Injuries and Diseases Act or the Unemployment Insurance Act or any other related legislation
- Persons with disabilities must know that they have the same rights to compensation for Occupational Injuries and Diseases should they acquire an injury or occupational disease at work
- Persons with disabilities should ask for assistance from the employer, or immediate supervisor when applying for compensation.



## CHAPTER 14

### 14.1 CONFIDENTIALITY

#### 14.1.1 LEGITIMATE PURPOSE

Employers, including health and medical services personnel, may only gather private information about an applicant or employee if it is necessary to achieve a “legitimate purpose” and with the written consent of the person. A legitimate purpose would be to ensure that the purposes of the Act are furthered, e.g., the non-discrimination and affirmative action if appropriate through the use of the information.

#### 14.1.2 HOW TO PROTECT CONFIDENTIALITY OF INFORMATION

In general, this type of information should only be accessible by those members of the workforce who actually need to know it, for the benefit of ensuring non-discrimination and affirmative action and/or for the objective safety concerns related to a specific individual and a specific job.

#### 14.1.3 WHEN TO DESTROY INFORMATION NO LONGER IN NEED

The information should be maintained only as long as it is necessary to ensure the implementation of non-discrimination and affirmative action measures.

#### 14.1.4 WRITTEN CONSENT AND REFERENCE TO HEALTH AND SAFETY

In addition to gaining consent in the gathering of information from elsewhere, unless legally required, no employer may disclose any information related to a person’s disability to anyone else without the written consent of the person.

### 14.2 DISCLOSURE

#### 14.2.1 RIGHT TO NON-DISCLOSURE AND THE EMPLOYER OBLIGATION

The applicant or employee with a disability may choose to disclose their disability, impairment and related reasonable accommodation requirements at any time in the employment process. However, if the person with a disability chooses not to disclose, the employer may not be aware of the needs of the employee, especially if the impairment is not self-evident. In this case, the employer is not obliged to provide the accommodation. If the disability, however, is self-evident, then the employer can reasonably be expected to be aware and to be proactively involved in identifying with the applicant or employee what reasonable accommodation may be required.

#### **14.2.2 RIGHT TO DISCLOSE AT ANY TIME**

An employee with a disability can disclose their disability at any time, even if there is no immediate need for reasonable accommodation.

#### **14.2.3 IF NOT SELF-EVIDENT, THE EMPLOYER MAY REQUIRE INFORMATION TO CONFIRM DISABILITY STATUS AND REASONABLE ACCOMMODATION REQUIREMENTS**

If the disability is not self-evident and the employee discloses that they have a disability and may need accommodation, the employer may require the employee to disclose sufficient information to confirm their disability status and their accommodation requirements.

#### **14.2.4 EMPLOYER IS ENTITLED TO REQUEST TESTING UNDER CERTAIN CONDITIONS**

If further information is needed, the employer may request a functional assessment of a specific job-related disability, and must bear the costs of the test.

#### **14.2.5 USE OF COMPETENT PERSONS FOR TECHNICAL INFORMATION**

Competent vocational and occupation personnel with expertise, from within or outside the company, should be used to gather the required information. These personnel should be carefully evaluated to make sure they understand the Act, Code and related best practices both in South Africa and internationally.

#### **14.2.6 FURTHER INFORMATION CAN ONLY BE RELEVANT TO A SPECIFIC JOB AND ESSENTIAL FUNCTIONS**

The focus of any enquiry into functional limitations needs to be related to a specific job and without reference to non-essential functions of a job.

#### **14.2.7 DISABILITY STATUS CANNOT BE REVEALED UNLESS RELEVANT TO HEALTH AND SAFETY**

The status of particular individuals and their disabilities and impairments cannot be revealed to anyone else unless this is required for the health or safety of the persons or other persons in the workplace. This determination needs to be objective and not influenced by assumptions or subjective opinions.

#### **14.2.8 DISCLOSURE OF INFORMATION FOR ACCOMMODATION PURPOSES**

Any additional sharing of information may also be done upon consulting with the employee and would be for the purposes of explaining the need for reasonable accommodation. This again, would only be on a need to know basis where other employees actually need to know the information to perform their jobs or ensure the functioning of the workplace.

### **14.3 GUIDELINES FOR PERSONS WITH DISABILITIES**

- Persons with Disabilities should familiarise themselves with section 7 and 8 of the Act as it has a direct bearing on the issue of disclosure
- Persons with Disabilities should understand that an employer may not disclose information regarding their disability without written consent from the employee in question
- Employees with no self-evident disabilities must know that it is their right to keep their disability status confidential, but know that they cannot expect the employer to provide proper reasonable accommodation under these circumstances
- Employees with disabilities have the right to disclose at any time during the employment process and employers must then provide reasonable accommodation if requested
- Persons with no self-evident disabilities may be asked by the employer to provide information about their disability; however, they are not obligated to provide detailed information about the medical history or their medical condition
- Persons with Disabilities should not pay for any test that is for the purpose of confirming the disability or the need for reasonable accommodation.

### **15.1 OBLIGATION OF EMPLOYER TO ENSURE THAT FUNDS AND BENEFIT SCHEMES DO NOT DISCRIMINATE**

The employer must ensure that benefit schemes do not unfairly discriminate, either directly or indirectly, against any applicant or employee with a disability. This applies whether the employer provides access to this scheme directly or indirectly.

### **15.2 NO REFUSAL OF MEMBERSHIP TO EMPLOYEE WITH DISABILITY**

No benefit scheme can refuse membership to an applicant or employee simply because they have a disability.

### **15.3 DESIGNATED EMPLOYERS SHOULD INVESTIGATE AND, WHERE REASONABLE, OFFER BENEFIT SCHEMES THAT ARE REASONABLY ACCOMMODATIVE**

In order to ensure retention of qualified employees with disabilities and to reduce the costs of benefit schemes, designated employers should investigate and, where reasonable, offer benefit schemes that reasonably accommodate employees with disabilities.

These include:

- Vocational rehabilitation, training and temporary income replacement benefits for employees who, because of illness or injury, cannot work for an extended period
- Financial compensation for employees who because of a disability are able to continue to work, but at lower levels of pay than they enjoyed before becoming disabled.

### **15.4 GUIDELINES FOR PERSONS WITH DISABILITIES**

- Employees with disabilities must understand the difference between a benefit and a reasonable accommodation
- Employees with disabilities should know that they may not be excluded from a benefit scheme on the grounds of having a disability
- Persons with Disabilities should know how to negotiate their employment package.

# EMPLOYMENT EQUITY PLANNING IN RESPECT OF PERSONS WITH DISABILITIES

## CHAPTER 16

### 16.1 EMPLOYMENT EQUITY PLAN

The base documents for this Chapter are the Employment Equity Act, the Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans and the Code of Good Practice on Employment of persons with Disabilities.

### 16.2 INTEGRATING DISABILITY INTO THE PLANNING PROCESS

The Code of Good Practice: Preparation, Implementation and Monitoring of the Employment Equity Plan sets out a ten-step plan for the preparing and implementing on the Employment Equity Plan. This section of the TAG will focus on assisting the employer to use the above Code to ensure that employees with disabilities are equitably represented in the workforce and are reported on accurately in their Employment Equity Reports.

The process of developing a plan should have three sequential phases. These are:

- REPARATION PHASE
- IMPLEMENTATION PHASE
- MONITORING PHASE

Although some steps overlap, communication and consultation continues throughout the process. Employers should ensure that the communication and consultation process is accessible to employees with disabilities through the provision of reasonable accommodation such as interpreters or any other electronic communicating device, audio communication and large print written material so as to ensure the participation of everyone.

#### 16.2.1 PHASE 1: PREPARATION

##### STEP 1 ASSIGN RESPONSIBILITY

In keeping with the guidelines of the Code of Good Practice on the Preparation, Implementation and Monitoring of the Employment Equity Plan, the person assigned to this role, irrespective of whether or not the person is disabled, should acquire further knowledge on Disability Management in terms of Employment Equity Act. This will assist the person in order to develop a comprehensive understanding of disability in the context of international and national standards, including [ as set out in] the UN Convention on the Rights of Persons with Disabilities and the Code of Good Practice on the Employment of Persons with Disabilities.

## **STEP 2 COMMUNICATION, AWARENESS AND TRAINING**

In order to equitably implement this step, employers should review their existing training methodology, programmes, tools and mechanisms to ensure that it is accessible to employees with disabilities.

## **STEP 3 CONSULTATION**

In keeping with both the Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity the Plan and the Disability Code, when employers are consulting in terms of section 16 of the Act, they should use the opportunity to heighten the awareness of their employees of the value and importance of recruiting and retaining employees with disabilities.

When an employer facilitates the establishment of a consultative forum in terms of section 16(1) (a) and (b) of the Act, the employer should take specific steps to promote the representation of employees with different disabilities in the forum.

In addition, employers should ensure that the representatives with disabilities are provided with reasonable accommodation in order to enable them to participate equitably in the forum.

The employer should ensure that the consultative process and methods are accessible to Persons with different Disabilities.

## **STEP 4 ANALYSIS**

When the employer embarks on this step, they must evaluate and review their recruitment policies and practices, as well as the manner in which they conduct their workforce profile to ensure that it is free from disability specific discrimination. Employers should create an enabling environment that encourages employees with no self-evident disabilities to disclose.

### **16.2.2 PHASE 2: IMPLEMENTATION**

## **STEP 5 CORRECTIVE MEASURES AND OBJECTIVES**

Employers must develop an implementation plan to address each of the factors identified in step 4 that adversely affect employees with disabilities. In this case, the cornerstone of the implementation plan will be reasonable accommodation. For example, if the employer found that the interview process is inaccessible to persons who have hearing impairment; they should consult with organizations for and of persons with hearing impairments to provide reasonable accommodation policy and guidelines.

Another example is that if a benefits policy makes allowances for senior managers to have access to a company car, the employer should ensure that such a policy does not discriminate against a senior manager who happens to have a visual impairment, by providing reasonable accommodation in the form of either a car allowance or paying for a driver. This provision should be discussed with the employee in question and be provided accordingly.

If Persons with Disabilities are under-represented in all occupational levels in the workplace, the employer could seek guidance from organizations that represent Persons with Disabilities or relevant expertise.

## **STEP 6 TIME FRAMES ESTABLISHED**

Employers should take the opportunity set out in this step to set milestones and targets to ensure the representivity of employees with disabilities at all occupational levels in the workplace.

## **STEP 7 ALLOCATION OF RESOURCES**

Employers may wish to consider creating a centralized budget for the provision of reasonable accommodation for employees with disabilities to enable them to achieve their objectives regarding disability employment equity planning. This budget should not be dependent or linked to other line function responsibilities.

## STEP 8 COMMUNICATION OF THE EMPLOYMENT EQUITY PLAN

Employers should ensure that any communication methods used to communicate the content of the Employment Equity Plan are fully accessible to all employees with disabilities.

## STEP 9 INTEGRATION OF THE EMPLOYMENT EQUITY PLAN

Employers should attempt to integrate disability into all of the organisation's plans.

### 16.2.3 PHASE 3: MONITORING

## STEP 10 MONITOR, EVALUATE AND REVIEW

Employers should ensure that employees with disabilities are enabled to participate in this process through the provision of reasonable accommodation. Employers should also ensure that disability management is integrated in the key performance areas and responsibilities of managers.

## STEP 11 EMPLOYMENT EQUITY REPORT

Employers should ensure that the report is accessible to all employees with disabilities by making it available in various formats.

## 16.3 GUIDELINES FOR EMPLOYERS

- Make sure the three options for disclosure noted in the Code are translated into clear communication with all employees and that specific procedures are set up to accommodate, encourage and ensure employees that disclosure will not result in adverse action of any kind
- Consider especially how to structure the third option noted in paragraph 16.5(iii) of the Code

### According to paragraph 16.6(iii) of the Code

*“(iii) disclose their disability in a confidential way, which assures confidentiality of their identity and their impairment and any disability related to reasonable accommodation that may be requested and/or required.”*

- Revise existing employment equity planning processes to ensure that disability is included
- Include employees with disabilities in the planning and monitoring process and use external expertise if appropriate.

## 16.4 GUIDELINES FOR PERSONS WITH DISABILITIES

- Persons with Disabilities should know that they have the same responsibilities and rights as their able-bodied co-workers during the employment equity planning process
- Persons with 3 should request reasonable accommodation in all the different phases of employment equity planning
- Employees with Disabilities should volunteer to serve on employment equity forums
- Persons with Disabilities should be open to disclose their disability status to the employer for employment equity reporting purposes-the employer must create an enabling environment for this to happen.



# CHAPTER 17

### 17.1 IMPORTANCE OF EDUCATION AND AWARENESS AND ROLE OF PERSONS WITH DISABILITIES

The only way to overcome fears, myths and negative attitudes about the abilities of employees and applicants with disabilities is through vigorous education and training within the Private and Public sectors. Furthermore, the experience is that Persons with Disabilities are the best-qualified persons to be the drivers of such education and awareness programmes. It is for this reason that the TAG sets out the following guidelines employers, employees, trade unions and employees with disabilities. The key components of any education and awareness programmes should include amongst others, the definition of disability and reasonable accommodation.

The Department of Labour will make every effort to ensure that copies of the Code of Good practice on the employment of Person with Disabilities and this TAG are available and accessible to Persons with Disabilities, other government departments as well as the private sector and civil society in general.

### 17.2 EMPLOYERS AND EMPLOYER ORGANIZATIONS

- The EE Act, Disability Code and TAG should be the baseline documents for any training conducted within a company on the employment of Persons with Disabilities
- The Code and the TAG should form the basis for the content of any company's Disability Employment Equity Policy
- The members of the Employment Equity Forum (s) should be trained on the content of the Code and the TAG
- All Human Resource Managers should be trained on how to incorporate the content of the Code and the TAG in their current recruitment policies and practices so as to enable them to comply with Chapter Two (Prohibition of Unfair Discrimination) of the Employment Equity Act.

### 17.3 TRADE UNIONS

- Trade unions should include the Code and the TAG in their education and training programmes
- All trade unions should design a disability employment equity-training programme as part of their broader diversity training
- The programme should encourage employees with disabilities to share their own experiences. Unions can utilize the services of Persons with Disabilities to assist with the designing and facilitation of some of the sessions covered in the programmes. Existing training providers disabled should integrate the content of the Code and the TAG into their current training material for trade unions.

### 17.4 GUIDELINES FOR PERSONS WITH DISABILITIES

- Persons with Disabilities should play a lead role in creating awareness in the workplace
- Persons with Disabilities must guide the development of all awareness programmes in the workplace
- Persons with Disabilities must consider becoming members of trade unions and any representative structure within the workplace in order to create hands on disability awareness training.



## CHAPTER 18

**18.1 RESPONSIBILITY FOR OVERSEEING THE ELIMINATION OF UNFAIR DISCRIMINATION AND THE IMPLEMENTATION OF AFFIRMATIVE ACTION MEASURES FOR THE EQUITABLE REPRESENTATION OF PERSONS WITH DISABILITIES ACROSS ALL OCCUPATIONAL LEVELS MUST BE ASSIGNED TO ONE OR MORE SENIOR MANAGERS IN THE WORKPLACE.**

### **18.2 ORGANISATIONS' MUST**

- Design and implement a workplace monitoring and evaluation system that includes strategies to address the elimination of unfair discrimination and the under-representation of Persons with Disabilities across all occupational levels in the workplace
- Select and make use of indicators that are specific, measurable, attainable, relevant and time-bound
- Gather and analyse qualitative/quantitative information, and communicate it effectively.

**18.3 OUTCOMES OF THE MONITORING AND EVALUATION PROCESS MUST ENHANCE EXISTING AND INFORM FUTURE POLICIES AND PRACTICES IN RELATION TO CONSULTATION, CONDUCTING AN ANALYSIS, PREPARATION OF THE EMPLOYMENT EQUITY PLAN AND WHEN REPORTING TO THE DEPARTMENT.**

**18.4 SMALL BUSINESSES THAT ARE NOT IN A POSITION TO HAVE SOPHISTICATED MONITORING AND EVALUATING SYSTEMS IN PLACE MUST ADOPT SIMPLE STRATEGIES TO MONITOR AND EVALUATE THE ELIMINATION OF UNFAIR DISCRIMINATION AND THE PROGRESS MADE IN TERMS OF ACHIEVING AN EQUITABLE WORKFORCE THAT IS REPRESENTATIVE OF DISABILITY.**

## MINIMUM STANDARDS

| No | Minimum Standards Checklist  | Yes | No |
|----|--|-----|----|
| 1  | An organization's position on disability   | ✓   |    |
| 2  | An outline of a disability programme, including affirmative action                 | ✓   |    |
| 3  | Details on employment policies   | ✓   |    |
| 4  | Express standards of behavior expected of all employees, employees an trade unions | ✓   |    |
| 5  | Grievance procedures (Dispute Resolution)  | ✓   |    |
| 6  | Communication strategies (Awareness)   | ✓   |    |
| 7  | Employee assistance programme  | ✓   |    |
| 8  | Roles and responsibilities   | ✓   |    |
| 9  | Resource Allocation (Budget)   | ✓   |    |
| 10 | Monitoring and evaluation mechanisms   | ✓   |    |

## 18.5 MONITORING BY OBJECTIVES

Setting effective objectives to guide implementation of HIV and TB workplace programmes is very important for the workplace. Well formulated objectives will steer an organisation in the right direction. Most organisations use the 'SMART' approach in formulating objectives.

- S - specific
- M - measurable
- A - achievable
- R - realistic
- T - time-based

**Specific:** The first term stresses the need for a specific goal over and against a more general one. This means the goal is clear and unambiguous; without vagaries and platitudes. To make goals specific, they must tell a team exactly what is expected, why is it important, who's involved, where is it going to happen and which attributes are important. A specific goal will usually answer the five "W" questions:

**Measurable:** The second term stresses the need for concrete criteria for measuring progress toward the attainment of the goal. The thought behind this is that if a goal is not measurable, it is not possible to know whether a team is making progress toward successful completion. Measuring progress is supposed to help a team stay on track, reach its target dates, and experience the exhilaration of achievement that spurs it on to continued effort required to reach the ultimate goal.

**Attainable:** The third term stresses the importance of goals that are attainable. While an attainable goal may stretch a team in order to achieve it, the goal is not extreme. That is, the goals are neither out of reach nor below standard performance, as these may be considered meaningless. When you identify goals that are most important to you, you begin to figure out ways you can make them come true. You develop the attitudes, abilities, skills, and financial capacity to reach them. The theory states that an attainable goal may cause goal-setters to identify previously overlooked opportunities to bring themselves closer to the achievement of their goals.

**Realistic:** The fourth term stresses the importance of objectives that are realistic and within the availability of resources, knowledge and time.

**Time-bound:** The fifth term stresses the importance of grounding goals within a time frame, giving them a target date. A commitment to a deadline helps a team focus their efforts on completion of the goal on or before the due date. This part of the S.M.A.R.T. goal criteria is intended to prevent goals from being overtaken by the day-to-day crises that invariably arise in an organization. A time-bound goal is intended to establish a sense of urgency.

# GLOSSARY OF COMMON DISABILITY RELATED TERMINOLOGY

## ANNEXURE A

### (ADAPTED FROM WHITE PAPER ON THE RIGHTS OF PERSONS WITH DISABILITIES (WPRPD))

**Augmentative and  
Alternative  
Communication:**

is an umbrella term that encompasses the communication methods, aside from traditional speech, used to supplement or replace speech or writing for those with difficulties in the production or comprehension of spoken or written language. This can include using pictures, gestures, sign language (SASL), visual aids, or speech-output devices like computers.

**Advocacy:**

The political act or process of supporting a cause, idea or policy by individuals or a group/s with an aim to influence the outcome. Advocacy should ensure that affected peoples voices are heard, their rights are promoted and that their views are considered when decisions that impact directly on their lives are being made.

**Assistive devices:**

Any device, product, equipment or tool that is designed or adapted to enable Persons with Disabilities to participate in activities, tasks or actions. They may include: (i) mobility aids such as wheelchairs, prostheses and crutches; (ii) Communication aids such as hearing aids, FM systems; (iii) Sensory aids such as white canes; noise reducing headphones and coloured lenses (iv) Technology aids such as computers for alternate and augmentative communication, screen readers, magnifiers, text in audio format.

**Assistive Technology:**

It is an umbrella term that includes assistive, adaptive, and rehabilitative devices and services for Persons with Disabilities, which enable Persons with Disabilities and learning differences to attain independence. They include for example, loop systems, sub texting and alternative input for cognitive assistance and computer or electrical assistive devices.

|   |  |
|---|--|
| <b>Basic Services:</b>                  | Any device, product, equipment or tool that is designed or adapted to enable people with disabilities to participate in activities, tasks or actions. One of the key features of a developmental state is to ensure that all citizens – especially the poor and other vulnerable groups - have access to basic services. The Constitution of the country places the responsibility on government to ensure that such services are progressively expanded to all, within the limits of available resources.                             |
| <b>Communication:</b>                   | Communication includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, lip-speaking services, speech reading services, whisper interpretation, note-taking services and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.   |
| <b>Community-Based Rehabilitation:</b>  | It is a strategy to enhance the quality of life of Persons with Disabilities through rehabilitation and habitation, equalisation of opportunities, poverty reduction, and social inclusion. CBR as a service is implemented through the combined efforts of Persons with Disabilities themselves, their families, organizations, and communities, and relevant governmental and non-governmental health, education, vocational, social, and other services.  |
| <b>CEE:</b>                             | Commission for Employment Equity   |
| <b>Discrimination:</b>                  | is any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly (a) imposes burdens, obligations or disadvantages on; and/or (b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds, which include disability and any other ground that might disadvantage a person, undermines human dignity or adversely affects an individual's rights and freedoms.  |
| <b>Disability Mainstreaming:</b>        | Disability Mainstreaming requires a systematic integration of the priorities and requirements of Persons with Disabilities across all sectors and built into new and existing legislation, standards, policies, strategies, their implementation, monitoring and evaluation. Barriers to participation must be identified and removed. Mainstreaming therefore requires effective planning, adequate human resources, and sufficient financial investment – accompanied by specific measures such as targeted programmes and services. |
| <b>Disabled Persons Organisation:</b>   | Disabled Persons Organisations (DPO's) are membership-based organisations that are managed and controlled by Persons with Disabilities, which may include their parents. They constitute the representative voice of Persons with Disabilities based on their membership demographics. The majority of DPOs have an advocacy role and ascribed to the principles of self-representation. Some DPOs have also moved to serve as service providers for their constituency  |
| <b>Disability Service Organisation:</b> | Disability Service Organisations (DSOs) focus on service delivery (rehabilitation, habilitation, counselling, training, employment support etc.) to Persons with Disabilities, and are not necessarily membership-based organisations. They are run by service providers and/or community members.   |



|  |  |
|--|--|
| <b>Disablism:</b>                                      | Describes the negative attitudes, behaviours, practices and environmental factors which discriminate (intentionally or unintentionally) against disabled people and create barriers to their equal participation in mainstream society.  |
| <b>Enabling Environments:</b>                          | Interrelated physical and other infrastructures, built environments, culture, laws, policies, information and communication technologies, and organisations that must be in place to facilitate the socio-economic development of Persons with Disabilities.   |
| <b>Exclusion:</b>                                      | refers to the act of socially isolating or marginalizing an individual or groups on the basis of discrimination by not allowing or enabling them to fully participate and be included in society and enjoy the same rights and privileges. This devaluation of and exclusion of individuals or groups results in keeping “others” outside from the prevailing social system and thus restricting their access to material, social, economic and political resources and rights. Exclusion consists of dynamic, multi-dimensional processes driven by unequal power relationships interacting across economic, political, social and cultural dimension and at different levels including individual, household, group, community, country and global levels. It results in a continuum of exclusion often characterised by unequal access to resources and material inequalities, extreme loneliness, loss of self-esteem, etc |
| <b>Impairment:</b>                                     | Impairment is a perceived or actual feature in the person's body or functioning that may result in limitation or loss of activity or restricted participation of the person in society with a consequential difference of physiological and/or psychological experience of life.   |
| <b>ICF:</b>  | International Classification of Functioning, Disability and Health   |
| <b>ILO:</b>  | International Labour Organisation  |
| <b>Inclusion:</b>                                      | International Labour Organisation  |
| <b>Independent Living:</b>                             | The ability of a person to live just like anyone else, to have opportunities to make decisions that affect their lives and to be able to pursue activities of their own choosing with the necessary support to enable Persons with Disabilities to live independently.   |
| <b>Information and Communication Technology (ICT):</b> | ICT is an umbrella term which includes any kind of information and communication device or application and its content, and encompasses a wide range of access technologies, such as radio, television, satellites, mobile phones, fixed lines, computers and network hardware and software.   |
| <b>NEDLAC:</b>   | National Economic Development and Labour Council   |

|  |                   |  |
|--|-------------------|--|
| <b>Personal Services:</b>                        | <b>Assistance</b> | A range of services, provided by one or more persons and/or service animals, designed to assist an individual with a disability to perform daily activities that the individual would typically perform if the individual did not have a disability.   |
| <b>Persons with Disabilities:</b>                |                   | Persons with disabilities include those who have perceived and or actual physical, psychosocial, intellectual, neurological and/or sensory impairments which, as a result of various attitudinal, communication, physical and information barriers, are hindered in participating fully and effectively in society on an equal basis with others   |
| <b>Progressive Rights:</b>                       |                   | The term refers to economic, social and cultural rights of human rights relating amongst others to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education.   |
| <b>Reasonable Accommodation:</b>                 |                   | Reasonable accommodation refers to necessary and appropriate modification and adjustments, as well as assistive devices and technology, not imposing a situation, where needed in a particular case, to ensure Persons with Disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.   |
| <b>Rehabilitation and Habilitation:</b>          |                   | Rehabilitation and habilitation is a process aimed at enabling Persons with Disabilities to reach and maintain their optimal physical, sensory, intellectual, psychosocial and/or social functional levels, thus providing them with the tools to change their lives towards a higher level of independence. Rehabilitation may include measures to provide and/or restore functions, or compensate for the loss or absence of a function or for a functional limitation |
| <b>Self-representation:</b>                      |                   | refers to the practice of people being able to articulate their own issues by themselves and for themselves. It refers to people being enabled and allowed to have their own voice in issues that relate to their specific needs and circumstances.  |
| <b>Sheltered Employment:</b>                     |                   | These spaces offer short to long term employment to Persons with Disabilities who wish to participate in the development of the economy, but who lack sufficient work and technical skills and productivity levels. These programmes must focus on developing, facilitating and strengthening initiatives to advance access to gainful and sustainable work for Persons with Disabilities, who require disability-specific vocational training.                          |
| <b>Social and Life Skills Community Centres:</b> |                   | These centres, also known as protective workshops, are spaces which provide for safe, accessible and development oriented environments where persons with severe disabilities are able to socialise, learn basic skills, engage in basic work and earn some additional income to supplement their social grants.   |



- Social Cohesion:** Social cohesion is the degree of social integration and inclusion in communities and society at large, and the extent to which mutual solidarity finds expression among individuals and communities. A community or society is cohesive to the extent that the inequalities, exclusions and disparities based on ethnicity, gender, class, nationality, age, disability or any other distinctions which engender divisions distrust and conflict are reduced and/or eliminated in a planned and sustained manner. Community members are therefore active participants, working together for the attainment of shared goals, designed and agreed upon to improve the living conditions for all.
- Social protection:** Refers to policies and programs designed to reduce poverty and vulnerability by promoting efficient labour markets, diminishing people's exposure to risks, and enhancing their capacity to manage economic and social risks, such as unemployment, exclusion, sickness, disability and old age.
- SAHRC:** South African Human Rights Commission
- SABS:** South African Bureau of Standards
- SASL:** South African Sign Language
- Universal Access:** Universal access means the removal of cultural, physical, social and other barriers that prevent people with disabilities from entering, using or benefiting from the various systems of society that are available to other citizens and residents. The absence of accessibility or the denial of access is the loss of opportunities to take part in the community on an equal basis with others.
- Universal Design:** Universal design is the design of products, environments, programmes and services to be usable by all persons to the greatest extent possible without the need for adaptation or specialised design. Assistive devices and technologies for particular groups of Persons with Disabilities where these are needed, must also respond to the principles of universal design. Universal design is therefore the most important tool to achieve universal access.
- UNCRPD:** United Nations Convention on the Rights of Persons with Disabilities of 2007, as amended.
- WPRPD:** White Paper on the Rights of Persons with Disabilities of 2016, as amended.

## CONTACT DETAILS

# ANNEXURE A

A LINK TO OR A LIST OF UPDATED CONTACT DETAILS OF DEPARTMENT OF LABOUR OFFICES AND OF KEY ORGANISATIONS OF DISABILITY SHOULD BE ACCESSED ON THE DEPARTMENT'S WEBSITE: [WWW.LABOUR.GOV.ZA](http://WWW.LABOUR.GOV.ZA)

|   | TELEPHONE      | TELEFAX        |
|---|----------------|----------------|
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