



Department of Labour

# Technical Assistance Guidelines on the Employment of People 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. People 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 people with disabilities.

Under our new democracy, the rights of the people with disabilities are now protected in the Constitution. Using the Constitution as a foundation, the South African government introduced the Employment Equity Act, 1998 to redress inequalities and discrimination in the workplace. To further ensure that the rights of people 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 People with Disabilities. 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 people with disabilities.

The Technical Assistance Guidelines on the Employment of People with Disabilities (TAG) is intended to complement the Code published in August 2002 to assist with the practical implementation of aspects of the Act relating to the employment of people 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 people 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.

Special appreciation to the United States Agency for International Development (USAID) for their financial support which made it possible to develop the TAG.

M M S MDLADLANA  
MINISTER OF LABOUR

# Table of contents

# Pages

Foreword	iii
<b>Chapter 1</b>	
<b>1. Introduction</b>	<b>1</b>
1.1 Purpose	1
1.2 Target group	1
1.3 Reality and context of disability discrimination	1
1.4 Examples and prevalence of disability	2
1.5 Experience of discrimination	2
1.6 Economic motivation and opportunity	2
1.7 Legal and human rights – disability is a natural part of human experience	3
1.8 Guidelines for people with disabilities	3
<b>Chapter 2</b>	
<b>2. Aims</b>	<b>4</b>
2.1 Employment Equity Act	4
2.2 Code of Good Practice on the Employment of People with Disabilities	4
2.3 Aims of the TAG for employers and for people with disabilities	4
2.4 Guidelines for people with disabilities	5
<b>Chapter 3</b>	
<b>3. Status of the code</b>	<b>6</b>
3.1 Legal and practical use of the TAG	6
<b>4. Legal framework</b>	<b>7</b>
4.1 South African legal context	7
4.2 International best practice and experience	7
<b>5. Definition of people with disabilities</b>	<b>8</b>
5.1 Three basic criteria covered under the Act	8
5.2 Checking the three criteria in practice	9
5.3 Link between disability and reasonable accommodation at the recruitment phase	12
5.4 Guidelines for people with disabilities	12
<b>6. Reasonable accommodation for people with disabilities</b>	<b>13</b>
6.1 What is the reasonable accommodation and how does it work?	13
6.2 Criteria for reasonable accommodation	15
6.3 Reasonable accommodation that apply to applicants and employees throughout the period of employment	15
6.4 When is an employer obliged to provide reasonable accommodation?	18
6.5 Reasonable accommodation obligation when changes to work, environment or the impairment occur	19
6.6 Consultation with the employee/applicant with a disability and use of technical experts	19
6.7 Conditions that may affect accommodation	19
6.8 Reasonable accommodation may be temporary or permanent, depending on the nature and extent of the disability	20

6.9	Representative list of examples of reasonable accommodation	20
6.10	Evaluating performance and reasonable accommodation	20
6.11	Employers are not obliged to provide reasonable accommodation if it creates an unjustifiable hardship	21
6.12	Defining unjustifiable hardship	21
6.13	Unjustifiable hardship cannot be generalised to other employers or to the future	21
6.14	Frequently asked questions about reasonable accommodation	22
6.15	Examples where reasonable and unjustifiable criteria might not be objectively determined	22
6.16	Best practice – Corporate level reasonable accommodation – “Hire the passion and train the skill”	22
6.17	Best practice for using the Supported Employment Model – Intellectual and other disabilities	23
6.18	Guidelines for employers	24
6.19	Guidelines for people with disabilities	25
<b>7.</b>	<b>Recruitment and selection</b>	<b>26</b>
7.1	Recruitment	26
7.2	Recruitment process	26
7.3	Application forms	26
7.4	Advertisement	27
7.5	Selection	27
7.6	Tips for job seekers with disabilities	31
7.7	Guidelines for people with disabilities	31
<b>8.</b>	<b>Medical and psychological testing and other similar assessments</b>	<b>32</b>
8.1	Medical testing	32
8.2	Testing after illness or injury	33
8.3	Health screening and safety	33
8.4	Pre-benefit medical examinations	33
8.5	Psychological testing of employees and other similar assessment of employees with disabilities	33
8.6	Guidelines for employers when administering psychometric tests	34
8.7	Guidelines for people with disabilities	35
<b>9.</b>	<b>Placement</b>	<b>36</b>
9.1	Introduction	36
9.2	Orientation and initial training	36
9.3	Induction training for employees with disabilities	36
9.4	Examples of what to do and what to avoid	37
9.5	Examples of equal treatment subject to reasonable accommodation	38
9.6	How to include appropriate disability sensitisation in orientation/induction and other training	39
9.7	Guidelines for employers	39
9.8	Guidelines for people with disabilities	39
<b>10.</b>	<b>Training and career advancement</b>	<b>40</b>
10.1	People with disabilities should be consulted in relation to career advancement	40
10.2	Accessibility of facilities and materials – examples and advice	40
10.3	Training to increase job performance	40
10.4	If the employer is using an external training provider	41
10.5	Training to ensure career advancement	41
10.6	How do I ensure that employees with disabilities are not discriminated against in career advancement	42
10.7	Awareness and Sensitisation training for existing staff on the Employment Equity Act	42

10.8	Focus on the Skills Development Act	42
10.9	Best Practice	43
10.10	Guidelines for people with disabilities	44
<b>11.</b>	<b>Retaining people with disabilities</b>	<b>45</b>
11.1	Employees who become disabled	45
11.2	Consultation with employees	46
11.3	Early return-to-work	46
<b>12.</b>	<b>Termination of employment</b>	<b>47</b>
12.1	Right to terminate	47
12.2	Dismissals based on operational requirements	48
12.3	Guidelines for people with disabilities	48
<b>13.</b>	<b>Worker's compensation</b>	<b>49</b>
13.1	Employers should assist with work related compensation	49
13.2	Guidelines for people with disabilities	50
<b>14.</b>	<b>Confidentiality and disclosure of disability</b>	<b>51</b>
14.1	Confidentiality	51
14.2	Disclosure	51
14.3	Guidelines for people with disabilities	52
<b>15.</b>	<b>Employee benefits</b>	<b>53</b>
15.1	Obligation of employer to ensure that funds and benefit schemes do not discriminate	53
15.2	No refusal of membership to employee with disability	53
15.3	Designated employers should investigate and, where reasonable, offer benefit schemes that are reasonably accommodative	53
15.4	Guidelines for people with disabilities	53
<b>16.</b>	<b>Employment equity planning in respect of people with disabilities</b>	<b>54</b>
16.1	Employment Equity Plan	54
16.2	Integrating disability into the 10-step plan process	54
16.3	Guidelines for employers	56
16.4	Guidelines for people with disabilities	56
<b>17.</b>	<b>Education and awareness</b>	<b>57</b>
17.1	Importance of education and awareness and role of people with disabilities	57
17.2	Employers and employer organisations	57
17.3	Trade unions	57
17.4	Guidelines for people with disabilities	57

# 1. Introduction

## 1.1 Purpose

The purpose of the Technical Assistance Guidelines on the Employment of People with Disabilities (TAG) is to assist employers, employees, trade unions and people with disabilities to understand the Employment Equity Act of 1998 and its Code of Good Practice on the Employment of People with Disabilities. This includes non-discrimination and affirmative action measures and provides guidelines on how to implement it.

## 1.2 Target group

The TAG is targeted at employers, employees, trade unions and people with disabilities so that they can understand their rights and responsibilities under the Act and the Code.

## 1.3 Reality and context of disability discrimination

### 1.3.1 Brief definition — impairment, disability and handicap<sup>1</sup>

#### 1.3.1.1 People first

People with disabilities are not conditions or diseases. They are individual human beings. 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 people 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, as people with disabilities.

#### 1.3.1.2 Distinction between disability and handicap

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 people with disabilities have one or more disabilities. A handicap is a physical or attitudinal constraint/barrier that is imposed upon a person, regardless of whether that person has a disability. Some dictionaries define handicap as "to put at a disadvantage".

## Example

Some people with disabilities use wheelchairs. Stairs, narrow doorways and curbs are handicaps imposed upon people with disabilities who use wheelchairs.

Many people who are blind use Braille to read and they may also use 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 accommodate an employee constitutes a handicap.

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 same way, through printed material or formal classroom training, may be a handicap for such people with disabilities.

People who are deaf communicate effectively through sign language. The lack of trained interpreters when needed to translate between spoken languages and the deaf is a handicap.

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<sup>1</sup>Adapted from **San Antonio Etiquette handbook**,

[http://www.sanantonio.gov/planning/disabilities\\_handbook/disability\\_handbook.asp?res=102&ver=true](http://www.sanantonio.gov/planning/disabilities_handbook/disability_handbook.asp?res=102&ver=true)

## 1.4 Examples and prevalence of disability

The number of people with disabilities varies significantly from country to country with the incidence of 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 incidence of disability ranges from between 10% to 26%. That is, between 10% and 26% of the population are regarded as living with a disability. In South Africa the exact number of people 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.

## 1.5 Experience of discrimination

Historically, throughout different societies people 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 people with disabilities. This marginalisation and ignorance also results in the systematic under-representation of people 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.

In South Africa, the apartheid system and history had a debilitating impact of further marginalisation and exclusion of people 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. Evidence of this comes from a report on a study of employment equity in South Africa by Global Business Solutions (GBS, 2001). The study of over 100 large and small companies covering more than 150 000 employees found that less than 1% of the total workforce in South Africa is reported as people with disabilities. Only 0,35% of new appointments appear to have been of people with disabilities.

## 1.6 Economic motivation and opportunity

The process of integrating people 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, people with disabilities can contribute valuable skills and abilities to every workplace, and contribute to the economy of our society."

Although South Africa, like other countries, invests in people with disabilities by providing some measure of health, social development and educational services, much of that investment is not realised by employers. Central to this is the failure on the part of employers to remove the barriers or handicaps that limit or restrict the participation of people with disabilities in the workplace. This failure is directly related to the way in which society and employers tend to view people with disabilities. Most employers tend to see people with disabilities as people who will add little or no value to the workforce and the productivity of the company or organisation.

If the integration of people 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 people with disabilities from a very different perspective. The benefits of approaching it from this perspective includes:

- Hiring the right person for the job

If the person for the job with the right qualifications, capabilities and experience, also happens to be a person with a disability, then accommodating that person within the workplace (reasonable accommodation without unjustifiable hardship) 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 people with disabilities is seen to improve the internal morale and public image of the company by denoting it as a socially responsible company and responsive to diversity within the population.

## **1.7 Legal and human rights — disability is a natural part of human experience**

People 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.

## **1.8 Guidelines for people with disabilities**

### **1.8.1 Understanding disability**

People with disabilities should understand disability 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. Whereas, the social model expresses the view that the disability is not the problem, but rather the negative attitudes of able-bodied people.

### **1.8.2 Suitable person for the job**

People with disabilities should be enabled to "market" themselves as the suitable person for the job, representing themselves as candidates who happen to have a disability.

# 2. Aims

## 2.1 Employment Equity Act

The Act seeks to eliminate all forms of discrimination. It protects people 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 people with disabilities as those groups of people who have been historically discriminated against, and thus the recipients of the non-discrimination and affirmative action measures prescribed.

## 2.2 Code of Good Practice on the Employment of People with Disabilities

The Code is a guide for employers, employees (both applicants and existing employees) and trade unions on promoting equal opportunities and fair treatment for people with disabilities as required by the Act.

## 2.3 Aims of the TAG for employers and for people with disabilities

### 2.3.1 Employers

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

- Their obligation to implement non-discrimination and affirmative action measures in respect of people with disabilities in the workplace
- Their right to generate economically viable enterprises and/or organisations which effectively provide services and products without discriminating against people with disabilities
- The opportunities that are afforded to them and their enterprises/organisations through the employment of people 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 People with disabilities

The TAG aims to assist people 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 the provision of 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 people with disabilities

- People with disabilities should familiarise 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.

## CHAPTER 3

# 3. Status of the Code

The Code is not an authoritative summary of the law, nor does it create additional rights and obligations. Failure to observe the Code does not by itself render a person liable in any proceedings. Nevertheless, when the Courts and tribunals interpret and apply the Employment Equity Act, they must consider it.

The Code should be read in conjunction with 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 and their organisations should use the Code to develop, implement and refine disability equity policies and programmes to suit the needs of their own workplaces.

The Code was formally gazetted on 19 August 2002, which means, after that date, Courts and tribunals must consider the Code when interpreting and applying the Act.

## 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 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.

The TAG is intended to be used as a practical guide to provide information and advice for employers, employees, trade unions and employees with disabilities in understanding and implementing the Act and the Code.

# 4. Legal framework

## 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, that is based on section 9(3) of the Constitution Act, No.108 of 1996.

According to 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 International best practice and experience

The Code and TAG have been developed with reference to the experience of employers, employees, trade unions and people with disabilities throughout South Africa in creating employment opportunities. For historical reasons, the experience of affirmative action and measures to eradicate discrimination against people with disabilities in South Africa is limited. Therefore, the international experience and context, including laws and similar technical guidelines, have been consulted as well.

# 5. Definition of people with disabilities

## 5.1 Three basic criteria covered under the Act

Section 1 of the Act defines people with disabilities as follows:

"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 in 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.

### 5.1.1 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 includes sensory impairments such as being deaf, hearing impaired or visually impaired" (Code, Paragraph 5).

A **mental impairment** is a clinically recognised condition or illness that affects a person's thought processes, judgement or emotions. This includes conditions such as intellectual, emotional and learning disabilities. For reasons of public policy, certain conditions or impairments may not be considered disabilities (Code, Paragraph 5.3.1(iv)).

### 5.1.2 Secondly, the impairment must also be long-term or recurring

**Long-term** means the impairment has lasted or is likely to persist at least 12 months. **Recurring** means the impairment in one that is likely to happen again and to be substantially limiting (see Paragraph 5.1.3. 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. People living with progressive conditions or illnesses are considered as people 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 with no 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.

### 5.1.3 Thirdly, the impairment must be substantially limiting

An 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 she/he is being considered. If the effects of the impairment are not substantially limiting, even if they are physical and/or mental, are long-term or recurring, then the person is not covered under the Act. Qualified experts may be used to assist the employer to determine whether a particular impairment is substantially limiting or an applicant or employee may be able to provide information sufficient to document this.

#### 5.1.3.1 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 an 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:

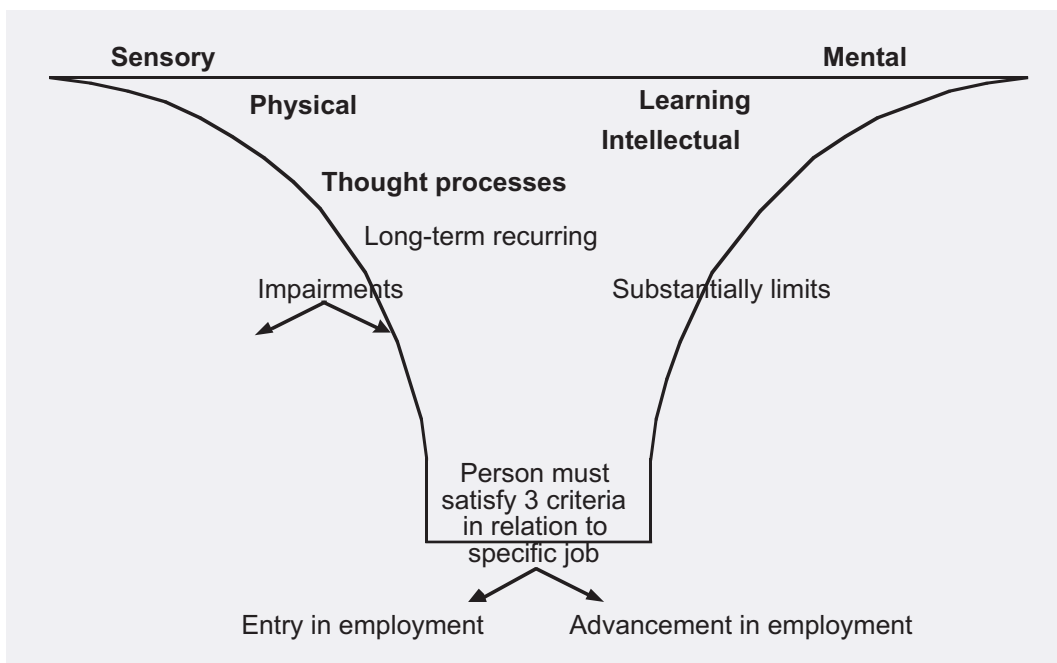
- sexual behaviour disorders that are against public policy
- self-imposed body adornments such as tattoos and body piercing
- compulsive gambling, tendency to steal or light fires
- disorders that affect a person's mental or physical state if they are caused by current use of illegal drugs or alcohol, 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.

## 5.2 Checking the three criteria in practice

For example, if one considers the image of the funnel below, it includes anyone who initially believes that they are disabled and as the funnel draws narrower towards the end, it begins to eliminate those who do not 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 on his/her application form that she/he has a disability. It can also be done if the person in your employ indicates that she/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>	Do you have difficulty following standard written or verbal instructions?		*	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>	Do you have difficulty performing when you feel extremely stressed?	*		Long-term is defined for the purpose of this exercise as 12 months or longer.
<b>Recurring</b>	Have you had this physical condition for more than 12 months? 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>	Can the effect of your disability be easily controlled with medication?  Can this disability be easily corrected, e.g. with a device?  Can the effect of the disability be reduced by, e.g. medical treatment?		*	

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>	Do you have difficulty following standard written or verbal instructions?  Do you have difficulty performing when you feel extremely stressed?		*	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>	Can the effect of your disability be easily controlled with medication?  Can this disability be easily corrected, e.g. with a device?  Can the effect of the disability be reduced by, e.g. medical treatment?	*		

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 an 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 analyses whether the impairment is substantially limiting for the job that the person is being considered for, or is currently doing.

### **5.3 Link between disability and reasonable accommodation at the recruitment phase**

The next step is to ascertain from the applicant or employee if she/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.

### **5.4 Guidelines for people with disabilities**

People with disabilities should:

- Familiarise 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
- Be able to explain the factors that limit their entry into, participation and advancement in the workplace.

# 6. Reasonable accommodation for people with disabilities

## 6.1 What is reasonable accommodation and how does it work?

All designated employers under the Act and Code, "should reasonably accommodate the needs of people with disabilities." This is both a non-discrimination 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 this accommodation is to reduce the impact of the impairment on the person's capacity to perform the essential functions of the job.

Accommodation, which are 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.

Example of reasonable accommodation

Reasonable accommodation measures may include:

- Assistance in making the workplace more accessible 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.

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 has difficulty typing with his/her hands at great speed.

### **Solution**

At minimal cost to the employer, 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 that causes difficulty with filing and carrying heavy reports on an occasional basis.

**Solution**

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

**Situation**

A bookkeeper who is deaf cannot speak on the telephone.

**Solution**

At no cost to the employer, the bookkeeper's colleagues were sensitised to the disability. The bookkeeper communicates via email, faxes or written messages with colleagues. Some colleagues have opted to learn basic Sign Language. On rare occasions, when required for client or staff meetings, an interpreter is retained on a consulting basis by the firm.

**Situation**

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

**Solution**

The individual benefits from sound amplification technology. 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**

At no cost to the employer, 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 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 sight 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 physical disability is required to compose messages and other written documents.

### **Solution**

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

### **Situation**

A competent and experienced attorney with a physical disability 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.

## **6.2 Criteria for reasonable accommodation**

The criteria for reasonable accommodation includes three interrelated factors:

- First, the accommodation must remove the barriers to performing the job for a person who is otherwise qualified. The employer must take steps, wherever reasonably practicable, to mitigate the effect of an individual's disability to enable him or her to play a full part 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 people 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 need not employ the person. The employer need not create a new job for the person with the disability, nor must the employer reallocate essential functions to another employee. 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 essential functions. Job specifications must be drafted to ensure that they do not unnecessarily exclude people with disabilities. As people 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, tapes, large print or appropriate language. Application forms should focus only on asking how an applicant is qualified to perform the essential functions of the job (Code, Paragraph 7.1.3).

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 organisation 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 accommodation during the interview and/or employment. Since the employer may not know if the short-listed candidate has any 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 who is partially sighted 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 on 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 who is deaf applied for a job at an organisation. The organisation 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.

### 6.3.4 Assessments or skills testing

Medical and psychological testing and other similar assessments should be free of bias and 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 who is deaf 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 organisation 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 people 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 people on wheelchairs; and lectures should have a sign language interpreter, or alternatively, presentations should also be captured visually if deaf persons 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 her/his 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 ongoing 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 people 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 people with disabilities. Unless it creates unjustifiable hardship to the employer, the employer must install facilities for people 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 employees 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 available 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 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 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 her/his accommodation requirements before a conditional offer is made and the offer is then withdrawn, the withdrawal may be seen to relate to the employer's 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 tells his supervisor "I need a Sign Language interpreter to communicate with my colleagues during business meetings."
- An employee tells her supervisor, "As a result of my emotional issues in the past, 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 experts to establish appropriate mechanisms to accommodate the employee".

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. accommodation required to perform the inherent requirements of the job. In this way, reasonable accommodation is most effectively identified as employees with disabilities often have the most knowledge of their requirements.

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 accommodation that is made is acceptable and supportive to both the employee and the employer.

## 6.7 Conditions that may affect 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, 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 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 an 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-organising workstations to ensure that people 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 people with visual disabilities; identifying and hiring venues that are accessible to people 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 employees.
- 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 specialised supervision, training and support in the workplace, e.g., interpreters for the deaf, readers for the blind, job coaches for people with intellectual disabilities or personal assistants for people 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 accommodation, their effectiveness and costs, and making a conditional job offer, the employer may conclude after an objective assessment that the 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 for South Africa where there has been so little employment and accommodation for people 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 accommodation must involve an objective process. On the one hand, this may involve identifying and determining the effectiveness of the accommodation and, on the other, whether the implementation of such accommodation 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 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 generalised 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, accommodation also has to become dynamic in nature in order to suite the requirements of a person with a disability at any given point in time. 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 people 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 switchboard operator who is blind because he needs a voice-output software package 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 the premises was not connected to major transport routes and they feared that 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, marketing and general information enquiries. The call centre employs 15 people with physical disabilities.

The company made a commitment to employ people with disabilities. In line with this commitment, the building was designed to guarantee access to people 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, analytical skills, 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 people with disabilities in various 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 ongoing 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**

### **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 ongoing basis. Supported employment often applies to people who have severe intellectual disabilities and/or multiple disabilities.

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

Sarah is deaf and has 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 total hearing impairment, a visual impairment and a total 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, ongoing 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 her/his 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 employees — 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 people with disabilities

People with disabilities should:

- Familiarise themselves with the term "Reasonable Accommodation"
- Be able to explain in their own words the type of accommodation they may require relating to their specific nature, degree and severity of their disability
- Take responsibility to ask for accommodation if they should require any
- Know that they have the right to ask for 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. Recruitment and selection

## 7.1 Recruitment

The employment of people 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 people 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 example 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 and 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>

## 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 inherent requirements of the job."

Wording to this effect should be used on application forms and the opportunity should be provided to voluntarily disclose, along with a brief statement explaining the benefits. A brief statement regarding the non-discrimination and, where relevant, 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.



## Example Two

Position	Tasks	Essential functions	Skills and capabilities
<b>Head Chef.</b>	<ul style="list-style-type: none"> <li>● Cooking.</li> <li>● Presentation and serving of food</li> <li>● Developing menus.</li> <li>● Staff management.</li> <li>● Costing and budgeting.</li> <li>● Purchasing.</li> <li>● Inventory management.</li> </ul>	<ul style="list-style-type: none"> <li>● Plan menus and functions.</li> <li>● Do costing of menus and 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 and organising.</li> <li>● Good communication.</li> <li>● Interpersonal skills.</li> <li>● Ability to meet deadlines and work under pressure.</li> <li>● Work in a team.</li> <li>● Work independently.</li> <li>● Leadership skills.</li> <li>● Computer literacy.</li> </ul>

## 7.4 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 people 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.

## 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 people 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. Another example, would be when a deaf person applies for a telephonist position, as the inherent requirements of this job is verbal communication.

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.	
In order to be effective and efficient in this job the applicant must have the following skills and capabilities: <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.
Contact details. 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.	Contact details. Please send your CV to NAME at ADDRESS or e-mail it to ADDRESS. The telephone number is NUMBER.

### 7.5.1 Interviews

According to the Code, interviews should be objective and unbiased. Interviewers should avoid assumptions about the abilities of people 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 blindness or partially sightedness, 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 is deaf where the employer must enquire whether the applicant

will require an interpreter or whether one will accompany the applicant.

- 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.

Example Two (consistent)	Example Two (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.
Contact details. Please send your CV to NAME at ADDRESS or e-mail it to ADDRESS. The telephone number is NUMBER.	Contact details. Please send your CV to NAME at ADDRESS or e-mail it to ADDRESS. The telephone number is NUMBER.

## 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.

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
<b>Physical</b>	Buildings more than one story high should have a lift. Buildings that have stairs should have ramps to accommodate the needs of people with mobility impairments. Accessible toilet facilities should be close to the interview venue. In the case of older buildings where there are no lifts, interviews should be on the ground floor.
<b>Deaf</b>	The interview panelists should address the deaf interviewee and not the interpreter, including eye contact.
<b>Totally blind</b>	The interview panelists should not engage in non-verbal gestures or whispers.
<b>Partially sighted</b>	The employer should enquire as to the degree of lighting needed by the interviewee during the interview.
<b>Intellectual disability</b>	Interviews could be conducted on a one-to-one basis as opposed to a panel of people. Interview questions should be kept short and simple. Interviewers should exercise patience.

### 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 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, a conditional job offer may be withdrawn based on the following conditions:

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

- 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.

Here are 16 tips to keep in mind when searching for work:

1. Use a variety of job-seeking techniques
2. Research prospective employers
3. Role-play
4. 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
5. Prepare well for the interview
6. Find out where the company is situated well in advance
7. Dress appropriately
8. Arrive 15 minutes earlier
9. Confidence is everything
10. Know what technologies can help you work effectively; how much they cost and where it can be obtained
11. Decide when to disclose your disability
12. Make the interview easy for the employer
13. There are several types of employment interviews. Being familiar with each type will enable you to better prepare yourself for the interview
14. Be honest
15. Know your rights and familiarise yourself with current legislation.
16. Don't let past failures affect you negatively.

## 7.7 Guidelines for people with disabilities

People 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.

# 8. Medical and psychological testing and other similar assessments

Medical and other testing is important because historically these types of assessments have been used to rationalise discrimination of people 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 inquiries.

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 people 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 –

- (a) has been scientifically shown to be valid and reliable
- (b) can be applied fairly to all employees
- (c) is not biased against any employee or group."

### 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 that tests are biased and exclusionary.

When employers assess either an individual with a disability or a group of individuals including those with disabilities, they must carefully consider 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 people with disabilities?
- Were individuals with like disabilities included in the normative and validation samples?
- Were there specialised 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 specialised 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 employee 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 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 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-lingually (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 people with disabilities

People 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; and
- 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. Placement

## 9.1 Introduction

The Employment Equity Act, No 55 of 1998 protects people 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 people with disabilities into the workplace must be followed by comprehensive orientation and induction training that must include disability sensitisation training. Very few people have had the opportunity to work with people 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 her/his 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 people 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**

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**

An employee who is deaf might request a sign-language interpreter to be present during the induction training.

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**

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**

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 people with disabilities
- Braille and large font(s) for persons with visual impairments, physical access for people on wheelchairs, and simple, repetitiveness and certain other adaptations for people 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 who is deaf does not speak on the telephone. 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 team-member(s) that are able-bodied.

### **9.5.3 Training and career advancement**

People 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 sensitisation 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.
- Sensitise 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 people with disabilities**

- People 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.
- People 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.
- People with disabilities should be prepared to take a leading role in disability awareness programmes.

# 10. Training and career advancement

## 10.1 People 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 the company's training courses are fair and without discrimination. Training courses must be accessible to employees with disabilities.

In order to make your 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 is deaf needs to attend a training programme.

**Solution**

A sign language interpreter is provided during the training programme. When audiovisual 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.

**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 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 accommodation. However, if the contractor is unable to provide the necessary accommodation, the employer remains responsible for providing the 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 a reasonable accommodation, unless the accommodation would constitute unjustifiable hardship.

People 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 ongoing 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 people 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 people who find it difficult to be employed, such as people with disabilities. Since the majority of employable people 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 people 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 people 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 people 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 people with disabilities, the learnership principle offers a worthwhile window of opportunity to employers who are serious about employing people 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 people with disabilities

- People with disabilities must be aware that they have the same right to access training as their able-bodied co-workers.
- People with disabilities have the responsibility to familiarise themselves with the relevant legislation that governs training in the workplace, such as the Skills Development Act, including the Skills Development Strategy and the Skills Levies Act.
- People with disabilities must explain their disability specific accommodation requirements during the orientation and induction process to their employer.
- People 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.
- People with disabilities must explain their disability specific accommodation requirements to enable them to participate in recreational/social activities.
- People 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.
- People with disabilities have the right to refuse to be evaluated on non-essential job functions during the performance assessment process.

# 11. Retaining people with disabilities

## 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 coordinated, cost-conscious, quality case management and rehabilitation services that reflect an organisation'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 coordinate 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 employees with disabling injuries and illnesses.

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

- **Access to benefits**

Many DM programmes coordinate 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 programmes 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.

# 12. Termination of employment

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). Special attention should be given to paragraph 10 and 11 below:

According to paragraph 10:

- "(1) 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.
- (2) 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.
- (3) 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.
- (4) 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:

- (a) whether or not the employee is capable of performing the work; and
- (b) if the employee is not capable-
- (i) the extent to which the employee is able to perform the work;
- (ii) 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; and
- (iii) 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 people with disabilities. Where possible, every attempt should be made to retain people with disabilities.

## 12.3 Guidelines for people with disabilities

- People 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, No 66 of 1995.
- People 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.
- People 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. Worker's compensation

## 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 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 Diseases Act (COIDA), Occupational Disease and Injuries Mine Employees 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 Fund to employees who were injured on duty to replace loss of wages and/or to pay medical expenses.**

If an employee is off work for three days or less, she/he will not receive compensation. Only medical expenses will be paid if the claim is reported and accepted.

For the first three months an employee is booked off from work, the employer must pay 75% of the employee's wages or salary. The employer will claim this back from the Compensation Fund.

If an employee is off work for more than three months, and if the employer terminates payment, the money must be claimed directly from the Compensation Fund.

If the doctor says that an employee has a **temporary disability** (an injury that gets better, such as a cut), an employee will only get 75% of their salary for the time the employee is "unfit for duty". An employee **will not get any more money for their injury, as no payment can be made for pain and suffering.**

If an employee has a permanent injury, such as deafness, blindness, amputation of the limb or an injury that causes permanent disability, i.e. for the rest of such an employee's life, assessment on the percentage of disability will be done in accordance with COIDA. If the disability is assessed to be 30% or less, a once-off lump sum payment will be made for the injury.

If the disability is assessed and is more than 30%, such an employee will receive an amount, which is the arrears payment from the date of stabilisation of the condition. This will be reflected on the final medical report and a monthly pension for life will be paid. The amount of this pension is calculated on the salary at the time of the accident, the percentage of disability and the benefits applicable at the time of the accident.

### ***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.

It is important to remember that benefits are paid for a maximum of 238 days or for the number of days credits that the person has accrued during a four-year period, preceding the date of application. Credits are given to employees as they work and contribute to the Fund. The credits are earned as follows:

- For every six days that a contributor works, one day's credit accrues.
- To qualify for the full 238 days credit, an employee must work for at least four years.

All contributors that have sufficient credits, in any period of four years, will be paid up to a maximum of 238 days

benefits if unemployed. In the case of maternity benefits, a total of 121 days is payable if sufficient credits are available. A contributor is not entitled to benefits if the contributor is:

- Receiving a monthly State pension
- Receiving payment from the Compensation Fund for illnesses or injuries that caused the temporary or permanent unemployment of the contributor
- Receiving benefits from any other scheme established by Labour Relations legislation
- Failing to comply with the provisions of the UIA
- Suspended from receiving benefits for being caught working and collecting benefits or has committed fraud related to the UIF.

**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 People of Disabilities encourages employers, where possible, to reintegrate employees who acquire disabilities later in their lives into the workforce, rather than terminate employment.

## **13.2 Guidelines for people with disabilities**

- People with disabilities should familiarise themselves with the relevant legislation that governs Compensation for Occupational Injuries and Diseases (COIDA), Occupational Disease and Injuries Mine Employees Act (ODIMWA), Road Accident Act (RAA) and Unemployment Insurance (UIF) applications.
- People 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.
- People 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.
- People with disabilities should ask for assistance from the employer, or immediate supervisor when applying for compensation.



# 14. Confidentiality and disclosure of disability

## 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 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 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 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 people with disabilities**

- People with disabilities should familiarise themselves with section 7 and 8 of the Act as it has a direct bearing on the issue of disclosure.
- People 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 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 accommodation if requested.
- People 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.
- People with disabilities should not pay for any test that is for the purpose of confirming the disability or the need for accommodation.

# 15. Employee benefits

## 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 people with disabilities

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

# 16. Employment equity planning in respect of people with disabilities

## 16.1 Employment Equity Plan

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

## 16.2 Integrating disability into the 10-step plan process

The Code of Good Practice on Preparation, Implementation and Monitoring of Employment Equity Plans sets out a 10-step plan to preparing and implementing an 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:

- Phase 1. Preparation
- Phase 2. Implementation
- Phase 3. Monitoring

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 Preparation, Implementation and Monitoring of Employment Equity Plans, 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. This will assist the person in order to develop a comprehensive understanding of disability in the context of international and national standards as set out in the Integrated National Disability Strategy (INDS) and relevant legislation and policy.

#### 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 Preparation, Implementation and Monitoring of Employment Equity Plans and the 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 people 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 people who are deaf, they should consult with organisations for and of deaf people 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 be blind, 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 people with disabilities are under-represented in all occupational levels and categories in the workplace, the employer could seek guidance from organisations that represent people with disabilities or relevant experts.

#### **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 levels in the company.

#### **Step 7** Allocation of resources

Employers may wish to consider creating a centralised 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 Plan

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

#### **Step 9** Integration of the 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** 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

"(iii) disclose their disability in a confidential way, which assures confidentiality of their identity and their impairment and any disability related 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 people with disabilities**

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

# 17. Education and awareness

## 17.1 Importance of education and awareness and role of people 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 people 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 for 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 and this TAG are available and accessible to people with disabilities, other government departments as well as the private sector and civil society in general.

## 17.2 Employers and employer organisations

- The Act, Code and TAG should be the baseline documents for any training conducted within a company on the employment of people 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 utilise the services of people 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 people with disabilities

- People with disabilities should play a lead role in creating awareness in the workplace.
- People with disabilities must guide the development of all awareness programmes in the workplace.
- People 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.

## APPENDIX B

### Contact numbers of Department of Labour offices

	<b>Telephone</b>	<b>Telefax</b>
Department of Labour (Head Office)	(012) 309-4000	(012) 320-2059
Laboria House 215 Schoeman Street Private Bag X117 PRETORIA 0001		
Provincial offices		
Eastern Cape Laboria Building 3 Hill Street Private Bag X9005 EAST LONDON 5200	(043) 701-3000	(043) 743-9719
Free State 43 National House Maitland P O Box 544 BLOEMFONTEIN 9300	(051) 505-6200	(051) 447-9353
Gauteng North Concillium Building 239 Skinner Street P O Box 393 PRETORIA 0001	(012) 309- 5000	(012) 309-5139
Gauteng South Annuity House 18 Rissik Street P O Box 4560 JOHANNESBURG 2000	(011) 497-3000	(011) 834-1081
KwaZulu-Natal Government Building Masonic Groove P O Box 940 DURBAN 4000	(031) 336-1500	(031) 307-6882



Mpumalanga Cnr. Hofmeyer Street and Beatty Avenue Private bag X7263 WITBANK 1035	(013) 655-8700	(013) 690-2622
Limpopo 42A Schoeman Street Old Boland Bank Private Bag X9368 POLOKWANE 0700	(015) 290-1744	(015) 290-1670
Northern Cape Laboria House No. 13 Cnr. Priel/Compound Streets Private Bag X5012 KIMBERLEY 8300	(053) 838-1500	(053) 838-1531
North West SEBO Building Provident House Second Floor University Drive Private Bag X2040 MMABATHO 2735	(018) 387-8100	(018) 384-2745
Western Cape Thomas Boydell building 22 Parade Street P O Box 872 CAPE TOWN 8000	(021) 460-5911	(021) 465-7318





