



F A S S E T

*Make the future count*

# Disability Toolkit

Employer toolkit for employing people with disabilities



# Message from the CEO



Cheryl James  
CEO

It gives me great pleasure to present the first revision of Fasset's Employer Disability Toolkit. When we released our first Employer Disability Toolkit in 2009, the South African Revenue Service (SARS) had not yet finalised their highly beneficial tax deductions for employers participating in learnerships. These have now been finalised and have been included in our revised document.

Susan Boyle, who was thrust into international stardom after her extraordinary talent was uncovered on the 2009 television programme, "Britain's Got Talent," has raised the profile of people with disabilities worldwide. Boyle's personal mission is to raise awareness around people with disabilities: "I was slightly brain damaged at birth, and I want people to like me, to see that they shouldn't let a disability get in the way. I want to raise awareness – I want to turn my disability into ability".

Boyle is certainly succeeding in this quest. In the eighties, Marlee Matlin, winner of the Academy Award for her role as Sarah Norman in *Children of a Lesser God* in 1981, also did much to raise the profile of people with disabilities. Aged 21, she was the youngest performer ever to receive the Best Actress Award, and the first hearing-impaired person to receive that honour. Organisations worldwide need to embrace Matlin's observation: "It was ability that mattered, not disability, which is a word that I'm not crazy about using".

It is my fervent hope that Fasset's Employer Disability Toolkit will help to raise the profile of people with disabilities within our sector, and increase the sector's understanding that the focus should be on ability.

The World Health Organisation (WHO) estimates that there are approximately 650 million people with disabilities worldwide – around 10% of the world's population. In 2008, the Council for Scientific and Industrial Research (CSIR) estimated that there are approximately 4 million people in South Africa with disabilities.

While countries such as the United States of America are making huge inroads in terms of employing people with disabilities (with a United States survey conducted in 2004, concluding that 35% of working-age people with disabilities were in employment) much hard work remains to be done in South Africa. Despite legislation promoting

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the employment of people with disabilities, and the National Skills Development Strategy (NSDS), South Africa continues to perform very badly on this front. National employment figures for people with disabilities are around 1%, and statistics for the Fasset sector are around 0.8%.

Fasset has always believed that there is a very compelling business case for employing people with disabilities. Even more compelling than the business case or legal imperatives, is the realisation that even very small firms are able to play an important role in creating a more inclusive society. It is my sincere hope that Fasset stakeholders will find the toolkit a useful and motivating resource in this quest.

Cheryl James  
CEO

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## Abbreviations and Acronyms

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ABET	Adult Basic Education and Training
ADKAR	Awareness, Desire, Knowledge, Ability and Reinforcement
ALS	Amyotrophic Lateral Sclerosis
ALS	Assistive Listening Systems
ATR	Annual Training Report
B-BBEE	Broad-Based Black Economic Empowerment
BCEA	Basic Conditions of Employment Act of 1997
CCMA	Commission for Conciliation, Mediation and Arbitration
CEO	Chief Executive Officer
CSRI	Corporate Social Responsibility Initiatives
CSIR	Council for Scientific and Industrial Research
DTI	Department of Trade and Industry
EE	Employment Equity
EEA	Employment Equity Act of 1998
EEP	Employment Equity Plan
Fasset	Seta for Finance, Accounting, Management Consulting and Other Financial Services
JAWS	Job Access With Speech
LCG	Learnership Cash Grant
LL	Lifelong Learning
LRA	Labour Relations Act of 1995
MS	Multiple Sclerosis
NGO	Non-Governmental Organisation
NQF	National Qualifications Framework
NSDS	National Skills Development Strategy
OHSA	Occupational Health and Safety Act of 1993
PAYE	Pay-As-You-Earn
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act of 2000
PTSD	Post-Traumatic Stress Disorder
SARS	South African Revenue Service
SCG	Strategic Cash Grant
SDL	Skills Development Levy
SDLA	Skills Development Levy Act of 1999
SETA	Sector Education and Training Authority
SMME	Small Medium and Micro Enterprises
SSP	Sector Skills Plan
TAG	Technical Assistance Guidelines
UK	United Kingdom
WHO	World Health Organisation
WSP	Workplace Skills Plan

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# 1 *Using the toolkit*

Fasset's Employer Toolkit for Employing People with Disabilities has been designed to support and encourage employers in the Finance, Accounting, Management Consulting and Other Financial Services (Fasset) sector, to recruit, retain and upskill people with disabilities, while at the same time, dispelling some of the myths surrounding the employment of people with disabilities. The toolkit will also assist employers to understand the legislative framework, and to obtain a far better understanding of the term "disability", as well as the benefits of employing people with disabilities.

## **Employers and Human Resource Managers need to:**

- Understand the definition "disability in the workplace" and the application thereof
- Be able to implement a representative workplace profile
- Encourage the "disclosure of a disability status" and manage confidentiality
- Understand the definitions of "incapacitation" in the Labour Relations Act (LRA) and "people with disabilities" and "reasonable accommodation" in the Employment Equity Act (EEA)

## **Practical guidelines are provided in the following areas:**

- The employment of people with disabilities within the financial services sector
- Basic information surrounding disability and the workplace
- Benefits to member companies of employing people with disabilities
- Legislation promoting the employment of people with disabilities
- Prescriptive legislation governing facilities and provisions for people with disabilities

- Good practices for recruiting people with disabilities
- Employment, training and retention considerations for people with disabilities
- Good practice relating to proactive training initiatives
- Changing workplace attitudes and environments
- Additional resources for further research and information

The toolkit provides a practical overview of employing people with disabilities. References to more comprehensive resources are supplied.

## **Practical information includes:**

- Fact sheets
- Testimonials
- Case study
- Business case for employing people with disabilities

# 2 The case for change

There is considerable scope to increase the employment of people with disabilities within the Fasset sector. Fasset lags behind national targets: Fasset's Sector Skills Plan (SSP) 2010/2011<sup>1</sup>, indicates that people with disabilities only constitute 0.8% of total employment within the sector.

Statistics pertaining to the employment of people with disabilities in South Africa appear in Figure 1 alongside.

South African employers across the board fall short of national targets for the employment of people with disabilities: only 1% of the total South African workforce is comprised of people with disabilities.

There are a number of reasons why the employment rate for people with disabilities within the Fasset sector is below the national average.

## Reasons may include:

- High entry requirements for occupations within the sector<sup>2</sup>
- Insufficient support and encouragement for people with disabilities
- The sector does not meet EEA targets
- Employers are often required to work offsite; this may serve as a barrier to entry as they have no control over client sites

Despite these challenges, there are very compelling reasons for employing people with disabilities.

**Figure 1: Employment data on the financial services sector**



<sup>1</sup> Fasset Sector Skills Plan 2010/2011, updated on 11 August 2009.

<sup>2</sup> 70% of employees in the sector have post-matric qualifications.

# 3 Fasset sector profile

The Fasset sector comprises a small number of very large organisations and a large number of very small organisations. Fasset's Sector Skills Plan (SSP) 2010/2011<sup>3</sup> reported that 96% of organisations employed fewer than 50 employees. Additional information appears in Table 1.

**Table 1: Distribution of number of employees in the finance sector**

Percentage of Organisations	Number of Employees
62%	1 - 5
18%	6 - 10
10%	11 - 20
6%	21 - 49
3%	50 - 149
1%	150 +

Source: Fasset's SSP 2010/2011

## Geographical distribution and gender profile

Some 50% of the employment is concentrated in Gauteng, with the Western Cape and KwaZulu-Natal accounting for 21% and 13% respectively. The remaining 15% were thinly spread across the other six provinces. In 2007 more than half (54%) of employees in the sector were women. Roughly a third (34%) of the managers and 48% of the professionals were women. The largest occupational group, clerical and administrative workers, consisted of 77% women.

The majority of workers in the sector were white (53%), followed by African workers (31%), Indians (8%), and Coloureds (8%). More than half (57%) of the employees were 35 years or younger and the average age of all employees was 36 years. Black (African, Coloured and Indian) employees were on average, five years younger than their white counterparts. Black managers were on

average four years younger than whites, and black professionals were five years younger. The total number of employees, who were identified as people with disabilities, constituted only 0,8% of total employment in the sector.

## Annual turnover

The sector's annual turnover is around R 62 billion. In the 2006 Sector Survey, some 44% of employers reported an annual turnover of between R 200,000 and R 2 million. Only 1% of organisations reported a turnover in excess of R 20 million per year. The sector's annual salary bill is around R 9,7 billion.

## Educational profile

The sector mainly employs highly qualified workers. The vast majority (94%) of employers have qualifications at National Qualifications Framework (NQF) Level 4 (Grade 12 or matric or equivalent) and above). As many as 61% hold qualifications at NQF Level 6 and above. By contrast, only 6% hold qualifications at NQF Level 3, 2, 1 and below.

Educational requirements are higher in the Fasset sector than in most other sectors. In addition, there is also a demand for long-term training, as well as post-qualification training periods, and continuous lifelong learning.

The sector has a high demand for well-qualified professionals. Demand currently outstrips supply. There is no reason, therefore, why appropriately qualified and skilled people with disabilities should not find employment within the sector.

People with disabilities constitute a largely untapped recruitment pool, which if recruited from, could assist the sector to meet its employment targets for people with disabilities and its employment equity targets. Employers would also benefit from a number of incentives, which encourages employers to appoint people with disabilities.

3 Updated on 11 August 2009.

## Case Study 1: Proactive employment

Organisation: Debt Recovery Agency

The company actively seeks to employ people with disabilities, and currently employs nine people with disabilities. Disabilities include polio, albinism and other physical disabilities. Candidates are employed in the company's call centre and recruited via a recruitment agency, specialising in the recruitment of employees with disabilities.

### Initial concerns

Initially, there were two major concerns of the employer:

1. There were some concerns around how receptive supervisors and existing staff would be to working with employees with disabilities.
2. Because the workforce is young, there were some concerns that the workforce might not be very accommodating or patient.

### Orientation

Management orientation training was provided prior to the appointment of the nine employees with disabilities. A similar exercise was undertaken with staff, who would work directly with the new appointees.

### The result

In the company's experience, employees with disabilities worked harder and in most instances were more committed than employees without disabilities. This could be ascribed to the fact that fewer employment opportunities were available for these candidates. The company experienced no major problems assimilating their new employees into their workforce. The only difference identified was that it took longer to train some of the employees with learning disabilities.



# 4

## Let's talk about disability

There are almost 4 million people with disabilities in South Africa. People with disabilities constitute 5,03% of the population. The last national census (2001) indicated that 702 011 individuals aged between 15 and 65 were unemployed due to illness and disability. Of particular concern, is the number of people with disabilities, who possess either a secondary or tertiary-level qualification (160,000 and 65,000 respectively), but who are currently unemployed<sup>4</sup>. These individuals could be recruited to meet skills shortages within the sector.

### Definition of workplace disability

The definition of disability needs to be applied to the workplace and the specific conditions of employment within it. (See Fact Sheet 1 for a definition of "workplace disability" and Fact Sheet 4 for a more detailed discussion of the three determining and necessary conditions that must be present in identifying a disability).

What needs to be determined is the impact that the disability has on the individual within the workplace.

#### Fact Sheet 1: Workplace definition of disability

In terms of the EEA, the focus is on the effect of a disability on the individual in relation to the working environment, and not on the diagnosis or the impairment.

Individuals are considered to be people with disabilities, when they satisfy all of the following criteria:

- they have a physical or mental impairment
- which is long-term or recurring, and
- which substantially limits their prospects of entry into, or advancement in employment

### Some examples of disabilities

The degree to which a disability impacts on an individual's life ranges from slight to significant. In some instances, an individual's disability is not apparent, for example, in the case of some cognitive disabilities. In other instances, the disability is immediately apparent, for example, in the case of some physical disabilities. An individual may have more than one disability. This makes the creation of a list of types of disabilities very difficult.

The examples below provide an indication of the wide-range of disabilities:

- **Blind:** refers to a total loss of vision
- **Visual impairment:** indicates partial sight
- **Congenital disability:** a physical impairment existing since birth
- **Deaf:** refers to a total loss of hearing
- **Hard-of-hearing:** refers to partial hearing loss ranging from slight to severe
- **Epilepsy:** a term for various disorders marked by electrical disturbances of the central nervous system and typically manifested by seizures or involuntary muscular contractions
- **Mental illness/mental disability:** a psychiatric disability caused by a biological, physiological or psychological disorder, or a chemical disorder of the brain
- **Mental retardation/cognitive disability:** a condition causing significantly below average intellectual functioning
- **Motor disability:** this includes multiple sclerosis (ms), muscular dystrophy, Lou Gerhig's disease (Amyotrophic Lateral Sclerosis (ALS)) and cerebral palsy. This is a group of conditions resulting from damage to the central nervous system
- **Paralysis/spinal cord injury:** Hemiplegia affects full or partial paralysis of one side of the body caused by brain damage

<sup>4</sup> Fasset Disability (Access to Funding and Benefits), January 2008.

as a result of a disease, trauma or stroke; paraplegia is a paralysis of the lower half of the body, and involves partial or total loss of function of both legs. Quadriplegia is paralysis of the body that involves partial or total loss of function in a person's arms and legs

- **Speech impairment:** limited or difficult to understand speech patterns

### Testimonial 1: Thandi

Type of disability: Hard-of-hearing

Employment status: Currently unemployed

Two years ago I started losing my hearing due to tuberculosis. I am partially deaf (hard-of-hearing) and struggle to hear in certain environments, for example, where there is loud music, where people talk at the same time, or drop their words at the end of sentences, where a person talks to me in a dark area, when the person speaking is not directly facing me or when they are speaking to me whilst having a conversation on the phone. I generally don't experience these difficulties in quiet environments and in one-on-one conversations.

I am judged unfairly by people who don't have any disability because they don't understand and feel what I am going through. Some tend to tell me that I am pretending that I cannot hear properly and others become impatient when I ask them to repeat themselves.

My condition is challenging at times and affects my self-esteem. I miss out on important information and can only make limited contributions and comments on what others say, especially in groups.

I put my trust in the Lord and believe everything happens for a reason and that I have a purpose to fulfill. I do not see my disability as a problem, but as a challenge that I have to face up to and accept. I don't hold grudges against people who discriminate or do not understand, or who are ignorant because they don't have a disability, as it can be hard for them to understand.

I am thankful that I did not lose all of my hearing. Although I can no longer run, because of the scarring to my lungs, at least I can walk, and I am not in a wheelchair. I am thankful for the little things that I have and don't worry about what I can't change.

The changes that I would like to see implemented within the working environment is the introduction of methods to teach employers and employees how to assist and work with people with disabilities, show appreciation for their good work, never discriminate and to see people with disabilities as not being capable. A quiet working environment would be ideal for me.

*(The name has been changed and some text has been edited).*

### Why do disability issues require special attention?

The 2002 Employment Equity Commission Report on the status of employment equity in the workplace suggested that while the percentage of people with disabilities remains at around 1% of the total workforce and accounted for 1% of all recruits, it only accounted for 0,5% of all promotions and 2,2% of all terminations. This suggests that people with disabilities were less eligible for promotions and that their employment was terminated more frequently than those people without disabilities.

It was also reported that the implementation of the provisions contained in the EEA showed very slow progress and that of all the affirmative action categories identified in the Act, the disability category had performed worst of all.

When it comes to the encouragement of the employment of people with disabilities, prejudice, ignorance and must be overcome. Many false assumptions and myths surrounding people

with disabilities still persist. Invalid assumptions include thinking that a disability implies stupidity or slowness. There is ignorance around the need to make special arrangements to accommodate the aids and devices that people with disabilities need in their daily life such as:

- Wheelchairs
- Hearing aids
- Guide dogs for the blind
- Buzzers
- Computer software

## Common impairments

A disability may be genetic, acquired during the birth process, may arise later in life as a result of the onset of illness, or may be the result of an accident. The legislation takes cognisance of the impact of a disability within the workplace and applies a specific definition of the disability experience in the workplace which is not based solely on the medical understanding. (Please refer to Fact Sheet 1 for the definition of workplace disability).

Cognisance should also be taken of incapacitation within the workplace, with provision being made for temporary incapacitation. Examples include a broken leg, foot, finger, or concussion. Longer-term incapacity may include progressive incapacitation arising from arthritis, MS or sight deterioration.

Examples of impairments include:

### Visual impairments

Visual impairments can be categorised into blindness or partial sightedness. Partial sightedness includes cataracts, glaucoma, myopic degeneration and diabetic eye disease. These occur more frequently than full blindness.

Sighted people often fail to understand how effectively a blind person is able to function, even in an unfamiliar environment. People therefore project their assumed helplessness and lack of experience onto the blind person. In South Africa, around 50 people start losing their sight daily. This will inevitably impact on employers. Fortunately, there are many aids that partially sighted persons can use in order to assist them in the workplace, such as large print, magnification glasses and computer accessibility adjustments to the screen.

### Hearing impairments

Hearing impairments can be categorised as deafness or hard-of-hearing. Many people with these disabilities have received special education and have acquired a wide range of skills, for example, sign language and lip-reading. Because these individuals have been deaf from a very early age, and have never heard the spoken language, they are often more comfortable with sign language. They often experience difficulties lip-reading different dialects or accents.

### Physical impairments

These are the types of impairments that are most often associated with disability, since they are more visible. Most workplaces make provision in built environments for reasonable accommodation around devices and aids used by this category of individuals, such as wheelchairs, crutches, limb prosthetics and walking sticks. The devices for arthritic and stroke-affected individuals have unfortunately been overlooked, as has the provision of other medical prosthetics.

### Mental impairments

Mental impairments cover a range of difficulties related to cognitive functioning, genetic disorders, "learning disabilities", mental health illnesses and functioning difficulties, which have resulted from "closed-head" injuries, such as, strokes, work and motor accidents. They also include the psychological and psychiatric impairments, such as phobias, mood disorders and schizophrenia.

People suffering from mental impairments have borne the brunt of discrimination. Globally, the accepted norm is to use the North American guidelines, which subsume "mental impairments" into the broader term "developmental disability", which includes epilepsy, autism, and cerebral palsy. The term "intellectual disability" is also being used as a synonym for significant cognitive disabilities. These terms are emerging to distinguish between psychological and cognitive disabilities because they have different implications for work functioning, workplace support and opportunities.

The terms distinguish between general and specific intellectual disability to describe conditions that have resulted from traumatic brain injury, poisonings (e.g. lead poisoning, toxic psychosis), dementias (e.g. Alzheimer's disease) and those that have a congenital or genetic root. This is due to the fact that the traumatic injuries have an acute onset and tend to have arisen later in life, whereas the others may have been a lifelong disability.

# 5 Benefits of employing people with disabilities

There are multiple benefits to employing people with disabilities, including the fact that it makes compelling good sense. Organisations can capitalise on financial incentives, contribute towards a more inclusive society, and employ a more diverse workforce.

## Compelling good sense

Benefits include:

- Problem-solving skills, as candidates are often incentivised to find creative ways to perform tasks others may take for granted
- Dependable, dedicated, hardworking and productive employees, who are often more determined and resolute since they have needed to overcome more difficulties
- Increased morale and productivity within the organisation
- A more inclusive corporate environment
- Employees with disabilities can help the organisation to craft effective marketing strategies to reach this previously untapped sector of the market
- By complying with the provisions of the EEA, potential claims of unlawful disability discrimination can be avoided
- Retaining employees who have become ill, incapacitated or impaired is often less expensive than recruiting and training new staff

## Financial incentives

Fasset is one of over 20 Sector Education and Training Authorities (Setas) that operate through a levy and grant system, as determined by the Skills Development Levies Act (SDLA) of 1999. According to this Act, every employer in South Africa with a payroll exceeding R 500,000 per annum is liable to register for the compulsory Skills Development Levy (SDL). The contribution is 1% of the total payroll (as calculated for the Pay-As-You-Earn (PAYE) tax), including staff who fall below the PAYE threshold, but excluding learners on registered learnership agreements.

## Seta financial incentives

Should a company be exempt from paying the SDL and fall within the Fasset sector, they are able to register with Fasset as a Non-Levy Paying member. This enables them to participate in specific Fasset benefits. Except employers do not qualify for grants linked to the reimbursement of the SDL (i.e. the Mandatory Grant, Pivotal Grant and the Strategic Cash Grant (SCG)) but do qualify to participate in other Seta benefits such as the Learnership Cash Grant (LCG), Small Medium and Micro Enterprises (SMME) Grant, Assessor & Moderator Grant, Lifelong Learning (LL) events and beneficiaries of Fasset-funded projects.

## Tax deductions

Table 2 provides details of the tax deductions that can be claimed from the South African Revenue Services (SARS) for a learner with a disability. The deduction can be claimed on commencement and completion of the learnership. The deductions are available to all learners registered on learnerships, and this tax incentive is not related to the LCG (the cash incentive offered by Fasset).

**Table 2: Tax deductions**

Type of learner	Commencement allowance	Completion allowance
Standard	R 30,000 per annum	R 30 000 per annum multiplied by no. of completed 12-month periods
Learner with disability	R 50,000 per annum	R 50 000 per annum multiplied by no. of completed 12-month periods

The employer may claim a commencement allowance for each year of the learnership; however the completion allowance may only

be claimed by the employer with whom the learner completes their learnership contract.

The commencement allowance must be pro-rated if the learnership is in existence for less than 12 months (and across employers, should the employee transfer from one company to another) however the completion allowance may not be pro-rated. It must be claimed in full by the employer where the learner completes the learnership. For each 12-month period of the entire programme completed, an allowance of R 30,000 may be claimed.

For example, if a learnership was two and a half years in duration, a deduction of R 75,000 would be allowable in terms of the commencement allowance (i.e. 2.5 multiplied by R 30,000) whereas only 2 years would be allowable in terms of the completion allowance i.e. R 60,000.

The employer may now claim an amount on commencement and again on completion of the learner per year that they progress through the learnership. An employer may claim a tax deduction of R 50,000 for a learner with a disability. This can be claimed for every year of the learnership for commencement and again a completion amount of R 50,000 for every year of completion at the end of the learnership. This amounts to a total tax deduction of R 300,000.

#### Learnership Cash Grant

Fasset incentivises companies employing fewer than 150 employees to employ black learners (defined as African, Coloured or Indian) and/or learners with a disability of any population group on a Fasset learnership, by way of a LCG. The LCG is applicable to both levy-paying and non-levy paying companies. The submission of an approved Fasset Mandatory Grant (a combined Annual Training Report (ATR) and a Workplace Skills Plan (WSP)) is a prerequisite for participation for levy-paying members. Non-levy paying (NLP) companies are required to register with Fasset as a NLP in order to apply for the LCG.

The LCG payment is a payment made on both commencement and successful completion of the learnership and is paid per learner upon approval of the application form, subject to certain criteria. In addition to the LCG, employers may claim the available tax deduction from SARS. The grant amounts change from year to year, and increase for learnerships of a longer duration.

Please consult the Fasset website: [www.fasset.org.za](http://www.fasset.org.za) for the latest application forms, criteria, and submission dates.

#### Strategic Cash Grant

Since its inception, Fasset has incentivised employers to provide training in strategic areas by offering a SCG. A levy-paying organisation with an approved Mandatory Grant can apply for the SCG in order to claim back up to 20% of the levies paid to SARS. The organisation must train black (defined as African, Coloured or Indian) and/or learners with disabilities in certain skills priority areas within a designated training period. Criteria funded in the past (this is subject to change from year to year as per strategic areas decided upon by the Fasset Management Board):

- Specific learners on learnerships
- Bursaries to specific unemployed learners to study at recognised institutions or professional bodies in scarce skills areas of study (also available to white women studying towards senior qualifications)
- Workplace experience, in areas of scarcity in the Fasset sector, to unemployed black and/or learners with disabilities from institutions
- Quality-assured and structured workplace experience where specific learners enter full-time, on-the-job training (non-learnership)

Please consult the Fasset website: [www.fasset.org.za](http://www.fasset.org.za) for the latest application forms, criteria, and submission dates.

#### SMME Grant

Fasset incentivises employers employing fewer than 50 employees to educate and train black learners (defined as African, Coloured or Indian), learners with a disability of any population group, and white women on senior NQF courses (NQF 7 and 8) to study structured educational interventions, at recognised institutions or professional bodies, in areas of study towards addressing a scarce skill in the Fasset sector.

The SMME grant is applicable to both levy-paying and NLP companies. The submission of an approved Fasset Mandatory Grant (a combined ATR and a WSP) is a prerequisite for participation for levy-paying members. NLP companies are required to register with Fasset as a NLP in order to apply for the SMME Grant.

Please consult the Fasset website: [www.fasset.org.za](http://www.fasset.org.za) for the latest application forms, criteria, and submission dates.

#### Project funding

Setas have different grant structures applicable to learners with disabilities. A number of Setas fund projects specifically aimed at

upskilling learners with disabilities. This project funding is allocated in line with strategic decisions of the Seta Management Board, and is made annually. Fasset Development Projects have always included the recruitment and training of learners with disabilities in the programmes. The projects focus on the training and upliftment of unemployed learners who will enter the Fasset sector.

### Business case for employing people with disabilities

Although the sector only employs a very small number of people with disabilities, the type of work performed in the sector lends itself to

the training of larger numbers of people with physical disabilities. By recruiting people with disabilities, employers will not only meet real skill needs within the sector, but they may also be able to support national policy and legislation such as Employment Equity targets, Corporate Social Responsibility Initiatives (CSRI) and Broad-Based Black Economic Empowerment (B-BBEE) targets. In addition, employers are able to benefit from higher SARS learnership deductions for each year of the learnership that has been registered and completed. Provided the employer is a levy-payer, the Mandatory Grant can be claimed. The employer may also be able to claim increased LCG amounts for these learners.

**Table 3: Business case**

This case study illustrates how, after deciding to increase its staff complement by two, a small accounting firm employing twelve staff, used this opportunity to employ people with disabilities.

The recruitment agency was asked to include a search for candidates with disabilities in the candidate pool. Two candidates were found and were made job offers. The one candidate was a trainee professional with a disability (in this case, a wheelchair-bound person) and the other, was a previously unemployed person (hard-of-hearing). Both were signed onto three-year learnerships.

The company then went through the necessary procedures to claim the incentives i.e. tax deductions from SARS and Seta cash grants. The administrative burden was not onerous: it only entailed a separate submission of the normal "paperwork" to the appropriate authorities:

- IT 180 form required to claim the tax deduction through SARS
- Preparation and submission of the Mandatory Grant to Fasset
- Individual IRP5 with disability status
- Records from which the employees claimed their personal tax deductions

The direct costs incurred to employ two candidates with disabilities, was nil.

Since the professional staff member had his own wheelchair and adapted vehicle with hand controls, no additional costs were incurred for the reasonable accommodation requirements. The company only needed to be aware of requirements in terms of the lift and passage width, and bathroom requirements.

The learner with the hearing loss did not use a hearing-aid because the hearing loss was acute. All instructions and materials needed to be written. No additional costs were incurred by the company. The only change that was required was that colleagues and clients had to use the fax or email for correspondence, rather than the telephone.

The business case demonstrates that the employment of people with disabilities is often less challenging than is assumed.

#### Financial benefit

Employers are able to claim R 50,000 from SARS per learner on commencement of each year of the learnership and R 50,000 per learner on completion of each year of the learnership amounting to R 300,000 per learner for a three-year learnership. Provided the employer is a levy-payer, the Mandatory Grant can also be claimed. Since the company had completed the Mandatory Grant and submitted it to Fasset, the company qualified for the R 47,250 LCG per learner (as per the grant tariff available in that financial year). In total, the employer claimed R 94,500 via the LCG.

Most individuals with disabilities direct their personal tax deductions to the items that they need to make their work life easier or help them to be effective in the workplace.

Most modern office buildings make provision for toilets for persons with disabilities. Where adaptations are required, these are for the landlord's account. When hiring office space, employers should check whether the building complies with building code requirements for "reasonable accommodation provisions".

## Creating a more inclusive society

South Africa has had a legacy of non-inclusivity. In recent years, government has endeavoured to remedy the situation through the Constitution and through enacting a chain of legislation. Many organisations too, have played a leading role to make their organisations more inclusive and representative of the country's demographics.

Fact Sheet 2 lists the policies that underpin much of South Africa's legislation pertaining to the employment of people with disabilities.

### Fact Sheet 2: Policy framework <sup>5</sup>

- 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
- Sector-specific charters outline goals and targets specific to certain industries. For example, the accounting sector and mining sector have their own charters

The financial services sector faces many challenges in terms of the advancement of previously marginalised sectors of society. The employment of people with disabilities is, but one step in this journey towards creating a more inclusive society. All companies in the Fasset sector have an important role to play in proactively addressing the imbalances in line with the policy framework as summarised in Fact Sheet 2.

## Diversity planning

A steady pipeline of qualified workers is needed to enable businesses to continue to grow and remain competitive. As the consumer market becomes increasingly global and diverse, organisations need to ensure that their workforce and their marketing strategies are able to meet these changing demands. By focusing on diversity and inclusive practices, organisations are able to reach far wider markets.

One of the United Kingdom's (UK) largest banks, Lloyds TSB has made a significant effort and considerable investment to ensure that its staffing reflects customer demographics. Lloyds' objective was to eliminate any discrimination faced by employees as well as customers with disabilities. Its disability programmes have resulted in better retention of employees with disabilities, more accessible buildings and increased business from customers with disabilities <sup>6</sup>.



<sup>5</sup> Skills Development Act, 1998 (SDA) and Skills Development Levy Act, (1999 SDLA).

<sup>6</sup> Business for Social Responsibility, (2005).

# 6 Practicalities of employing people with disabilities

People with disabilities want to be known for who they are. They want to feel part of everyday life and they want to be able to make a valuable contribution. If treated differently, this should be ascribed to

their personality, likes, interests and their contributions, not as a result of their impairment.

## Testimonial 2: Gloria

Type of disability: Partially sighted

Employment status: Employed

I am 25 years old and have been partially sighted since I was four years old. For years doctors told me I had corneal difficulties, but they did not know the cause. I am now awaiting surgery for a corneal transplant. This may take many years due to the shortage of corneas in the country. My family, unfortunately, cannot afford the operation. I would like to find a good job so that I can afford the corneal replacement. This would enable me to do things I would not be able to do otherwise.

I was very fortunate to attend a special school where I learnt Braille. I have always endeavoured to do my best and learn as much as possible, despite my sight difficulties. I received a merit award certificate when I matriculated. I went to university where things were quite different. I had to adjust to studying using normal print which was very difficult, but with determination and courage I managed to obtain my degree in record time. I decided to pursue an LLB degree after obtaining a BA in Politics. Because of the lack of resources and the strain on my eyes I could not keep up and performed badly. I was denied registration for the following year, and was advised to enroll for a course requiring less reading. Resources available to assist blind people are extremely expensive, and beyond the reach of the average blind person.

Persons with disabilities have to work three times harder than those without a disability. Society does not make it easy due to people's perceptions of people with disabilities. I feel that people should not be characterised by their disability. They should be seen in their own right as individuals.

Accommodating a person with a disability is not about preferential or special treatment: it is only an acknowledgment of their special situation and characteristics or differences. Professor Watney Murdoch once said: "People need to learn to work within their differences. If people deny their differences they can never learn from each other". Only mutual acceptance and peaceful co-existence would enable organisations to be experienced more positively by all involved. In order to capitalise on the diversity of South African society, it is necessary to build a culture of inclusivity, of working with tolerance in a diverse organisation. There is also a need to balance individual and group needs in this regard. With tolerance and appreciation of others, companies can be more productive and efficient."

*(The name has been changed and some text has been edited.)*

## Disability etiquette

People without disabilities often stereotype people with disabilities. Never refer to the person by their disability. People with disabilities

are not handicapped, retarded, deaf and dumb, paraplegic, spastic, but are individuals with disabilities.

### Testimonial 3: Nathi

Type of disability: Mobility disability

Employment status: Currently employed

I am a South African male, who has been confined to a wheelchair for most of my life. Post-polio at an early age resulted in a permanent disability. I am employed in a research organisation, in ICT Services.

I started my tertiary education in 2001. It was not easy for me and for my family to support me. This is when I really came to terms with what is really required from me in order to achieve the kind of life I dreamt of. I also came to realise the fact there is no special world for people with disabilities. You can have a disability, but at the end of the day you have to compete with non-disabled people for the same limited opportunities in life.

I originally enrolled at the former Pretoria Technikon for the International Certificate in Computer Studies, which was a bridging course for B.Tech Information Technology and then transferred to the former University of Durban-Westville where I graduated in BSc (Computer Science and Information Technology) in 2006. During my tertiary education I equipped myself with a lot of necessary and special survival skills that a person with a disability needs in order to progress and succeed in this competitive world, socially, academically and in the workplace.

#### Obstacles

The main obstacle that I have encountered is people and their lack of understanding of people with disabilities. People tend to think that we are different. This is untrue. They do not understand, nor do they believe that we are capable individuals. We have to prove

ourselves and prove the fact that we are not inferior. Even when we achieve, they often remain skeptical.

#### Practicalities

I have not experienced any real obstacles in my current employment. My scooter assists with my mobility when I need to see clients. I do, however, always need to check on the adequacy of "reasonable accommodation" provision before visiting new buildings, in order to prepare myself before my visit.

#### The work environment

Fortunately, my company has a facilities department and they are very helpful and always open to suggestions. I have found in the past that companies and buildings declare themselves accessible to people with disabilities, but are not. Sometimes the bathrooms are difficult to enter or toilets and kitchens have an entrance step which can make them inaccessible.

Employers need to ensure that the basic amenities are accessible to people with physical disabilities. This does not mean the entire building, but those parts that are needed to do my job. The most important items are the bathrooms and the kitchens. Employers tend to think that it's very expensive, but it's not if you consider that it is really just the basics required for everyday functioning in society.

*(The name has been changed and some text has been edited.)*

### Fact Sheet 3: General disability etiquette, do's and don'ts

#### Do:

- Shake the person's hand
- Offer assistance, but wait until it is accepted
- Provide help in the way it is asked for
- Not feel offended if your offer of assistance is declined
- Treat people as individuals and as adults
- Talk directly to the person, not their assistant or dog
- Use the term "non-disabled" rather than "able-bodied"
- Consider the fact that guide dogs are working dogs; recognise that they may need a break

#### Don't:

- Lean on the wheelchair
- Make assumptions (Impairments are often not visible, for example, diabetes, MS)
- "Talk down" to the person or patronise them
- Ask medical or personal questions
- Worry about making mistakes, just ask
- Get down to the same eye level to a person in a wheelchair to avoid the individual having to continuously look up at you
- Use words such as "normal" and "abnormal"
- Thank the assistant, if the person with a disability has hired the services of one, thank the person for the service they have provided and the person with the disability will thank their assistant
- Refer to a person with a disability as the crippled, blind, deaf, etc

### Employers need to tackle the barriers

Employer commitment is required to increase the employment levels of persons with disabilities. Most barriers to the employment of people with disabilities emanate from:

- Prejudices and stereotyping
- Inflexible organisational procedures and rules
- Inaccessible information
- Inaccessible buildings
- Inaccessible transport

A person's impairment is not always a clear indicator of their needs. Two individuals with the same impairment may have different requirements. It is best to ask the individual concerned what his or her requirements are, in order to develop practical, customised solutions.

By focusing on barriers to employment it is possible to group individuals according to similar requirements and needs. The use of fire escapes is an example. It is not only people with wheelchairs who are unable to use them, but the hypertensive and morbidly overweight persons, diabetics, pregnant women and the aged as well as those who can be exposed to severe heart-stress risk resulting from the numerous stairs, hot environments and feelings of panic in dark environments which have to be negotiated during the rapid evacuation of a building during emergencies.



## Testimonial 4: Samantha

Type of disability: Congenital blindness

The following are issues that would help you to see it from my viewpoint:

- Treat me as you would anyone else. I do the same things as you do, but sometimes use different techniques
- Speak in a normal tone of voice. Blindness doesn't mean hearing loss
- Talk directly to me, not to my companion – loss of sight is not a loss of intellect
- When entering a room, identify yourself
- When exiting, mention that you are leaving
- Address me by name so I will know you are speaking to me
- If you leave me alone in an unfamiliar area, consider offering me an orientation clue, such as - "the door is to your left"
- Don't worry about using common, everyday words and phrases like "look," "see" or "watching TV" around me
- If I look as though I may need assistance, ask and I'll tell you if I do
- If I am about to encounter a dangerous situation, voice your concerns in a calm and clear manner
- Pulling or steering me is awkward, confusing and not helpful
- Avoid grabbing my arm, and please don't touch my dog's harness
- Ask: "Would you like me to guide you?"
- Offering your elbow is an effective and dignified way to lead someone who is blind
- Do not be afraid to identify yourself as an inexperienced sighted guide
- Ask for tips on how to improve
- Using audible cues, such as a tap or pat on an object (such as a chair or doorway), is a good technique for showing me their location
- Commenting, "Here's the chair," while tapping on it helps me to quickly locate it
- Be considerate - If you notice a spot or stain on my clothing, tell me privately
- Be sure to give useful directions
- Phrases such as "across the street" and "left at the next corner" are more helpful than vague descriptions like "over there"
- In a restaurant, give clear directions to available seats
- Your offer to read the menu aloud may be appreciated, but you shouldn't assume I would not want to order my own food
- Offer to let me know what is on the table: tomato sauce bottle, water, glasses, salt and pepper shakers, etc
- You can describe the location of items by using clock positions: "Your coffee is at 3 o'clock"; "The sugar is at 1 o'clock"
- Leave doors all the way open or all the way closed: Half open doors or cupboards are dangerous
- Moving chairs or other objects around, especially in a familiar environment, lands up being more confusing for me than helpful
- Be sensitive when questioning me about my blindness: this is personal information and boundaries should be respected

*(The name has been changed and some text has been edited.)*

# 7 Legislation

Disability employment is nothing more than a special application of the provisions of employment equity directed towards one of the specifically designated groups of persons in terms of the Employment Equity Act (EEA).

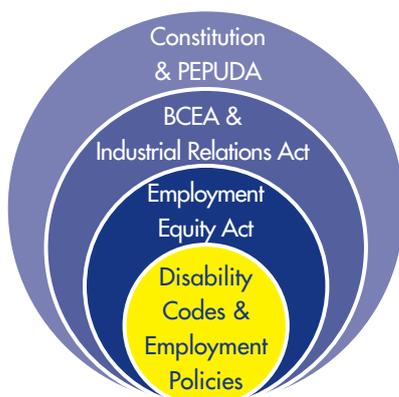
Legislation impacting upon the employment of the person with a disability needs to be seen from two perspectives:

- Legislation that protects and guarantees the rights of all persons, including people with disabilities, since it pertains to all individuals and “protected” groups designated in the Bill of Rights in the South African Constitution. There is also related general legislation specifically promulgated to address people with disabilities <sup>7</sup>
- Workplace legislation is aimed at ensuring employment equity, of which people with disabilities is a specifically mentioned group in terms of this legislation and are entitled to the “positive discrimination” benefits that the EEA affords <sup>8</sup>

Employees with disabilities are subject to all employment statutes governing all of the general conditions of employment.

The interrelationship between the legislation and codes as they relate to the employment of people with disabilities is illustrated graphically below.

Figure 2: Legislation in context



Legislation pertaining to the employment of people with disabilities is a subset of the specialised employment legislation covered by the EEA, which in turn, falls within the domain of the LRA and the Basic Conditions of Employment Act (BCEA). The Constitution is the overarching legislation that covers all of the above.

Managers are often overwhelmed by reasonable accommodation issues. (Please refer to Fact Sheet 7 for a definition of reasonable accommodation.) Many of the requirements are safety issues, of which people without disabilities are unaware. The lack of guardrails, for example, presents a severe threat to the blind. Because sighted people naturally steer themselves around these obstacles, they are not necessarily aware of the risks.

It is only when the employer addresses these issues that they become aware of the safety hazards within the workplace. A quick review of standard safety procedures such as fire evacuation, lift operating procedures, door sensors and warning of glass doors will confirm that these requirements are not onerous.

## Definition of disability

The definition of disability, as defined in the EEA has three important aspects. Only people who satisfy all of the following three criteria are regarded as people with disabilities:

- The disability must be “long-term or recurring”
- “Having a physical or mental impairment”: A physical impairment means a partial or total loss of a bodily function or part of the body
- “Which substantially limits” must be present

All three of these conditions are the criteria to be used for determining a state or the extent of disability and all three must be simultaneously present to confirm the disability status. (Note: the definition is not a “medical” definition, but a workplace functioning description.)

<sup>7</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA).

<sup>8</sup> Employment Equity Act 55 of 1998.

## Focus on the EEA<sup>9</sup>

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.

Fact Sheet 4 provides the additional details for employers who may require insight for particular cases.

### Fact Sheet 4: Additional information on the definition of disability

#### Long-term or recurring means:

- An impairment that has lasted or is likely to persist for at least twelve months
- A recurring impairment is one that is likely to happen again and to be substantially limiting. It includes a constant underlying condition, even if its effects on a person fluctuate
- Progressive conditions are those that are likely to develop or change or recur. People living with progressive conditions or illnesses are considered to be 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

#### Impairment means:

- An impairment may be physical or mental
- "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
- "Mental" impairment means a clinically recognised condition or illness that affects a person's thought processes, judgment or emotions
  - Compulsive gambling, the 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
- Conventional physical and mental characteristics and common personality traits

#### Substantially limiting means:

- 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
- Some impairments are easily controlled, corrected or lessened in that they have no limiting effects e.g. spectacles or contact lenses
- An assessment of 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
- 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 e.g. sexual harassment
  - Self-imposed body adornments such as tattoos and body piercing

## The Constitution

The Constitution promotes and protects human rights and dignity as its guiding principle. It was conceptualised to be restorative and seeks to heal the nation from previous wrongs. It is in this restorative outlook that it provides for affirmative action that is required to restore the rights and place in society of people and groups whom, previously, were

victims of discrimination and injustice. It is against such injustices and discrimination, that the Bill of Rights<sup>10</sup> protects people with disabilities as one of the designated protected groups.

<sup>9</sup> Employment Equity Act of 1998.

<sup>10</sup> Chapter 2 of the Constitution of South Africa.

## Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA)

PEPUDA identifies unfair practices such as creating artificial barriers to employment opportunities or applying human resource practices which unfairly discriminate against persons from identified groups on prohibited grounds. These groups include race, gender, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, work or any other grounds for discrimination based on causes that perpetuate systemic disadvantages, undermines human dignity or adversely affects the equal enjoyment of rights and freedoms. It also applies to failing to respect the principle of equal pay for equal work.<sup>11</sup>

The right to equality in the workplace is also protected in PEPUDA and enacted through national legislation to give full effect to the right of equality in the Constitution. It is not solely confined to the workplace, however. While PEPUDA does not apply to those conditions that are covered by the Employment Equity Act<sup>12</sup> it does contain an illustrative schedule of unfair practices<sup>13</sup> that may be deemed to be unfair and include areas, such as:

- Labour and employment
- Education
- Health care services and benefits
- Housing, accommodation, land and property
- Insurance services
- Pensions
- Partnerships
- Professional bodies
- Provision of goods, services and facilities
- Clubs, sports and associations

## Other legislation

Besides the legislation that addresses and deals with disability objectives in South Africa and the required employment of people with disabilities, other legislation has practical implications of which an employer needs to be aware:

- Non-compliance can be avoided if attention is paid to the specific relevant components of legislation. The Fact Sheets in this toolkit summarise the key issues regarding disability employment

- The employer also needs to avoid discriminating against people with disabilities. Failure to comply with requirements may result in a dispute being taken to the Commission for Conciliation, Mediation and Arbitration (CCMA), Labour Court or Equity Court
- The employer must realise that poor corporate citizenship will result in a poor public image and reputation for the organisation
- A loss of valuable benefits can be avoided if the organisation puts in place proper plans to claim the financial incentives for practices, which the company is entitled to claim
- Not achieving the required B-BBEE and sector charter targets will put the organisation under compliance pressures. This can be avoided once again by proper planning

Skills development legislation recognises people with disabilities as candidates for skills and workplace advancement in terms of the incentives available. Also, provisions of the Compensation for Occupational Injury and Diseases Act<sup>14</sup> (COIDA) have recognised a set of scheduled diseases for which compensation is entitled. These include a set of "mental impairments", such as Post Traumatic Stress Disorder (PTSD) and some Affective Disorders such as psychological illnesses with a disability status within the work context which can require "reasonable accommodation measures".

The Occupational Health and Safety Act<sup>15</sup> (OHSA) also provides for the safety of employees within the workplace. These conditions are equally applicable to people with disabilities. Thus any condition of safety, which is only applicable to the non-disabled, and excludes the necessary provisions for people with disabilities, can be considered discriminatory and providing insufficient safety provision for a select category of employees. Provisions should first consider the health and safety requirements of all employees before any exclusion of people with disabilities are considered. Minimum standards established by OHSA pertain to all employees and not only certain groups of employees. Thus, if a person with a disability trips over a "raised tile, uneven step, etc", clemency cannot be sought because the person was "blind" and could not see properly. Basic safety and procedures are applicable to all employees and not only those with certain qualities or abilities, such as sight or hearing.

11 Landis H and Grossett L, "Employment and the Law," *Juta Academic*. (2005), page 7, item 1 of the schedule refers specifically to labour and employment.

12 Section 5 (3), subsections 4 (1) - (3).

13 Schedule of illustrative practices in certain sectors (Section 29), PEPUDA.

14 Compensation for Occupational Injury and Disease Act of 1993 (COIDA).

15 The Occupational Health and Safety Act of 1993 (OHSA).

Fact Sheet 5 provides basic objectives of legislation and policy regarding disabilities.

### Fact Sheet 5: Basic objectives of legislation and policy pertaining to disability

Key objectives:

- To acknowledge and address past and current discrimination of people with disabilities
- Protection of people with disabilities from being discriminated against in the future
- To create an inclusive society and give force to the values and society envisaged by the Constitution
- Provide for affirmative action and “positive discrimination” for people with disabilities
- Make provision for policies in favour of people with disabilities
- Empower people with disabilities to declare disputes relating to unfair or discriminatory workplace practices and to seek redress

### Special workplace legislation applicable to people with disabilities

All employment legislation is applicable to the employment of people with disabilities. This toolkit only addresses issues and legislation pertaining to the employment of people with disabilities. Law and statute have both a “spirit” and a “letter” to it. When it comes to employment legislation of people with disabilities, since they form part of the “protected and previously disadvantaged” groups that are designated as needing equity protection, it is important not to address issues in terms of the letter of the law, but to rather understand the “spirit” of the law and why it was enacted in the first place. If the latter is borne in mind, the employer is unlikely to fall foul of the law and will enjoy the many benefits associated with the active employment of people with disabilities.

The EEA is a key piece of legislation and provides some key principles underpinning the legislation. Fact Sheet 6 demonstrates these points of departure on the employment of people with disabilities.

### Fact Sheet 6: EEA points of departure

The EEA is important because it:

- Defines a person’s disability status for purposes of employment
- Identifies people with disabilities as a “designated group” who must benefit from the provisions contained in the EEA
- Eliminates unfair and discriminatory practices in the workplace
- Prevents distinctions being made between people with disabilities and non-disabled people on an arbitrary or unfair basis, namely the disability itself
- Identifies, when distinctions are made, whether these are unfair and applies a two phase test to evaluate the nature of the distinction. The EEA does provide for distinction to be made in selection, placement and advancement, but this distinction must not be arbitrary or unfair

The spirit of the legislation as it relates to disability encompasses the following:

- Recognise past and current discrimination experienced by people with disabilities
- Avoid discrimination from occurring in future
- Create an inclusive society where diversity is valued
- Make provision for positive discrimination in favour of people with disabilities
- Recognise the rights of people with disabilities as a human rights issue rather than a welfare issue
- Provide people with disabilities with the basis on which to declare disputes relating to unfair work practices

Employment legislation that safeguards the employment of people with disabilities is a fundamental component of employment equity. Thus, to understand the employment requirements of persons with a disability, one must understand the EEA.

### Reasonable accommodation

The provision of reasonable accommodation for employees with disabilities is an important issue for employers to take into account. Fact Sheet 7 provides information on the issue.

**Fact Sheet 7: Reasonable accommodation**

Reasonable accommodation may be temporary or permanent depending on the nature and extent of the disability.

Reasonable accommodation includes but is not limited to:

- Adapting existing facilities to make them more accessible
- Adapting existing equipment or acquiring new equipment including computer hardware or software
- Re-organising work stations
- Changing training and assessment materials and systems
- Restructuring jobs so that non-essential functions are re-assigned
- Providing readers, sign language interpreters or allowing the person with a disability to obtain them for themselves
- Adjusting working time and leave
- Providing specialised supervision, training and support in the workplace

The following sheds further light on the provisions for “reasonable accommodation” and the employers’ obligations and duties:

- There is an obligation for employers to reasonably accommodate the needs of people with disabilities
- An employer may adopt the most cost-effective means to effectively remove the barrier(s) preventing the person from being able to perform the job and to enjoy equal access to the benefits and opportunities of employment
- Reasonable accommodation applies both to applicants and employees which may be required during:
  - The selection and recruitment processes
  - In the working environment
  - The way work is done, evaluated and rewarded, and
  - Any benefits, privileges and rewards
- An obligation to make reasonable accommodation available to an employee or applicant may arise when that person voluntarily discloses their disability status and related accommodation needs or when such becomes apparent to the employer
- The employer must attend to reasonable accommodation needs when the work environment changes, or the impairment varies, and affects the ability of the employee to perform the core functions of the job

- The particular reasonable accommodation requirement is shaped by the nature of the impairment, its effect on that particular person, as well as on-the-job and working environment conditions and characteristics
- An employer may evaluate the performance of the person with the disability against the same standards as those applied to other employees in similar positions, but the nature of the disability may require the employer to adapt and modify the way in which performance is measured
- The employer need not accommodate an employee with a disability if this would impose an “unjustified hardship” on the business of the employer. Unjustified hardship is an action that requires significant or considerable difficulty or expense, which would substantially harm the viability of the business
- A reasonable accommodation demand that imposes an unjustified hardship for one employer, at a specific moment in time, may not be so for another or the same employer at a different point-in-time

Fact Sheet 8 provides some examples of reasonable accommodation adjustments.

**Fact Sheet 8: Examples of reasonable accommodation adjustments**

- Altering work hours or allowing flexi-time
- Time off for treatment
- Space for a guidedog
- Reader software programme for the computer
- Modifying or purchasing certain equipment
- Way in which instructions are given
- Extra training time
- Changing the layout of office furniture, e.g. storage at floor or eye-level
- Sensors on sliding mechanised doors
- Allowing for “assisted devices” in the workplace, height adjustable chairs, special computer mouse, etc
- Vibrating cell phone
- Loop system for hearing aids for meetings and TVs
- Audio signals for lifts or Braille floor numbering
- Wide parking space
- Attention to escape and emergency practices and provisions (i.e. fire escapes, hand rails, etc)
- Care taken when choosing outside conference/meeting/presentation venues

## Employment Equity Act (EEA)

The legislation seeks to:

- Protect employees and job applicants from direct or indirect unfair discrimination and the inclusion of arbitrary grounds for employment policies and practices, including race, religion, gender, age, HIV status and language. Harassment is also included in the list contained in the EEA <sup>16</sup>
- Positive “discrimination” aimed at addressing the discrimination and employment imbalances of the past. The legislation gives rise to the employment equity targets and requirements on employers for the development of Employment Equity Plans (EEP). “Disability targets” form part of these plans

Chapter two of the EEA contains a prohibition of unfair discrimination on any grounds in the workplace including, race, gender and disability and is applicable to all employers and employees. The EEA recognises three forms of discriminatory behaviour and provides protection from them:

- **Direct discrimination:** a distinction is made between people on arbitrary, non-justifiable criteria
- **Indirect discrimination:** a seemingly neutral criterion has the effect of excluding a majority of people or a sub-group of people (i.e. bias in psychometric tests favouring one group over another, or not employing women because employees have to work late at night, etc)
- **Harassment:** this entails the derogatory treatment of a person based on a perceived inferiority (i.e. demeaning jokes about a person’s disability, intentionally turning your head away)

“Unfair discrimination” against people with disabilities is perpetuated in many ways, including the following:

- Unfounded assumptions about the abilities and performance of job applicants and employees with disabilities
- Advertising and interviewing arrangements which either exclude people with disabilities or limit their opportunities to prove themselves
- Using selection tests which discriminate unfairly
- Inaccessible workplaces
- Inappropriate training for people with disabilities <sup>17</sup>

Fact Sheet 9 shows how, by proactively developing the skills of designated groups, employers are able to improve a company’s rating in terms of the Department of Trade and Industry’s (DTI) codes.

### Fact Sheet 9: Skills development as part of the DTI codes

Skills development forms 20% of the weighting in (DTI) B-BBEE Codes. Skills development, if carefully planned, can contribute a substantial number of points to the DTI’s codes and the training and development of people with disabilities form a part of this evaluation.

Points can be earned for skills development initiatives relating to employees who are part of the “designated groups”, namely; black people, women and people with disabilities.

### Disclosure of disability status

An applicant and/or an employee has the choice as to whether they are willing to disclose their disability status or not, and whether they require adjustments to be made to the workplace environment. Employees can only require adjustments to be made provided they disclose their disability status or if the status is self-evident to the employer. The employer does have the right to verify a person’s disability status. The employer does, however, have a right to request a “functional assessment” of a specific job-related disability. The employer will bear the cost of this assessment. More information is provided in Fact Sheet 10.

### Fact Sheet 10: Confidentiality (EEA Section 59)

EEA section 59: Breach of confidentiality: subsections (3) to (6): 7.1.2

- 1) Any person, who discloses any confidential information acquired in the performance of this function in terms of this Act, commits an offence.
- 2) Subsection (1) does not apply if the information is:  
disclosed to enable a person to perform a function in terms of this Act, or  
if it must be disclosed in terms of this Act, or by any other law or an order of the court.
- 3) A person convicted of an offence in terms of the section may be sentenced to a fine not exceeding R 10,000 <sup>18</sup>

16 EEA – Section 6(3).

17 “Code of Good Practice on the Employment of People with Disabilities.” page 5, Section 1. Department of Labour.

18 This amount can be adjusted for inflation.

Although an applicant or employee has the right not to disclose their disability status, it is advantageous to do so. The interviewer needs to be sensitive to any concerns that the incumbent may have.

### What does this mean for the employer?

What has important bearing for the employer with regard to the employment of the person with a disability and that influences the definition of “disability in the workplace” is that the EEA:

- Recognises that inherent requirements of the job are a legitimate reason for differentiating and distinguishing between people as is the implementation of affirmative action measures, policies and practices, (the Act uses the term suitably qualified <sup>19</sup> in this regard)
- Defines designated groups as black people (including African, Coloured and Indian people), women and persons with disabilities
- Requires employers to implement comprehensive employment equity policies, which address employee rights in general and specifically those employees affected by illnesses such as HIV/AIDS and those affected thereby
- Requires policies and practices to be introduced to manage and overcome resistance to employment equity measures. This includes the myths that pertain to and the prejudices associated with disabilities. Procedures should be in place to support the EEP and disputes arising from its interpretation and implementation

Important guidelines are provided to the employer in the application of this Act with regard to employing persons with disabilities in “The Code of Good Practice: Key Aspects on the Employment of People with Disabilities <sup>20</sup>.” The Technical Assistance Guidelines (TAG) were also developed to assist trade unions, employers, and people with disabilities to understand the EEA and Code. The TAG addresses the issues of non-discrimination and affirmative action.

### Obligations under the LRA and EEA

The LRA and EEA are in place to ensure equity in the workplace by promoting equal opportunity and fair employment. This is done by protecting an employee from unfair work practices and employment policies and requiring organisations to undertake specific actions or develop plans for the future removal of discriminatory practices by providing redress to the previous disadvantages experienced by employees of designated occupational categories, work levels and designated groups. “Disability” is one of the designated groups.

The EEA provides for the following, which has direct and indirect importance to the employment of the people with disabilities:

“Inherent requirements” of a position, job or task are the only recognised reason for differentiation between people, and the implementation of affirmative action, policies and practices only. Consequently, differentiation can occur between people in the workplace based upon the following criteria:

- Inherent job requirements.
- Affirmative action for designated groups.
- Designated groups are by definition, black people (including African, Coloured and Indian), women and persons with disabilities.
- A temporary employment service and its clients are jointly and severally liable for acts of unfair discrimination, where the service, or the express or implied instructions of the client commits an act of unfair discrimination. This should be taken into account when contracting a temporary employment service.
- Employers should implement a comprehensive employment equity policy incorporating employees’ rights in general and, specifically, the rights of those employees infected with diseases such as HIV/AIDS, and those affected thereby.
- The policy should cover the procedure to manage resistance to employment equity measures.
- Procedures should also be in place to support the EEP and disputes arising from its interpretation and implementation

### Employers’ duties

These are set out in chapter 3 of the EEA and include the implementation of affirmative action measures designed to ensure that suitably qualified people from designated groups are given equal employment opportunities and enjoy equitable representation.

The measures include identifying and eliminating employment barriers which threaten diversity in the workplace, such as not providing reasonable accommodation for designated groups. The LRA makes provision of the implementation of employment policies and practices to achieve adequate protection in the advancement of previously disadvantaged persons or groups. Based on inherent job requirements, these measures do not constitute unfair labour practices involving direct or indirect unfair discrimination. The EEA describes these as follows:

19 “Suitably qualified” means qualifications as a result of any one of, or any combination of, a person’s formal qualifications, prior learning, relevant experience or capacity to acquire, within reasonable time, the ability to do the job.

20 Code is issued in terms of 54 (1) (a) of the Employment Equity Act, No 55 of 1998.

- Conducting an analysis on employment policies, practices, procedures and the working environment to identify discriminatory barriers. The analysis must include a profile of employees in each occupational category and level to determine the degree of under-representation of people from designated groups
- Preparing an EEP that has specific components designated by the Act. The EEP should relate to the circumstances and conditions in the workplace and should have achievable aims. The EEP should include actions to address under-representation of persons from designated groups, measures to achieve equitable representation of suitably qualified people, numeric goals, timetables and strategies to achieve these goals

Fact Sheet 11 provides information on some of the EEA requirements for an EEP.

### Fact Sheet 11: EEA section 20(2)

EEA section 20(2)(c) An employment equity plan... must state that:

(c) under-representation of people from designated groups has been identified by the analysis, the numeric goals to achieve the equitable representation of suitably qualified people from designated groups within each occupational category and level in the workforce, the timetable within which this is to be achieved, and the strategy that is intended to achieve these goals.

- "Suitably qualified" in terms of the EEA means qualification as a result of any one of, or any combination of, a person's formal qualifications, prior learning, relevant experience or capacity to acquire within a reasonable time, the ability to do the job
- In determining whether a person is suitably qualified for a job, the employer must consider all the factors outlined in the definition of suitably qualified and determine whether the person has the ability to do the job in terms of one or a combination of these factors
- Suitability should be determined in as an objective manner as possible to ensure fairness and to justify the decision made. This has to be done by preparing and submitting an initial report to the Director-General of Department of Labour (DoL) and subsequent reports on the progress made in implementing the plan and this report must include an income differentials statement, containing information on remuneration and benefits received in each occupational category and the level of the workforce

Fact Sheet 12 provides summary information on the term "suitably qualified" in terms of the EEA.

### Fact Sheet 12: Suitably qualified in terms of the EEA Section 20(3)

EEA section 20(3) "For the purpose of this Act, a person may be suitably qualified for a job as a result of any one of, or a combination of, that person's:

- a) Formal qualifications
- b) Prior learning
- c) Relevant experience, and
- d) The capacity to acquire, within a reasonable time, the ability to do the job

Timing and frequency of equity reports to be submitted

This is determined by the following:

- Whether the employer has become a "designated employer"
- Whether the employer employs 150 or more employees
- Whether the company is registered as a public company. If that is the case then no choice exists as all public companies must publish this report as part of its annual financial report
- All state organs must present equity reports to parliament
- Turnover exceeds the designated minimum values, published from time to time

In terms of the EEA there is a distinct procedure that should be followed when developing EEPs. Reporting frequencies to the Director-General of the DoL are also provided. The following steps are required when developing an EEP:

- Consult with employees, as designated in the guidelines on how to conduct the employee consultations on the workplace analysis, preparation and implementation of an EEP and the report. Appoint one or more senior manager to monitor and implement the EEP and provide the manager with the authority and means to perform the necessary functions
- Maintain records with respect to the workforce, the EEP and the items required by the EEA
- Display a standard notice summarising the EEA provisions in an accessible place in the workplace. Display an EEP, making a copy available to employees for copying and consultation
- Display the most recent report, compliance orders, arbitration awards

or orders of the Labour Court and any other prescribed document relating to the EEA

- Employers are liable for employee’s compliance with the EEA
- Obstruction, undue influence and fraud are prohibited in terms of the implementation of the EEA
- Confidentiality of information acquired in the performance of a function of the EEA is protected.
- Employment equity policy and initiatives need to be integrated and aligned with business strategy and other related policies

- New policies and changes to existing policies need to be through a process of consultation/negotiation with the bargaining partners. Policies need to be communicated effectively within the organisation
- Development of employees should be a dual focus along with recruitment strategies in line with employment equity goals
- Adequate financial and human resources need to be allocated to the management of employment equity to ensure effective implementation and monitoring

Fact Sheet 13 indicates the reporting requirements of the EEP.

**Fact Sheet 13: Employment equity plan and equity plan reporting requirements**

EEA section 20(1)

**20 Employment Equity Plan**

1) A designated employer must prepare and implement an employment equity plan which will achieve reasonable progress towards employment equity in that employer’s workforce.

**21 Report**

(This refers to the first report. Subsequent reports will reflect the progress made in the implementation of the Equity Plan).

- 1) A South African designated employer that employs fewer than 150 employees must:
- submit his first report to the Director-General within 12 months after the commencement of this Act or, 12 months after the date on which that employer became a designated employer; and
  - thereafter submit a report to the Director-General once every two years, on the first working day of October

2) A designated employer that employs 150 or more employees must:

- submit its first report to the Director-General within six months after the commencement of this Act or, within six months after the date on which that employer became a designated employer; and
- thereafter submit a report to the Director-General once every year on the first day of October

**22 Publication of Report**

- Every designated employer that is a public company must publish a summary of a report required by section 21 in that employer’s annual financial report
- When a designated employer within any organ of state has produced a report in terms of section 21, the Minister responsible for that employer must table that report in parliament

**Summary of employers’ most important obligations**

**Table 4: Summary of important employer obligations**

Obligations	Possible solutions
Equip employees within the organisation to deal with diversity issues and to avoid discriminatory practices or behaviours	Offer disability awareness and sensitisation training and create a changed mindset towards people with disabilities. Ensure that all staff are familiar with disability etiquette
Align human resource’s policies with the legal framework	Include disability mainstreaming as part of policy framework
Avoid discrimination in all processes and procedures	Enforce strict compliance of disability sensitive processes and procedures
Follow fair termination processes	Exhaust alternative and reasonable accommodation requirements prior to coming to a decision to dismiss

Obligations	Possible solutions
Consult with employees or a representative forum on employment equity and skills development matters	Include people with disabilities in the consultative process
Conduct a quantitative and qualitative workplace analysis	The analysis should identify all barriers faced by people with disabilities. Establish a disability workforce profile
Draft an EEP	Include initiatives to address barriers experienced by people with disabilities
Set numerical goals to attain representation	Include targets for people with disabilities on all occupational levels and categories
Submit regular reports to the DoL and account for progress	Include progress made towards people with disabilities and details of reasonable accommodation measures taken
Complete, submit and implement WSPs	Set targets for people with disabilities and ensure that access is guaranteed
Deal with inaccessible buildings	Analyse barriers and deal with them. Use an access consultant where necessary
Comply with health and safety standards	Ensure that the environment complies with health and safety in a disability inclusive manner. Review policies to ensure they do not discriminate based on prejudice and stereotypes
Maintain proper records	In order to justify the approach taken, and to meet statutory requirements, information requested should be readily available

## Special terms

Designated Employer: this is defined in Fact Sheet 14.

### Fact Sheet 14: Designated employer

"A designated employer" is one which:

- Employs 50 or more employees,
- Employs fewer than 50 employees and has a total turnover equal to or above the applicable annual minimum values
- Turnover as stipulated in schedule 4 of the EEA
- Is a municipality,
- Is an organ of state, or
- Is bound by a collective agreement appointing as a designated employer, to the extent provided for in that collective agreement"

### Reasonable accommodation

The aim of providing reasonable accommodation is to reduce the impact of the impairment and the resultant capacity of the person to fulfill the essential job functions.

(Please refer to Fact Sheet 15 for a definition of reasonable accommodation.)

The EEA directs employers to adopt the most cost-effective means to provide reasonable accommodation, or remove obstacles to the effective functioning of the person with the disability that prevent the person with the disability of being able to perform the job and to enjoy equal access to the benefits and opportunities of employment.

The issue of providing reasonable accommodation for people in designated groups in order to ensure that they enjoy equal opportunities often presents unnecessary challenges to the employer. The accommodation requirements are not as difficult to implement as many employers may assume. The key is to communicate with the employee in order to understand their requirements. The aim of the reasonable accommodation is not to punish the employer with unnecessary and expensive costs and onerous support, but to be reasonable in providing the employee with equal access.

Fact Sheet 15 highlights some important issues relating to reasonable accommodation.

**Fact Sheet 15: Important issues relating to reasonable accommodation**

“Employers should adopt the most cost-effective means that is consistent with removing the barriers to job performance. Reasonable accommodation applies to applicants and staff members with disabilities who are suitably qualified for the job and may be required:

- During the recruitment and selection process,
- In the work environment,
- In the way work is usually done, evaluated and rewarded, and
- In the benefits and privileges of employment.”

Source: “What employers and workers need to know about employment equity?” (DoL).

In the EEA “reasonable accommodation” is an important concept and its purpose is to enhance the opportunities for qualified people with disabilities to be employed and continue to be employed.

The employer’s obligation with respect to the provision of reasonable accommodation arises when an applicant for employment or an employee voluntarily makes their disability status known or where the disability is self-evident. Employers do not necessarily incur huge costs when complying with this need. The average cost of reasonable accommodation provisions in the UK were generally below five hundred pounds per employee with a disability.

The employer need not accommodate a qualified applicant or an employee with a disability if this would impose an unjustifiable hardship on the business or employer. An unjustifiable hardship is an action that requires significant or considerable difficulty or expense and that would substantially harm the viability of the enterprise. It is important to recognise that reasonable accommodation that imposes an unjustifiable hardship for one employer at a specific time, may not be so for for the same employer at a different time.

The employer must accommodate employees when work or the work environment changes or impairment varies which affects the employee’s ability to perform the essential functions of the job. The employer should consult the employee with the disability, as the individual concerned is best placed to know what works best. Reasonable accommodation may vary from person to person, even for persons with the same disability types. The reasonable

accommodation requirement may be temporary and/or permanent in nature, depending upon the nature and extent of the disability.

The employer may evaluate work performance against the same criteria as other employees, but the nature of the disability may require the employer to adapt the way performance is measured.



# 8

# Good recruitment practices

## Recruitment

The Employment Equity Act (EEA) states that employers may not discriminate on any basis whatsoever. What this means for the employment of people with disabilities is that employment policies and practices such as recruitment procedures, advertising and selection criteria, job classification and grading, training and development, promotion, transfer and disciplinary measures must not be discriminatory. People with disabilities may not be refused a job interview based on their disability.

Fact Sheet 16 provides some practical guidelines during recruiting.

### Fact Sheet 16: Recruitment guidelines

When recruiting one should:

- Identify the inherent requirements of the vacant position
- Clearly describe the necessary skills and capabilities required for the job
- Set reasonable criteria for selection, preferably in writing, for the job applicants for such vacant positions

“Inherent requirements” of a job are the purpose(s) for which the job came about and must achieve. State what functions and duties are necessary for the job to achieve its purpose and fulfill its function.

## Applications

The application forms should state the functions and duties required to perform the job. The ability of the applicant to perform the core requirements of the job should be the primary focus of all application forms. Advertisements should contain sufficient detail about the essential job function to enable a person with disabilities to make an informed decision as to whether the candidate will be able to meet the inherent job requirements. A person with a disability may perform

the job functions of a job in a completely different manner from the non-disabled person.

Advertisements should provide sufficient detail so that the inherent requirements of the job can be identified. Where practical, requirements should be circulated to organisations that represent the interests of persons with disabilities, such as newsletters and specialist recruitment agencies.

The employer needs to ensure that requirements that are not essential for the job, are excluded. Failure to do so, may expose the employer to an unfair labour practice claim. Furthermore, requests for notices and advertisements in a format that is accessible to the person with a disability, such as large print, braille, audio tape, etc is a reasonable request that should be provided if required.

## Selection

During the selection process the same criteria should be applied to all applicants. The reasonable accommodation requirements may, however, require separate consideration for the applicant with a disability. When assessing whether an applicant is suitably qualified, an employer may not request information about actual or perceived disability from a previous employer.

Fact Sheet 17 provides a useful summary of the EEA and criteria of unfairness.

### Fact Sheet 17: EEA and criteria of unfairness

The EEA does allow for distinction, evaluation and preference for certain abilities, aptitudes and skills, as long as these are based upon definable, defensible criteria that distinguish between job requirements. It does not allow for these criteria to be established on an "arbitrary" basis and application of these criteria on an unfair basis.

Two criteria of unfairness are:

- Was the distinction made between people in making a selection decision based on some arbitrary criterion, such as a "disability"?
- Whether the distinction was done unfairly

### Interviews

Interviews should be handled in a sensitive, objective and unbiased manner. The interviewer should avoid making assumptions about the candidate's abilities and should focus instead on the candidate's qualifications for the position. Rather than make assumptions, the interviewer should ask all applicants how they would accomplish the essential functions that comprise the position.

If the employer knows that the applicant has a disability before the interview they should make reasonable accommodation available for the interview.

Avoid asking inappropriate questions about the person's disability, such as:

- How will you operate the switchboard as you are blind?
- How do you climb the staircase in your current job?
- Who helped you get dressed this morning?
- How did your disability come about?

Only ask factual questions related to the job function. All candidates should be asked similar questions.

If the applicant discloses a disability or has a self-evident disability, the interviewer should focus on the person's qualifications rather than the assumed or actual disability. The interviewer may ask all applicants to indicate how they would accomplish the inherent requirements

of the job and perform its essential functions, and if reasonable accommodation is required.

Fact Sheet 18 provides useful information on the applicant being suitably qualified.

### Fact Sheet 18: EEA and suitably qualified

The EEA provides for a "suitably qualified person" in sections 20(3), 20(4) and 20(5)

20(3): a person may be suitably qualified for a job as a result of any one of or a combination of a person's:

- formal qualifications,
- prior learning,
- relevant experience, or
- capacity to acquire, within a reasonable time, the ability to do the job

20(4): when determining whether a person is suitably qualified for a job, an employer must

- review all the factors listed in 20(3); and
- determine whether that person has the ability to do the job in terms of any one of or a combination of those factors

20(5): in making a determination under 20(4), the employer may not unfairly discriminate against a person solely on the grounds of that person's lack of relevant experience

### Good practices for interviewing hard-of-hearing, deaf or blind candidates

When setting up the interview, ask the candidate his/her preferred method of communication for the interview.

#### Interviewing a deaf or hard-of-hearing candidate

- Inform the receptionist that you are expecting a deaf or hard-of-hearing candidate
- Use a location with good lighting
- Have a written itinerary and company literature available
- Develop a simple "Suggestions for good interviewing practice" booklet to guide the interviewer
- Position the interpreter next to the interviewer so the candidate can easily see both individuals

- If interviewing with an interpreter, clarify whether the candidate will speak for himself or herself, or whether the interpreter will voice what the candidate signs
- If interviewing with an interpreter, make eye contact with the candidate
- If interviewing with an interpreter, address your questions directly to the candidate, not the interpreter
- If interviewing without an interpreter, provide a written copy of the interview questions
- Speak clearly and slowly
- Use gestures and facial expressions
- Encourage the deaf individual to let you know if your communication is unclear
- Rephrase where necessary
- Ask open-ended questions
- Use paper and pencil if necessary
- If appropriate, ask the candidate to demonstrate his or her skills during the interview by operating a piece of equipment or software application
- Resist placing your hands on or near your mouth as you speak

#### Interviewing a blind or partially-sighted candidate

- Before meeting face-to-face with the candidate, the interviewer should ascertain the exact nature of the disability, since this will impact on the interview process
- When meeting the candidate in the reception area, the interviewer should simply say: "I am pleased to meet you, let me shake your hand"
- When relocating to the interview room, offer the candidate your arm
- The candidate may prefer to make his or her way to the interview room without assistance, especially in the case of partially sighted individuals, or individuals making use of other assistance, such as a cane or a guide dog
- Do not pet the guide dog unless you have been given permission to do so
- Alert the candidate to any obstacles in his or her path
- Guide the candidate to the chair simply by gently taking the candidates hand and putting it on the back of the chair

- Should refreshments be offered, ensure that they are in easy reach and inform the candidate of their whereabouts
- Offer to provide the guide dog with water
- When interviewing the candidate for the position, do not assume that it is not possible for the candidate to accommodate any particular tasks. Disabilities, even forms of blindness, vary radically, and you may not be aware of the many technological advances that have expanded the potential for those with disabilities

#### Conditional job offers

If the applicant with a disability is suitably qualified, a job offer may be made conditional upon medical or functional testing to determine the actual or potential ability to perform the essential tasks of the position.

Fact Sheet 19 provides useful information on medical testing.

#### Fact Sheet 19: EEA and medical testing

Avoid all encompassing (i.e. generic) medical assessments or questions.

Under the EEA medical testing is prohibited, unless it is required by law, or is justified in light of the inherent requirements of the job. If medical testing is required, then it must only be carried out post job-offer and would form part of a conditional job offer.

Testing must comply with statutory requirements and should determine if the applicant is able to perform the essential functions of the job, with or without reasonable accommodation.

An employer may test applicants with disabilities for a specific job and not require all other applicants to undergo testing.

If testing shows that reasonable accommodation requirements would create unjustified hardship, or there is an objective justification that relates to the inherent job requirements of the job or to health and safety, the employer may withdraw the job offer.

**Testimonial 5: Mandisa**

Type of disability: Blind for the past 15 years

Employment status: Currently employed on an internship

**Obstacles**

In her private life, Mandisa experiences difficulties in getting around and has to rely on her husband. She has no other aid. The biggest obstacle in her working career was convincing people to believe in her. The main problem she experiences in her job is that it sometimes takes her longer to complete some tasks: this frustrates her supervisor.

**Practicalities**

The company provided her with the Job Access with Speech (JAWS) computer programme, developed for blind people. Audible feedback of information on the screen is provided.

**What differences or changes would you like to see within your working environment?**

Mandisa does not want to be employed solely on the basis of her disability or her BEE status. She wants to feel that she is part of the team and makes a valuable contribution to the company. She has found that she has not always been given a job with actual responsibility and spends a large amount of time doing nothing, waiting for other employees to provide her with work.

**What would you like employers to know?**

Mandisa was in the graduate programme at her auditing firm. She feels that the programme could be more successful for other blind people as it affords opportunities for a person with a disability. These are hard to come by. However, before an employer takes on a blind person they need to ensure that they have a clear idea of what it is they would like the person to do, and not let the person feel that they are less productive than other employees. Care needs to be taken to understand practical job requirements such as not requiring the reading of paper documents that cannot be translated by colleagues or by JAWS.

*(The name has been changed and some text has been edited.)*

# 9 Good retention practices

Retaining persons with disabilities is no different from retaining any other employees. In order to retain persons with disabilities, employers need to eliminate stereotypes and prejudices in the workplace with respect to persons with disabilities. Ensure that the incumbent feels valued as a useful team member.

## Example of good practice for the retention of deaf or hard-of-hearing staff members

The following example of good practice in retaining an employee who is deaf or hard-of-hearing illustrates some of the practices that should be followed. Some of these practices can be applied to other disabilities. Certain minor adjustments may need to be made to integrate these individuals into the workplace.

### One-on-one communication

- Ask deaf or hard-of-hearing employees how they prefer to communicate, for example, via e-mail, instant messaging, speech reading, writing, demonstration, etc
- Maintain eye contact
- Explain the topic of the conversation and do so again when the topic changes
- Do not hesitate to ask questions if communication is not clear
- Encourage deaf or hard-of-hearing employees to ask questions if communication is unclear
- Be prepared to repeat and rephrase information
- Be patient
- Have pencil and paper available and use them if necessary to communicate
- Ask deaf or hard-of-hearing employees to review key points of the conversation to ensure understanding
- Reduce environmental distractions, such as background noise and movement
- Position yourself in appropriate lighting so that the candidate can lip-read or see the signing

### During a meeting

- Ensure that one person speaks at a time
- Do not pace around the room while giving a presentation
- Speak clearly and slowly
- Do not talk with your back to the audience while writing on a blackboard

### After a meeting

- Take minutes or notes taken for future reference
- Review critical issues introduced in a meeting to ensure understanding

### Equipment

- Where appropriate, use visual aids, demonstrations, flip charts, written agendas, and handouts in presentations

### New employee orientation

- Provide name tags, including job titles, for everyone
- If necessary, hire an interpreter
- Provide an organisational chart
- Provide deaf or hard-of-hearing employees with information to read before orientation
- If available, use captioned films or videotapes

### On-the-job

- Ask the person how best to attract their attention
- Use signaling equipment for incoming calls
- Use hands-on demonstrations to assist in training
- Allow extra time for communication when training
- Provide an outline of the training session
- Assign a mentor to work directly with deaf or hard-of-hearing employees during the training period

- Share informal information
- Be sure to include deaf or hard-of-hearing employees in conversations, work break activities and social events
- Use a buddy system to alert deaf or hard-of-hearing employees of emergency situations
- Install flashing lights to work in conjunction with auditory alarms
- Review safety procedures, including exits and alarms
- Use texting, e-mail or a pager to contact deaf or hard-of-hearing employees in the event of an emergency
- Notify security if deaf or hard-of-hearing employees are alone in work areas

### Reasonable accommodation

A variety of workplace assistive devices are available for employees, who are hard-of-hearing, or who use hearing aids.

### Interpreters

Depending on the deaf employee's preference, it may be helpful to hire an interpreter for occasions when communication is critical or lengthy, such as during interviews, staff meetings, performance appraisals and training. Interpreters facilitate communication in a variety of ways using voice and sign language.

### Working with an interpreter

- If possible, meet with the interpreter before the programme to explain what will be covered
- As you can imagine, interpreters work a few words behind the speaker and will need time to finish sentences. Speak in normal tones, complete sentences and use steady pacing and enunciation
- Speak to deaf employees directly, and not to their interpreter
- Relay services, include telephone relay systems, which assist deaf and hearing colleagues communicate over the telephone by providing a simultaneous, three-way communication among a deaf person, a communication assistant and another person

### Debriefing

Debriefing is a strategy that involves a one-on-one meeting with deaf employees after meetings and other presentations to ensure that everything is clear.

### Technology solutions

Captioning is a process of converting the audio portion (dialogue and sounds) of a video production into text. Text is typically displayed

across the bottom of the screen over a black background. One form of captioning is real-time captioning. This can occur during a live event or large meeting. During filming, a captionist types the words into a computer which displays the speakers' words across the bottom of a video screen. If the captionist is at another location, the captionist hears the spoken words via telephone and types and transmits the text back on another phone line where it is converted into words which are fed to the video screen.

Computers can facilitate communication in the workplace in a variety of ways:

- Instant messaging allows users to exchange text messages online in real time
- E-mail allows users to send and receive messages online, but not in real time
- C-print is a computer assisted system for transcribing speech to print. It involves a hearing captionist typing words as they are being spoken and provides a real time text display that the deaf person can read
- Speech synthesisers provide synthesised voice output of letters, phonemes, words, or phrases typed on a keyboard
- Automatic speech recognition transcribes a single person's spoken message, voiced into a microphone, into text displayed on a computer screen
- Computer-assisted note taking allows notes and graphics to be typed almost simultaneously and displayed with overhead projectors for all to view

Assistive Listening Systems (ALS) are helpful for people who have difficulty hearing in large groups, at a distance, or in noisy environments:

- A telephone amplifier enables some deaf and hard-of-hearing people to use the telephone by increasing the volume of the phone
- An induction loop is a wire circling a given area connected to an amplifier and the speaker's microphone. These are often used in meeting and presentation rooms

Other environmental accommodation adjustments might include:

- Changing/adding lighting to enhance visibility
- Blocking out extraneous noise to eliminate disturbances
- Posting directional and safety signs as well as room numbers
- Adding vision panels to doors and walls to improve lines of sight
- Using round or oval tables for group discussions
- Installing convex mirrors to allow pedestrians to see what is coming down hidden corridors

# 10 *Other good practices*

Workers must refer disputes about unfair discrimination to the CCMA in writing within six months of its occurrence.

## **Termination of employment**

If an employee becomes disabled, the individual should be consulted to assess how the disability can be accommodated, if at all possible. After all avenues have been exhausted to make necessary accommodation adjustments, redeployment or termination of employment may be the only alternative. Before any termination decisions are made, appropriate alternative employment should be explored. If the employee cannot be accommodated and there is no alternative employment available, the employment relationship can be terminated, in line with fair procedure.

An employer may not retain an employee that becomes incapacitated or disabled, or recruit a person with a disability on less favourable terms than other employees performing the same work.

## **Confidentiality and disclosure**

- Employee information must remain confidential
- Any information related to the disability may not be disclosed, without the employee's written permission

- If a person with a disability needs to be accommodated and the disability is not self-evident, the employer may require any employee to disclose sufficient information to confirm the disability or reasonable accommodation needs

## **Developing solutions**

One of the biggest constraints employers find when trying to employ a person with a disability is the employers own lack of knowledge of disabilities. For this reason, they are often reluctant to employ people with disabilities. Expert advice and information is readily available. (Please refer to the Resources section of this toolkit for more information.)

The real expert on an individual's disability-related needs and the practical solutions required to meet them is the person with the disability. Employers often fail to engage with the employee adequately so as to be able to develop practical solutions. Open and frank engagement will assist the employer to understand the needs and possible solutions. These conversations will also dispel some myths surrounding disability.



## 11

# Recommended strategies

Employers, who hire people with disabilities, will be able to enrich their workplace diversity. Strategies are outlined below to proactively include people with disabilities in the workplace:

- Make a corporate commitment to include people with disabilities
- Commitment from the Chief Executive Officer (CEO) will assist in creating a disability-friendly workplace
- Ensure that corporate policies, procedures and practices specifically provide for proactive employment of people with disabilities
- Include persons with disabilities on your Management Board
- Employ people with disabilities at all levels, including senior management positions
- Market your products and services to customers with disabilities
- Educate all staff about disability issues
- Include disability awareness training in your new staff orientation
- Ensure that training materials is available in alternate formats such as large print, braille and captioned
- Use employees with disabilities to mentor new recruits, who do not have disabilities
- Integrate people with disabilities into your workforce
- Provide continuous information on disability issues
- Ensure that staff are familiar with legislation pertaining to disability issues
- Include information about disability routinely in the company newsletter or Intranet
- Ensure that buildings, parking areas, workspaces and communication systems are accessible to people with disabilities
- Create a budget for providing reasonable accommodation for applicants and workers with disabilities
- Ensure that employees are informed about provisions and assistance for reasonable accommodation adjustments
- Project a disability-friendly image so as to attract candidates and customers with disabilities
- When making campus calls, target students with disabilities
- When recruiting, search for resumes on disability-related websites
- Establish relationships with community agencies serving applicants with disabilities, and encourage staff to build relationships with these agencies
- Train and advance workers with disabilities
- Include employees with disabilities in employer-sponsored training opportunities
- Ensure that procedures are in place to promote qualified employees with disabilities to management and supervisory positions
- Train co-workers how to welcome workers with disabilities
- Establish a Disability Support Group and allow the group to make recommendations to management
- Ensure that co-workers know who to contact for questions regarding working with employees with disabilities

Fact Sheet 20 provides a practical step-by-step process for developing a strategy.

### Fact Sheet 20: Steps for developing a strategy

- Step 1: Establish the outcomes that the strategy needs to achieve (number of people to be employed, Awareness creation, etc).
- Step 2: Agree on the stages of the strategy (design, approval, implementation, etc) and the steps in each stage.
- Step 3: Estimate the costs and implications of implementing the strategy
- Step 4: Design the strategy
- Step 5: Obtain approval for the strategy
- Step 6: Implement the strategy
- Step 7: Review the strategy on a periodic basis to test its effectiveness and implement any required change actions

# 12 *Creating a more inclusive organisational culture*

This section summarises interventions that can be followed, which have been found successful in changing attitudes regarding the employment of people with disabilities.

## **A four-pronged approach**

A four-pronged approach towards creating a positive attitude in the employment of people with disabilities is proposed:

1. Actively implement the equity sentiment contained in the Employment Equity Act (EEA) by seeking to employ people with disabilities.
2. Ensure that the human resource systems within the company are more inclusive.
3. Encourage staff and the company in general, to become involved with people with disabilities.
4. Senior management and staff should convey positive attitudes about the employment of people with disabilities, by sending the “right signals”. The Human Resource Policy should include a statement to the effect, “if an employee becomes disabled during employment, where practical the company will re-integrate the employee back into the workplace”.

Other practices, such as, maintaining contact with the person who has become disabled at the workplace during recuperation, assisting employees with frequent absences owing to illness or injury should be made. The employer should also consider vocational rehabilitation, transitional work arrangements and temporary or permanent flexible time arrangement as methods for accommodating the employee’s journey to “full disability” status. How the employer deals with these issues sends important signals to staff that the company is serious about its commitment to support employment of people with disabilities.

Best practice shows that senior management’s attitude to disability issues impacts on the entire organisation. Workplace sensitisation to the employment of people with disabilities must be driven by the CEO and senior management.

Practical solutions should be sought to address reasonable accommodation issues. Small changes can often make a huge difference. For example, a small change such as lengthening comfort breaks may be necessary for people with disabilities, and may pre-empt any issues that may arise.

In line with good corporate governance, current company policies should be reviewed to ensure that they are disability-friendly and that they also comply with legislative requirements. Special attention should be paid to the issues of disability, incapacitation and employee benefits.

## **Change programmes**

A substantial body of knowledge is available in literature to assist organisations to initiate and manage a change programme to migrate the organisational culture from current poor attitudes around disability issues to more desired attitudes.

The Awareness, Desire, Knowledge, Ability and Reinforcement (ADKAR) change management model<sup>21</sup> is a good example of such a programme. The model characterises the process for individual change in five key steps:

1. **Awareness** of the need to change
2. **Desire** to participate and support the change
3. **Knowledge** about how to change
4. **Ability** to implement new skills and behaviours
5. **Reinforcement** to keep the change in place

21 *The Perfect Change*. Loveland, CO: Learning Centre Publications. Prosci, (1998).

## Additional resources

This section provides a list of useful resources, where additional information can be obtained with respect to employing persons with disabilities.

### South African National Council for the Blind (SANCB)

SANCB is a non-governmental organisation (NGO) which attempts to meet and represent the needs of partially-sighted and blind individuals in South Africa. A range of services are provided including rehabilitation, education, training and the provision of assistive devices. The NGO represents the interests of the blind in all facets in society as well as providing programmes for the prevention of blindness and the restoration of sight. Disability services include blindness, blurred vision, colour blindness and cataracts.

Tel/Fax: (012) 346-1171  
Email: [jenny@sancb.org.za](mailto:jenny@sancb.org.za)  
Website: [www.sancb.org.za](http://www.sancb.org.za)

### People for Awareness on Disability Issues (PADI)

PADI attempts to create and promote awareness around disability issues. Disability services include mobility, blindness, deafness, as well as various other disabilities.

Tel: (011) 436-0409  
Fax: (011) 535-3656  
Email: [padi@icon.co.za](mailto:padi@icon.co.za)  
Website: [www.padi.za.org](http://www.padi.za.org)

### Quadriplegic Association of South Africa (QASA)

The Association undertakes numerous activities to support people with physical disabilities, relating to quadriplegia and paraplegia. A database of people with disabilities seeking employment is maintained.

Tel: (031) 709-2121  
Fax: (031) 709-2120  
Email: [aris@iafrica.com](mailto:aris@iafrica.com)  
Website: [www.qasa.co.za](http://www.qasa.co.za)

### South African National Federation for Mental Health (SAFMH)

Disability services that the federation covers include mental health disabilities.

Tel: (011) 781-1852  
Fax: (011) 326-0625  
Email: [safmh@sn.apc.org](mailto:safmh@sn.apc.org)  
Website: [www.safmh.org.za](http://www.safmh.org.za)

### Medunsa Organisation of Disabled Entrepreneurs (MODE)

Services covered include assisting people with disabilities with finances to start their own business. A database of people with disabilities is maintained. A wide range of disabilities are covered.

Tel: (011) 830-0231  
Fax: (011) 839-3216

# 13 *Frequently asked questions*

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1. I employ 23 employees. Do I have to comply with the EEA or are my actions voluntary?

Yes, you do have to comply with the legislation, but you do not have to report on your EEA activities as you are not a “designated employer”. All employers must comply with the requirements of the legislation, but reporting requirements differ according to employment size.

2. I do not understand the definition of “disability”. My employees have to drive to clients. Do I have to provide them with special vehicles for those who use wheelchairs?

The Act is clear on the definition of disability and the three criteria test according to the impact at work applies. Unless the disability is visible and apparent, the employer’s obligations only arise when the employee declares their disability and status. Common sense prevails when it comes to wheelchairs. Most are practical. If the employee works alone then special assistance is needed, because once seated in the vehicle, the employee can’t get their wheelchair into the boot of the car. If traveling with another person, most vehicles are able to accommodate a folded wheelchair.

3. I employ a lot of people from our overseas parent company. Does the provision of the EEA apply to them?

Non-South Africans do not qualify in terms of the Employment Equity Act (EEA) provisions for BEE. With regard to disability, practical requirements are the order of the day as the requirements apply to all people with disability and not citizen status. If you employ a non-South African, even though they fall within the designated group status, the employer cannot claim for the person in terms EEA as a non-resident employee. Special dispensation can, however, be applied for. The provisions of the EEA in terms of meeting targets are generally only applicable to South African citizens.

4. Can I request that a person with a disability supply a medical certificate about their disability?

A medical certificate is not a legal requirement. Where disabilities are less obvious, for example, depression, psychiatric disorders, or epilepsy, people with disabilities may elect to get a note from their doctor confirming the prevalence of the condition. The employer may, however, not insist on such a note. Such a note is often used to support equity claims and tax claims.

If the employee does not disclose his or her status, unless the disability is obvious, the employer has no obligations. As an employer you need to be very sensitive regarding the individual’s concerns and anxieties. The importance of confidentiality is very important in the case of non-immediately visible disabilities (normally in the cognitive and mental areas).

5. Am I responsible for the “reasonable accommodation” requirement at my client’s premises on audits or is it my client’s responsibility to look after my employee with a disability?

Your client, the employer of the person with the disability and the person with the disability may have to play a role in assisting your client (for practicality sake) on reasonable accommodation issues. Building requirements are distributed through a variety of regulations where the obligation of compliance lies with landlord and tenant. The primary responsibility rests with your client, but you need to help with the practical requirements as their experience will often be limited and if you don’t assist your employees’ will bear the unnecessary consequences.

6. What are my obligations to any sub-contractors that I employ?

Your obligations extend to your employees on fixed or temporary contracts. You are, however, limited in terms of the incentive claims you can make as these only apply to full-time employees.

7. Do I have to make special provisions with our medical aid for any person with a disability that I employ? Who is responsible for the excess incurred on our group life cover, the company or the employee with the disability?

Yes, you do. People with disabilities cannot be discriminated against in any way and they are entitled to the same benefits as employees undertaking equivalent work, with the same grade status and employment contracts. If your medical aid does not provide the same benefits, then you should do something about it, but you cannot provide differential employee benefits based on the employees disability status.

8. Is there not a medical authority or test that can be conducted to determine whether a person is disabled or not?

No, the definition of a disability is a workplace definition, identified according to the three criteria explained in the EEA (See Fact Sheet 4) and not a medical definition, determination by a board or a gazetted set of ailments or impairments. The disability must have workplace impact and the incumbent unable to fulfill the core functions of the job without reasonable accommodation adjustments and often through the use of specialised devices and aids (i.e. hearing aids, calipers, large script).



# 14 *Disclaimer*

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While every caution has been taken to provide accurate information, this toolkit is not intended as a definitive resource and the reader is advised to consult their relevant organisational resources before taking any actions or decisions based on the information in this toolkit. In no event will Fasset, its directors, officers, shareholders, parents, subsidiaries, affiliates, agents and licensors or content providers be liable for any indirect, special, incidental, punitive or consequential damages arising out of or related to the use, inability to use, performance or nonperformance of the services even if Fasset was previously advised of the possibility of such damages and regardless of whether such damages arise in contract, tort, under statute, in equity, at law, or otherwise.

Postal Address: PO Box 6801, Cresta, 2118

Call Centre: 086 101 0001

E-mail: [fassetcallcentre@fasset.org.za](mailto:fassetcallcentre@fasset.org.za)

Web: [www.fasset.org.za](http://www.fasset.org.za)

# 15 References

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- Business for Social Responsibility, 2005
- Chapter 2 of the Constitution of South Africa, 1996
- Code of Good Practice on the Employment of People with Disabilities," Department of Labour
- Compensation for Occupational Injury and Diseases Act of 1993 (COIDA)
- Employment Equity Act 55 of 1998
- Fasset: Disability Access to Funding and Benefits. January 2008
- Fasset's (SSP) 2010/2011, updated on 11 August 2009
- Landis H and Grossett L, "Employment and the Law," Juta Academic. (2005)
- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA)
- Report for Fasset conducted by Research Focus (Pty) Ltd. "Survey of the Financial and Accounting Services Sector". (2008)
- Schedule of illustrative practices in certain sectors (Section 29), PEPUDA
- Skills Development Act, 1998 (SDA) and Skills Development Levy Act, 1997 (SDLA)
- The Occupational Health and Safety Act of 1993 (OHSA)
- The Perfect Change. Loveland, CO: Learning Centre Publications. Prosci, (1998)
- What employers and workers need to know about employment equity, DoL

# 16 Glossary

**Blind:** refers to a total loss of vision

**Congenital disability:** a physical impairment existing since birth

**Deaf:** refers to a total loss of hearing

**Direct discrimination:** a distinction is made between people on arbitrary, non-justifiable criteria

**Disability:** as defined in the EEA, only people who satisfy all of the following three criteria are regarded as people with disabilities: the disability must be long-term or recurring; having a physical or mental impairment; a physical impairment means a partial or total loss of a bodily function or part of the body; which substantially limits must be present

**Epilepsy:** a term for various disorders marked by electrical disturbances of the central nervous system

**Harassment:** this entails the derogatory treatment of a person based on a perceived inferiority (i.e. demeaning jokes about a person's disability, intentionally turning your head away)

**Hard-of-hearing:** refers to partial hearing loss ranging from slight to severe

**Hearing impairments:** can be categorised as deafness or hard-of-hearing

**Indirect discrimination:** a seemingly neutral criterion has the effect of excluding a majority of people or a sub-group of people (i.e. bias in psychometric tests favouring one group over another, or not employing women because employees have to work late at night, etc)

**Inherent requirements:** in terms of a job, these are the purpose(s) for which the job came about and must achieve. State what functions and duties are necessary for the job to achieve its purpose and fulfill its function

**Long-term impairment:** an impairment that has lasted or is likely to persist for at least twelve months

**Mental illness or mental disability:** a psychiatric disability caused by a biological, physiological or psychological disorder, or a chemical disorder of the brain

**Mental impairments:** cover a range of difficulties related to cognitive functioning, genetic disorders, "learning disabilities", mental health illnesses and functioning difficulties, which have resulted from "closed-head" injuries, such as, strokes, work and motor accidents. They also include the psychological and psychiatric impairments, such as phobias, mood disorders and schizophrenia

**Mental retardation or cognitive disability:** a condition causing significantly below average intellectual functioning

**Motor disability:** this includes multiple sclerosis (ms), muscular dystrophy, Lou Gerhig's disease ALS and cerebral palsy. This is a group of conditions resulting from damage to the central nervous system

**Paralysis or spinal cord injury:** *Hemiplegia* affects full or partial paralysis of one side of the body caused by brain damage as a result of a disease, trauma or stroke; *Paraplegia* is a paralysis of the lower half of the body, and involves partial or total loss of function of both legs; *Quadriplegia* is paralysis of the body that involves partial or total loss of function in a person's arms and legs

**Physical impairments:** these are the types of impairments that are most often associated with disability, since they are more visible. Devices used by this category of individuals include wheelchairs, crutches, limb prosthetics and walking sticks

**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

**Reasonable accommodation:** there is an obligation for employers to reasonably accommodate the needs of people with disabilities, by adopting the most cost-effective means to effectively remove the barrier(s) preventing the person from being able to perform the job and to enjoy equal access to the benefits and opportunities of employment

**Recurring impairment:** is one that is likely to happen again and to be substantially limiting. It includes a constant underlying condition, even if its effects on a person fluctuate

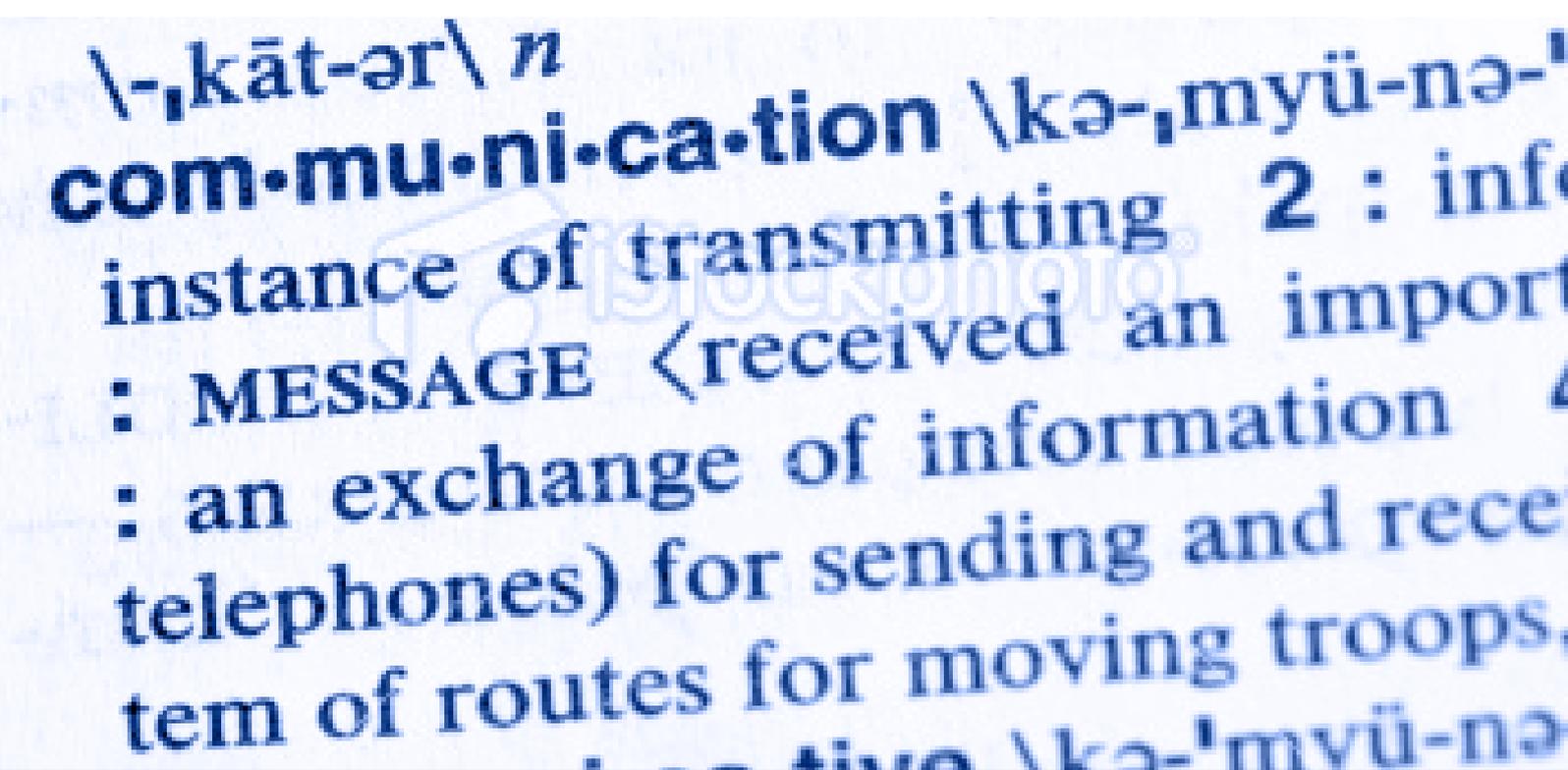
**Speech impairment:** limited or difficult to understand speech patterns

**Substantially limiting:** means 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

**Suitably qualified:** in terms of the EEA means qualification as a result of any one of, or any combination of, a person's formal qualifications, prior learning, relevant experience or capacity to acquire within a reasonable time, the ability to do the job

**Visual impairments:** can be categorised into blindness or partial sightedness. Partial sightedness includes cataracts, glaucoma, myopic degeneration and diabetic eye disease. These occur more frequently than full blindness

**Workplace definition of disability:** individuals are considered to be people with disabilities, when they satisfy all of the following criteria: they have a physical or mental impairment which is long-term or recurring, and which substantially limits their prospects of entry into, or advancement in employment. and typically manifested by seizures or involuntary muscular contractions



# 17 Appendix

**Figure 1.1: Proposed structure of the 10-level NQF**

Band	Level	Qualification and Certificates	Institutions			
Higher Education and Training (HET)	10	Doctorates	Tertiary / Research / Professional Institutions			
	9	Masters Degrees				
	8	Post-graduate diplomas and Professional Qualifications	Universities / Technikons / Colleges / Private / Professional Institutions / Workplace / etc.			
	7	Bachelors Degrees and Advanced Diplomas				
	6	Diplomas and Advanced Certificates				
	5	Higher Certificates and Advanced National (vocational) Certificates				
Further Education and Training (FET)	4	Std 10 / Grade 12, N3 / NCS National Senior Certificate and National (vocational) Certificates	Formal High schools / Private / State schools	Technical / Community / Police / Nursing / Private colleges	Industry Training Boards / Unions / Workplace, etc	
	3	Std 9 / Grade 11, N2 / NIC National (vocational) Certificates				
	2	Std 8 / Grade 10 Further Education and Training Certificates				
General Education and Training (GET)	1	Senior Phase, Std 7 / Grade 9	Formal schools (Urban / Rural / Farm / Special)	Occupation / Work-based training / Upliftment programmes / Community programmes	NGOs / churches / Night schools/ ABET programmes / Private providers/ Industry training boards / Unions/ Workplace, etc	
		Intermediate Phase				ABET Level 4
		Foundation Phase				ABET Level 3
		Pre-School				ABET Level 2
		ABET Level 1				

**Figure 1.2: Proposed structure of the 8-level NQF**

Band	Level	Qualification and Certificates
Higher Education and Training (HET)	8	Post-doctoral research degrees Doctorates Masters degrees
	7	Professional qualifications Honours degrees
	6	National first degrees Higher diplomas
	5	National diplomas National certificates
Further Education and Training (FET)	4	
	3	National certificates
	2	
General Education and Training (GET)	1	ABET Level 4/ Grade 9 National certificates



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