

# Employment – Code of good practise

## EMPLOYMENT EQUITY ACT NO 55, OF 1998

### *DRAFT CODE OF GOOD PRACTICE ON DISABILITY IN THE WORKPLACE*

#### **1. INTRODUCTION**

##### **1.1. Employment rights of people with disabilities**

Disability is a natural part of human life and does not diminish the right of people with disabilities to take their rightful place in the world of work. Widespread ignorance, fear and stereotypes cause people with disabilities to be unfairly discriminated against in society and in employment. As a result, people with disabilities experience high unemployment levels and, in the workplace, often remain in low status jobs and earn lower than average remuneration.

Unfair disability discrimination is perpetuated in many ways:

- (i) There are many unfounded assumptions about the abilities and performance of job applicants and employees with disabilities.
- (ii) Advertising and interviewing arrangements exclude people with disabilities or limit their opportunities inappropriately.
- (iii) Employers set criteria for selection and safety standards that are not relevant to the inherent requirements and essential functions of the job.
- (iv) Selection tests discriminate unfairly.
- (v) Workplaces are inaccessible and training is inappropriate for people with disabilities or not available at all.
- (vi) Employees who become disabled are often dismissed for poor performance or incapacity or they resign unnecessarily. They are often encouraged or forced to apply for disability benefits and they tend to retire earlier than other employees do, although if their needs are reasonably accommodated, they can continue as productive employees.

##### **1.2. Benefits of employing people with disabilities**

Equal employment opportunities enable people with disabilities to participate actively in the economy. People with disabilities can demonstrate their ability and contribute equally alongside fellow workers if enterprises remove discriminatory barriers to their employment and make practical accommodation for their needs.

Some of the benefits of employing people with disabilities are that:

- (i) People with disabilities can contribute their skills and abilities to the economy and society.
  - (ii) The cost of claims on public social security and occupational benefit schemes can be reduced if employees with disabilities are retained at work.
  - (iii) Accommodating job applicants with disabilities often benefits existing employees and improves workplace morale and relationships.
  - (iv) Disability equity attracts new customers with disabilities and those sensitive to disability and creates new markets that are attracted by organisational practices, which affirm people with disabilities.
  - (v) It tends to reduce unjustified preconceptions about disability.
- Employers who focus on the real and not the presumed effects of mental and physical impairments on human capacity are able to adopt flexible work practices that are consistent with business needs.

## **2. AIMS, STRUCTURE AND TECHNICAL RESOURCES**

### **2.1. Aims of the Code**

The Code is a general guide for employers and employees on some of the key aspects of promoting equal opportunities and fair treatment for people with disabilities as required by the Employment Equity Act. This Code is intended to help employers and employees to understand their rights and obligations, to promote certainty and reduce disputes to ensure that people with disabilities can enjoy and exercise their rights at work. The Code is intentionally general because every person and situation is unique and departures from the standards in this code may be justified in appropriate circumstances.

### **2.2. Structure of the Code The Code guidelines cover five aspects:**

- (i) Definitions (clauses 5-6). Important concepts are explained including the definition of people with disabilities, reasonable accommodation and the nature and the extent of an employer's obligation to accommodate.
- (ii) The Employment Cycle (clauses 7-13). The Act requires employers to avoid unfair discrimination and to try to achieve equity in every "employment policy or practice." The Code includes guidelines on advertising, recruitment and selection, appointment, medical testing, placement, training and career advancement, retention and management of people who become disabled while in employment; and termination of employment.
- (iii) Confidentiality and Disclosure. Clause 14 includes guidelines on policy and procedures regarding disclosure and protection of information about disability and testing applicants and employees to establish disability.
- (iv) Employment Benefits. Clause 15 deals with fair access to and management of benefit schemes for job applicants and employees with disabilities.

(v) Employment Equity Plans. Clause 16 gives guidance on integrating people with disabilities in equity planning.

### **2.3 Technical Assistance Manual**

Technical information, guidance and specific practical examples to assist employers and people with disabilities will be provided in the accompanying Technical Assistance Manual.

## **3. APPLICATION**

3.1 The rights and obligations arising from the Employment Equity Act are contained in the Employment Equity Act, other statutes referred to in the Employment Equity Act and this Code. The Code is not an authoritative summary of the law, nor does it create additional rights and obligations. Failure to observe the Code does not, by itself, render a person liable in any proceedings. Nevertheless when the courts and tribunals interpret and apply the Employment Equity Act, they must consider it.

3.2 The Code should be read in conjunction with other Codes of Good Practice that may be issued by the Minister of Labour. 3.3 Employers, employees and their organisations should use the Code to develop, implement and refine disability equity policies and programmes to suit the needs of their own workplaces.

4. LEGAL FRAMEWORK The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No. 55 of 1998 and is based on the Constitutional principle that no one may unfairly discriminate against a person on the grounds of disability.

## **5. PEOPLE WITH DISABILITIES**

The Employment Equity Act protects people with disabilities against unfair discrimination on the ground of their disability and entitles them to affirmative action measures. They are defined as "people who have a long-term or recurring physical or mental impairment, which substantially limits their prospects of entry into, or advancement in, employment".

Employers may not unfairly discriminate against employees or applicants for employment, because the employer suspects or believes, whether the belief or suspicion is correct or not, that the applicant or employee has an impairment that amounts to a disability, or that they have been disabled, or they are, or have been, associated with other people who are, or have been, disabled. People in a relationship, or association with, or those who have responsibility for, a person with a disability, have, under the Act, Chapter II's rights to protection against unfair discrimination but not Chapter III's affirmative action protections.

## **5.1 Defining persons with disabilities under the Act**

The scope of protection for people with disabilities in employment focuses on the effect of a disability on the person in relation to the working environment, and not on the diagnosis of the impairment. Only people who satisfy all the criteria in the definition:

- (i) long-term or recurring;
- (ii) having a physical or mental impairment;
- (iii) which substantially limits, are considered as persons with disabilities and entitled to protection against discrimination.

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

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 as people with disabilities once the impairment starts to be substantially limiting. Progressive or recurring conditions which have no overt symptoms or which do not substantially limit a person are not disabilities.

### **5.1.2 Impairment**

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.

### **5.1.3 Substantially limits**

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 class of jobs or would be significantly limited in doing the particular class of jobs. This should be determined by considering the nature, extent, duration and impact of the impairment as well as the essential functions of the class of jobs in question.

## **5.2 Impairments that are not disabilities**

Some impairments are excluded from the scope of protection because they are not considered substantially limiting and others for reasons of public policy.

### **5.2.1 Controllable and correctable impairments**

Some impairments are so easily controlled, corrected or lessened, that they have no limiting effects. For example, a person who wears spectacles or contact lenses does not have a disability unless even with spectacles or contact lenses the person's vision is substantially impaired. An assessment whether the effects of an 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. If so, the impairment is not a disability.

### **5.2.1 Impairments excluded for reasons of public policy**

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

- (i) sexual behavior disorders that are against public policy;
- (ii) self-imposed body adornments such as tattoos and body piercing;
- (iii) compulsive gambling, tendency to steal or light fires;
- (iv) 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;
- (v) normal deviations in height, weight and strength; and conventional physical and mental characteristics and common personality traits.

## **6. REASONABLE ACCOMMODATION FOR PEOPLE WITH DISABILITIES**

### **6.1 Accommodation, anti-discrimination and affirmative action**

People with disabilities have a right to be protected against unfair discrimination. This means that all employers should reasonably accommodate the needs of people with disabilities. The Act defines accommodation as "modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment". The accommodation should aim to reduce the impact of the impairment on the person's capacity to fulfil the essential functions of a job. The employer may adopt the most cost-effective means that are consistent with effectively removing the barrier to a person being able to perform the job, and to enjoy equal access to the benefits and opportunities of employment. Designated employers must also implement affirmative action measures to ensure that people with disabilities who are suitably qualified for a job can enjoy equal opportunities and are equitably represented in the workforce.

### **6.2. Scope of reasonable accommodation**

Reasonable accommodation applies to applicants and disabled employees who are qualified to perform the essential functions of a job. Reasonable accommodation may be required:

- (i) during the recruitment and selection processes;
- (ii) in the working environment;

(iii) in the way work is usually done and evaluated and rewarded; and in the benefits and privileges of employment.

### **6.3 When is an employer obliged to make reasonable accommodation?**

The obligation may arise at any of the different stages in employment when an applicant or employee voluntarily discloses a disability related accommodation need or when such a need is reasonably self-evident to the employer. Employers must also accommodate employees when work or the work environment changes or an impairment varies which affects the employee's ability to perform the essential functions of the job.

### **6.4 Process of reasonable accommodation**

The employer should consult the employee and, where practicable, technical experts to establish appropriate mechanisms to accommodate the employee with workplace needs.

### **6.5 Examples of reasonable accommodation**

The particular accommodation will depend on the individual, the impairment and its effect on the person, as well as on the job and the working environment. Reasonable accommodation may be temporary or permanent, depending on the nature and extent of the disability.

Examples include:

- (i) adapting existing facilities to make them accessible;
- (ii) adapting existing equipment or acquiring new equipment including computer hardware and software;
- (iii) re-organising work stations;
- (iv) changing training and assessment materials and systems;
- (v) restructuring jobs so that non-essential functions are re-assigned;
- (vi) adjusting working time and leave;
- (vii) transferring the person to a vacant position;
- (viii) providing readers, sign language interpreters, and
- (ix) providing specialised supervision, training and support.

### **6.6 Accommodation and work performance**

An employer may evaluate work performance against general standards applicable to other employees but the nature of the disability may require an employer to adapt the way performance is measured so that it focuses on the essential functions and not on irrelevant or marginal job functions. Being provided reasonable accommodation does not reduce a disabled employee's obligation to perform the essential functions of a job.

### **6.7 Reasonable accommodation and unjustifiable hardship**

The employer need not accommodate a qualified applicant or an employee with a disability if this would impose an unjustifiable hardship on the business of the employer. Unjustifiable hardship is action that requires significant or considerable difficulty or expense and that would substantially harm the viability of the enterprise. This involves considering the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the business. An accommodation that imposes an unjustifiable hardship for one employer at a specific time may not be so for another or for the same employer at a different time. In general, larger employers are expected to make accommodation requiring greater effort or expense than a smaller employer particularly if many people with disabilities would be likely to benefit. Employers should adopt the best option consistent with the need for effectively removing the barrier to the applicant or employee.

## **7. RECRUITMENT AND SELECTION**

The Act requires all employers to ensure that their recruitment procedures, advertising and selection criteria, appointments and the appointment process do not unfairly discriminate against applicants with disabilities. An employer may not refuse to employ people because they have disabilities or because they need to be accommodated, unless they are unable to perform the essential functions of the job or their needs cannot be reasonably accommodated.

### **7.1 Describing the job**

When employers recruit they should identify the purpose and essential functions of the vacant position so that they can describe the job accurately and set reasonable criteria for selection, preferably in writing, for job applicants for vacant positions.

#### **7.1.1. Inherent requirements and essential job functions**

The inherent requirements of the job are the purposes for which the job exists. Employers should avoid specifying job requirement that are not required to perform the job if these tend to exclude people with disabilities from applying or being considered. The essential functions and duties of the job are what are necessary to get the job done. Employers should identify the job functions clearly because these identify the necessary skills and capabilities for the job. Employers should not include functions that are not essential to performing the inherent requirements of the job because selection based on marginal functions may exclude people with disabilities unfairly .

#### **7.1.2. Criteria for Selection**

Employers are entitled to set fair and reasonable criteria for selection. These may be based on formal educational or professional qualifications, prior learning, practical experience, skills, aptitudes, attitudes and the capacity to acquire the ability to do the job. Employers should monitor their qualification standards and recruitment practices. If they tend to exclude people with disabilities, they should be reviewed to ensure that they are consistent with business necessity. If they are not, the criteria for selection should be amended to remove inappropriate barriers to persons with disabilities.

## **7.2 Advertising**

Advertisements and job notices should be accessible to persons with disabilities and, where practicable, circulated to organisations that represent the interests of people with disabilities. Advertisements or notices should include sufficient detail about the essential functions and duties of the job so that potential applicants with disabilities can make an informed decision if they meet the inherent requirements of the job. Employers should avoid misleading job titles as these may discourage qualified applicants with disabilities from applying. On request, and if practicable, notices and advertisements should be provided in a format appropriate to persons with disabilities, such as large print, Braille, or audiotape.

## **7.3 Job application process**

Employers should pay particular attention to the job application process, the forms they use and the questions they ask to avoid assuming that a person with a disability is not qualified to perform the essential functions of the job. Application forms should focus on identifying an applicant's ability to perform the essential functions of the job.

## **7.4 Selection process**

The purpose of the selection process is to assess whether or not an applicant is suitably qualified. This may require a two-stage process if an applicant has a disability:

- (i) Determining whether Suitably Qualified. This enquiry considers whether the applicant is "suitably qualified" and
- (ii) Determining Accommodation Requirements. This enquiry considers whether a "suitably qualified applicant" needs any accommodation to be able to perform the inherent requirements or essential functions of the job. An employer's selection criteria and tests must be valid, accurate and reliable, and necessary to the employer's business. Employers should apply the same standards to test the ability of people with disabilities as

are applied to other applicants, although it may be necessary to accommodate applicants who have disabilities. Employers should ensure that their selection processes do not unfairly discriminate against people with disabilities.

## **7.5 The interview**

Selection interviews should not unfairly discriminate, exclude and be fair in that:

- (i) They should be flexible, sensitive, objective and unbiased.
- (ii) Interviewers should avoid assumptions about people with disabilities.
- (iii) If an applicant has disclosed a disability or has a self-evident disability, the employer must focus on the applicant's qualifications for the work rather than any actual or presumed disability but may enquire and assess if the applicant would, but for the disability, be suitably qualified.
- (iv) Interviewers should instead ask all applicants to indicate how they would accomplish the inherent requirements of the job and perform its essential functions and if accommodation is required.
- (v) If the employer knows in advance that an applicant has a disability the employer should be prepared to make reasonable accommodation during the interview.

## **7.6 Disability-related information**

When assessing if an applicant is suitably qualified an employer may not request information about actual or perceived disability.

## **7.7 Job offer may be conditional**

If an applicant with a disability is suitably qualified, an employer may make a job offer conditional on medical or functional testing to determine an applicant's actual or potential ability to perform the essential functions of a specific job. The testing must comply with the statutory requirements. This is the only situation where an employer may test applicants with disabilities for a specific job and not require all other applicants to undergo testing. Such tests should be minimally intrusive and consistent with measuring or predicting if the applicant or employee is able to perform the essential functions of the job, with or without reasonable accommodation.

## **7.8 Terms and conditions of employment**

An employer may not employ people with disabilities on less favorable terms and conditions for reasons connected with the disability. Employees who have become ill or injured should have their employment status and benefits protected and those who can be retained at work should continue on their former remuneration and terms and conditions of employment.

## **8. ASSESSMENT OF ABILITY AND PSYCHOMETRIC TESTING**

Psychometric, psychological and honesty and integrity testing, as well as functional ability assessments must comply with the requirements of the Act.

## **9 MEDICAL TESTING, HEALTH SCREENING AND SAFETY**

The Act prescribes that medical testing is prohibited, unless legislation permits or requires it, or it is justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of a job .

Tests must be relevant and appropriate to the kind of work and the necessary fitness criteria for the job, the workplace and its hazards, and necessary to the employer's business. Employers should establish that tests do not unfairly exclude and are not biased in how or when they are applied, assessed or interpreted.

Tests to establish the health of an applicant or employee should be distinguished from tests that assess the ability to perform essential job functions or duties. Health testing should therefore only be carried out after an employer has established that the person is in fact competent to perform the essential job functions or duties and after a job offer has been made. The same applies to medical testing for admission to membership of an employee benefit scheme.

An employer who requires a person to undergo any medical, health screening or safety test must bear the costs of the test.

### **9.1 Medical testing**

#### **9.1.1 Job applicants**

Section 7 of the Act allows an employer to test short-listed applicants if the test is fairly designed to determine if people who are apparently suitably qualified, are able to perform the inherent requirements of the job or have the capacity to acquire the ability within a reasonable time.

#### **9.1.2 After illness or injury**

If an employee has been ill or injured and it appears that the employee is not able to perform the job, the employer may require the employee to agree to functional determination of disability and accommodation, to medical or other appropriate tests to assess if the employee can safely perform the job or to identify reasonable accommodation for the employee.

## **9.2 Health screening**

Employers are obliged to provide and maintain a working environment that is safe and without risk to the health of employees. Health testing may be lawful and justifiable in the light of medical facts or employment conditions, if the presence of a specific medical condition in relation to a particular job and the working conditions of that job would pose a significant health risk. An employer may withdraw a conditional job offer, and need not retain an employee with a disability if objective assessment shows that even with reasonable accommodation, the work would expose the employee or others to substantial health risk and that there is no reasonable accommodation to mitigate that risk.

## **9.3 Safety**

The health screening principles also apply to safety considerations. An employer should not employ a person if the employer can demonstrate that a person with a disability would represent an actual direct risk of substantial harm to his or her own or other people's safety, which could not be eliminated or reduced by applicable reasonable accommodation.

## **9.4 Pre-benefit medical examinations**

Employees may be required to submit to medical examination or tests before becoming members of employee benefit schemes that are offered within the employment relationship. The purpose of these examinations is to assess a person's suitability for membership of a benefit scheme and is not relevant to a person's capability to perform the inherent requirements of the job. Therefore an employer may not refuse to recruit, train, promote or otherwise prejudice any person only because that person has been refused membership of a benefit scheme.

## **10. PLACEMENT**

Placement involves the orientation and initial training a new employee may require to become integrated into the workplace and to perform the inherent job requirements and duties. New employees with disabilities must be treated equally, subject to reasonable accommodation, to employees who do not have disabilities. Employers should be aware that their orientation and initial training should be flexible and should ensure that these are accessible, responsive to and able to accommodate the needs of employees who have disabilities.

## **11. TRAINING AND CAREER ADVANCEMENT**

### **11.1 Responsibility of designated employers to retain and develop people with disabilities**

The Act provides that designated employers must take affirmative action measures to “retain and develop people from designated groups”. Employers should consult employees with disabilities and develop specific career advancement programmes to enable them to achieve equitable representation, their full employment potential and to be employed in all occupational levels and categories in the work place.

### **11.2 Integration at work**

All employers should ensure that training, work organisation and recreational benefits are accessible to employees with disabilities. If they are not, employers should make reasonable accommodation. Examples are training tools, materials, venues and processes, as well as canteen facilities, parking, crèche and social and sporting activities.

### **11.3 Performance evaluation**

Employers must ensure that their systems and practices to evaluate work performance clearly identify and fairly measure and reward performance of the inherent requirements or essential functions of the job . Employers should also ensure that performance evaluation reasonably accommodates disabled employees. Misconceptions and negative or prejudicial assumptions about the performance of employees who have disabilities must be avoided and addressed. Employers should ensure that work that falls outside the inherent requirements or essential functions of the job is not evaluated, particularly if so doing would be likely to exclude people with different disabilities.

## **12. RETAINING PEOPLE WITH DISABILITIES: DISABILITY MANAGEMENT**

### **12.1 Objectives**

Designated employers are obliged to retain and develop people with disabilities. This aims to enhance efficient employment and to encourage employees to return to work after absence on sick leave or other alternatives. Employees who are people with disabilities and who are temporarily ill, injured or disabled should, where practicable, be re-integrated into work. Employers should integrate employment policies and practices with policies and practices relating to employee benefits, since workplace retention and claims administration efficiencies are likely to increase and needless costs will be reduced.

### **12.2 Policy guidelines**

If an employee is, or becomes a person with a disability, the employer should keep in regular touch with the employee and where practicable, encourage early return-to-work. This may require the employer to provide

vocational rehabilitation, transitional work programmes and where appropriate, temporary or permanent flexible working time. If an employee is frequently absent from work for reasons of illness or injury, the employer may consult the employee to assess if the cause of the illness or injury is a disability that requires accommodation. If practicable, employers should offer alternative work, reduced work or flexible work placement, so that employees are not compelled or encouraged to apply for benefits if they could, with reasonable accommodation, continue in employment. Employers should regularly evaluate the relationship between employees and the working environment and where necessary provide appropriate programmes to prevent injury, illness and disability and promote health at work.

## **13. TERMINATION OF SERVICE**

### **13.1. Dismissal**

Employees are protected against unfair dismissal in terms of the Labour Relations Act. If an employee with a disability's performance is disability or impairment-related, the employer should consult the employee to assess what appropriate reasonable accommodations are available to retain the employee with a disability, and continue to perform the essential functions of the job. Where these are not possible, the employer should consult the employee about the effect of the disability on the employer's obligation to retain, assess the employee's capabilities and ability and then explore the possibility of alternative employment appropriate to the employee's capacity. If at the end of the process the conclusion reached is that the employee cannot be reasonably accommodated in the current job, and there is no appropriate alternative employment, termination of the employment relationship could be appropriate.

### **13.2. Dismissal for operational requirements**

Dismissal for operational requirements is governed by the Labour Relations Act, 1995, and the Code of Good Practice on Dismissal for Operational Requirements. Employees who have disabilities may be dismissed because of the operational requirements of the undertaking but employers should ensure that any selection criteria do not directly or indirectly unfairly discriminate against people with disabilities.

### **13.3 Severance benefits on grounds of disability**

Employers who provide disability benefits should ensure that employees are fairly advised before they apply for the benefits available and before resigning from employment because of a medical condition.

## **14. CONFIDENTIALITY AND DISCLOSURE OF DISABILITY**

14.1 The purpose of gathering information must be legitimate. Employers, including health and medical services personnel, may only gather private information relating to employees if it is necessary. Employees are usually the most reliable source of information about themselves and employees are entitled to disclose as much information as they wish.

### **14.2 Employers must protect confidential information**

Employers must protect the confidentiality of the information that has been disclosed and must take care to keep records of private information relating to the disability of applicants and employees confidential and separate from general personnel records. When an employer no longer requires the information it must be returned to the employee or be destroyed or rendered anonymous. Employers may not disclose any information relating to a person's disability without the written consent of the person concerned.

### **14.3 Employee disclosure of disability-related needs to employer**

People with disabilities are entitled to keep their disability status confidential. But if the employer is not aware of the disability or the need to be accommodated, the employer is not obliged to provide it. If the disability is not self-evident the employer may require the employee to disclose sufficient information at his or her disposal to confirm the disability or the accommodation needs and to cooperate with the employer in the search for reasonable accommodation. As information about disability may be technical, employers should ensure that a competent person interprets the information. If an employer requires further information this must be relevant to a specific job and its essential functions. If accommodating the employee requires the co-operation of other employees, it may be necessary to reveal the fact of a person's disability if it is not otherwise obvious, to some of the person's colleagues, particularly a supervisor or manager. The employer may, after consulting the person with the disability, advise relevant supervisory staff that the employee requires accommodation, without disclosing the nature of the disability, unless this is required for the health or safety of the person with the disability or other persons.

### **14.4 Confirmation of disability status**

If the employer disputes that the employee is disabled or that the employee requires accommodation, the employer is entitled to request the employee to be tested to determine the employee's ability or disability, at the expense of the employer.

## **15. EMPLOYEE BENEFITS**

### **15.1 Principles**

Benefits mean employee benefits, medical benefits, group disability assurance benefits, retirement schemes, life assurance schemes, as well as similar benefits provided to employees in terms of the employment relationship. An employer who provides or arranges for occupational insurance or other benefit plans directly or through a separate benefit scheme or fund, must ensure that they do not unfairly discriminate against people with disabilities. Employees with disabilities may not be refused membership of a benefit scheme only because they have a disability.

### **15.2 Provision of benefits**

Employers should ensure or verify that disability-related benefits provided to, or available for employees, whether directly or through third party providers, do not discriminate unfairly, do not unfairly limit or exclude, and do not amount to unfair conduct in the provision of benefits to employees with disabilities.

### **15.3 Promote programmes and benefits appropriate to employees with disabilities**

To increase employment opportunities and job security for employees who have disabilities and to reduce the costs of benefit schemes, designated employers should investigate and, if practicable, offer benefit schemes that reasonably accommodate persons with disabilities. These include:

- (i) vocational rehabilitation, training and temporary income replacement benefits for employees who, because of illness or injury, cannot work for an extended period, and
- (ii) financial compensation for employees who because of a disability are able to continue to work but at lower levels of pay than they enjoyed before becoming disabled.

## **16. DISABILITY AND EMPLOYMENT EQUITY PLANS**

### **16.1 Workforce profile**

When designated employers compile a profile of their workforce, they should use the opportunity to heighten the awareness of their employees of the value and importance of recruiting and retaining employees who have disabilities. However employers should do this without disclosing the individual identity of disabled employees without their consent.

Employees with disabilities may choose to either:

- (i) identify their disability themselves; or
- (ii) disclose their disability to their employer as long as their identity is kept confidential. The profile should reflect separately any employees who are not in active employment; for example employees who are receiving total or partial income replacement benefits while recovering from illness or disability.

## **16.2 Employment Equity Plan**

Employers should set targets to recruit and promote people with disabilities at all occupational levels, as people with disabilities are often employed in low status work and tend to be promoted less often than employees without disabilities. A workforce profile may show that the enterprise has few or no disabled employees, or that disabled employees are over-represented in specific job categories. If so the employer should review its entry and exit processes:

- (i) to ensure that its selection criteria for employment do not inappropriately exclude persons with disabilities; and
- (ii) to change the necessary processes appropriately over a prescribed period. If employees with disabilities are concentrated in particular occupational categories, the employer should consider if its criteria for selection or performance standards could be adapted to facilitate employees with disabilities being employed in different categories. When an employer facilitates the establishment of a forum to develop or evaluate employment equity plans, the employer should take specific steps to promote the representation of employees with different disabilities in the forum. If people with disabilities are under-represented in all occupational levels and categories in the workplace, the employer should, after consulting the forum, seek guidance from organisations that represent people with disabilities or relevant experts, for example in disability equity, vocational rehabilitation and occupational therapy. An employer should ensure that the resources available to the forum should be reasonable, having regard to the size and capabilities of the employer and that the plan should be regularly evaluated and adapted to measure its effectiveness in achieving the objectives of the Act.