



# **DISABILITY RIGHTS**

**People with disabilities are demanding their:**

**Legal and Human rights to overcome the handicapping conditions of society and the environment.**



# CONSTITUTION

**According to the Constitution, the State may not unfairly discriminate directly or indirectly against anyone on one or more of the following: race, gender, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, religion, disability, age, conscience, belief, culture, language and birth.**



# **EE ACT**

**The EEA seeks to promote equal opportunities and fair treatment in employment through the elimination of unfair discrimination and directing affirmative action measures as a redress.**



# **DISABILITY CODE**

**The Code is a guide for employers, employees, trade unions and people with disabilities on:**

- Fair treatment of people with disabilities**
- Promoting equal opportunities; and**



# **AIMS OF TAG FOR EMPLOYERS**

**To assist by helping them to understand:**

- **Their obligation to implement non-discrimination and affirmative action measures;**
- **Their right to to generate economically viable enterprises;**



## **(CONTINUED)**

- **The opportunities that are afforded to them and their organizations by employing people with disabilities; and**
- **Practical ways to move forward to ensure the application of non-discrimination and affirmative action measures.**



# **AIMS OF TAG FOR PEOPLE WITH DISABILITIES**

**To assist them understand:**

- **Their right to reasonable accommodation and not to be discriminated against;**
- **The affirmative action measures they are entitled to;**
- **Their obligation in participating as an informed partner with the employer;**



## **(CONTINUED)**

- **Practical ways to move forward in preparing for and accessing employment opportunities that may exist.**
- **Opportunities that exist to prepare, enter and advance in the workplace; and**





# **CONTEXT OF DISABILITY DISCRIMINATION**

- **People with disabilities are not conditions or diseases;**
- **A disability is a condition that is caused by accidents, trauma, disease or genetics which may cause limitations; and**
- **A handicap is a physical or attitudinal constraint/barrier that is imposed on a person.**



# **ECONOMIC MOTIVATION**

- **Integrating people with disabilities into the workplace should be motivated from a strategic business perspective.**
- **When opportunities and reasonable accommodation is provided, valuable skills and abilities can be contributed to the workplace and the economy by people with disabilities.**



# DEFINITION OF PEOPLE WITH DISABILITIES

The EEA defines people with disabilities as follows:

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



# **EXCLUSIONS FROM DEFINITION**

- **Impairments that can be easily controlled and corrected with no limiting effects; and**
- **Public policy exclusions like sexual behaviour disorders, tattoos, gambling, tendency to steal, normal deviations in height, weight and strength, etc.**



**REASONABLE  
ACCOMMODATION FOR  
PEOPLE WITH  
DISABILITIES (RA)**



# **WHAT IS RA**

**According to the Act and Code:**

**It is a non-discrimination and an affirmative action requirement to accommodate the needs of people with disabilities.**



# **AIMS OF RA**

**The aim of RA is to allow access and reduce the impact of the impairment on the person's capacity to perform the essential functions of the job.**



# **CRITERIA FOR RA**

- **The accommodation must remove the barriers to performing the job;**
- **It must allow the person with the disability equal access; and**
- **It must adopt the most cost-effective means consistent with the above two criteria.**





# EXAMPLES OF RA

- Assistance in making the workplace more accessible;
- Workstation modifications;
- Adjustment to work schedules;
- Adjustment to the nature and duration of duties on a temporary or permanent basis; and
- The reallocation of non-essential tasks.



# **WHEN IS EMPLOYER OBLIGED TO PROVIDE RA**

**According to the Code:**

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



# **WHEN IS EMPLOYER NOT OBLIGED TO PROVIDE RA**

**According to the Code:**

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



# **DEFINITION OF UNJUSTIFIABLE HARDSHIP**

**Unjustifiable hardship is action that requires significant or considerable difficulty or expense. It involves considering, amongst others, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the business.**



# **UNJUSTIFIABLE HARDSHIP CANNOT BE GENERALISED**

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




**Reasonable  
accommodation may be  
temporary or permanent**



# **CONSULTATION ON RA**

**The employer should consult the employee/applicant and, where reasonable and practical, technical experts to establish appropriate mechanisms to accommodate the employee.**



**RA AND THE  
ELIMINATION OF  
UNFAIR DISCRIMINATION  
THAT APPLY TO  
APPLICANTS AND  
EMPLOYEES WITH  
DISABILITIES  
THROUGHOUT THE  
PERIOD OF EMPLOYMENT**





# RECRUITMENT



# **JOB PROFILING**

- **Job profiles and specifications should be drawn to identify the essential functions, inherent requirements and competencies necessary to perform the job.**
- **Job specifications must be drafted to ensure that they do not unnecessarily exclude people with disabilities.**



# **JOB ADVERTISEMENTS AND APPLICATIONS**

**According to the Code:**

**“Application forms should focus on identifying an applicant to perform the inherent requirements of the job.”**



# SELECTION



# SHORTLISTING

- **Short-listing criteria should be fair and non-discriminatory.**
- **Same criteria should apply to test the ability of people with disabilities as others.**
- **Individuals should be provided the opportunity to voluntarily disclose their accommodation requirements during the interview**



# Interview

- Interviews must be objective and unbiased.
- Interviewers must avoid assumptions about the abilities of people with disabilities.
- Where disability is disclosed, the employer may enquire on the type of RA required to participate equitably in the interview.
- Flexibility must be exercised & orientation to toilets, seating, etc. must be given.



# **Focus of the interview**

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



# CONDITIONAL JOB OFFER

- A conditional job offer may only be made to one person at a time.
- A conditional job offer is made to assess an applicants ability to perform the essential functions of the job, with or without accommodation, and not medical conditions nor the nature of disability.

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# **WITHDRAWAL OF CONDITIONAL JOB OFFER**

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

- RA would create unjustifiable hardship;
- There is an objective justification relating to the inherent requirements of the job; or
- There is an objective justification relating to health and safety.



**MEDICAL AND  
PSYCHOLOGICAL TESTING  
AND OTHER SIMILAR  
ASSESSMENTS**



# **TESTING AND ASSESSMENT REQUIREMENTS**

- **Testing and assessments should be free of bias and discrimination.**
- **If assessment of certain skills is imperative, accommodation must be provided.**
- **An inquiry exam must be relevant and appropriate to the work.**
- **Records should be treated as confidential**



# **PRE-BENEFIT MEDICAL EXAMINATIONS**

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



# **PROHIBITIONS**

**An assessment or test is prohibited unless it:**

- Has been scientifically shown to be valid and reliable;**
- Can be applied fairly to all employees; and**
- Is not biased against any employee or group.**



# **BURDEN OF PROOF**

- **If an employee or job applicant claims discrimination on the basis of disability during the testing phase, then the burden of proof lies with the employer.**
- **People with disabilities should refuse to be tested if the test is exclusively for them.**



# PLACEMENT



# **ORIENTATION & INITIAL TRAINING**

- **Placement is the process through which a person is appointed to a job.**
- **An individual with a disability should not be assigned to a job with less favourable terms & conditions.**
- **Orientation, induction and disability sensitization training must be provided.**





# **INDUCTION & DISABILITY**

- **Make arrangements for someone to meet the new employee;**
- **Arrange for RA to ensure that training material is accessible; and**
- **Consult with employee to ascertain the type of RA that is required during induction training.**



# **FOCUS OF INDUCTION**

- **Overview of the organization**
- **Overview of policies and procedures;**
- **Safety regulations and labour relations;**
- **Facilities and functions of departments;**
- **Tasks & responsibilities**
- **Introduction to employees, etc.**



# **TRAINING & CAREER ADVANCEMENT**



# **CONSULTATIONS FOR TRAINING & CAREER ADVANCEMENT**

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



# **TRAINING TO INCREASE JOB PERFORMANCE**

- **The employer must ensure that all training courses are fair and without discrimination.**
- **Training must be accessible to employees with disabilities.**
- **To make sure that training is accessible, the employer must take the needs of employees with disabilities into account.**



# **EXTERNAL TRAINING PROVIDER**

- **The employer is required by law to ensure that all training is accessible.**
- **If an employer contracts and external company, the employer is responsible for ensuring accessibility and other needed accommodation.**



# **TRAINING TO ENSURE CAREER ADVANCEMENT**

- **Employees with disabilities must be provided with equal and preferential access to participate in training.**
- **People with disabilities must be consulted during the career and succession process.**



# **ENSURE PEOPLE WITH DISABILITIES ARE NOT DISCRIMINATED AGAINST TO ADVANCE (CAREERS)**

- **Introduce clear, well-defined and well-structured routes of training**
- **Introduce a standard method of assessing trainees' potential**
- **Institute a mutually agreed upon career and succession plan**





## **(CONTINUED)**

- **Identify suitable, accredited training programmes.**
- **Provide on the job coaching.**
- **Develop mentorships.**
- **Recognize and reward achievements.**
- **Provide ongoing support and feedback.**



# **THE SKILLS DEVELOPMENT ACT**

**The main aim of this Act is to develop the skills of the the South African workforce – i.e. existing employees and new entrants as well.**



# **ALIGNING SKILLS DEVELOPMENT & EE**

**For genuine employment equity to take place, it is fundamental that skills of people with disabilities is developed to take full advantage of employment equity legislation. The only way to achieve this is to link skills development with employment equity.**



# **RETAINING PEOPLE WITH DISABILITIES**



# **DISABLING INJURY OR ILLNESS**

**When employees leave work because of disabling injury or illness, knowledge and experience are lost, workplace efficiency decreases, customer relations suffer and productivity declines.**



# **WHAT SHOULD AN EMPLOYER DO WHEN AN EMPLOYEE BECOMES DISABLED**

- The employer is required to ensure through rehabilitation, training or any other appropriate measure the retention of existing staff.
- The employer should ensure that the employee remains in their job before considering alternatives, for example redeployment.



## **(CONTINUED)**

- **The employer should keep in contact with the employee and encourage early return to work.**
- **Early return to work may require vocational rehabilitation, adjustments to work programmes or temporary or permanent working hours.**



# **DISABILITY MANAGEMENT**

**Disability Management is a workplace prevention and remediation strategy that seeks early intervention at the onset of disability by using coordinated, cost-conscious, quality case management and rehabilitation services to overcome functional work limitations in order to retain employee services..**





# **AIMS OF A DISABILITY MANAGEMENT PROGRAMME**

**DM is aimed at improving overall workforce health, easing administrative burdens and providing a seamless set of benefits for employees with injuries and illnesses through coordination, behavioural health care, health promotion, disease management and employee assistance programmes.**



# **PERFORMANCE MANAGEMENT AND REWARDING OF PERFORMANCE**



# **EVALUATION OF PERFORMANCE**

- **Systems and practices to evaluate work performance should clearly identify, fairly measure and reward performance of the essential functions of the job.**
- **Key performance indicators should be identified prior to the job taking place.**
- **Additional areas must be assessed only if agreed upon by both parties.**



# **PERFORMANCE ASSESSMENT INDICATORS**

- **Assessment of performance should give an indication of the performance gaps; help identify appropriate intervention measures to close these gaps; and establish the appropriate reward or recognition for actual performance.**
- **Rewarding of performance should not unfairly discriminate against disability.**



# **TERMINATION OF EMPLOYMENT**



# **FAIRNESS OF TERMINATION**

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



# **WORKERS' COMPENSATION**

Employers should assist with work related compensation, for instance, in terms of:

- **COIDA & ODIMWA**
- **RAA**
- **UIA**
- **Legislation and rules governing retirement funds:**



# **CONFIDENTIALITY AND DISCLOSURE**

- **Information on the disability of an employee should only be gathered for a legitimate purpose – written consent is crucial.**
- **Guidelines are provided on how to effectively manage confidentiality and disclosure of disability.**





# EMPLOYMENT EQUITY PLANNING

Disability should be included into the following three phases of planning:

- Preparation-Assign responsibility, communication & awareness, consultation & analysis.
- Implementation-corrective measures & objectives, milestones & resource allocation.
- Monitoring-evaluation & review



# **EDUCATION & AWARENESS**

**Education & awareness programmes should be undertaken to:**

- Overcome fears, myths & negative attitudes;**
- Orientate staff on disability issues; and**
- Create an understanding for the need of reasonable accommodation.**



# CONCLUSION

The TAG encourages employers, employees and trade unions to focus on:

- People's abilities, rather than their disabilities.