

Code of Good Practice on Key Aspects of Disability
in the Workplace

WORKPLACE MEDIATION

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Code of Good Practice on Key Aspects of Disability in the Workplace

An interesting question arose on the potential areas for mediation in the Code of Good Practice on Key Aspects of Disability in the Workplace will be discussed.

Several areas where mediation could be used in resolving potential disputes may arise and to better adhere to the Code of Good Practice on Key Aspects of Disability in the Workplace:

- **Reasonable accommodation:** The Code emphasises the employer's duty to provide reasonable accommodation for employees with disabilities. However, disagreements might arise regarding what constitutes "reasonable accommodation" in specific situations.
 - For example, an employee might request a specific type of equipment or work schedule modification, while the employer may deem it too costly or disruptive.
 - **Mediation could be helpful in finding mutually acceptable solutions, balancing the needs of the employee with the operational realities of the business.**
- **Recruitment and selection:** The Code outlines guidelines for fair recruitment and selection processes that avoid discrimination against individuals with disabilities. Disputes might arise regarding:
 - The interpretation of inherent job requirements, the suitability of selection criteria, or the accessibility of application procedures.
 - **Mediation can facilitate a dialogue between the employer and potential employees to clarify expectations, ensure fairness, and explore ways to adapt procedures for better accessibility.**
- **Medical and psychometric testing:** The Code addresses the use of medical and psychometric testing, emphasising its relevance, appropriateness, and non-discriminatory nature.
 - Disputes might arise concerning the necessity of specific tests, their potential bias, or the interpretation of test results.
 - **Mediation could help to resolve disagreements regarding the testing process, ensuring compliance with the Code and protecting the rights of individuals with disabilities.**
- **Retaining employees with disabilities:** The Code encourages employers to support employees who become disabled during employment, facilitating their reintegration into work through vocational rehabilitation, transitional programs, and flexible work arrangements. Disputes may occur regarding:
 - The feasibility of such measures, the extent of the employer's support, or the employee's ability to perform work tasks.
 - **Mediation can help explore solutions to address the employee's needs and support their continued employment, fostering a cooperative approach to disability management.**



- **Termination of employment:** The Code outlines procedures for terminating employment when an employee becomes disabled and reasonable accommodation or alternative employment is not feasible.
 - Disputes might arise concerning the efforts made to accommodate the employee, the suitability of alternative positions, or the fairness of the termination process.
 - **Mediation could facilitate a respectful and structured process for communication and decision-making, potentially mitigating the impact of job loss and ensuring procedural fairness.**
- **Confidentiality and disclosure:** The Code underscores the importance of confidentiality regarding an employee's disability status and the need for employee consent for disclosure.
 - Disagreements might arise about the extent of information required by the employer, the handling of confidential data, or the need for disclosure to other employees.
 - **Mediation can help establish clear communication channels and agreements regarding confidentiality, ensuring that information is handled sensitively and in accordance with the Code.**

By promoting dialogue and understanding, mediation can help resolve disputes related to these areas, fostering a more inclusive and equitable workplace for individuals with disabilities. The Code's emphasis on consultation and open communication aligns with the principles of mediation, further supporting its potential as a valuable tool in implementing the Code's provisions.

Mediation's role in compliance with the Code of Good Practice

Mediation can play a significant role in achieving compliance with the "Code of Good Practice on Key Aspects of Disability in the Workplace." The Code, stresses several key principles that align with the core values of mediation:

- **Consultation and dialogue:** The Code repeatedly stresses the importance of consultation between employers and employees, particularly when addressing disability-related issues. This emphasis on open communication and collaborative problem-solving mirrors the essence of mediation, which seeks to facilitate constructive dialogue between parties in conflict.
- **Finding mutually acceptable solutions:** The Code highlights the need for finding solutions that accommodate the needs of employees with disabilities while considering the operational realities of the business. Mediation, through its focus on interest-based negotiation, can help parties explore a wider range of options and reach agreements that balance both individual and organisational needs.
- **Promoting understanding and awareness:** The sources emphasise the need to address ignorance, fear, and stereotypes surrounding disability. Mediation, by fostering direct communication and empathy between parties, can help break down barriers, dispel misconceptions, and promote a more inclusive and understanding workplace culture.



How mediation can assist:

- **Addressing disputes early on:** Mediation can be used proactively to prevent disputes from escalating, providing a safe and structured space for parties to air concerns, clarify misunderstandings, and find solutions before positions become entrenched.
- **Resolving conflicts related to specific Code provisions:** As identified previously, mediation can be particularly valuable in resolving disputes related to reasonable accommodation, recruitment and selection processes, medical testing, retention efforts, termination procedures, and confidentiality concerns. By bringing in a neutral third party to facilitate communication, mediation can help parties navigate these complex issues and find solutions that align with the Code's principles.
- **Supporting the implementation of employment equity plans:** The Code emphasises the importance of employment equity planning to promote the equal participation of people with disabilities in the workforce. Mediation can be integrated into this planning process, facilitating discussions between employers, employees, and representative organisations to develop and implement inclusive policies and practices.

FAQ: Employers obligations in terms of disability in the South African workplace

1. What is the definition of disability under the Employment Equity Act?

The Employment Equity Act defines disability based on its impact on a person's ability to work. It requires the presence of all three criteria:

- (i) **Long-term or recurring:** This means the impairment has lasted or is expected to last for at least 12 months, or is likely to happen again. This includes progressive conditions once they become substantially limiting.
- (ii) **Having a physical or mental impairment:** "Physical" impairment refers to a partial or total loss of bodily function or part of the body, including sensory impairments. "Mental" impairment refers to a clinically recognised condition affecting thought processes, judgment, or emotions.
- (iii) **Which substantially limits:** This means that without reasonable accommodation from the employer, the person would be either completely unable to do the job or significantly limited in doing the job. Easily controlled or corrected impairments, like those remedied by spectacles, are not considered disabilities.

2. What is reasonable accommodation, and what are some examples?

Reasonable accommodation refers to adjustments and modifications employers must make to enable people with disabilities to participate fully in the workplace. The aim is to reduce the impact of the impairment on the employee's ability to perform the essential functions of the job.

Examples of reasonable accommodation include:

- Adapting existing facilities and equipment for accessibility.
- Acquiring new equipment, including assistive technology.
- Restructuring jobs to re-assign non-essential functions.
- Adjusting working time and leave arrangements.
- Providing readers, sign language interpreters, or specialised supervision and training.



3. What are the obligations of employers during the recruitment and selection process?

Employers have a duty to ensure their recruitment and selection practices do not unfairly discriminate against people with disabilities. They should:

- Clearly describe the inherent requirements and essential functions of the job.
- Use selection criteria that focus on an applicant's ability to perform these functions.
- Make advertisements and application processes accessible to people with disabilities.
- Provide reasonable accommodation during interviews and assessments.
- Base job offers on an applicant's qualifications, not assumptions about their disability.

4. Can employers request medical or psychometric testing?

Medical testing is permitted if it is relevant to the inherent requirements of the job, workplace hazards, and the employer's business. Tests should not be biased and should not unfairly exclude individuals with disabilities. Health testing to determine an applicant's fitness for a role should only be conducted after a conditional job offer has been made. Employers are responsible for covering the costs of these tests.

5. What are the guidelines for training and career advancement opportunities for employees with disabilities?

Employers should:

- Provide training programs and career advancement opportunities that are accessible to employees with disabilities.
- Ensure that training materials, venues, and processes are inclusive and accommodating.
- Consult with employees with disabilities to develop specific career advancement programs tailored to their needs.
- Implement fair and objective performance evaluation systems that focus on the essential functions of the job.

6. What should employers do if an employee becomes disabled during their employment?

Employers have a duty to support employees who acquire a disability during their employment. They should:

- Consult with the employee to determine if reasonable accommodation can be provided to enable them to continue working.
- Explore alternative employment options within the organisation if the employee's previous role is no longer suitable.
- Provide support for reintegration into work, including vocational rehabilitation and transitional work programs.
- Only terminate employment if reasonable accommodation or alternative employment is not feasible.



7. What are the rules regarding confidentiality and disclosure of disability?

Employees with disabilities have the right to keep their disability status confidential. However, if an employer is unaware of a disability or the need for accommodation, they are not obliged to provide it.

Employers must:

- Protect the confidentiality of any disclosed disability-related information.
- Keep records of this information separate from general personnel records.
- Obtain written consent from the employee before disclosing any information about their disability.

8. How does employment equity planning address the needs of people with disabilities?

Employment equity planning requires designated employers to take proactive steps to promote the equal representation of people with disabilities in the workplace. This includes:

- Raising awareness among employees about the importance of disability inclusion.
- Consulting with organisations representing people with disabilities and experts in vocational rehabilitation.
- Setting targets for the recruitment and promotion of people with disabilities at all occupational levels.
- Regularly evaluating workplace practices to identify and remove barriers to the employment of people with disabilities.

Frequently Asked Questions: Employment of People with Disabilities in South Africa

■ What is the purpose of the Code of Good Practice on Key Aspects of the Employment of People with Disabilities?

This Code, published in the South African Government Gazette on August 19, 2002, provides practical guidelines for employers to promote the employment of people with disabilities. It aims to eliminate discrimination and ensure equal opportunities in the workplace.

■ What legislation does this Code relate to?

This Code is issued in terms of the Employment Equity Act (55/1998) of South Africa.

■ What are the key principles of the Code?

The Code emphasises the following principles:

- **Equality and non-discrimination:** Treat all employees fairly, regardless of disability status.
- **Reasonable accommodation:** Make adjustments to the work environment and practices to enable employees with disabilities to perform their duties effectively.
- **Consultation and participation:** Involve employees with disabilities in decisions that affect their employment.
- **Accessibility:** Ensure physical access to the workplace and provide accessible information and communication.



■ What is the role of employers in promoting the employment of people with disabilities?

Employers have a responsibility to:

- Develop and implement employment equity plans that include specific measures to employ and advance people with disabilities.
- Provide reasonable accommodations for employees with disabilities.
- Create a work environment that is inclusive and supportive of employees with disabilities.
- Train and educate all employees on disability awareness and inclusion.

■ What is "reasonable accommodation"?

Reasonable accommodation refers to adjustments made to the work environment or practices to enable a person with a disability to perform the essential functions of a job. This can include:

- Modifications to the physical workspace.
- Provision of assistive devices or technology.
- Adjustment of work schedules or duties.
- Provision of training or support services.

■ Are employers required to hire people with disabilities?

The Code encourages employers to proactively recruit and hire people with disabilities. However, the ultimate hiring decision should be based on the individual's skills and qualifications in relation to the job requirements.

■ What are the benefits of employing people with disabilities?

Employing people with disabilities brings several benefits:

- **Diversity and inclusion:** A diverse workforce brings a range of perspectives and experiences.
- **Talent and skills:** People with disabilities have valuable skills and abilities.
- **Positive image:** Demonstrates social responsibility and commitment to equality.
- **Increased productivity:** Employees who feel valued and supported are more likely to be productive.

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