



**the dpsa**

Department:  
Public Service and Administration  
**REPUBLIC OF SOUTH AFRICA**

Private Bag X916, PRETORIA, 0001 Tel: (012) 336 1000, Fax (012) 326 7802  
Private Bag X9148, Cape Town, 8000. Tel: (021) 467 5120, Fax (021) 465 5484

Enquiries: Ms Fanani Manugu  
Tel No: (012) 3361217  
Fax: 086 545 0423

Mr Ntozakhe Daweti  
Tel No: (012) 3361271  
Fax: 086 518 5665

**TO: ALL HEADS OF DEPARTMENTS AND PROVINCIAL ADMINISTRATIONS**

**REQUEST FOR INPUTS AND COMMENTS ON THE DRAFT POLICY GUIDELINES ON REASONABLE ACCOMMODATION, ASSISTIVE DEVICES AND OTHER MEASURES FOR EMPLOYEES WITH DISABILITIES IN THE PUBLIC SERVICE**

1. Following the launch of the Handbook on Reasonable Accommodation and Accessibility for People with Disabilities in the Public Service, the Diversity Management Component of the **dpsa** has crafted the Draft Policy Guidelines to ensure uniformity of practice across the Public Service workplace.
2. To initiate the consultative process, **dpsa** invites submission of inputs and comments on this Draft Policy Guidelines on Reasonable Accommodation, Assistive Devices and other Measures for employees with Disabilities.
3. The closing date for the submission of comments and inputs is 31 December 2009.
4. It is envisaged that the inputs as contemplated in paragraph 4 will be complemented by structured national and provincial consultative workshops.
5. The Draft Policy Guidelines on Reasonable Accommodation, Assistive Devices and other Measures for Employees with Disabilities can be accessed electronically on the **dpsa's** website page: [www.dpsa.gov.za](http://www.dpsa.gov.za). For further details and assistance contact Ms Fanani Manugu at 012 336 1271 or [fanani.manugu@dpsa.gov.za](mailto:fanani.manugu@dpsa.gov.za), or Mr Ntozakhe Daweti at 012 336 1217 or [ntozakhed@dpsa.gov.za](mailto:ntozakhed@dpsa.gov.za).

**Prof. Richard Levin**

**Director-General: Department of Public Service and Administration**

Date: 28/10/09

**Policy Guidelines on Reasonable  
Accommodation, Assistive Devices and  
other Measures for Employees with  
Disabilities in the Public Service Workplace**

**DRAFT 1**



**Department of Public Service and Administration**

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## **1. INTRODUCTION**

One of the major objectives of disability management in the Public Service, in addition to ensuring inclusion of people with disabilities in the workplace, is to ensure the full economic empowerment of people with disabilities. The Department of Public Service and Administration seeks to achieve this through engaging the following measures:

- facilitating skills development and acceleration of the employment programme for people with disabilities in the Public Service in order to meet Cabinet approved disability equity targets;
- mainstreaming of disability issues in the Public Service workplace; and
- provision of reasonable accommodation measures or assistive devices in support of equity in employment.

These Policy Guidelines are in support of the third role of disability management in the Public Service. It is submitted that access to assistive devices and other relevant reasonable accommodation measures will supplement the initiatives as espoused in the JobACCESS Strategic Framework on the Recruitment, Employment and Retention of Persons with Disabilities in the Public Service regarding the employment and, in particular, the retention of persons with disabilities at the Public Service workplace.

## **2. SCOPE OF APPLICATION**

The Policy Guidelines shall apply to all National Departments and Provincial Administrations as mandated by the Public Service Act (1994 as amended).

### **3. OBJECTIVES**

- 3.1 In the main, the purpose of these policy guidelines is to facilitate the implementation of a programme of providing reasonable accommodation measures which invariably include the provision of assistive devices to deserving employees with disabilities in support of employment equity that will in turn enable individual employees with disabilities full participation in their socio-economic environment.
- 3.2 These also seek to provide guidance on the disposal of assistive devices once an employee with a disability leaves a department for another, or exits the Public Service workplace.
- 3.3 Furthermore, the Policy Guidelines will seek to provide guidance with regard to the provision by departments of transportation services to and from work for employees with disabilities who cannot otherwise utilize the current public transportation system which is largely inaccessible for some people with particular degrees of disabilities.

### **4. TARGET**

The policy guidelines focus on provision of reasonable accommodation measures as well as the disposal of assistive devices that were previously provided to employees with disabilities (to enable them to secure and sustain employment) who have since left one department for another, or have exited the Public Service altogether. It needs to be emphasized here, though in passing, that acquisition of assistive devices by the Public Service as an employer does not replace the provision of such (devices of a personal nature – to be discussed below) - by either:

- The Department of Health; or
- Medical Aid Schemes.

Rather, they seek to close the gap where the current provision does not allow for the full and necessary provision of assistive devices, particularly to people requiring these devices in the context of employment.

## **5. CATEGORIES OF ASSISTIVE DEVICES**

Assistive devices can fall into two broad categories as follows:

- **"Personal" assistive devices.** These devices are specific to the person; they are prescribed for them and used only by them. These include, amongst others, artificial limbs, hearing devices, prostheses, wheelchairs, white canes. They provide support with all aspects of a person's life, including personal independence. Save in instances where a person's disability has deteriorated over time whilst already in the employ of the Public Service, employees with disabilities using "personal" assistive devices can, on request, be considered for other specialized reasonable accommodation measures or assistive devices that will take into account their new circumstances.
- **"Employment related" assistive devices.** These devices provide specific support in the context of employment. Without these, an employee would not be able to perform his or her functions, or the quality thereof may be gravely compromised by the lack of such devices or reasonable accommodation measures.

## **6. THE STATUS QUO**

While the Employment Equity Act seeks to address, amongst others, the issue of inclusion of people from the previously disadvantaged backgrounds (blacks, women and people with disabilities), it also recognizes the attendant need for their reasonable accommodation which include the provision of assistive devices to employees with disabilities in order to fully enhance their participation in the

workplace. The broad interpretation of reasonable accommodation relates to the specific needs of people from previously disadvantaged backgrounds, and that includes people with disabilities.

The funding for an assistive device under medical aid cover depends entirely on the provision of the member's medical plan.

The excessive cost of assistive devices effectively excludes the majority of people with disabilities from acquiring such a necessity. As a result of modifications and adaptations people with disabilities are often faced with excessive hidden costs.

In the context of a favorable policy and a legislative environment for employment equity, the role of the Public Service as an employer in providing assistance to individuals with disabilities in acquiring assistive devices to enhance their performance, and thus retain their employment is most significant. It further becomes of critical importance that the Public Service adopts a uniform practice regarding the provision of reasonable accommodation measures and the provision of assistive devices, and the disposal of same when the user leaves the employer.

## **7. MANDATING FRAMEWORKS**

### **The Constitution of the Republic of South Africa, 1996**

The Constitution of the Republic of South African, 1996 in particular, the equality clause (Section 9 (c)) prevents direct and indirect discrimination against any person on a number of grounds, including disability.

## **The Promotion of Equality and Prevention of Unfair Discrimination Act (2000)**

The Promotion of Equality and Prevention of Unfair Discrimination Act (2000) specifically aims to "Provide measures to facilitate the eradication of unfair discrimination, hate speech and harassment, particularly on the grounds of race, gender and disability".

## **The Integrated National Disability Strategy (INDS) (1997)**

Integrated National Disability Strategy (INDS) (1997) attempts to facilitate the realization of the rights of people with disabilities in South Africa. It aims at promoting equality and dignity through ensuring participation in a barrier-free society.

This strategy recognizes the importance of assistive devices. It states that "Assistive devices enable individuals with disabilities to participate on equal terms. If people with disabilities are to access their rights and responsibilities and participate in society as equal citizens, they must have access to appropriate and affordable assistive devices". Its emphasis on the issue of "affordability" strongly embraces the assertion that the acquisition of any assistive device should not impose any undue hardship on the part of the employer.

## **The Employment Equity Act No. 55 of 1998**

This Act seeks to ensure that people with disabilities are afforded equal employment opportunities through:

- promoting equal opportunities and fair treatment in employment through the elimination of unfair discrimination; and



- implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce.

The affirmative action measures espoused in the Employment Equity Act includes making reasonable accommodation measures for the designated groups which incorporate the provision of assistive devices for people with disabilities.

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

South Africa signed this Convention on 30 March 2007, thus obliging itself to ensuring that among others, issues of reasonable accommodation which include acquisition of assistive devices, and accessibility are honoured. Provision of reasonable accommodation measures, including assistive devices by the Public Service is in line with this Convention.

## **8. PROVISION OF REASONABLE ACCOMMODATION MEASURES FOR PEOPLE WITH DISABILITIES IN THE WORKPLACE**

8.1 In line with the Employment Equity Act (1998) and the Code of Good Practice on the Employment of People with Disabilities, all designated employers are required to undertake affirmative action measures by, among others, reasonably accommodating the needs of employees from the designated groups which include people with disabilities.

8.2 Accommodation is understood as being the modifications or alterations to the way in which a job is normally performed, such that it makes it possible for a suitably qualified person from the designated groups to perform the work with minimal collegial support.

8.3 The type of reasonable accommodation measures required for an individual employee with a disability depends on the three main factors, namely:

- the particular job and its essential functions;
- the work environment; and
- the person's specific impairment.

Reasonable accommodation may include adapting existing facilities to make them accessible, and adapting existing equipment or acquiring new equipment including computer hardware and software.

8.4 An employer is obligated to provide reasonable accommodation when an employee voluntarily discloses a disability related accommodation need or when such a need is reasonably self-evident to the employer.

8.5 Reasonable accommodation should always be linked to the inherent requirements of a particular job as insinuated in **paragraph 8.3**. It should add value to the performance of the functions attached to the job of the employee with a disability.

8.6 Reasonable accommodation measures can take various forms and these must always take into account the unique nature of disabilities.

8.7 In determining as to whether in a given case there is a need for the provision of reasonable accommodation measures or assistive devices, it must first be determined as to whether an employee with a disability would not, but for the provision of reasonable accommodation measures or assistive devices, be able to perform his or her functions, or whether the failure to provide the requested reasonable accommodation

measures or assistive devices would otherwise compromise the quality of work of the employee with a disability.

8.8 In the case of doubt, professional services will be utilized in order to give effect to **paragraph 8.7**.

8.9 The Code of Good Practice on the Employment of People with Disabilities emphatically states that if reasonable accommodation of a qualified applicant or an employee with a disability would impose unjustifiable hardship on the business of the employer, then the employer need not accommodate this person.

8.10 Within the context of reasonable accommodation being made by employers when employing persons with disability, *unjustifiable hardship* is considered to be, in terms of paragraph 6.12 of the Code, an "Action that requires significant or considerable difficulty or expense. This involves considering, amongst other things, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the business".

8.11 However, the Technical Assistance Guidelines (p.21) strongly asserts that using "unjustifiable hardship" as a reason not to provide reasonable accommodation measures for an employee with a disability must involve an objective process. This may involve identifying and determining the effectiveness of the accommodation and the extent to which the accommodation will create difficulty or expense that will seriously disrupt the operation of the business.

8.12 Whenever a request for reasonable accommodation or assistive device is declined, such a refusal to provide reasonable accommodation or assistive device by the employer must always be in writing, stating the reasons why the request has been declined.

8.13 The employee with a disability whose request for reasonable accommodation or assistive devices has been declined must be afforded an opportunity to make representations against the decision not to provide reasonable accommodation measure or assistive device.

## **9. DISPOSAL OF ASSISTIVE DEVICES**

9.1 The disposal of assistive devices for employees with disabilities may occur in instances where such an employee leaves one department for another, or exits the Public Service.

9.2 A department or provincial administration seeking to dispose of an assistive device shall have regard to the provisions of Section 42 of the Public Finance Management Act (PFMA) No.1 of 1999 as well as the Treasury Regulations 2005 Gazette No. 27388 dated 15 March 2005.

9.3 Section 42 of the PFMA demands that the Accounting Officer of the transferring department must draw up an inventory of assets to be transferred, and must provide the Accounting Officer of the receiving department with substantiating records, including personnel records of staff to be transferred.

9.4 The transferring and the receiving departments must sign the inventory when the transfer takes place.

- 9.5 The accounting officer of the transferring department must file a copy of the signed inventory with the relevant treasury and Auditor-General within 14 days of the transfer.
- 9.6 Section **16A7** deals with disposal and letting of state assets. This will be applicable in instances where the employee with a disability exits the Public Service workplace.
- 9.7 The disposal of movable state assets must be at market-related value, by way of price quotations, competitive bids or auction, whichever is advantageous to the state (**16A7.1**).
- 9.8 The accounting officer or accounting authority must, when disposing of computer equipment, firstly approach any state institution involved in education and / or training to determine whether such an institution does require such equipment (**16A7.7**).
- 9.9 In the event of the computer equipment being required by such a state institution, the accounting officer or accounting authority may transfer such equipment free of charge to the identified institution (**16A7.7**).
- 9.10 The accounting officers and accounting authorities may transfer movable assets free of charge to other departments, constitutional institutions or public entities by means of formal vouchers (16A7.2).
- 9.11 When an employee with a disability exits the public service the assistive device will be retained by the public service employer and be disposed of as a donation to an appropriate institution or individual of its choice, or may be disposed of (sold) taking into account the market value of the assistive device at the time of such disposal. The specialist services will

be utilized to establish the value of the device at the time of such disposal.

## **10. ROLES AND RESPONSIBILITIES OF DIFFERENT ROLE-PLAYERS IN THE PROVISION OF ASSISTIVE DEVICES**

10.1 There are some key role-players involved in the provision of assistive devices and in ensuring employment equity for persons with disabilities in the Public Service. As the Public Service seeks to provide support for economic empowerment of people with disabilities, it will be essential to work in close co-operation with these role-players both nationally and provincially.

10.2 The Public Service has an important role to play in closing the gap and providing appropriate assistive devices in the context of employment, to those employees with disabilities who are unable to obtain them.

### **The Employer (National Department or Provincial Administration)**

- (i) Comply with the obligations of the Employment Equity Act, including provision of reasonable accommodation without unjustifiable hardship.
- (ii) Provide justification for unjustifiable hardship where applicable.
- (iii) Maintain and update the data base of suppliers of assistive devices.
- (iv) Develop an application guideline with criteria for the qualification for an assistive device by the applicant (employee with a disability).
- (v) Provide technical assistance to the applicant.
- (vi) Maintain an updated data base of successful and unsuccessful applicants for assistive devices;
- (vii) In accordance with the existing procurement policy departments will purchase assistive devices from the different suppliers;
- (viii) Facilitate a service contract for the different suppliers;

- (ix) Award the assistive device to the beneficiary;
- (x) Provide professional assessment, in the instance where the person with disability does not know their exact requirements for an assistive device, or on specific request, by suitably trained staff in the relevant field;
- (xi) Assist with technical support and information, with regard to the assistive device.
- (xii) Work in collaboration with disabled people's organisations to improve service delivery and access to assistive devices, including employment opportunities for disabled people;

### **Employee**

- (i) Make application for an assistive device through the line manager
- (ii) Undertake to care for the assistive device, and use it for the purpose for which it was intended;

### **Suppliers of assistive devices**

- (i) Provide the expected life-span and guarantee period of the assistive device to the department that purchased it on request;
- (ii) Abide by the service contract made when the particular department or provincial administration purchases the assistive device for the employee with a disability.

## **11. PROVISION OF TRANSPORTATION FOR EMPLOYEES WITH DISABILITIES TO AND FROM THE PUBLIC SERVICE WORKPLACE**

11.1 The operation of reasonable accommodation measures for people with disabilities commences when an employee with a disability enters the workplace up until when he or she leaves the workplace.

11.2 Save for the provision of official transport for official duties, the employer is not obliged to provide transportation for people with disabilities to and from work.

11.3 However, a department may, within the limits of its own available resources provide transportation to its employees, including those with disabilities who may not be able to utilize public transport, and who may not be able to drive nor qualify for any government subsidized transport, on mutual terms and conditions.

11.4 Paragraph 11.3 is in line with Resolution 3 of 1999, with specific reference to Chapter X issued by the Department of Public Service and Administration.

11.5 Chapter X of Resolution 3 of 1999 gives discretionary powers to the Executing Authority to provide transportation to officials, with due regard to the specified tariffs.

11.6 When a department decides to provide the said transportation for people with disabilities to and from the place of work, the terms and conditions as agreed upon must be put into writing in a form of a departmental policy in order to ensure consistency.

## **12. MONITORING AND EVALUATION**

12.1 The operation of reasonable accommodation commences when from recruitment, employment, retention through to and including termination of the employment relationship between the employee with a disability and the employer.



12.2 An employer has an obligation to enquire about the reasonable accommodation needs of a candidate who has disclosed a disability prior to the candidate attending the interview process.

12.3 On appointment, an employee with a disability who has disclosed can only commence with duties when reasonable accommodation needs have been met, or the necessary assistive device has been acquired.

12.4 All disciplinary proceedings involving people with disabilities must take into account all reasonable accommodation needs of the employee with a disability that may include the following: sign language interpreter, charges being in an accessible format for a person with a visual disability, e.g. Braille or some other format which is accessible for people with visual impairment; or accessible venue or facilities for employees with a physical disabilities.

### **13. CONCLUSION**

13.1 It needs to be noted that any Reasonable Accommodation policy depends on how the employer interprets the policy, and the expectations of the employee with a disability. There will always be some gray areas in the policy whereby people with disabilities' needs may not, in their perceptions, be adequately and completely covered by the policy.

13.2 It is further submitted that the success of any policy on reasonable accommodation is dependent on a common understanding of the meaning of Reasonable Accommodation and Unjustifiable Hardship by both the employers and the employees with disabilities, and some form of debate on this issue should be facilitated in the workplace, and consensus reached as to the boundaries that pertain to the sphere of

reasonable accommodation and the provision of assistive devices for employees with disabilities in the Public Service workplace.

13.3 Failure to provide reasonable accommodation when a need for such has been communicated, or where a reasonable accommodation need is reasonably apparent, amounts to unfair discrimination.

13.4 An employee who has been unreasonably and unfairly refused reasonable accommodation may institute grievance proceedings in terms of the existing grievance procedures.