

# POLICY ON EMPLOYEES WITH DISABILITIES

Item B-HR (16-2007) MC 17/05/2007	REPORT ON THE POLICY ON EMPLOYEES WITH DISABILITIES
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**RESOLVED:**

1. **That** the contents of the report from the Employment Equity and Transformation Directorate regarding the Policy on Employees with Disabilities **BE NOTED**.
2. **That** all previous Policies on Employees with Disabilities from the disestablished Councils **BE RESCINDED** and **BE REPLACED** with the proposed Policy on Employees with Disabilities.
3. **That** the Policy on Employees with Disabilities attached to the report as **Annexure "A" BE ADOPTED** and **IMPLEMENTED** from the date of resolution.

# **EKURHULENI METROPOLITAN MUNICIPALITY**

EMPLOYMENT EQUITY AND TRANSFORMATION

## **POLICY ON EMPLOYEES WITH DISABILITIES**

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## 1. INTRODUCTION

The Ekurhuleni Metropolitan Municipality (EMM) recognises and acknowledges that employees with disabilities are equal citizens and should therefore enjoy equal rights, responsibilities and have access to equal opportunities.

The EMM supports the human rights and development approach to disability focussing on the removal of barriers to equal participation and the elimination of discrimination based on disability.

## 2. PREAMBLE

The EMM acknowledges the under-representation of people with disabilities in the workplace and therefore, commits itself to best practice and leadership in implementing a programme for employees with disabilities to ensure the establishment of a workforce that is non-discriminatory and a workplace that shall provide reasonable accommodation.

### **The EMM recognises that:**

- Discrimination against employees with disabilities is in contravention with the Employment Equity Act and the Labour Relations Act as amended, which regulate fair and just treatment of all employees.
- Disability is a natural consequence of human life and does not diminish the right of people with disabilities to take their rightful position in the workplace;
- A disability policy has to be developed in consultation with employees with disabilities and/or their representative committee;
- Disability is not regarded predominantly as a health and welfare issue but shall be seen from a human rights and developmental perspective;
- The set targets in respect of people with disabilities shall be achieved within the stipulated timeframe and thereafter continued hiring of people with disabilities shall be ensured;
- Reasonable accommodation for people with disabilities who are suitably qualified for a job shall be provided to ensure that they enjoy equal opportunities as specified in the Employment Equity Act, No. 55 of 1998; and
- Opportunities and appropriate training workshops shall be developed to sensitise other employees to the needs of people with disabilities and to the diversity of disabilities.

## 3. PURPOSE OF THE POLICY

To enable employees with disabilities to have equal/reasonable access to participate and advance in employment by creating an environment that supports diversity and is free of barriers for employees with disabilities.

## 4. POLICY STATEMENT

EMM aims to bring about social transformation that shall achieve equity in the workplace by:

- Promoting equal opportunity and fair treatment in employment by eliminating unfair discrimination; and
- Implementing affirmative action measures to redress disadvantages in employment experienced by designated groups, to ensure their equitable representation in all occupational categories and levels in the workforce.
- Achieving the targets set for people with disabilities.

## 5. OBJECTIVES OF THE POLICY

- To provide the EMM with a clearly outlined normative framework within which to understand and manage the integration and advancement of employees with disabilities.
- For the EMM to acknowledge that, in dealing with employees with disabilities, one is dealing with very personal and sensitive issues. While the EMM does not wish to encroach, it seeks to deepen its understanding of disabilities and plan appropriately. In so doing, it shall also address areas of risk.
- To ensure that employees with disabilities shall be fairly treated and reasonably accommodated.
- To update and modify the policy as the need arises.
- To provide guidance during recruitment and advancement of employees with disabilities.

## 6. PRINCIPLES

Based on the **Constitutional principle** that no one may unfairly discriminate against a person on the grounds of disability, EMM commits itself to the following principles for the effective management of disability:

- To eliminate unfair discrimination against employees with disabilities;
- To ensure that employees with disabilities have the same rights, and privileges as all other employees. The potential of each individual employee shall be recognised to ensure continued growth and development within their chosen career;
- To treat employees with disabilities with dignity and respect;
- To reasonably accommodate the needs of employees with disabilities;
- That disability can be addressed by creating a barrier free environment through removal of employment and attitudinal barriers in our human resources policies and practices, which limit or exclude the participation and advancement of employees with disabilities;
- That communication and training shall be accessible to all employees.

## 7. DEFINITION OF PEOPLE WITH DISABILITIES AND CATEGORIES OF DISABILITY

### 7.1. DEFINITION OF PEOPLE WITH DISABILITIES

"Persons with Disabilities (PWD)" refer to People who have recurring physical and or mental impairment, which substantially limits their prospects of entry into, or advancement in employment. A disability is a long-term or permanent impairment or recurring condition or health problem, which needs to be reasonably accommodated on the job and calls for the elimination of barriers in the workplace. The impairment

may be of a physical, mental, sensory, learning or psychiatric nature, which is medically certified.

In evaluating whether job applicants and / or employees with qualifying disabilities fall within the scope of the definition, an understanding of the key elements is essential. In order to qualify for protection as a person with a disability, all the criteria of the definition must be satisfied. This refers to: “**long term**”, “**recurring impairment**”, “**physical or mental impairment**” and “**substantially limit**”.

#### Long-term impairment

The impairment has lasted or is likely to persist for at least 12 months. A short term or temporary illness or injury is not an impairment which gives rise to a disability.

#### Recurring impairment

Is likely to recur and be substantially limiting, regardless of whether the effect on a person fluctuates. Progressive conditions are deemed a disability once impairment starts to be substantially limiting. Progressive or recurring conditions, which have no overt symptoms or do not substantially limit individuals, are not considered disabilities.

#### Physical impairment

This refers to the partial or total loss of a bodily function. It includes sensory impairments such as being deaf, hearing or visually impaired and any combination of physical or mental impairments.

#### Mental impairment

This refers to clinically recognised conditions or illnesses that affects a person's thought processes, judgement or emotion.

#### Substantially limits

Impairment is classified as substantially limiting if, in the absence of reasonable accommodation by the EMM, an employee would be either totally unable to do a job or would be significantly limited in doing the job.

## 7.2 CATEGORIES OF DISABILITY

### PHYSICAL DISABILITY

Refers to damage to muscles, nerves, skin or bones that leads to difficulties in moving about and performing activities in daily living.

Physical disabilities include:

- **Paraplegia**: a substantial loss of function in the lower part of the body;
- **Quadriplegia**: a substantial loss of function in all four limbs;
- **Hemiplegia**: a substantial loss of function on one side of the body, often due to a stroke or as a result of epilepsy;

- **Cerebral palsy:** a damage to the brain that causes muscular inco-ordination;
- **Post-polio paralysis:** weakness in some muscles, and under-development of some limbs.

## VISUAL DISABILITY

Refers to the loss of sight that may be total or partial.

Visual disabilities include:

- **Blind:** refers to total loss of sight. A person might experience difficulty in moving around and knowing where things are;
- **Low vision:** a limited range of sight and focus that cannot easily be corrected with spectacles (eg. A person with a squint).

## HEARING DISABILITY

Hearing loss that may be mild, severe or total.

Hearing disabilities include:

- Deaf- hearing loss that usually results in difficulties in learning a spoken language

## MENTAL DISABILITY

Mental disabilities include cognitive, psychiatric and learning disabilities as well as physical head trauma.

- **Intellectual disability:** people with intellectual disabilities find it difficult to learn and retain new information, and often struggle to adapt to new situations.
- **Psychiatric disability:** people living with a psychiatric or mental illness often experience difficulties in perceiving or interpreting reality, and coping with some aspects of daily life.

## MULTIPLE DISABILITIES

Multiple disabilities means having two or more of the disabilities already described, for example, people who have a hearing and visual disability.

*Epilepsy* and *albinism* should be regarded as a disability. Epilepsy often causes physical and/or mental disabilities.

Albinism is an inherited condition where a person has absence of pigmentation of the skin and hair and is partially sighted. Most people with albinism identify with other people with disabilities due to the nature of discrimination they experience.

## IMPAIRMENTS EXCLUDED FOR REASONS OF PUBLIC POLICY

For reasons of public policy certain conditions or impairments are not considered to be disabilities. These include but are not limited to:

- Sexual behaviour disorders that are not caused by physical impairments. These include transvestism, transsexualism, paedophilia, exhibitionism, voyeurism as well as sexual behaviour and gender identity disorders
- Self-imposed body adornments such as tattoos and piercing
- Compulsive gambling, kleptomania or pyromania
- Disorders that affect a person's mental or physical state if they are attributed to the use of illegal drugs or alcohol, unless the affected person is participating in a recognised programme of treatment
- Abnormal deviations in height, weight or strength.
- An assessment may be done by a qualified person if there is uncertainty as to whether impairment may be substantially limiting.

### 7.3 DISABILITY RELATED DEFINITIONS

The words and terms used in this policy are defined below:

#### 7.3.1 *Disability Discrimination*

- The systematic societal and individual discrimination against people with, or perceived to have, disabilities that hinder or preclude their ability to conduct their activities, undermines their sense of human dignity and self-worth, and prevents their full integration into the greater society.
- The systematic individual discrimination against people with, or perceived to be HIV/ AIDS positive.
- The defining, perceiving of, or limiting of people with disabilities by their disability rather than examining societal and individual biases and stereotypes that continues to disadvantage and discriminate against people with disabilities.
- Contravening the South African Bureau of Standards Code of Practice or Regulations that govern environmental accessibility.
- Disqualifying a suitably qualified person because of her/ his disability.

#### 7.3.2 *Reasonable Accommodation*

Refers to any modification or adjustment to a job or working environment that will enable a person from a designated group to have access to participate or advance in employment levels.

#### 7.3.3 *Rehabilitation*

Refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric and social functional levels, thus providing them with the



tools and training to change their lives towards higher levels of independence.

#### **7.3.4 Assistive Devices**

These are devices and ergonomic solutions capable of reducing the handicap or difficulties experienced by employees with disabilities.

#### **7.3.5 Barrier Free Environment**

An environment in which access to all facilities and services are equally available and accessible to all employees.

## **8. LEGISLATIVE FRAMEWORK**

The policy and legislative parameters are framed *inter alia* by the following documents:

- Employment Equity Act (Act 55 of 1998)
- Code of Good Practice on the Employment of People with Disabilities (2002)
- Labour Relations Act (Act 66 of 1995)
- Occupational Health and Safety Act (Act 85 of 1993)
- Basic Conditions of Employment Act (Act 75 of 1997)
- Promotion of Equality and Prevention of Unfair Discrimination Act (2000)
- White Paper on an Integrated National Disability Strategy (1997)
- White Paper for Affirmative Action (1998)
- Skills Development Act (1998)
- Building Standards Act (1997)
- National Building Regulations and SABS 0400 Code of Practice
- TAG on people with disabilities
- Compensation of Occupational Injuries & Diseases Act 130 of 1993
- Conditions of Service applicable

## **9. SCOPE OF APPLICATION**

The policy shall be applicable to all employees with disabilities within the EMM.

## **10. CO-ORDINATION AND IMPLEMENTATION**

The Employment Equity and Transformation Division shall be responsible for ensuring that this policy and other programmes affecting employees with disabilities within the organisation are effectively implemented and monitored. Therefore, implementation of any programme for employees with disabilities shall be done in consultation with this Division. This division shall be required to:

- Assist in communicating the policy to all employees
- Implement and monitor the policy for employees with disabilities
- Liaise with stakeholders
- Foster a supportive, non-discriminatory workplace
- Propose steps to eradicate barriers to employment and advancement and implement interventions, where required
- Be the custodian of all issues pertaining to disability and co-ordinate all actions
- Channel relevant information through appropriate communication channels

The EMM shall strive to ensure that people with disabilities make up at least 4% of the workforce.

## **11. RECRUITMENT, SELECTION AND APPOINTMENT**

EMM shall endeavour to:

- 11.1 Provide people with disabilities with a range of employment opportunities aimed at meeting different needs and offering real possibilities for occupational choice.
- 11.2 Identify vacant posts that could be targeted for persons with disabilities in line with our current demographic statistics in order to enhance full representation across occupational categories and levels.
- 11.3 Recruitment of people with disabilities shall be done in accordance with the set Employment Equity targets but shall not be limited by such targets.
- 11.4 Provide training to recruitment staff to ensure understanding of the options available in the placement of disabled job seekers and employees.
- 11.5 Ensure that advertisements and job notices are accessible to persons with disabilities and, where applicable, circulate them to organisations that represent the interests of people with disabilities. On request notices and advertisements shall be given in a format appropriate to persons with disabilities, such as large print, Braille, or audiotape.
- 11.6 Apply the same standards and criteria in testing people with disabilities as are applied to others, subject to reasonable accommodation for the needs of people with disabilities.
- 11.7 Retain people with disabilities by Continuous training and development and enhancing promotability in accordance with the set targets

In view of the above EMM shall implement the following model to ensure that the recruitment process is fair and non-discriminatory when employing PWD:

### **Step 1: Complete a job analysis including a task definition**

- Develop job specifications stated in clear, objective language
- Check that these are neither misleading nor discriminatory.

### **Step 2: Prepare a job advertisement**

The job advertisement will:

- Welcome applicants with disabilities or specifically target them, if a particular vacancy has been identified for a candidate with a disability.
- Be available in large print, Braille, on a disc, or on a tape to increase accessibility.

- Request applicants for suggestions of ways to facilitate and support them during the recruitment process.
- Indicate that EMM shall make reasonable adjustments to the workplace and to offer the necessary support for the applicant during the recruitment process.

### **Step 3: Gather all relevant information about candidates**

- Try to use a format that does not discriminate against PWD, for example, copies of curriculum vitae prepared as an audiocassette.

### **Step 4: Selection and assessment**

- The selection process shall be objective.
- In the process of short-listing candidates, the following criteria shall apply:
  - The applicant's potential to perform the required competencies set out by the job specifications after suitable training.
  - The applicant's potential to perform after adjustment to the workplace regarding ergonomic considerations as well as assistive devices.

During the assessment process considers the following:

- The applicants should be assessed to help determine their potential.
- All tests should be relevant and properly analysed to make sure that they are appropriate for the job for which the applicant has applied and carry no bias.
- Assessment mechanisms shall be designed to help the EMM determine any adjustments that need to be made to the workplace, equipment or the tools.
- Be flexible and allow candidates with a disability more time to complete tests if the particular disability requires this.
- Allow candidates support in reading and understanding the questions but not in answering them.

The following shall be taken into account with regard to medical assessment:

- Medical examinations of candidates shall be requested only if this is permitted or required by law and if this is an inherent requirement of the position.
- A medical assessment has merit if it might increase the likelihood of an applicant with a disability's success in getting the job. Other possible benefits of medical assessment are that this helps the prospective employee as well as EMM as the employer to determine the levels of adjustment that may need to be made to the workplace and the requirements of reasonable accommodation.
- In the case of a candidate with a mental disability, EMM will request a psychological report and an Occupational Therapist's assessment of the tasks or jobs that the applicant could perform with the most success in order to ensure a placement and candidate match.
- Allow additional time for the interview, particularly where an applicant with a hearing impairment needs assistance of a sign language interpreter.
- Applicants may be asked how their disability could affect them in the workplace, if they are successful in applying for the vacancy in question.

### **Step 5: Interviews**

Candidates shall be reasonably accommodated in order to equalise their opportunity to compete fairly for vacancies. In this context reasonable accommodation will refer to reasonable cost and the practicality of making certain concessions.

### **Step 6: Final Selection**

The final selection shall be considered as per recruitment & selection procedure.

## **12. RETAINING PEOPLE WITH DISABILITIES**

- An employee who becomes disabled during employment shall, where practicable, be re-integrated into the workplace.
- Where practical, EMM shall offer alternative work, reduced work or flexible work placement, to enable an employee to continue in employment.
- EMM shall, in consultation with an employee with a disability assess if the disability can be accommodated and thus provide reasonable accommodation needed in order for that individual to function effectively.
- Medical boarding to be done in consultation with the Employment Equity and Transformation Division.

## **13. ILL HEALTH RETIREMENT**

This matter shall be dealt with in accordance with Conditions of Employment and Occupational Health and Safety Policy.

## **14. ACCESS TO INFORMATION AND COMMUNICATION**

EMM shall ensure that employees with communication disabilities have reasonable access to communication:

- Assistive devices shall be provided to employees that have visual impairments e.g. Braille, tape services, large print and other appropriate technologies;
- Appropriate technologies shall be provided to employees with auditory impairments to enable them to have access to spoken information.

## **15. TRAINING AND DEVELOPMENT**

- EMM shall develop the skills of PWD depending on their capabilities.
- Employees with disabilities shall be consulted so as to develop specific career advancement programmes responsive to their needs and circumstances.
- Training, work organisation and recreational benefits shall be accessible to employees with disabilities.

## 16. CONFIDENTIALITY AND DISCLOSURE OF DISABILITY

### 16.1 Confidentiality

- EMM shall protect the confidentiality of the information that has been disclosed. It shall take care to keep records of private information relating to the disability of applicants and employees confidential and separate from general personnel records.
- EMM shall not disclose any information relating to a person's disability without written consent of the person concerned.
- When the information is no longer required it shall be returned to the employee or be destroyed or rendered anonymous.

### 16.2 Employee Disclosure

- Employees with disabilities are entitled to keep their disability status confidential. Should this right be exercised, EMM may not be held liable for failure to provide reasonable accommodation.
- In cases where the disability is not evident the EMM may require the employee to disclose sufficient information to confirm the disability or the accommodation needs.
- Should the EMM dispute that the employee is disabled or that the employee requires accommodation, the EMM is entitled to request the employee to be examined to determine the employees' ability or disability, at the organisation's expense.
- If accommodating the employee requires co-operation of other employees, it will be necessary to reveal the disability status of a person if it is not otherwise obvious, to some of the person's colleagues, particularly a supervisor or manager, with the written consent of the person concerned.
- Upon consulting the employee with a disability, relevant staff members shall be informed of accommodation requirements of the employee, without disclosing the nature of the disability, unless this is required for the health or safety of the person with the disability or other persons.

## 17. MEDICAL TESTING

Medical testing of an employee is prohibited and it shall be dealt with in terms of Basic Conditions and Employment Equity Acts.

## 18. MANAGING DISABILITY

Capacity to perform:-

- Disclosure does not exempt an employee from performing his/her duties
- Only when incapacity is established shall steps be taken to evaluate the employment roles and responsibilities
- Termination shall be the last resort.

Facilities:-

Reasonable accommodation shall be provided within one month of appointment.

Employee benefits:-

- No discrimination shall be allowed towards employees with disabilities
- Medical records shall be kept confidential

The responsibilities of co-workers:-

- No employee may refuse to work with an employee with a disability. Should this instance occur, dispute resolution measures shall be implemented
- Only where an employee poses a risk to himself or co-workers, shall other employment options be considered.

## 19. DISPUTE RESOLUTION

Any dispute arising from the implementation of this policy shall be dealt with in accordance with grievance procedure of the Municipality.

## 20. MONITORING AND EVALUATION

The Employment Equity and Transformation Division together with the Committee of Employees with Disabilities would be responsible for:

- Co-ordinating and overseeing the promotion and advancement of the rights of employees with disabilities.
- Monitoring progress and co-ordinating programmes/campaigns and commemorating the International Day of People with Disabilities.
- Ensuring that each Department has a representative to the Committee of Employees with Disabilities, who would be responsible for protecting and advancing the rights of employees with disabilities and ensuring that the EMM's policies and programmes are aligned to meet the needs of these employees.
- Supporting Departments to implement the Policy for Employees with Disabilities.
- Ensuring that disability issues are mainstreamed within the EMM.
- Monitoring and evaluating the Policy for Employees with Disabilities
- Conducting regular surveys on monitoring and evaluation of progress.
- Consolidating quarterly reports on qualitative and quantitative indicators for assessing mainstreaming of disability issues to be submitted to the Mayoral Committee.

***It is imperative for the EMM to timeously evaluate its progress in mainstreaming disability issues and ensuring a disability sensitive environment. The checklist referred to below is a tool that could be used to evaluate whether each department has complied with key aspects of the policy.***

## CHECKLIST FOR A DISABILITY SENSITIVE MUNICIPALITY

- Does your employment equity plan have targets for the recruitment and promotion of people with disabilities?
- Does such a plan include targets for different levels of employees?
- Does your equity planning process make provision for a review of whether you are achieving your targets and if not, why not?
- Does your equity plan make provision for the reasonable accommodation of employees with disabilities at all stages of the employment cycle?
- Does the recruitment policies and practices accommodate the needs of people with disabilities?
- Have the employees in the Department who have disabilities been reasonably accommodated in terms of the Code of Good Practice on Disability?
- Do you ensure that all employees are sensitised to the needs of employees with disabilities through diversity management programmes, newsletters, etc
- Do you ensure that employees who are injured are assisted in early, safe return to work, including rehabilitation?
- Do you have targets and plans for skills development for employees with disabilities?
- Have you undertaken an audit to establish where physical barriers exist in respect of employees with disabilities?
- Some of the areas where employees with disabilities need to be accommodated include
  - Lifts-level of buttons, Braille/indented buttons, voice links
  - Disability friendly toilets
  - Ramps and strips
  - Provision for parking in the buildings/sheltered parking
  - Prioritised-in terms of disaster management
  - Floor surfaces