

Defining 'reasonable accommodation' for people with disabilities

By [Hugo Pienaar](#) and [Roxanne Bain](#)

17 May 2016

The Employment Equity Act and the revised BBBEE codes require businesses to employ more people with disabilities and not to claim that they are unable to accommodate people with disabilities. However, this should not cause an organisation 'unjustifiable hardship'.



© Andriy Popov – [123RF.com](#)

Dr Jerry Gule, chairman of South African Employers for Disability (SAE4D), points out that despite the Disability Code of the Employment Equity Act stating that employers should reasonably accommodate people with disabilities, employers are not obliged to employ a person with a disability where that person cannot perform the essential functions of a job even with reasonable accommodation.

“While the concept of accommodation itself is fairly easy to understand – for example, making existing facilities accessible to people in wheelchairs, or reorganizing workstations – the question of what is ‘reasonable’ in this regard is often less clear.”

“Let’s take the basic issue of access. Would it be reasonable to expect a business, which is located on the second floor of an old building that does not have a lift, to make itself accessible to an employee, or a potential employee, who uses a wheelchair?”

“In this example, the actions that would have to be taken to accommodate the employee – installing a lift or even moving premises - could be regarded as causing ‘unjustifiable hardship’ to the organisation. However, if the business has offices on the ground floor as well, it may not be an ‘unjustifiable hardship’ to accommodate the person downstairs.

“What the law does require is that the employer investigates the particular accommodation the person with a disability requires and how effective it would be in reducing the impact of the disability on his or her ability to perform the essential functions of the job.

“The costs of the accommodation also have to be ascertained before deciding whether the provision of reasonable accommodation would entail ‘unjustifiable hardship’.

“However, employers cannot simply claim that the cost of the required accommodation is unaffordable and therefore an ‘unjustifiable hardship’; the employer has to prove that the hardship is unjustifiable.

What if an individual is no longer able to do the job for which he or she was employed due to injury or illness? Are employers obliged to create a new job for the individual for the purpose of reasonably accommodating the person?’

“No and, in addition, the employer need not reassign the essential functions of the job to another employee in order to accommodate the employee. However, in certain circumstances, non-essential functions which are peripheral to the job for which the person is employed, should be reassigned.”

The bottom line is that there cannot be a ‘one-size fit all’ approach to the reasonable accommodation of employees with disabilities.

“Just as people with disabilities will have different accommodation requirements, different businesses will have different capacities to implement the required accommodation. Each case has to be considered on its own merits,” Dr Gule concludes.

ABOUT THE AUTHOR

Hugo Penaar is a director and Roxanne Bain, a candidate attorney in Cliffe Dekker Hofmeyr's Employment Practice.

For more, visit: <https://www.bizcommunity.com>