



DISABILITY STRATEGY

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DEFINITION OF DISABILITY

For the purpose of the Disability Strategy of the Western Cape Education Department (WCED), persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.

Disability can be defined in many ways, using many different approaches. The Disability Strategy of the WCED acknowledges that disability is a social and medical construct which includes the clinical diagnosis of a disability by a qualified medical practitioner. See Appendix A for a list of definitions.

2. INTRODUCTION

The WCED aspires to protect, serve and empower persons with disabilities, including WCED employees, so that they are afforded the same opportunities as all other citizens.

The Disability Strategy of the WCED outlines objectives in relation to the current South African legal framework, the definition of disability, the disability disclosure form, recruitment and retention of persons with disabilities, personal development of people with disabilities, and promoting and protecting the rights of WCED employees with disabilities. The strategy is in line with the values entrenched in the Constitution. It is aimed, in part, at addressing levels of unemployment, low status jobs and exclusion from training and development, which persons with disabilities may experience.

The Disability Strategy of the WCED should be read in conjunction with the *Technical Assistance Guidelines on the Employment of People with Disabilities (Department of Labour, 2002)* and the *Policy Statement on the Management of the Employment, Development and Career Progression of People with Disabilities (Provincial Government Western Cape, 2004)*. These policies intend to provide persons with disabilities the opportunity to contribute meaningfully to the economy, society and the community.

3. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

Nationally and internationally, disability has been the subject of various legislative instruments and bodies because of discrimination, isolation and exclusion of persons with disabilities from the mainstream of society.

- *The Constitution of the Republic of South Africa, Act 108 of 1996*, in Chapter 2 of the Bill of Rights, Section 9 (*the Equality Clause*), provides that everyone is equal before the law and has the right to equal protection and benefit of the law, and includes the full and equal enjoyment of all rights and freedoms. Disability is specifically mentioned as one of the specified grounds in respect of which the state is enjoined not to unfairly discriminate directly, or indirectly against anyone in terms of the listed grounds. Thus persons with disabilities are guaranteed the right to be treated equally and to enjoy the same rights as all other citizens.
- The State is further enjoined by Section 9 (4) of the Constitution to enact National legislation to prevent or prohibit unfair discrimination. Thus the *Promotion of Equality and Prevention of Unfair Discrimination Act (Act 4 of 2000)* was enacted to give effect to the letter and spirit of the Constitution, and to provide for measures to facilitate the eradication of unfair discrimination, hate speech and harassment on the grounds of race, gender and disability, etc.
- The purpose of the *Labour Relations Act (Act 66 of 1995)* is to advance economic development, social justice, labour peace and the democratization of the workplace by

fulfilling, *inter alia*, the following primary objectives: To give effect to and to regulate the fundamental rights conferred by Section 23 of the Constitution (the right to fair labour practices), and to give effect to the obligations incurred by the Republic as a member state of the International Labour Organisation *Regulations of the Labour Relations Act (Act 66 of 1995)*.

- *The Employment Equity Act (Act 55 of 1998)* is designed to achieve equity in the workplace and promote equal opportunity and fair treatment in employment through the elimination of unfair discrimination, and the implementation of affirmative measures designed to redress the disadvantages in employment experienced by designated groups and, thereby, to ensure their equitable representation in all occupational categories and levels in the workforce.
- Other relevant and critical legislative instruments are the *Basic Conditions of Employment Act (Act 75 of 1997)*, the *Occupational Health and Safety Act (Act 85 of 1993)*, the *Compensation for Occupational Injuries and Diseases Act (Act 130 of 1993)*, the *Skills Development Act (Act 97 of 1998)* and *Regulations*, and the *Skills Development Levies Act (Act 9 of 1999)*.
- National policies include, *inter alia*, the *White Paper on Integrated National Disability Strategy, November 1997*; *Technical Assistance Guidelines on the Employment of People with Disabilities, 2002*; the *Code of Good Practice on the Employment of People with Disabilities, 2002 (Department of Labour)*; the *Job Access Strategic Framework, 2006 – 2010 (Department of Public Service and Administration)* and the *National Building Regulations and Building Standards Act of 1997*.
- Relevant legislation in education in South Africa includes, *inter alia*, the *National Education Policy Act (Act 27 of 1996)*; the *South African Schools Act (Act 84 of 1996)* and the *Employment of Educators Act (Act 76 of 1998)*.

At international level, the *United Nations General Assembly, on 20 December 1993*, facilitated the drafting of the *Standard Rules for the Equalisation of Opportunities for Persons with Disabilities*. These guidelines are rooted and based on International Human Rights Instruments which comprise, *inter alia*, the *Universal Declaration of Human Rights*; the *International Covenant on Economic, Social and Cultural Rights*; the *International Covenant on Civil and Political Rights*; the *Convention on the Rights of the Child*; the *Convention on the Elimination of All Forms of Discrimination Against Women*; and the *World Programme of Action Concerning Disabled Persons*, which constitutes the political and moral foundation for the *Standard Rules on the Equalisation of Opportunities for Persons with Disabilities*.

In the Western Cape Province, the following important legislative and policy measures have been put in place to give effect to both the Constitution of the Republic and the following international human rights instruments to which South Africa is a signatory:

- *Constitution of the Western Cape, 1997*
- *Western Cape Provincial Schools Education Act (Act 12 of 1997) and Amendment Act (Act 7 of 2010)*
- *Integrated Provincial Disability Strategy, Western Cape, 2001*
- *Policy Statement on the Management of the Employment, Development and Career Progression of People living with Disabilities, Provincial Government Western Cape, 2004*
- *Transversal Framework Policy on HIV and AIDS/STI's, Provincial Government Western Cape, 2005*

Internal WCED documents include the: *WCED Employment Equity Plan, 2008 – 2012*; *Annual Human Resource Plan*; *Performance Management Systems for Employees*; *Skills Development Framework*; *Leave Policy (Special and Incapacity Leave)*; *HIV and AIDS Workplace Policy*

4. PURPOSE

The purpose of the Disability Strategy of the WCED is to guide and inform line managers, employees, employee parties, service providers and persons with disabilities about the nature and definition of living and working with a disability, to promote recruitment and retention of persons with disabilities, and to identify and support those people who have not yet disclosed their disability, should they so choose. The strategy also aims at providing reasonable conditions of employment for persons with disabilities.

5. SCOPE OF APPLICATION

The provision of this strategy is applicable to all WCED employees, including part-time or contract, persons in receipt of a bursary, learnerships and internships from the Western Cape Education Department. It will also be required of service-providers to be "disability friendly". However, it is not applicable to employees employed by school governing bodies or FET college councils.

6. DISABILITY STRATEGY OBJECTIVES

- To create a disability-sensitive culture within the WCED
- To ensure that persons with disabilities have access to employment in the WCED
- To promote recruitment and retention in the WCED of persons with disabilities
- To promote awareness, understanding and acceptance of the needs of persons with disabilities amongst employees of the WCED.
- To promote a safe and healthy working environment for all current and prospective persons with disabilities employed by the WCED.
- To ensure that persons with disabilities who are currently employed in the WCED, whether educators or public service employees, are able to develop and progress within the WCED and are afforded the same privileges as their non-disabled colleagues
- To ensure that appropriate measures are in place to prevent and eradicate discriminatory practices and employment barriers affecting the employment of persons with disabilities in the WCED
- To provide information in a disability-sensitive manner, where necessary
- To provide emotional and psychological support for all WCED employees, including persons with disabilities, where an area of concern is identified
- To provide reasonable accommodation for the needs of persons with disabilities so that they can perform their duties optimally

7. STRATEGIC FOCUS AREAS

The strategic focal areas highlight the need to support persons with disabilities, line managers and supervisors within the WCED. The strategy includes important matters such as recruitment, placement, conditions of employment, development and retention of persons with disabilities within the WCED.

7.1. Recruitment and selection of people with disabilities

The WCED is mandated by the Department of Public Service and Administration to ensure that at least 2% of the staff of the WCED is comprised of disabled persons at all occupational levels (including SMS) and categories. This should be reflected in the employment equity statistics of the WCED, with specific targets for each occupational level.

It is the duty of line managers to ensure that they are well acquainted with the *Technical Assistance Guidelines on the Employment of People with Disabilities, 2002 (Department of Labour)*.

The process to be followed when selecting and recruiting persons with disabilities:

- Posts to be filled by persons with disabilities are identified.
- Posts accessible to the target group, as determined by the WCED's Employment Equity Plan, are suitably advertised in media that attract the target group. Where necessary, the inherent job requirements may be adapted to ensure that persons with disabilities have access to posts at all levels.
- Advertisements must be disability sensitive, which means making use of the disability insignia, inviting all disabled applicants to apply, using the preferred disability language or terminology and making the information available in an appropriate format (i.e. audio tape and Braille) when required.
- Advertisements and information about jobs, learnerships, internships, bursaries and training opportunities available at the WCED must be accessible to persons with disabilities and circulated to organisations and in publications that represent the interests of persons with disabilities.
- An employment equity score of 15% must be added to all persons with disabilities, irrespective of race and sex, during the shortlisting process. Persons with disabilities must, as far as possible, form part of all the selecting and interviewing panels. Should it be necessary, a suitable panel member could be provided by another provincial or national state department.
- Reasonable allowance, such as allocating more time for translation and more time to read tasks, must be made when interviewing a person with a disability, should this be required.
- Should the interviewee require a support person, because of the interviewee's disability, that person should be allowed to sit in on the interview.
- No questions may be asked about a person's disability as their abilities, qualification and experience are not linked to their disability. Information related to his or her disability should be obtained after completion of the interview by using the Disability Disclosure Form.
- When an applicant has disclosed a disability prior to the interview or if the disability is self-evident, the necessary reasonable accommodation must be provided by the relevant WCED directorate or institution.
- Should the employer choose not to employ persons with disabilities, the burden of proof that they were discriminated against lies with the employee or applicant.
- The WCED Employment Equity Consultative Forum must, each quarter, monitor the progress towards the 2% target so as to ensure that the target is reached. The WCED must make reasonable progress towards reaching its 2% target by the end of 2013.
- The WCED will consider the appointments of learners or interns with a disability who have completed the programme in line with the Recruitment and Selection Policy.
- In addition to the normal recruitment process and where possible, each Chief Directorate within the WCED should recruit a minimum of at least 2 to 4 interns per financial year (office based).

7.2. Placement of, and conditions of employment for, persons with disabilities

- The WCED must ensure that persons with disabilities are reasonably accommodated in order to perform their job functions.
- Persons with disabilities must be able to access all WCED offices and institutions, as far as possible.
- When persons with disabilities are employed, the WCED must, as far as possible, ensure that the appropriate assistive support required for them to perform their jobs, is provided to the employee as well as easy access to resource material and equipment.

7.3. Development and retention of persons with disabilities

- All bursaries, learnerships, internships and training offered by the WCED should have a minimum of 4% representation of persons with disabilities in terms of the requirements of the Department of Labour (National Skills Development Strategy), where practicable.
- All courses offered by the WCED and its service providers must accommodate the needs of disabled persons and be available in an appropriate format. For example, Braille course notes should be available for blind course participants, the venue should be wheelchair accessible and the venue should provide sufficient space for wheelchair movement.
- The course content must be presented in a disability sensitive manner and no reference should be made or inappropriate language used in reference to a participant's disability.
- Ensure that the orientation and induction programme accommodates persons with disabilities.
- Ensure that shadowing opportunities, mentoring and coaching for persons with disabilities are provided, where possible.
- Appropriate information sessions should be provided to create an environment of awareness and sensitivity towards persons with disabilities.

8. ROLES AND RESPONSIBILITIES

8.1. Directorate: Human Resource Management

The overall responsibility of the Directorate: Human Resource Management is to drive and coordinate the implementation of the Disability Strategy for the WCED. Its responsibilities include the following:

- Communicating the strategy to all offices and institutions of the WCED through various diversity management programmes, seminars, posters, newsletters, awareness campaigns and workshops
- Ensuring compliance with targets set in the Strategy
- Monitoring implementation and providing feedback
- Ensuring that all line managers receive the necessary disability sensitization training when employing persons with disabilities in their units
- Ensuring that all WCED programmes and policies do not discriminate against any employee with a disability
- Ensuring that all persons with disabilities (including interns) are appropriately accommodated
- Raising awareness about disability through focus and commemorative days
- Ensuring, where possible, that at least 4% of persons with disabilities are included in training programmes
- Ensuring that persons with disabilities are selected for bursaries
- Ensuring that the WCED meets its target of 20 interns with a disability per financial year (as a minimum) and that those interns are provided with the support of selected mentors
- Co-operating with all directorates in recruiting interns with disabilities

It will also be the responsibility of the Directorate: Human Resource Management to ensure the payment of stipends to interns with disabilities recruited within the department.

8.2 Directorate: Infrastructure, Planning and Management

The Directorate: Infrastructure, Planning and Management will be responsible for ensuring that WCED offices and institutions are reasonably accessible to persons with disabilities. This includes, amongst others, disability-friendly parking available at all WCED offices and institutions, and accessible and maintained toilet facilities suited to persons with disabilities, over time.

8.3 Directorate: Supply Chain Management

This directorate must ensure that disability-friendly transport is available for persons with disabilities in order to assist them to perform their job functions. Accessible transport is a basic human right for persons with disabilities.

8.4 The Office of the Head of Education

The Office of the Head of Education will be responsible for supporting the employment equity manager in achieving the target and for reporting to the Department of Labour and the Department of Public Service and Administration on compliance with set targets.

8.5. Line managers

- Line managers should identify the training needs and facilitate the career progression of all employees, including persons with disabilities.
- The employer must provide all information in a manner and format that is accessible to all employees (i.e. payslips in large font for visually impaired individuals).
- The employer must accommodate employees when their job function, the working environment or the severity of their impairments changes in a way that may affect the employee's ability to perform the essential functions of the job. The employer will consult with the employee and experts, if necessary, to establish appropriate ways of accommodating the employee. The particular accommodation will depend on the individual, the impairment and its effect on the person, the job and the working environment.
- When an employee becomes disabled, either at work or outside of work, the employer is under obligation, where reasonable, to accommodate the employee in a suitable post within the WCED or to modify the person's job role in order to accommodate his or her disability.
- Line managers should familiarize themselves with the Disability Strategy of the WCED and other relevant documents referred to in this document.
- Line managers should contribute by ensuring that consideration of disability is included in all relevant mainstream programmes and operational tasks.

8.6 Employees with disabilities

- Should concessions be required but the disability not be self-evident, the onus is on the disabled employee to provide medical proof.
- An employee, or potential employee, with a disability may disclose their disability by making use of the Disability Disclosure Form. Any information that is provided in the Disability Disclosure Form may not be shared without the written consent of the employee or potential employee concerned. It should also be noted that all the information which is disclosed is confidential and will be kept separate from general personnel records.
- Employees with disabilities have the right to request reasonable accommodation, related to their disability, at any stage of their employment within the WCED.
- The onus is not on the employer to pay for health care, medication or psychological care.
- Employees could express an interest in career development related to their current line function, and should guide the line manager as to how they would like to progress.
- Employees should familiarize themselves with the Disability Strategy of the WCED and other relevant documents referred to in the strategy.

8.7 Disability manager

The following are the responsibilities of the disability manager:

- To inspect the working environment of persons with disabilities
- To ensure that the Disclosure Forms are made available to all WCED employees
- To ensure that the Persal is updated accordingly

- To ensure that Disclosure Forms are kept confidential
- To provide health and wellness support

9. THE DISABILITY DISCLOSURE FORM

Disclosure of a disability and/or the gathering of confidential information on employees can be requested only if it is necessary to achieve a legitimate purpose and with the written consent of the employee(s) concerned. A legitimate purpose would be to ensure that all the legislative requirements, particularly in the Employment Equity Act (Act 55 of 1998) and the Promotion of Equality and Prevention of Discrimination Act (Act 4 of 2000) are upheld.

9.1. Procedure to follow when disclosing a disability

When employees choose to disclose their disability, they should complete the WCED Disability Disclosure Form. An assessment by a suitably qualified medical practitioner might be requested to verify the disability and to indicate what, if any, reasonable accommodation is required. The forms will then be handed to the disability manager and registered on PERSAL. This information will be kept separate from the general personnel records and will be accessible only to the disability manager.

9.2. Benefits of disclosing

The purpose of the Disability Disclosure Form is for employees to disclose their disability and the nature of their disability in order for the WCED to ensure that they are accommodated accordingly in their job function and the working environment. If a person with a disability chooses not to disclose that disability, the WCED may not be aware of the specific needs of that person and might therefore not be able to reasonably accommodate such a person.

All information that is provided in the Disability Disclosure Form is confidential and may not be shared without the written consent of the employee concerned.

Persons with disabilities will also be encouraged to apply for promotion and will also be selected for attendance at training and development courses

10. PROMOTING AND PROTECTING THE RIGHTS OF EMPLOYEES WITH DISABILITIES

The WCED acknowledges that awareness and disability sensitisation programmes on their own are not sufficient to ensure that persons with disabilities are productive and retained. A societal understanding of disability is essential, and the opportunity for a disabled person to dispute an issue is a fundamental right.

The rights of persons with disabilities will be promoted through various diversity management programmes, seminars, posters, newsletters, awareness campaigns and workshops.

10.1. Disputes and grievances

- Any person who has a grievance or dispute, concerning unfair discrimination on the grounds of disability, against another within the WCED, as defined in the strategy, shall have normal recourse to the prescribed grievance procedures and collective agreements, as well as any other legal right. Should such grievance remain unresolved, the aggrieved person may take the matter further by way of the prescribed dispute resolution procedure.
- Line managers should be aware of the contents of the *Grievance Procedures and Collective Agreements* document and should, where possible, assist persons with disabilities who wish to lodge disputes or grievances.

- Any individual who registers a complaint will not be prejudiced, intimidated or penalised as result, unless the complaint is found to be false or malicious.
- Appropriate action, using the prescribed channels, shall be taken at all times by the WCED when allegations of unfair discrimination on the basis of disability have been brought to its attention.

11. IMPLICATIONS

11.1. Budget

- In terms of the DPSA prescripts each department must have a disability budget which is mainstreamed in various budgets.
- Certain funding is incorporated in the Employee Health and Wellness budget. The WCED could pay for assistive devices where they are required to make the workplace more disability friendly and accommodating: examples would be specific IT software for the hearing impaired or visually impaired.
- Assistive devices of a personal nature will not be covered, eg wheelchairs, hearing aids, etc.
- The WCED, through the Department of Public Works, needs to ensure that buildings are disability friendly when they are built or rented.
- Should any structural adaptations be required this must be cost-efficient and the cost must not outweigh the reason it is done.
- The Workplace Skills Plan must ensure that provision is made for internal and external capacity-building initiatives focusing on persons with disabilities
- The Directorate: Human Resource Management must make provision for stipends for internship and learnerships for persons with disabilities. The budget will be centralised within the directorate.

11.2. Review of policies

The WCED's Recruitment and Selection Policy will be affected by the adoption of the Disability Strategy and will be reviewed and amended.

12. MONITORING AND EVALUATION

12.1. Monitoring

Monitoring refers to the ongoing systematic collection of data which will identify areas within the WCED where progress is evident and problem areas which require intervention. The WCED Disability Strategy necessitates the following for monitoring purposes:

- Line managers
- Systems which currently support persons with disabilities
- Interventions accommodating current and new employees
- The Employment Equity Consultative Forum
- Top Management of the WCED.
- Directorate: Human Resource Management.

12.2. Evaluation

Evaluation of the WCED's Disability Strategy will be determined by the progress achieved through interventions introduced. The evaluation will focus on improvement and/or development in the following areas:

- Individual assessment
- Organization assessment
- Employment of new employees with disabilities

- Employment of current employees with disabilities
- Reasonable accommodation for current and new employees

APPENDIX A: TERMINOLOGY OF DISABILITY

1. TERMINOLOGY

- 1.1. **disability:** People may be *physically disabled*, which includes medical conditions and sensory impairments; or they may be *mentally disabled*, which includes clinically diagnosed illnesses, intellectual impairments, emotional impairments and learning disabilities. Such impairments, conditions or illnesses may be permanent or transitory in nature.
- 1.2. **designated group:** Means black people, women and people with disabilities, as defined in the Employment Equity Act
- 1.3. **affirmative action measures:** Refers to measures designed to ensure that suitably qualified people from the designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer as defined in the Employment Equity Act
- 1.4. **discrimination:** Any act or omission, including a policy, law, rule, practice, condition or situation, which directly or indirectly imposes burdens, obligations or disadvantages on, or withholds benefits, opportunities or advantages from any person on one or more of the prohibited grounds, which include disability
- 1.5. **equal opportunity:** The right of all people to participate equally in, and benefit from, programmes and activities for which they qualify
- 1.6. **job content:** All work tasks which are required to perform the job and which take into consideration the psychological and social structures of the work environment. This can include issues relevant to work demands, physical ability to perform a task, decision-making opportunities, social interaction, productivity, adjustment to work schedules and sequence of work, or the breakdown of work-related tasks.
- 1.7. **job retention:** Retention of employees who acquire a disability while employed within the WCED, which will include remaining with the employer, undertaking the same or different duties or conditions of employment, and a return after a period of absence
- 1.8. **disability disclosure:** The act of disclosing a disability or the nature of a disability to a senior member of staff in a supervisory role or by the use of the Disability Disclosure Form
- 1.9. **reasonable accommodation:** Means any modification or adjustment to a job or to the working environment that will enable persons with disabilities to have reasonable access, participation or advancement in employment. This may include adjustment or modifications to job content, the work organisation, working time, machinery and equipment in order to facilitate the employment of persons with disabilities.
- 1.10. **assistive devices:** These fall into the following two broad categories:
 - 1.10.1. **personal assistive devices:** These devices are specific to the employee. They are prescribed for, and can only be used by, that individual employee. These include, amongst others, artificial limbs, hearing devices and prostheses. They might also be more universal items like wheelchairs and white canes. They provide support with all aspects of a person's life, including personal independence. Save instances where a person's disability has deteriorated over time whilst already in the employ of the public service, employees with disabilities and using personal devices can, upon request, be considered for other

specialised reasonable accommodation measures or assistive devices, where practicable, that will take into account their new circumstances.

- 1.10.2. **employment-related assistive devices:** These devices provide specific support in the context of employment. Without these, an employee would not be able to perform his or her functions, or the quality thereof may be gravely compromised by the lack of such devices or reasonable accommodation.