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PROMOTING EQUITY



PROMOTING DIVERSITY AND INCLUSION THROUGH WORKPLACE ADJUSTMENTS

A PRACTICAL GUIDE

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DIVERSITY AND INCLUSION
THROUGH
WORKPLACE ADJUSTMENTS
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Preface

Equality of opportunity and treatment is a fundamental principle of social justice that has been at the core of the ILO's work since it was founded in 1919. Reasonable adjustments, often referred to as accommodations, are an essential component for promoting diversity and inclusion at the workplace and the right to equality in employment, vocational training and education. Most workers will require a reasonable accommodation at some point in the employment cycle, whether to enable them to compete for and access employment on an equal footing with others, to enable them to remain in employment, or return to work following an absence. The need for a reasonable accommodation may arise from family responsibilities for children, parents or other dependents, religious requirements, a temporary or permanent disability, HIV status, or other causes, which may include accidents, chronic illnesses or age-related impairments.

Reasonable accommodations allow workers and their employers to take advantage of their full professional potential and thereby contribute to business success.

The purpose of a reasonable accommodation at work is not to unduly burden an employer, nor is it to grant one employee an unfair benefit or advantage over another. Reasonable accommodation in the workplace means providing one or more modifications or adjustments that are appropriate and necessary to accommodate a worker or job candidate's individual characteristics or differences so that he or she may enjoy the same rights as others. Often, a reasonable accommodation may be made at little or no cost to an employer, and results in concrete benefits to both the employer and the worker.

When and how should a workplace accommodation be provided? When should a requested accommodation be considered both necessary and reasonable? This guide aims to assist employers of all sizes and in all economic sectors, to provide reasonable accommodation at all stages of the employment relationship, including in designing and advertising a vacancy, the selection and recruitment phase, as well as during employment and in the context of return to work.

We hope that this guide will be used in a wide variety of workplaces, both big and small, and that it will provide employers with useful and practical information on how to provide reasonable accommodation. We hope that it will give employers the tools to build inclusive, productive and sustainable workplaces that work with individual differences, contributing both to better working environments and, ultimately, to better businesses.

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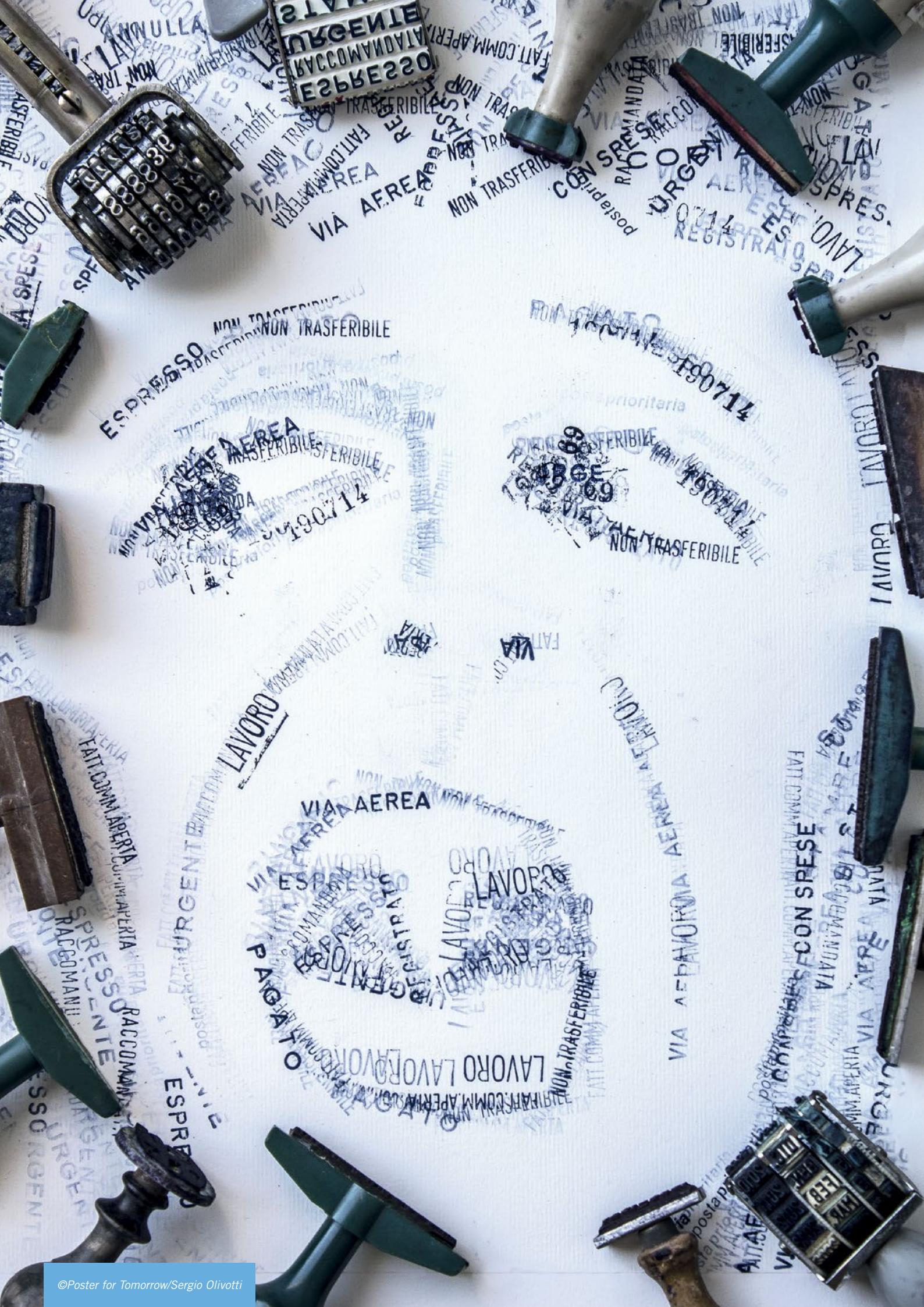
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External vocational rehabilitation consultants, DKA and Associates, developed a first draft of the guide. The draft benefitted from the insight and experience of a number of experts from business, trade unions and academia, including: Mark Bell, Professor, Trinity College Dublin School of Law; Hélène Loubeyre, Manager of IMS Entreprendre pour la Cité, Paris, France; Michael Lynk, Associate Professor of Law, Western University, Ontario, Canada and UN Special Rapporteur on the Situation of the Palestinian Territories; Wendy Porch, Senior Manager, Canadian Working Group on HIV and Rehabilitation; Alberto Vásquez, Office of the UN Special Rapporteur on the Rights of Persons with Disabilities; Lucy Vickers, Professor of Law, Oxford Brookes University; and Graeme Whippy, MBE, Senior Manager of the Group Disability Programme at Lloyds Banking Group.

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Introduction

This guide aims to explain the concept of reasonable adjustments (referred to in this guide as “reasonable accommodation”) and provide practical step-by-step guidance on how and when these should be provided in the workplace. Employers and workers are both key stakeholders in ensuring greater workplace equality, diversity and inclusion – as are governments, employers’ organizations, trade unions and other actors, such as civil society organizations.

While all workers should enjoy equal access to employment, some workers encounter barriers that may put them at a disadvantage. Such barriers can prevent them from accessing or remaining in employment and, if not addressed, can also deprive companies of a broader, more diverse pool of workers from which to recruit. The provision of reasonable accommodation plays a major role in addressing these barriers and thus contributes to greater workplace equality, diversity and inclusion.

This guide is designed to be a flexible tool that can be adapted to the needs of any enterprise or group of enterprises, regardless of size and scope, including small and medium-sized enterprises (SMEs). It provides the user with a range of good practice examples of reasonable accommodations that can be made in varying circumstances.

How to use this guide

This guide is divided into five sections designed to help the user understand the concepts behind reasonable accommodation and the process and steps for implementing accommodations throughout the employment cycle. The structure of the guide takes the user through the accommodation process sequentially, starting with an explanation of reasonable accommodation, followed by examples of the application of reasonable accommodation in practice. The examples provided are illustrative rather than prescriptive; the exact determination of what constitutes a reasonable accommodation will always depend on the individual circumstances of the worker and the company. A model policy on reasonable accommodation is included as an appendix and can be tailored for the use by companies of varying size (including SMEs), complexity and resources.

Which categories of workers are covered in this guide?

While recognizing that the need for a reasonable accommodation may arise in a variety of situations, this guide focuses on four specific categories of workers:

1. workers with disabilities;
2. workers living with or affected by HIV or AIDS;
3. pregnant workers and workers with family responsibilities;
4. workers who hold a particular religion or belief.

These categories of workers have been selected because company experience suggests that these four categories represent the most common circumstances in which an individual worker will request an accommodation. Even SMEs are likely to receive accommodation requests linked to one or more of these characteristics. Although the guide does not specifically address requests based on other characteristics, such as gender identity¹, its recommended approach to handling accommodation requests could be applied to a wider range of situations.

¹. For example, transgender workers may seek accommodation during the process of transitioning to a gender role that reflects their gender identity and differs from that ascribed to them at birth.

Workers with disabilities

Disabilities arise from the interaction of individual impairments (e.g. physical, sensory, intellectual or mental) with attitudinal or environmental barriers. The most visible examples relate to the physical environment, such as a wheelchair user who encounters a building that can only be accessed via steps. It is, however, important to be aware of the diversity of conditions experienced by individuals with disabilities and the invisible barriers that they may encounter.

For example, a person living with generalized anxiety disorder may find it difficult to perform his or her job due to persistent worries about managing the workload. A reasonable accommodation could be to provide the worker with some additional support from the line manager. This could take the form of

regular meetings with the worker to review commitments and schedule.

Impairments may exist prior to the worker joining the company, or they may arise during the course of employment. Impairments can result from work-related injuries or from events outside the workplace (e.g. a car accident unrelated to the job).

It is important to be aware that the protection from discrimination on the ground of disability, including the provision of reasonable accommodation, usually extends also to persons with caregiving responsibilities for a relative with a disability. For example, parents caring for a child with a disability may need certainty about when the working day finishes in order to schedule paid carers.

Workers living with or affected by HIV or AIDS

In accordance with the ILO HIV and AIDS Recommendation, 2010, (No. 200), workers living with or affected by HIV or AIDS include those that are living with the virus as well as workers caring for a family member or other dependent who is living with HIV-related illness.

An HIV-positive individual may be generally fit for work but experience episodic ill-health. This means that a reasonable accommodation may need to be flexible. For example, a worker living with HIV might normally perform

all her tasks from the office, but she might seek flexibility to work part of the week from home during periods where she may be affected by an HIV-related illness or during a period of adaptation to anti-retroviral or other medication related to her HIV status. A worker may not be living with HIV but may have caregiving responsibilities to a family member with HIV or AIDS. In these circumstances, the worker may have a need for a reasonable accommodation, such as a temporary reduction in working time.

Pregnant workers and workers with family responsibilities

In this guide, persons with family responsibilities include those who are pregnant or breast-feeding, and those caring for dependent children or other dependent family members, such as a parent or sibling.

A common type of accommodation sought by those with family responsibilities is an adjustment to

standard working hours. If workers are expected to start at 8.30 a.m., this may be difficult for a parent who has to drop off children for school at the same time.

A reasonable accommodation could be to permit the parent to start work at 9.00 a.m., reducing the lunch break from one hour to 30 minutes.

Workers with a particular religion or belief

Reasonable accommodation has often been linked with the three groups listed above, but there is evolving practice that illustrates its potential application to persons with a particular religion or belief. Work and society have often been structured around the culture and practices of the dominant religious communities in a specific country. These can determine the allocation of official, state-recognized national holidays, the normal day(s) for weekly rest, or workplace dress codes.

These may go against some religious practices. In this context, workers of any religion or belief, including those who do not have a particular

religion or belief, may seek reasonable accommodation². Moreover, it is important to take into account that there are often differences within any given religion regarding how individual adherents interpret their obligations. For instance, some workers are comfortable working any day of the week, while others are not.

Some accommodations may be temporary in nature, responding to a specific point in the calendar. For example, a Muslim worker who is fasting during Ramadan might request a rest break at sunset in order to be able to eat.

2. See also: *Promoting Equity – Ethnic Diversity in the Workplace: A Step-By-Step Guide*, ILO, 2014, p. 26, http://www.ilo.org/declaration/info/publications/eliminationofdiscrimination/WCMS_340481/lang--en/index.htm

WOMEN

Chapter 1

What is Reasonable Accommodation?

After Reading This Chapter You Should Be Able To:

- understand the concept of reasonable accommodation;
- describe how providing reasonable accommodation furthers the promotion of equality;
- distinguish policies on accessibility from those providing reasonable accommodation;
- identify the factors to be considered when determining if it would be reasonable to grant a particular accommodation request.

Contents

- ▶ Understanding reasonable accommodation
- ▶ When is an accommodation reasonable?
- ▶ Identifying the essential elements of the job
- ▶ Why should employers provide reasonable accommodation?
- ▶ How does reasonable accommodation further the promotion of equality?
- ▶ Resources for facilitating reasonable accommodation
- ▶ The distinction between reasonable accommodation and accessibility
- ▶ Occupational safety and health requirements

Understanding reasonable accommodation

Reasonable accommodation has been defined in two international instruments. The ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200) defines reasonable accommodation as:

“[A]ny modification or adjustment to a job or to the workplace that is reasonably practicable and enables a person living with HIV or AIDS to have access to, or participate or advance in, employment”³

3. Para. 1(g), ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200).

Recommendation No. 200 also provides that:

*“Persons with HIV-related illness should not be denied the possibility of continuing to carry out their work, with reasonable accommodation if necessary, for as long as they are medically fit to do so. Measures to redeploy such persons in work reasonably adapted to their abilities, to find other work through training or to facilitate their return to work should be encouraged”.*⁴

Additionally, the ILO Code of Practice on HIV/AIDS and the World of Work (2001), a set of guidelines developed by a tripartite group of experts, identifies the following as examples of typical reasonable accommodation:

“rearrangement of working time, special equipment, opportunities for rest breaks, time off for medical appointments, flexible sick leave, part-time work and return-to-work arrangements”.

The UN Convention on the Rights of Persons with Disabilities (CRPD) defines reasonable accommodation as:

*“[N]ecessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.*⁵

Furthermore, Article 2 of the CRPD defines the denial of reasonable accommodation as a form of discrimination.

Certain workers may encounter barriers to accessing, advancing or remaining in employment due to factors such as the physical environment in the workplace or the manner in which work is organized. Reasonable accommodation seeks to remove or reduce these barriers by adapting the existing way of doing things, or by removing physical barriers in the workplace where necessary and feasible, like replacing a step with a ramp in order to facilitate access by wheelchair users.

The key element of this concept is reasonableness. Employers may not be able to accommodate every request for a change to a job or workplace; some modifications could be considered too disruptive to the functioning of the business. At the same time, the mere fact that an accommodation may be inconvenient for the employer is not a sufficient reason for its rejection. Reasonable accommodation makes the workplace more inclusive while ensuring that businesses continue to operate efficiently.

The determination of what is reasonable ultimately takes into consideration all the circumstances of any individual case. Later in this section, you will find more detailed guidance on the factors to be considered when deciding whether a requested accommodation is reasonable. For example, if there is public funding to assist in meeting the financial costs of an accommodation, then expense is unlikely to be a sufficient basis for rejecting the request.

4. *Ibid, para. 13.*

5. *Art. 2, CRPD.*

If a worker would not be able to perform the essential functions⁶ of a job, even with accommodation, the employer will not, as a general principle, be expected to provide the accommodation, since it would not serve the purpose of enabling the worker to perform the essential tasks of his/her particular job or the job for which he/she has applied or has been hired.

When is an accommodation reasonable?

The concept of reasonable accommodation can be broken down into two principal elements:

- ▶ identifying effective measures that remove or mitigate barriers encountered by the worker;
- ▶ assessing the reasonableness of that accommodation.

What are effective measures?

Effective measures are those that permit the worker to perform the essential functions of a specific job. In other words, it consists of those measures that remove or sufficiently mitigate the barriers that may be encountered by a worker, thereby enabling him/her to access, continue in and progress in employment. Different types of barriers will give rise to a need for different types of adjustments. These may arise from the physical environment (e.g. unsuitable work stations), workplace policies (e.g. the possibility of changing working hours) or attitudes (e.g. a stereotype that workers with caring responsibilities will not have a reliable attendance record). The Job Accommodation Network in the USA provides guidance on a wide range of functional limitations and the accommodations that can be adopted in response to an individual request: <https://askjan.org/limitations/atoz.htm>

Examples: Barriers and Effective Measures

Barrier: Dora is in the early stages of pregnancy and is experiencing bouts of acute morning sickness. This makes it very difficult for her to travel on crowded public transport during the rush hour.

Effective measures: Dora's employer agrees that she can temporarily work from home in the mornings as this allows her to travel to work later in the day, when public transport services are quieter and when she generally feels better. Dora will be available to be contacted by co-workers via telephone and videoconference during the mornings in order to allow necessary meetings to continue to be held.

6. Various terms are used in practice, but essential or core functions may be regarded as those that are indispensable in performing the work of the job. See the section on Identifying the essential elements of the job later in this Chapter.

Barrier: Salim wishes to undertake the Hajj pilgrimage, but he does not have enough time to do so by using his normal accrued annual leave allowance.

Effective measures: Salim's employer agrees that he can take less holidays this year and then carry over his unused annual leave days so that he can take a longer period off work next year. This will enable Salim to accumulate sufficient annual leave days to allow him to undertake the pilgrimage.

Barrier: Gloria is a full-time worker living with rheumatoid arthritis. She finds that her joint pain and stiffness is worse first thing in the morning, but that it gradually eases during the day. For this reason, it is difficult for her to work until mid-morning. She therefore requests a reduction in her working time.

Effective measures: Gloria is permitted to reduce her contract to 70 per cent of full-time hours. Her normal start time will be 11.00 a.m., but she can use flexible working time to start earlier or later on some days.

Barrier: João is starting a job working in a medium-sized supermarket. He will be stocking shelves and helping when deliveries arrive. João has an intellectual disability and this limits some of his skills, such as communication and literacy.

Effective measures: The company appoints a co-worker, Sara, to be his mentor, providing her with specific training on how best to support people with intellectual disabilities. Sara meets with João before he takes up the position. Once he starts the job, João shadows Sara during his first work week. As his confidence grows, he gradually assumes a full range of duties. João knows that he can raise concerns with Sara and this facilitates his successful integration into the workplace.

Barrier: Jaimini has been off work for 3 months following an HIV-related illness. She wants to return to work, but she does not feel able to start back to work on a full-time basis, at least initially.

Effective measures: Jaimini is granted a phased return to work⁷ where her hours will gradually increase to full-time over a period of 3 months. She will meet her supervisor each week to discuss how she is doing and to consider whether any changes to the arrangement are needed.

7. During a phased return to work, the level of remuneration that a worker receives may depend upon the terms of the worker's contract of employment or company sick leave policy. Alternatively, there may be financial support available from a social security scheme applying to that occupation.

How can reasonableness be assessed?

The duty of an employer to provide an accommodation is balanced by the requirement of reasonableness. This is expressed in different ways, but an accommodation will not be reasonable if it imposes a “disproportionate burden” or creates “undue hardship” for the employer. For example, Article 2 of the CRPD states that:

“Reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden...”

The concepts of disproportionate burden and undue hardship convey the idea that employers can be expected to incur some expense or inconvenience when making accommodations, but that there will be a point at which these become excessive and unreasonable. Ultimately, this can only be assessed in reference to all the circumstances of each individual case. Some of the factors that are commonly taken into account in determining whether a requested accommodation would pose a disproportionate burden include:

- ▶ the cost of the accommodation;
- ▶ the size and economic turnover of the enterprise obliged to provide the accommodation. If it is part of a larger company, the size of the entire company should be the reference;
- ▶ the functioning and the organization of the company;
- ▶ whether the accommodation will benefit more persons than the individual making the request;
- ▶ the existence of public (or other) funding, which could cover or reimburse the employer for the partial or total cost of the accommodation;
- ▶ occupational safety and health requirements; and
- ▶ the anticipated duration of the employment relationship. If the worker has been hired on a short, temporary contract, then the employer might not be expected to invest in major changes unless these would be of wider benefit to other workers.

Occasionally, requests for accommodation might have an inappropriate impact on other workers. This is a factor to consider in determining whether the accommodation sought might create a disproportionate burden. For example, an employer should not accommodate a request from a male worker who, citing religious reasons, does not want to be under the direct supervision of a female manager. Such a request would create inequality in the workplace on the basis of gender and might contravene national laws or policies aimed at ensuring gender equality at work.

Examples: Disproportionate Burden

Zhang Li is deaf and she has applied for a job working in a clothing alterations shop. It is a small firm of 10 workers, all of whom take turns to staff the reception as well as working on sewing machines. The company is concerned about whether Zhang Li can fulfil all of the responsibilities of the job. She is able to lip read, so she can handle customer inquiries in person, but she cannot respond to telephone calls.

The shop mainly deals with customers in person and there are always other staff present who could take telephone calls, so this does not create a disproportionate burden for the company. The company hires Zhang Li, knowing that the accommodations she would require are reasonable and that she will be able to perform the essential functions of the job with the accommodation.

Olga has been offered a job working as a shop attendant in a mobile phone shop, which is open on Sundays. Due to her religious beliefs, she wishes to be exempt from working on Sundays. The shop is, however, a small business with only three other shop attendants. Each of the shop attendants is required to work one Sunday per month. The other shop attendants all have young children, and the shop owner is aware

that they do not wish to work more than one Sunday per month due to their family responsibilities. The shop owner concludes that accommodating Olga's request would impose a disproportionate burden on her three other employees and informs Olga that the requirement of working one Sunday per month cannot be changed. In the circumstances, Olga decides not to take the job.

Identifying the essential elements of the job

When considering the reasonableness of a proposed accommodation, it is important that the employer distinguish between the essential and non-essential elements of a job. Within any job, there are core functions that are indispensable to the performance of the role. For example, school teachers need to be able to deliver lessons to their students. In most jobs, however, there are also additional functions that the worker performs, but that are not essential to the job. A school teacher, for example, might be expected to help out occasionally with recreational trips for students or with voluntary activities, such as assisting with a school concert to raise money for a local charity. While these activities are undoubtedly important to the overall life of the school, they would not necessarily be considered essential to performing the core functions of the teacher's job.

Distinguishing between essential and non-essential job functions is important in the employer's evaluation of requests for reasonable accommodation. If a worker cannot perform a particular element of the job, even with reasonable accommodation, then the employer needs to consider whether that part of the job is essential or non-essential. If the task is non-essential, then the employer might be able to reallocate it to other workers. As a general principle, an employer is not expected to recruit a worker who cannot perform the essential functions of a job, even after reasonable accommodation is provided.

Examples: Essential and Non-Essential Functions

Maria is offered a position as a history teacher. The job description mentions that she would be expected to accompany an annual school trip to visit another country. Maria is a single parent with a child aged 4. It is impossible for her to be away for several days due to her caregiving responsibilities. She mentions that she would not be able to take part in

the annual school trip. This is not a compulsory element of the curriculum and only a minority of students and staff take part each year.

The school concludes that this is a non-essential function and that Maria can take up the position without needing to perform this task.

Jin is offered a position as a geography teacher. The position requires the teacher to take students on field trips, some of which entail overnight stays. However, Jin is caring for his elderly mother, who has dementia. He needs to be available in the evenings to give her a meal and to assist her in getting ready for bed.

Jin explains to the school that he would not be able to take part in some of the field trips. There is, however, only one position as geography teacher in the school and the geography department field trip is an essential part of the curriculum for students. The school is unable to modify this part of the job, so Jin is unable to take up the position.

Given the potential importance of determining which tasks are essential or non-essential, the employer should consider this in advance when advertising a vacancy. See [Attracting a diverse workforce, Chapter 4](#).

Why should employers provide reasonable accommodation?

In an increasing number of countries, the national legislation establishes the obligation of employers to provide reasonable accommodation. Most frequently, this legislation will be specific to disability, which in a number of countries includes HIV and AIDS.

Article 4 of the CRPD requires States to take legislative measures to implement its provisions, including steps to ensure the elimination of discrimination by private companies. Some countries have already introduced obligations to provide reasonable accommodation for workers in their national legislation. Therefore, it is beneficial for companies to understand what this entails and to be in a position to anticipate and comply with any existing or future legal obligations in this area.

Furthermore, providing reasonable accommodation is a key measure to promote diversity in the workplace and there is clear and increasing evidence that diversity can improve the performance and competitiveness of a business.

An increasing number of companies recognize the benefits of diversity. For example, the ILO Global Business and Disability Network brings together a range of employers who have voluntarily undertaken to promote the employment of persons with disabilities.⁸ While increased diversity arguably benefits society, the businesses concerned have also concluded that diversity constitutes good business practice.

AXA is a multinational insurance company with over 100 million customers. Its Deputy Chief Executive Officer stated:

"At AXA we are actively engaged in attracting and retaining diverse talents. We are committed to creating an accessible and inclusive environment in order to broaden our talent pool while being agile, innovative and customer-oriented"⁹

The main arguments in favour of diversity within enterprises include:

- ▶ A diverse workforce that is comfortable communicating varying points of view provides a larger pool of ideas and experiences. This enables a company to be more innovative in planning and problem-solving.
- ▶ A diverse collection of skills and experiences (e.g. languages and cultural understanding) allows a company to provide better service to customers, both locally and globally.
- ▶ Companies with a good reputation for sensitivity, diversity and accommodation can increase their market share with consumers from a wide range of backgrounds.
- ▶ Companies that value diversity and maintain an inclusive workplace culture may improve the retention of workers with diverse backgrounds and enhance their loyalty to the company. In turn, this will reduce the costs associated with employee turnover, recoup the investment in training, and sustain institutional memory.

Reasonable accommodation has a key role to play in business, helping companies to broaden their recruitment pool as well as helping them to retain existing workers, thereby benefiting from their skills and experience. The following are some other benefits frequently linked to reasonable accommodation:

- ▶ A company that provides reasonable accommodation will be well placed to demonstrate that it offers an inclusive working environment, which can assist in reducing discrimination and promoting employee engagement.
- ▶ Reasonable accommodation can facilitate a swifter and smoother return to work following absences on sick, maternity, paternity or parental leave. This can reduce the costs to employers arising from absenteeism and staff turnover and help break the glass ceiling by promoting women's career progress and access to management positions.
- ▶ Accommodations introduced in response to requests from individual workers can also benefit customers, such as an accommodation that makes the physical environment in the workplace more accessible for all those with reduced mobility.
- ▶ Where providing accommodations is a legal obligation, compliance helps companies to avoid the costs of litigation, compensation awards and related adverse publicity.
- ▶ In some countries, employers have a legal duty to hire a minimum number of workers with disabilities. Reasonable accommodation can help employers comply with quotas where they exist.

8. The ILO Global Business and Disability Network Charter: <http://www.businessanddisability.org/index.php/en/about-the-network/charter>

9. Ibid.

Measuring the Benefits

Lloyds Banking Group is a leading UK-based financial services group. It rolled out a new policy on workplace adjustments in 2010. Key features of the policy include:

- ▶ All employees can make a request for an adjustment. The request is handled by a dedicated business manager who is responsible for adjustments;
- ▶ A central budget for funding adjustments;
- ▶ Clear processes for handling requests, with a strong emphasis placed on speed and efficiency; on average, cases are resolved in 14 days.

Research was undertaken in eight US companies of varying sizes.¹¹ Over 100 participants took part in interviews or focus groups, and over 5,000 employees completed an online survey.

The results demonstrated that both managers and employees found that providing accommodations resulted in concrete benefits:

- ▶ 58.7 per cent of managers/ supervisors said that the accommodation improved the employee's productivity;

Research within the company has found that the policy has significantly benefited productivity:

- ▶ The average case cost dropped from £1,500 per case in 2010 to £700 in 2014;
- ▶ 62 per cent of colleagues (and 63 per cent of their managers) using the service reported a reduction in absenteeism;
- ▶ 85 per cent of managers using the service reported a significant improvement in performance.¹⁰

- ▶ 71.8 per cent of managers/ supervisors said that the accommodation improved the employee's morale;

- ▶ 71.9 per cent of employees who received an accommodation said that it made it more likely that they would stay at that company;

- ▶ 65.2 per cent of employees who received an accommodation said that it decreased their stress at work.

How does reasonable accommodation further the promotion of equality?

In reflecting on the meaning of equality, many people might conclude that equality means treating one person or group of persons in the same way as another person or group of persons in similar or identical circumstances, irrespective of personal characteristics. This understanding of equality is reflected in the notion that it would be wrong to deny someone a job because of characteristics such as their gender or ethnic origin. It is often summarised by the expression of "formal equality".

10. S. Scott-Parker, *Moving from Ad Hoc to Streamlined Efficiency: The Lloyds Banking Group Case Study*, Business Disability Forum, 2014, pp. 4-5, <http://businessdisabilityforum.org.uk/about-us/news/case-study-lloyds-banking-group-transforms-workplace-adjustments-process/>

11. L. Schur et al, *Accommodating Employees With and Without Disabilities*, in: *Human Resource Management*, 2014, Vol. 53, p. 593

Yet there are some situations where treating someone in an identical manner will not result in genuine equality. It is here that the principle of reasonable accommodation may come into play to help ensure equality of opportunity and treatment in the workplace.

Example: Reasonable Accommodation and Equality

An employer holds a job interview in a first floor office that is only accessible by climbing a steep flight of stairs. All job candidates have to climb the stairs to reach the interview room; the same requirement applies to all. It is, however, obvious that this requirement will not lead to genuine equality in practice for a job candidate who is a wheelchair user. As she cannot reach the interview room, she will not have an opportunity to compete for the job, even though she might turn out to be the best qualified candidate.

This example illustrates that achieving equality sometimes demands a change to conducting “business as usual” and a response to different personal situations. The employer could accommodate the candidate by holding her interview in a different room on the ground floor. Ideally, the employer could change the venue for all the interviews to an accessible venue, thereby ensuring that all candidates could easily access the interview room and be interviewed in the same environment.

There is growing international recognition that treating all people in the same manner is not sufficient to achieve equality. The term “substantive equality” has been used to reflect a different understanding of what equality entails. This focuses on tackling disadvantage, under-representation and marginalization within the labour market. It recognizes that the existing way of doing things has often been shaped by the working lives of those who historically dominated in the labour market. For example, the traditional pattern of working full-time hours was suitable for those workers who were in good health and who were not constrained by caring responsibilities. Similarly, women and girls are more vulnerable to HIV infection and due to gender inequalities are disproportionately affected by the epidemic. In particular, women often shoulder a disproportionate share of caregiving responsibilities within the family, which in turn impacts on their working lives.

Developing a more inclusive labour market means that “standard” practices may have to be reconsidered in order to respond to the diversity of today’s workforce.

Resources for facilitating reasonable accommodation

Most accommodations do not entail a significant cost. Research conducted for the Job Accommodation Network in the USA found that 58 per cent of employers reported that the accommodations requested cost nothing. Where there was a cost, this was typically around US\$500.¹² Furthermore, in many countries there are external funds from public or private sources that can assist employers in meeting any costs linked to reasonable accommodation. Typical sources for such funds are Departments of Labour or Welfare, or national agencies providing social security schemes.

12. In US studies, managers/supervisors reported that the costs of accommodation were less than US\$500 in 60 per cent of cases. See: B. Loy, *Workplace accommodations: Low cost, high impact*, Job Accommodation Network Accommodation and Compliance Series, updated January 2016, <https://askjan.org/media/lowcosthighimpact.html>

In most companies, it is recommended to plan in advance for any costs associated with providing reasonable accommodation. If expenses are dealt with on an *ad hoc* basis and absorbed by the local department in which the worker is located, then this may create resistance to accommodation requests. Specifically, the manager of the local department may feel that the cost of accommodation has an adverse effect on the department's budget.

A good practice for larger companies is to create a centrally managed budget for any costs linked to providing reasonable accommodation. This will avoid a situation where individual departments within a company are disproportionately affected by any costs arising from accommodation requests. A central budget will also help the company in assessing the reasonableness of requests; this should be assessed with reference to the overall resources of the company, not just the local department where the worker is based.

In SMEs, it may not be necessary to allocate a separate budget for accommodations because such costs may only arise irregularly. Nevertheless, it could be helpful for employers to consider in advance what resources could be made available in the event of a request.

Example: Budget Resources for Accommodations

Gbeke runs a small accountancy firm with two other staff. One of his workers has had a road traffic accident and is experiencing acute back pain that prevents him from working full-time from his current office chair and desk. His physiotherapist has recommended the purchase of a special chair and a desk with adjustable height to enable him to change his position throughout the working day.

The cost of these items is estimated at US\$750.

Unfortunately, Gbeke's business has been struggling in recent months and he is currently seeking ways to save money, so the extra cost of the furniture would be difficult to afford. He discovers that the government runs a scheme that will reimburse him 60 per cent of the cost of the furniture. While Gbeke will still incur some costs to provide the accommodation, it will still be cheaper to make this investment rather than seeking to recruit and train a replacement worker. Gbeke undertakes to provide the accommodation requested.

The distinction between reasonable accommodation and accessibility

Sometimes there is confusion around the distinction between broader measures that are aimed at making companies accessible for all and the specific concept of reasonable accommodation. While these are complementary in nature, they are different, so it is important to be clear about the meaning of each at the outset.

Accessibility is a concept that stems from law and policy on disability. Nevertheless, the underlying idea of designing work in an inclusive fashion is also relevant to those with particular religious beliefs, or those with family responsibilities. Accessibility covers matters such as the design of the built environment, the types of technologies used in the workplace or other ways in which work is structured. Accessibility implies strategic planning by companies in advance, and on a continuous basis. "Universal Design" is an approach that aims to ensure that products, environments, programmes and services are usable by all people, to the greatest extent possible, without the need for adaptation or

specialized design. This is an ambitious, long-term objective that facilitates the realization of accessibility. For example, depending on their size, companies should consider providing a suitable space within the workplace for workers who are breastfeeding, or for workers who wish to pray during rest breaks.

Example: Planning for Accessibility

A company is expanding and plans to move from a single site to working across two locations. In planning for the design of the new premises, it will need to consider, in advance, how to ensure that the building is accessible for workers with a range of disabilities, such as mobility or visual impairments. For example, this could entail installing doors that open electronically upon pushing a button or making sure that any glass doors are marked for those with visual impairments.

The company will be purchasing a large amount of new equipment for the

premises, so it should ensure that these devices can be used by all workers. For instance, desks could include an adjustable height function as this can assist workers with back impairments. Once the company begins operating from two sites, some workers will have to spend time in both locations. The company needs to ensure that methods of transportation between its different branches are able to be used by all workers. It may take some workers with mobility impairments slightly longer to transit between the sites, so meeting schedules need to be planned with this in mind.

Reasonable Accommodation is normally viewed as an individualized adjustment to the working environment in response to the specific requirements of a worker. Whereas accessibility entails taking general measures in anticipation of the needs of a range of workers, including those who may be expected to work for the company in the future, reasonable accommodation will typically be a response to an individual request.

Example: Providing Reasonable Accommodation

The company has now established its operations across two work sites. Philip is a Human Resources Manager, so he often works in both of the company's locations.

Philip is living with HIV and adheres to a prescribed treatment regimen. Following a recent change to his anti-retroviral medication, he is experiencing increased fatigue. In order to avoid becoming excessively tired in travelling between the company's two

work sites, he requests a reasonable accommodation. Specifically, Phillip requests permission to conduct more meetings via online video-conferencing. By reducing his travel between the two sites, Phillip is better able to manage his fatigue and this allows him to keep working. The company provides this accommodation and the parties agree to hold a review after three months to see how this arrangement is functioning.

In the examples above, the company addressed accessibility by planning for the changes to its premises, including office equipment. Effective approaches to accessibility should reduce the need for individuals to seek reasonable accommodation; if information technology (IT) equipment is designed for the needs of a variety of users, then requests for specific adaptations will be less frequent. Nevertheless, given the diversity of conditions encountered by individuals, as well as combinations of impairments, it may also be necessary to respond to the circumstances of the individual via reasonable accommodation. In this regard, it is important to bear in mind that each individual experiences impairment differently. For example, some people undergoing chemotherapy may wish to reduce their working time and work from home more frequently. Others might be able to work for a greater portion of the week and might prefer to continue working from the office.

Occupational safety and health requirements

Employers have an obligation to protect the safety and health of their workers. An employer may be concerned that providing a requested accommodation would be incompatible with occupational safety and health (OSH) requirements. For example, some conditions that cause an episodic disability may temporarily affect the worker's working capacity, such as someone with diabetes who experiences hypoglycemic episodes or someone with epilepsy who experiences seizures.

In most cases, a worker with a specific condition can perform the job in question and there will not be any incompatibility with appropriate OSH measures that may be put in place. Employers should make informed assessments of what risks may be tolerable, rather than automatically assuming that any increase in the risk posed to the worker or to others as a result of the worker's condition cannot be accommodated.

Occasionally, requests for reasonable accommodation may arise with regard to the application of standard OSH practices. An assessment of the reasonableness of departing from such practices should consider whether any increased risks are tolerable.

Example: Reasonable Accommodation and OSH Requirements

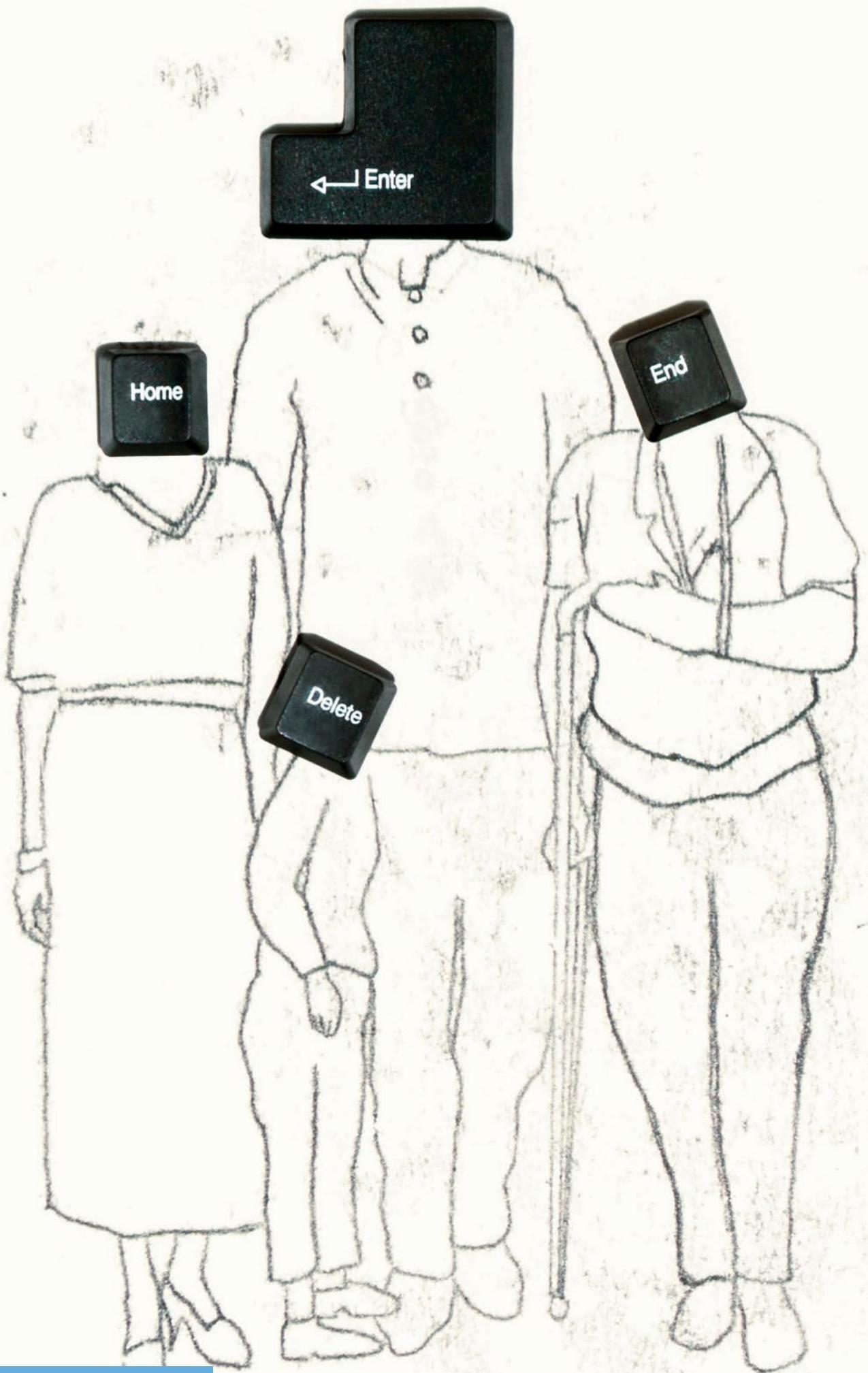
Mary is a nurse. Her hospital uniform policy prohibits the wearing of any external jewellery. Due to her religious beliefs, she requests permission to wear a necklace with a cross over her uniform.

Her supervisor explains that jewellery worn over the uniform may come into

contact with patients during her work. This could facilitate the transmission of viruses. In order to protect the health of patients and other workers, the policy prohibiting the wearing of external jewellery is strict and no exceptions can be permitted. Mary can, however, wear her cross inside her uniform.

Having completed this chapter, you should now understand:

- the business case for providing reasonable accommodation;
- the difference between general measures to provide accessibility in the workplace and handling individual requests for reasonable accommodation;
- the distinction between essential and non-essential job functions;
- the steps that could constitute an effective measure where needed in an individual case;
- that an accommodation will not be reasonable if it gives rise to a disproportionate burden on the employer.



Chapter 2

The Process of Providing Reasonable Accommodation

After Reading This Chapter You Should Be Able To:

- describe the key steps in handling a request for reasonable accommodation;
- understand the importance of confidentiality in the context of reasonable accommodation and measures to ensure that this is protected;
- identify the training needs that arise within the company when implementing policy on reasonable accommodation.

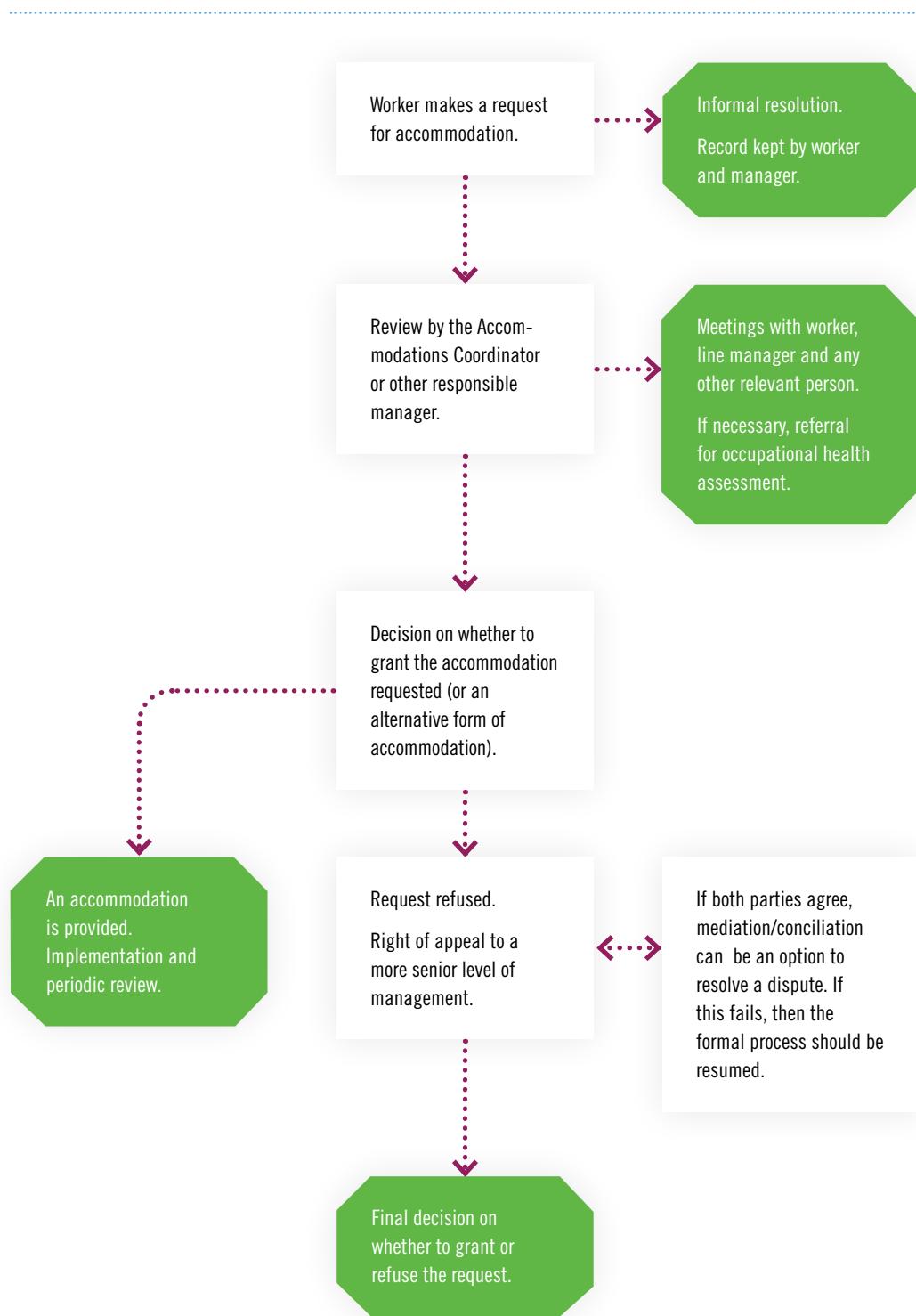
This chapter should be read in conjunction with the [Model Policy on Reasonable Accommodation](#) found in [Appendix 2](#). The Model Policy provides an example of how employers might develop procedures for handling requests for reasonable accommodation.

Contents

- ▶ The business process of providing reasonable accommodation
- ▶ Receiving requests from job applicants and workers for reasonable accommodation
- ▶ Disclosure and confidentiality
- ▶ What information should an employer require from a worker?
- ▶ Informal and formal processes
- ▶ Who handles accommodation requests?
- ▶ Consulting on accommodation requests
- ▶ Dispute resolution within the workplace: mediation/conciliation
- ▶ Dispute resolution beyond the workplace: the potential role of law
- ▶ Co-workers and the accommodation process

The Business Process of Providing Reasonable Accommodation

This chapter begins with a flow chart that provides an overview of the process by which companies can handle requests for reasonable accommodation. The flow chart provides guidance, but will need to be adapted to the size and structure of each company. The remainder of the chapter examines the steps in this process in more detail.



Receiving requests from job applicants and workers for reasonable accommodation

The reasonable accommodation process typically begins with a request from a worker (or a job applicant) for an adjustment to remove a barrier that the individual is encountering. While the burden is typically on the individual to initiate this process, there are some situations where the employer possesses sufficient knowledge of the individual's circumstances to initiate the process.

Example: Employer-Initiated Reasonable Accommodation

Faruk was diagnosed with HIV last year. He has been off work for 9 months, initially due to side-effects from his medication, but then also with depression. His manager wants to support his return, so she proposes that they explore steps that could help him gradually come back to work.

After consultation with Faruk, the parties agree that he will, at least

initially, return to work on a part-time basis. His medication sometimes causes fatigue, so he will have a flexible start time to accommodate this. In order to respond to his depression, he will initially receive the support of a weekly meeting with a mentor. The company offers a free mindfulness course to workers, so Faruk's hours will be scheduled in order to let him take part in this course.

Disclosure

Workers will be able to perform their jobs more effectively if they are able to seek and receive reasonable accommodation. Consequently, it is desirable that workers disclose any accommodation needs they may have at the outset of the employment relationship, including in the recruitment process, or when such needs arise during the course of employment. This allows the employer time to put in place any reasonable accommodation needed. Workers should cooperate with their employer in order to facilitate the good functioning of the accommodation process.

In practice, some workers may be reluctant to disclose the need for accommodation. This is likely to be especially true for those conditions that are highly stigmatised, such as

HIV status or mental health conditions. An individual may have experienced discrimination in the past as a result of a particular condition and might therefore choose not to disclose as a strategy to avoid negative treatment in the future.

Employers cannot compel workers to disclose personal information at the time of hiring. However, periodic training for new staff as well as for existing staff provides an important opportunity to communicate the company's desire to support workers who may need an accommodation and to explain how such requests will be handled (including by affirming the employer's commitment to safeguarding confidentiality). This should encourage workers to feel more confident in disclosing their requirements.

Confidentiality

Workers may have concerns about privacy and confidentiality in the workplace when requesting an accommodation. Companies should have appropriate processes in place to ensure workers' privacy, particularly with regard to their personal medical data. A balance must be struck between the concerns of workers and situations where the employer has a reasonable need to access medical information, such as:

- ▶ establishing the justification for a worker's absence on sick leave;
- ▶ ascertaining when or whether a worker can safely return to work;
- ▶ in devising a reasonable accommodation.

In all cases, the need for information should be proportionate (see next section).

The steps required to ensure confidentiality will necessarily reflect the circumstances of the company, but these could include measures such as:

- ▶ transmitting sensitive information only in sealed envelopes clearly marked as confidential and directed to specific staff only, or
- ▶ keeping files on accommodation requests separate from other personnel files, with limited access to the information they contain.

Maintaining the confidentiality of medical information is essential to ensure that no stigma attaches to a worker. In this context, the ILO HIV and AIDS Recommendation, 2010 (No. 200) provides that:

[W]orkers, their families and their dependants should enjoy protection of their privacy, including confidentiality related to HIV and AIDS, in particular with regard to their own HIV status; ... no workers should be required to undertake an HIV test or disclose their HIV status.¹³

The Recommendation also calls for measures to be taken in or through workplaces to reduce HIV transmission and reduce its impact by "ensuring the effective confidentiality of personal data, including medical data" and provides that:

[W]orkers, including... job applicants, should not be required... to disclose HIV-related information about themselves or others. Access to such information should be governed by rules of confidentiality consistent with the ILO code of practice on the protection of workers' personal data, 1997 and other relevant international data protection standards.¹⁴

What information should an employer require from a worker?

Practice varies with regard to the extent of information that employers require from a worker to support a request for a reasonable accommodation. Some companies do not insist upon the production of corroborating evidence unless there are special reasons to ask for this. Such an approach displays an employer's trust in its workers and takes into account that the need for some types of accommodation may be difficult to establish. This is especially the case for accommodations sought for a particular religious practice.

13. Recommendation No. 200, para 3, subsections (h) and (i).

14. Ibid., paras 14 (g) and 27. See also: ILO Code of Practice on the Protection of Workers' Personal Data, 1997: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/normativeinstrument/wcms_107797.pdf In addition, section 4.7 of the ILO Code of Practice on HIV/AIDS and the World of Work, 2001, states that "there is no justification for asking job applicants or workers to disclose HIV-related personal information".

In relation to requests for accommodation of a disability, the only information that the employer should require is:

- ▶ the functional limitation(s) experienced by the worker; and
- ▶ the steps that could be taken to remove or mitigate any barriers connected to such limitation(s).

Most importantly, there is no need for the employer to be informed of the underlying diagnosis of the worker.

For example, a worker has a functional limitation due to a suppressed immune system. As a result, the worker may need a variety of accommodations, such as a dedicated workstation with his/her own IT equipment in order to minimise exposure to germs.¹⁵ In handling the worker's accommodation request, the employer does not need to know the underlying cause of the worker's suppressed immune system. This is especially important because of the stigma attached to some conditions. If workers are compelled to disclose such conditions, then frequently they will choose not to request an accommodation. This result would also be detrimental to the interests of the employer. If workers do not seek accommodation due to fear of negative consequences, employers may, as a consequence, be faced with increased levels of absenteeism and diminished productivity.

Example: Information that might be required from a worker

The Ontario Human Rights Commission¹⁶ recommends that: "Ideally, the employer will clearly identify what information is needed and why. For example, the employer could provide a list of questions for the doctor to answer:

- ▶ Must Susan be totally off work for six weeks, or is there some way she can continue to work with accommodation such as part-time work, flexible hours, working from home, job modification, or workspace modification?
- ▶ Can Susan take part in a gradual return-to-work programme? If so, when and how?
- ▶ Here is a physical demands analysis. Please indicate what, if anything, Susan can continue to do.

Do not design the questions in such a way that the answers will reveal the person's diagnosis. For example, an employer can ask whether accommodation is needed related to any side effects of prescribed medication, but should not ask what medications the person has been prescribed.

This could, in some cases, reveal the diagnosis and is not necessary for accommodation. If the doctor provides a diagnosis or information that has not been requested, proceed very carefully and make sure that any decisions made relate to restrictions and accommodation needs rather than assumptions based on the diagnosis or other information provided."

15. *Job Accommodations for People with Immune System Conditions*, Job Accommodation Network, EAP Series, 2016, <http://soar.askjan.org/Limitation/111>

16. *Human Rights at Work*, Ontario Human Rights Commission, 2008, section IV. 9(d): <http://www.ohrc.on.ca/en/iv-human-rightsissues-all-stages-employment/9-more-about-disability-related-accommodation>

Dos and Don'ts

- ✓ **DO** ask workers to explain what obstacle they are encountering in performing the job.
- ✓ **DO** ask workers if there are any adjustments or modifications that could remove or mitigate the obstacles that they are encountering.
- ✗ **DO NOT** ask workers for details of their underlying medical diagnosis.
- ✗ If it is necessary to seek medical documentation, **DO NOT** ask the worker's doctor to disclose his or her diagnosis.

Informal and formal processes

When a worker makes an initial request for an accommodation, it may be appropriate to see if this request can be handled informally.

Examples: Informal Resolution of an Accommodation Request

Kinga's father is undergoing medical treatment for the next three months that requires weekly visits to the hospital. She requests permission to work half-days on Wednesdays in order to accompany him to the

hospital. Kinga proposes to work one hour longer on the other four days to meet her contractual working hours. This does not pose any difficulties for the company, so her manager is able to agree immediately to this arrangement.

Sally has just returned to work at a small travel agency after being on maternity leave. She is still breastfeeding her baby. Sally sits in an open space with four other travel agents and there is only one small private office for the manager and one toilet for all staff. It is therefore difficult to express milk while at work.

One option is for Sally to use the couch in the manager's office to express the milk during her lunch break. However, this is not private nor secure enough to ensure uninterrupted time to express breastmilk. Sally is eventually allowed to work flexible hours to enable her to breastfeed away from the office.

Although some accommodation requests can be handled swiftly and informally, it is still recommended to keep some written record of what has been agreed upon between the employer and the worker. This is valuable for both parties in case of any future disagreement.

If the accommodation request is more complex, or has not been resolved informally, then a formal procedure should exist within the company to handle such requests. Small employers might not have a formal procedure designed exclusively for accommodation requests, but such requests could be incorporated within another process that allows a worker to raise a concern. For larger companies, a specific procedure for accommodation requests is recommended.

Who Handles Accommodation Requests?

Companies are advised to establish a clear procedure identifying who is the appropriate decision-maker in relation to accommodation requests. In small companies, this might be the worker's supervisor, but in larger companies it will generally be preferable to allocate this responsibility to a specific unit/department. The advantages of having staff who are dedicated to handling accommodation requests is that they can build up expertise on options for responding to various needs. As a result, they could be expected to know what sources of government funding may be available, or know how to contact the suppliers of specialist equipment/furniture. This will also help to ensure consistency in how the company responds to requests from staff in different roles and build its expertise regarding any legal obligations the company might have in this regard. Moreover, it is recommended that the team handling accommodation requests manage any central budget allocated for this purpose: See [Resources for Facilitating Reasonable Accommodation, Chapter 1](#).

Example: Handling Accommodation Requests

Department of Public Service and Administration, South Africa¹⁷

The key to case management is the effective coordination of the many factors and staff who will be involved. The key figure is the disability coordinator, whose role is to link opinions and expertise in assessment operation and review. This person can be the human resources manager, an employment equity officer, or another staff member who has knowledge of disability in the workplace and HR practices. The coordinator will, among other functions:

- ▶ coordinate involved staff as a team (especially in policy issues), review cases and find resolutions to cases;
- ▶ identify individuals who need disability management or support in returning to work;
- ▶ work with the person through assessment, planning, decision-making and review;
- ▶ protect the individual's rights, ensure confidentiality and explain these to the individual;
- ▶ manage assessment and commission specialist advice where needed, including obtaining a medical opinion;
- ▶ brief advisors thoroughly;
- ▶ coordinate the functional needs assessment of individuals in particular jobs, including the job analysis, to include inherent requirements of the job;
- ▶ gather reports for cross-disciplinary review to interpret assessment;
- ▶ arrange for reasonable accommodation, supported by appropriate staff training;
- ▶ document the process in relation to each individual to include any justifications for less favourable treatment; and
- ▶ manage the termination of employment where necessary and in accordance with company procedures.

17. *Handbook on Reasonable Accommodation For People With Disabilities in the Public Service*, Department of Public Service and Administration RSA, 2007, <http://unpan1.un.org/intradoc/groups/public/documents/CPSI/UN-PAN028090.pdf>

Consulting on Accommodation Requests

When a request for an accommodation is received, it should be carefully explored by the responsible person. Within this process, the worker making the request should be given an opportunity to communicate views and respond to any proposed accommodations.

Companies might not be able to provide the specific accommodation requested by the worker, but a process of dialogue and negotiation can frequently identify a suitable compromise for all parties. Reasonable accommodation is both a procedural and substantive duty. In this regard, the CRPD states that: “persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them”.¹⁸

Example: Consulting on Accommodation Requests

Tina has an intellectual disability. She is working in a factory producing bicycles. At present, she is located in a very noisy part of the production process, where she finds it difficult to concentrate. She has requested an accommodation in the form of a transfer to the finishing stage of the production process, an area which is smaller and quieter. Her request will be considered at a formal meeting with her supervisor and the company's accommodations coordinator.

Tina encounters some barriers to communicating her views, particularly in a formal context that she finds stressful. She requests permission to be accompanied by her support officer, an individual who assists her with independent living outside the workplace. Company procedures do not normally permit workers to be accompanied by a person from outside the workplace, but the company provides an accommodation for her by allowing her support officer to take part in the meeting.

Dispute resolution within the workplace: mediation/conciliation¹⁹

Sometimes it may not be easy for employers to reach an agreement with their workers on what constitutes a reasonable accommodation or what steps would be reasonable for the employer to take in response to a particular request. In the event of a dispute, it is recommended that employers provide the option of informal conflict resolution, through mediation or conciliation.

The terms “conciliation” and “mediation” are sometimes used interchangeably, although in some systems a distinction is made in terms of process, with a mediator making recommendations, and a conciliator facilitating dialogue between the parties but not making any recommendations. Where both parties agree, conciliation or mediation can be used at any time during the process. For example, a worker might raise a formal complaint challenging a decision to refuse a request for accommodation. If, during the formal investigation of a complaint, both the worker and the employer agree to mediation instead, then the formal process would be suspended pending the outcome of the informal one.

¹⁸. Preamble, Para (o) CRPD.

¹⁹. This section is based on text found in: Promoting Equity – Ethnic Diversity in the Workplace: A Step-By-Step Guide, ILO, 2014, p. 43, http://www.ilo.org/declaration/info/publications/eliminationofdiscrimination/WCMS_340481/lang--en/index.htm

The role of the conciliator or mediator is not to impose an agreement, but to help the parties reach a mutually acceptable agreement. Conciliators and mediators therefore need to be knowledgeable about any law on reasonable accommodation, the terms of any collective agreement in force, the company's reasonable accommodation policy and any other relevant company policies and procedures.

The conciliator or mediator should remain objective and impartial throughout the complaints process. In most cases, conciliators and mediators have specialized training. They may be recruited from outside the company, particularly where neutrality is a concern. In relation to accommodation requests, it is generally considered good practice to maintain a confidential written record of the outcome of the mediation and any commitments made by the worker and the employer.

Dispute resolution beyond the workplace: the potential role of law

It is important that employers be aware that, in some jurisdictions, failure to provide reasonable accommodation could be deemed unlawful. Employers should check sources of information on national law to be aware of their legal responsibilities.

Where providing reasonable accommodation is a legal duty, then employers have an additional reason to ensure that all requests are handled fairly and transparently. Litigation is often costly and time-consuming for all parties involved. For this reason, it is frequently in the interests of the employer to try to resolve disputes internally. This may also assist in maintaining an atmosphere of trust and ensuring a non-discriminatory working environment.

In some legal systems, claims that an employer has failed to provide a reasonable accommodation are subject to special rules regarding the burden of proving the essential elements of the claim. This can mean that where an individual has presented evidence from which it could be concluded that the employer failed to meet its responsibilities, then the burden of proof would shift to the employer to show that this was not the case. This reinforces the value to the employer of having a formal workplace policy for dealing with requests for reasonable accommodation. The [Model Policy](#) found in [Appendix 2](#) of this guide offers companies a basis for developing their own policy.

Co-workers and the accommodation process

As mentioned earlier, providing a reasonable accommodation to a worker can have an impact on other workers. It might, for example, lead to an adjustment in the distribution of job tasks if an accommodation means that certain functions are transferred to other workers (and vice versa). Even where there is no change to co-workers' tasks, other workers may have questions when they see differences in the way in which the work of one of their colleagues is organized. This might lead to questions along the following lines:

- ▶ Why is Dana allowed to start work at 9.30 a.m. when everyone else is expected to arrive at 8.30 a.m.?
- ▶ Why has Femi been given a different office chair from the standard one we use?
- ▶ Why is Katarzyna not required to attend the office "Away Day" like everyone else?

The employer may be unable to answer these questions because there is a duty of confidentiality with respect to the worker who has been granted an accommodation. Depending on the circumstances, it may be appropriate for the employer to discuss with the worker granted an accommodation whether he/she has any views on how to respond to questions from other workers relating to the accommodation. As responding to queries involves data personal to the worker, it is for the worker to decide whether or not he/she wishes to voluntarily share any of this information with co-workers. No pressure should be placed upon the worker to disclose. There may, however, be circumstances where the worker prefers other co-workers to be fully informed.

Taking our examples, Dana's colleagues already know that she has a young child to take to school before work, so, if questions arise about her delayed start time, she is happy for this to be explained to other workers. Likewise, Femi's co-workers already know that she experienced a back injury in a recent car accident, so she is comfortable with any co-worker knowing that this is the reason for her new chair. In contrast, Katarzyna cannot attend the Away Day because she has an antenatal check-up. Her co-workers do not know that she is pregnant and she does not want to share this information at this point in time. In this case, the employer would have to explain to any worker who asked about her absence that the reason is confidential.

Resolving potential conflict or resentment amongst workers requires a planned strategy that ensures that all workers know about and understand the company's reasonable accommodation policy. Ideally, training in reasonable accommodation policy should take place as early as possible in the course of the worker's employment with the company. Good quality training and information is likely to yield benefits by defusing any tensions that may arise at the workplace over situations where accommodations are provided.

Through training, workers should understand that reasonable accommodation is potentially relevant and valuable to all workers. Even those who do not have any accommodation needs at present may require an accommodation at some time in the future, so being familiar with and respecting the principle of reasonable accommodation is beneficial to everyone.

- ▶ *Generali* is one of the largest insurance companies in Europe. In France, it has innovated through its fresh approach to training on issues relating to disability in the workplace. The company developed a series of video clips with the participation of staff to provide first-hand accounts of experiences of workers, such as those with less visible disabilities.²⁰
- ▶ *The Accor Group* is a leading international hotel operator. In France, an innovative approach was taken to training kitchen staff in working alongside those with visual impairments. The training included an exercise for which staff wore special glasses that simulate the effect of a visual impairment. This increased staff awareness and understanding of the impact of visual impairments and the need for accommodations. Some of the changes made to accommodate workers with visual impairments within the kitchens included providing chopping boards of different colours and making alterations to neon lighting.²¹
- ▶ *Standard Bank* employs almost 48,000 people across 18 countries in Africa. Originally, reasonable accommodation requests were handled in an *ad hoc* manner by line managers. This *ad hoc* process was replaced by a "Standard Bank Disability Policy" with clear procedures for handling requests and a central budget to fund any

20. *Generali* video series, <http://www.cahandilong.fr>

21. *Business as unusual: Making workplaces inclusive of people with disabilities*, ILO, 2014, http://www.businessand-disability.org/images/pdf/pubs/Business_as_unusual_web.pdf

associated costs. The policy was accompanied by a “Guide to Managing Disability in the Workplace” that provides advice to managers on working with disabled workers and clients. The guide is similar to a training module and covers the diverse range of issues that can arise.²²

Having completed this chapter, you should now understand:

- the process through which requests for accommodation should be handled;
- the importance of maintaining confidentiality throughout this process and not seeking disclosure from the worker of any underlying medical diagnosis;
- the need to train and raise awareness among all company staff, at all levels, to ensure that the accommodation process is fully understood and accepted.

22. Ibid.



Chapter 3

Reasonable Accommodation in the Employment Cycle

After Reading This Chapter You Should Be Able To:

- identify how reasonable accommodation issues can arise at different points in time over the worker's career with the company;
- understand the potential of reasonable accommodation to facilitate a return to work following a period of absence.

Contents

- ▶ The recruitment process
- ▶ Training
- ▶ Promotion
- ▶ Job retention and return to work

The recruitment process

When recruiting, companies should be open to the possibility that some job applicants may need reasonable accommodation. The accommodation can relate to:

- ▶ the recruitment process;
- ▶ the requirements of the job that has been advertised.

In the context of the recruitment process, the job announcement should include an invitation to candidates to indicate if they have a specific need or require an accommodation in order to enable them to participate in the interview or any other assessment task. For example:

[Company A] “is an equal opportunities employer and is committed to accommodating the needs of people to enable them to participate on an equal basis in the selection process.

Please let us know if you have any particular requirements should you be invited for assessment/interview or that you wish us to take into account when considering your application.”²³

23. Adapted from *Guidelines on the Equal Opportunities Aspects of Employing People with Disabilities in the Health Service*, Health Service Executive, Ireland, 2006, http://hse.ie/eng/staff/Resources/Employment_Legislation_Guidelines/Guidelines%20on%20Employment%20of%20People%20with%20Disabilities.pdf

Typical aspects of the selection process that can give rise to accommodation requests include:

- ▶ the format in which information about the job has been provided;
- ▶ the format of the job application form;
- ▶ the format of any tests or assessments carried out as part of the recruitment process, as well as the arrangements made for such activities;
- ▶ the manner in which interviews will be conducted, including location and schedule.

Ensuring accessibility in the design of the recruitment process will help to reduce the need for job applicants to seek individualized accommodations. See [Attracting a diverse workforce, Chapter 4](#).

Examples: Reasonable Accommodation and the Recruitment Process

Prita has been shortlisted for a vacancy. When she is informed of the interview date, she discovers that it clashes with the festival of Diwali. As a Hindu, this is a very important date for her and she always travels to another city to spend it with her family.

Prita explains the significance of the festival to the company and asks if she could be accommodated through rescheduling the interview to another day. The recruitment process is taking place via interviews over several days, so the company is able to grant the accommodation.

Daniel is invited to take part in a job interview, but on the same date his mother is moving from her home of 40 years into an assisted living complex for older people. He wants to be present on that day to support her during this important transition. He inquires about performing the interview on another

date, but the employer explains that assessors from outside the company will be taking part in the interview panel, so the logistics require that all interviews be held on the same date. As a consequence, Daniel decides to decline the interview.

Requests for reasonable accommodation may also relate to the requirements of the job that has been advertised. For example, the description of the job states that the working hours are 8.30 a.m. to 5.00 p.m. A job applicant who has to take his/her child to school before starting work might ask whether it is possible for the working hours to be modified to 9.00 a.m. to 5.30 p.m.

In some cases, the job applicant may be unable to perform all of the tasks associated with the position. In these circumstances, the company may need to consider whether non-essential functions can be redistributed among other workers. The duty to provide a reasonable accommodation does not require employers to hire workers who, even after accommodation, would be unable to perform the essential functions of the job.

Training

Companies of all sizes frequently require staff to undergo training, whether this consists of initial training upon taking up the job or periodic on-the-job training, as necessary. Given the importance of training for career development, the company must ensure that it is possible to provide workers with a reasonable accommodation necessary for their participation in the training activity. For example, some companies choose to provide training through online courses. If a worker has a visual impairment, then it may be necessary to provide the option of screen-reading technology so that the worker can access the online training.

Small companies may not have the capacity to deliver their own training and may rely on external training providers. The mere fact that the training is being provided by a third party would not, by itself, absolve the company of any responsibility it may have for providing reasonable accommodation. For example, a worker who is breastfeeding is attending a training course provided on behalf of the company, but at a different premises. Where this is feasible, the training provider should take steps to accommodate the worker's need for a space to express breast milk during the training.

It is also important that companies provide appropriate training for those staff members involved in the reasonable accommodation process. For example, a staff member who was successful in a promotional opportunity and rises to a management position may have different responsibilities as a manager than they would have had previously. Where individuals take on responsibilities related to handling accommodation requests, the employer should ensure that they are trained, in advance, to respond to these situations.

Promotion

Opportunities for promotion should be available to all qualified workers, regardless of possible or actual need for accommodation. Again, starting with the job description to determine which elements of a job are essential, all qualified workers should be able to compete on an equal basis for promotions.

Promotions frequently involve increased responsibility, more hours, additional deliverables, staff and resources management, travel and/or possible relocation. As long as a person has the appropriate qualifications and experience for the job, and can compete for the promotion, any need for reasonable accommodation should be considered.

Example: Reasonable Accommodation and Promotion

Joyce has been successful in her application for promotion to a management role that entails responsibility for staff working in different parts of the country. This will involve regular long-distance travel; however, Joyce has recently given birth and is breastfeeding.

Joyce requests a reasonable accommodation to reduce the amount of travel that she would have to undertake while she is breastfeeding. Upon consultation, the company concludes that travel is essential to the position, but it agrees that, temporarily, more meetings will be held virtually, thereby reducing Joyce's travel obligations.

Job retention and return to work

When workers must leave the workplace to recover from an accident, illness or other condition that can affect their ability to carry out their job (e.g. absence for maternity or parental leave), the company has a number of issues to address, both while the workers are away and upon their return.

The company needs to find a way to retain workers that may be out of the workplace for an extended period of time. In some cases, an injured worker may return to work in a different physical or mental condition and may require a reasonable accommodation specific to that changed condition. Workers who have acquired a family responsibility may seek an accommodation upon returning to work, such as a change to their working time. This could take the form of a request for either a temporary or permanent alteration of their working hours.

Some countries have labour laws that prescribe what happens in these situations, and the requirements are clear. In other countries, the employer's obligations may be less clear, or a legal framework regulating these situations may not exist.

Nonetheless, in all cases, the fundamental elements of a strong job retention and return-to-work programme are:

- ▶ flexibility of time;
- ▶ flexibility of place; and
- ▶ flexibility of tasks.

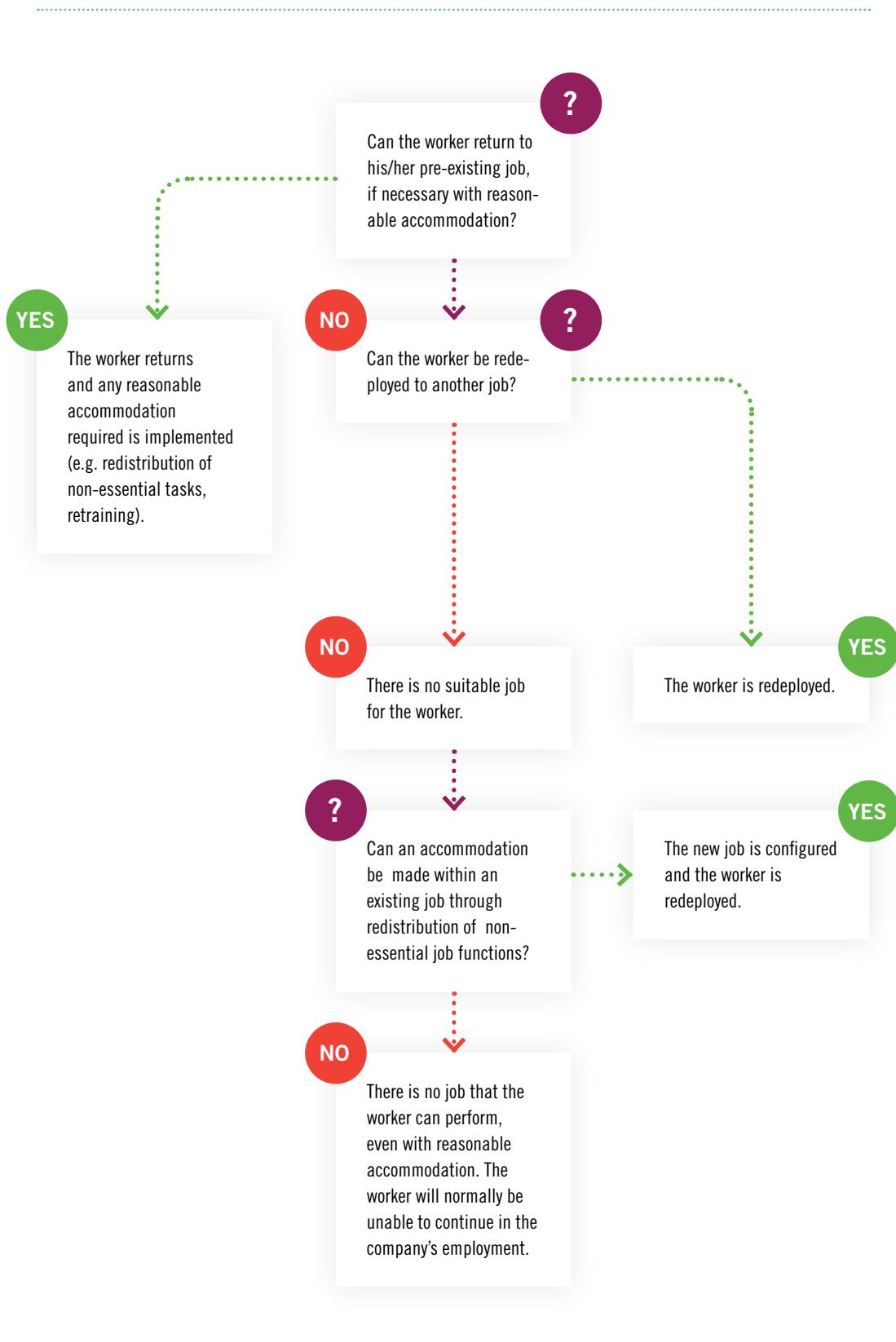
The first step in the process is to find a way to return the worker to work as quickly as the situation allows. Retaining talented, trained and experienced workers is one of the most cost-effective things a company can do. Companies that have clear and flexible return-to-work practices are in a good position to maintain company investment in their staff.

In some cases, workers will be unable to perform the essential elements of their previous job, even with reasonable accommodation.

For example, a worker employed as a refuse collector loses the ability to walk following an accident. The job involves walking alongside the refuse collection truck and emptying bins from the street into the back of the truck. Following the accident, it is no longer possible for the worker to perform this job, even with reasonable accommodation. In such a case, the company should explore the possibility of redeploying the worker to another position within the organization. In looking for other suitable jobs in the company that the worker could perform, it may be necessary to contemplate providing reasonable accommodation within an alternative position.

Business Process: Return to Work

The steps to be followed in this process are represented in the following diagram:



Example: Return to Work after Parental Leave

Eva is the manager of a small company providing IT support to other companies. One of the workers, David, has been off work for three months on parental leave, caring for his new daughter. He contacts Eva to explain that, due to his childcare responsibilities, he would like to make a permanent change to his contract to work part-time hours (mornings only).

Eva initially declines this request because she is concerned about maintaining the continuity of business

for her company's clients, who often raise urgent queries at short notice. David then makes an alternative proposal; he will job-share with another worker who would also like to reduce her hours. He will work Monday to Wednesday lunchtime and she will work Wednesday lunchtime to Friday; they will overlap by one hour to ensure a smooth handover. Eva agrees to a trial period of one year, including monthly meetings to discuss how the arrangement is functioning.

Tips for Managers – when people return to work²⁴

- ▶ Meet the individual on his or her first day back.
- ▶ Have a plan for the person's first day back to ensure he or she feels included.
- ▶ Discuss if there are particular tasks, responsibilities or relationships that people are apprehensive about and consider temporary changes to their role during their initial return to work to help manage this.
- ▶ Explore potential return-to-work adaptations with an open mind.
- ▶ Explain any recent changes that affect the individual's role, responsibilities and work practices.
- ▶ Incorporate a phased return to work for the individual, if appropriate.
- ▶ Make the individual's first few weeks back at work as low-stress as possible.
- ▶ Involve a co-worker to help people reintegrate into the workplace, involve them in coffee/tea breaks and lunch plans and also update them on any changes in the organization, e.g. changes to staff, systems or processes.
- ▶ Promote a positive team spirit and encourage colleagues to make sure the person feels welcome and their return is comfortable.
- ▶ Colleagues are often unsure if it is appropriate to ask how people are, but most people appreciate being asked how they are doing.
- ▶ Keep in regular contact with the returning employee and regularly ask how they are.
- ▶ Ensure regular on-going opportunities to monitor and review what is and is not going well, to make sure the supports/adjustments are helping and to adapt these if they are not quite right.

²⁴. Adapted from: How To Support Staff Who Are Experiencing a Mental Health Problem, Mind, p. 13, <http://www.mind.org.uk/media/550657/resource4.pdf>

Having completed this chapter, you should now understand:

- that accommodation requests can arise at any time throughout the employment cycle;
- that accommodation can play an important role in facilitating return to work after an extended absence.



Chapter 4

Company Practices that Complement Reasonable Accommodation

After Reading This Chapter You Should Be Able To:

- explain the importance of having a diversity policy as a complement to providing reasonable accommodation;
- identify the need to reflect upon a wide range of company policies and practices aimed at promoting an inclusive company culture.

Contents

- ▶ Attracting a diverse workforce
- ▶ Creating an inclusive company culture
- ▶ Occupational Safety and Health

Providing reasonable accommodation is one aspect of a wider company policy on inclusion and diversity. In order for the company to realize the maximum benefits from its reasonable accommodation policy, it needs to pay attention to a broader range of measures to ensure that a diverse and inclusive workplace is established.

It is beyond the scope of this guide to provide detailed advice on the full spectrum of initiatives that companies can take to support diversity. This chapter will provide some examples of steps that will be a good complement to a specific policy on reasonable accommodation. For further information concerning a more ethnically diverse workforce, you are particularly advised to consult the following ILO resource: *Promoting Equity – Ethnic Diversity in the Workplace: A Step-By-Step Guide* (2014).²⁵

25. *Promoting Equity – Ethnic Diversity in the Workplace: A Step-By-Step Guide*, ILO, 2014, http://www.ilo.org/declaration/info/publications/eliminationofdiscrimination/WCMS_340481/lang--en/index.htm

Attracting a diverse workforce

Selection and recruitment is a critical exercise for all businesses, regardless of size or scope, and is an opportunity for them to attract and retain the best talent available. It is in the company's interest to ensure that vacancies are carefully designed to respond to the needs of its business, while avoiding barriers that may reduce the pool of qualified job applicants. Steps to consider include the following:

- ▶ Write a clear description of the education and experience requirements for the position, distinguishing those that are necessary from those that are desirable;
- ▶ Identify the job functions that are essential and those that are non-essential;
- ▶ Post your announcement in a variety of venues, including publicly available newspapers, websites and in-house newsletters, as well as with government agencies, social service providers, organizations of various groups (persons with disabilities, HIV or AIDS, etc.) and universities;
- ▶ Job announcements should be available in a variety of formats, including in electronic versions that are compatible with screen readers.

Creating an inclusive company culture

Accessible recruitment processes should be part of a broader and more inclusive company culture. If this is not done, there is a risk that women and those belonging to minority groups may have higher rates of exit from the company. Making the company culture inclusive should involve reflection on both formal measures, such as workplace policies, and on informal practices, such as how work-related social events are organized.

Here are some examples of steps that can be taken to increase the inclusiveness of a company's culture:

- ▶ As far as possible, meetings should be scheduled during standard working hours and with predictable start and finish times. Workers with family responsibilities often need to be sure of when they can leave work to collect children or other dependents, or take over from paid carers.
- ▶ If feasible, provide on-site childcare facilities or support workers in accessing childcare in the vicinity of the workplace. For example, *Weleda*, which produces cosmetic products in France, recognized that lack of access to childcare facilities constituted a barrier preventing women from participating in the workforce. It therefore established a high-quality and environmentally sustainable childcare facility to improve work/life balance for all workers.
- ▶ When providing food in the workplace, companies should provide a range of options and cater for different dietary requirements. These could be religious (e.g. not eating certain meats) or health-related (such as allergies to nuts).
- ▶ Companies should provide facilities for women who are pregnant or breastfeeding. For example, this could be simply a quiet, private room with space to sit or lie down, and a refrigerated space to store breast milk if needed.
- ▶ Some workers do not drink alcohol for religious reasons, while others may not drink due to a health condition, or because they need to drive in connection with family

responsibilities. Companies should ensure that work events have non-alcoholic options. They should avoid a situation where work-related social events always take place in pubs or bars.

- ▶ Depending on size and resources, companies could create quiet and private space in the workplace. This can be helpful for workers who wish to perform religious obligations, such as prayers, but also for workers with mental health conditions, who may value a space where there is a calm environment.

Occupational Safety and Health (OSH)

OSH policy has an important role to play in responding to diversity. As discussed in [Chapter 1](#), OSH requirements may sometimes conflict with requests for reasonable accommodation, so it is important that the design of OSH policy is linked with its diversity policy. For example, OSH policy should take into account psychosocial risks to workers' health and the steps that the company can take to mitigate these.

In larger companies, there may be dedicated OSH services. It is important to plan the role of these services in relation to the reasonable accommodation process. Many accommodation requests do not require a prior OSH assessment, so referral to OSH should not be a mandatory part of the procedure. At the same time, there may be complex accommodation needs in which an OSH assessment can be useful to devise potential solutions and ensure that the proposed accommodation is compatible with OSH requirements. OSH services can also be of assistance in supporting workers during an extended absence and in planning their return to work.

Smaller companies are unlikely to have their own OSH services. Depending on the financial situation of the company, it may consider joining a private employee assistance programme that provides access to healthcare services, including help with rehabilitation, where required by an individual worker.

A specific issue in OSH policy is emergency protocols and evacuation procedures. Companies should consider all aspects of emergency protocols and how they would apply to workers needing an accommodation. This means ensuring consideration of the needs of workers with reduced mobility impairments, such as wheelchair users, as well as those with hearing or visual impairments in the context of an emergency evacuation. It also includes evaluation of all premises for the location of workers with specific needs, such as pregnant women, in case emergency responders are needed to assist with their evacuation.

Having completed this chapter, you should now understand:

- the need to design recruitment processes to be accessible for all workers;
- the importance of reviewing all aspects of organizational culture and practice to ensure that these foster the inclusion of all workers;
- the interaction between OSH and diversity and inclusion considerations.



Chapter 5

Support Available for Employers in Providing Reasonable Accommodation

After Reading This Chapter You Should Be Able To:

- identify potential sources of support for employers to assist them in providing reasonable accommodation.

Contents

- ▶ Government
 - ▶ Financial Assistance
 - ▶ Technical Assistance
- ▶ National Human Rights Institutions
- ▶ Employers' organizations
- ▶ Trade unions
- ▶ Civil society organizations

Governments

In many countries, the government will assist employers in providing reasonable accommodation to their workforce. This assistance takes a variety of forms, but of particular importance are: (i) financial assistance and (ii) technical assistance.

(i) Financial Assistance

Governments may assist companies with the costs of reasonable accommodation. For example, the State might provide grants to assist with the costs of providing individual support to a worker (e.g., a job coach or mentor), or to help with the cost of technical devices that an individual might need (e.g., a height-adjustable desk for a worker with back pain).

Example: Financial assistance

In New Zealand, the government supports employment agencies with long-term financial assistance aimed at helping people with disabilities to access and retain jobs. Supported agencies throughout the country are able to provide individuals with funding for job support and training needs related to their disabilities.

This funding can be used toward individualized investments or put into employment programmes through

which persons with disabilities are able to obtain suitable work experience.

An example of financial assistance can be seen in the Modification Grant,²⁶ which is a payment of money towards supporting persons with disabilities so that they can afford necessary workplace adjustments to help them access, or remain in, employment. Payments are commonly used for items such as ramps and handrails, visual aids, and computer equipment.

(ii) Technical Assistance

Government agencies are frequently a source of advice and guidance for employers on complying with any responsibilities to provide accommodation. While many accommodations are relatively straightforward, some might raise more complex technical issues. For example, assistive technologies may be necessary to accommodate workers with visual or hearing impairments. Official guidance can also assist employers in ensuring that other legal obligations, such as occupational safety and health requirements, are met.

Example: Measures concerning breastfeeding

The UK Advisory, Conciliation and Arbitration Service (ACAS) has produced a guide to accommodating breastfeeding employees in the workplace. This short booklet explains, in everyday language, employers' legal responsibilities and

gives practical examples of the types of accommodations that can be provided to assist workers who are breastfeeding. For example, this could include a designated safe and hygienic area in a workplace refrigerator to store expressed breast milk.²⁷

26. Modification Grant, New Zealand Ministry of Social Development, <http://www.workandincome.govt.nz/individuals-a-z-benefits/modification-grant.html>

27. Accommodating breastfeeding employees in the workplace, ACAS, 2014, [http://www.acas.org.uk/media/pdf/j/k/Acas_guide_on_accommodating_breastfeeding_in_the_workplace_\(JANUARY2014\).pdf](http://www.acas.org.uk/media/pdf/j/k/Acas_guide_on_accommodating_breastfeeding_in_the_workplace_(JANUARY2014).pdf)

National Human Rights Institutions

Many countries have a National Human Rights Institution (NHRI). In some cases, the NHRI's mandate includes responsibility for promoting equality and non-discrimination. In other countries, there may be another specific body or bodies with a mandate to promote equality. It is also common to find specialized agencies that promote the rights of persons with disabilities. Any or all of these organizations might be a source of advice and guidance for employers on reasonable accommodation.

Example: Belgium – Interfederal Centre for Equal Opportunities (UNIA)

UNIA has developed a number of booklets on reasonable accommodation. In 2005, they provided a booklet specifically addressing reasonable accommodation in the workplace. In 2010, they provided booklets that addressed the provision of reasonable accommodation in ten sectors: private

services, public services, transport, sport, commerce, healthcare, housing, culture, leisure, and catering.²⁸ The purpose behind such an initiative was to promote better understanding and wider implementation of reasonable accommodation.

Example: Canada – Canadian Human Rights Commission

The Canadian Human Rights Commission advises companies on what they are legally required to do under the Canadian Human Rights Act and the Employment Equity Act. The Commission provides guidance on the duty to accommodate and examples

of what this may entail. This includes a template for a workplace policy on accommodation,²⁹ a best practice guide to pregnancy and human rights in the workplace,³⁰ and a guide to balancing work and caregiving obligations.³¹

28. *Les aménagements raisonnables en 10 brochures*, UNIA, 2010, <http://www.diversite.be/les-aménagements-raisonnables-en-10-brochures>
29. *A template for developing a workplace Accommodation Policy*, Canada Human Rights Commission, <http://www.chrc-ccdp.gc.ca/eng/content/template-developing-workplace-accommodation-policy>
30. *Pregnancy & Human Rights in the Workplace – Policies and Best Practices*, Canada Human Rights Commission, <http://www.chrc-ccdp.gc.ca/eng/content/pregnancy-human-rights-workplace-policy-and-best-practices>
31. *A Guide to Balancing Work and Caregiving Obligations*, Canada Human Rights Commission, <http://www.chrc-ccdp.gc.ca/eng/content/guide-balancing-work-and-caregiving-obligations>

Employers' organizations

Organizations of employers play a key role in providing guidance and advice. They can do this through workshops or providing research on good practices and examples relevant to the type of industry in which the company operates.

Example: Republic of Suriname – Suriname Business Coalition Against HIV/AIDS

The Suriname Business Coalition aims "to balance business needs with empathy to enable persons living with HIV and AIDS to work productively by providing reasonable accommodation to employees, thus allowing them to work for as long as they are medically fit in available, appropriate work."³² The Coalition expresses a commitment

to consulting with workers and their representatives in taking reasonable accommodation measures, including: rearrangement of working time; provision of special equipment; granting opportunities for rest breaks or medical appointments; and making arrangements for flexible sick leave, part-time work and return to work.

Example: United Kingdom – Business Disability Forum

The Business Disability Forum is a not-for-profit organization that aims to make it easier and more rewarding to do business with and employ persons with disabilities. Its members employ almost 20 per cent of the UK workforce and it brings together business people, opinion leaders with disabilities and government to understand what needs

to change if persons with disabilities are to be treated fairly so that they can contribute to business success, to society and to economic growth. It provides support by sharing expertise, giving advice, providing training and facilitating networking opportunities.³³

Trade unions

Trade unions are vital partners for businesses in developing a policy on reasonable accommodation and supporting its implementation. Trade unions are well placed to communicate the policy to their members. Unions can draw on their knowledge and experience of how reasonable accommodation policies work in other companies. Including trade unions in the design and implementation of the policy, and the subsequent training of workers, can strengthen the confidence of workers in using the procedure.

32. Policy statement, Suriname Business Coalition, <http://www.surinamebusinesscoalition.org/en/council/purpose>

33. Business Disability Forum, <http://businessdisabilityforum.org.uk/about-us/>

Trade unions are often the first port of call for workers seeking to understand if and when they are entitled to reasonable accommodation, including in the context of return to work. Trade unions and employers should share a common understanding of what the policy entails, which could in turn facilitate the informal resolution of requests from workers for accommodation.

Example: United Kingdom – Trade Union Equality Representatives

During the past decade, there has been a significant increase in the number of “equality representatives”, with well over 1,000 such representatives active in both the public and private sectors. Many workplace equality representatives have received training from the Trades Union Congress.

They provide a local contact point for individual workers seeking advice and representation on matters relating to equality, and can also use their specialist training to work with employers on enhancing equality policy and practice in the company.³⁴

Civil society organizations

Civil society organizations can provide advice to companies on the types and forms of reasonable accommodation that may be necessary. They are particularly equipped to offer specialized advice. With regard to disability, civil society organizations may have acquired expertise on the accommodations that function best for a particular type of disability. They might also be helpful sources of practical information, e.g. on suppliers of specialist equipment.

Civil society organizations may offer training services for employers on reasonable accommodation, as well as publishing useful resources. Some charitable organizations will have funding to assist with the costs of reasonable accommodation, so it is important for employers to consider this option.

Example: Ireland – See Change

See Change is an alliance of organizations working together through the National Stigma Reduction Partnership in Ireland to bring about positive change in public attitudes and behaviour towards people with mental health conditions.³⁵ It provides online resources for line managers and a

template workplace policy on mental health. If companies commit to its six-step pledge programme to create an open culture around mental health in the workplace, then the Partnership will offer dedicated training for the company's line managers.

34. *Equality reps make a real difference to UK workplaces*, TUC, 2010, <https://www.tuc.org.uk/equality-issues/equality-reps-make-real-difference-uk-workplaces>

35. *See Change in your Workplace*, See Change, <http://www.seechange.ie/category/workplace/>

Having completed this chapter, you should now understand:

- the different sources of support that may be available to employers to help them when dealing with requests for accommodation;
- the importance of exploring any schemes that provide public or private funding to assist with any cost linked to providing an accommodation.



Appendix 1

Glossary of Key Terms and Concepts

AIDS – refers to the acquired immunodeficiency syndrome that results from advanced stages of HIV infection, and is characterized by opportunistic infections or HIV-related cancers, or both.³⁶

Accessibility – ensuring that all aspects of the company are suitable for use by all persons. This includes the physical environment and methods of information and communication, as well as the company's policies, processes, systems and facilities.

Conciliation/Mediation – an intervention in a dispute by an independent party with a view to achieving a mutually agreed solution through facilitated dialogue. The terms “conciliation” and “mediation” are sometimes used interchangeably, though in some systems a distinction is made in terms of process, with a mediator making recommendations, and a conciliator facilitating dialogue between the parties, but not making any recommendations.

Disability – disability is an evolving concept that results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.³⁷

Discrimination – ILO Convention No. 111 defines discrimination as “Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”. The Convention also provides for the possibility of including additional grounds of discrimination, to be determined by the ratifying member State concerned after consultation with representative employers’ and workers’ organizations, where these exist, and with other appropriate bodies. Discrimination can be direct or indirect:

Discrimination is direct when rules, practices, behaviour or policies exclude, prefer or otherwise treat less favourably certain individuals, either explicitly or implicitly, because they belong to a particular group.

Indirect discrimination refers to apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics, e.g. persons with a particular religious belief. It occurs when the same condition, treatment or criterion is applied to everyone, but has a disproportionately harsh or negative impact on some groups.³⁸

Diversity – refers to a commitment to recognizing and appreciating the variety of characteristics that make individuals unique in an atmosphere that embraces and celebrates individual and collective achievement. Identity is dependent on much more than one dimension of a person’s background. In recognizing and appreciating the many characteristics that make individuals unique, diversity provides solutions to eliminate discrimination in the workplace.³⁹

36. Para 1(b), *ILO Recommendation concerning HIV and AIDS and the World of Work*, (2010) No. 200.

37. Para (e), *Preamble*, CRPD. See also: *ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983* (No. 159).

38. These definitions are based on those found in: *Promoting Equity – Ethnic Diversity in the Workplace: A Step-By-Step Guide*, ILO, 2014, pp. 69–70, http://www.ilo.org/declaration/info/publications/eliminationofdiscrimination/WCMS_340481/lang--en/index.htm

39. *Ibid.*

Functional Limitations – “restrictions in an individual’s functioning that hinder the ability to perform tasks or activities”.⁴⁰

HIV – refers to the human immunodeficiency virus, a virus that damages the human immune system.⁴¹

National Human Rights Institutions – “includes those bodies with competence to promote and protect human rights, whose mandate is clearly set forth in a constitutional or legislative text, specifying a given body’s composition and its sphere of competence.”⁴²

Persons living with HIV – persons infected with HIV.⁴³

Persons with disabilities – “includes 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.”⁴⁴

Religion or Belief – the terms “belief” and “religion” have to be broadly construed. This protects theistic, non-theistic and atheistic convictions. It is not limited to traditional religions or beliefs, but applies also to religions and beliefs that are newly established, as well as to those of religious minorities.⁴⁵

Stigma – “the social mark that, when associated with a person, usually causes marginalization or presents an obstacle to the full enjoyment of social life”.⁴⁶

Universal Design – the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.⁴⁷

Workers with family responsibilities – male and female workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in, or advancing in economic activity. This also covers male and female workers with responsibilities in relation to other members of their immediate family who clearly need their care or support.⁴⁸

40. *Guide for Assessing Persons with Disabilities: Key definitions*, Public Service Commission of Canada, 2007, <http://www.psc-cfp.gc.ca/plcy-pltg/guides/assessment-evaluation/apwd-eph/ch1-eng.htm>

41. Para 1(a), ILO Recommendation No. 200.

42. *Principles relating to the Status of National Institutions (The Paris Principles)*, United Nations Office of the High Commissioner for Human Rights, 1993, <http://www.ohchr.org/EN/ProfessionalInterest/Pages>StatusOfNationalInstitutions.aspx>

43. Para 1(c), ILO Recommendation No. 200.

44. Art 1, CRPD.

45. *Para 10, UN Special Rapporteur, Study on freedom of religion or belief and the status of women in the light of religion and traditions*, Economic and Social Council, E/CN.4/2002/73/Add.2, 24 April 2009.

46. Para 1(d), ILO Recommendation No. 200.

47. Art 2, CRPD.

48. Art 1, ILO Workers with Family Responsibilities Convention, 1981 (No. 156).

Appendix 2

Model Policy on Reasonable Accommodation

This Model Policy has been designed to cater to the needs of companies of different sizes. It is nevertheless important that the suggested text be adapted to the specific characteristics of each company. Very small employers are encouraged to use the Model Declaration as a starting point in their management of reasonable accommodation requests, while it is recommended that larger companies put in place a comprehensive policy on reasonable accommodation. This policy might be combined with the company's wider policy on equality and non-discrimination.

A key ingredient in the success of a workplace policy is a clear and sustained commitment from the senior management to ensuring its effective implementation. Larger companies should consider having the policy endorsed by the company's Chief Executive Officer (or equivalent) and designating a member of the senior management team as responsible for its implementation.

The workplace policy should be prepared in consultation with workers' representatives, including trade unions. If relevant networks of workers exist within the company (e.g. a network of workers with disabilities or workers living with HIV), then these should also be consulted.

This Model Policy is based on the principle that reasonable accommodation should potentially be available to all workers. The organization will need to decide whether to follow this approach or whether it will limit reasonable accommodation to certain categories of workers, e.g. workers with disabilities, workers living with or affected by HIV or AIDS, pregnant workers, workers with family responsibilities, workers with a particular religion or belief, or other groups. In making this decision, companies need to take into account their objectives in establishing a diverse, discrimination-free working environment, as well as any social and legal obligations that may apply to them.

The Model Policy has been written with a focus on addressing the needs of workers who are already employed by the company. As discussed earlier in this guide, requests for reasonable accommodation may also be made by job applicants. Equivalent procedures, with appropriate modification, should be established to enable such requests to be handled fairly when recruitment takes place. For example, the time constraints within any recruitment procedure mean that decisions will have to be taken swiftly and there may not be the same opportunity for extended investigation as in the case of an existing worker. The process for job applicants to make a request for accommodation should be clarified in the information provided to potential job applicants (e.g. via the company's recruitment website or in published vacancy announcements).

Declaration

We, the leaders of [insert company name] are committed to:

- ▶ ensuring equality for all persons in the workplace;
- ▶ respecting the diversity of all workers;
- ▶ fostering an organizational culture characterised by inclusivity and respect for fundamental rights and dignity;
- ▶ a policy of zero tolerance towards discrimination;
- ▶ creating and maintaining a working environment free of discrimination that is unlawful or prohibited by company policy.

The company should provide reasonable accommodation to workers who require workplace modification to be able to perform their jobs on the same basis as other workers. The company acknowledges that, as a general principle, denial of a reasonable accommodation is a form of discrimination.

Thus, the company is committed to providing individual workers with accommodation where this is both reasonable and necessary, and recognizes that reasonable accommodation should be provided where the accommodation requested does not impose a disproportionate burden. In this context, the needs of both the worker and the company should be considered.

Definitions

“Reasonable Accommodation”

Necessary and appropriate modification and adjustments not imposing a disproportionate burden, where needed in a particular case, to ensure that all persons have access to, can participate or advance in, employment or a specific occupation.

“Disproportionate burden”

In determining whether the accommodation requested will give rise to a disproportionate burden, the company should take into account factors such as:

- ▶ financial and other costs;
- ▶ the resources of the company;
- ▶ the company's organization or functioning;
- ▶ the possibility of obtaining funding from a third party for the accommodation;
- ▶ the potential benefits of the accommodation to persons other than the individual making the request;

- ▶ the obligations of the company to protect the safety and health of the individual making the request and any other person who may be affected;
- ▶ the rights and freedoms of others.

“Qualified to Perform the Essential Functions of the Job”

An individual should be qualified to perform the essential functions of the job. This means that the worker should:

- ▶ satisfy essential job requirements regarding educational background, employment experience, skills, licenses, and any other qualification standards that are job-related;
- ▶ be able to perform those tasks that are essential to the job, but which may need a reasonable accommodation to enable the worker to do so.

“Essential Functions of the Job”

Essential (or “core”) functions are the fundamental job duties or requirements of a particular job. Essential functions cannot be eliminated or substantially modified without changing the nature of the job. Essential functions do not include the secondary tasks of a job.

Factors to consider in determining whether a function is essential include:

- ▶ whether the primary reason that the position exists is to perform that function;
- ▶ the number of other workers available to perform the function or among whom the performance of the particular function can be distributed;
- ▶ the degree of expertise or skill required to perform the function;
- ▶ the judgement of the company concerning which functions are essential, and the written job description prepared before advertising or interviewing for a job;
- ▶ the actual work experience of present or past workers in the job;
- ▶ the proportion of time required by the worker to perform the function in question;
- ▶ the consequences of not requiring that a worker perform a specific function.

Who is Covered

A worker may request an accommodation at any point during the employment cycle (including progression to different positions within the company).

In principle, the company is committed to providing reasonable accommodation:

- ▶ when a worker needs an accommodation to perform his/her job;
- ▶ when a worker needs an accommodation to enjoy equal access to any benefits of employment, to use any company equipment or facilities, or to participate in any aspect of the company's culture or activities (e.g., being able to participate in the annual company retreat, to take part in training courses or to participate in meetings to inform and/or consult with company staff).

The responsibility for processing requests for accommodation lies with [*insert the name of the relevant unit or post within the company – hereafter “Accommodations Coordinator”*].

Accommodations Coordinator

The Accommodations Coordinator should handle all worker requests for reasonable accommodation and may be contacted as follows:

- ▶ Email address [*this may be generic, e.g. accommodations@...*]
- ▶ Telephone number
- ▶ Physical address.

While the Accommodations Coordinator should handle all requests for reasonable accommodation, line managers and other responsible persons often need to be consulted about specific requests.

The Reasonable Accommodation Process

The worker should let the company know, as early as possible, that he or she needs an adjustment concerning some aspect of the job, or any benefit, facility or activity provided by the company.

A worker may request a reasonable accommodation at any time, whether verbally or in writing.

A worker may choose, in the first instance, to raise the request informally with his/her line manager. This could allow for swift and informal resolution of the request, but a written record of any agreed step to be taken should be retained by the worker and the manager.

Where a worker has previously received, or been denied, an accommodation, this should not prevent the worker from making another request at a later time if his/her circumstances change and he/she believes that a reasonable accommodation is needed. This may be a request for the accommodation previously declined,

because the worker's situation has since changed. It may also be a request for a different type of accommodation. The Accommodations Coordinator may decline to process a request where there is compelling evidence that it is vexatious and/or an abuse of the process.

Processing a Request

The Accommodations Coordinator is responsible for processing requests for reasonable accommodation. Once the Accommodations Coordinator receives the request, he or she should meet with the worker within a reasonable period.

Obligations of the Worker

The worker should participate constructively in the accommodation process by communicating his or her needs in a timely manner, providing necessary documentation, and attending any meetings that may be necessary to discuss the accommodation request.

Support

The worker may choose to be accompanied by a co-worker or a worker representative, including a trade union representative, at any meeting held with the worker to discuss the worker's accommodation request.

Initial Meeting

At the initial meeting with the worker, the Accommodations Coordinator should explore the accommodation request in order to better understand the circumstances and to identify any effective and reasonable accommodation that may be available.

Feasibility Assessment

The Accommodations Coordinator may need to consult with the worker's line manager, other company staff or outside experts/sources to obtain information necessary to enable him/her to make a determination about the request for accommodation. This may include consultation to determine the essential functions of the job. Company staff contacted in this context should respond to any such requests in a timely fashion.

Additional Information to Substantiate the Request

The Accommodations Coordinator may request additional information to substantiate the request. If the additional information sought relates to personal medical information, the request for additional information should be limited to information that will enable the Accommodations Coordinator to understand the concrete functional limitations experienced by the person, their likely duration, and any accommodations that may be needed as a result. As a general principle, the Accommodations Coordinator should not request information on the underlying diagnosis relating to the impairment.

The Accommodations Coordinator may seek the opinion of an occupational health professional or other expert to assist him or her in determining the nature and availability of an effective measure for the worker.

Resolution of the Accommodation Request

The Accommodations Coordinator should process requests in a prompt and efficient manner. It is recommended that companies identify reasonable deadlines for the process.

(i) The Decision

Once the Accommodations Coordinator makes a decision regarding a request for accommodation, written notice of the decision should be provided to the worker. Any denial should clearly state the specific reasons for the decision. The worker's line manager should also be notified of the Accommodations Coordinator's decision.

(ii) Implementation of Reasonable Accommodation

Once a determination has been made granting accommodation to a worker, the Accommodations Coordinator should oversee the implementation of the accommodation. The worker's line manager should send confirmation to the Accommodations Coordinator when the accommodation is implemented.

(iii) Job Performance

A worker provided with reasonable accommodation should be held to the same job performance standards and requirements as other workers without accommodations.

(iv) Transfer to another Position

If a determination is made that it is not possible to accommodate a worker in his or her current position, the company should attempt to place the worker in a suitable vacant position elsewhere in the company, corresponding to the worker's qualifications and experience. Transfer to another position is only possible if, after providing reasonable accommodation, the worker will be able to perform the essential functions of the new position.

Review of Reasonable Accommodation

The Accommodations Coordinator should put in place arrangements for periodic reviews to determine how the accommodation is functioning in practice. This review should take into account the perspectives of the worker and the needs of the company.

Confidentiality Requirements

Information obtained in connection with the reasonable accommodation process should be kept confidential. Where this information concerns particularly sensitive personal data (e.g. medical information), access should be strictly limited. The person making the request should be informed of the confidentiality arrangements applicable to his/her request.

Dispute Resolution

If a worker is dissatisfied with the decision made in respect of his/her request for an accommodation under this company policy, the company and the worker can explore other methods of informal dispute resolution, including, but not limited to, mediation, conciliation and other relevant practices within the company.

Alternatively, or in the event that informal dialogue does not resolve the issue, the worker may appeal the decision to a more senior level of management. The person appointed to review the decision should consider the process followed in reaching the initial decision. This person may review all the information provided during the investigation of the accommodation request, as well as any new information that may be deemed relevant. The appeal process should be conducted promptly and efficiently.

Training

All company staff, at all levels, should be trained in this policy and it should be available to them in accessible formats. This training should be provided upon taking up a position with the company, and there should be provision for periodic training to refresh and update knowledge. Where individuals are promoted into line management roles, training should be provided on their responsibilities under this policy. This training may take place alongside other types of workplace training, e.g. as part of a worker's initial induction training.

Reviewing the Policy

In consultation with workers' representatives, including trade unions and any staff networks who are particularly affected (e.g. workers with disabilities or those living with or affected by HIV or AIDS), this policy should be reviewed regularly. Reviews should take place at intervals of [*insert the number of years, e.g. 3*].

In order to facilitate reviews of the operation of this policy, data should be collected on a regular basis. This should include items such as: the number of job applicants and workers making requests; the time taken to process requests; the outcome of requests and the costs and benefits of accommodations provided.

Appendix 3

Sources of Further Information

- ▶ ILO Global Business and Disability Network: <http://www.businessanddisability.org>
- ▶ ILO, *Code of Practice on the Protection of Workers' Personal Data* (1997)
- ▶ ILO, *Code of Practice on HIV/AIDS and the World of Work* (2001)
- ▶ ILO, *Code of Practice on Managing Disability in the Workplace* (2002)
- ▶ ILO, *Disability in the Workplace: Company Practices* (2010)
- ▶ ILO, *Wise-R Action Manual Module 5 - Family-friendly Measures* (2010), available at: http://www.ilo.org/travail/whatwedo/instructionmaterials/WCMS_145380/lang--en/index.htm
- ▶ ILO, *Wise-R Trainers' Guide Module 5 - Family-friendly Measures* (2010), available at: http://www.ilo.org/travail/whatwedo/instructionmaterials/WCMS_145387/lang--en/index.htm
- ▶ ILO, *Good practices and challenges on the Maternity Protection Convention, 2000 (No. 183) and the Workers with Family Responsibilities Convention, 1981 (No. 156): A comparative study* (2012)
- ▶ ILO, *Promoting Equity – Ethnic Diversity in the Workplace: A Step-By-Step Guide* (2014)
- ▶ ILO, *Business as unusual: Making workplaces inclusive of people with disabilities* (2014)
- ▶ ILO, *Achieving Equal Employment Opportunities for People with Disabilities through Legislation: Guidelines* (2nd ed, 2014)
- ▶ Perry, D. (ed), *Moving Forward: Toward decent work for people with disabilities – Examples of good practices in vocational training and employment from Asia and the Pacific* (2003)
- ▶ Perry, D. (ed), *EmployAbility : a resource guide on disability for employers in Asia and the Pacific* (2007)

Key International Instruments

- ▶ ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- ▶ ILO Workers with Family Responsibilities Convention, 1981 (No. 156)
- ▶ ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)
- ▶ ILO Maternity Protection Convention, 2000 (No. 183)
- ▶ ILO HIV and AIDS Recommendation, 2010 (No. 200)
- ▶ UN Convention on the Rights of Persons with Disabilities, 2006

Appendix 4

List of Abbreviations

CRPD	Convention on the Rights of Persons with Disabilities
ILO	International Labour Organization
IT	Information Technology
OSH	Occupational Safety and Health
SME	Small and Medium-sized Enterprise

The practical guide *Promoting diversity and inclusion through workplace adjustments* is the third module in the ILO's Promoting Equity series and aims to assist employers of all sizes and in all economic sectors, to provide reasonable accommodation at all stages of the employment cycle.

Reasonable adjustments at the workplace, oftentimes also referred to as reasonable accommodations, may include adaptations to the job, including modification of machinery and equipment and/or of an employee's job content, working time and work organization.

Reasonable adjustments aim to provide equal opportunities for employees at the workplace, so their skills and talents can be used to full capacity. By recognizing and accommodating individual needs, companies create work environments that truly welcome the diversity of their staff and thereby contribute to greater business success.

This guide specifically supports employers in how to provide reasonable accommodation to workers with disabilities, those living with or affected by HIV or AIDS, pregnant workers and workers with family, as well as those who hold a particular religion or belief.

The guide takes managers and human resources professionals through the accommodation process sequentially, starting with an explanation of reasonable accommodation, followed by examples of the application of reasonable accommodation in practice. A model policy on reasonable accommodation is included as an appendix that can be tailored for use by companies of varying size, complexity and resources.

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