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REASONABLE ACCOMMODATION GUIDELINES

An instructional guide to reasonable accommodation for people with epilepsy

 **epilepsy**
SOUTH AFRICA

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1. INTRODUCTION

1. INTRODUCTION

The Constitution has enshrined human rights as a fundamental principle within South African policies, including the establishment of the inalienable right to dignity and participation in civil society. The valued participation of individuals from all aspects of society is a hallmark of South Africa. People with epilepsy and related disabilities have an enormous contribution to make to society and the economy, however barriers to full participation in the open labour market often prevent them from accessing decent employment. Reasonable accommodation plays a significant role in the conceptual and practical implementation of a workforce made stronger through the inclusion of people with epilepsy and other disabilities.

This booklet examines the provision of reasonable accommodation within the workplace and provides step by step guidance to ensure an understanding of its role within the world of work. It is written to empower persons with epilepsy to understand and access their rights as well as to address the unimagined concerns and logistical challenges sometimes experienced by employers. It seeks to demystify how to identify and minimise or eliminate barriers to employment for people with epilepsy to support their full integration into the workplace. Particularly focusing on the South African policy context, important theoretical and practical elements are illuminated to provide pragmatic guidance toward taking the requisite steps to ensuring reasonable accommodation in your place of work.



1.1 Epilepsy South Africa

Founded in 1967, Epilepsy South Africa is the only national non-profit organisation in the country focusing exclusively on rendering specialised and comprehensive services to people living with epilepsy and other disabilities. Epilepsy South Africa is committed to rendering quality, needs-directed services, ensuring maximum organisational effectiveness and impact as well as accomplishing long-term sustainability. We achieve our objectives through a variety of education, awareness, social development and economic empowerment programmes.

Even in today's progressive society, a person with epilepsy is not guaranteed equality. Epilepsy South Africa is a vigorous advocate for those living with epilepsy. We work to protect their rights, promote empowerment, self-determination and, when unable to do so themselves, represent their interests. We seek to ensure that people with epilepsy have equal access to opportunities that enable them to live rich, productive and fulfilling lives and achieve their greatest potential in all spheres in life.

1.2 Purpose

The Reasonable Accommodation Guidelines booklet was created to provide an accessible guide to understanding and implementing reasonable accommodation in the workplace. It provides a variety of tools and information that can be directly applied within the workplace to better enable people with epilepsy, and other disabilities, to reach their productive potential as employees. The manual also provides basic ideological and legal framework that informs the application of reasonable accommodation within the South African context.

There are a variety of strategies and suggestions provided, from which each reader must decide what tools and information best suits their particular situation. Many items discussed apply generally to the application of reasonable accommodation, solutions to workplace barriers should be adapted to fit the particular needs and employment aspirations of both employer and employee.



1.3 Definitions

Disability: There are specific criteria that must be met to qualify as having a disability. The Code of Good Practice on Key Aspects on the Employment of People with disabilities states that the definition of disability focuses on the effect of the disability and not on the specific diagnosis. It further states:

People are considered as persons with disabilities who satisfy all of the following criteria:

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

Epilepsy: A chronic neurological condition that impacts the brain, requiring people with epilepsy to manage its neurobiological, social and psychological consequences daily. Epilepsy is characterized by seizures which are the result of an electrochemical disorder in the brain. A person must have experienced more than one epileptic seizure and be diagnosed by a doctor or neurologist. Epileptic seizures are most often treated with medication, which offers varying results depending on the individual and the type of epilepsy one has. Medication often, although not always, significantly reduces or even eliminate seizures.

Reasonable Accommodation: Any action, behaviour or modification to job tasks or a working environment done in effort to eliminate a barrier to employment or increase access, participation or advancement of a person with a disability, or other categorically disadvantaged group.

Unjustifiable hardship: A reasonable accommodation that requires “significant or considerable difficulty or expense and that would substantially harm the viability of the enterprise” is considered unjustifiable hardship. According to Employment Equity Act, an employer is required to provide reasonable accommodation unless it is an unjustifiable hardship.

1.4 Business Case for People with Disabilities

While South African policy touts the social imperative of inclusion, the economic impacts of inclusion provides an equally compelling business case for including people with disabilities in the workforce. The Accelerated and Shared Growth Initiative for South Africa acknowledges that one of the reasons for slow economic growth is the inability to integrate marginalised people into the formal economy. The prosperity of South Africa’s businesses are dependent upon the participation

and consumption of its entire population so as to ensure a sustainable and robust economy for generations to come.

Research by the International Labour Organisation (ILO), among other organisations, has consistently revealed that businesses that employ people with disabilities have experienced many benefits. Employers have consistently identified workers with disabilities as some of the most productive and reliable; employees with disabilities often have longer retention rates and better attendance. Several international studies have also demonstrated that businesses that employ people with disabilities have improved moral among all employees. In addition, organisations with expertise in managing disability in the workplace report they are better able to minimise costs associated with unnecessary early medical retirement, work-related injuries and absenteeism due to stress and illness.

Significant research also supports the inclusion of people with disabilities in the workforce as a source of efficient and effective human resource management. Managing diversity is increasingly seen as a key factor in efficiency, productivity and overall business success in an increasingly global and competitive economy. Hiring workers with disabilities also provides access to untapped reserves of talent and promotes new sources of ideas, creativity and problem solving. Businesses that embrace diversity are also able to improve operational efficiency and reduce costs due to turnover and litigation.

Furthermore, people with disabilities are developing into an important consumer group. Understanding and integrating the interests and needs of people with disabilities broadens a business consumer base and offers opportunity to access new markets. Organisations accessible to disabled customers are more appealing to all consumers and builds brand loyalty and distinctiveness.

Unfortunately, the most recent Commission on Employment Equity Annual Report indicated that people with disabilities comprised 0.8% of the workforce. This continued exclusion of people with disabilities in the labour market has been a significant detriment to the South African economy, costing over one hundred million rands per annum, according to an ILO study. A tripartite workshop hosted by the International Labour Organisation in Pretoria identified barriers to employment for people with disabilities as:

- employers' attitudes about disability;
- inaccessible working environments;
- lack of knowledge about reasonable accommodation; and
- discriminatory selection and recruitment practices.

All of the above factors can often easily be remedied through reasonable accommodation and inclusive business processes and practices, which will benefit the country as well as provide a competitive edge to the businesses that employ them.

1.5 Understanding Disability

Throughout history disability has encountered intense stigma and people with disabilities have often been subjected to isolation, segregation and sometimes abuse. The increasing advancement of medical science and technology throughout the twentieth century legitimised a medicalised description of what was 'normal' versus 'abnormal', placing disability within the context of a medical problem. People with disabilities were then considered objects of pity and charity. The orthodox belief that people with disabilities are unfit or unable to participate in typical activities of civil life became ingrained within most societies.

Today, however, disability is understood differently. Disability is now understood as the result of an un-accommodating environment rather than the result of an individual's limitations or diagnosis. Disability is therefore framed within the context of an environment designed to exclude those with variations of mobility, cognition, and/or sensory use. The focus then changes to the social processes, institutions and behavioural expectations that limit the participation of people with disabilities.

The implications of this transformation in thinking about disability are significant, obliging individuals and institutions (businesses included) to examine factors external to persons with disabilities that impose barriers to their participation. It has become the responsibility of governments and businesses to identify processes, social relations, physical structures and attitudes that limit the full participation of people with disabilities in economic, social and political life. Thus, solutions to full access and liberation revolve around the identification and elimination (or at least mitigation) of barriers.

This theoretical explanation is necessary because it is the foundation from which existing policy was developed and forms the framework for the intentions behind policies that support the integration of people with disabilities. It is encouraged to bear in mind this information to better understand how to apply such policies, which will be discussed presently.

2. POLICY

2. POLICY

South Africa has a variety of policies to support individuals with disabilities to have access to full participation in all aspects of life, including the world of work. These policies form the framework to which society must comply. The policies most relevant to the subject of reasonable accommodation and disability are discussed presently.

2.1 *Employment Equity Act*

The Employment Equity Act was developed to address the profound challenge of employment equity in South Africa as a result of the discriminatory policies of the past. It acknowledges that in order to promote an equitable workplace for the identified disadvantaged groups, a rigorous policy of redress is necessary. The Employment Equity Act seeks to facilitate a workforce that demographically represents the country's diversity by, amongst other things, identifying people with disabilities as a group that had been categorically disadvantaged.

The Employment Equity Act requires all designated employers, loosely defined as any entity that employs more than fifty people, to be responsible for ensuring their workforce is diverse at all levels of the organisation. The Act compels employers to conduct an analysis of their workforce demographics and develop an equity plan that identifies strategies to reach employment equity goals. Employers are expected to identify and minimise barriers to employment and provide reasonable accommodation. It also requires employers to retain employees from the designated groups and provide skills training as necessary and appropriate.

According to the Employment Equity Act, reasonable accommodation means "any 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". In South Africa, reasonable accommodation applies to all persons, regardless of disability, as an integral component of the general principle of non-discrimination. Thus, reasonable accommodation must be provided to ensure equal opportunities on account of not only disability, but other grounds for discrimination such as age and sex.

The provision of reasonable accommodation in South Africa is specifically defined as a measure of “affirmative action”. Section 15(2) of the Employment Equity Act specifies that affirmative action measures implemented by a designated employer must include the following actions:

- identify and eliminate employment barriers, including unfair discrimination;
- define measures to advance diversity, dignity and respect;
- provide reasonable accommodation;
- ensure and demonstrate equitable representation of designated groups in all occupational categories and levels; and
- retain and advance individuals, including providing training.

Thus the Employment Equity Act has a profound impact on how employers are expected to implement employment equity activities, including reasonable accommodation.

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

The Code of Good Practice on Key Aspects of Disability in the Workplace elaborates on the scope of reasonable accommodation found in the Employment Equity Act and provides guidance on a variety of its mandates. Reasonable accommodation is expected to be applied to all workplace environments to systematically remove barriers to employment experienced by people with disabilities. It establishes that reasonable accommodation should be considered if a job task or the workplace environment changes in a way that creates barriers for an employee, including if a person acquires an impairment while being employed with the business. Furthermore, reasonable accommodation may be temporary or permanent and will vary depending on a number of factors involving the workplace and the individual with a disability.

The Code of Good Practice on Key Aspects of Disability in the Workplace also establishes that the provision of reasonable accommodation applies through all aspects of the hiring and employment process, including:

- recruitment and selection;
- workplace environment;
- workplace processes, evaluations and reward systems; and
- benefits and privileges.

The application of reasonable accommodation to each of the above mentioned employment stages are discussed in detail in chapter 4.

2.3 *The United Nations Convention on the Rights of Persons with Disabilities*

South Africa has signed and ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which is a legally binding document that provides guidelines to States in regard to the full implementation of rights for people with disabilities. Article 9 pertains specifically to accessibility and reiterates South Africa's own policies in its mandate for States to:

"Take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications...and to other facilities and services open or provided to the public, both in urban and rural areas."

Article 27 of the UNCRPD focuses on work and employment, which requires States to "recognise the right of persons with disabilities to work, on an equal basis, with others". This includes opportunities to freely choose open labour employment as well as entrepreneurship. Much of the language put forth in the UNCRPD resembles that of existing policies in South Africa, including the prohibiting of discrimination all phases in the employment process. It also mandates reasonable accommodation be provided within the workplace.



3. DISCLOSURE

3. DISCLOSURE

Disclosure refers to the act of revealing one's disability, and has particular significance regarding the provision of reasonable accommodation. It is the right and responsibility of the person with a disability to disclose, or not to disclose. Disclosure may be self-evident in the case of those with disabilities that are apparent upon sight, such as some physical disabilities. However, less visible disabilities, such as epilepsy, often require the person to inform the employer or potential employer of their disability. An employer or potential employer is only responsible for providing reasonable accommodation if disability is disclosed.

It is important to note that the Technical Assistance Guidelines on the Employment of People with Disabilities, published by the Department of Labour, conveys that it is not appropriate for potential employers to seek detailed information about reasonable accommodation needs prior to determining a candidate for the job. Should reasonable accommodation be required, details about such should be dealt with after an employment offer. The provision of reasonable accommodation should not be a factor in determining if the individual is or is not offered the position. Therefore, as a person with epilepsy or other disabilities, even if you choose to disclose you have a disability prior to being offered the position, you have the discretion to determine if you want to offer additional information regarding what reasonable accommodation you may need to be able to fulfil the requirements of the job.

3.1 Disclose Your Disability

As a person with epilepsy, it is important to consider all the options and their consequences when considering disclosure. It is also important to consider not only if and when disclosure is the most appropriate but also how much information to disclose.

Review the charts below to identify the risks and benefits of disclosure during the different phases of the employment process. It is developed from the perspective of individuals with disabilities.



Advantages	Disadvantages
ON THE APPLICATION OR CV	
<ul style="list-style-type: none"> • Employers will recognise your employment as a contribution to their employment equity plans. • You are eligible for reasonable accommodation should you be invited to the next step of the hiring process. 	<ul style="list-style-type: none"> • There is no way to know if your application was discriminated against due to your disability.
Advantages	Disadvantages
DURING THE INTERVIEW	
<ul style="list-style-type: none"> • You can personally address issues, concerns and myths related to epilepsy to put the employer at ease. • If hired you can feel secure knowing management knows you have a disability. • You can discuss reasonable accommodation during the interview. 	<ul style="list-style-type: none"> • It may be challenging to highlight your capabilities should the discussion focus on your disability. • If you are not hired, discrimination is difficult to prove and you have little recourse.
UPON BEING OFFERED THE JOB	
<ul style="list-style-type: none"> • You are eligible for reasonable accommodation. • You will know your employer and/or co-workers will be prepared should you have a seizure at work. • If disclosure changes the hiring decision or job conditions you may have grounds to approach the CCMA on the basis of discrimination. 	<ul style="list-style-type: none"> • Your employer may feel that you hid your disability and could potentially hold that against you in the future.

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AFTER STARTING THE JOB

- You have the opportunity to showcase your ability to perform the job.
- You should be protected by the law from discriminatory practices based upon disclosing your disability.

- You may harbour stress about not telling your employer and worry about having a seizure before you have the chance to disclose.
- The longer you wait to disclose, the more difficult it will be to tell your employer.

AFTER HAVING A SEIZURE ON THE JOB

- You should be protected by the law from discriminatory practices based upon disclosing your disability.

- You may risk your health if nobody knows what to do during the event you do have a seizure.
- You risk losing the trust of your employer and co-workers by not preparing them before you had a seizure.
- You may experience stress because of not disclosing you have epilepsy.



Another important factor to consider is the type of seizure(s) you have and to what extent the seizures are controlled. About 80% of people with epilepsy are able to control their seizures with medication so that seizures occur rarely or never as long as the medication maintains its therapeutic levels and are taken as prescribed. Furthermore, there are various types of seizures which would impact the workplace differently. You know best what happens during a seizure and can assist in gauging what is and is not safe. Consider the following types of seizures and how they may impact the workplace:

Seizure Type	What it looks like
GENERALISED ABSENCE (Previously named Petit mal)	The person looks blank and stares. There may be blinking or slight twitching. It lasts a few seconds then normal activity continues.
GENERALISED TONIC-CLONIC (Previously named Grand mal)	The common sequence is: staring; stiffening of the body; possible blue colour around the mouth; jerking movements. As breathing restarts normal colour returns. There may be blood flecked saliva and incontinence (rare). Lasts a few minutes.
COMPLEX PARTIAL (affecting a specific area of the brain)	May start with a warning or "aura". The person may appear confused or distracted. There may be repetitive movements, e.g. plucking at clothes.

Also consider the environmental hazards of different types of jobs. Working in high risk environments such as around moving machinery, open water, exposed circuit electricity, chemicals or ovens that can burn is cautioned. It is not advised to accept positions of high risk without carefully considering the type and frequency of seizures you experience as well as ensuring proper disclosure so your employer and co-workers can be prepared should you experience a seizure.

The important thing is to take the time to consider the best option for you depending on the circumstances. Don't ignore the issue. You will have worked very hard to get the employment opportunity, so don't disadvantage yourself by not carefully considering the risks and benefits to when and how to disclose your disability.

3.2 Disclosure from an Employer Perspective

An employer also has rights and responsibilities once disability is disclosed. South African policies are developed to provide a fair environment within which businesses and employees can conduct their work. Therefore, employers also have rights. An employer can not be held liable for not providing a reasonable accommodation prior to knowing about the disability. Therefore, an employer is not obligated to provide reasonable accommodation until after disclosure and consultation with the employee or prospective employee. Furthermore, it is acceptable for an employer to request additional information that is sufficient to confirm the disclosed disability or reasonable accommodation requirements.

Employers are not obligated to provide reasonable accommodation if they can prove that providing the reasonable accommodation incurs an "unjustifiable hardship". Reasonable accommodation that would cause "significant or considerable difficulty or expense and that would substantially harm the viability of the enterprise" is considered unjustifiable hardship. Criteria to prove unjustifiable hardship are strict and relative. More information about unjustifiable hardship is contained in chapter 5.

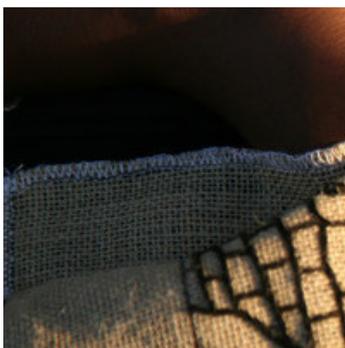
Employers also have a variety of responsibilities when faced with providing reasonable accommodation. The Employment Equity Act mandates employers to take reasonable steps to consult and reach agreement with an employee in regard to all affirmative action measures, including, but not limited to identifying and eliminating barriers to employment and providing reasonable accommodation. This means that employers should not make crucial decisions about what type of reasonable accommodation to provide without consulting the individual. Details about important actions to consider regarding the provision of reasonable accommodation are provided in the next chapter.

The Employment Equity Act also prohibits medical and psychometric testing unless the test(s) are scientifically valid (in the case of psychometric testing), inherent to the requirements of the job functions and are applied fairly to all employees. Furthermore, the Technical Assistance Guidelines on the Employment of People with Disabilities advises that employers must have determined that a candidate is suitable and provide a job offer, at least conditionally, before inquiring details about any reasonable accommodation that may be required. In other words, a job offer may not be contingent upon the type of reasonable accommodation required for the employee to fulfill all the essential functions of the job.

The chart below examines some of the important factors to consider about disclosure of an employee or potential employee.

IF DISABILITY IS DISCLOSED:	CONSIDERATIONS	COMMENTS
<p>On the application or CV</p>	<p>In South Africa it is legal to solicit employees with disabilities to fulfil expectation within the Employment Equity Act</p> <p>The employer must provide reasonable accommodation during all aspects of the hiring process for individuals with disabilities</p>	<p>It is advised to establish processes that do not discriminate against people with disabilities</p>
<p>During the interview</p>	<p>An employer may ask an employment candidate if they are able to do the essential functions of the job with or without accommodation</p> <p>If an interviewee discloses their disability it is advised to ask if they require reasonable accommodation to complete the interview</p>	<p>Implement hiring policies and practices that eliminate ambiguities that may later be alleged as discrimination</p>

IF DISABILITY IS DISCLOSED:	CONSIDERATIONS	COMMENTS
During the interview	It is not appropriate to ask detailed medical information about one's disability, particularly if there is no relevance to the essential functions of the job	
Offering the job	<p>If one discloses disability upon being offered the job it is unlawful to rescind the offer based on his or her disability</p> <p>Once a disability is disclosed, an employer is legally obligated to provide reasonable accommodation to the extent the law requires</p>	If an employee discloses his or her disability, work together to find pragmatic solutions to barriers to their full participation and success. Most accommodations cost little or nothing and many can generally improve workplace efficiency



IF DISABILITY IS DISCLOSED:	CONSIDERATIONS	COMMENTS
After starting the job	Once a disability is disclosed, an employer is legally obligated to provide reasonable accommodation to the extent the law requires	If an employee discloses his or her disability, work together to find pragmatic solutions to barriers to their full participation and success. Most accommodations cost little or nothing and may improve workplace efficiency for all employees
After having a seizure on the job	Not disclosing a disability is not grounds to terminate employment	If an employee discloses his or her disability, work together to find pragmatic solutions to barriers to their full participation and success. Most accommodations cost little or nothing and may improve workplace efficiency for all employees



4. REASONABLE ACCOMODATION

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Reasonable accommodation describes any action taken in effort to minimise an attitudinal, physical, social or other barrier to facilitate a person's capacity to perform essential functions of the job. The need for reasonable accommodation arises when a person engaged in any step of the employment process discloses a disability or when need is self-evident. It may also be necessary if the essential functions of a job or the job environment changes in such a way that it negatively impacts an employee's ability to continue performing the essential functions of the job. The provision of reasonable accommodation should be considered standard practice throughout all levels of a business and should be reflected in every day activities and processes as well as in the strategic business plan. A business must provide reasonable accommodation during all phases of the employment process, including recruiting and hiring, while performing workplace duties, during workplace evaluations and incorporated within rewards systems and the benefits of employment. This chapter will examine reasonable accommodation through each of the employment phases.

4.1 Recruitment and Selection

The Code of Good Practice on Key Aspects of Disability in the Workplace states that employers are responsible for providing reasonable accommodation during the recruitment and selection processes. This requires employers to consider how and where posts are advertised as well as barriers that may be inherent within the hiring and selection processes. This section offers points of consideration in this regard and is largely adapted from the Code of Good Practice on Key Aspects of Disability in the Workplace.

Recruitment processes should focus expressly on identifying an employment candidate that meets the essential functions of the job, which should be clearly articulated in writing. Essential functions are the job tasks for which the job was created or the specific primary function(s) of the position in the business. Often, employees perform duties that are not essential functions of the job, but may fit a particular individual's skill set or interest. Or, perhaps, it's just a case of somebody needing to do a task so it falls into the routine of an existing employee. It is important to recognise that positions often include these 'extra' responsibilities for employees. Once an employee is hired, additional tasks can be assigned as appropriate. However, unless the task is a requirement of the position it should be left out of the recruitment process because it may unknowingly disqualify an otherwise ideal person for the position. This should be reflected in the application as well as in advertisements or postings for the position.

****Consider advertising vacancies with an organisation that works with people with disabilities****

The Technical Assistance Guidelines on the Employment of People with Disabilities advises employers to ensure all questions on a job application relate directly to the essential functions of the job. Personal questions or questions eliciting information that could potentially be alleged as discriminatory should be avoided. It is important that the same standards and criteria utilized through each step of the process apply to people with and without disabilities. It is unlawful to inquire if somebody has a disability from a previous employer or a third party. Furthermore, medical and psychometric testing is allowable only under very limited circumstances.

It is not appropriate to make assumptions about a person's capabilities based upon a disability. If disability is disclosed, either directly or a disability is self-evident, it should be assumed the candidate is capable of performing the essential job functions unless it is proven otherwise. This is also true with "invisible" disabilities, such as epilepsy. People are much more than their disability. Furthermore, even those with the same disability have widely varying abilities, aptitudes and interests.

If an employment candidate is offered an interview, he or she should be provided opportunity to voluntarily disclose any reasonable accommodation required for the interview. It is not recommended to ask the candidate details about their disability, but inquiring if reasonable accommodation will be required for the interview is appropriate. If a disability is disclosed before the interview, employers are required to provide reasonable accommodation if necessary. Such accommodations may include:

- Ensuring a physically accessible room for the interview for a person with a physical disability.
- Conduct the interview in a room without flickering lights for a person with photosensitive epilepsy.
- If written information will be provided during the interview, provide enlarged print or required background colour for an interviewee with a visual impairment.
- Arrange seating during the interview so the interviewee is able to sit with his/her back to the window to minimise the impact of a visual impairment.

****Consider participating in learnerships, apprenticeships, internships, or other skills development activities that include people with disabilities in your workplace****

4.2 *The Work Environment*

It is the workplace environment that most people think about when applying reasonable accommodation. There are many different forms that reasonable accommodation can take because every person with a disability and each workplace is different. The work environment includes physical structures and processes that require consideration. This section will focus on both the physical environment as well as reasonable accommodation within daily work processes, including information about some generic accommodations as well as those specific to people with epilepsy.

The first thing to consider when providing reasonable accommodation for a new or current employee is to consult the employee directly. The employee may be able to offer invaluable information regarding:

- specific barriers to job tasks;
- accommodations that have and have not worked in the past; and
- additional information that will assist in best identifying appropriate support.

Any reasonable accommodation provided should be based upon the following factors:

- the job tasks to be performed;
- the type of barrier prohibiting the person from performing the task; and
- accommodations that have worked previously for the individual.

An accommodation should not be provided:

- without consulting the person with the disability; or
- based exclusively on a diagnosis.

There are a variety of sources that can assist in supplying additional information to determine the most suitable reasonable accommodation. Additional resources are available through professional organisations and Non-Governmental Organisations, including Epilepsy South Africa and other Disabled People's Organisations. They can assist with identifying and implementing the most appropriate accommodation through the use of various tools such as:

- job description analysis;
- task analysis;
- workplace environment analysis; and
- accessibility audit.

There are many different types of accommodations because accommodations must fit the specific person and the particular requirements of the job. The Code of Good Practice on Key Aspects of Disability in the Workplace is a very good resource to consult for more information. Below are a few examples of generic reasonable accommodations:

- adapt existing facilities;
- adapt existing equipment;
- acquiring new equipment including computer hardware and software; and
- re-organise work stations.

Reasonable Accommodation for People with Epilepsy

Reasonable accommodation for an employee with epilepsy usually involves simple arrangements which help to ensure safety in the workplace and maximize the highest potential of the employee. Someone with epilepsy may, or may not, need the following accommodations or may need an accommodation that is not listed, however, below are some examples of reasonable accommodation for people with epilepsy:

- arrange work schedule to avoid undue sleep disruption;
- install a safety device around machinery;
- place a piece of carpet over a concrete floor;
- reassign non-essential duties;
- allow a flexible starting time to accommodate the need to sleep later on mornings after a seizure;
- give an individual a regular shift or steady routine;
- allow an individual who needs to rest for a period of time after a seizure the option of making up missed hours during evenings or weekends;
- allow sufficient time to become familiar and comfortable with the job and work environment;
- arrange flexible scheduling may be needed occasionally for people who use public transportation;
- have one team member drive for jobs in which driving is generally a shared responsibility, if the person with epilepsy is unable to drive;
- assign the employee with epilepsy to work on machines equipped with safety switches;
- educate supervisors and co-workers about first aid for seizures and post first aid instructions in the work area;

- have a “buddy system” in which one employee in the same workplace is designated to assist the person having a seizure;
- allow an employee to take medication at required times;
- work with the doctor to revise the medication schedule if it interferes with work; and
- allow time off, without penalty, to seek treatment or adjust to medication.

REASONABLE ACCOMMODATION FOR EMPLOYEES WITH PHOTOSENSITIVE EPILEPSY

Photosensitive epilepsy is a particular type of epilepsy. It is characterized by seizures that are initiated by flashing lights or contrasting visual patterns. Individuals with photosensitive epilepsy are encouraged to consult a doctor or neurologist and adhere to the medication treatment prescribed, as any other person with epilepsy. However, there are specific measures of reasonable accommodation that can be employed for this type of epilepsy that may reduce the visual triggers that cause a seizure, including:

- provide glare guards to eliminate glare on a computer;
- decrease colour intensity and contrast on the computer monitor;
- ensure the employee does not sit too close to the computer monitor;
- reduce the blink rate of the cursor or enlarge the cursor;
- on a computer, reduce the speed of the tabbing/flipping window to less than 3Hz (more than 3Hz can trigger seizures);
- decrease the computer screen’s roll rate on a computer;
- use a modern high resolution monitor to reduce the flicker effect due to refreshing the screen or use an LCD screen;
- reduce extended periods of time at a computer;
- replace flickering lights in the work area;
- eliminate fluorescent lighting, replacing it with incandescent or natural lighting. Full spectrum lighting can also be utilized;
- reduce emergency strobe lighting to operate at 3Hz or less;
- place a light between the monitor and the person using the computer; and
- use larger monitors (larger than 15”).

Memory Accommodations

In some cases brief memory loss may occur due to a seizure. In this situation it may be helpful for the employee's neurologist or physician to review the job duties and make recommendations which may help the employee be most efficient on the job. However, listed below are some easy accommodations that can be made to minimise or eliminate issues regarding memory loss:

- have a workplace organized to cue the person to the next task;
- use a journal or diary to organize and date things;
- keep an information card listing critical information;
- keep cue cards with important information that may not always be remembered;
- tape record important classes or meetings;
- carry an appointment book or pocket diary as a reminder of when take medicine or keep an appointment; and
- use a telephone answering machine or voice mail to record reminders.

4.3 Workplace Evaluation and Rewards Systems

An employer should evaluate the work performance of an employee with epilepsy or any other disability against the same standards as other employees. The processes by which the evaluation takes place should be clearly articulated and fairly measured. However, it is important to consider if the processes of evaluation present barriers to employees' full participation or ability to best demonstrate their knowledge and skills. Therefore, the nature of the disability may require an employer to adapt how performance is measured. Some examples include:

- evaluate performance on days or during times of day when a seizure may be less likely;
- provide written instructions or explanations rather than exclusively oral instructions;
- provide the least stressful environment for evaluation;
- restructure an assessment so that non-essential functions are not evaluated;
- provide specialised supervision, training and support.

****Review and consider the short article on Universal Design for Learning (UDL) principles, particularly the second principle about expression of knowledge****

4.4 Benefits and Privileges of Employment

Employees with epilepsy and other disabilities must enjoy the same benefits and privileges as other employees. Employers are expected to take measures to “retain and develop” employees with disabilities. The Technical Assistance Guidelines advise employers to consult employees with disabilities to determine appropriate training and skills development activities based upon their aspired career advancement.

The Technical Assistance Guidelines also advise that training methodologies be accessible to people with disabilities. Therefore, reasonable accommodation may be required for employees to participate in training opportunities, including the following examples:

- ensure the building and room are physically accessible;
- if the training is not at the workplace, ensure accessible transport is available;
- ensure restrooms are accessible;
- provide adapted training materials to suit individuals with visual impairments;
- break at times that suit medication needs;
- provide written materials for those with learning disabilities such as dyslexia or with challenges writing excessively; and/or
- consider integrating Universal Design for Learning into all teaching strategies.

Discuss in advance of the training any reasonable accommodation that may be required for the employee to be able to fully participate and integrate information learned into future practices.

4.5 Financial Implications

Of general concern to employers are, understandably, the costs involved in providing reasonable accommodation. Unfortunately, little research has been conducted in South Africa to identify aggregate costs that can be generalized throughout this diverse country. International studies throughout various countries, albeit mostly developed countries in the West, have consistently demonstrated that reasonable accommodation often are of low cost and high benefit to business.

As an employer, keep in mind that many reasonable accommodations cost nothing. Examples of no cost accommodations include:

- Adjusting work hours
- Changing or re-arranging a workstation
- Modifying tasks
- Change computer settings
- Record meetings
- Alter break time to align with prescribed time to take medication

Costs generally occur in order to adapt a physical environment, purchase adaptive equipment and/or may include human resource costs involved in training and educating other employees and/or supervisors. In the United States, over one half of the accommodations provided by business were of no cost. Over one third of businesses in the same national survey stated accommodations were a one-time expense . Research done in the United Kingdom revealed that while most reasonable accommodations incurred no extra cost, the average expense was £80.

The key to keeping costs down is to carefully identify a reasonable accommodation that best suits the needs of the situation. Reasonable accommodations must address the specific barriers of the individual with a disability and ensure the essential job function(s) will be able to be fulfilled effectively and efficiently. It is advised that employers thoroughly investigate various accommodations and research the most efficient options by:

- consulting the individual with a disability about prior reasonable accommodations that did and did not work;
- comparing costs of multiple suppliers; and
- solicit input from experts in disability and accommodation.

<http://askjan.org/media/atoz.htm> is a United States-based website that has a comprehensive list of examples of accommodations listed for over a hundred different disabilities and impairments.

Universal Design and Universal Design for Learning

Universal Design refers to design practices that are based upon aesthetics, or pleasing appearance, as well as accessibility to the broadest extent possible. It takes into account the fact that individuals have varying needs and incorporates that depth of variety into design elements so that children, pregnant mothers, the elderly, adults with babies and people with disabilities are all accommodated

within the architectural design. One of the most recognised elements of Universal Design is the “curb cut” or the “dropped curb” that makes it easier for children’s strollers, wheelchairs and others with physical impairments to cross the street. The same theoretical principles are now being applied throughout the world in various sectors, including technology and instruction.

Universal Design for Learning is supported by scientific evidence of the different learning processes in the human brain. The National Skills Development Strategy III specifically identifies the workplace as a “place of learning” and establishes an increased focus on worksites as being an important location for skills development and training. Learnerships and other training models currently incorporate workplace learning into the curriculum. It is therefore prudent for businesses to consider the most efficient and effective strategies to train both learners and employees to ensure the greatest return on investment for the time, energy and resources spent on training.

Universal Design for Learning is supported by scientific evidence in regards to the learning process. Individuals’ learning needs vary and neuroscience has established that three different “brain networks” are utilized in the learning process. Accessing these three networks represents the three basic principles of UDL. The following three principles provide the guidelines from which UDL is implemented, namely:

- Multiple means of representation
- Multiple means of expression
- Multiple means of engagement

Multiple means of representation refers to providing instruction (training) by using varying methods of delivery. For example, when delivering training to learners or employees use both verbal and written instructions and also allow people to practice the skill during the training. Utilize diagrams (many people are visually oriented) when possible. Allow for discussion to assist individuals to process the information orally. The important factor is provide information to learners in as many ways as possible.

UDL recognises that people demonstrate their knowledge best through various means. Allowing opportunity for learners or employees to demonstrate their knowledge in as many ways as is appropriate for the work context is therefore key. Writing an exam may be the standard format to represent ones knowledge, but not everybody will be able to make their abilities evident with a written test. Another option is to allow oral examinations. Consider options such as allowing

individuals to demonstrate the knowledge through practical activities, which also reveals the persons ability to cope with activities within the workplace context. Therefore, multiple means of expression refers to allowing learners to demonstrate the knowledge they've learned in ways that best highlight their capabilities.

The final guiding principle neuroscience revealed is the depth to which engagement impacts learning. Motivation can be induced through various measures, and evidence points to improved learning by those who are engaged in the learning process. The challenge is that individuals are unique therefore different learners are motivated through various strategies. Therefore, the importance of varying instructional methods to ensure that learners are engaged is critical. This may be easier providing one on one instruction in the workplace, however, in a large group one must be creative and put effort into providing structured and flexible learning with various means of interaction such as group discussions, individual activities, lecture, learner presentations etc in an effort to engage each person.

Ensuring that training techniques and methodologies address the needs of the broadest set of learners/employees possible saves time and money. Workplace training requires the time of existing training staff or supervisors, which is a valuable asset for business. It also requires materials and tools to demonstrate and/or execute tasks. Utilizing these resources as efficiently as possible to ensure that learners/employees learn the skills necessary to become contributing members of the workforce saves trainers or managers time and allows for more efficient use of employees/learners. More information and resources about Universal Design for Learning can be found at the CAST National Center for Universal Design for Learning in the United States at <http://www.cast.org/udl/>.



5. UNJUSTIFIABLE HARDSHIP

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The failure to provide reasonable accommodation may, or may not, be interpreted as discrimination. South Africa has a variety of policies that prohibit discrimination. Because discrimination is a serious offense, it is important for employees and employers to understand the expectations of the law and work in collaboration to avoid allegations of discrimination. The laws not only protect individuals from discrimination, they also exist to protect employers and ensure there is a balance of fairness in the workplace. However, various court decisions support the legal requirements of employers to provide reasonable accommodation, and, if not, to provide comprehensive evidence of unjustifiable hardship.

An employer is required to provide reasonable accommodation unless it is an “unjustifiable hardship”. Therefore it is important to understand what constitutes an unjustifiable hardship. Only activities which require “significant or considerable difficulty or expense and that would substantially harm the viability of the enterprise” including “the extent to which it would seriously disrupt the operation of the business” are considered unjustifiable hardship.

Financial expense or inconvenience is not unjustifiable hardship, although cost may be one consideration in determining the most suitable reasonable accommodation. In fact, the Code of Good Practice on the Employment of People with Disabilities encourages employers to seek the most cost-effective means to provide reasonable accommodation. Identifying reasonable accommodation that limits financial expense but provides the same impact as far as eliminating a specific barrier to employment may be acceptable. However, failing to provide reasonable accommodation based solely on expense may not fulfill the criteria for unjustifiable hardship.

The decision whether or not to provide reasonable accommodation can also depend upon the extent to which providing the reasonable accommodation would disrupt vital business operations. Therefore, if the reasonable accommodation can be proven to significantly disrupt operations then the provision may be considered an unjustifiable hardship. However, if reasonable accommodation is denied, the business has the burden of proof to demonstrate how it would substantially harm the enterprise.

It is important to note that “unjustifiable hardship” is relative and contextual and therefore will not be the same for every firm. Decisions about reasonable accommodation that applied to one employee can not be applied in general throughout the business because each case must be judged individually. Therefore, it is not within the intentions of the law to allow a firm to generalize all accommodations for a specific diagnosis, such as blindness or epilepsy.

** Significantly, “unjustifiable hardship” is considered to be a more rigorous standard than “undue hardship.” According to the Department of Labor, this more rigorous standard is necessitated by South Africa’s history of providing so little employment and accommodations for people with disabilities. The South African Code thus encourages employers to make more effort to reduce and eliminate discrimination and/or promote affirmative action. **



6. RESOURCES

6. RESOURCES

Policy and Government Documents

A full copy of the Employment Equity Act can be accessed through the Department of Labour or online at: <https://www.labour.gov.za/legislation/acts/employment-equity/employment-equity-act>.

The Code of Good Practice on Disability in the Workplace can be obtained through the Department of Labour or at <https://www.labour.gov.za/downloads/legislation/Codes%20of%20Good%20Practice/>.

The United Nations Convention on the Rights of Persons with Disabilities (UNCPRD) can be accessed at: <http://www.un.org/disabilities/convention/conventionfull.shtml>.

The Commission for Employment Equity Annual Report 2011-2012 is also accessible on the Department of Labour website at: <https://www.labour.gov.za/documents/annual-reports/>.

Universal Design and Universal Design for Learning

A useful local resource about Universal Design is located at www.universaldesign.co.za.

Information and various tools regarding Universal Design for Learning can be accessed through CAST at <http://www.cast.org/udl/>.

Implementing Reasonable Accommodation

The Job Accommodation Network (JAN) and their resources, including reasonable accommodation suggestions for over a hundred disabilities, can be accessed at: <http://www.askjan.org>.

The article titled "Workplace Accommodations: low cost, high impact", published by the Job Accommodation Network, that conducts ongoing research regarding reasonable accommodation in the United States can be accessed at: <http://askjan.org/media/lowcosthighimpact.html>.

The Technical Assistance Guidelines on the Employment of People with Disabilities, published by the South African Department of Labour, can be accessed at: <https://www.labour.gov.za/downloads/documents/useful-documents/employment-equity/>.

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Images courtesy of www.africamediaonline.com / googleimages

The logo for Epilepsy South Africa features the word "epilepsy" in a large, bold, black, lowercase sans-serif font. A stylized flame icon, colored in red and orange, is positioned above the letter 'i'. Below the word "epilepsy", the words "SOUTH AFRICA" are written in a smaller, red, uppercase sans-serif font.

epilepsy
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