



DISABILITY TOOLKIT



**A QUICK
REFERENCE
GUIDE**



&



**MONITORING
FRAMEWORK**

FOR EMPLOYERS

DISABILITY TOOLKIT



**A QUICK
REFERENCE
GUIDE**

&



**MONITORING
FRAMEWORK**

FOR EMPLOYERS



PREFACE

The South African Human Rights Commission (SAHRC) has worked with a small team of dedicated employers and research specialists to develop this quick reference resource guide to assist employers to harness the potential of their diverse workforces and to equip employers with the knowledge and tools to make South Africa's workplaces more accessible, more inclusive and more productive for people with disabilities.

This guide is intended to be used in conjunction with the revised Toolkit, Promoting the Right to Work of Persons with Disabilities: A Toolkit for South African Employers as well as the relevant pieces of legislation, namely the Employment Equity Act and the Technical Assistance Guidelines on the Employment of People with Disabilities.

We have attempted to provide easy to navigate and practical advice about disability and employment. The information provided is applicable to employers of all sizes and across all sectors.

We have also provided links to a rich repository of resources available on the worldwide web.

This is an evolving document and very much a work in progress which we intend to improve, develop and change, as we learn and improve our own understanding of this important employment and human rights subject.

MESSAGE FROM THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

ADVOCATE BOKANKATLA JOSEPH MALATJI



The South African Human Rights Commission recognises that people with disabilities can make up a significant portion of South Africa's productive workforce – if barriers preventing them from actively participating in employment are identified and removed.

We also know that the challenges impacting persons with disabilities in South African employment are more complex and challenging than in most other countries; because often, before we give attention to disability, we have to prioritise race and gender and skills shortages – and we forget that disability spans all levels, all categories, all races and all genders. And while a dedicated and focused approach is needed to position disability as a key priority, what is also needed is a mainstreaming approach, for disability to be considered in all aspects of our employment; not as an add-on, but as an integrated component of the diversity that makes up our workplaces.

The SAHRC hereby urges employers to make concerted efforts to improve their workplace cultures and physical environments so as to improve the inclusion of people with disabilities – and to enable such individuals to make meaningful contributions to their jobs in ways that help them to realise their full potential.

South Africa's Employment Equity Act and the South African National Standards – Building Regulations provide comprehensive rules and guidelines to assist employers to make their workplaces free from discrimination and more accessible to diverse groups of employees with and without disabilities - to know their rights. I encourage all employers to familiarise themselves with these legislative provisions to fully understand and comply with; for employers to fully understand and comply with their responsibilities, and for employees – with and without disabilities, to know their rights.

When it comes to ensuring that workplaces are inclusive of the skills and talents of people with disabilities, not all employers may know where to start, what to do or what the implications are for them as employers.

It is for these reasons that in 2015 the SAHRC developed and launched our Disability and Employment Toolkit – and the Monitoring Framework – resources for employers in the private sector. During 2016, we tested these resources and in doing so, we realised that there is much work that is still to be done. We identified additional employer needs and we realised that people with disabilities also need access to information and support.

To this end, we have revised our 2015 Toolkit and Monitoring Framework. The 2015 Toolkit has been updated for use by all sectors and remains a rich source of research and guidance.





In this quick reference guide, we have attempted to expand and at the same time simplify information relating to disabilities that is relevant and topical. We have highlighted the areas of the Employment Equity Act that are of relevance to disability and have provided a robust compilation of questions and answers and an A-Z glossary explaining common, but often misunderstood, terms and definitions.

We trust that this will assist employers to improve the employability and inclusion of persons with disabilities in South Africa's workplaces.

The SAHRC thanks the following organisations and individuals for their input into the development of this new resource material:

- » Trevonica Naidu (Transformation Integrated Africa)
- » Dr William Rowland (Honorary President of the SA National Council for the Blind and author of "Nothing About Us Without Us")
- » The following companies who participated in the Disability Toolkit pilot project: Mpact, Standard Bank, Accenture, Total, Barloworld Logistics, Mogale City Local Municipality, Tsogo Sun, Sasol South Africa and Protea Hotel Ranch Resort.
- » Mr Tyrone Naidoo - BEE Online.
- » Mr Krishna Soobramoney Padachie
- » Ms Gale Ndebele



This Disability Reference Guide provides guidelines and information that cover ten important aspects relating to disability and employment. We believe that the range of strategies provided will assist employers and employees to improve employment outcomes for persons with disabilities and will increase diversity and a culture of inclusion in their workplaces.

The SAHRC intends monitoring the progress of disability and employment outcomes for South Africa and improving our resources as time progresses. The information in this Disability Reference Guide and the Disability Toolkit will be updated periodically, and employers are invited and encouraged to make recommendations that will make our workplaces more respecting and inclusive of persons with disabilities.

B. J. Malatji

Advocate Bokankatla Joseph Malatji
SAHRC Commissioner

QUICK REFERENCE GUIDE CONTENTS

	GLOSSARY	6
1	DEFINING AND UNDERSTANDING DISABILITY	11
2	DISABILITY LEGISLATION	23
3	THE RIGHTS OF EMPLOYEES WITH DISABILITIES	27
4	REASONABLE ACCOMMODATION	33
5	ASSESSING ACCESSIBILITY	37
6	CREATING INCLUSIVE CULTURES FOR PEOPLE WITH DISABILITIES	41
7	DEVELOPING A WORKPLACE DISABILITY STRATEGY	47
8	ESTABLISHING DISABILITY NETWORKS AND WORKPLACE SUPPORT GROUPS	49
9	QUESTIONS AND ANSWERS	53
10	MONITORING FRAMEWORK FOR EMPLOYERS	57
	ACKNOWLEDGEMENTS, ADDITIONAL RESOURCE LINKS AND REFERENCES	64



GLOSSARY OF DISABILITY-RELATED TERMS

Accessible: In the case of a facility, accessible means it must be readily usable by a particular individual; in the case of a programme or activity, it must be presented or provided in such a way that a particular individual can participate - with or without assistance.

Access Barriers: Any obstruction that prevents people with disabilities from using standard facilities, equipment and resources.

Accessible Web Design: Creating web pages according to universal design principles to eliminate or reduce barriers, including those that affect people with disabilities.

Accommodation: Accommodation refers to equipment, practices or policies that enable an employee with a disability to succeed in the workplace. Examples of accommodation include additional equipment or modifications to existing equipment (e.g. modified keyboards), flexible hours of work or modified work schedule, additional training, etc.

Adaptive Technology: Hardware or software products that provide access to a computer that is otherwise inaccessible to an individual with a disability.

Assistive Technology: Technology used to assist a person with a disability, e.g., wheelchair, computer-based equipment.

Braille: System of embossed characters formed by using a Braille cell, a combination of six dots consisting of two vertical columns of three dots each. Each simple Braille character is formed by one or more of these dots and occupies a full cell or space. Some Braille may use eight dots.

Communication Device: Hardware that allows a person who has difficulty using their voice clearly to use words or symbols for communication. May range in complexity from a simple picture board to complex electronic devices that allow personalised, unique construction of ideas.

Compensatory Tools: Assistive computing systems that allow people with disabilities to use computers to complete tasks that they would have difficulty doing without a computer, e.g., reading, writing, communicating, accessing information.

Designated Employers: Employers who employ 50 or more employees or who hire less, but by virtue of meeting turnover thresholds as stipulated by the Department of Labour, are considered as designated employers.

Designated Groups: Previously disadvantaged people of South African origin who are African, Indian, Coloured, female or a person with a disability.

Disclosure: Disclosure refers to a process of self-identification and informing an employer about a disability.

Discrimination: Discrimination is any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly (a) imposes burdens, obligations or disadvantages on; and/or (b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds, which include disability and any other ground that might disadvantage a person, undermines human dignity or adversely affects an individual's rights and freedoms.

*Unfair treatment or being refused a benefit because of one's disability is considered **discrimination** in terms of the Employment Equity Act. For example, an employer refusing to accommodate or dismissing an employee from their jobs because of a disability is discrimination.*

***Indirect Discrimination** refers to apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics.*

Disability Discrimination: Discrimination on the basis of disability means any distinction, exclusion or restriction of persons on the basis of disability, which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, on all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It encompasses all forms of unfair discrimination, whether direct or indirect, including denial of reasonable accommodation.

Disability Mainstreaming: Disability Mainstreaming requires a systematic integration of the priorities and requirements of persons with disabilities across all sectors and built into new and existing legislation, standards, policies, strategies, their implementation, monitoring and evaluation. Barriers to participation must be identified and removed. Mainstreaming therefore requires effective planning, adequate human resources and sufficient financial investment – accompanied by specific measures such as targeted programmes and services.

Duty to Accommodate: Employers have a “duty to accommodate” disabilities of employees and potential employees up to the point of “undue hardship”. In determining whether an employer has reached a point of “undue hardship”, the courts will consider financial costs, health and safety risks, and, size and flexibility of the workplace.

Egress: A continuous and unobstructed way of exit travel from any point in a building or facility to a public way. A means of egress comprises vertical and horizontal travel and may include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, horizontal exits, courts and yards.

An accessible workplace means of egress is one that complies with the National Building Regulation Guidelines and does not include stairs, steps or escalators. Areas of rescue assistance or evacuation elevators may be included as part of accessible means of egress.

Employment Equity Act: A comprehensive South African law that prohibits discrimination on the basis of disability in employment and details duties of a designated employer about identifying and eliminating barriers.

Employment Equity: Employment equity is about improving the representation of under-represented groups in the workplace, in accordance with the demographics of the land.

Enabling Environments: Interrelated physical and other infrastructures, built environments, culture, laws, policies, information and communication technologies, and organisations that must be in place to facilitate the socio-economic development of persons with disabilities

Equality: Equality refers to the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes equality according to the law and in terms of outcomes. It ensures that individuals or groups of individuals are treated fairly and equally and no less favourably, specific to their requirements. It is the right of different groups of people to have respect for their social position and receive equitable treatment in society.

Equal Treatment: Equal treatment is when everybody is treated the same and there is no distinction based on the needs of employees.

Exclusion: Exclusion refers to the act of socially isolating or marginalising an individual or groups on the basis of discrimination by not allowing or enabling them to fully participate and be included in society and enjoy the same rights and privileges. This devaluation of and exclusion of individuals or groups results in keeping “others” outside of the prevailing social system and thus restricting their access to material, social, economic and political resources and rights.



Fair Treatment: Fair treatment of workers involves respecting their right to privacy, providing feedback regarding their performance, avoiding discrimination of any kind and ensuring that employees are treated in accordance with their circumstances and any special needs they may have.

Graphical user Interface: Programme interface that presents digital information and software programs in an image-based format as compared to a character-based format.

Hearing Impairments: Complete or partial loss of ability to hear caused by a variety of injuries or diseases including congenital defects.

Harassment: Harassment is a type of discrimination and can manifest in the form of humiliating or offensive comments or actions. Staring, touching, jokes or remarks relating to disability (or any other grounds for discrimination) are harassment.

Inherent Requirements of the Job: An inherent requirement of the job is a job requirement or qualification that is essential to completing the job safely and efficiently. An employer would not be required to accommodate a disability if it can show that the specific job duty or requirement is an inherent requirement and the person did not disclose a disability that could limit the person's ability to perform a task.

International Symbol of Accessibility: The most recognisable Symbol of Accessibility, which we call the International Symbol of Accessibility, or ISA, is often known as the wheelchair symbol.

Interpreter: Professional person who assists a deaf person in communicating with hearing people.

Keyboard Emulation: A method of having an alternative device and/or software, such as a switch-based system, serve the role of a keyboard.

Large Print Books: Most ordinary print is six to ten points in height (font size). Large type is fourteen to eighteen points (font size and sometimes larger). The format of large print books is also proportionately larger.

Mainstreaming Inclusion: The inclusion of people with disabilities, with or without special accommodations, in programmes, activities and facilities with their non-disabled peers.

Medical Model: The medical model promotes the image of people with disabilities as needing health care or as "sick".

Mobility Impairment: Disability that affects movement ranging from gross motor skills such as walking to fine motor movement involving manipulation of objects by hand.

Optical Character Recognition (OCR): Technology system that scans and converts printed materials into electronic text.

Peripheral Neuropathy: A condition caused by damage to the nerves in the peripheral nervous system which includes nerves that run from the brain and spinal cord to the rest of the body.

Ramp: A ramp should be at least 1,2m in width and have a gradient no greater than 1:12.

Reader: Volunteer or employee of an individual with a disability (e.g., visual impairment, learning disability) who reads printed material in person or records to audiotape.

Reading System: Hardware and software designed to provide access to printed text for people with visual impairments, mobility impairments, or learning disabilities. Character recognition software controls a scanner that takes an image of a printed page, converts it to computer text using recognition software and then reads the text using a synthesised voice.

Refreshable Braille Display: Hardware connected to a computer that echoes screen text on a box that has cells consisting of pins that move up and down to create Braille characters.

Repetitive Stress Injury (RSI): A disability that may be chronic or acute and usually is described as pain caused by overuse of extremities, usually hands and wrists.

Scanning Input: A switch-based method of controlling a computer. Activations of a switch will, in order, bring up a control panel that upon subsequent switch activations allow a user to focus in on a desired control or keystroke. Custom scanning layouts can be created for a variety of purposes and programs and may also be used in a communication device.

Screen Enlargement: Hardware and/or software that increases the size of characters and text on a computer screen.

Screen Reader: Software used to echo text on a computer screen to audio output, often used by people who are blind, with visual impairments, or with learning disabilities.

Screen Resolution: Refers to the clarity or sharpness of an image. For computer monitors, this term indicates the number of dots on the screen used to create text and graphics. Higher resolution means more dots, indicating increased sharpness and potentially smaller text.

Sensory Impairment: A disability that affects touch, sight and/or hearing.

Server: Any computer that stores information that is available to other users, often over the Internet.

Sign Language: Manual communication commonly used by deaf. The gestures or symbols in sign language are organised in a linguistic way. Each individual gesture is called a sign. Each sign has three distinct parts: the handshape, the position of the hands and the movement of the hands. Deaf people from different countries speak different sign languages.

Specific Learning Disability: Disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in difficulties listening, thinking, speaking, reading, writing, spelling, or doing mathematical calculations. Frequent limitations include hyperactivity, distractibility, emotional instability, visual and/or auditory perception difficulties and/or motor limitations, depending on the type(s) of learning disability.

Speech Impairment: Problems in communication and related areas such as oral motor function, ranging from simple sound substitutions to the inability to understand or use language or use the oral-motor mechanism for functional speech.

Speech Input or Speech Recognition: A method of controlling a computer and creating text by dictation. Speech input software is combined with a microphone.

Standard HTML: Version of HTML accessible by all web browsers.

Streaming Multimedia: A method of transferring audio and/or video via a network from a server to an end user's computer. During the transmission, the material is displayed or played on the target computer.

Suitably Qualified Individual with a Disability: An individual with a disability who, with or without reasonable modification to rules, policies or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.



Switch Input: A method of controlling a computer or communication device. It is most often used with Morse code or scanning methods, but may also be used for controlling household appliances and related controls. Switches are available in a nearly endless array of sizes, shapes and activation methods.

TAG: Technical Assistance Guidelines on the Employment of People with Disabilities (Department of Labour resource).

Telecommunications Device for the Deaf (TDD) or Teletypewriter (TTY): A device which enables someone who has a speech or hearing impairment to use a telephone when communicating with someone else who has a TDD/TTY. TDDs/TTYs can be used with any telephone, and one needs only a basic typing ability to use them.

Trackball: A mouse alternative that is basically an upside-down mouse. Useful for some people with mobility impairments because it isolates pointer movement from button clicking.

Traumatic Brain Injury (TBI): Open and closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behaviour; physical functions; information processing and speech. The term does not apply to brain injuries that are congenital, degenerative, or induced by birth trauma.

Undue Hardship: The term “undue hardship” means significant difficulty or expense in, or resulting from, the provision of an accommodation.

Universal Access: Universal access means the removal of cultural, physical, social and other barriers that prevent people with disabilities from entering, using or benefiting from the various systems of society that are available to other citizens and residents. The absence of accessibility or the denial of access is the loss of opportunities to take part in the community on an equal basis with others

Universal Design: Designing programs, services, tools and facilities so that they are useable, without modification, by the widest range of users possible, taking into account a variety of abilities and disabilities.

Universal Design of Instruction: The design of instructional materials and activities that make learning achievable by students with a wide variety of abilities and disabilities.

Virtual Keyboard: Software used to emulate a keyboard. A picture of a keyboard is displayed on a computer screen and the user points and clicks on the pictures of keys to enter text.

Vision Impairments: Complete or partial loss of ability to see, caused by a variety of injuries or diseases including congenital defects. Legal blindness is defined as visual acuity of 20/200 or less in the better eye with correcting lenses, or widest diameter of visual field subtending an angular distance no greater than 20 degrees.

Word Prediction: Software that reduces the number of keystrokes needed to type words and sentences. As characters are entered on either a standard, alternative or virtual keyboard, suggested completions of the word that has been started are provided to the user.



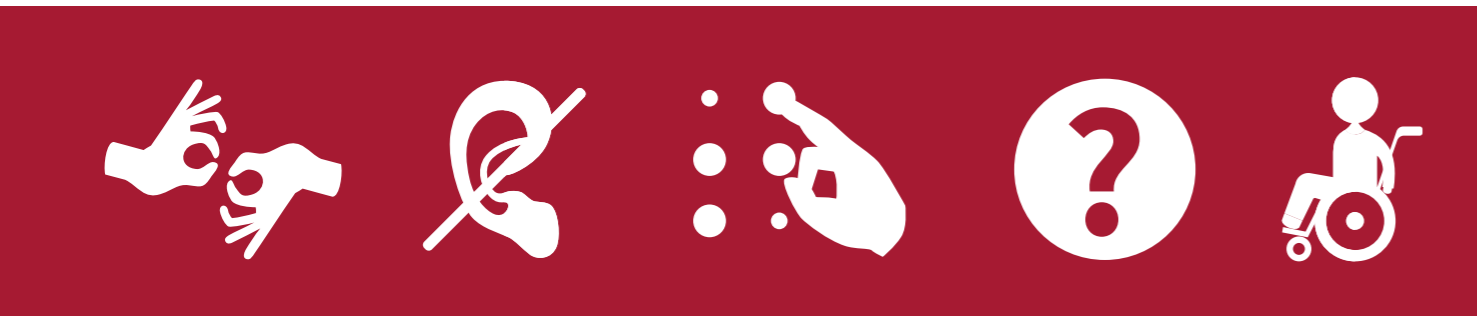
DEFINING AND UNDERSTANDING DISABILITY

Defining disability is not a simple process. Different people view disabilities from different reference points and as such, they define the concept based on their own unique perspectives and interactions. Persons with disabilities, regulators, employers, insurance companies and persons without disabilities are all likely to have a different idea of what a disability is. This is problematic as it leads to different approaches and solutions when attempting to address or act on the topic.

Many people with disabilities perceive definitions to be mechanisms that are used to exclude and marginalise them, rather than as enabling tools for positive action, development and social integration.

While we realise that “disability” is often used as an umbrella term that includes impairments, activity limitations and participation restrictions, we also know that there is a need for more clarity regarding what constitutes a disability.





The social model explained

Disability is an evolving concept.

According to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), disability is an evolving concept and *disability results from the interaction between persons with impairments and attitudinal and environmental barriers*. It recognises persons with disabilities as those persons who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.

South Africa defines disability as the loss or elimination of opportunities to take part in the life of the community, equitably with others, that is encountered by persons having physical, sensory, psychological, developmental, learning, neurological or other impairments that may be permanent, temporary or episodic in nature, thereby causing activity limitations and participation restriction with the mainstream of society. These barriers may be due to economic, physical, social, attitudinal and/or cultural factors.

Therefore, disability is the consequence of an impairment that may be physical, cognitive, mental, sensory, emotional, developmental, or some combination of these. A disability may be present from birth, or occur during a person's lifetime. This definition is referred to as the “**social model**”.

The South African Human Rights Commission endorses the UNCRPD approach, and encourages all employer groups to incorporate this application and understanding of disability into their policies and practices.

The Employment Equity Act (EE Act) provides details relating to the criteria for establishing whether a disability exists. These elements must be understood and applied in conjunction with the “social model” definition. According to the EE Act, people with disabilities are those who have a **long-term** or **recurring physical** or **mental impairment** which **substantially limits** their prospects of entry into, or advancement in, employment.

In attempting to assess whether the impairment constitutes a disability, the criteria must be evaluated. The Department of Labour's Technical Assistance Guideline (TAG) outlines three basic qualifying criteria to determine if a person has a disability – and provides guidelines to assist in the application and understanding of these criteria:

a) There must be 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”.

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 as disabilities.

b) The impairment must be long-term or recurring

Long-term means the impairment has lasted for, or is likely to persist for at least twelve months. Recurring means the impairment in one that is likely to happen again and when it does, it is substantially limiting. 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 is the case in 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 EE Act until the symptoms substantially limit the person's ability to perform their job.

c) 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 he/she 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 EE Act. Employers are encouraged to seek the assistance and advice of technical experts to determine whether a particular impairment is substantially limiting, or an applicant or employee may be able to provide information that is deemed sufficient to document this.

In applying our understanding to the criteria to determine whether there is a disability, one needs to remember that an impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. Disability is therefore not just a health problem. It is a complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which he or she lives. Overcoming the difficulties faced by people with disabilities requires interventions to remove environmental and social barriers.



Common categories of disabilities

Employers and employees need to understand the different disabilities in order to provide relevant and appropriate interventions, tools and resources. It is important to remember that the specific disability labels individuals carry are not particularly important, but that understanding employees for the value they bring, their different perspectives and unique abilities is what will help us create successful employment outcomes. Understanding the needs of people with different disabilities will assist us to create enabling work environments.

We have highlighted some of the common categories that disability and health conditions can be linked to. Not all disabilities slot neatly into these categories, and employers are encouraged to seek assistance from technical and medical experts if they need additional information and clarity.

The categories of disabilities provided here are not exhaustive, and employers are encouraged to test criteria against environmental barriers and potential barriers by using the three-pronged disability qualification test.

Employers are encouraged to review the Department of Labour’s Employment Equity Act, the Code of Good Practice on Key Aspects of Disability in the Workplace and the Technical Assistance Guidelines on the Employment of People with Disabilities (TAG) for additional information and guidance.



VISION IMPAIRMENT
Vision impairment refers to people who are blind or who have partial sight.

DEAF OR HEARING IMPAIRED
Hearing impairments can range from mild to profound. People who are hard of hearing may use a range of strategies and equipment including speech, lip-reading, writing notes, hearing aids or sign language interpreters.

MENTAL HEALTH CONDITIONS
Mental illness is a general term for a group of illnesses that affect the mind or brain. These illnesses, which include bipolar disorder, depression, schizophrenia, anxiety and personality disorders, affect the way a person thinks, feels and acts.

INTELLECTUAL DISABILITIES
A person with an intellectual disability may have significant limitations in the skills needed to live and work in the community, including difficulties with communication, self-care, social skills, safety and self-direction.

ACQUIRED BRAIN INJURIES
Acquired brain injury refers to any type of brain damage that occurs after birth. The injury may occur because of infection, disease, lack of oxygen or trauma to the head.

AUTISM SPECTRUM DISORDERS
Autism is an umbrella description which includes autistic disorders, Asperger's syndrome and atypical autism. Autism affects the way information is taken in and stored in the brain. People with autism typically have difficulties in verbal and non-verbal communication, social interactions and other activities.

PHYSICAL DISABILITIES
The common characteristic in physical disability is that some aspect of a person's physical functioning, usually either their mobility, dexterity, or stamina, is affected. People with physical disabilities are usually experts regarding their own needs, and will understand the impact of their disability.

PROGRESSIVE CHRONIC CONDITIONS
A progressive disorder is a disease or health condition that gets worse over time, resulting in a general decline in health or function. The term progressive disorder is often used to distinguish a condition from a relapsing and recurring disorder. In a relapsing and recurring disorder there are often periods of relief, when the disease is stable for a while or is in remission. In contrast, a progressive disorder does not have these breaks. Depending on the diagnosis, a progressive disorder may move quickly or very slowly.



Disability exclusions

The first category of exclusions relates to impairments that are easily controlled, corrected or reduced, so 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 whether 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 referred to as 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 states 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.

Using correct disability terminology and language

“Language reflects the social context in which it is developed and used. It therefore reflects the values and attitudes of that context, and plays an important role in reinforcing values and attitudes that lead to discrimination and segregation of particular groups in society.”

Language can therefore be used as a powerful tool to facilitate change and bring about new values, attitudes and social integration. In recent years, persons with disabilities have claimed individual and collective rights and sought to change their circumstances, in part, by changing the words used to describe them. Negative words and stereotypes act as barriers to understanding the reality of disability. Misguided language and many prevailing attitudes promote outdated beliefs that persons with disabilities are suffering, sick, disadvantaged, needy and, in general, not like 'us', and have juxtaposed persons with disabilities with those who are 'able-bodied'.



Article 8 of the UNCRPD obliges States Parties to adopt immediate, effective and appropriate measures that will foster respect for the rights and dignity of persons with disabilities, measures that will combat stereotypes, prejudices and harmful practices relating to persons with disabilities.

The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, outlaws hate speech on, among others, the basis of disability. Section 10 of this Act, dealing with prohibition of hate speech, states that it is prohibited to publish, propagate, advocate or communicate words against any person that could reasonably be construed to demonstrate a clear intention to be hurtful, be harmful or to incite harm, or to promote or propagate hatred” (White Paper on the Rights of Persons with Disabilities, 2016).

People with disabilities want respect and not pity, and they want the language used about them to reflect this respect, equality and fairness.



Simple, direct terms are accepted by people with disabilities. When describing people, it is not important to talk about the disability unless one is directly discussing disability related issues. Otherwise, people are described in the same manner as any other individual is described, whether they have a disability or not.

Mistakes we often make about people with disabilities

People that use wheelchairs are not bound to them any more than people without disabilities are bound to their clothes or transport. Some wheelchair users can walk for short periods or stand to transfer to a car, bed or chair. People with epilepsy are not epileptics. Epilepsy is not their most defining feature. People with seizure disorders have seizures, not attacks or fits. People with communication barriers are not automatically less intelligent and unable to comprehend language simply because they cannot speak clearly.

As people with disabilities are not generally ashamed of their disabilities, others need not feel uncomfortable living and working with them, or talking about disabilities in their presence if such discussion is warranted.



DO'S AND DON'TS WHEN REFERRING

TO PEOPLE WITH DISABILITIES



- People with disabilities, the disability community.
- Has a disability, is a person with a disability.
- People without disabilities, able-bodied, person who is able to walk, person who can see, etc.
- Person who is blind, person who is deaf or hard of hearing.
- Person who uses a wheelchair, wheelchair user.
- Accessible parking, parking for people with disabilities.
- Person who cannot speak, has difficulty speaking, uses synthetic speech, is non-vocal, non-verbal.
- Person with a speech impairment, who has a speech disability, speech disorder, or communication disability.
- Person with cerebral palsy.
- Person with a disability, walks with a cane, uses leg braces.
- Person with epilepsy, person with seizure disorder.
- Seizure, epileptic episode or event.
- People with emotional disorders, mental illness, mental health disability, psychiatric disability.
- Person with a developmental disability, person with mental retardation, person with a developmental delay, person with Down syndrome or person who is brain injured, has traumatic brain injury, is brain damaged, with a closed head injury.
- Short stature, little person.
- Person with spinal cord injury, man with paraplegia, woman who is paralysed.
- Congenital disability, birth anomaly.
- Has had polio, experienced polio.
- Stay-at-home, hard for the person to get out.
- Person with Alzheimer's disease, person who has dementia.

- The disabled, the handicapped.
- Crippled, suffers from, afflicted with, stricken with, victim of, invalid.
- Normal person, healthy, whole.
- The blind, the deaf person.
- Wheelchair bound, confined or restricted to a wheelchair.
- Handicap parking.
- Dumb, mute.
- Stutterer, tongue-tied.
- CP victim, spastic.
- Crippled, lame, deformed.
- Epileptic.
- Fit, attack.
- Crazy, maniac, lunatic, insane, nuts, deranged, psycho, demented.
- Retard, mentally defective, moron, idiot, slow, imbecile, feeble-minded, Down's person, mongoloid.
- Dwarf, midget.
- Paraplegic, quadriplegic.
- Birth defect.
- A post-polio, suffered from polio.
- Homebound.
- Senile, demented.



Disability etiquette

Communicating with a person with a disability can seem daunting to many. Some people are concerned that they will embarrass themselves or the person with a disability by saying or doing the wrong things. Though these concerns usually come from a good place, they are entirely unnecessary. The most important thing to remember is to treat each person with respect.



Some basic tips

- Avoid asking personal questions about someone’s disability.
- Be considerate of the extra time it might take for a person to do or say something.
- Be polite and patient when offering assistance, and wait until your offer is accepted.
- Listen or ask for specific instructions. Be prepared for your offer to be refused.
- Relax. Anyone can make mistakes. Offer an apology if you feel you have caused embarrassment.
- Keep a sense of humour – most people with disabilities do – and are willing to communicate.

When speaking or writing

Refer to a person’s disability only when necessary and appropriate. Refer to the individual first, then to their disability (for example, “person with a disability”, rather than “disabled person”).

The following terms should be avoided because they can have negative meanings and associations:

- invalid
- able-bodied
- wheelchair-bound
- victim
- crippled
- defect
- suffers from
- handicap
- a patient.

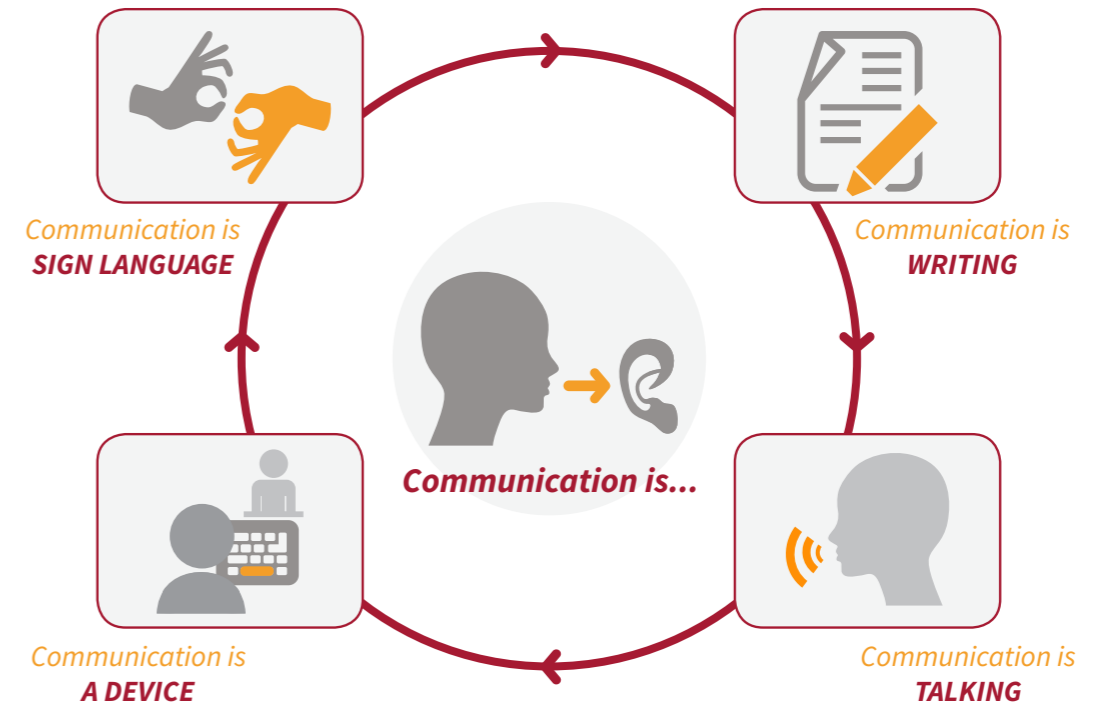
One should also avoid terms that imply that people with a disability are overly courageous, brave or special, and making references to people with disabilities as being “inspirational”.

Instead take note of the following recommended approaches:

- Use a normal tone of voice when welcoming a person with a disability. Do not raise your voice unless you are asked to.
- Shake hands even if the person has limited hand use or wears an artificial limb. A left-hand shake is acceptable. If the person cannot shake hands, acknowledge them with a smile and a spoken greeting.
- When planning a meeting or other event, think about specific accommodations a person with a disability might need. If a barrier cannot be avoided, let the person know ahead of time.
- Look and speak directly to the person with a disability, not just to the people accompanying them, including interpreters.
- Do not patronise or talk down to people with a disability. Treat people with respect and dignity.
- Be patient and give your undivided attention, especially with someone who speaks slowly or with great effort.
- Never pretend to understand what a person is saying if you do not. Ask the person to repeat or rephrase, or offer them a pen and paper.
- If requested to by the individual, offer a person who is blind or has low vision your elbow or shoulder, to guide, rather than propel them.
- It is okay to use common expressions like “see you soon” or “I’d better be running along”.

Communicating with persons with disabilities

Example of visuals



Often employers and employees without disabilities lack confidence when communicating with people with disabilities. People may feel uncomfortable. They may be concerned with not being politically correct or using the right terminology. The motto of the South African Human Rights Commission is “nothing about us, without us” and persons with disabilities are eager to clarify matters or advise on how they would like to be addressed or treated.

When communicating with people with disabilities, one should speak in the same way as one would speak to someone without a disability – using respectful language. Addressing the individual by name can go a long way to making him or her feel welcome and accepted.

The motto of the South African Human Rights Commission is “nothing about us, without us”.

One key point to remember when addressing individuals with disabilities is that the person being addressed is the individual and not his or her disability. If unsure of what word usage is appropriate, it is perfectly acceptable and advisable to ask.





2

KEY CONSTITUTIONAL PROVISIONS & LEGISLATION

Employees with disabilities are protected under the following legal provisions:

- *The Constitution of the Republic of South Africa (1996)*
- *The United Nations Convention on the Rights of Persons with Disabilities (Article 27)*
- *The Employment Equity Act 55 of 1998*
- *The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000*
- *The Labour Relations Act 66 of 1995*
- *Relevant Codes of Good Practice issued by the Department of Labour*
- *The Occupational Health and Safety Act 85 of 1993*
- *The National Building Regulations Part S*

The SAHRC’s initial Toolkit, Promoting the Right to Work of Persons with disabilities provides details relating to these legislative provisions. Employers and employees are encouraged to refer to this resource aid for more information.

DISABILITY LEGISLATION

There are comprehensive local and international laws and instruments to protect the human rights of people with disabilities. The most relevant legislation that protects the rights of employees with disabilities in South Africa is the **Employment Equity Act**. Borne out of the values enshrined in South Africa’s **Constitution**, the EE Act provides for the promotion of equal opportunities and fair treatment to all in the workplace – through the elimination of unfair discrimination – and to implement affirmative action measures to redress the disadvantages in employment experienced by designated groups. Persons with disabilities are included in the definition of designated groups. The Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 (PEPUDA) affords protection to individuals, companies, organisations and government departments from discrimination on the grounds of disability. Denying a person with a disability access to jobs, education and facilities because of their disability is considered to be discrimination. Not ensuring that people with disabilities have access to buildings is also considered to be a form of discrimination.

While the EE Act sets out steps and measures employers need to follow to improve equity outcomes for previously disadvantaged groups, South Africa also has **Broad-Based Black Economic Empowerment (B-BBEE)** legislation that takes priority in business. B-BBEE is intended to stimulate the process of participation of previously disadvantaged groups in the economy to lead to increased economic growth. Employers pay careful attention to B-BBEE in order to maximise their B-BBEE scores. Employers who hire and train South African Black people with disabilities can generate points on the Scorecard, and a positive B-BBEE score opens doors for business opportunities. Under both the EE Act and the B-BBEE Codes of Good Practice, designated groups are intended to be first-line beneficiaries of progressive plans and affirmative action measures.

This section provides details relative to the duties and responsibilities of South Africa’s designated employers as they relate to the EE Act and outlines the elements of the Broad-Based Black Economic Empowerment Codes (2015) that are linked to disability.





The Employment Equity Act

The EE Act is the main law that provides for equal rights and opportunities, fair treatment and freedom from discrimination in South Africa's workplaces. The EE Act recognises the dignity and worth of every person and gives effect to one's constitutional rights.

The EE Act has endorsed the Social Model of disability and considers external barriers in its definition of disability.

The EE Act requires employers to ensure that their work environments are free from discrimination in any form and that people with disabilities - as designated groups, are first-line beneficiaries of affirmative action measures and other progressive plans. The EE Act further provides that employers must analyse their workplace cultures, identify barriers in policies and practices and they must conduct an analysis of their workforce profiles. People with disabilities must be taken into account in the full application and implementation of the EE Act.

People with disabilities are a diverse group, and experience disability, impairment and societal barriers in many different ways.

In employment, people with disabilities are entitled to the same opportunities and benefits as everyone else. The EE Act prohibits discrimination based on the individual's disability. This means that a person with a disability must, for example, enjoy equal access, opportunities and fair treatment as these relates to job applications, recruitment, training, transfers, promotions, succession planning, dismissal, retrenchments, terminations and in situations where an employee returns to work after a disability-related absence. It covers remuneration, overtime, hours of work, holidays, benefits, shift work, discipline and performance evaluations.

People with disabilities are a diverse group, and experience disability, impairment and societal barriers in many different ways. Disabilities are often "invisible" and episodic, with people sometimes experiencing periods of wellness and periods of disability. All people with disabilities have the same rights to equal opportunities under the EE Act, whether their disabilities are visible or not.

In addition to the EE Act, the Department of Labour has developed two very practical and useful resource aids to assist employers and employees to understand, include and manage disabilities in the workplace; these are:

- » The Technical Assistance Guideline Document (TAG)
- » The Code of Good Practice on the Employment of Persons with Disabilities in the Workplace.

Duties of a designated employer (EE Act)

Conducting the EE analysis

One of the main duties of an employer under the EE Act is to conduct an analysis of policies, practices, procedures, profiles, environment and culture – so as to identify barriers and potential barriers that prevent the attainment of the EE Act's objectives and those that restricts the entry, development and advancement of previously disadvantaged groups in South Africa's workplaces.

Developing and implementing sustainable EE plans

A second important duty of designated employers is to use the results of the analysis to develop realistic employment equity plans that are workplace specific and capable of measurement. EE Plans must include previously disadvantaged designated groups (this includes people with disabilities) as beneficiaries to the measures and opportunities outlined in the strategy and action plans.

Consultation with employees

Consultation with employees is another important duty of a designated employer. Employers required to consult and reach consensus with a workplace forum before implementing any proposal concerning measures designed to protect and advance persons disadvantaged by unfair discrimination (EE Act and Labour Relations Act). Consultative forums must be established for this purpose. The forum should include employee representatives reflecting the interests of employees from both designated and non-designated groups and across all occupational categories and levels of the workforce. People with disabilities need to be included in this consultation process and should occupy seats on the employment equity forum.

Substantive and procedural compliance

Compliance to the EE Act requires employers to follow several procedural requirements. Employers are also required to comply with the substantive requirements of the EE Act. This means that while procedures must be followed, meaningful results must also be achieved. Both substantive and procedural compliance to the EE Act must address the following opportunity areas:

- » Persons with disabilities must be adequately represented on the EE Forum and be involved in the consultation processes
- » Hiring, advancing and retaining persons with disabilities
- » Creating Inclusive workplace cultures for persons with disabilities
- » Introducing flexible work arrangements and technological advancements to assist people with disabilities
- » Setting and achieving numerical targets for the employment of persons with disabilities
- » Introducing affirmative action measures for people with disabilities.

Future plans include the introduction of measures to monitor disability progress and to work with the Department of Labour to enhance existing monitoring mechanisms.





The B-BBEE Scorecard

The definition of “designated” groups under the B-BBEE Scorecard differs from the definition of “designated” groups under the EE Act. Under B-BBEE, only Black people (African, Indian and Coloured) are categorised as beneficiaries. The EE Act considers all people with disabilities to be previously disadvantaged and they are categorised as designated groups. *Points on the B-BBEE Scorecard are only awarded for Black people with disabilities and not all people with disabilities.*

Under the Generic Scorecard, there are five elements that companies can be measured on. These are Ownership, Management Control (including Employment Equity), Skills Development, Enterprise & Supplier Development, and Socio-Economic Development. Under the Management Control and Skills Development elements, organisations can attract up to six points for these two elements for affording opportunities to persons with disabilities.

B-BBEE ELEMENTS



In order for the measured B-BBEE entity to qualify for these points, evidence from a medical practitioner, confirming the disability must be provided.



THE RIGHTS OF EMPLOYEES WITH DISABILITIES

Employees’ rights and protection

The Constitution and the Employment Equity Act protect employees from unfair discrimination and harassment. Section 6 of the EE Act provides that, “No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, **disability**, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground.”

- **Employees with disabilities have the right to equal protection and benefit of the law**
- **Employees have the right to a safe and non-discriminatory workplace**
- **Employees with disabilities have the right to recourse and redress in the event that their rights are violated**
- **Employees have the right to non-disclosure of their disability status**
- **Employees with disabilities have the right to enjoy the same opportunities and benefits as people without disabilities**
- **Employees with disabilities have the right to be treated fairly and with respect**
- **Employees have the right to reasonable accommodation**
- **Employees with disabilities have the right to be included in decisions that affect them.**





Employees with disabilities who have the inherent skills and qualification to do the job are protected from unfair discrimination on the basis of their disability. An employer cannot ask an employee if he or she has a disability or about the nature or severity of the disability.

An employer can ask if the employee is able to perform the duties of the job with or without reasonable accommodation. An employer can also ask the employee to describe or to demonstrate how, with or without reasonable accommodation, they will perform the requirements of the job.

An employer cannot request an employee to take a medical examination before they are offered a job. Following a job offer, an employer can base the offer of employment on the satisfactory result of a medical examination, but only if this requirement is applied to all staff.

An employer may not reject a candidate because of information about their disability that may be revealed by the medical examination, unless the reasons for rejection are job-related and necessary for the conduct of the employer's business.

The employer cannot refuse to hire an employee because of their disability if they can perform the essential functions of the job with an accommodation.

Once an employee has been hired, the employer cannot require the employee to take a medical examination or ask questions about their disability unless these are related to the job and necessary for the conduct of the employer's business.

The employer may conduct voluntary medical examinations that are part of an employee health programme, and may provide medical information required by the Department of Labour or B-BBEE Regulations subject to disclosure laws that protect the employee. The results of all medical examinations must be kept confidential, and maintained in separate medical files by the employer.

Disclosing one's disability status

During an interview an employer may ask questions about the health or disability status of the employee. These questions are designed to determine the suitability of the candidate for the job. This may include assessing one's ability to work overtime, carry heavy objects or to travel. The employee may be asked if they have any physical or mental disabilities that affect their ability to do the job. The employer's questions must focus on the job function. The employer does not have the right to ask about a diagnosis or to ask about treatment. Questions must relate to the ability to perform the requirements of the job.

Employees are not required to tell a potential employer about a disability or health condition, if the employee can do the work required without accommodation, and if the disability will not pose a danger at work for the employee or other employees. Medical reports may be required, for which the employer will need to bear the costs. For example, a learning disability, such as dyslexia, could affect an applicant's ability to do the job if reading is an important part of the job. In this case, the disability should be disclosed. However, an applicant with epilepsy would not be compelled to disclose his or her disability, as it would not affect the candidate's ability to read.



If the employee will need accommodation to perform any of the duties in the job description, the employee has the responsibility to disclose this to the employer. The employer has the responsibility to maintain confidentiality about an employee's disability and any accommodation requirements.

If an employee develops a disability during employment, the employer is legally entitled to ask questions about functional limitations caused by the disability as well as the prognosis.

Employees are entitled to reasonable accommodation.

The right to reasonable accommodations

It is the responsibility of the employer to provide reasonable accommodations for persons with disabilities. There are no official request forms that exist under the EE Act, but some employers prefer formal documentation of requests for reasonable accommodation. Employers and employees should engage at least in initial open and informal discussions about the nature of the accommodations requested and how to best incorporate them into the workplace.

It is the responsibility of the employer to provide reasonable accommodations for persons with disabilities.

Examples of accommodations for employees with disabilities include the following:

- » Lowering a desktop height for a wheelchair user
- » Providing special chairs, desks, technology, devices, computer programmes, etc.
- » Providing special telephone equipment for a hearing-impaired worker
- » Allowing a guide dog into the workspace for a blind worker
- » Modified and flexible work schedule for a worker with mobility challenges
- » Allowing a person to change his/her place, time and hours of work
- » Providing a person with a disability the opportunity for redeployment
- » Providing persons with disabilities with accessible parking spaces.

The provision of reasonable accommodation in the workplace is a responsibility of the employer. The employer is obligated to adjust or modify the workplace or position, as best as the employer is able to. In the interest of all parties in the process, there is also the responsibility on the part of the person with the disability to co-operate and work with the employer during the accommodation process (See Section 4: Reasonable Accommodation).

The right to safety at work

Health and safety precautions are important in any workplace, but they become even more crucial when employees with disabilities are involved.



Employers need to ensure that their workplaces are legally compliant in terms of safety and occupational health requirements (Refer to Section 5: Assessing Accessibility).



Occupational health and safety regulations

The Occupational Health and Safety Act aims to provide for the health and safety of persons at work and for the health and safety of persons in connection with the activities of persons at work. Complying with safety standards can be a challenge for employers that hire people with disabilities. People with vision impairments, for example, may find it more difficult to avoid potential hazards that do not produce a sound or smell, while those with mental disabilities may find it harder to use their judgment to avoid dangerous situations in the workplace. Employees are entitled to a safe working environment and employers are required to ensure the safety of all employees, including those with disabilities.

Emergency procedures

Employer emergency evacuation plans must always include accommodations and special measures as may be required for employees with disabilities. To prepare for emergencies, employers should ask new employees about any limitations they may have that need to be taken into account in the event of emergency evacuation procedures.

Emergency evacuation accommodation measures for employees with disabilities may include the following:

Employer emergency evacuation plans must always include accommodations and special measures as may be required for employees with disabilities.




Well-marked emergency route signs and alarms in good working condition




A buddy system among co-workers to assist one another to safety



Operating phones with two-way radios to contact emergency services



Strobe lights and vibrating alert devices




Proper drills and training of evacuation procedures



Fire safety training



Evacuation devices to move people with motor impairments down stairs



Removal of furniture, supplies and other obstacles from exit routes



RESOURCES AND MORE INFORMATION

The Employment Equity Act, the Technical Assistance Guidelines on the Employment of People with Disabilities and the Code of Good Practice on Key Aspects of Disability in the Workplace provide detailed information that further highlights the rights of persons with disabilities. Employees are encouraged to become familiar with these resources.



Disability related disputes: lodging a complaint

For employees who think they are being discriminated against on the basis of their disability, it is recommended, where this is possible, and the employee does not feel that he/she is risking further victimisation, that the employee follows the organisation's internal dispute or grievance procedures. All Employment Equity Plans have internal dispute resolution mechanisms documented. In the event that the employee fears further discrimination or retribution for complaining, employees can contact the South African Human Rights Commission.



The mandate of the SAHRC is to promote, protect and monitor the rights of persons with disabilities. The Commission remains dedicated to addressing human rights violations and seeking effective redress.



An online claim lodging tool is accessible via the SAHRC's website:

www.sahrc.org.za



The SAHRC can also be contacted on:

+27 11 877 3600

The complaint can be completed by the individual or by someone acting on behalf of the individual.

Lodge your disability human rights complaints with the SAHRC

www.sahrc.org.za



REASONABLE ACCOMMODATION

The Employment Equity Act 55 of 1998 requires employers to provide "reasonable accommodation" for individuals with disabilities, unless such accommodation causes undue hardship to the employer.



A reasonable accommodation is any change or adjustment in the work environment or in the way a job is performed, that enables a person with a disability to enjoy equal employment opportunities. It refers to the provision of conditions, equipment and environments that enable individuals with disabilities to effectively perform their duties. Examples of reasonable accommodation include work station adaptations, the provision of assisted devices, changes to work hours, flexible work arrangements, sensitising employees so as to improve attitudes, and time off from work for medical care.

Employers often have questions and concerns about their obligations, especially as this relates to what "reasonable" means and what implications, financial and other, this may have on the organisation. It is important for employers to understand some practical considerations in dealing with employees who have disabilities, the rights of the disabled employee and the employer's legal obligations relating to the provision of reasonable accommodation.



Practical considerations

Courts and human rights custodians have agreed that the duty to accommodate persons with disabilities means that accommodation must be provided in a manner that respects the dignity of the person. The accommodation at the same time must not create undue hardship for the employer. “Undue hardship” must be considered on a case-by-case basis and should take into account factors such as financial implications, the size of the employer’s operations, risks to health and safety of the employee, other employees and customers if applicable, staff morale, including that of other employees, and the impact of a co-worker’s accommodation measures on other employees’ rights.

The duty to accommodate is about removing barriers related to the prohibited grounds of discrimination as outlined in the Employment Equity Act.

There is no set formula for deciding what constitutes undue hardship. Employers however, are required to make serious, conscientious and genuine best efforts to understand and intervene on each case. Employers should also document their efforts, and include input from the employee and employee representative, where this is applicable. It is not sufficient to offer assumptions or impressions about what is, or is not possible. For example, simply declaring that the cost is too high or that there is an unreasonable risk to health and safety does not constitute undue hardship. To prove undue hardship, employers must provide substantial evidence and document it.

Limitations on the duty to accommodate



Accommodation requires a balance between the rights of an employee or potential employee and the right of an employer to operate a productive workplace.

While accommodation does not need to be perfect, it must be “reasonable”. The duty to accommodate is therefore not limitless and employers are NOT required to:

- » Accommodate where this will result in undue hardship to the employer (e.g. health, safety, cost, etc.).
- » Create a job that is not required.
- » Retain an employee who is unable to meet his or her employment responsibilities despite accommodation, for example, employers are not required to tolerate substandard performance or unpredictable attendance. (Once employees are accommodated, they are expected to deliver on the requirements of their tasks). It is important to ensure that employees understand performance expectations. Accommodation aims to enable employees to achieve employment and performance standards and these must be communicated to employees.
- » Hire a candidate who, after being accommodated during the selection process, does not meet the essential qualifications required for the position.
- » Accommodate an employee’s persistent absenteeism if such is unrelated to the disability. Such practices require management intervention and must be resolved through communication and mechanisms such as the regular performance management and disciplinary processes.

Employee responsibilities

Accommodation can be different for each person, as such, employees have the responsibility to inform the employer of their needs. Successful accommodation requires the collaboration of multiple parties, including the employee, the employer, employee representatives, co-workers and wellness specialists as may be applicable in each organisation.

Employees are expected to:

- **Inform their employers of their disability and the need for accommodation. They should not assume that the manager knows or should have known about their disability.**
- **Disclose their disability status (usually using the Department of Labour’s EEA1 form).**
- **Work with the employer by providing relevant and appropriate information to support the request for accommodation.**
- **Ensure that health assessments, if necessary, are done. (The employer is not entitled to provide accommodation if sufficient details about the disability are not provided. However, the employer does bear the responsibility to cover the costs of the required assessments).**
- **Work with their employer to find appropriate accommodation solutions.**
- **Be considerate to the current situation and realities of their employer and consider what the employer is proposing. A reasonable accommodation proposed by an employer may not be the employee’s preferred option, however, a rejection of reasonable accommodation efforts could be a deciding factor in determining whether the employer has met the legal responsibilities. For example, an employee may ask for another job as a result of an illness, but the employer may instead suggest modifying the employee’s duties. In this case, the employer may have met the duty to accommodate.**
- **Advise the employer if accommodation measures need to be changed or if the agreed-upon solution has not worked as it was intended, and explore ways to modify the arrangements (accommodation is not always a one-time provision; changes in employee needs or the job itself can trigger the need for new solutions).**
- **Join and talk to members of the Employment Equity Committee to ensure that disability remains on the organisation’s transformation agenda.**





Access to technology resources

In nearly every industry and work environment, technology is reshaping the way businesses are conducted. People with disabilities need proper access to technology to enable them to do their jobs, stay connected and informed and to advance their careers. Not only is technology needed in the normal course of business, it can also put employees of different physical and mental abilities on a more level playing field and is now gaining acceptance as a popular and effective reasonable accommodation measure.

Assistive technologies can be used to modify the workplace to adapt to the needs of individuals with disabilities. Whether employees have visual or hearing impairments, mobility limitations, learning disabilities, neurological disorders, or other types of disabilities, technological advancements are making it easier for employers to provide accommodation and for employees to obtain tools and support.

Examples of assistive technology innovations may include:

- **Non-skid mat to stabilise work materials**
- **Computer keyboard key guard to improve typing accuracy**
- **Stapler mounted onto a base to enable stapling with one hand**
- **Audio players and recorders**
- **Voice recognition programs**
- **Automatic page turners**
- **Ramps and grab bars.**



Adaptations for the visually impaired

- **Talking calculators**
- **Magnifying devices**
- **Personal electronic navigation aids**
- **Braille note taker**
- **Text-to-speech screen readers.**

Adaptations for the hearing impaired

- Employees who suffer from serious hearing problems have many options available to them to make the workplace a more comfortable and efficient environment. Examples of hearing assistance technology include the following:**
- **Assistive listening devices**
 - **Text TTY telephones**
 - **Strobe light smoke detectors**
 - **Vibrating pagers**
 - **Open and closed captioning.**

Adaptations for wheelchair users

- Mobility issues can create challenges for employees who could be otherwise fully functional and productive at work. Adaptive devices for wheelchair users include:**
- **Battery-powered scooters**
 - **Accessible ramps**
 - **Swivel seat cushions**
 - **Tables with adjustable heights**
 - **Incline platform lifts.**



ASSESSING ACCESSIBILITY

As the number of people with disabilities entering our workplaces increase, the accessibility of our buildings, facilities and physical spaces increases in importance. The goal is simply equal access; everyone who visits the organisation should be able to do so comfortably and efficiently.

A “disability friendly” and inclusive workplace is a workplace that allows all people to access its spaces without encountering barriers to access and mobility.



While a major focus of access deals with the physical environment such as doorways, wheelchair ramps, braille signage and accessible toilets, progress in the digital and technology space with regards to information and learning opportunities now requires employers to give consideration to digital accessibility and whether this is accessible to all, and compatible with assistive devices. Employers need to ensure that doors to the organisation, whether literally or virtually, remain open.



Universal design



“Universal Design refers to the design and composition of an environment so that it can be accessed, understood and used to the greatest extent possible by all people, regardless of their age, size, ability or disability” (Global Disability Act, 2005). South African building regulations have adopted the principles of universal design.

Legal issues

The South African National Building Regulations require that buildings and facilities comply with acceptable safety and accessibility standards.

Part S of the South African National Building Regulations (Facilities for Persons with Disabilities) requires that buildings and facilities that are designed, constructed, or altered comply with acceptable safety and accessibility standards.

The regulations provide that persons with disabilities shall be able to safely enter the building, make use of the facilities within it and exit the building. Suitable access for use by persons with disabilities, from the main and ancillary approaches of the building to the ground storey, via the main entrance, and any secondary entrance must be available.

The provision of space, safe landing, assistance and support such as hand rails, floor surfaces and counter heights are aspects that must be given consideration. Emergency exits and evacuation procedures must be user friendly and enabled for persons with disabilities.

The Occupation Health and Safety Act provides for the health and safety of persons at work and for the health and safety of persons in connection with the use of facilities, plant and machinery, and the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work. Employers therefore have a duty to ensure that their workplaces are safe, easily accessible and conducive to people with disabilities gaining reasonable access and conducting employment duties.

In addition to legal risks, an inaccessible environment can present a barrier for people with disabilities in everyday life. Typical problems can include entering buildings, using stairs and opening doors. People with sensory impairments can also have difficulties hearing public announcements or reading signs. Accessible buildings and facilities enable equal use for all. Accessibility allows dignified and non-discriminatory entry and use of buildings, facilities and services.

Conducting an access audit

A disability access audit is a useful means of assessing the current state of accessibility and usability of buildings by people with disabilities. Buildings that have been designed or adapted to meet the access needs of people with different impairments are likely to be more flexible and make it easier for employers and service providers to fulfil their duties.

The purpose of an access audit is to establish how well a particular building performs in terms of access and ease of use by a wide range of potential users, including people with mobility and sensory impairments. The audit gives a snapshot of a building at any point in time and allows for the identification of gaps and risks. In addition to the sample checklist below, the SAHRC also recommends that employers refer to the South African National Building Regulations Standards for more specific details and measurements relating to the physical work and access environments as they relate to people with disabilities.

A disability access checklist guide

Question no.	Details	Yes	No
EXTERIOR			
1.	Are there designated parking bays for people with disabilities?		
2.	Do the parking bays comply with the standard size and layout?		
3.	Is the designated parking not more than 50m from the main entrance to the building?		
4.	Is the car park well lit?		
5.	Is there a bus stop in the vicinity (within 50m)?		
6.	Is the route to the main entrance clearly signed?		
7.	Is the route suitable for wheelchair users?		
8.	Are there dropped kerbs where necessary?		
9.	Is this route suitably lit?		
ENTRANCE			
10.	Is the main entrance level, stepped?		
11.	If stepped are there handrails on both sides?		
12.	Is there a tactile warning strip at the top?		
13.	Is the rise of the steps 170mm or less?		
14.	Is the height of each flight of stairs less than 1 530mm?		
15.	Is there a ramp alongside the steps?		
16.	Is the gradient of the ramp steeper than 1:12?		
17.	Is the length of the wheelchair ramp long enough for a safe landing?		
18.	Is there a level platform at the top of the ramp?		
19.	Does at least one lane give a minimum clear opening width of 800mm?		
ENTRANCES and DOORWAYS			
20.	Is the door furniture at a reasonable height (1 400mm from ground level)?		
21.	Is the door colour contrasted from the frame?		
22.	If there is a doorbell or entry system, is it at a reasonable height (1 200mm from ground level)?		
23.	Is the entrance mat of firm texture and flush with the floor?		
24.	Is there a vision panel at wheelchair level?		



Question no.	Details	Yes	No
RECEPTION AREA			
25.	Is at least part of the reception desk at a wheelchair accessible height?	<input type="checkbox"/>	<input type="checkbox"/>
26.	Is there a hearing induction loop or other amplifying device fitted in reception?	<input type="checkbox"/>	<input type="checkbox"/>
27.	Is there any seating in the waiting area?	<input type="checkbox"/>	<input type="checkbox"/>
28.	If there are seats, is there a mix of seats with arms and seats without arms?	<input type="checkbox"/>	<input type="checkbox"/>
29.	Is there space for a wheelchair user to wait?	<input type="checkbox"/>	<input type="checkbox"/>
30.	Is the entire ground floor accessible?	<input type="checkbox"/>	<input type="checkbox"/>
LIFTS & STAIRCASES			
31.	Is there a lift in the building?	<input type="checkbox"/>	<input type="checkbox"/>
32.	If there is a passenger lift, does it comply with lift regulations?	<input type="checkbox"/>	<input type="checkbox"/>
33.	Is the staircase suitable for ambulant disabled people?	<input type="checkbox"/>	<input type="checkbox"/>
34.	Are the nosing (front of stair step) of each step colour contrasted?	<input type="checkbox"/>	<input type="checkbox"/>
35.	Are there any intermediate landings?	<input type="checkbox"/>	<input type="checkbox"/>
36.	Are the handrails continuous on both sides?	<input type="checkbox"/>	<input type="checkbox"/>
37.	Do the handrails extend 300mm past the top and bottom steps?	<input type="checkbox"/>	<input type="checkbox"/>
DOORS & INTERNAL INFRASTRUCTURE			
38.	Do all internal doors give a minimum clear opening width of 750mm?	<input type="checkbox"/>	<input type="checkbox"/>
39.	Is the door furniture at a reasonable height?	<input type="checkbox"/>	<input type="checkbox"/>
40.	Is there a vision panel at a wheelchair height?	<input type="checkbox"/>	<input type="checkbox"/>
41.	Are there any internal ramps in the building?	<input type="checkbox"/>	<input type="checkbox"/>
42.	Do the gradients of the internal ramps comply with safety standards?	<input type="checkbox"/>	<input type="checkbox"/>
43.	Are there handrails on the ramps?	<input type="checkbox"/>	<input type="checkbox"/>
44.	Is the main hall fitted with a hearing induction loop?	<input type="checkbox"/>	<input type="checkbox"/>
45.	If kitchen or canteen facilities are available are they at a wheelchair accessible height?	<input type="checkbox"/>	<input type="checkbox"/>
TOILETS			
46.	Is there a wheelchair accessible toilet cubicle?	<input type="checkbox"/>	<input type="checkbox"/>
47.	Does the toilet cubicle comply with the minimum dimensions of 2000mm x1 500mm	<input type="checkbox"/>	<input type="checkbox"/>
48.	Are the grab-rails colour contrasted from the background?	<input type="checkbox"/>	<input type="checkbox"/>
49.	Are the hand washing and drying facilities within easy reach of anyone sitting on the toilet?	<input type="checkbox"/>	<input type="checkbox"/>
50.	Is there an emergency pull-cord in the bathroom that reaches down to the floor?	<input type="checkbox"/>	<input type="checkbox"/>

Every effort should be made to provide accessible facilities in as many buildings as possible, notwithstanding the fact that it might not always be a requirement of the National Building Regulations. The potential to adapt buildings after construction might be prohibitive in terms of cost, and therefore any decision made to include an inaccessible area of a site or building or facility at the design stage, when such works are possible, should not be taken lightly. One must be reminded that all facilities, if designed correctly, can also provide safe, comfortable and convenient use to persons with and without disabilities.

6

CREATING EMPLOYMENT OPPORTUNITIES AND INCLUSIVE CULTURES FOR PEOPLE WITH DISABILITIES

The SAHCR's Disability Toolkit (2017, revised) outlines a strong business case for creating accessible and inclusive work environments for employees with disabilities. Readers are encouraged to review the material in this publication.

The full inclusion of people with disabilities in South Africa's workplaces will open doors to their full participation in the economy not just as employees, but also as customers and entrepreneurs. Many employers, employees and even people with disabilities do not understand what it means to be inclusive.

This chapter provides details relating to inclusion and outlines the importance of creating inclusive cultures. We also examine practices relating to the "how" in creating these inclusive workplaces.



What is an inclusive workplace for employees with disabilities?



In an inclusive workplace, employees and customers are treated in a manner that upholds their dignity and rights. There is respect. All people are treated fairly and equally and the organisation is vocal and visible about their diversity and inclusion vision and expectations.

Inclusive workplaces make sure that people with disabilities are included in decisions about them; they are included in policy decisions, have seats on the organisation's employment equity committees and they are consulted when decisions affecting them are being made.

Leadership commitment and progressive practices

Commitment at all levels of an organisation is an important requirement to creating and maintaining workplaces that are diverse and inclusive. Establishing an inclusive business culture begins with leadership at the highest levels, including executives, leadership teams, management teams and supervisors. Human resource staff and those involved in hiring decisions need to understand the roles they play in facilitating an inclusive environment. Finally, communicating the organisation's goal of an inclusive and diverse workplace to employees at all levels of the organisation and indicating what employees can do to help are also extremely important in ensuring that inclusive cultures are promoted and maintained.

Many progressive companies make visible and formal statements about their commitment and intent relating to the recruitment, hiring, retention, and advancement of suitably qualified individuals with disabilities. These companies also attribute their successful disability outcomes to some of the following people practices:

- » They develop and communicate a policy statement about disability and the organisation's commitment and intentions
- » They establish workplace disability networks and support groups of leaders, managers, employees and people with disabilities to support and advance the recruiting, hiring, retention and promotion of individuals with disabilities
- » They communicate the business case for employing and retaining individuals with disabilities.
- » They integrate disability into policies and practices such as the employment equity policy, the skills development policy, and recruitment and promotion policies
- » They recognise that people with disabilities form part of the organisation's diverse community of employees such as racial groups, gender groups, lesbian, gay, bisexual, transgender and allies (LGBT-A) and foreign nationals

- » They ensure that affirmative action measure include people with disabilities as beneficiaries.
- » They are open to exploring flexible work arrangements as a reasonable accommodation measure and good people practice to enable people with disabilities to continue employment
- » They provide fair and objective platforms for people with disabilities to raise disputes
- » They educate and raise awareness across the organisation about disability as a human rights issue and a business imperative
- » They review and analyse systems, processes and policies to identify barriers and to ensure that the needs of employees with disabilities are addressed
- » They consult with employees with disabilities ("nothing about us, without us")
- » They hold leaders and managers accountable for their efforts and deliberate plans in creating inclusive workplaces.

Recruiting people with disabilities

South Africa's changing population and demographics and scarcity of skills (see Revised Toolkit) require employers to think differently and strategically about attracting, recruiting and retaining employees. People with disabilities represent a sizeable portion of the country's skills base and a pool of untapped resources that can fuel South Africa's economy.

Employing a diverse workforce will allow organisations to better respond to their markets, create new and relevant products, improve service, contribute to better decision-making, improve the hiring, retention, engagement and utilisation of people so as to create competitive advantage.

Inclusive recruitment practices

The main purpose of any recruitment process is to find out whether an applicant has the skills and capability to undertake the "inherent or essential requirements" of the job.

Employers need to ensure that the environment is enabling, accessible and welcoming for potential employees. This involves making application forms and other material available in accessible formats, setting up an accessible website, providing further and additional information as may be needed, informing candidates about workplace adjustments and highlighting the organisation's disability employment policy – all as part of the recruitment process.

Dealing with uncertainties and fears

For some people with a disability, an interview may not be the best way to demonstrate their skills. Candidates may be nervous about interviews, especially if they have had unpleasant experiences or if they have been unemployed for some time. A person with a disability may have the skills to perform the job but not perform well in the interview for various reasons. As such being considerate to the circumstances and possible challenges experienced by the person with the disability is a positive practice.

People with disabilities may not have access to the technology or platforms to find out about vacancies. They may also have reservations about applying for certain jobs if they have had negative experiences in



the past. Employers also have uncertainties, fears and concerns – often as a result of a lack of awareness and knowledge about people with disabilities.

Often common concerns are about whether the employee will be able to do the job and if productivity will be decreased, if mobility will be possible and whether the employee will “fit into the culture” of the workplace. There is also the stigma associated with hiring people with disabilities. This is still one of the biggest barriers to successfully hiring and retaining people with disabilities. For those with little knowledge about persons with disabilities it is often the fear of the unknown. Many employers have the incorrect view that resources for people with disabilities will cost the organisation more, that it will take more time to train people with disabilities and that people with disabilities will require additional time off for sick leave and medical care – all of which are not always the case.

Many employers feel they lack the knowledge or the resources to hire a person with a disability as they have little knowledge about what to expect once they do hire.

Education and awareness

Education becomes key to successfully managing fears and uncertainties. Exploring and unpacking myths, talking to and about people with disabilities and seeking professional technical assistance can shed light on the subject of disability and can assist in removing doubts, clearing up fears and paving the way for persons with disabilities to obtain meaningful employment and for employers to see and reap the business benefits that employing people with disabilities can bring.

Attitudes



Examining one’s attitudes and assumptions relating to persons with disabilities, can be the start to the process to remove barriers preventing people with disabilities from being fully engaged in the workplace and from affording them the opportunity to become employed.

Setting targets for employees with disabilities

As a compliance requirement, employers need to set clear employment targets for people with disabilities. These targets need to be communicated to managers and staff. Targets without accountability bring very little results. It is therefore imperative to take a strong leadership mandate to those responsible for recruiting and responsible for recruitment decisions. Being clear with staff about the organisation’s commitment to promoting and maintaining a diverse and inclusive workplace is necessary and will assist in ensuring the environment is conducive to welcoming and integrating a person with a disability into the work and team environment.

Job design

When filling a vacancy, human resource practitioners need to look objectively at the job and consider whether it can be done differently, with a different set of skills or a combination of skills. Questions should consider if it can or must be done from a particular location such as office, home, remote location. Issues relating to scheduling must be given objective consideration. Hours of work such as whether the

job needs to be done during traditional office hours and reasons for this must be explored. Different working hours to cater for needs such as available transport, part time versus full time positions, etc. should also be investigated. Considering these possibilities and exploring opportunities objectively will assist employers in determining whether the job design and responsibilities can be modified to suit a person with a disability.

Advertising of vacancies

Job adverts should seek to deliberately invite persons with disabilities to apply for positions. This can be done by including wording that reflects the inclusive culture and serious intention of the employer to hire persons with disabilities. An example of such wording could include content that states, for example, “as a diverse, inclusive and transforming employer, we invite suitably qualified people, including suitably qualified people with disabilities to apply”.

Vacancies should be posted on media sites and within organisations where people with disabilities have regular contact or interactions. Examples of such organisations are universities and their alumni divisions, disability interest groups, recruitment agencies who specialise in recruiting persons with disabilities, training companies who offer disability training and other identified avenues.

Care must be taken to ensure that technology sites that are used do cater for persons with disabilities such as those with visual and hearing impairments.

The interview process – to ask or not to ask?

It is essential for recruiters and human resource practitioners to be knowledgeable and disability confident. Recruiters should ask the applicant the same questions that they would ask of anyone else and questions should only address the inherent requirements of the job and the candidate’s suitability for such.

Behavioral interview questions should be structured around the job requirements. This will allow candidates the opportunity to reflect on their experiences and skills irrespective of their disabilities and the context. For example, instead of asking a candidate to describe their call centre experience, one can ask about a time where they solved a problem for a difficult customer. This type of questioning allows candidates to demonstrate that they have the skills required for a customer service role.

The only questions an employer can lawfully ask about a disability or injury relate to:

- » Any adjustments required to ensure a fair and equitable interview/selection process
- » How the person will meet the inherent requirements of a job
- » Any adjustments that may be required to complete the inherent requirements of the job
- » Any other questions about an individual’s disability are inappropriate, including questions about how the individual acquired their disability, specific details of the individual’s disability or how the disability will impact the person’s ability to perform aspects of the role.



General interview etiquette

- » People with disabilities do not want to be patronised. Adults want to be treated as adults.
- » Do not be embarrassed if you use common expressions such as “see you later” to a person with vision impairment.
- » If you offer assistance, wait until the offer is accepted. Be prepared for your offer to be refused.
- » Use a normal tone of voice when extending a welcome. Do not raise your voice unless asked.
- » Speak directly to the person with a disability, rather than through a companion, interpreter or aid if they are present.
- » Allow sufficient time for an applicant to respond to questions.
- » Never pretend to understand if you do not. Instead, repeat what you have understood and allow the person to respond. The response will guide your communication.

Interviewing people with physical disabilities

- » Offer to shake hands even if they have limited hand use or wear an artificial limb. A left-hand shake is acceptable.
- » Never lean on a person’s wheelchair as the chair is their personal space.
- » Allow a person who is blind or has low vision to take your arm near the elbow to guide them, rather than propel them.
- » When interviewing people who are blind or have low vision, always identify yourself and others who may be with you.
- » When interviewing people who are deaf or hard of hearing, to gain attention, tap the person on the shoulder or wave your hand.
- » Look directly at the person.
- » For those that can read lips, face the light and keep your mouth clear when speaking.
- » Be aware of the impact of background noise for people who are hard of hearing.
- » When interviewing people with intellectual disabilities, speak in a straightforward manner and check understanding. Be patient and wait for the person to finish what they are saying.
- » Do not pretend to understand the person if you do not. Ask them to repeat what they have just said or to say it in another way (using different words, for instance).



For additional resources relating to building inclusive cultures for people with disabilities, refer to the reference links provided at the end of this guide.



DEVELOPING A WORKPLACE DISABILITY STRATEGY

TA disability workplace strategy is a roadmap designed to facilitate the meaningful employment of persons with disabilities through a coordinated effort and taking into account individual needs, the work environment, business needs, legal requirements and responsibilities.

Documenting commitments, resources, goals, intentions, time frames and accountabilities will enable organisations to project their progress and to track, maintain and hold stakeholders accountable for the implementation of initiatives and the successes and failures of their plans.

The process to develop a disability strategy, if proactive and structured, will allow employers to provide better support for employees with disabilities, while at the same time, managing compliance risks and improving organisational cultures.

We outline a basic structure to assist disability champions and employers to develop a disability workplace plan.





Step 1 Commitment

Establish a long-term commitment from leaders, managers and disability champions in respect of numerical goals, resources and workplace culture issues. This task becomes easier if disability stakeholders have some knowledge of disability – the benefits and risks.

Step 2 Assessment – conduct a workplace audit

Conduct a numerical audit and culture assessment to identify numbers, practices, trends and progress. Review records relative to the accident/illness history and current return-to-work practices. Integrate the disability audit with the EE Act's Section 19 analysis plans and use the results of the profile analysis to set targets in the EE Plan.

Step 3 Secure resources

Dedicated resources are critical for the success of any Disability Management Program. Selecting appropriate human resources with input from the implementation team is often helpful and we encourage this. Financial resources should also

Step 4 Develop a framework

A framework will outline the organisation's approach to disability management. Specifically, it should outline policies and legal obligations, define clear roles and responsibilities, and clarify programme expectations, targets, time frames and resource allocations.

Step 5 Integrate with other people processes

A disability strategy should align to, and integrate with other people strategies such as workforce planning, employment equity and skills development – plans and processes.

Step 6 Build capacity through training and awareness

Management, employee and committee training is essential. Promoting ongoing awareness for general and specific disability-related topics can assist the employer to acquire the skills and knowledge to manage risks and improve outcomes.

Step 7 Measure results and communicate outcomes and progress

Internal departmental mechanisms need to be in place to gather timely, relevant and reliable information for the tracking of progress and the continuous improvement of the disability workplace plan's outcomes.

Sound communication plans are an integral part of a disability strategy and communication should underpin all aspects of the exercise. Ensure that disability remains on the agenda of management and EE committee meetings and that communication to and from leaders happens.



ESTABLISHING DISABILITY NETWORKS AND WORKPLACE SUPPORT GROUPS

Employee networks and support groups can be powerful opportunities to foster employee engagement, enthusiasm and collaboration among staff.



These networks are gatherings of employees who want to interact with others on common topics. They provide opportunities for people from all levels and backgrounds to connect, to encourage career advancement and to provide support for each other, including employees with disabilities. These structures can be designed to be a confidential platform for debate, sharing experiences and raising awareness.



Purpose and structure of a disability network

A network for employees with disabilities may have a single focus or a combination of functions as reflected below.

- » As an advisory group to drive culture change and provide support and advice
- » As a consultative structure to explore and find solutions to practical workplace issues
- » Promote networking and communication amongst peers
- » Enhance career progression of employees with a disability.

Organised groups of interested employees can provide a platform for discussions about issues and challenges relating to disabilities in the workplace, trends in disability and this can be a powerful opportunity for an employer to demonstrate strong commitment to improving employment outcomes for people disabilities and using such networks to champion a cause for disability empowerment.

Disability networks operate as structured committees. They meet regularly, usually once a month and have focused items on the agenda. These meetings can attract guest speakers, be used to deliberate on issues affecting the organisation's people with disabilities, statistics and successes. It is also an excellent platform to learn and teach more about disabilities and to explore best practice strategies and solutions.

Benefits of a disability network

- » Workplace interest groups such as a disability network serve as effective vehicles to promote the disability cause, improve representation and increase communication and awareness relating to disability issues.
- » Disability networks also serve as a useful connector for the organisation externally.
- » Employee networks can offer powerful opportunities to foster employee engagement, enthusiasm and collaboration.
- » They provide opportunities for people from all levels and backgrounds to interact to encourage career advancement and support for employees with disabilities.
- » Organised groups of interested staff can provide a supportive forum for the discussion of workplace issues. They can be designed to be a confidential arena for debate, sharing experiences and raising awareness.
- » Well managed, they can be a powerful opportunity for employers to demonstrate their strong commitment to improving employment outcomes for people with disabilities within the organisation.
- » The network can provide a structured framework for employees to share information and advice and to make contacts across the organisation.
- » Disability networks can assist to promote diversity and equal employment opportunities across the organisation.
- » The network may help promote the professional development of employees with disabilities whilst focussing on broader organisational issues such as business practice, practical management, presentation of self, improving personal effectiveness, mentoring, etc.

Establishing a disability network

Organisations wanting to establish disability networks may consider the following steps:

- » Identify the purpose of the disability network
- » Establish the roles in the network (officers, members, interested stakeholders)
- » Define the network's governance arrangements
- » Promote networking benefits of the structure
- » Plan a programme and meet regularly
- » Connect with external disability organisations and invite them to attend
- » Align network activities with national events and days such as disability awareness day, HIV AIDS Day, etc.
- » Report on activities and issues and advertise successes and developments.

Examples of typical disability network activities

- » Meet monthly
- » Identify disability trends in the workplace
- » Get involved in the development of a disability workplace strategy
- » Organise information sessions with guest speakers/disability experts
- » Encourage employees to share their knowledge and expertise informally or through mentoring or coaching
- » Encourage employees to participate in research groups, consultative committees and selection panels
- » Organise workplace awareness campaigns and disability days
- » Set up an e-mail or WhatsApp group for employees with a disability to improve links between employees across the organisation.



9

QUESTIONS AND ANSWERS



1

Q. Is an employer required to provide reasonable accommodation when I apply for a job?

A. Yes. Applicants, as well as employees, are entitled to reasonable accommodation. For example, an employer may be required to provide a sign language interpreter during a job interview for an applicant who is deaf or hearing impaired, unless to do so would impose an undue hardship.

2

Q. Should I tell my employer that I have a disability?

A. If you think you will need a reasonable accommodation in order to participate in the application process or to perform essential job functions, you should inform the employer that an accommodation will be needed. Employers are required to provide reasonable accommodation only for the disabilities of which they are aware. Generally, it is the responsibility of the employee to inform the employer that an accommodation is needed.

3

Q. Do I have to pay for a needed reasonable accommodation?

A. No. The EE Act requires that the employer provide the accommodation unless to do so would impose an undue hardship on the operation of the employer's business. If the cost of providing the needed accommodation would be an undue hardship, the employee must be given the choice of providing the accommodation or paying for the portion of the accommodation that causes the undue hardship.

4

Q. Can an employer lower my salary or pay me less than other employees doing the same job because I need a reasonable accommodation?

A. No. An employer cannot make up the cost of providing a reasonable accommodation by lowering your salary or paying you less than other employees in similar positions.

5

Q. Does an employer have to make non-work areas used by employees, such as cafeterias, lounges, or employer-provided transportation accessible to people with disabilities?

A. Yes. The requirement to provide reasonable accommodation covers all services, programs, and non-work facilities provided by the employer. If making an existing facility accessible would be an undue hardship, the employer must provide a comparable facility that will enable a person with a disability to enjoy benefits and privileges of employment similar to those enjoyed by other employees, unless to do so would be an undue hardship.

6

Q. If an employer has several qualified applicants for a job, is the employer required to select a qualified applicant with a disability over other applicants without a disability?

A. No. The EE Act does not require that an employer hire an applicant with a disability over other applicants. However, the EE Act does stipulate that preference may be given to suitably qualified designated groups. Employers are required to set targets that prioritise under-represented groups. These targets provide the direction that employers need to take when making recruitment decisions. The EE Act prohibits discrimination on the basis of disability. It makes it unlawful to refuse to hire a qualified applicant with a disability because he or she has a disability or because a reasonable accommodation is required to make it possible for this person to perform essential job functions.

7

Q. Can an employer refuse to hire me because he believes that it would be unsafe, because of my disability, for me to work with certain machinery required to perform the essential functions of the job?

A. The EE Act and occupational health regulations permit an employer to refuse to hire an individual if he or she poses a direct threat to the health or safety of herself/himself or others. A direct threat means a significant risk of substantial harm. The determination that there is a direct threat must be based on objective, factual evidence regarding an individual's present ability to perform essential functions of a job. An employer cannot refuse to hire someone because of a slightly increased risk or because of fears that there might be a significant risk sometime in the future. The employer must also consider whether a risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

8

Q. Can an employer offer a health insurance policy that excludes coverage for pre-existing conditions?

A. Yes. However most medical aids can only impose a waiting period for a limited time.

9

Q. If the health insurance offered by my employer does not cover all of the medical expenses related to my disability, does the organisation have to obtain additional coverage for me?

A. No. No legislation imposes this requirement on employers. Employers need to ensure that employees are not disadvantaged due to lesser benefits than other employees.

10

Q. Are people with AIDS protected under the EE Act?

A. Yes. No person can be unfairly discriminated against on such grounds. **Section 6 of the EE Act stipulates that**, "No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, **disability**, religion, **HIV status**, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground".



How do your organisation's policies and practices stack up?
Take our quick quiz and see how you fare:

Questions	Yes	No
Does your diversity policy specifically reference individuals with disabilities?		
Do you have employee resources or interest groups that address disability along with other diverse populations?		
Do your senior leaders discuss and promote disability initiatives?		
Do you ask candidates whether they require accommodations for their interviews?		
Is your organisation's website accessible to persons with disabilities?		
Do you offer application and recruitment materials in a variety of accessible formats (Braille or large font)?		
Do you offer specialised training to recruiters and hiring managers to equip them to be able to relate to and address the needs of candidates with disabilities?		
Do you have a procedure in place to invite employees and new hires to voluntarily self-disclose their disability status?		
Do you have agreements with agencies or university alumni and career offices to assist you to identify and connect to potential employees with disabilities?		
Do you offer annual disability and diversity training to managers, supervisors and staff?		
Do you track the disability status of your employees in your data management systems?		
Do you have a comprehensive strategy to promote disability employment within your organisation?		



The inclusion of persons with disabilities is fast becoming a critical business imperative. Employers who have their plans, processes and cultures attuned to the needs of persons with disabilities will reap the benefits that diverse workforces bring. They will enjoy competitive advantages associated with increases in employee morale, improved productivity levels and better retention of employees.



A MONITORING FRAMEWORK FOR EMPLOYERS

Name of organisation:		Date of submission/ completion of report:	
Report completed by: <i>(Name of organisation representative)</i>		Monitoring dates: <i>(period covered e.g. 1 March 2016 – 28 February 2017 – EE reporting cycle)</i>	



SECTION
A

INDICATOR: EMPLOYMENT PROFILES

No.	Questions	Answers
1.	How many employees are currently employed in your organisation	
2.	How many of your employees have disabilities?	
3.	How many of your employees have VISIBLE disabilities?	
4.	How many of your employees have NON-VISIBLE disabilities?	
5.	How many employees in total left the organisation (termination statistics) in the last EE reporting cycle?	
6.	How many employees with disabilities left the organisation (termination statistics) in the last EE reporting cycle?	
7.	How many employees in total were recruited (new appointments) in your organisation in the last EE reporting cycle?	
8.	How many employees with disabilities (visible and non-visible) were recruited (new appointments) in your organisation during the last EE reporting cycle?	
9.	How many curriculum vitae did you receive from people with disabilities in the last EE reporting cycle?	
10.	If applicable, explain what were the main reasons for not appointing people with disabilities who applied for positions in your organisation?	
11.	How many employees in total received training and development as part of the organisation's Skills Development strategy in the last EE reporting cycle?	
12.	How many of the employees mentioned under 11. above were persons with disabilities ?	
13.	How many employees have been promoted into higher occupational levels in the last EE reporting cycle (sum total is required)?	
14.	Of the total number of employees that were promoted under 13. above, how many were persons with disabilities ?	

15.	What was the total number of COID claims that have been lodged in the last EE reporting cycle.	
16.	How many people are currently being reasonably accommodated in your organisation?	

No.	Questions	Answers			
17.	What targets (%) did your organisation set for employees with disabilities at the start of the last (EE) reporting period?				
18.	What was the total disability employment results achieved at the end of the last EE reporting period?				
19.	Please indicate the number of persons with disabilities in your employ, in each of the occupational levels given below:				
	Top management	Senior management	Middle management	Junior management	Other staff
NB. The results must reflect total number (and not %) of people with disabilities at each of the occupational/management levels.					
20.	Of the total number of people with disabilities in your workplace, please indicate how many have the following qualifications as their highest qualification?				
	Matriculation	Technical qualification	Diploma	Degree	Post graduate



SECTION

B

INDICATOR: POLICY MATTERS

No.	Questions	Yes	No
1.	Does your organisation have a stand-alone disability policy?		
2.	Has your organisation completed a disability access audit?		
3.	Did your disability audit findings result in changes to your disability plans and processes?		
4.	Is there any mention of persons with disabilities in your vacancies and job advertisements?		
5.	Do your other employment policies, such as recruitment, employment equity, skills development, succession plans, COID policy, give special attention to people with disabilities? If yes, please list such policies.		
6.	Does your organisation have an Employment Equity Plan?		
7.	Did your EE analysis (section 19) include people with disabilities in terms of policies, practices and the work environment?		
8.	Does your organisation have a disability disclosure policy or guideline document to encourage disclosure?		
9.	Do employees have the option to disclose their disability status in a discreet and strictly confidential manner yet still feel that they can be reasonably accommodated? If yes, please provide details.		
10.	Do your employees who become disabled have the option to become medically boarded?		
11.	How many of your recently-disabled employees were afforded the opportunity of redeployment?		
12.	Does your organisation allocate a separate budget for disability-related expenses, such as training, workspace adaptations, etc.?		
13.	Do your employees have support to manage their disabilities through your organisation's wellness or employee assistance programmes?		
14.	Does your organisation have a dispute resolution mechanism/process for people with disabilities to declare disputes?		
15.	What are the other options/benefits (if any) that are made available to persons who become disabled while working in your organisations? List all.		

SECTION

C

INDICATOR: REASONABLE ACCOMMODATION

No.	Questions	Yes	No
1.	Are your premises physically accessible to wheelchair users?		
2.	Does your organisation have an accessible toilet area for wheelchair users?		
3.	Does your organisation have parking allocated to persons with physical disabilities?		
4.	Does your organisation have an emergency evacuation plan providing for persons with disabilities?		
5.	Does your organisation provide persons with disabilities with assistive devices and technologies in order to assist them to carry out their duties?		
6.	Does your organisation allow people with disabilities flexible work arrangements to enable them to continue working?		
7.	If yes to question 6. above, what flexible arrangements are offered?		
8.	Does your organisation provide transport for persons with disabilities to get to and from work?		
9.	List adaptations that have been made to any workstations used by employees with disabilities, e.g. computer hardware and software, screen enlargement and magnifiers, hearing loops, spatial arrangements, stairs, colour contrasts, lift announcements, artificial lighting, etc.?		
10.	List other measures that are in place to attract, advance and retain persons with disabilities in your workplace.		



SECTION

D INDICATOR: COMMUNICATION

No.	Questions	Yes	No
1.	Are your organisation's technology platforms such as emails, websites, intranet and other communication channels adapted for ease of use by persons with disabilities?		
2.	Does your organisation provide Sign Language interpreters for employees who are deaf?		
3.	Does your organisation provide for real-time speech-to-text transcription services for persons who are hard of hearing, deaf and/or hearing impaired?		
4.	Does your organisation provide braille or large print for blind or partially-sighted employees?		
5.	Does your organisation provide education and training to sensitise employees about disability?		
6.	Does your organisation communicate its disability philosophy and stance both inside and outside the organisation?		
7.	Does your organisation advertise with the disability-friendly symbol or state that PWD's are encouraged to apply for employment?		
8.	Does your organisation provide disability awareness and management training for human resource personnel and EE Forums?		
9.	Are people with disabilities included in the EE Forum as regular members?		
10.	Do you use posters and other media to promote awareness of disabilities in your workplace?		

SECTION

E INDICATOR: GENERAL

No.	Questions	Answers		
1.	What effect has the employment of persons with disabilities had in your workplace? Please indicate your answer (X) in the grid below.			
		Positive	Negative	Neutral
	Productivity			
	Staff morale			
	Budgets			
	Workplace culture			
	B-BBEE status			
	Questions	Yes	No	
2.	Has your organisation received complaints relating to disability (unfairness, discrimination or other)?			
3.	If yes in 2. above, where these complaints received from persons with disabilities or other staff? Please provide details relating to the processes followed and the outcomes achieved in addressing these complaints.			
4.	Please indicate the name of the employee assistance programmes, if applicable, that your organisation subscribes to?			
5.	Have your employees received training/coaching for any of the following?			
		Yes	No	
	Sexual harassment			
	Employment equity			
	Disability			
	Diversity			
	Discrimination			
	HIV & AIDS awareness			



ACKNOWLEDGEMENTS, ADDITIONAL RESOURCE LINKS AND REFERENCES

The development of this resource guide was made possible through the large body of knowledge that is freely available on the world-wide web. Local and international resources provided solid guidelines and insights on the various aspects of disability and employment. The sites are too many to note; however, we have listed those websites and resource links that we believe our readers will find value in exploring further.

DETAILS/TOPIC	WEBSITE DETAILS
Accessible Communication – A Workplace Guide	http://www.eduweb.vic.gov.au
Comprehensive Disability Resources & Links (including templates, checklists, survey instruments, etc.)	http://www.disabilitysa.co.za
International Disability Research Studies and Resource Material	http://www.conferenceboard.ca
Department of Labour Resources	https://www.labour.gov.za
Disability Info – and Index Website	https://www.disabilityinfo.org
Disability Glossary Terms	http://www.washington.edu
Disability Toolkit & Monitoring Framework	https://www.sahrc.co.za
Employment Equity Resources	https://www.labour.gov.za
Higher and Further Education Disability Services Association	https://www.hedsa.org.za
Human Resources Guide ‘Hiring and Retaining Employees with Disabilities’	http://on.cme-mec.ca
Ideas for employment resources and support	http://www.workablesolutionsbc.ca
Integrated National Disability Strategy	http://www.gov.za
Information Relating to Progressive Conditions	https://www.verywell.com
National Council for Persons with Disabilities	http://www.ncpwd.go.ke
Profiles of Persons with Disabilities in South Africa	http://www.statssa.gov.za
SANS – Building Regulations, Facilities for Persons with Disabilities	http://sans10400.co.za
Templates and Additional Resources	https://www.disabilitysa.co.za
Tapping the Talents of Person with Disabilities	http://www.cfeebc.org
The Americans with Disabilities Act of 1990	https://www.eeoc.gov
The United Nations Convention on the Rights of Persons with Disabilities (Article 27).	https://www.un.org
Types of Disabilities	https://services.anu.edu.au
South African Government Website	http://www.gov.za
White Paper on the Rights of Persons with Disabilities	http://www.gov.za
Working without Limits	http://www.workwithoutlimits.org



SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Forum 3, Braampark Office Park, 33 Hoofd Street
Braamfontein

Private Bag 2700, Houghton, Johannesburg 2041

Tel: +27 11 877 3600 Fax: +27 11 403 6621

www.sahrc.org.za info@sahrc.org.za