



ANNUAL LABOUR LAW & COMPLIANCE SUMMIT

*Disability, Dignity, and Decent Work:
Constitutional Imperatives and the Duty of
Reasonable Accommodation in South African Labour Law*

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Background

- History
 - Exclusion (Bible)
- Stats
 - Global – 1 Billion
 - SA: 3.3 million represents 1% of the workforce
- Unemployment
 - Half as likely to be employed (self-employed, part-time, low wage)
- Link to poverty
 - Poverty contributes to disability
- Myths
 - Curse / Punishment / Hidden from society



Importance

- Disability inclusion is not only a compliance exercise
- Constitutional obligation grounded in dignity and equality.
- Increasing prevalence of non-traditional or invisible health-related impairments (e.g. chronic illness, mental health, episodic conditions).
- Employers face uncertainty:
 - Who qualifies as a person with a disability?
 - What constitutes reasonable accommodation?



Constitutional Foundation

- The Constitution of the Republic of South Africa, 1996
 - equality (s9)
 - dignity (s10)
 - fair labour practices (s23)
- Reasonable accommodation is not generosity
- It is a mechanism to realise substantive equality.
- Accommodation operationalises dignity in the workplace.
- Ubuntu (*Damons* case)



Legislative Framework

- Employment Equity Act 55 of 1998 (as amended)
- Definition of disability now reflects interaction with barriers
- Explicit duty to provide reasonable accommodation: affirmative action
- Implied non-discrimination
- Code of Good Practice & Technical Assistance Guidelines
 - not fully aligned with recent amendments, creating practical gaps
- Link to international law: Convention on the Rights of Persons with Disabilities
- LRA & Dismissal Code
- Rehabilitation & Return to Work Regulations (COIDA)
- White Paper
- Disability Bill
- African Disability Protocol?



The Threshold Problem

- Many disputes never reach the accommodation stage
- Fail at the definition stage
- Key tension: Traditional model focusing on permanent, visible impairments
- Modern reality: episodic, invisible, health-related conditions
- Cancer (in remission), HIV/AIDS, Mental health conditions
- Overly narrow definitions result in legal risk and exclusion



Reasonable Accommodation in Practice: What Does It Actually Mean?

- Core idea: removing barriers, not lowering standards
- Types of accommodation: Adjustments to working hours (flexibility), Job restructuring or redistribution of marginal tasks, Assistive technologies, Physical accessibility, Remote Working
- Effective Accommodation (Disability Code & TAG) – only when disability or accommodation need is evident
- Accommodation is context-specific and case-by-case
- Lessons from COVID 19
- However, possible to implement a level-based approach (designed)



The Limits: Undue Hardship

- Employers often rely on too expensive or too difficult
- Must show objective, evidence-based hardship
- Consider: Cost relative to organisation, size, availability of alternatives, impact on operations
- Negligence of the employer caused the disability
- Undue hardship is a high threshold, not mere inconvenience



Inherent Requirements of the Job

- Is it truly essential, or just historically assumed?
- Can the job be restructured without losing its core function?
- Link to dignity: excluding someone without exploring alternatives
- Dismissal proceedings - LRA & Dismissal Code



Process Matters: The Duty to Engage

- Accommodation is not a once-off decision
- It requires:
 - Consultation with the employee
 - Exploration of alternatives
 - Ongoing adjustment
- Failure to engage = procedural unfairness
- Practical takeaway: create structured internal processes for accommodation requests



Employer Pitfalls

- Treating accommodation as optional
- Relying on outdated medical definitions
- Ignoring invisible disabilities
- Failing to document decision-making
- Rejecting accommodation without exploring alternatives



Moving Beyond Compliance: A Proactive Model

- Shift from reactive accommodation to inclusive design
- Examples:
 - Universal workplace policies
 - Flexible work models
 - Accessibility built into systems
- Outcomes: Retention, Productivity, Reduced litigation risk



Conclusion

- Reasonable accommodation is where law meets lived experience
- Conditions of employment, occupational health and safety, and equality law to be read together.

