

Why not meeting targets?

On 7 February 2012 the Minister of Trade and Industry published notice of the new BBBEE targets effective from 9 February 2012. These were the six to ten year compliance targets established on 9 February 2007. The new compliance targets for black employee representation in the workforce are as follows:

- Black disabled employees: 3%

Disability cannot be ascribed, it is self-declared. People have to declare their disability to the employer. Has to be done annually. Unless you have created the right safe environment, people know that they won't declare their disability. So all looking for more visible disabilities.

So look at the definition of disability – see Department of Labour where define disability – anything that can be disabling...

People may fear that they will be seen as “can we rely on this person” – instead of thinking how we can accommodate.

14.2.1 People with disabilities are entitled to keep their disability status confidential. But if the employer is not aware of the disability or the need to be accommodated, the employer is not obliged to provide it.

People with disabilities are a target and beneficiary group for development and workplace advancement according to skills development legislation

- Provision is made for financial assistance to the employer for changes made to the work environment to assist in the employment and development of people with disabilities
- Provision is made to support employers to recruit, employ, train and advance employees with disabilities
- It adds to the “skills pool” from which the achievement of employment equity targets can be drawn.
- It forms part of the people component of the scorecard on which points can be attained in the implementation of a B-BBEE methodology - *Skills Development Act, 1998 (SDA) and Skills Development Levy Act, (1999 SDA)*.

Skills development legislation recognises people with disabilities as candidates for skills and workplace advancement in terms of the incentives available

Definition of People with Disabilities

5.1 Defining persons with disabilities under the Act

The scope of protection for people with disabilities in employment focuses on the effect of a disability on the person in relation to the working environment, and not on the diagnosis of the impairment.

Only people who satisfy all the criteria in the definition:

- (i) long-term or recurring;
- (ii) having a physical or mental impairment;
- (iii) which substantially limits,

are considered as persons with disabilities.

5.1.1 Long-term or recurring

(i) Long-term means the impairment has lasted or is likely to persist for at least twelve months. A short-term or temporary illness or injury is not an impairment which gives rise to a disability.

(ii) A recurring impairment is one that is likely to happen again and to be substantially limiting (see below). It includes a constant underlying condition, even if its effects on a person fluctuate.

(iii) 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 are not disabilities.

5.1.2 Impairment

(i) An impairment may be physical or mental.

(ii) '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 and any combination of physical or mental impairments.

(iii) 'Mental' impairment means a clinically recognised condition or illness that affects a person's thought processes, judgment or emotions.

5.1.3 Substantially limiting

(i) An impairment is substantially limiting if, in the absence of reasonable accommodation by the employer, a person would be either totally unable to do a job or would be significantly limited in doing the job.

(ii) Some impairments are so easily controlled, corrected or lessened, that they have no limiting effects. For example, a person who wears spectacles or contact lenses does not have a disability unless even with spectacles or contact lenses the person's vision is substantially impaired.

(iii) An assessment whether the effects of impairment are substantially limiting must consider if medical treatment or other devices would control or correct the impairment so that its adverse effects are prevented or removed.

(iv) For reasons of public policy certain conditions or impairments may not be considered disabilities. These include but are not limited to:

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