



International
Labour
Organization

 **Irish Aid**
Department of Foreign Affairs
An Roinn Gnóthaí Eachtracha

Achieving Equal Employment Opportunities for People with Disabilities through Legislation



AN EDUCATION AND TRAINING GUIDE





International
Labour
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INTERNATIONAL LABOUR ORGANIZATION
An Education and Training Guide

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Introduction

The International Labour Organization (ILO) has worked for decades to promote equal training and employment opportunities for persons with disabilities through international labour standards, knowledge development, advocacy and technical advisory services to its constituents. This work has been given renewed impetus by the UN Convention on the Rights of Persons with Disabilities (CRPD) that entered into force in May 2008. The ILO Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) No. 159 and other international labour standards combine with the CRPD to firmly set disability issues in the framework of human rights. Together, these instruments highlight significant changes required in the legal and policy environment in many countries around the world to give effect to this new policy vision.

This education and training guide *Achieving Equal Employment Opportunities for Persons with Disabilities through Legislation*, and the legislation guidelines to which it is linked, were developed as part of an ILO Project 'The Employment of People with Disabilities: the Impact of Legislation', funded by the Government of Ireland. ILO commissioned Cornell University to develop this guide to serve as a resource for trainers in countries around the world. The education and training guide was authored and designed by Thomas P. Golden of Cornell University's Employment and Disability Institute in close collaboration with Barbara Murray (ILO), with assistance of Debra Perry (ILO) and Ilene Zeitzer, Disability Policy Solutions.

The guide has been used as the basis for introducing modules on disability legislation in the law faculties of several universities to date. It is also used as a resource by the Centre for Disability Law and Policy at the University of the Western Cape, South Africa, which was established in 2010 with the sponsorship of the ILO/Irish Aid Partnership Programme to serve as regional resource centre providing degree courses and annual workshops relating to the legal rights of persons with disabilities. It is available electronically through the ILO web site www.ilo.org/disability and in hard copy through ILO offices.

With the entry into force of the UN Convention on the Rights of Persons with Disabilities in May 2008, countries around the world are attaching higher priority to promoting the rights of persons with disabilities in skills development and employment. This is why the education and training guide is so timely and relevant to realizing the vision of a labour market that is open, inclusive and accessible to persons with disabilities.



Christine Evans-Klock
Director
Skills and Employability Department



*Achieving Equal Employment Opportunities for People with Disabilities through Legislation
An Education and Training Guide*

Purpose, Context and Teaching Strategies

This module provides helpful tips for using this Guide to maximize the learning experience and potential impact on achieving equal employment opportunities for people with disabilities through legislation.

This Education and Training Guide has been designed to support improved capacity of governments in collaboration with social partners and civil society agencies to design, implement and evaluate legislation that effectively supports equal employment opportunities for people with disabilities. Toward that end, educators and trainers are being provided this resource Guide to assist them in equipping policy makers, legislators, social partners, individuals with disabilities, their families and advocates, and other key individuals to achieve a positive legislative impact.

Course Content

As an educator and/or trainer you have an ability to influence the development of legislation and policies that positively affect equal employment opportunities for people with disabilities by creating and offering learning experiences that support development in this area. While you may not directly bring about specific legislative or policy changes, the individuals you teach and train may have that direct influence. Affecting positive changes in the area of equal employment opportunities for people with disabilities can occur on several different levels through: modification and enhancement of current law; development of new legislation; and/or development or modification of regulations, policies, or procedures to implement specific laws. Whatever the level that individuals in your classrooms may currently occupy, they may now be, or in the future may be, in positions to promote these opportunities. The key is in knowing how to take advantage of teaching opportunities and to equip individual course participants with the information they need to promote an equal employment opportunity agenda. This Education and Training Guide provides seven modules to assist you in accomplishing those ends.



Module One:

Equips the instructor to use the Guide and to maximize and measure its teaching and impact on course participants.



Module Two:

Explores current trends in disability legislation, including basic principles surrounding the concept of disability and the context of basic human rights.



Module Three:

Reviews non-discrimination legislation including the scope of disability law, types of discrimination and the concept of reasonable accommodation.



Module Four:

Provides an overview of quota systems including both binding and non-binding approaches, and tips for making quotas work in practice.



Module Five:

Presents an outline for the planning of implementation and specific provisions for consideration, including transportation and specialized equipment.



Module Six:

Suggests helpful strategies for drafting legislation and policy, and for involving critical stakeholders to support the process.



Module Seven:

Considers how laws and policies should be enforced including monitoring and evaluating compliance, and utility of the law.

As an instructor, what you decide to teach and how you decide to design the learning experience will depend on the audience you will be training and the outcomes which you are seeking. As you consider potential course participants, make sure to include policy makers; Governments, employers' organizations, workers' organizations, legislators/parliamentarians; other community groups; constituency organizations like community rehabilitation programmes; state agency representatives; governmental representatives; disability groups and associations; parent groups and associations; trade associations; and business groups. All these groups have a role to play in equal employment opportunities and should be involved in affecting positive legislative changes in this area.

Designing a Learning Experience

This Education and Training Guide has been developed with maximum flexibility in mind - recognizing that not all audiences or intended outcomes are the same. While the objective is to equip participants to promote and advance equal employment opportunities for people with disabilities through effective legislation, the means by which this will be accomplished will vary. The Guide is based on the following three principles:

- To affect positive equal employment opportunities for people with disabilities, individuals who are in key positions of influence must be equipped with certain knowledge, skills, and strategies to accomplish that goal.
- To provide information to these individuals based on their specific and unique needs. The information a parent advocate, as opposed to a policy maker, may need to affect a similar change, might differ depending on their respective perspectives. A parent advocate may need an explanation about how policies are actually developed, whereas a policy maker may have in-depth knowledge in this area already, but may not have a basic understanding of disability rights issues.
- To maximize the impact for the course participant, supplemental country-specific and locally-relevant examples and information will be needed.

Each module presents an array of methods in support of these principles. A basic core training outline is provided for each module. The entire core training outline requires approximately 30 to 40 hours to complete and may be conducted in a continuing education format covering either four to five straight days of training, or a series of multi-hour events over a period of time – depending on the audience and intended outcome. Each core training outline provides purpose; learning objectives; duration; key concepts; a glossary of frequently used terms and concepts; and is followed by trainers' notes and accompanying visual aids (Attachment A). To enhance the learning experience, optional exercises are also provided throughout the training outline to expand instruction to illustrate and allow practice of important concepts. This expanded learning option provides additional exercises, practice experiences, and lecture material. Finally, each module provides sample feedback/evaluation tools; online resources; as well as references and suggested readings. The icon key below provides the layout of each module and demonstrates picture icons that are used for easy referencing while training.



Learning Objectives



Getting Started



Time Frame



Optional Exercises



Key Concepts



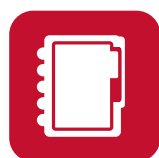
Evaluating Impact



Glossary of Terms



Online Resources



Training Outline



References and Readings

Selecting Your Approach

The approach you select and amount of time you allocate to present this information will be determined primarily by the composition of the group and the individual experience of the course participants. Are they a homogenous or heterogeneous group (e.g. advocates versus other types of key individuals influencing policy?) How many individuals need to be trained? What is their experience with disability and equal employment opportunity issues? What is their experience in policy making? What is the gender, age, and education distribution of the group? Is there a particular piece of the content that is more relevant to the audience? All these variables are important to consider when determining the approach and amount of time needed to equip the course participants. Another important consideration is whether or not the student is expecting to receive college or university credit for course participation. If so, the amount of contact hours will be determined by your institutional requirements in this area and specific content will need to be customized to meet this time requirement.

Another consideration to make is the specific needs represented by individuals who will compose the audience. For example, what specific strengths and

experiences do individual course participants bring to the learning environment that you could draw upon and consider as you design the training? Do participants have specific expectations that need to be met? Are there specific obstacles or challenges that students are going to experience as they attempt to apply the information you give them? This is critical information to consider as you design the learning experience, and should be gathered in a variety of ways including direct discussion with students; past observations; dialogue with larger groups of stakeholders; examination of data and reports; formal needs assessment; and more in-depth assessment of the current legislative, policy and regulatory environment in which course participants will need to operate.

In summary, it is important to understand your course participants' needs in order to customize a learning experience that addresses not only time and course credit considerations, but also the specific content that you will need to focus on and the additional resources and references to support the learning experience.

Strategies for Presenting Information

As the trainer, it is critical that you have taken adequate time to review the publication *Achieving Equal Employment Opportunities for People with Disabilities through Legislation: Guidelines*. Throughout this curriculum the Guidelines are referred to as the "Primer" and you should make sure that copies are available to all course participants, as they are referenced repeatedly throughout the programme. The Guidelines, an accompanying document to this Guide, can be accessed at:

http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_091340/lang--en/index.htm

Your familiarity with this publication, coupled with your own knowledge and experiences of the current equal employment opportunity environment in your country and locally-relevant examples, will provide the foundation for your training. This technical foundation is critical to your credibility as an instructor. Equally important is the effectiveness of your communication as an instructor.

While communication is a combination of both expressive and receptive factors, about 70 per cent of effective communication is receptive (listening) and only about 30 per cent is expressive (what you "send"). Within the expressive portion of communication, over half of what people "hear" from you is what you send with your body language. The second largest piece is your voice tone or inflection, while only a small part of effective communication is actually the words you speak. Expressive communication constitutes approximately 30 per cent of good conversation. The following is a list of effective body language that facilitates open and honest conversation.

- Maintain a comfortable posture, not too relaxed and not tight. This implies interest. A posture that is too intense may be threatening or may signal that you are in a hurry.
- Maintain good eye contact. This signals that you are interested, paying attention, and it enhances development of trust and rapport; however, be sensitive to cultural or disability-related exceptions, as some people consider too much direct eye contact to be a “power-play” or an invasion of their personal boundaries. Watch for indications of discomfort with your eye contact and adjust your style accordingly.
- A facial expression that is natural, shows interest, and which is free of shock, dismay, irritation, or disagreement encourages open communication. If you feel comfortable in your role as a trainer, this will be relatively easy to accomplish. However, if you are new to this role and somewhat nervous, be aware of your facial expressions, as they may reflect your nervousness. You may appear very intense as you focus on doing a good job, and your expressions may be misinterpreted as meaning one of the abovementioned reactions.
- Distracting body movements can also detract from effective communication, such as fiddling excessively with some object such as a pen or piece of paper. Remember to watch the course participants for signs that your body movements are distracting or annoying them.

The sincerity reflected in your voice is even more powerful than the words you speak in letting a person know what you think. If your voice tone is too severe, too playful, or too authoritarian, the listener may interpret this as being frightening, patronizing, or that you feel superior to them, which hampers open communication. Voice tone should match the intent of the words you are speaking and should be adjusted to the needs of the individual.

Words are the final piece of expressive communication, and the cautions regarding this part can be easily summed up. Eliminate jargon and hard-to-understand language from your discussions with the learner. Therefore, make sure the course participant understands any specific language you must use that is not commonly understood, and remind them often that it is alright to ask for clarification at any time. In addition, when explaining complicated concepts and when talking through examples, possibilities, and options, it may be helpful to use audio-visual tools to clarify the concepts being discussed.

Training and Teaching Methods

As complex human beings, we bring to the learning environment a combined set of emotional, physical, mental, and social characteristics that make each one of us unique. The way to approach diversity in course participants and to accommodate diverse learning styles is with variety in instructional techniques. To do this, the instructor must first understand the specific informational needs of the people in attendance, the sequence in which they need it, and what form the information and instruction will take in order to maximize learning. A master trainer:

- uses simple language and speaks with clarity, using appropriate inflection and tone
- knows his/her content area;
- bases much of his/her training on personal experiences in order to enrich the learning experience;
- uses multiple teaching modes, and balances their use to maintain participant attention;
- will accommodate training as requested and needed;
- has technical skills in using advanced audio-visual technology;
- understands the diversity of learning styles of the participants in the training;
- establishes a learning contract early on in the training to gauge what the participants specifically want to learn, beyond the general content referenced in the brochure;
- is skillful in engaging participants in discussion;
- is skilled at bringing discussion to a close;
- is not condescending and is accessible to course participants;
- promotes sharing and networking among participants;
- recognizes and respects the expertise and skills participants bring to the learning environment;
- can monitor and self-pace instruction;
- creates a learning environment that is safe and secure, in order to allow for sharing of ideas and personal beliefs and experiences.

The format for delivering the information is as important as what you will be delivering. A group of advocates with minimal experience in affecting policy change may require a more standard lecture-based approach – with the trainer providing new information using predominantly one-way communication. A somewhat more knowledgeable group of course participants, with some basic information, may require a more balanced delivery approach whereby the trainer provides some lecture but intersperses opportunity for two-way communication and planned dialogue which is focused toward specific learning objectives. Finally, a relatively experienced group of participants who want to refine their skills may require a more learner-focused approach established in group dialogue, exercises, and opportunities to test and hone their skills. Being skilled at knowing which approach to use at what time is important. The following table highlights several common training approaches, what each sets out to achieve, and common pitfalls to avoid.

What It Is	What It Will Achieve	Points to Watch / Disability Sensitivity
<p>Lecture</p> <p>A talk given without much, if any, participation in the form of questions or discussion on the part of course participants.</p>	<p>Suitable for large audiences where active engagement of the participants is not possible because of numbers. The information to be conveyed can be exactly worked out beforehand - even to the precise wording of it. Timing can be accurately worked out.</p>	<p>The lack of participation on the part of the audience means that unless the whole of it, from beginning to end, is fully understood and assimilated, the meaning will be lost.</p> <p>Limited value in promoting behavioural or attitudinal changes.</p> <p>Unsuited for teaching skills that may require practice.</p> <p>For course participants that are deaf or hard of hearing, make sure that an interpreter or other accommodations are provided. This will require you as a trainer to be sensitive to the speed at which you are instructing, and in the case of interpreters, that you allow for breaks in the dialogue. You should also make sure that questions from the audience during lecture are restated so that they are heard.</p> <p>For course participants who are blind or visually impaired, it is important to bear in mind when lecturing that if visuals are used, that they be thoroughly explained, so that the participant can put together a visual picture in their head of what seeing participants are viewing.</p> <p>If course participants are lip readers, the instructor is going to need to ensure that the room is adequately lit and that they do not block their lips from the sight of the lip reader. Often instructors forget and will put their hands to their mouth or perhaps stand behind equipment or a podium with a microphone that blocks the view of participants.</p> <p>Another issue to remain sensitive about when using a lecture-based format is that individuals have diverse learning styles. While some may take information in best by listening, others may find this challenging and need opportunities to practice what is being said or restate it. Make sure to provide opportunities that cater to all learning styles.</p>

What It Is	What It Will Achieve	Points to Watch / Disability Sensitivity
<p>Discussion</p> <p>Knowledge, ideas and opinions on a particular subject are freely exchanged among course participants and the instructor.</p>	<p>Suitable where the applications of information is a matter of opinion. Also useful when attitudes need to be induced or changed. Course participants are more likely to change attitudes after discussion than they would if they were told during a talk that their attitude should be changed. Also suitable as a means of obtaining feedback for the instructor about the way in which course participants may apply the knowledge learned.</p>	<p>The course participants may stray from the subject matter or fail to discuss it usefully. The whole session may be blurred and unfocused. Course participants may become entrenched in their attitudes rather than be prepared to change them.</p> <p>It is critical when using this approach to bear in mind that participants who are blind or visually impaired may not see the individuals who are speaking, so it is good practice for anyone who begins to speak to identify who they are.</p> <p>When using interpreters to assist persons who are deaf and hard of hearing, it is important to make sure that those individuals engaged in discussion speak loudly enough so that what they are saying is heard by the interpreters and can be conveyed.</p> <p>For those participants who are possibly lip readers, this approach poses a particular challenge, as participants engaged in the dialogue are often not within eyesight of the person doing the lip reading. When using this approach and under these circumstances, make sure the room is well-lit and that people either asking questions or engaged in dialogue come to a central point in the room where they can be easily seen.</p> <p>Remember that your audience may be diverse and acronyms used or terms of art may not be understood by everyone. Encourage participants to refrain from using acronyms and, when they must be used, to define what they stand for.</p> <p>Be sensitive to the nonverbal communication of your audience when using this approach. Discussions can often become entrenched and not engage the entire class. Make sure that discussion is inclusive of all course participants.</p> <p>If individuals are using an interpreter make sure to allow them opportunity to speak for the participant that is using their services so that they can engage in ongoing discussion as well.</p>

What It Is	What It Will Achieve	Points to Watch / Disability Sensitivity
<p>Role Play</p> <p>Course participants are asked to enact, in the training situation, the role they will be called upon to play in their job or work. Used mainly for the practice of dealing with face-to-face situations (i.e. where people come together in the work situation).</p>	<p>Suitable where the subject is one for which real life practice in the training situation could be useful for the course participants. The course participants can practice and receive expert advice, or criticism and opinions of their colleagues in a “protected” training situation. This provides confidence as well as guidelines. The course participants can experience the pressures of a real life situation.</p>	<p>Course participants may be reluctant to engage in role play and certain types of participants may not consider role play a serious learning technique.</p> <p>Besides the obvious stated above, bear in mind that individuals with certain types of disabilities may not be able to engage completely in this type of activity. For example:</p> <ul style="list-style-type: none"> - Individuals who are deaf or hard of hearing who use lip reading, interpreter services or real time transcription need to have these supports considered; - Individuals who are blind may need some additional preparation time to understand visually how the space they will be using is laid out and their location proximate to the other individuals in the role play; - Individuals who have certain types of anxiety disorders or mental health impairments may find these types of activities extremely difficult. <p>Make sure that if scenarios are provided for the role players to use, they are available in alternative formats so you are prepared well in advance and not embarrassed by an individual volunteering for the activity who requires a specific accommodation. For example, an individual with a visual impairment requires large print.</p> <p>The reality is that individuals with or without certain types of disabilities may find role play activities extremely stressful or anxiety-producing. Remain sensitive to your audience and when using this approach seek volunteers who perhaps enjoy “being on stage.”</p>

What It Is	What It Will Achieve	Points to Watch / Disability Sensitivity
<p>Case Study</p> <p>The course participants examine a history of some event or set of circumstances, with the relevant details. Case studies fall into two broad categories: those in which the course participants diagnose the causes of a particular problem; and, those in which the course participants set out to solve a particular problem.</p>	<p>Suitable where an objective look at the problem or set of circumstances, free from the pressures of the actual event, is beneficial. It provides opportunities for exchange of ideas and consideration of possible solutions to problems the course participants will face in the work situation.</p>	<p>Course participants may get the wrong impression of the real work situation. They may fail to realize that decisions taken in the training situation are different from those that have to be made on the spot in an actual situation.</p> <p>Bear in mind that not always will everyone in the training environment be equitably equipped to diagnose and/or prognose specific scenarios. In these cases make sure that you pair or group individuals in a way that skill sets across groups are fairly distributed.</p> <p>Besides the obvious stated above, bear in mind that individuals with certain types of disabilities may not be able to engage completely in this type of activity. For example:</p> <ul style="list-style-type: none"> - Individuals who are deaf or hard of hearing who use lip reading, interpreter services, or real time transcription need to have these supports considered; - Individuals who are blind may need additional supports to engage in and complete the exercise; - Individuals who have certain types of anxiety disorders or mental health impairments may find these types of activities extremely difficult. <p>Make sure, if case study scenarios are provided, that they are available in alternative formats so that you are prepared well in advance.</p> <p>The reality is that individuals with or without certain types of disabilities may find case study situations where they have to work in a group extremely stressful or anxiety-producing.</p>

What It Is	What It Will Achieve	Points to Watch / Disability Sensitivity
<p>Exercise</p> <p>Course participants are asked to undertake a particular task, leading to a required result, following guidelines laid down by the trainers. It is usually a practice or a test of knowledge gained prior to the exercise.</p> <p>Exercises may be used to discover course participants' existing knowledge or ideas, before further information or new ideas are introduced.</p> <p>Exercises may be crafted for individuals or for groups.</p>	<p>Suitable for any situation where the course participants need to practice following a particular pattern or formula to reach a required objective. The course participants are to some extent "on their own." This is a highly active form of learning. Exercises are frequently used instead of formal tests to find out how much the participant has assimilated. This method provides a broad scope for the imaginative trainer.</p>	<p>The exercise must be realistic and the expected result reasonably attainable by all course participants or they will lose confidence and experience frustration.</p> <p>Bear in mind that individuals with certain types of disabilities may need additional support to engage completely in this type of activity. For example: individuals who are deaf or hard of hearing who use lip reading, interpreter services, or real time transcription need to have these supports considered; individuals who are blind may need additional support to engage in and complete the exercise.</p> <p>Make sure, if exercises or worksheets are provided, that they are available in alternative formats so that you are prepared well in advance.</p> <p>An area to be sensitive about is how you, as the instructor, plan to debrief the exercise. Some individuals find situations where they are asked to present to a class or report their findings extremely stressful and anxiety-producing, which may impede learning.</p>

What It Is	What It Will Achieve	Points to Watch / Disability Sensitivity
<p>Application Project</p> <p>Similar to an exercise but giving the participant much greater opportunity for the display of initiative and creative ideas. The trainer lays down the particular task but the lines to be followed to achieve the objectives are left to the participants to decide. Like exercises, projects may be set for either individuals or groups.</p>	<p>Suitable where initiative and creativity need stimulating or testing. Projects provide feedback on a range of personal qualities of course participants, as well as their range of knowledge and attitude on the job. Like exercises, projects may be used instead of formal tests. Again there is a wide range of possibilities for the imaginative trainer.</p>	<p>Approaches of this type require the instructor to monitor the course participants constantly to ensure that they are on track and completing the project. Individuals who are not self-motivated and engaged, may not fare well with this type of exercise.</p> <p>Bear in mind that individuals with certain types of disabilities may need additional support to engage completely in this type of activity. For example: individuals who are deaf or hard of hearing who use lip reading, interpreter services, or real time transcription need to have these supports considered; individuals who are blind may need additional support to engage in and complete the exercise.</p>

Several low-tech tools exist for educators/trainers to reinforce the learning experience. These audio-visual tools include things like flipcharts, overheads, and slides. Using a Flipchart is an important tool for the trainer; however, to keep it effective, remember the following points.

- Make it readable! Write large enough (at least ½ an inch high and two spaces between lines).
- Leave bottom of flipchart sheet 1/4 – 1/3 blank.
- Use multiple colors (except for yellow).
- Use underlining and boxing for key words.
- Have tape available to attach completed sheets to the wall.
- Do not keep your back turned to the audience for too long.
- Do not use these tools with large audiences that will not be able to see.
- Make sure to read and describe everything you put down on the flipchart to ensure accessibility of materials to people with visual impairments.

The following steps will assure the effectiveness of your audio-visual material:

- Focus and position equipment before starting – make sure visuals are clean, crisp, and focused!
- Watch the lighting of the room (dimmed enough to see screen well, but light enough for notes and safety. Bear in mind the use of interpreters and individuals who read lips).
- Recheck position for each overhead/slide.
- Do not walk or stand in front of the screen.
- Do not look at the screen while talking. If you need notes – copy them and carry them with you.
- Do not move through the audio-visuals too quickly in case the audience is taking notes (or provide them copies of overheads as handouts).
- Turn off the projector for longer discussions about a topic, if it is noisy or distracting (if not, leave on).
- Use large fonts (20+).
- Use color if available.
- Spell check/edit before use.
- Do not have words/images too close to the bottom.
- When an overhead/slide includes a list, move it down instead of revealing all at once.
- Again, remember to read and describe everything on the visuals being used to ensure accessibility of information.

The presentations you develop and implement in your local and regional areas will each have unique qualities and varied outcomes. Participant responses to training and presentations are as varied as are the individuals with whom you will interact. You should infuse into each new programme the lessons learned from previous programmes.

Identifying and Packaging Supplemental Information

Quality materials are an important element of any training programme. While course participants may forget some of the instruction almost immediately, the information and resources provided will serve as useful tools later on. Bear in mind, reference tools are not just the participant training manual, but may also include other materials such as articles, informational brochures, web page references, bibliographies, and other quick reference guides. A good rule to follow is to ensure that, for every learning objective designed, participants have some sort of resource they can take home with them for future reference. While instructors often rely on a training manual for this, it can also be successfully accomplished using some of the suggestions given above.

As you package your materials together, bear in mind accessibility and usability of information provided. In developing corresponding supplemental audio-visual materials, make sure to include a full citation for the materials you have provided, so that participants can access the information at a later time. This step allows the trainee not only to hear and see the information, but also to find and get a feel for it – covering the entire primary learning modes.

Evaluating and Assessing Learning and Impact

It is critical to evaluate and assess the efficacy and impact of a training programme. A comprehensive evaluation seeks not only to measure the extent of learning that occurred as a result of instruction provided, but also the environmental variables associated with the training, as well as the effectiveness of the instructor. Each module in this Guide provides instructors with a sample tool they can immediately use to assess the knowledge gained from the training

effort associated with each module - corresponding directly to each module's learning objectives. A generic Training Programme Survey is also referenced and provided in Appendix A to assist the instructor in gauging the effectiveness of the learning experience.



Training Outline

It is assumed leading up to the point of actually conducting the training that you as the instructor and/or course coordinator have taken the time necessary to identify your target audience for the training event; identified their specific learning needs; advertised and registered participants for the course; customized the curriculum to be used for the event; identified the most appropriate instructors based on content to be covered; coordinated and arranged the training environment; confirmed participant attendance and provided them instructions for attending the event. The training outline provided below starts one hour prior to conducting the actual event.

one hour prior to
commencement



Getting Started: Preparation

- a. Set up the training environment at least one hour prior to the seminar start time.
- b. Make sure that copies of training materials are distributed.
- c. Set up and test audio-visual equipment to ensure that it is ready to be used. Have **Transparency 1** on the screen as participants come in.
- d. Hang three sheets of poster/flip chart paper on the wall and write at the top of one "Ground Rules", on another, "Learning Objectives", and on the third, "Parking Lot".
- e. Welcome course participants as they arrive and start the seminar on time.

35 minutes



Getting Started: Introduction

- a. Start the session by introducing yourself and providing a general welcome. Explain to participants where lavatories and break areas are located. If you are conducting the training in a "smoke-free" environment, explain to participants where smoking areas are located.
- b. Before beginning the lecture, take a moment to review the general learning

objectives for the course. Ask participants to introduce themselves by stating their name; organization or affiliation; a brief one sentence summary of what they do; and, a specific learning objective they have for the seminar. As participants state their individualized learning objectives, write them on the poster/flipchart paper titled “Learning Objectives” for reference throughout the seminar. It is important that when a course participant identifies a specific learning objective that is not consistent with the course objectives to state that objective will not be covered in this programme. You may want to tell the person that you would be more than happy during a break or after the first session to provide them a referral as to perhaps a more appropriate place or event where that objective can be met.

- c. Following introductions, take some time to establish some ground rules for the learning environment. Using the flip chart page titled “Ground Rules” write some basic well-known ground rules: **Confidentiality** – what is said in the room, stays in the room; **Respect** – everyone is entitled to his/her own opinions and viewpoints; and **Challenge** – it is acceptable to ask questions of things stated that are contrary to personal beliefs for the purpose of discussion, not argument. Provide participants an opportunity to list additional ground rules that they feel are important for establishing a safe learning environment.
- d. Explain to participants that questions may often arise during the seminar which may or may not be relevant to the topic being covered at that particular time; however, that does not minimize their importance. Present the “Parking Lot” flip chart page and explain that as ideas or questions come up that cannot be currently addressed they will be written on that page. At the conclusion of the seminar, if the issue or question was not covered, strategies will be discussed for how to resolve them and/or referrals provided as to a more appropriate venue for meeting said objectives.
- e. To set context for the class, mention that for a long time it was assumed that unemployment and underemployment of people with disabilities were closely interrelated to, and, in fact, the unavoidable consequence of the physical and mental impairments of the persons concerned. Explain that it is now recognized that many of the disadvantages individuals with disabilities face, and their exclusion from society, are not due to individual impairments, but rather are the result of the reaction of society to that impairment. Laws and policies are part of this reaction.

Disability issues are now increasingly viewed as issues of human rights. The basic idea of human rights law, centered on the concept of human dignity, is that all people have equal rights, notably the right to live a full and decent life. This reflects the simple, and at the same time, crucially important notion, that everyone is a human being. Corresponding to the rights of individuals, States have the duty to protect, respect and fulfill human rights. This reappraisal is prompting major shifts in international and national law. It is now widely accepted that the human rights of persons with disabilities must

be protected and promoted through general, as well as specially-designed laws, policies, and programmes. National Governments can ensure this protection through their legislation.

Explain to participants that *Achieving Equal Employment Opportunities for People with Disabilities through Legislation: Guidelines*, referred to as the 'Primer' throughout the training Guide, was developed by the International Labour Office to reflect the reappraisal of disability as a human rights issue. These guidelines are intended for policy-makers and drafters of legislation and have been developed with a view to assisting in improving the effectiveness of national laws concerning training and employment of disabled persons. They have been drafted with reference to ILO international labour standards in this area, the existing ILO Labour Legislation guidelines and other relevant international labour and human rights instruments. They can be used as a tool to evaluate elements of a national equal opportunity strategy and for further discussion and debate at the national level. They can also serve as a baseline for measuring how well distinct national laws, and the policy measures to implement these laws, comply with international human rights and labour law.

Section 2 of the Primer covers the guiding principles and concepts underlying legislation along with key terminology. Sections 3 and 4 examine the main types of law and policy used to promote employment of people with disabilities in the open employment market, while Section 5 focuses on implementation measures. Section 6 addresses the consultation process that should precede the adoption or revision of legislation and policies seeking to promote equal employment opportunities for people with disabilities. Section 7 analyses the enforcement of laws promoting equal employment opportunity for people with disabilities. A summary of the main points is presented in Section 8.

The Primer accompanies this Education and Training Guide as supplementary material for trainers and participants.

Notes



*Achieving Equal Employment Opportunities for People with Disabilities through Legislation
An Education and Training Guide*

Current Trends in Disability Legislation

This module establishes disability as a basic human rights issue - assisting the trainee in exploring the definition of disability, principles of non-discrimination and equality, context of disability within legislation, and social policy leading to affirmative action.



Time Frame

6 – 9 hours
(based on extent
of optional
exercises selected
to reinforce
learning)



Learning Objectives

At the completion of this seminar, participants will be able to:

✓	Understand the role of the ILO in supporting the development of equal employment opportunity for people with disabilities.
✓	Reflect on their personal beliefs and attitudes regarding the experience of disability as a human rights issue.
✓	Explain the principle of non-discrimination.
✓	Outline the potential location of disability within legislation.
✓	Define disability within a context of who is a beneficiary of legislation.
✓	Identify specific goals for targeting a definition of disability in statute.
✓	Outline basic human principles leading to equality.
✓	Explain the two-pronged approach to equal employment opportunity.
✓	Understand the potential role that gender potentially plays in intensifying discrimination.



Key Concepts

It is critical to support potential policy makers in crafting innovative disability equal employment opportunity legislation, by providing them with a solid foundation of basic concepts. This module presents a two-pronged definition for equal employment opportunity – prohibition of discrimination on the grounds of disability, and affirmative action to ensure that people with disabilities have access to employment opportunities. A Primer on how disability can be incorporated into legislation is provided along with two approaches for defining disability; the Primer *Achieving equal employment opportunities for people with disabilities through legislation: Guidelines*, is available at:

http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_091340/lang--en/index.htm

The successful presentation of the content in this module is contingent on how well you, the instructor, provide a solid values-based context for the information to be presented – providing course participants an opportunity to explore and challenge their own values and beliefs’ systems regarding the experience of disability. An important question for participants to answer is where they feel the experience of disability stems from – is it inherent to the individual or the environment? Exercises are suggested in the trainer’s outline below in order to assist students in exploring their beliefs in this area.

Glossary of Terms



Affirmative Action:	A policy or a programme that seeks to redress past discrimination through active measures to ensure equal opportunity, as in education and employment.
Civil Law:	Legislation related to the private rights of individuals and to legal actions involving these.
Constitutional Law:	The highest law of the land. Concepts laid out in the Constitution of any given country describe the State's responsibility to their citizens and the citizens' rights guaranteed by the State.
Criminal Law:	Laws or codes dealing with the commitment of a crime such as theft.
International Labour Office:	The permanent secretariat of the Organization, its operational headquarters, research centre, and publishing house.
International Labour Organization:	A specialized tripartite United Nations agency devoted to advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security, and human dignity. Its main aims are to promote rights at work, to encourage decent employment, to enhance social protection, and to strengthen social dialogue in the resolution of employment-related issues.
Labour Law:	Laws or codes that refer to issues of employment.
Non-discrimination:	Fairness in treating people without prejudice.
Penal Law:	Laws or codes which prohibit an act and impose a penalty for the commission of it.



Training Outline



Getting Started: Introduction

10 minutes



- To start this session, have **Transparency 1** on the screen.
- Make sure “Ground Rules” are still clearly visible to participants and that other flipchart papers are not covering them.
- Provide participants with a general overview of the learning objectives for this session using **Transparency 2**.
- Remind participants that you will log questions in the “Parking Lot” that arise during the seminar which may or may not be relevant to the topic being discussed. The Parking Lot concept is a tool an instructor can use to record questions or issues that come up during the course of instruction. For inquiries that are relevant to the topic at hand but that will be discussed later it validates the learner’s inquiry and sets the context that it will be discussed later. For issues that are not relevant, it still validates the learner’s inquiry and also provides an important cue for you as the instructor to make sure to meet with this individual at another time to possibly provide information and referral on that particular topic if it is not addressed in the training.

20 minutes



2.1 Standard Lecture

ILO Conventions and Recommendations

- Using **Transparency 3**, explain what the International Labour Organization (ILO) is. Explain that the ILO carries out its mission mainly by setting standards through the adoption of international labour Conventions and Recommendations.
- Explain that promoting equal employment opportunities has been a key objective of the ILO since before the end of the Second World War. Use **Transparency 4** to review the “Declaration of Philadelphia” adopted by the International Labour Conference in 1944.
- OPTIONAL EXERCISE:** Ask participants to reflect on the “Declaration” and share their thoughts and impressions about what it actually means to them. Ask participants to give concrete examples of how this belief is currently held or where there may be limitations in their countries, and record the answers on flipchart paper.
- Use **Transparency 5** to highlight actions taken by the ILO that have brought us to this point in the history of promoting equal employment opportunities.

30 minutes



Point out to participants that while many of the Conventions referenced apply to persons with disabilities, nevertheless, the Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (No. 111) did not explicitly mention disability as a protected category against discrimination.

- e. End this section by using **Transparencies 6–8** to finish highlighting specific actions taken on the part of the ILO to reinforce the importance of equal employment opportunity for all.

2.2 Standard Lecture

Disability as a Human Rights Issue



20 minutes

- a. Explain to participants that over the last century, we have seen a major evolution in the way individuals with disabilities are perceived, interacted with, treated, and supported. For centuries, most people with disabilities have been excluded from mainstream society, based on the notions that disability was something to be feared or pitied (linked to cultural taboos), or more recently, that disability was a problem of the individual – something that could be ‘corrected’ to a certain extent through medical and rehabilitative treatment, frequently in specialist, segregated centres. The policy focus associated with these ways of understanding disability was on charity in the first case, and on the provision of services catering to their medical and associated rehabilitation requirements – as well as on welfare and social security provisions – in the second case. These approaches are generally referred to as the charity model and the medical model of disability and led to the social exclusion of disabled persons.

In recent years, there has been a growing emphasis on the social and physical environmental factors constraining the participation of disabled persons in the world of work in society more generally. This trend has led to an increasing recognition of the rights of persons with disabilities and their status as citizens. Underlying this is a transformation in understanding of disability. Rather than being seen as a personal problem or tragedy, there is now a recognition that many of the barriers to participation arise from the way in which society is built and organized, together with the way in which people think about disability and the assumptions they make.

As the evolution has taken place in policy terms from the medical model to the social model – more recently called the rights-based model – there has been a more general acceptance of disability. As a result, individuals with disabilities have been afforded more and more opportunity to fill their roles in society as productive citizens. This shift has taken considerable time to filter systematically through to laws, policies, programmes and services shift from the perception of disability as a social welfare issue wherein people with disabilities were marginalized within society.

Using **Transparency 9**, illustrate the differences between the medical and social models, explaining that the medical model is based on “fixing” something that is perceived as being wrong; whereas the social model focuses on dismantling environmental barriers to full participation.

The medical model emphasizes the individual’s impairment, disability and limitations. Based on the idea that there is one norm for everybody, it seeks to rehabilitate the individual in line with what is considered ‘normal’. Services are generally provided based on what is available rather than what the person wants.

The social model seeks to put persons with disabilities at the centre of services and support they need and it emphasizes capacity – what the person can do, versus what they cannot. Furthermore, the social model states that behaviour is influenced by environment and goes as far as to say, for example, that wheelchair-users who live in completely physically accessible environments do not experience impediments or barriers to working or living in their communities. The model encourages independence and seeks to minimize the experience of disability by identifying and maximizing an individual’s capacity. It can be described as trying to rehabilitate society, rather than the individual person with an impairment.

Using **Transparency 10**, illustrate the definition of human rights, underscoring that disability issues are now increasingly viewed as issues of human rights. The basic idea of human rights law, centred on the concept of human dignity, is that all people have equal rights, notably the right to the full enjoyment of the right to work. This reflects the simple, and at the same time crucially important notion, that everyone is a human being. Human rights are rights inherent to all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, disability, or any other status. Everyone is entitled to human rights without discrimination. Corresponding to the rights of individuals, states have the duty to protect, respect and fulfill human rights. International human rights law lays down the obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights, the and fundamental freedoms of individuals or groups. This reappraisal of disability issues as issues of human rights is prompting major shifts in international and national law. It is now widely accepted that the human rights of persons with disabilities must be protected and promoted through general, as well as specially-designed laws, policies and programmes. National governments can make this possible through their legislation.

The human rights Charters and Conventions adopted from the mid-1940s to the late 1960s – such as the United Nations Universal Declaration on Human Rights in 1946, the UN Covenant on Economic, Social and Cultural Rights in 1966 and the UN Covenant on Civil and Political rights in 1966 – do not specifically mention people with disabilities. It is only since the 1970s that the disadvantages faced by disabled persons, their social exclusion, and

the discrimination against them were increasingly perceived to constitute a human rights issue. The shift from a social welfare approach to the one based on human rights is reflected in explicit reference to persons with disabilities in human rights Charters, Conventions and initiatives adopted since the 1980s, and in an increasing number of special – and usually non-binding – instruments adopted by such organizations as the UN and the Council of Europe. These instruments include the Council of Europe Coherent Policy for the Rehabilitation of Persons with Disabilities 1992 and the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities 1993.

On 19 December 2001, the UN General Assembly adopted Resolution 56/168 establishing an “Ad Hoc Committee, open to the participation of all Member States and observers of the United Nations, to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disability, based on the holistic approach in the field of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development.” On the recommendation of the Ad Hoc Committee at its second Meeting in June 2003, a decision was taken to proceed with the development of such a Convention. The Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol was adopted on 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007. On 3 May 2008, the CRPD and its Optional Protocol entered into force. This marked a major milestone in the effort to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms of persons with disabilities, and to promote respect for their inherent dignity.

Similar shifts from a social welfare to a human rights law approach are taking place on a regional and national level, with an increasing number of existing human rights instruments being amended to include the rights of people with disabilities, and new instruments being adopted, both comprehensive and disability-specific.

- b. **OPTIONAL EXERCISE:** Separate participants into small groups based on the decade in which they graduated from secondary school (e.g. 1940s, 1950s, 1960s, etc.). Each group should identify a group reporter and recorder. You will need to have flip chart paper and felt tip markers for each group. Using **Transparency 11**, have each group reflect back on their high school experiences and answer the following questions: What were the fads/fashions? What were the scientific discoveries? Who were the idols? Where did you see people with disabilities? As responses are generated the individual recorder should do so on flip chart paper. At the end of the exercise the individual reporting should share the group’s responses. Take ten minutes at the end to identify common themes, and track the public perceptions and experiences of people with disabilities across the decades.



45 minutes

- c. Explain to participants that many human rights charters and conventions adopted from the mid-1940s to the late 1960s did not specifically mention people with disabilities. It is only since the 1970s that the disadvantages faced by persons with disabilities have been perceived as a human rights issue.
- d. Using **Transparency 12**, highlight positive changes that have taken place to elevate the experience of disability as a human rights issue.
- e. Conclude this section using **Transparency 13** to highlight the UN's most recent Convention which further reinforces disability as a human rights issue.

15 minutes



2.3 Standard Lecture

The Principle of Non-discrimination

- a. Explain to participants that a key element of this human rights based approach is the adoption of non-discrimination laws and policies. Emphasize that people with disabilities are inherently equal human beings and thus entitled to equal treatment and equal opportunities, particularly with respect to employment.

Use **Transparency 14** to illustrate the principle of non-discrimination, which is a cross cutting principle in international human rights law. The principle is present in all major human rights conventions, including the UN CRPD. Discrimination on the basis of disability is defined in Article 2 of the Convention as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.” Article 5 of the Convention elaborates on the principle of non-discrimination, recognizing that, “Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination.” Indeed, employment practices are not considered to be discriminatory when based on the actual and real needs of a job, if they are meant to promote equality by affirmative action.

Legislation prohibiting discrimination is now regarded as an essential element of the response to employment discrimination (**Transparency 15**). The object of non-discrimination legislation is to prohibit discrimination on the ground of disability, as well as other grounds. An increasing number of States prohibit discrimination on the ground of disability, particularly in the field of employment, either through comprehensive laws applying to different groups in the population as a whole, or disability-specific laws. This reflects the increasing acknowledgement that disability is frequently used as a reason to exclude people with disabilities and to deny them equal employment

opportunities, where this is not justified in the given circumstances. The objective of such laws is to combat the exclusion of people with disabilities, and the denial of equal opportunities because of particular characteristics, such as disability. By making disability a protected ground, the law extends protection against discriminatory behaviour and punishes those people who violate the non-discrimination norm.

- b. Use **Transparency 16** to explain to participants the different forms and foci that disability non-discrimination law and policies can take. Ask participants to generate some additional locally-relevant areas where a law or policy can protect people with disabilities from unequal treatment. Have participants write down the examples provided.
- c. Use **Transparency 17** to highlight how non-discrimination against people with disabilities can be one of several grounds on which discrimination is prohibited, such as the grounds of gender, ethnic origin, race or religion. Ask participants to generate some additional locally-relevant areas in which protected status is ensured by law. Record participant responses on flipchart paper.
- d. Also use **Transparency 17** to explain how non-discrimination law can help raise awareness as well as to contain provisions for equal treatment between persons with, and persons without, disabilities. Highlight with the examples provided in the transparency.

2.4 Standard Lecture

The Location of Disability within Legislation



45 minutes

- a. Highlight for participants the existence of several options for how disability non-discrimination can be incorporated into legislation: constitutional law (concepts laid out in the Constitution of any given country that describes States' responsibility to their citizens and the citizens' rights guaranteed by the State); civil law (those related to the private rights of individuals and to legal actions involving these); labour law (the laws or codes that refer to issues of employment); and criminal law (those dealing with the commitment of a crime such as theft) or penal law (those which prohibit an act and impose a penalty for the commission of it). Governments may choose either to incorporate it in one approach or to take a multi-track approach, depending on the scope of the issue to be addressed.
- b. Explain to participants the highest level of legislation is "constitutional law". Emphasize that the placement of non-discrimination says much about the importance of the issue in society. Using **Transparency 18**, outline the types of laws and different forms that provisions can take.

The Brazilian Constitution of 1988 provides one example where the rights of people with disabilities are explicitly mentioned. All the chapters in the Constitution dealing with the rights of citizens and the duty of the Government have

articles that specifically mention people with disabilities. The public service obligations to people with disabilities are spelled out. In addition, the Constitution prohibits any kind of discrimination concerning hiring criteria or wage differences as far as people with disabilities are concerned. Furthermore, the publication of the new federal Constitution in 1988 meant that States and cities had to update their legislation to include articles about the rights of people with disabilities.

Continue by helping participants understand that a national constitution is commonly the highest law of the country and binding on all State authorities. Laws and policies should therefore be in conformity with the constitution. Use **Transparency 19** to highlight some countries that have included disability in their constitutional provisions. Reinforce for participants that constitutional provisions send out an important message regarding the status of people with disabilities within the national legal order and seek to guarantee that other laws as well as policies conform to the constitution. Before referencing specific country examples, remind participants that the enforceability and effect of constitutional rights depends on the wording used and the legal culture and system in a country.

Explain to participants that without specific reference to disability in legislation, the rights of people with disabilities are not guaranteed. Describe for participants that there are three ways to distinguish constitutional provisions. Using **Transparency 20** (and referencing additional examples on page 10 of the Primer), explain that the first requires the State to address the needs of and/or to take special measures to promote the societal integration of people with disabilities.

Using **Transparency 21** (and additional examples on page 11 of the Primer), explain that the second way is to prohibit discrimination on the grounds of disability.

Using **Transparency 22** (and additional examples on page 12 of the Primer), explain that the third way is to create oversight bodies for the enforcement of constitutional rights, like Ombudsman Institutes and/or Human Rights Commissions.

- a. Explain to participants that a second approach for incorporating disability non-discrimination provisions is to use civil and labour law. Laws can take the form of non-discrimination laws or laws that confer employment rights, such as quota laws. Using **Transparency 23**, highlight possible options for the scope of the law.
- b. Summarize the final approach of criminal or penal law. Explain that this approach involves fines and imprisonment in the proven case that discrimination actually occurred. Stress that this approach is not particularly effective in conferring rights to employees with disabilities since they have to prove that employers intended to discriminate. Mention that such provisions can send a strong dissuasive message.

Use **Transparency 24** and highlight the French Penal Code, Article 224, explaining that each national system has its own approach to criminalization of social issues. Further, highlight countries with penal law provisions prohibiting discrimination on the grounds of disability. These include: Finland; France; Luxembourg and Spain. In addition, those countries (except Luxembourg) have also introduced anti-discrimination provision in other sections of their legislation.

In closing, reference that some states that have adopted civil and labour law provisions rather than criminal law statutes concerning persons with disabilities, nevertheless include criminal or administrative penalties within these laws.

- c. **OPTIONAL EXERCISE:** Begin this exercise by separating participants into three small groups. Assign each group a category of legislation (constitutional law; civil and labour law; and criminal or penal law). Explain to each group that they have 30 minutes to review the type of law they have been assigned and identify the positive and negative attributes for that specific approach to non-discrimination legislation. Each group should identify a facilitator who will keep them moving through the exercise as well as a recorder to document the positives and negatives that they identify. Finally, each group should identify a reporter who will then report their findings back to the larger group. At the conclusion of the report, conclude by emphasizing to participants that the “best” approach to creating non-discrimination is dictated by the desired outcome.

NOTE: Possible pointers for participant consideration are included on pages 13-14 of the Primer.



60 minutes

2.5 Standard Lecture

The Concept of Disability



20 minutes

- a. Explain to participants that one of the biggest challenges to crafting effective disability non-discrimination legislation is defining disability. Explain to participants that prior to defining disability, policy makers must first understand the conditions that they are trying to eliminate or the goals they wish to promote. Use **Transparency 25** to help participants understand three possible goals which might alter how disability is defined.
- b. **OPTIONAL EXERCISE:** Begin this exercise by asking participants to think about a job they have had in the past that they disliked and from which they were either dismissed (fired) or which they quit. Have participants turn to their neighbor and take a minute each to explain to their partner what it was about the job that made them quit or get fired. Using a flipchart and markers, have participants share some of their reasons for quitting or being fired and record them. Next, have individuals identify a person (with or without a disability) that they have known or worked with in the



30 minutes

past that was difficult – who regardless of what they did was just always failing, complaining, or not being successful. Have participants turn to their neighbor and take a minute each to describe to their partner what it was about the person that made him or her difficult, fail or be unsuccessful. Using a flipchart and markers, have participants share some of their reasons for quitting or being fired and record them. Post the two lists next to each other and ask participants to make observations about the lists. Immediately they should recognize that when they are talking about themselves they ascribe the problem to the environment but when they speak about others, the problem is always inherent to the person. This draws an exceptional contrast for launching into the next section on defining disability.

- c. Referencing the earlier discussion (or optional exercise if you opt for that) regarding the medical model and social model, explain again how two opposing views of disability can be distinguished. Situating the experience of disability within the person (medical model) can be particularly helpful in such fields as rehabilitation medicine and social security law, while situating the experience of disability within the culture or environment can be instrumental in tackling the root causes of exclusion, disadvantage, and discrimination. The social model recognizes that the answer to the question of whether a person can be classified as having a disability is intrinsically related to such factors as culture, time and environment.

45 minutes



- d. **OPTIONAL EXERCISE:** Begin this exercise by again separating participants into three small groups. Using **Transparency 25**, assign each group one of the three goals highlighted. Ask each group to take some time to discuss the goals they have been assigned and to decide whether, given the goal, they are best positioned to use a medical model of disability or a social model. Give each group 20 minutes to brainstorm and make their case. Have each group assign a facilitator to keep them on track and a recorder to scribe their answers. Each group should also assign a reporter to summarize the group's response to the larger group.

20 minutes



2.6 Standard Lecture

Defining Disability in Legislation

- a. Explain to participants that the definition of disability determines who will be recognized as a person with a disability, and hence protected by the relevant legislation. This is very much dependent on the goal being pursued by the particular law or policy. Stress that there is no right or single definition of disability that can be universally used across labour or social legislation. Use **Transparency 26** to review the two different approaches to defining disability frequently found in national legislation. First, wording aimed at a narrow, identifiable beneficiary group. This should be used if the aim is to craft laws to provide financial or material support to disabled individuals, or employers of disabled people. A limited, impairment-related definition

of disability (individual model) thereby ensures that support is targeted at those who are most in need. Second, broadly inclusive wording aimed at protection from discrimination on grounds of disability. This broader definition of the protected group (social model) should be used in anti-discrimination laws because many people, including those with minor disabilities, people associated with people with disabilities and those who are wrongly assumed to have a disability can be affected by disability-based discrimination.

- b. Reference page 17 of the Primer to highlight for participants examples from Australia, China, Germany, India, South Africa, and the United Kingdom.
- c. Use **Transparency 27** to explain to participants about the different terms used to describe disability. Various words are used to describe people with disabilities. Terms such as 'invalids', 'handicapped,' or 'retarded' are considered by many to be offensive and assume that a person's identity is based primarily on that person's impairment. Legislation should include terms which are consistent with respect for the dignity of human beings – such as 'persons with disabilities', or 'disabled persons'.
- d. **OPTIONAL EXERCISE:** Using **Transparency 28** have participants work in pairs to identify person-first ways of expressing terms that have been provided. Have participants write their responses on paper. Afford participants approximately 10 minutes to work and then have them share their responses with one another.



30 minutes

2.7 Standard Lecture

The Principle of Equality



20 minutes

- a. Using **Transparencies 29–32**, explain to participants about the principle of equality and the various ways of defining it in law. The principle of equality is closely related to the notion of human dignity. It is grounded in the idea that all human beings, regardless of physical, mental and other differences, are of equal value and importance. Each person is entitled to and should be afforded equal concern and respect, or, as stated in Article 1 of the Universal Declaration of Human Rights (1948): 'All human beings are born free and equal in dignity and rights. ...'. The ILO Declaration of Philadelphia (1944) affirms that all human beings, irrespective of race, creed, or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom, dignity, of economic security, and equal opportunity. This means that all women and men should have an equal chance and be provided with equal opportunities to participate in society, including the labour market. Should differences therefore be ignored? No, on the contrary, it is widely believed that people who differ from others in ways which cause them disadvantage should be treated differently to compensate for the disadvantages they face arising from those differences.

The principle of equality, as well as its corollary, namely the prohibition of discrimination, can be defined in various ways in law.

Formal equality

In a formal approach to equality, persons who are situated alike should be treated in the same way (**Transparency 31**). Such an approach frequently ignores individual and contextual differences and disadvantages, as if these were irrelevant. The denial of identical treatment is prohibited, but there is no requirement to make accommodations or adjustments. This approach, therefore, falls short of meeting the support needs of some disabled people.

Equality of opportunity

Another way in which equality may be conceptualized is through equality of opportunity (**Transparency 32**). This concept provides for equal chances, but not necessarily equal results. In this way of looking at equality, the importance of individual and group differences is acknowledged and account is taken of external barriers experienced by disabled people, which may inhibit social participation. Both stereotypes and structural barriers are seen as obstacles to full participation. In this approach, disability is ignored, if stereotypes are the basis for action, and taken into account if changes to the social or built environment are necessary to promote access and inclusion.

Equality of results

Equality of results is concerned with securing the same outcomes for all (**Transparency 33**). When equality is viewed in this way, individual and group differences are acknowledged. For example, account is taken of any additional costs a disabled worker has, in examining the question of whether they receive equal pay. This concept of equality has several weaknesses. It does not clearly indicate where responsibility lies for meeting the needs of disabled persons so as to guarantee true equality of results – with the State, with the private sector or with the individual. In addition, it is not clear in this approach whether an individual's merits are understood to justify unequal results.

- b. Review **Transparency 29** and ask participants to share what the principle of equality means to them in light of the two statements provided. Basically this means that all men and women should have an equal chance to participate in society, including the labour market.
- c. Pose this question to participants: Should differences therefore be ignored? No, on the contrary, it is widely believed that people who differ from others in ways which cause them disadvantages should be treated differently, in order to compensate for the disadvantages that arise from those differences.
- d. Stress that the concept of equality of opportunity is now the most frequently applied in national legislation.

2.8 Standard Lecture

Social Policy and Affirmative Action



20 minutes

- a. Explain to participants that the promotion of equal employment opportunities for people with disabilities not only entails the prohibition of discrimination on grounds of disability, but it also requires States to take affirmative action to ensure that people with disabilities have access to employment opportunities in the labour market. This proactive approach includes requirements that the workplace environment be adapted to make it accessible to all people with disabilities who are able to work, with appropriate technical aids or supports, if necessary. It is not sufficient to simply pass laws or regulations that prohibit discrimination.
- b. Review for participants the distinction that exists between social policy measures, which are always permitted, and affirmative action measures, which deviate from the equal treatment norm and therefore may need justification. For example, if the law merely states that transportation companies cannot discriminate against people with disabilities, it may not be specific enough to ensure that people who use wheelchairs can use the bus. Instead, companies must be required to buy a sufficient number of kneeling buses or para-transit buses and run them in sufficient numbers on all routes, in order to ensure access for wheelchair users.
- c. Using **Transparency 34**, highlight some examples of social policies, explaining that respect for human dignity requires the formulation of such social policies. Have participants generate additional examples of social policy.
- d. Using **Transparency 35**, explain that affirmative action (or positive action) measures actively seek to promote the principle of equal opportunity for members of disadvantaged and under-represented groups, by granting these members some form of preferential treatment. Stress that affirmative action is not discrimination. Affirmative action measures seek to promote equality of opportunity and are aimed at overcoming structural disadvantage experienced by a group.

2.9 Standard Lecture

Disability and Gender



15 minutes

- a. Explain to participants that there is a growing awareness that women are more likely than men to be confronted with disadvantage, exclusion and discrimination, irrespective of abilities. This holds true for individuals with disabilities as well.
- b. Use **Transparency 36** to illustrate the gender bias that exists and is compounded by the experience of disability.

- c. Close by stressing that in preparing legislation, national law and policy makers should be as sensitive as possible to the gender dimension of disability, disability laws and policies, so as to ensure that both women and men with disabilities can benefit equally.



Evaluating Impact

Prior to closing the session, ask participants to take a moment to complete the Training Programme Survey provided in Appendix A and Module 2 Learning Objectives Evaluation provided in Appendix B. Upon completion, ask participants to turn them in. Tabulate the responses to gauge overall instructor effectiveness and the extent to which specific learning objectives were attained. Take time to specifically note where the lecture and learning experience could have been enriched to enhance learning.



Online Resources

<http://www.ilo.org>

The official web site for the International Labour Organization provides a comprehensive repository and directory of ILO-related initiatives, products, and international news items. In particular, the 'About Us' section has links to the history, membership, and structure of the ILO, as well as a link to the objectives and constitution of the organization, including an online version of the "Declaration of Philadelphia" of May 1944. Furthermore, the web site has pages with Labour statistics, a link to the International Institute for Labour Studies, and an entire section on employment, to name a few.

<http://www.hrweb.org/resource.html>

This web site has an entire section focused on links to human rights organizations all over the world. This web site is run by the Human Rights Web, and also has links to the UN and government human rights sites. In addition, there are also regional and national human rights organizations and resources broken down by world region.

<http://www.dredf.org/international/lawindex.shtml>

Part of the Disability Rights Education & Defense Fund web site, this page is a directory of disability non-discrimination laws from countries all over the world. The site contains links to an online version of the legislation, and the directory includes countries such as Columbia, Fiji, Madagascar, and Thailand.

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALPROTECTION/EXTDISABILITY/0,,menuPK:282704~pagePK:149018~piPK:149093~theSitePK:282699,00.html>

This web page is operated by the World Bank and focuses on disability with important links and resources concerning publications and reports available online. The web page has disability issues broken down by world region, as well as resources on specific disability topics, such as gender or poverty. Some of these publications cover the topics of managing disability in the workplace.

<http://www.ilo.org/public/english/region/asro/bangkok/ability/index.htm>

This web site represents the International Labour Organization (ILO)'s Disability Programme in Asia and the Pacific Region highlighting project activities; employers and workers; standards and rights; national laws and information as well as publications.

References and Readings



1. ILO: Achieving equal employment opportunities for people with disabilities through legislation: Guidelines (2007) Geneva.

These guidelines reflect the reappraisal of disability as a human rights issue. Intended for policy-makers and drafters of legislation, they have been developed with a view to assisting in improving the effectiveness of national laws concerning training and employment of disabled persons, as part of an ILO Project 'The Employment of People with Disabilities: The impact of Legislation'. This project aims to enhance the capacity of governments of selected countries to implement effective legislation on the employment of people with disabilities - either in the form of laws, or revisions to existing laws, or through the development of regulations or policies to implement laws. The project also provides technical assistance to selected national governments in implementing necessary improvements to their laws. These drafting guidelines are a valuable tool to support this technical advisory role.

Available online:

http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_091340/lang-en/index.htm

2. Gubbels, A.; Kemppainen, E. (2002). *A review of legislation relevant to accessibility in Europe*. Europe Accessibility Group.

The report includes a discussion concerning European and national legislation in some European countries with respect to e-accessibility.

Available Online:

http://www.inst-informatica.pt/servicos/informacao-e-documentacao/biblioteca-digital/sociedade-da-informacao-1/2005-e-anos-anteriores/eacc_rev_leg.pdf/view

3. **Herr, Stanley, S.; Gostin, Lawrence, O.; Koh, Harold, Hongju, (eds); *The Human Rights of Persons with Intellectual Disabilities*; Oxford University Press; New York and Oxford.**

The issue of the rights of persons with intellectual disabilities has long been neglected in the field of human rights. This collection of contributions on the rights of persons with intellectual disabilities is dedicated to the memory of Stanley S. Herr, a noted advocate in this field. The book is based on the principles of the "Yale Declaration", which was drafted and signed at an international symposium on the Rights of People with Mental Retardation held at Yale Law School in March, 1995. This is a very large volume that provides a concrete basis for work in furthering a rights-based approach for people with intellectual disabilities.

4. **Lunt, N.; Thornton, P. (1994). Disability and employment: Towards an understanding of discourse and policy. *Disability & Society*, 9(2), 223-238.**

This article explores the nature of disability employment policy, drawing on evidence from fifteen countries. In line with earlier sociological approaches to disability, it describes two ways of framing policy in the subject area. These two paradigms are developed and used to critically evaluate employment policy under the headings: legislative measures open employment-financial employment support services and sheltered/supported provision. The dilemmas that may arise during implementation of policy are discussed and the consequences for the construction of an emancipatory employment policy. Finally, the article suggests some themes or dimensions that a coherent disability policy should have.

Available Online:

[http://taylorandfrancis.metapress.com/\(3dkun1z5cbtwvg45jmeuwxri\)/app/home/contribution.asp?referrer=parent&backto=issue,6,16;journal,73,100;linkingpublicationresults,1:100641,1](http://taylorandfrancis.metapress.com/(3dkun1z5cbtwvg45jmeuwxri)/app/home/contribution.asp?referrer=parent&backto=issue,6,16;journal,73,100;linkingpublicationresults,1:100641,1)

5. **Mabbett, Deborah. (2005) "The Development of Rights-based Social Policy in the European Union: The Example of Disability Rights". *JCMS* Vol. 43 No. 1. 97-120.**

This publication examines the development of non-discrimination rights in the EU, with particular reference to disability. It outlines the origins of Article 13 TEC, which extended the competence of the Community institutions to combat discrimination, and traces the history of other initiatives in the disability policy area.

6. **O'Reilly, Arthur (First published as working paper 2003 – Revised edition 2007). *The Right to Decent Work of Persons with Disabilities*. International Labour Organization, Geneva.**

The ILO commissioned this paper to contribute to the deliberations that were taking place in preparation for the development of a United Nations Convention on the Rights of Persons with Disabilities. Specifically, the paper was meant to help the drafters of the provisions concerning employment and work in the Convention. It examined the development over time of the "right to work" of disabled persons and the way in which this issue has been dealt with in international instruments and national legislation up to that point. This paper is the revised edition 2007.

***Available Online:

<http://www.ilo.org/public/english/employment/skills/disability/download/right.pdf>

7. Parker, Sarah. (2006). International justice: The United Nations, Human Rights and Disability. *Journal of Comparative Social Welfare*, 22(1), 63-78.

This publication explores the United Nations (UN) human rights system through the lens of disability. An analysis of two human rights instruments, the International Covenant on Economic, Social and Cultural Rights, and the Standard Rules on the Equalization of Opportunities for Persons with a Disability, is undertaken with reference to three key areas that influence the participation of persons with a disability: non-discrimination, social security, and employment.

Available Online:

[http://taylorandfrancis.metapress.com/\(tj3ukh55lh2xgm55vcnwle55\)/app/home/contribution.asp?referrer=parent&backto=issue,6,8;journal,1,1;linkingpublicationresults,1:119819,1](http://taylorandfrancis.metapress.com/(tj3ukh55lh2xgm55vcnwle55)/app/home/contribution.asp?referrer=parent&backto=issue,6,8;journal,1,1;linkingpublicationresults,1:119819,1)

8. Quinn, G; Degener, Theresia; Bruce, Anna; *Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability*; Office of the High Commissioner for Human Rights; United Nations; New York; 2002.

Notes

Notes



Achieving Equal Employment Opportunities for People with Disabilities through Legislation
An Education and Training Guide

Non-Discrimination Legislation

This module stresses the importance of disability non-discrimination legislation and provides a concise overview of the potential scope that disability legislation can take. This module also highlights types of discrimination that can occur and establishes a context for the importance of reasonable accommodation.



Time Frame

6 – 9 hours
(based on extent
of optional
exercises selected
to reinforce
learning)

Learning Objectives



At the completion of this seminar, course participants will be able to:

✓	Outline the importance of disability non-discrimination.
✓	Understand the potential scope of disability law.
✓	Explain the different forms that discrimination can take.
✓	Define reasonable accommodation.
✓	Provide examples of reasonable accommodation.
✓	Describe the concept of burden of proof.



Key Concepts

Legislation prohibiting discrimination is now regarded as an essential element of the response to employment discrimination. This is based on the supposition that disability is frequently used as a ground to exclude people with disabilities from the workplace and their communities. Effective non-discrimination law combats this exclusionary practice and provides certain rights to a protected class of people. Discrimination can take many forms including both direct and indirect discrimination as well as harassment, instruction and incitement. Some would state that discrimination potentially exists when we do not seek to accommodate and embrace diversity in the workplace. Reasonable accommodation is not a new concept. Why do people use a chair to reach dishes on a high shelf? Why do people use electric pencil sharpeners? Why do people use ergonomically designed office chairs and work stations? Simply put, these adaptations make a task easier and may help save time. These are examples of simple accommodations that people may make to be more productive and ease their workload. Reasonable accommodation is defined as modification or adaptation of a job, employment practice, or work environment, that makes it possible for a qualified person with a disability to apply for a job, perform an essential function of the job, or access a benefit of employment. The concept of reasonable accommodation is in line with the functional supports or social construct model we have been discussing. It recognizes that if certain conditions exist, the experience of disability can be minimized. There are times, though, when even with the existence of accommodations, discrimination can still occur. In the case of discrimination, the burden of proof is typically placed on the individual alleging the discrimination, although many countries have shifted the burden of proof away from the claimant and onto the entity or person who allegedly discriminated.

Glossary of Terms



Affirmative Action: An action taken by a company or institution to correct an imbalance in the composition of its workforce in order to be more representative of gender and marginalized groups. Complaints filed under affirmative action laws are typically on behalf of a class of people who allege discrimination.

Qualified Worker: An employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the job in question.

Reasonable Accommodation: This legal concept was embodied initially in the Americans with Disabilities Act but is now used in other countries' disability laws, and in the UN Convention on the Rights of Persons with Disabilities. It may include, but is not limited to: (1) making existing facilities used by the employees readily accessible to and usable by persons with a disability – for example, employee lavatories; (2) job restructuring, modifying work schedules, or reassignment to a vacant position; (3) acquiring or modifying equipment or assistive devices, adjusting or modifying tests, training materials or policies; and (4) providing sign language interpreters or readers for individuals who are blind or have low vision.

Undue Hardship (or Burden): This is the counter to Reasonable Accommodation and is defined as an action involving significant difficulty or expense when considered in the light of factors such as the size of the company, its financial resources and the nature and structure of the operation. An employer is not required to lower production standards in order to make an accommodation, nor is she or he obligated to provide personal use items such as hearing aids or glasses.



Training Outline



Getting Started: Introduction

10 minutes



- a. To start this session, have **Transparency 37** on the screen.
- b. Make sure “Ground Rules” are still clearly visible to participants and that other flipchart papers are not covering them.
- c. Provide participants with a general overview of the learning objectives for this session using **Transparencies 38**.
- d. Remind participants that you will log into the Parking Lot, questions that arise during the seminar that may or may not be relevant to the topic being discussed (see pp. 13 and 16).

15 minutes



3.1 Standard Lecture Disability in Legislation

- a. Begin this section by asking participants to identify some examples of grounds for discrimination. Record responses on flipchart paper. Stress to participants that legislation prohibiting discrimination is now regarded as an essential element of the response to employment discrimination. The object of non-discrimination legislation is to prohibit discrimination on the grounds of disability, as well as other grounds as identified by the group.
- b. Using **Transparency 39** briefly outline some of the concepts of non-discrimination legislation such as non-discrimination, equality of opportunity, equal treatment, and affirmative actions which have been discussed in Module 2; and reasonable accommodation and disproportionate burden which will be discussed later in this module.

Non-discrimination: *ILO Convention No. 111 concerning Discrimination (Employment and Occupation)* 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 (Article 1(a)); or such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organizations, where such exist, and with other appropriate bodies (Article 1(b)). However, any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination (Article 2).

The UN Convention on the Rights of Persons with Disabilities defines discrimination on the basis of disability as any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation (Article 2).

Equality of opportunity and treatment in employment: Two aspects of equality in employment are important: equality of opportunity and equal treatment. Equal opportunity means having an equal chance to apply for a particular job, to be employed, to attend educational or training courses, to be eligible to attain certain qualifications, to be considered as a worker, or to be considered for a promotion in all occupations or positions; including persons with disabilities. The importance of individual and group differences is acknowledged and account is taken of external barriers experienced by disabled people, which may inhibit social participation. Equal treatment refers to entitlements in pay, working conditions, security of employment, and so on. The promotion of equality requires dynamic continuous efforts and the implementation of concrete measures, and is a step beyond the prohibition or elimination of discrimination. ILO Convention No. 111 concerning Discrimination (Employment and Occupation) 1958 and Recommendation No. 111 concerning Discrimination (Employment and Occupation) 1958 set out relevant international standards.

Reasonable accommodation: Disability can sometimes affect an individual's ability to carry out a job in the usual or accustomed way. The obligation to make a reasonable or effective accommodation, or the right to be accommodated, is often found in modern disability non-discrimination law. Disability non-discrimination legislation increasingly requires employers and others to take account of an individual's disability and to make efforts to cater for the needs of a disabled worker or job applicant, and to overcome the barriers erected by the physical and social environment. This obligation is known as the requirement to make a reasonable accommodation. The failure to provide a reasonable accommodation to workers and job applicants, who face obstacles in the labour market, is not merely a bad employment practice, but is increasingly perceived as an unacceptable form of employment discrimination. The law should define closely what is meant by reasonable accommodation, so that misinterpretation is avoided and employers clearly understand what they must do. Reasonable accommodation is defined in Article 1 of the UN Convention on Rights of Persons with Disabilities as meaning necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. The provision of a reasonable accommodation is an individualized measure that does not need to be temporary in nature – in fact, it could be provided

for an individual for the duration of his or her employment. It should be distinguished from an affirmative action measure aimed at the favourable treatment of groups. The duty to provide a reasonable accommodation should not be confused with the duty to comply with general accessibility and occupational health and safety standards.

Disproportionate burden: the 'defence' or justification for not accommodating a disabled person needs to be drafted carefully. Otherwise, unscrupulous employers would have recourse to this in order to avoid any obligation. Much litigation might ensue. The fact that the workplace or work schedule would be inconvenienced clearly does not amount to a 'disproportionate burden'. In practice, the question as to what constitutes a disproportionate burden very much depends on the context of the case concerned, and is not merely dependent on the financial costs of an accommodation or financial compensation schemes. It depends on such factors as its practical implications, effects on the overall work process, number of disabled workers already employed and length of the envisaged employment contract.

Affirmative action measures: sometimes called positive action – seek to actively promote the principle of equal opportunity for members of disadvantaged and under-represented groups by granting these members some form of preferential treatment. Positive action is traditionally perceived as a response to structural or institutional discrimination experienced, and as a justified exception to the principle of equal treatment. In other words, affirmative action is not discrimination. Affirmative action measures seek to promote equality of opportunity and are aimed at overcoming structural disadvantage experienced by groups. Such measures are not intended to cater for the needs of single individuals and are thus distinct from Reasonable Accommodation. Affirmative action measures are temporary in nature, and are intended to last until there has been compensation, or for catching up from a structurally disadvantaged position.

45 minutes



3.2 Standard Lecture

The Scope of Disability Law

- a. Explain to participants that a growing number of States prohibit discrimination on the grounds of disability, particularly in the field of employment, either through comprehensive laws applying to different groups in the population as a whole, or through disability-specific laws. This shift actually reflects the increasing acknowledgement that disability is frequently used as a reason to exclude people with disabilities and to deny them equal employment opportunities, although the particular circumstances do not warrant such treatment. Establishing disability as a protected status under law extends protection against discriminatory behaviour and punishes those people who violate the non-discrimination norm.
- b. Explain to participants that States can elect to include disability non-

discrimination in one of two ways. First, by developing comprehensive non-discrimination legislation that applies to the population as a whole with mention of disability and second, by adopting legislation that only applies to people with disabilities. Use **Transparencies 40-41** to highlight States with comprehensive non-discrimination legislation applying to the population as a whole, with explicit mention of disability. Follow that up with examples in **Transparency 42** of States with non-discrimination legislation applying only to people with disabilities.

Examples of States with comprehensive non-discrimination legislation applying to the population as a whole, with explicit mention of disability:

Canada – Human Rights Act, 1985, which prohibits discrimination on the grounds of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted to; and Employment Equity Act, 1986 which applies to women, aboriginal peoples, persons with disabilities and members of visible minorities.

Ireland – Employment Equality Act, 1998 which outlaws discrimination on the basis of gender, marital status, family status, sexual orientation, religious belief, age, disability, race and membership of the traveler community.

Namibia – Affirmative Action Act, 1998 applies to racially disadvantaged persons, women irrespective of race and persons with disabilities (physical or mental limitations, irrespective of race or gender).

Examples of States with non-discrimination legislation applying only to people with disabilities include:

Costa Rica (Law 7600 on Equal Opportunities for People with Disabilities, 1996);

Ghana (The Disabled Persons Act, 1993);

Malta (Equal Opportunities (Persons with Disability) Act 2000);

United States of America (Rehabilitation Act, 1973; Americans with Disabilities Act, 1990).

- c. **OPTIONAL EXERCISE:** The purpose of this exercise is to provide participants an opportunity to consider the positives and negatives of comprehensive and targeted non-discrimination legislation. Split participants into two groups. Assign one group as the advocates for crafting full non-discrimination legislation that applies to the general population and the other half as advocates for targeted non-discrimination legislation. Each group will have 30 minutes to make their joint argument for why its own approach is better. Each group will then select two individuals from its team to represent their group in a debate. The instructor will serve as the moderator and flip a coin to determine which group goes first to make its case. The presenters have ten minutes to present their argument. They will then be followed by the other group who will have the same conditions. Following both presentations the class will vote as to which made the stronger case.
- d. Stress to participants that when legislation seeks to define precisely the category of people with disabilities covered by the law, caution should be exercised to ensure that it does not, intentionally or unintentionally, restrict the group of protected individuals. This can occur when legal protection is not provided to individuals who experience disability discrimination but who



60 minutes

fail to meet specific criteria within the legal definition of disability. Illustrate with the example of the Netherlands in which they did not define the term disability in their law, but instead offered protection to both people with and without disabilities against unjustified adverse treatment on the grounds of a disability. In this case, countries can focus on whether a person has been discriminated against on the grounds of a real or perceived impairment.

Ask participants the following questions to clarify when certain distinctions should be made: When is a very specific definition of disability required? When is a broader, more inclusive definition preferable?

- e. Recap for participants that so far we have discussed reasons for disability non-discrimination, approaches for incorporating it into law, definition of disability as it applies to protected classes of people, and in this moment, who the law is actually intended to cover. Explain to participants that in most disability non-discrimination legislation not all employers are covered. Who is covered by the law is a similar process to identifying whom the protected class of individuals should be - it is dictated by the labour market and needs that have been identified. Use [Transparencies 43-44](#) to highlight how both the United Kingdom and the United States of America identified which employers would be covered by their respective legislation.

In the **United Kingdom**, for example, the Disability Discrimination Act of 1995 originally applied to employers with a workforce of 20 or more employees. A government review revealed that 95 per cent of employers and 4.5 million workers, including a quarter of all disabled employees were excluded from coverage. As a result, this threshold was reduced to 15 or more employees in 1998. The exemption for small employers was completely removed in October 2004, in line with the European Commission Directive on Equal Treatment in Employment and Occupation (2000/78/EC).

In the **United States**, under the Americans with Disabilities Act (as well as other federal non-discrimination legislation), firms with less than 15 employees are excluded. The reason for this exemption is that small employers are not expected to engage in interstate trade relations, thus depriving the federal legislature from the competence to regulate their employment policies. Under – often similarly worded – State disability non-discrimination acts, smaller employers are covered.

1 hour



3.3 Standard Lecture

Different Forms of Discrimination

- a. Explain to participants that the prohibition against discrimination does not make all forms of differentiation among workers and job applicants illegal. There are certain skills or competencies which are necessary, and employers have a right to require that applicants and employees possess those skills. These are often in view of the nature of the job or the context in which the job is to be carried out. Use [Transparency 45](#) to illustrate with the taxi

company example. Answers to the first question might include individuals who are blind, persons with seizure disorders, or individual who because of other medical conditions have had their licenses revoked. Ask participants to identify other careers that may have justifiable occupational requirements.

Example: A taxi company requiring job applicants to have a driving license, for example, excludes blind people as well as people who, due to a medical condition, no longer have a driving license. Such a license requirement on the part of the taxi company is legitimate and proportionate and therefore constitutes a genuine or justifiable occupational requirement.

- b. Ask participants, “When does discriminatory behaviour arise? Stress to participants that discriminatory behaviour arises when an employer treats an applicant or worker adversely on the grounds that they have an impairment, where the impairment has no, or hardly any, effect on job performance and should thus be regarded as irrelevant. Transition to **Transparency 46** by explaining to participants that you will be reviewing, in depth, various forms of discrimination – highlighting those listed. This includes direct, indirect, harassment, instruction and incitement.
- c. Using **Transparency 47**, explain that direct discrimination occurs when a person is treated less favorably than another similarly situated person because of a particular characteristic protected by non-discrimination law, such as race or sex, without an objective justification. Illustrate with the example provided on the transparency.

Example: An employer advertises for a job and states in the advertisement: only people with a driving license should apply. This requirement does not expressly exclude disabled people. However, people with certain kinds of disabilities cannot acquire a driving license and will be unable to apply for the job. If the requirement of having a driving license is unnecessary for the job, in that the job rarely requires the worker to drive, and taxis can be hired or public transport used for the few occasions when vehicular travel is required, the requirement will amount to indirect discrimination.

- d. Using **Transparency 48**, explain that indirect discrimination occurs when an apparently neutral differentiation criterion is applied with the effect that a group protected by non-discrimination law is disadvantaged compared to others, and no objective justification can be shown to exist for the applied criterion. Illustrate with the example provided on the transparency.

Example: An employer advertises for a job and states in the advertisement that “only people with a driver’s licenses should apply”. While at face value, the advertisement does not expressly exclude people with disabilities - it does preclude those without licenses from applying and, if not a justified occupational requirement, indirectly discriminates.

- e. Using **Transparency 49**, explain that harassment occurs when an unwanted

conduct related to a protected ground takes place with the purpose or effect of violating the dignity of a person and/or of creating an intimidating, hostile, degrading, humiliating, or offensive environment. Illustrate with the example provided on the transparency.

Example: A co-worker of an employee with quadriplegia tells jokes about “wheelchair users”, degrading and humiliating the person with a disability.

- f. Using **Transparency 50**, explain that instruction and incitement to discriminate occur when a person or institution demands or encourages others to treat a person less favorably than another similarly-situated person because of a particular characteristic protected by non-discrimination law. Illustrate with the example provided on the transparency.

Example: A co-worker encourages or stimulates others in the workplace toward hatred or violence against another employee with a disability through mean, distasteful jokes or pranks.

60 minutes



- g. **OPTIONAL EXERCISE:** The purpose of this exercise is to provide participants an opportunity to identify forms of discrimination. Distribute the case studies provided in Appendix C: Applied Learning. Break participants down into groups of 3 to 5 participants. Explain to them that they are to work as a group and come to agreement as to the form of discrimination taking place in each of the case studies. Each group should be prepared to report its findings and discuss their rationale for the form it selected. Provide the groups 30 minutes to process the exercise and 30 minutes for debriefing as a larger group. The answers are as follows:

Case Study 1: Harassment

Case Study 2: Indirect Discrimination

Case Study 3: Direct Discrimination

Case Study 4: Instruction and incitement

- h. Conclude this subsection by stressing to participants that laws prohibiting discrimination on the grounds of disability should cover all four forms of discrimination (i.e. harassment; indirect and direct discrimination, and instruction and incitement) and that the exception of genuine occupational requirements should be defined narrowly and applied strictly.

3.4 Standard Lecture

Reasonable Accommodation

- a. Begin this subsection by asking participants to share from their own experiences objects, supports, technologies, or people that make life or their jobs easier for them. Record their responses on flipchart paper.

Explain to participants that disability can sometimes affect an individual's ability to carry out a job in the usual or accustomed way. The obligation



1 hour, 30 minutes

to make a reasonable or effective accommodation, or the right to be accommodated, is often found in modern disability non-discrimination law. Disability non-discrimination legislation increasingly requires employers and others to take account of an individual's disability and to make efforts to cater for the needs of a disabled worker or job applicant, and to overcome the barriers erected by the physical and social environment. This obligation is known as the requirement to make a reasonable accommodation, otherwise referred to as a reasonable adjustment or an effective accommodation/adjustment. The failure to provide a reasonable accommodation to workers and job applicants who face obstacles in the labour market, is not merely a bad employment practice, but is increasingly perceived as an unacceptable form of employment discrimination. The law should define closely what is meant by reasonable accommodation, so that misinterpretation is avoided and employers clearly understand what they must do.

- b. **OPTIONAL EXERCISE:** Explain to participants that the way reasonable accommodation has been described has been to reference people with disabilities, but “accommodations” are allowed for employees without disabilities as well. Have participants work in small groups of 3 to 5 participants, designate a reporter and recorder. Referencing [Transparency 51](#), ask groups to prepare to answer the following questions, discuss and be prepared to present to the rest of the group. Allow 30 minutes for small group activity and 30 minutes for debriefing as a large group.
- “Describe a time when accommodations were effectively implemented either at your workplace or at a place known to you.”*
- What were the “reasonable accommodations”?
 - How were they implemented?
 - Who was involved in the process?
 - What about accommodations for employees without disabilities – what would they be and are they provided in your place of employment?
 - What about an occasion when they weren’t effectively implemented... what could have been done better?
- c. Using [Transparency 52](#), describe that reasonable accommodation is defined as modification or adaptation of a job, employment practice, or work environment that makes it possible for a qualified person with a disability to apply for a job, perform an essential function of the job, or access a benefit of employment. Use [Transparency 53](#) to highlight some examples that may parallel the responses participants gave to the first question. Reasonable accommodation may include an adjusted office chair (for a person with a back impairment), adapted working hours (e.g. for a person with a medical condition requiring frequent rest-breaks), a computer keyboard with a Braille reader (for a blind person, and the assignment of a job coach (e.g. for a person with an intellectual or mental health disability).
- d. Highlight the obligation to make a reasonable accommodation as it is contained in the Americans with Disabilities Act using [Transparency 54](#).



60 minutes

In the **United States of America**, the obligation to make a reasonable accommodation is understood to mean any change in the work environment or in the way a job is performed that enables a person with a disability to enjoy equal employment opportunities. There are three categories of “reasonable accommodations”: changes to a job application/interview process; changes to the work environment or the way a job is typically done; and changes that enable an employee with a disability to enjoy equal benefits and privileges of employment, such as access to training.

Explain that in other countries like Australia, New Zealand and South Africa, there are legal provisions stipulating that the failure to provide a reasonable accommodation constitutes a form of discrimination. They differ slightly from the United States in that in Australia the law requires *“removal of unreasonable requirements which disadvantage people with a disability”*; in New Zealand that *“it is always the duty of the employer to “take reasonable measures” to ensure the equal treatment of all employees regardless of disability; and in South Africa that “affirmative action measures implemented by a designated employer must include [...] making reasonable accommodation for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented in the workforce of a designated employer”*.

- e. Emphasize that the provision of a reasonable accommodation is an individualized measure that does not need to be temporary in nature - in fact often they are for the duration of a person’s employment. Using **Transparency 55**, explain that reasonable accommodation is not affirmative action. Affirmative action is action aimed toward favorable or preferable treatment toward a larger group or population.

An example of affirmative action would be if a company, realizing that their workforce was almost completely white males, decided actively to recruit women and racial minorities and set a goal for a certain percentage of the new employees to be from the under-represented groups. Similarly, a company might decide that their workforce should be more representative of the general population and therefore, it would actively recruit people with disabilities. Alternatively, a complaint filed under affirmative action laws might be brought by a group of women who allege that the company they worked for routinely chose males for promotions to managerial positions. Such a complaint or lawsuit that is filed on behalf of a whole group of employees is called a class action suit.

- f. Explain that reasonable accommodation is an individualized and customized process based on the support needs that exist for the individual to conduct his/her job effectively. Explain that in the example mentioned above where the company engages in affirmative action to hire employees with disabilities, one or more of these people might need a reasonable accommodation in order to perform the duties of his or her job. For example, the company might normally have rules that prohibit animals in their building. However, if one of the new employees uses an assist dog and asks that the prohibition be waived so the companion dog was allowed, the company would need

to make that reasonable accommodation. The duty to provide a reasonable accommodation should not be confused with the duty to comply with general accessibility and occupational health and safety standards.

- g. Using **Transparency 56**, explain to participants that an applicant or worker with a disability requesting a reasonable accommodation needs to demonstrate three things: 1. The person is (otherwise) qualified for the job; 2. The employer (or other party) was aware of the person's needs; and, 3. With an accommodation, the person could (safely) perform the essential functions of that particular job.
- h. **OPTIONAL EXERCISE:** Have participants break up into small groups of 3-5 individuals. Assign each group a case study provided in Appendix D. Have each small group designate a reporter and recorder. Ask groups to prepare to answer the questions provided in the case study, discuss and be prepared to present to the rest of the group. Provide groups 45 minutes to work the case studies and 30 minutes to debrief as a larger group.
- i. Follow-up using **Transparency 57** to illustrate the three conditions under which an employer could be exempted from providing a reasonable accommodation. This includes that he/she was not aware of the need for an individual accommodation. For example, a worker who suffers from depression, but who failed to tell his employer, then has a breakdown requiring several months hospitalization and asks the employer for an accommodation by holding his job during his absence; or, an effective accommodation, enabling the applicant or worker with a disability to perform the essential functions of a job is not available. For example, an engineer whose primary job involves doing computer-assisted design (CAD) becomes blind as a result of diabetes. He asks the employer for an accommodation, but the employer cannot comply because the worker can no longer do the primary functions of his job and that is the only kind of work the company does, or the requested accommodation imposes a 'disproportionate burden' on the employer (**Transparency 58**). In this last situation, an example would be if, because of an accident, a worker now uses a wheelchair and his employer is in a building that does not have an elevator. It might prove a disproportionate burden to expect the employer to move his facility or install an elevator.

Explain that the 'defense' or 'justification' for not accommodating a person with a disability needs to be drafted carefully. Otherwise, unscrupulous employers would have recourse to this in order to avoid any obligation. In practice, the question as to what constitutes a disproportionate burden may very much depend on the context of the case concerned, and is not merely dependent on the financial costs of an accommodation or financial compensation scheme. It depends on such factors as its practical implications, effects on the overall work process, number of disabled workers already employed and length of the envisaged employment contract.



1 hour 15 minutes

15 minutes



3.5 Standard Lecture

Shifting the Burden of Proof

- a. Using **Transparency 59**, explain to participants that under some legislation, a person who considers him or herself wronged because of discrimination has to produce evidence to prove that this has occurred. In some cases it is not too difficult to collect the necessary evidence, while in others it is virtually impossible.

Ask participants to generate a list of evidence that might be easy to identify. This could include: job postings, advertisements and recruitment materials.

Ask participants to generate a list of evidence that might be more difficult to attain. This could include situations that are more rooted in suspicions and mistrust rather than in tangible evidence.

Emphasize that placing the burden of proof on the applicant or employee has been seen as one of the greatest obstacles to obtaining a fair and just result.

- b. Explain to participants that many countries have begun to shift burden of proof to the party who is alleged to have done the discrimination. In many jurisdictions, it now suffices for a person with a disability who alleges discrimination to establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination. After this, it is for the person who allegedly discriminated to prove that there has been no discrimination. This reversal in burden of proof makes non-discrimination law effective. The reversal places the burden of proof once an allegation has been made onto the party against whom discrimination is alleged.

For example, a blind lawyer takes the exam for the diplomatic corps of her country and passes with one of the top three grades. However, instead of being appointed, she is bypassed and people with lower grades than hers receive postings. She files a suit alleging discrimination because she was passed over because she was blind. A reverse example would be a hospital that is sued by a surgeon who was fired by the hospital. The surgeon alleges that the hospital failed to accommodate his disability. However, his disability is alcoholism and the hospital fired him on the grounds that his disability was an endangerment to others.

In closing, using **Transparency 60**, describe the paradigm shift that the European Union has set in place requiring countries to introduce laws or amendments to their laws to allow for a reversal of the burden of proof in employment discrimination cases involving direct or indirect discrimination.

In 2003, all fifteen countries of the **European Union (EU)** were required to introduce laws or amendments to their laws or other legal instruments to allow for a reversal of

the burden of proof in employment discrimination cases involving direct or indirect discrimination. All new Member States will also have to follow suit. This follows from a European Union law (a directive) adopted by the Council of Ministers in the year 2000. The Directive stipulates that disability discrimination cases are subject to a reversal of the burden of proof in favor of the employee or job applicant with a disability from 2003 onwards.

Conclude this module by emphasizing that non-discrimination laws should explicitly refer to disability as a protected ground; that laws prohibiting discrimination should cover all forms of discrimination including direct and indirect discrimination, harassment, instruction and incitement; that reasonable accommodation is a key component of modern anti-discrimination legislation and should be provided; and that the burden of proof should be shifted to those against whom discrimination is alleged.



Evaluating Impact

Prior to closing the session, ask participants to take a moment to complete the Training Programme Survey provided in Appendix A and Module 3 Learning Objectives Evaluation provided in Appendix E. Upon completion, ask participants to turn them in. Tabulate the responses to gauge overall instructor effectiveness and the extent to which specific learning objectives were attained. Take time to specifically note where the lecture and learning experience could have been enriched to enhance learning.



Online Resources

<http://www.un.org/esa/socdev/enable/disovlf.htm#overleg2>

Entitled “Overview of International Legal Frameworks For Disability Legislation,” this United Nations Enable web site contains further information regarding the role of disability legislation, international legal framework, and application of international conventions, standards and norms to domestic law. For example, within the international legal framework section, there are links to convention proceedings regarding racial discrimination or the protection of the rights of migrant workers. Furthermore, there is a link to the “Declaration on the Rights of Disabled Persons,” and a link to the “World Programme of Action concerning Disabled Persons.”

<http://www.un.org/esa/socdev/enable/rights/ahc7bkgrndra.htm>

The Concept of Reasonable Accommodation in Selected National Disability Legislation. This paper was prepared as a background conference document prepared by the Department of Economic and Social Affairs. This paper provides a description of how national legislation incorporates the concept of “reasonable accommodation” to persons with disabilities. The paper is based on legislation pertaining to the following countries/entities selected on the basis of present availability to the Secretariat as well as illustrative value: Australia, Canada, European Union, Ireland, Israel, New Zealand, the Philippines, South Africa, Spain, Sweden, United Kingdom, United States and Zimbabwe.



References and Readings

1. Gunderson, M., & Hyatt, D. (1996). Do injured workers pay for reasonable accommodation? *Industrial and Labor Relations Review*, 50(1), 92-104.

The authors present evidence on the extent to which injured workers in Ontario in 1979-88 “paid,” through lower wages, for “reasonable accommodation” requirements designed to facilitate their return to work after their injury. The data source, the Ontario Workers’ Compensation Board’s Survey of Workers with Permanent Impairments, provides detailed information on two categories of accommodation: workplace modifications, such as customized equipment and shortened work schedules; and reductions in physical demands, such as exemption from bending and heavy lifting. Employers who rehired their own injured workers appear to have absorbed virtually all the cost of the accommodations they made, but employers who hired workers who were injured at other firms shifted a substantial portion of the cost of workplace modifications onto the injured workers, in the form of lower pay.

Available Online (subscription needed):

<http://www.jstor.org/pss/2524391>

2. Metts, R. (2000). Disability issues, trends, and recommendations for the World Bank. *Social Protection*, 1-100.

After describing the two major contemporary disability definitions and comparing their suitability for disability policy and planning, the paper presents a descriptive analysis of the evolution and current status of disability policy and practice.

Available Online:

http://www-wds.worldbank.org/servlet/WDSCContentServer/WDSP/IB/2001/12/11/000094946_01110204011328/Rendered/PDF/multi0page.pdf

3. Morris, J. (2001). Impairment and disability: Constructing an ethics of care that promotes human rights. *Hypatia*, 16(4), 1-16.

Author Jenny Morris discusses her own personal experience of impairment within a social model of disability, and the importance of recognizing differences in order to promote human rights.

4. O’Neil, T., & Piron, L. (2003). Rights-based approaches to tackling discrimination and horizontal inequality: Background paper. *Overseas Development Institute*, 1-21.

Included in this paper are a review of the importance of human rights for equality and social inclusion, the extent and nature of discrimination and its contribution in explaining inequalities in income, assets, health, education, the process by which discrimination takes place and the extent to which states combat direct and indirect discrimination in law and practice. Furthermore, the paper touches upon the potential contribution of ‘rights-based approaches’ by governments, civil society and international donors in combating discrimination and the inequalities they create.

Available Online:

http://www.odi.org.uk/pppg/activities/country_level/mic/workshop/Rights_and_Discrimination_Background_Paper.pdf

5. Rosenthal, E., & Sundram, C. (2003). International human rights in mental health legislation. *World Health Organization. New York Law School Journal of International and Comparative Law. Volume 21 (3), p.469.*

This paper describes some of the elements of international human rights law that governments should take into account when drafting domestic legislation affecting people with mental disabilities. International human rights law has major implications for laws regulating the operation of mental health and social service systems, as well as for broad laws protecting all citizens from discrimination.

6. The National Council on Disability Topical Overviews for Delegates to the 6th Ad Hoc Committee on the Protection and Promotion of the Human Rights of People with Disabilities.

The National Council on Disability (NCD) commissioned this series of papers on various topics that were paramount to the human rights discussions related to drafting a UN Convention. The papers were to help the delegates comprehend and utilize concepts and constructs under discussion. The topics include the right to: employment and work; education; healthcare; transportation; information technology; living independently; and participation in political and public life. Each paper examine key aspects relevant to its topic for example, in the paper on employment and right to work, concepts such as “reasonable accommodation” and “undue hardship” are explained and discussed.

Available online:

<http://www.ncd.gov/newsroom/publications/2005/publications.htm>

7. Weiwei, L. (2004). Equality and non-discrimination under international human rights law. *Research Notes.*

This paper provides an overview of the sources of non-discrimination and the historical development of the concept, and examines in detail the scope of the principle of non-discrimination. The paper emphasizes the domestic implementation of the principle with a discussion of its application in China.

Available Online:

<http://www.mittendrindaussenvor.de/fileadmin/bilder/0304.pdf>

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Notes



*Achieving Equal Employment Opportunities for People with Disabilities through Legislation
An Education and Training Guide*

Quotas

This module provides an overview of quota schemes covering what a quota levy scheme is and issues pertaining to a binding quota without an effective sanction. Practical strategies for making quota systems work in practice are highlighted.



Time Frame

6 - 9 hours
(based on extent
of optional
exercises selected
to reinforce
learning)

4



Learning Objectives

At the completion of this seminar course participants will be able to:

✓	Define quota schemes as an affirmative action measure.
✓	Identify the three basic schemes that quota systems can be divided into and issues pertaining to each.
✓	Outline effective strategies to make a quota system work in practice.
✓	Identify which people with disabilities should be targeted and eligible for quota schemes.
✓	Discuss the pros and cons of whether a quota should favor certain people with disabilities.
✓	Determine standard quota or varying quota rates.
✓	Identify what an appropriate quota percentage should be and types and size of employers to be targeted.



Key Concepts

Quota schemes are probably the best known and the most familiar affirmative action measures aimed at promoting the integration of people with disabilities in the labour market. Quotas are sometimes introduced by law and sometimes by Government decision or regulation.

Under quota schemes, employers employing a specific minimum number of persons are obliged to ensure that a certain percentage (quota) of their workforce is made up of people with disabilities. Such schemes first emerged in Europe in the aftermath of the First World War, and initially war veterans who were disabled as a result of military action were the only beneficiaries. These schemes typically exempted small employers. In the post Second World War period, quota schemes were extended to cover civilians with disabilities, and were adopted in many countries throughout the world. The exemption for small employers was, however, often maintained. More recently, some quota schemes have been expanded expressly to include people with intellectual disabilities (such as the quota scheme in Japan) and people with mental health problems (such as in Germany).

Glossary of Terms



- Employment Quota:** The compulsion placed on every employer, or those having more than a fixed minimum number of employees, to employ a fixed minimum or maximum of workers from categories such as the following: disabled workers, veterans, minority groups, migrant workers, frontier workers, etc.
- Quota-levy scheme:** A quota scheme involving a compensatory payment to be made by employers who do not fulfil the quota obligation.



Training Outline



Getting Started: Introduction

10 minutes



- a. To start this session, have **Transparency 61** on the screen.
- b. Make sure “Ground Rules” are still clearly visible to participants and that other flipchart papers are not covering them.
- c. Provide participants with a general overview of the learning objectives for this session using **Transparency 62**.
- d. Remind participants that you will log in the “Parking Lot” questions that arise during the seminar which may or may not be relevant to the topic being discussed (see pages 13 and 16 for an outline of the Parking Lot concept).

55 minutes



4.1 Standard Lecture A Quota-Levy System

- a. Begin this lesson section by explaining to participants that quota schemes can be divided into three basic groups: a binding quota which is backed up with an enforced sanction (quota-levy system); a binding quota which is not backed up with an effective sanction and/or with an effective enforcement mechanism; or, a non-binding quota based on a recommendation, e.g. a government circular. Illustrate these three basic groups using **Transparency 63**.

Explain to participants the quota schemes are not effective as stand-alone provisions but are potentially an important element of broader, more comprehensive non-discrimination legislation. Under quota schemes, employers employing a specified minimum number of persons are obliged to ensure that a certain percentage (a quota) of their workforce is made up of people with disabilities. Such schemes first emerged in Europe in the aftermath of the First World War, and initially war veterans who were disabled as a result of military action were the only beneficiaries. These schemes typically exempted small employers. In the post Second World War period, quota schemes were extended to cover disabled civilians, and were adopted in many countries throughout the world. The exemption for small employers was, however, often maintained. More recently, some quota schemes have been expanded expressly to include people with intellectual disabilities (such as the quota scheme in Japan) and people with mental health difficulties (such as in Germany).

Quota schemes have undergone extensive evolution over time – moving from general quota systems with no sanctions to today’s more quota-levy

systems that can be seen as a form of affirmative action and sometimes linked to effective non-discrimination legislation.

NOTE: Some countries and especially some disability advocates are opposed to quota-levy systems. Countries such as the USA, the UK, Canada and many of their disability communities find that quotas undermine the argument that people with disabilities can be equally as productive workers as non-disabled individuals, provided they have the proper accommodations. They believe that a quota-levy system sets up an antagonistic position with employers, forcing them to hire individuals lest they be fined. These critics of quotas believe more can be gained by incentives such as paying for accommodations than by the sanctions.

- b. Explain to participants that you will be exploring each of these approaches in greater detail. Begin by using **Transparency 64** to explain that under a quota-levy scheme, a binding quota is set and all covered employers who do not meet their obligation are required to pay a compensatory payment. The money typically raised through such a quota scheme usually goes into a fund to support the employment of people with disabilities - typically administered by the public authorities, although exceptionally the social partners are involved as in the case of France.
- c. Referencing page 36 of the Primer, highlight the examples from Germany, France and Japan that are provided.

Germany was among the first countries to adopt a quota-levy scheme in 1974. Under the Social Code, Book 9, of 2002, public and private employers with a workforce of at least 20 employees are required to ensure that five per cent of their workforce is made up of people with disabilities. Employers who do not meet their quota obligation are obliged to pay a fixed compensatory levy for every unfilled quota place. This levy is used exclusively to promote the rehabilitation and employment of people with disabilities and can be used, for example, to provide grants to employers who exceed their quota obligations or to help employers meet any extra costs associated with the employment of a person with a disability, such as adaptations to buildings or the provision of extra training.

A quota-levy system has also been adopted by other European countries, including **France**. In France, the funds arising from non-fulfillment of the quota obligation may be used to fund vocational training of individuals with disabilities. The French quota law also provides other options for employers to partially meet their obligation under the law, such as by purchasing goods or services from sheltered workshops employing disabled people, or by implementing an agreement, negotiated between employers' and employee associations, aimed at the integration of disabled workers, though recruitment, training, job retention or adjustment to technological change.

In **Japan**, the employment quota for people with disabilities varies depending on the level of full-time employment and unemployment in the general labour market.

- d. Emphasize that it is not sufficient to provide merely for the payment of a levy when an employer fails to meet the set quota. Some means of collecting the levy must also be put in place. Explain that statutory bodies are generally given the task of both administering the collection and the distribution of the funds collected. Typically employers are given the task of assessing and declaring the amount due, and then paying the levies to the fund set up for that expressed purpose. The levies can be collected or paid annually, quarterly or monthly and are usually transferred directly to this fund. In some countries the employers do not self-identify, but instead are informed of their financial obligations by the oversight body. Using **Transparency 65**, highlight the approaches used in Austria and France explaining that in some countries, like Poland, tax collectors are given the authority to collect levy payments and then pass them on to the oversight body.

In **Austria**, the national rehabilitation fund is administered by a government ministry which calculates the amount owed by an employer and informs the employer about it. The ministry has access to information about employers' insurance obligations and uses this information to calculate the quota and levy responsibilities.

In **France**, the fund is managed by an association (AGEFIPH) was established by law in 1987. The administrative council of AGEFIPH is composed of representatives of employers, worker and, persons with disabilities as representatives, qualified persons nominated by the social partners, disabled persons' organizations and the Ministry for Employment and Solidarity.

In **Poland**, levy payments are regulated under the law providing for tax liabilities. Under this law, tax offices have to control payments and to collect funds owed to the national rehabilitation fund. If an employer fails to pay the levy directly to the National Rehabilitation Fund, the Fund, without needing a court order, can ask the tax office to collect the money directly from the employer's bank account or even take the employer's property.

In **China**, employers are obliged to pay a daily fine for each day that a payment is overdue.

- e. Before moving on to binding quotas without an effective sanction, explain to participants that, in some countries, employers are fined for late payment of the levy sums owed. Summarize by stating that in some countries, quota-levy schemes are valued because of their revenue generating capacity to support the employment of people with disabilities. If employers prefer to pay the levy rather than employ workers with disabilities, however, the operation and effectiveness of the quota scheme should be reviewed. Conclude by stating that if a quota-levy scheme is being considered because it is seen as a source of funding for disability-related activities and services, other approaches should be explored, as these are likely to be more cost effective.

4.2 Standard Lecture

A Binding Quota without an Effective Sanction



20 minutes

- a. Using **Transparency 66**, explain to participants that under this kind of system, employers are obliged through legislation to employ a quota of persons with disabilities, but that this obligation is not backed up with any effective sanction - either because it does not exist or the sanction is not enforced. This lack could be due to the fact that the legislation does not provide for an effective sanction or because the public authorities have decided not to prosecute in cases where the quota obligation is not met.
- b. Use **Transparencies 67 - 68** to illustrate this point with the examples from the United Kingdom and Thailand. Conclude by stating that it is not merely enough to impose a quota - provisions must be made for an effective enforcement mechanism if the quota is to have a practical impact.

In the **United Kingdom** in 1993, less than twenty per cent of British employers met the three per cent quota established under the Disabled Persons (Employment) Act of 1944. The main reason for the failure of the British quota was the unwillingness or inability of successive governments to enforce the quota by strictly policing the granting of exemption permits and prosecuting errant employers through the courts. Few prosecutions occurred. The quota was abolished in 1996 when the Disability Discrimination Act of 1995 came into force.

In **Thailand**, a quota obligation was established for private employers by the Rehabilitation of Disabled Persons Act of 1991. Those who failed to meet the quota were obliged, under law, to pay a levy. No enforcement mechanism existed, however, and the impact of the quota was limited. The Persons with Disabilities Empowerment Act of 2007 that replaced the 1991 Act, provides for an employment quota for public and private employers, subsequently specified by Ministerial decree as one employee with a disability for every 100 employees. Non-complying employers may offer a business concession, provide sales or services, or offer occupational training for persons with disabilities. Those who do not comply with these options are required to make a compensatory payment. As a form of social sanction, information on compliance or non-compliance with the law can be made public.

4.3 Standard Lecture

A Non-Binding Quota Based on a Recommendation



35 minutes

- a. Explain that under a non-binding quota that employers are not legally obliged to employ a set percentage of workers with disabilities but it is recommended that they do so. Compliance with the quota is voluntary at best and there is no sanction stemming from non-compliance. Use **Transparency 69** to describe this type of quota.
- b. Using **Transparency 70**, explain that a non-binding quota system existed

in the Netherlands in the mid-1980s. The quota target was between three and five per cent to be achieved over three years. Upon evaluation, the government decided the system had created little improvement and was abolished. Summarize by stating that a voluntary quota, involving no legal obligation on employers, and no sanctions in the event of a failure to meet the target, is unlikely to have much impact on the number of people with disabilities in employment.

Brazil has an interesting variation on typical quota scheme structure – it is not voluntary, nor does it use levies. This quota applies to companies with 100 or more employees and requires that at the 100 employee level, two per cent of the workforce must be people with disabilities. The requirement increases incrementally up to five per cent for firms with 1,000 workers. Monitoring and enforcement is the responsibility of the Ombudsman's office. Employers may not avoid complying simply by paying a fine. Instead, companies must demonstrate and provide detailed plans and documentation to the Ombudsman's office concerning what they are doing to meet the requirement, including their plan for recruitment, hiring, training, and so forth. The Brazilian model is also unique in that Centres for Independent Living (CILs) and other Disabled People's Organizations (DPOs) play an active role in the implementation of quota requirements. There are now 22 CILs and more than 500 DPOs in Brazil, many of which are self-sustaining and none of which receive funding from the federal or local government. Many employers contract with these organizations while implementing strategies to meet the quota requirement, in order to assist with recruitment and training of potential employees and in some cases to manage groups of employees with disabilities. CILs and DPOs maintain a database of people with disabilities who are seeking work and coordinate with the companies for whom they are providing workers. The approach often involves several partners, with the CILs providing the work socialization aspects; training schools providing the technical training; and the company providing the specific job training. Typically, the companies contract with the organizations to provide the needed workers, who are under 2-year contracts and are paid by the CIL/DPO.

2.5 hours



4.4 Standard Lecture

Making the Quota Work in Practice

- a. Emphasize to participants that quota systems can be adapted to fit national economic and political requirements, since they allow law and policy makers to influence the size and nature of both the targeted group of beneficiaries (persons with disabilities) and the group upon whom obligations are imposed (employers). Using **Transparency 71**, highlight factors that should be considered when establishing a new quota system or reviewing an existing system.

Explain to participants that many countries have opted to use quota or quota-levy systems to improve employment outcomes for people with disabilities but, thus far, available data indicates that they are only partially

effective as an instrument for furthering open competitive employment for individuals with disabilities. Even in countries with systems that provide for sanctions, for example fines or levies for non-compliance, quotas are only partially filled. Research indicates that the use of quotas and levies must be accompanied by adequate instruments to enforce these sanctions, but even in this case the results are not conclusive as to their efficacy. Highlight some of the findings outlined below for participants as time allows:

(1) Transforming Disability into Ability; Policies to promote work and income security for disabled workers, a 2004 study conducted by the Organisation for Economic Co-operation and Development (OECD) in 20 countries found that more than one-third of the countries in the study used mandatory quota systems. Obligations on the employers were: 7 per cent in Italy; 6 per cent in France and Poland; 5 per cent in Germany; 4 per cent in Austria; 3 per cent in Turkey; 2 per cent in Korea and Spain. Regulations only applied to employers of a certain minimum number of workers, with Korea requiring 300; 50 in Spain and Turkey; and 15–25 elsewhere. Some countries provide for double or even triple counting of severely disabled people for the purposes of the quota. The study concluded that, whether the approach is rights-based (anti-discrimination laws), obligations-based (quota) or incentives-based (voluntary action), it is predominantly current employees with a disabling condition who receive protection. A further conclusion was that employees who become disabled and are thus eligible for counting towards the quota are more likely to be kept in a job, while quota schemes give little incentive to employ a disabled job applicant. [p. 105].

(2) In 1976, the Japanese government passed the Law for Employment Promotion of Persons with Disabilities making it mandatory for companies to ensure a certain percentage of disabled people in their workforce. The law stipulates that 1.8 per cent of the positions in all private-sector companies employing 56 or more workers should be filled with people with disabilities. In the public sector, i.e. national and municipal governments, as well as for state-affiliated organizations, the percentage is 2.1 per cent. Since the quota was introduced, compliance has been less than optimal and this continues to be the case. According to the Health, Labour and Welfare Ministry, as of June 2005, only 42.1 per cent of private-sector companies complied, along with 44.8 per cent of state-affiliated organizations and 77.5 per cent of national and municipal government; this is the case even though Japan's quotas are lower than most of the countries in the OECD.

(3) In Bahrain, with 20 per cent unemployment, the government tries to limit the number of foreign (i.e. non-Bahrainis) that a company may hire. However, to encourage the hiring of workers with disabilities, the government allows employers to hire two foreign workers for every one disabled worker.

- b. Which People with Disabilities Should be Targeted by Quota Schemes? Using **Transparency 72**, and referencing section 4.4.1 of the Primer, explain that people with disabilities comprise a large and diverse group in the population, and include people with very different abilities and impairments.

In recognition of this, some quota schemes target all people with disabilities while others target those with the most severe disabilities. Emphasize that the latter group might be expected to be less able to profit from the existence of disability non-discrimination legislation, and that even in non-discrimination environments may not be able to compete for and win jobs on their individual merits. Therefore, a targeted positive action measure in the form of a quota might be an appropriate tool to promote employment for this group.

In **Germany**, the quota scheme is specifically targeted at people with severe disabilities.

In the **Netherlands**, the voluntary quota system covered all people who were entitled to claim the disability benefit, as the main aim of the system was to reduce the number of claimants. Although the voluntary quota no longer applies, employers still qualify for an exemption from social security premiums where five per cent of their workers have an employment disability, whatever the disability.

Ask participants to list aloud the attributes and liabilities that might be associated with a global quota scheme that covers all people with disabilities. Positive attributes might include that quota schemes could: (1) help target more global issues such as decreasing the number of people receiving social welfare benefits; and (2) allow the most prepared to avail of the opportunity to access the workplace. Liabilities might include: (1) that only individuals with mild disabilities would be included; and (2) individuals with the most severe disabilities would continue to be un/under employed. Conclude by stating that whichever approach is taken, consideration must be given to the outcome that is intended or expected.

c. How to Identify Those Eligible for Employment under the Quota?

Using **Transparency 73**, and referencing section 4.4.2 of the Primer, explain to participants that for a quota system to be effective, it must include two measures for identifying those eligible for employment under the scheme. These measures would include establishing a definition of disability which focuses on the limited working capacity of the individual and the means by which such people are administratively identified.

Emphasize that in designing a quota scheme, it is important to ensure that very real benefits accrue to those who register and are “labeled” as having a disability by this process. This attention to design will assist in minimizing any problems associated with registration, such as stigma, or a focus on inabilities. One means of achieving this goal is to ensure that registration entitles an individual to coverage under the quota system, but also to other related benefits, or financial support to assist in finding and/or maintaining employment. Please also note to participants that the way in which disability is defined for the purposes of the quota scheme is typically different to the definition used for social insurance.

Highlight particular issues to which attention must be paid when establishing

means for identifying those eligible for the quota. Problems arise if the definition of disability focuses on impairment, rather than limited work capacity. It is important to avoid this, in order to ensure that individuals with low working capacity who need the protection of the quota are those who actually benefit. Additionally, the process of registering for the quota may negatively influence the individual if, in order to do that, they must focus on the inability to work and limited work capacities. Therefore, incentives should be built into the quota registration process, so as to minimize disincentives that might exist for individuals, and allow them dignity. Finally, the physical and emotional costs of requiring a medical examination to ascertain disability may be more costly for the individual than the potential benefit of being eligible for the quota.

d. Should the Quota Especially Favour Certain Disabled People?

Referencing section 4.4.3 of the Primer, remind participants that even when a quota is targeted at people with severe disabilities or disability benefit claimants, there may still be a group of people who experience particular difficulty in finding employment under the quota, or whose employment should be specifically promoted for one reason or another. Use **Transparency 74** to highlight who the group of people might include: people with particularly severe disabilities; war veterans with a disability; people with a disability occupying training or apprentice positions; and people with disabilities who experience a secondary discrimination (for example women, older people, those belonging to ethnic, linguistic, religious, or sexual minorities).

Illustrate with the examples of Germany and France, provided on page 44 of the Primer, that quota systems can be used to give employers additional incentives to employ targeted populations within the disability community. In those cases individuals who are part of those targeted groups will be regarded as occupying more than one quota position - therefore making it easier for employers to meet their quota obligation.

In **France** and **Germany**, both an individual disabled person occupying a training or apprenticeship position, and an individual with particularly severe disabilities, can be regarded as occupying two or even three quota positions.

e. Standard Quota or Varying Quota Rates?

Referencing section 4.4.4 of the Primer, ask participants why a State might want to elect to use either one single quota target (e.g. three to five per cent of the workforce), versus different quota targets for different industries or different regions of the country. List the group's responses on flipchart paper.

Reinforce the groups' responses using **Transparency 75** explaining that targeted quotas might be used because it is felt that certain sections or regions are able to provide a large number of jobs which are suitable for people with severe disabilities; or that certain sectors or regions are only able to provide a limited number of jobs which are suitable for persons with severe disabilities.

Explain that these factors might be relevant because the relative size of the agricultural, industrial and service sectors varies from country to country, or from region to region. Each sector offers different possibilities for employing people with various kinds of disabilities. Even within these sectors, there are variations which are determined by the production processes in use. As a consequence, labour intensive employment offers wholly different integration possibilities for people with certain types of disabilities compared with employment in which the new technologies play an important role.

In **Germany**, a forerunner to the current quota system, established in 1953, initially set a quota of 10 per cent for the public sector and for the banking and insurance sectors, and a quota of 6 per cent for the rest of the private sector.

In the **Netherlands**, the now non-existent quota system used different rates for different sectors so that white collar companies having mostly sedentary work had higher quota levels than did blue collar industries.

In **China**, the specific rate of the quota is determined by the government of provinces, autonomous regions and municipalities directly under the Central Government. The percentage of disabled employees must be at least 1.5 per cent of the overall employees.

Conclude by stating that a comprehensive review of the various employment sectors in a country should be carried out before adopting a single quota target covering all employers or deciding whether to set specific quota targets for specific sectors or regions.

f. What is the Appropriate Quota Percentage?

Determining the appropriate quota percentage is not as complex as one might think. Using **Transparency 76**, and referencing section 4.4.5 of the Primer, explain to participants that the quota percentage should be based on consideration of the number of people with disabilities willing and available to work, and the size and profile of companies in the economy. Explain to participants that some countries have differing quota obligations depending on the sector – that is, lower percentage requirements for more labor intensive sectors such as manufacturing and higher quotas for white collar (sedentary) sectors such as clerical work.

Within the **European Union**, the quota percentage has varied between 2 per cent in Spain and 15 per cent in Italy, where the quota not only covered people with disabilities, but also widows, orphans and refugees.

Emphasize that it should also be decided whether specific assistance is needed for those with particular types or levels of disability. This information will enable a comparison between the number of jobs that would result if all employers fulfilled the quota obligation, and the number of job seekers with disabilities who can meet job requirements.

g. Should Small and Medium-Sized Employers be Included?

Referencing section 4.4.6 of the Primer, explain that typically small and medium-sized companies are exempted from quota obligations and that this has an impact on the effectiveness of a quota scheme. In some countries, the exemption applies to employers with less than 10 employees; in others, to companies with less than 300 employees.

Using **Transparency 77**, explain why the question of whether small companies should be covered by the quota system or exempted is significant. Illustrate the positive and negative ramifications.

Arguments in favour of including small companies are based on evidence suggesting that it is easier for many people with disabilities to integrate socially in small companies. In addition to this, where a high number of people are employed in small companies in a state, the exclusion of such firms will similarly exclude a large proportion of the workforce and, as a consequence, significantly restrict the number of jobs reserved for people with disabilities.

Arguments against including small companies are frequently economic. For example, if firms incur extra costs when employing a person with a disability under a quota system, and these costs are not compensated by grants from the national fund or the relevant agency, small companies with a relatively low turnover may be less able to absorb this cost and therefore be placed in a difficult position.

In the **European Union**, the minimum size of firms covered by quota legislation varies from 20 employees in Germany to 50 employees in Spain and Turkey. These cut-off figures have a significant effect on the number of employers covered by the quota system and the number of jobs yielded. Approximately 90 per cent of all enterprises in the European Union have nine or fewer employees and thus, while they generate approximately 30 per cent of the employment in the European Union, they are not covered by any quota scheme. The predominance of small firms varies from country to country, however. 80 per cent of workers are employed in such firms in Spain and Portugal, compared to 63 per cent in Denmark. Exclusion of small firms from the quota scheme would therefore have a much greater impact in Spain and Portugal than it would in Denmark. In countries with few large employers like Mongolia, where the quota applies to employers with 50 or more employees, excluding small employers from the quota results in few jobs for persons with disabilities.

Conclude this subsection by restating that before deciding on whether to include or exclude small employers from a quota scheme, and determining the cut-off point for employers who will not be covered by the quota, an assessment should be made of the importance of small employers within the State. Where small employers provide a high percentage of jobs in a State, the impact of the quota will be significantly reduced if such employers are excluded from its scope.

1 hour



OPTIONAL EXERCISE: In lieu of initially using **Transparency 77**, break participants down into small groups of 3-5 people. Provide participants 30 minutes to discuss the pros and cons of whether or not to include or exclude small employers in a quota scheme. Have each group prepare an argument and allow 30 minutes for a report of findings following process time. Conclude the exercise by reinforcing the points made by respondents with **Transparency 77**.

1 hour



OPTIONAL EXERCISE: In lieu of the optional exercise above, use the following questions to facilitate discussion among the participants. Explain to participants that the following questions are the types of questions one should be asking when considering whether or not to use a quota system. Ask participants to respond to each question to demonstrate the breadth of potential responses.

1. Beyond the obvious general goal of wishing to improve employment outcomes for persons with disabilities, what specific goals are desired from the use of a quota system? For example, are quotas meant to address employment only for people with severe disabilities? If so, how will adherence to that goal be measured?
2. Is the goal of people with disabilities getting any job, including very low paying jobs, with little chance of advancement sufficiently acceptable as a policy outcome?
3. Is sheltered or segregated work an acceptable outcome?
4. Is the goal of using levies just to raise money to fund vocational rehabilitation and training services an acceptable outcome?
5. How will the administration of those funds be monitored and who should do it?
6. How should transparency in the use of funds from the collected fines be assured?
7. Are levies the best way to encourage employers to retain and hire workers with disabilities? Can you think of other ways or combinations of approaches?
8. What ways might employers use to avoid paying fines and also to not employ disabled workers and what could you do to discourage these practices?
9. How should quota systems be designed in relation to other measures affecting the hiring and retention of workers with disabilities? For example, most systems use different definitions of disability for the quota system versus those used for eligibility for disability benefits – what do you think about that?
10. What are your views about quota systems compared to other incentives such as a civil rights based approach? How should quota systems be constructed to interact with existing labor laws and worker protection (occupational safety and health) laws?

- h. Should the Quota Apply to Both the Public and Private Sector?
Referencing section 4.4.7 of the Primer, query participants as to their thoughts and impressions as to the pros and cons associated with including

or excluding public sector employers from a quota scheme. Reinforce responses by stating that since the public sector is a major employer in most countries and has an important role to play as a model employer, it would seem counterproductive to exclude this sector from any quota scheme. Further, if the law only applies to the private sector it could call into question the extent to which the public sector is committed to the employment of people with disabilities. An important point to make to participants is in regard to the responsibility of the public sector to set a good example - typically governments are the largest purchaser of goods and services and therefore are in a unique position to influence their suppliers.

i. What Options Should Be Open To Employers?

Conclude this seminar by explaining to participants that the operation of quota-levy schemes in the past have highlighted the tendency of many employers to make the levy payment rather than employing the targeted group - leaving the goal of the quota system only partially achieved. To counteract this trend, and to encourage employers to become more actively involved, other optional ways for employers to meet their quota obligations should be considered such as the provision of on-the-job training opportunities or provision of sub-contract work to vocational rehabilitation settings employing people with disabilities.

Illustrate these other options, referencing section 4.4.8 of the Primer and using **Transparency 78**, conclude by reminding participants that it is important to bear in mind that quotas were originally introduced to promote jobs for individuals with disabilities. The quota-levy system seems to make a greater contribution to the promotion of employment of people with disabilities than the other forms of quota described throughout this section.

j. **OPTIONAL EXERCISE:** Explain to the class that you are going to be conducting a Quota Simulation. The purpose of the exercise is to allow participants an opportunity to evaluate the need for, consider specific implications of, and design a quota system that best fits the needs identified. Break the group down into small groups of 5-7 individuals. Distribute the work sheet provided in Appendix F. Set the exercise up by explaining the following:

Recent research, released by a national advocacy group, shows that individuals who are predominantly left-handed make up 15 per cent of the population and they are disproportionately underrepresented in pre- and post-service educational programmes (fewer than 3 per cent). You have been asked to join a national think tank charged with crafting legislation prohibiting discrimination against left-handers in post-secondary education settings. As part of this effort, a high-level official in the government is advocating that a quota scheme needs to be incorporated into the legislation. Your task force is charged with coming to consensus on responses to the following questions to support the development of a quota-levy system. How will you respond?

1. Is there additional information the Task Force needs to assist them in



2 hours

reaching consensus? If so, what types of additional information are needed?

2. Which type of quota is preferable given the circumstances described? (quota-levy; binding quota with no sanction; or non-binding quota).
3. If a quota-levy system is chosen, how would you administer and enforce the scheme?
4. If a binding quota with no sanction, what might the potential outcome be?
5. If a non-binding quota, what might the potential outcome be?
6. What target group should be identified for the quota?
7. How would you define eligibility?
8. Should the quota favor certain left-handers over others?
9. Should standard or varying quota rates apply?
10. What would the appropriate quota percentage be?
11. Who would the quota be imposed on?



Evaluating Impact

Prior to closing the session, ask participants to take a moment to complete the Training Programme Survey provided in Appendix A and Module 4 Learning Objectives Evaluation provided in Appendix G. Upon completion, ask participants to turn them in. Tabulate the responses to gauge overall instructor effectiveness and extent to which specific learning objectives were attained. Take time to specifically note where the lecture and learning experience could have been enriched to enhance learning.



References and Readings

1. Barnes, C. (1992). Disability and employment. *Department of Sociology & Social Policy, the University of Leeds*, 1-28.

This paper focuses on institutional discrimination in employment and explains why anti-discrimination legislation is the most likely solution. The report is divided into four sections. The first defines institutional discrimination against disabled people. The second provides substantive quantitative evidence of institutional discrimination in employment. The third examines the main factors that cause that discrimination, and the fourth evaluates Government policies relating to disabled people's employment.

2. **McDonnell, R., & Weale, A. (1984). Regulating for equal employment opportunities: The case of the disabled quota. *Journal of Law and Society*, 11(1), 105-114.**

This article touches upon the history of, as well as recent trends in the usage of disability quotas. The effectiveness of quotas and administrative changes are also discussed.

Available Online (subscription needed):

<http://www.jstor.org/pss/1409933>

3. **Organization for Economic Co-operation and Development (OECD); (2004) Transforming Disability into Ability: Policies to promote work and income security for disabled workers; Paris.**

This publication was produced by the Organization for Economic Cooperation and Development (OECD) and is a comparison of the efficacy of the social policies of 20 countries with respect to how well they encourage or discourage work by people with disabilities. Among the many policies that this study examines is how effective quota systems are in the OECD countries that use them.

4. **Thornton, P. (1998) Employment Quotas, Levies and National Rehabilitation Funds for Persons with Disabilities: Pointers for policy and practice'**

This report discusses the history, advantages and disadvantages of quota-levy systems, levy redistribution policies and national rehabilitation funds. It draws on responses to survey of countries which have established quota-levy systems and have had experience with rehabilitation funds. It also summary reports of Austria, China and Hungary. Finally, it reports on the management of national funds and the establishment of policy.

Available Online:

http://www.ilo.org/skills/what/pubs/lang--en/docName--WCMS_106625/index.htm

Notes

Notes



*Achieving Equal Employment Opportunities for People with Disabilities through Legislation
An Education and Training Guide*

Planning for Implementation

This module outlines important considerations as a country plans for implementation of disability non-discrimination legislation. The content includes a discussion of the role of information campaigns, as well as critical employment support measures that can be provided for the protected status of people with disabilities, and/or businesses and employers to support effective implementation of the law.



Time Frame

4 - 7 hours
(based on extent
of optional
exercises selected
to reinforce
learning)



Learning Objectives

At the completion of this seminar course participants will be able to:

✓	Define the importance of an information campaign in planning for the implementation of disability non-discrimination legislation.
✓	Identify the three basic forms of employment support measures that can be taken to support legislative implementation.
✓	Outline the importance of providing specialized work-related equipment and adaptation grants as a form of employment support.
✓	Outline the importance of providing specialized equipment for daily living as a form of employment support.
✓	Identify approaches for promoting safe and appropriate transportation to and from work for people with disabilities.
✓	Discuss other types of technical advisory and support services to assist and support employers in meeting the demands of disability non-discrimination legislation.
✓	Identify different approaches for providing financial supports for people with disabilities to encourage and support employment.
✓	Identify options for providing financial subsidies for employers to encourage employment for individuals in protected status.



Key Concepts

When drafting disability laws and formulating policies, special attention needs to be paid to implementation, so that any issues which may arise in implementation can be identified and easily resolved. The effectiveness of legislation and policy that aims to promote equal employment opportunity for persons with disabilities will depend on the measures introduced to implement these in practice. These should include information campaigns about the rights and duties of people with disabilities, employers and other stakeholders under the law, and the policy provisions that have been introduced; as well as a range of technical advisory and support services and measures for employers and for disabled job seekers and workers. These measures include both financial incentives as well as specific employment support measures such as specialized work-related equipment, grants for workplace accommodation, and specialized equipment for daily living and transportation.

Glossary of Terms



- Campaign:** A systematic course of activities organized for some specific purpose.
- Incentive:** Something that incites or tends to incite to action or greater effort, as a reward offered for increased productivity.
- Subsidy:** A direct pecuniary aid furnished by a Government or other entity to a private industrial undertaking, a charity organization, an individual or the like.



Training Outline



Getting Started: Introduction

10 minutes



- a. To start this session, have **Transparency 79** on the screen.
- b. Make sure “Ground Rules” are still clearly visible to participants and that other flipchart papers are not covering them.
- c. Provide participants with a general overview of the learning objectives for this session using **Transparency 80**.
- d. Remind participants that you will continue to log questions in the “Parking Lot” that arise during the seminar which may or may not be relevant to the topic being discussed (see pp. 13 and 16).

1 hour



5.1 Standard Lecture The Role of Information

- a. Begin by emphasizing to participants that information campaigns play an important role in implementing laws promoting the employment of people with disabilities and in encouraging positive employment practices. Targeted campaigns can be particularly useful in reaching and impacting specific audiences with specific messages. For example, potential legislation and policies being introduced to provide certain protections for workers who sustained a permanent disability as a result of work would require a very specific outreach campaign that reaches deeply into existing industries and work places. In this example, it would be critical to recognize that this message may need to reach the entire workforce because these workers may all potentially be at risk of being disabled as a result of work-based injury or accident. Further, there may be common specific points of contact where industrially-injured and disabled workers meet and these places should be used to ensure the message is clearly broadcast or visible.

If not electing to do the Optional Exercise listed below in “b”, explain to participants, using **Transparency 81**, that a well-designed information campaign targeting employers could, for example, send the message that workplace diversity makes good business sense. Diversity reduces the stigma that is often attached to disability by highlighting the working capacity of people with disabilities and the fact that many employers find their employees with disabilities to be excellent workers and an asset to the company. Another example of a good information campaign is one that would inform people with disabilities about their rights under the employment legislation, or trade unions about their role in ensuring that workers with disabilities access their rights.

Explain that companies are increasingly responsive to a concept often termed Corporate Social Responsibility (CSR) by the leading business schools. CSR is a broad concept that promotes companies taking social responsibility whether it is to promote a cleaner environment, daycare for the children of workers, or to aim for social diversity in the workforce, including through hiring, retention, and promotion of people with disabilities. Companies now understand that a diverse workforce that reflects societal differences in gender, race, culture, sexual preference, etc., is ultimately good for business because people from diverse backgrounds are also potential customers.

- b. **OPTIONAL EXERCISE:** Break participants up into six groups. Assign each group a critical stakeholder role in the employment process (e.g. employer, job seeker with a disability, current worker with a disability, trade union, family member of a person with a disability, and co-workers). Explain to each group that it will have 30 minutes in which to come up with an information marketing campaign to support the implementation of a new piece of disability non-discrimination legislation. Instruct each group, using **Transparency 82**, that it should ascertain the specific message(s) to be delivered, why it is important, and any anticipated outcome the group members think their message might have. Each group should select a reporter from the team to share the information campaign with the larger group. Allow each group ten minutes to report, followed by questions and answers in each case.

Encourage participants to think of alternatives to potential high-cost information campaigns such as posters, kiosks, traveling plays, soap operas, etc. Also ask participants what measures they might be able to take to ensure alternative formats for the message to ensure the information gets to a broad array of disability groups and stakeholders.

- c. Ask participants to generate a list of options that exist for promoting a general information campaign. Responses might include radio, newspaper and television advertisements, ads in public transportation vehicles, etc. List their responses on flipchart paper.
- d. Change direction slightly and ask participants to assist in generating a list of options that might be used to promote a more targeted information campaign. What if the aim was to reach employers exclusively or people with disabilities or trade unions? Would the same approaches hold true or would the tactics adopted need to be more customized?
- e. Close this part of the lecture by reminding participants that well-planned information campaigns are crucial and to be effective must be designed to address the specific requirements of the different stakeholders involved. Emphasize that in addition to general information campaigns, provision should be made at the planning stage for technical advisory services targeted at stakeholders such as information and advice on technical aids and adaptations, job placement, financial incentives, and other employment supports that may be required. Explain that this will be dealt with in much greater detail later in this module.



1.5 hours

An Example of an Effective Information Campaign

In Poland, an organization called Integracja was started more than 20 years ago by Piotr Pawlowski, after doctors told him that he could never work following an accident that left him with quadriplegia. Today, he runs a major organization with 40 employees that produces a glossy, 90 page magazine with the highest circulation (more than 15,000 copies) of any Polish magazine of this type. The magazine, which features national and international information on a wide variety of subjects, such as how to find a job, is just one part of this multi-faceted NGO. Integracja carries out public education campaigns to change public attitudes, demystify disability, and emphasize the abilities of people with disabilities. Among many other activities, it runs training courses, has its own programme on public TV, co-produces other radio and TV programmes and maintains a database of disabled individuals. One of its successful campaigns promoting barrier-free travel resulted in two guidebooks about Warsaw and Krakow published in Polish and English. It works to sensitize students through presentations in schools and universities. It promotes greater accessibility to various businesses by sponsoring competitions such as 'Pharmacies without Barriers' and 'Hotels without Barriers' and works with the trade associations to promote these competitions.

2.5 hours



5.2 Standard Lecture

Employment Support Measures

- a. Explain to participants that employment support measures can be provided to either the employer or the person with a disability or both. Critical to the success of any pending legislation is that these supports should be planned for and adequately resourced from the time the law is enacted. Use **Transparency 83** to highlight the many different forms these supports can take: financial incentives; benefits in kind such as specialized equipment and technical advisory and support services.
- b. Emphasize to participants that when the employment support measures take the form of financial support, the money could be used merely to cover any extra costs associated with employment of the worker with a disability (e.g. costs associated with making a reasonable accommodation); or, the financial support could provide a financial incentive to the person with a disability, or, more usually to the employer. Use **Transparency 84** to illustrate these options.

Explain to participants that this incentive for employers goes beyond any identifiable additional costs associated with employing a person with a disability. Such incentives can be classified as a “reward” for employers, and are not designed to cover or be specifically attached to any extra costs associated with employing people with disabilities.

Many disability advocates object, however, to the practice of rewarding employers to take people with disabilities as workers. Their criticism stems

from the fact that not only does the practice reinforce the notion that people with disabilities are inferior workers, but it is also often manipulated by employers who may keep the workers at very low pay with little possibility of advancement. If the rationale is that the worker with a disability is less productive than non-disabled workers, then many advocates feel that the employer should be permitted to pay such workers less, but then the supplement should be paid to the worker to bring the wage up to the level paid to other workers, rather than to the employer.

Transition to **Transparency 85**, and explain to participants that you will now consider specific forms of employment support measures.

c. Provision of Specialized Work-Related Equipment

Referencing section 5.2.1 of the Primer, begin by reviewing the examples provided in **Transparency 86**.

"A blind person may require a computer keyboard with a Braille reader in order to use a computer."

"An individual with cerebral palsy may require adaptive agricultural equipment in order to work on a farm."

Explain that these are both examples of specialized work-related equipment that an individual with a disability may need to perform his/her job effectively. In many cases this equipment can be made or adapted readily and cheaply, and its provision will not prove problematic.

Highlight that it may sometimes prove costly or problematic for either the worker with a disability or the employer to obtain and/or pay for the equipment. Refer to **Transparency 86** again to consider options in these cases.

Emphasize that it is important to ascertain whether the equipment is being given or lent to the employer, or to the individual worker. If it is being given to individual workers, they can then take the specialized equipment with them if they change jobs. If it is being given or lent to the employer, the question of what happens to the equipment when the individual worker leaves the job must be considered. Finally, the question of whether this equipment will be made available free of charge or whether some fee or deposit will be payable needs to be decided when the scheme is being designed.

Conclude the discussion on specialized work-related equipment by referencing the following United Kingdom example. Emphasize to participants that in the UK, specialized equipment is provided as part of an integrated set of services. In addition, emphasize that it is important in designing individual support schemes, to provide a coherent set of services, flexibly combined to cater to individual needs.

In the United Kingdom, the Employment Service provides individually tailored programmes of Work Preparation (also called Employment Rehabilitation) to help a person with a disability to obtain work. The programme addresses the employment-related needs that result from the individual's disability, and currently prevent them from being able to enter employment or training of a type that would otherwise be suitable.

An additional UK scheme, the Access to Work Scheme, provides practical advice to help overcome work-related obstacles resulting from disability. It provides grants designed to partially cover extra employment costs, including special aids or equipment for employment, adaptations to premises and existing equipment, help with travel to work if public transport is unsuitable, a support worker to provide help in a workplace, and a communicator for support at interviews.

d. Provision of Specialized Equipment for Daily Living

Referencing section 5.2.2 of the Primer, explain to participants that many workers with disabilities require specialized equipment in order to achieve a degree of independence in everyday life and to increase their ability to function. Use **Transparency 87** to highlight some common examples of such equipment including wheelchairs and hearing aids.

Emphasize that without such equipment, individuals with disabilities could find it highly difficult to find and hold down employment. Explain that for these reasons the provision of such basic equipment, needed to function in all spheres of life, can play a vital role in enabling individuals with disabilities to take up employment. Ask participants the following questions:

1. "If an individual required the use of hand rails in their home for mobility purposes, but they were not available in their community or workplace, what might the implications be?"
2. "Are there potentially other types of equipment that could meet this individual's need in other environments?"
3. "If so, what considerations would need to be made in putting them in place?"
4. "If specialized equipment an individual needs is not used only for employment, is it appropriate to expect the employer to be the provider?"

Explain that there may be multiple responses to the last question. The response depends on whether such equipment is used for more than employment, because in that situation it may not be appropriate to expect the employer to be the provider. Instead this task should be coordinated by public authorities that, as with specialized work-related equipment, could set up units to produce and maintain this daily living-related equipment.

State that, as in the case of work-related equipment, the public authorities will need to decide whether this equipment will be provided free of charge or whether some fee will be charged. In some countries, a means test is applied, with those with income above a certain level being required to pay, and those with income below this level receiving the equipment free of charge.

e. Provision of Transport Facilities

Referring to section 5.2.3 of the Primer, explain that one common problem experienced by people with disabilities concerns transportation. Use **Transparency 88** to review for participants some of the primary obstacles and issues experienced. This discussion could include that poor transport facilities restrict ability to travel to and from work and to other locations. Further, public transport systems are often also inaccessible to people with certain kinds of disabilities. Finally, many people with disabilities are unable to afford to run their own car or use expensive private taxis.

Explain that a number of measures can be introduced to promote the safe and appropriate travel to and from work of people with disabilities including:

- Developing an accessible public transport system - involving ensuring that buses, trams, trains, metro systems and taxis are all accessible to people with disabilities, including people who use wheelchairs.
- Ensuring that some private taxis can be used by people with disabilities – by providing vouchers which can be exchanged for taxi journeys to and from work, either through the employer or public authorities.
- Providing individuals with a disability the financial support to enable them to make their own transport arrangements - for taxi travel, as a subsidy of the purchase or running of an adapted car or to pay someone else to bring them to work. Individuals with disabilities could also be allowed to use public transit at no cost (such as is done in Brazil).
- Providing specific and separate transport systems (called para-transit) to allow people with disabilities to travel to and from work, usually in adapted mini buses which can be accessed by people who use a wheelchair.

Conclude this section by illustrating with the following example from Australia provided on page 56 of the Primer.

“In **Australia**, the Mobility Allowance provides financial assistance to people with disabilities who are in paid employment, voluntary work, vocational training, undertaking independent living/life skills training or a combination of paid work and training, and who are unable to use public transport without substantial assistance. The individual recipient is free to decide how to use this money to meet their mobility needs. For example, the money can be put toward the purchase, upkeep, and running of an adapted vehicle; used to pay someone else to provide transport in a private vehicle; or used to pay for taxi journeys.”

f. Financial Support/Financial Incentives for People with Disabilities

Transitioning to **Transparency 89**, and referring to section 5.2.4 of the Primer, explain to participants that some people with disabilities may require financial support or financial incentives in order to enable or encourage them to take up employment. Highlight the reasons why such financial support or incentives may be necessary.

- When they take up a job, individuals may give up the right to claim

disability social security benefits, which they regard as providing a guaranteed and regular income. This may be a difficult decision, as the job may involve an uncertain future. Policy makers in countries that have a system of disability benefits in place should pay particular attention to ensuring that the social security system does not create a disincentive for people with disabilities to take up employment.

- One means of encouraging employment is to allow individuals with a disability to automatically reclaim their disability benefits if, for some reason, they are unable to remain in employment. This right might be limited in time, for example, to a period of one year. Emphasize to participants that in most countries, it takes a period of time to be assessed as eligible for disability benefits and that this waiting period could be waived in the case of those who go off the benefit to enter employment, should they lose their jobs within a defined period.
- Another way to promote employment is to introduce a 'bridging' arrangement, in which individuals are entitled to earn income up to a specified level as a supplement to their social security allowance, without the level of this allowance being affected. Then a proportionate reduction in this allowance is made for income above this threshold, up to a specified level, and the allowance is discontinued above the top level. A further reason why financial supports and incentives are needed is that many people with disabilities may be able to find only low-paid work. From a financial perspective, this situation may leave them in no better position than claiming disability benefits. A financial incentive which tops up low pay may help to encourage these individuals to take up poorly paid work, in order to gain work experience, as a first step towards developing a career.
- Another point is that people starting a new job must often cover certain costs prior to taking up the work. These costs might result from the need to purchase new clothing, specialized equipment or training, or prepaid transport passes. A one-time or ongoing payment to people with disabilities who have limited resources could help to cover these costs and help prevent this expenditure from becoming a barrier to taking up a job.

Conclude this section by illustrating with the examples provided on page 57 of the Primer from New Zealand and Finland.

"In **New Zealand**, the Disability Allowance reimburses people for ongoing regular costs that they incur because they have a disability. The amount paid depends on the person's costs and the level of their income."

"In **Finland**, the disability allowance is paid to disabled people aged between 16 and 64 to help them better cope in everyday life, at work or in education. The allowance is intended as compensation for costs incurred by disability or ill health. The allowance comes in three amounts, depending on the severity of disability. The recipient's income or assets do not influence the amount of the allowance, which is also untaxed."

g. Financial Support / Financial Incentives for Employers

Use **Transparency 90** to describe for participants that financial incentives for employers can take several forms including grants, tax credits, tax deductions and wage subsidies. Emphasize to participants that financial support for employers can take two forms – an incentive to support good practice, or a subsidy to compensate employers for extra costs or low productivity associated with an employee with a disability.

Explain that public authorities can provide financial subsidies to employers in the form of a grant or tax incentive to cover any extra costs associated with employing a disabled worker. In some cases and as a result, for example, of providing additional training or making necessary adaptations to facilities, an employer may be faced with certain additional costs. In order to ensure that these costs are not a disincentive or a reason for not employing a person with a disability, the public authorities could meet all or some of these costs. In many cases, though, employers will not incur any extra costs and financial subsidies will not be needed. Illustrate this with the examples from Belgium, Germany, and the Netherlands provided on page 58 of the Primer.

“In **Belgium**, a Collective Agreement, concluded between the social partners provides that under certain conditions, the employer may pay only part of the total remuneration of the worker with a disability, the remainder being paid by a public body. In exceptional cases, labor inspectors may authorize the employer to pay workers recognized as having disabilities, a remuneration that is under the minimum level set either in collective agreements or by custom. This reduction – which may never fall under 50 per cent of the normal remuneration – is justified by the reduced productivity of the worker. The difference between what the employer is authorized to pay and the normal level of remuneration is then paid to the disabled person by the public authorities.”

“In **Germany**, employers may apply for loans or grants in order to comply with reasonable accommodation duties. In addition, wage subsidies and vocational training are provided for all disabled persons. Employers who are not subject to reasonable accommodation or quota obligations can also apply for grants to make their worksite and workplaces accessible. Wage subsidies are granted where a disabled worker has a lower productivity level. The amount granted depends on the severity of disability and other factors that hamper integration into the open employment sector, such as age. Wage subsidies are granted for a limited time, with a maximum duration of three or eight years, depending on various factors.”

“In the **Netherlands**, subsidies may be granted to the employer or to the disabled employee for the costs of ‘facilities’/‘services’ related to (re)integration. These extra costs may vary from special furniture, to transport facilities, to education or training facilities, etc.”

h. Financial Support / Financial Incentives to Encourage Recruitment

Refer back to **Transparency 90** to remind participants that financial incentives for employers can take several forms including grants, wage subsidies or tax incentives, to encourage them to employ workers with a disability.

Explain to participants that unlike the financial subsidy referred to above, the value of this incentive would not be linked to, or limited to, any additional costs an employer incurred through employing a particular person with a disability. The financial incentive is intended as an encouragement to employers to take on individuals with disabilities, and may be useful in promoting the employment of people with disabilities who experience particular difficulties in the labour market. The value of the incentive could be linked to the perceived difficulty of employing the worker.

Use **Transparency 91** to illustrate with this example and ask the following questions.

“A person with a severe disability or without an established work history may be regarded as more difficult to employ than a person with a mild disability, or with an established work history.”

1. “Why might it be particularly important to provide a financial incentive to employers to hire this individual?”
2. “Is there a benefit to the individual with a disability?”
3. “Do you see any negatives or downsides to providing the employer a financial incentive?”
4. “How would you determine who to make eligible for this type of financial incentive?”

Explain to participants that the incentive could be linked to the amount of time the worker has been unemployed. A higher incentive could be provided to take on a worker who has been unemployed for one year or more. This approach is likely to be less stigmatizing and easier to administer than if the incentive was linked to the level of the individual’s work capacity. The incentive could be temporary (for example, a monthly payment over a period of one or two years) or without a time limit.

Using **Transparency 92**, remind participants that in designing financial incentive measures, steps should be taken to prevent or minimize the following problems which may arise:

- Where the schemes are temporary, employers may tend to dismiss disabled workers employed under the scheme as soon as possible, and to take on a new worker with a disability who is eligible for financial support;
- Workers with disabilities who are employed under such schemes may be stigmatized, and regarded as less able or less productive;
- Non-disabled workers may resent the employment of subsidized workers with disabilities, if they perceive them as a threat to their own jobs.

Ask participants how these potential problems might be avoided, as highlighted in **Transparency 92**. If not generated by participants, emphasize that where the payment is temporary, the employer could be obliged to retain the worker for a certain period after the incentive payment has ceased. Information campaigns could also be designed to highlight the ability of

workers with disabilities and tackle stereotypes. The support of trade unions for the financial incentive scheme could also be solicited, as a means to overcome reservations which non-disabled workers may have about the scheme.

Conclude this section by highlighting the following examples provided on page 60 of the Primer from the Netherlands, Canada and Australia.

In the **Netherlands**, an agreed subsidy (called a 'placement budget') is provided for employers as a compensation for hiring a disabled person for at least six months or permanently. In addition, a subsidy (called a 'reallocation budget') can be provided to an employer who allocates a new job to an employee who has become unable to perform the job for which he/she was initially employed. Alternatively, public subsidies can be provided to employers who request a tailored subsidy package where the reintegration costs exceed the placement budget or reallocation budget. In **Canada**, unemployed individuals eligible for employment insurance who have difficulty finding work due to employment barriers are assisted in locating an employer who will enter into an agreement with the local Human Resource Centre of Canada office, in order to provide the individual with employment. The agreement with the employer can be approved for up to 78 weeks.

In **Australia**, a Wage Subsidy Scheme is used as an incentive for employers providing jobs to people with disabilities in the open labor market. The scheme aims to increase the competitiveness of workers with disabilities in gaining employment of at least 8 hours per week, for a minimum of 13 weeks.

Emphasize that a combination of financial incentives and employment-related support services needs to be introduced for disability non-discrimination legislation to be effective and that these incentives and services need to be provided in a coordinated, coherent way. These supports will assist job-seekers with disabilities in finding work, off-setting the costs of going to work, underwriting potential costs for employers in making specific types of accommodations, and facilitating employers in recruiting and retaining persons with disabilities. Explain that these incentives and supports are also critical in developing effective quota schemes.

OPTIONAL EXERCISE: The purpose of this exercise is to provide participants an opportunity to weigh the advantages and disadvantages of offering specific financial incentives to people with disabilities and/or employers. Break the group into six smaller groups. Assign each group a position:

- Positives associated with financial incentives for people with disabilities to encourage work.
- Negatives associated with financial incentives for people with disabilities to encourage work.
- Positives associated with providing financial incentives to employers to cover disability and access-related costs.
- Negatives associated with providing financial incentives to employers to cover disability and access-related costs.
- Positives associated with providing financial incentives to employers for



1.5 hours

- recruiting, hiring and retaining.
- Negatives associated with providing financial incentives to employers for recruiting, hiring and retaining.

Explain to participants that they need to develop an argument that represents the position they have been assigned. Each group will have 20 minutes to form its position and then 10 minutes to share its findings.

i. Consulting Employment Services

Explain to participants that over the past 20 years, there has been growth in the number of individuals with disabilities entering the labour market. This growth has included developments in the area of providing essential supports to the workplace. Use **Transparency 93** to highlight the variety of forms that technical advisory and consultative employment support can provide including pre-employment services, job placement services and employment services. Explain to participants that each of these areas will be explored in more depth.

Using **Transparency 94**, detail for participants the array of pre-employment services that might be available. Help participants to understand that vocational assessment is a service to assist in understanding the specific skills, traits and abilities a person with a disability has that can be matched to specific jobs. It also aids in identifying specific support needs and potential accommodations an individual may need to be successful in the job market. Typically, a vocational assessment is a standardized battery of aptitude and other tests used to generate a standard framework for the individual being tested. Work trials and functional assessment are more functionally-based in that they focus on real situations and jobs and assess the interaction of the person while actually performing the job in the environment and culture. Information gathered can be critical in determining a person's ability to function independently as well as providing an excellent opportunity for testing accommodations and modifications during performance. Pre-employment skills training focuses on aiding individuals with disabilities to gain skills they may need to pursue a specific career or, more generally, to assist them to enter the job market through developing interviewing and/or job seeking skills. Often, career counseling is the 'glue' that holds pre-employment services together, because the pre-employment process is an ongoing dialogue to gain a better understanding of the individual, the types of work environment of interest to him or her and the job match between the two.

Using **Transparency 95**, outline for participants the breadth of services potentially available to support job placement. Job development is a specific activity that job placement organizations engage in to assist them in understanding their local labour market and the employment opportunities available. It focuses on building a relationship with the labour market and creating job opportunities for potential applicants with disabilities. Job seeking support is provided to individuals with disabilities once they have determined their specific employment goals. It is a negotiation process

between the job placement organization and the individual. It involves identifying the parts of the job-seeking process that the individual can perform independently as well as where he/she may need additional support - such as finding job opportunities. A critical part of the job placement process is job matching. This process involves taking what was learned about the individual with a disability as part of the vocational and functional assessment and pairing it with an analysis of a specific job and work environment and culture. Consider this step as a type of balancing act to determine where an individual's skills and abilities match to the job. Where they do not match, a job placement organization knows that additional supports must be provided. This gap potentially results in supporting the individual with a disability and the employer to negotiate accommodations and work adaptations needed for effective job performance. Often at this point in the job placement process, the job placement organization may provide technical advice to employers to assist them in making accommodations or possibly with restructuring the job or specific tasks of the job.

Use **Transparency 96** to explain the many aspects of providing employment services. Most typically, once an individual with a disability is placed in a job, there may be some agreement concerning the type of training and additional supports the individual will require to accommodate the specific disability. This can include on-the-job training provided by the employer with possible enhancements, as well as job coaching which may be provided by the job placement organization. Once an individual with a disability is employed, the job placement organization may continue to provide ongoing services to support job advancement, ongoing career counseling and crisis management, as needed.

Close this module by emphasizing to participants that the array of services and supports discussed may or may not be provided by the same job placement organization. It is critical to ascertain from the start, the extent of technical advisory and consultative supports that may be available, and from which agencies, to support the employment process.



Evaluating Impact

Prior to closing the session, ask participants to take a moment to complete the Training Programme Survey provided in Appendix A and Module 5 Learning Objectives Evaluation provided in Appendix H. Upon completion, ask participants to submit these. Tabulate the responses to gauge overall instructor effectiveness and extent to which specific learning objectives were attained. Take time to specifically note where the lecture and learning experience could have been enriched to enhance learning.



Online Resources

<http://www.usdoj.gov/crt/ada/business.htm>

This Americans with Disabilities Act Business Connection web site provides resources concerning how businesses can adapt themselves to fit to ADA standards, including accessible design guidelines and information about ADA tax credits. Although this site is geared toward serving businesses, the same design guidelines can apply for employees with disabilities.

<http://www.jan.wvu.edu>

JAN is a free consulting service to increase the employability of people with disabilities by: 1) providing individualized worksite accommodations solutions; 2) providing technical assistance regarding the ADA and other disability-related legislation; and 3) educating callers about self-employment options. The web site contains specific portals for private employers; federal government employers and State and local government employers and it also provides information on Personal Assistance Services in the workplace.

<http://www.abledata.com>

ABLEDATA is an online "source for assistive technology information." With products that range from available prosthetics to workplace equipment, ABLEDATA also contains a page of resources and information centres, such as a list of links for specific disabilities as well as links for workplace resources and general disability resources, to name a few.

<http://www.psi.org.uk/publications/DISAB/dissocpol.htm>

An online text version of the book Disability and Social Policy, which contains chapters entitled "Income maintenance for people with disabilities," "Social care services for disabled people," and "Overcoming barriers to employment," to name a few.



References and Readings

- 1. McFarlin, D. B., Song, J., & Sonntag, M. (1991). Integrating the disabled into the work force: A survey of fortune 500 company attitudes and practices. *Employee Responsibilities and Rights Journal*, 4(2), 107-123**
A survey of Fortune 500 companies was conducted to determine employer attitudes towards disabled persons, and to explore further employer hiring and accommodation practices. This investigation was done in order to shed light on a topic that has little available information.
The article is available for purchase at:
[http://www.springerlink.com/\(1jd1thvzqgwtgam1q11km445\)/app/home/contribution.asp?referrer=parent&backto=issue,2,7;journal,44,57;linkingpublicationresults,1:105548,1](http://www.springerlink.com/(1jd1thvzqgwtgam1q11km445)/app/home/contribution.asp?referrer=parent&backto=issue,2,7;journal,44,57;linkingpublicationresults,1:105548,1)
- 2. Merilainen, A., & Helaakoski, R. (2001). Transport, poverty and disability in developing countries. 1-29.**
Inclusive transport is a critical element in a comprehensive strategy of mainstreaming people with disabilities in developing countries. Transport systems that exclude people with disabilities virtually guarantee that people with disabilities will be poor, since such systems may well preclude education, prevent participation in the labor market, and restrict access to health and other social services. Apart from creating "income poverty" for people with disabilities, exclusive transport systems also deprive people with disabilities of social, cultural and political opportunities. When analyzing the environment with regard to transport and disability, two main perspectives need to be considered. These perspectives are access to and accessibility of the built environment.
Available Online:
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTTRANSPORT/EXTTSR/0,,contentMDK:21268763~menuPK:2970912~pagePK:210058~piPK:210062~theSitePK:463716,00.html>
- 3. Barbara Kolucki & Barbara Duncan; Working Together with the Media: A Practical Guide for People with Disabilities; International Labour Office and Rehabilitation International; 1994; Geneva**
- 4. Verick, S. (August 2004). Do financial incentives promote the employment of the disabled? Discussion Paper no. 1256, Institute for the Study of Labor, University of Bonn.**
In October 1999, the unemployment rate of people with severe disabilities in Germany was more than double that of the non-disabled population. To improve this situation, the People with Severe Disabilities Act was reformed to increase incentives for the severely disabled to enter the work force and for employers to hire such workers. In 2003 the Federal Government announced that through this reform it had successfully reduced the number of unemployed by 25 per cent representing around 45,000 individuals. However, an evaluation of the impact of this policy reform on labour market outcomes for the severely disabled indicates that this was not achieved by getting these individuals into employment. Moreover, a recent deterioration in the number of unemployed suggests that the success in 2002 was at best temporary. Thus, there is no evidence that changes

to financial incentives in the PSDA had a positive long-term impact on the employment of people with severe disabilities.

Available Online:

<http://opus.zbw-kiel.de/volltexte/2005/2455/pdf/dp1256.pdf>

5. Walls, R., Hendricks, D., Dowler, D., & Hirsch, A. (2000). Job accommodation resources: Lessons from the global neighborhood. *Journal of Rehabilitation*, 68(4), 34.

Walls et al. describe from an international perspective the resources available to facilitate employment, worksite accommodation information-dissemination models, and existing barriers to employment of people with disabilities. Over the past 20 years, there have been amazing strides toward integration of employees with disabilities internationally. Even though different nations have achieved differing levels of sophistication, the goals, processes, and barriers to full engagement are consistent around the world.

Available Online:

<http://linkresolver.library.cornell.edu:4550/resserv?sid=google&auinit=RT&aulast=Walls&atitle=Job+Accommodation+Resources:+Lessons+from+the+Global+Neighborhood.&title=journal+of+rehabilitation&volume=68&issue=4&date=2002&spage=34&issn=0022-4154>

Notes



*Achieving Equal Employment Opportunities for People with Disabilities through Legislation
An Education and Training Guide*

Drafting Legislation and Policy

6

This section provides general guidance to policy-makers and legislators pertaining to stakeholders that need to be consulted and invested in the development of effective disability non-discrimination legislation. An overview of the various stakeholder groups (including people with disabilities and the organizations that represent them, employers and employers' organizations, workers and trade unions, service providers and other interested parties) is provided along with strategies for gaining their support and involvement. Specific examples of how the consultation process might be structured and how other countries have already designed the process are provided.



Time Frame

6 - 8 hours
(based on extent
of optional
exercises selected
to reinforce
learning)

Learning Objectives



At the completion of this seminar course participants will be able to:



Define the importance of consultation in the legislative development process.



Identify the four primary groups to be targeted for consultation when developing equal employment and disability non-discrimination legislation and policy.



Describe a typical consultative legislative process.



Highlight examples from at least three countries of their experiences in consulting with specific targeted stakeholders in their legislative development process.



Key Concepts

This module focuses on the basic premise that law and policy-makers should consult widely when seeking to draft or revise laws designed to promote the employment of persons with disabilities as well as when developing policies to implement these laws. Widespread consultation will enable law and policy makers to profit from the expertise that exists in the community and help to ensure the effectiveness of any law and policy that is eventually adopted.

Glossary of Terms



- Consultation:** A meeting for the purpose of deliberation, discussion, or decision.
- White Paper:** An official governmental or authoritative report issued by an organization or Government.



Training Outline



Getting Started: Introduction

15 minutes



- a. To start this session, have **Transparency 97** on the screen.
- b. Make sure “Ground Rules” are still clearly visible to participants and that other flipchart papers are not covering them.
- c. Provide participants with a general overview of the learning objectives for this session using **Transparency 98**.
- d. Remind participants that you will continue to log questions in the “Parking Lot” that arise during the seminar which may or may not be relevant to the topic being discussed (see pp. 13 and 16).

2 hours



6.1 Standard Lecture

Consulting with Social Partners and Civil Society

- a. Begin this section by emphasizing to participants that law and policy makers should consult widely when seeking to draft or revise laws designed to promote the employment of persons with disabilities, as well as when developing policies to implement these laws. Use **Transparency 99** to emphasize that widespread consultation will enable law and policy makers to profit from the expertise that exists in the community, and help to ensure the effectiveness of any law and policy which is eventually adopted.
- b. Consulting Organizations of People with Disabilities
Be careful to explain to participants that there are, in fact, various ways to collect information from and involve individuals with disabilities in the legislation drafting process. Referencing section 6.1.1 of the Primer, use **Transparency 100** to highlight that information can first be gathered and involvement sought by consulting with organizations that represent individuals with disabilities, and second directly from individuals with disabilities themselves or through elected Members of Parliament who represent the concerns of people with disabilities.

Other Approaches to Consulting with Disabled People’s Organizations (DPOs)

In recent years, several countries have gone beyond merely consulting with DPOs regarding drafting legislation, etc., to directly involve them in the business of representing the concerns of people with disabilities by being part of the government. The first country to make a deliberate effort to ensure a political voice for people with disabilities was **South Africa**. In 1999, it had 10 Members of Parliament who were people with disabilities (the highest number of any country

in the world). This was not a coincidence or an accident. Instead, it is part of a deliberate effort on the part of the African National Congress (ANC), the majority party, to overturn the past practices of apartheid in which no minorities had representation. Now representation is assured because of reserved disability positions in the Parliament. The ANC approached the DPOs and asked them to draw up a list of well-qualified disabled candidates in different geographic areas whose names were then placed on the party's national list. After verifying their credentials, the ANC then placed their names on the ballot. After election, those elected to these positions are expected to represent the needs and concerns of people with disabilities, in all areas that could affect them. Today, the minority parties have followed similar practices. The process in **Uganda** differed from that of South Africa. Since 1996, Uganda has embraced an all encompassing movement system of government whereby there are no political parties but instead, all groups elect their own representatives. Therefore, disabled people had to organize to elect their own leaders to the five seats in Parliament reserved for them. It was also totally up to disabled Ugandans to decide how to divide up their representation. They began by dividing the country into four regions and then decided exactly how they wanted the representation to be accomplished, for example, they determined that they wanted one seat for women with disabilities that could therefore be contested for only by women with disabilities. The other four seats were to be contested for by both men and women to ensure balanced representation. Electoral colleges were then organized, to which each district sends representatives. When the time comes to elect Members of Parliament (MPs), each district is asked to send four people – one with a visual impairment, one with a hearing disability, one with a physical disability and the last with any other type of disability. They all go to the Electoral College, draft their manifesto and whoever wishes to serve as an MP goes on to campaign. Only disabled people can vote for their candidates and whoever they elect becomes an MP without any need for government endorsement. Disabled Ugandans have a great deal of influence because not only do they vote for their own MPs, they also vote for the other MPs from their community too, who they can go to if needed.

Explain that in the first instance, it is important to consult with organizations of and for people with disabilities. Using **Transparency 101**, describe specific considerations that should be made, including the following:

- Organizations should be representative of the disability community, rather than of non-disabled persons seeking to represent the interests of disabled persons.
- Organizations should be encouraged to take on board the concerns of women and other disadvantaged and under-represented groups of disabled persons.
- When person with disabilities cannot represent themselves, representation can occur through family members or advocates, although, even in these cases, every attempt should be made to listen to the disabled individuals, who may be able to express some opinions.

Make sure that participants understand that the disability community is very heterogeneous. A number of different organizations may exist, representing

the interests of people with different disabilities. Where this is the case, all representative organizations should be consulted. Consultation could also be facilitated by a national disability council or a network of national disability organizations.

Explain to participants that as a potential strategy, it might be useful to produce a position paper (sometimes referred to as a White Paper) which discusses the particular challenges, issues and needs to be tackled and addressed and options for change, as a basis on which the consultation can begin. Larger disability organizations could be specifically invited to comment on and discuss this position paper and smaller organizations (of which the authorities may not be aware), could be given the possibility of responding if they wish. For this arrangement to work, the position paper should be widely distributed and adequate publicity arranged concerning the consultation. Requests for public comment enrich the debate at this preliminary stage.

1.5 hours



OPTIONAL EXERCISE: Begin this exercise by explaining to participants that they are going to be responsible for outlining a position paper (White Paper) supporting the development of disability and employment non-discrimination legislation in their country. Break the larger group into smaller groups of 5 individuals. Ask each group to draft a paper using an outline format. Explain that the purpose of the paper is to frame a proposal for the non-discrimination legislation concerning the employment of persons with disabilities. The challenge for them is to consider what needs to be incorporated into a comprehensive paper/proposal. Allow each group 45 minutes to frame its paper and another 45 minutes to debrief the exercise allowing each group approximately 5-10 minutes to share its paper outline with the class.

Emphasize that support from the majority of the disability community is essential to the success of any eventual policy. If this support does not exist, people with disabilities may boycott the policy, for example, by not registering as a disabled person; not applying for financial or material support; or not seeking to enforce individual rights through the courts. Without this support, the law or policy is likely to fail.

Using **Transparencies 102-104**, highlight some additional considerations policy makers may need to make to involve individuals with disabilities in the consultative process as they consider these strategies.

- People with disabilities and their organizations may not easily be able to respond to and comment on draft legislation and policy initiatives, either because they are not accustomed to being consulted on legal and policy issues, or because they are not physically able to process and understand written information.
- Special efforts may have to be made in order to promote the involvement of organizations of people with disabilities.
- Any written or oral information on the consultation should contain a sufficient amount of background information which clearly sets out the perceived

problem and the tools which are proposed for addressing that problem.

- The fact that the opinions of people with disabilities are valued and welcomed should also be stressed, especially given that organizations of people with disabilities may not be accustomed to being asked for their opinions.
- If written information is provided, alternative formats may be needed such as Braille; audio tapes; text written in a large print; and, easy-to-read texts and short summaries in order to reach people with certain types of disabilities.
- Where it is not financially feasible to provide such alternative formats or where they are not relevant (if not required by the group engaged in reviewing the paper), the report should remind readers of the need to involve people who are blind or have intellectual disabilities in the information and consultation process.
- State representatives could be sent to different parts of the country to discuss the legal and policy issues with people with disabilities and their organizations. Such meetings could reinforce and clarify any written information previously provided – reaching many people who would be unable to receive or read written consultation documents.
 - Alternatively, public authorities could train people with disabilities to participate in and chair such meetings, and to report the opinions they heard. This may result in a more open and informal discussion with the disability community.
 - Sign language interpretation may be needed at such meetings to facilitate the participation of deaf people. Local communities may be able to provide such interpretation if provided with enough notice and sufficient support.
- If it is not possible to hold meetings, radio chat programmes may be used to stimulate debate on the legal and policy issues, and to obtain feedback.

Conclude this subsection by referencing the example provided on page 64 of the Primer that highlights the independent committee approach that Ireland took to advise the government on disability policy issues. Independent committees have proven to be an effective practice in ensuring that the voice of persons with disabilities has a place of prominence in public policy-making discussions. It also provides a neutral and potentially unbiased vehicle for gathering, analyzing and synthesizing information from certain target audiences that may be critical to the policy making process.

In **Ireland**, an independent committee was established to advise the government on disability policy. All members of the committee had a disability, or were the parents of a person with a disability who was unable to represent himself or herself. The committee traveled throughout Ireland holding public hearings to discuss the future of disability policy in Ireland. The committee concluded its work by presenting a lengthy report, based on its own opinions and those of the public who had contributed to the meetings, on how disability policy in Ireland should be organized.

c. Consulting Employers and Employers' Organizations

Explain to participants that many of the obligations resulting from a law or policy to promote the employment of people with disabilities fall on employers. Given the ultimate impact on employers, it is important to understand the opinion of employers prior to adopting or amending the law or policy and, wherever possible, to work in collaboration with employers.

In light of this, ask participants why they think it is important to engage employer representatives in the development of laws and policies - why might an employer representative want to have input into the drafting process? Make sure to document participant responses on flip chart paper.

Referencing section 6.1.2 of the Primer, use **Transparency 105** to highlight some basic information pertaining to involving employer organizations. Explain that many countries have a central employer organization that represents a large number of employers. Consultation with employers' organizations need not, however, be confined to a single body. Consultation should occur with bodies which represent specific kinds of employers, such as rural and industrial employers, employers in different sectors, and large and small employers. This is because different industries or sectors may be able to offer different employment opportunities to people with disabilities. As with consultation of organizations of people with disabilities, a public position paper, which invites comments, may be one means of securing a widespread and informed response.

Review the barriers to possible employer involvement outlined in **Transparency 106**.

Explain that law and policy makers should be aware that employers frequently resist binding obligations regarding the employment of people with disabilities as well as those in other areas. Instead, they tend to prefer the use of a voluntary code of good practice. Emphasize, as articulated in the Guidelines, that European and North American countries, frequently after trying a voluntary approach, have generally rejected such an approach to promoting the employment of people with disabilities and instead have imposed binding obligations on employers.

Conclude by stating that it is important to emphasize that it is good business practice to employ persons with disabilities, both from a financial as well as a social perspective. This business case should then be infused into a far-reaching public information campaign providing, clear information on how different policy options have worked in other places and the reasons for the success of some of these policies.

d. Consulting Workers and Trade Unions

Begin the discussion on trade unions by explaining that, as with the employers' organizations, consultations should occur both with the central trade union organization and with sectoral trade unions.

Referring to section 6.1.3 of the Primer, review the basic considerations for engaging and involving labour unions in the legislative drafting process using **Transparency 107**. Explain that law and policy makers should take into account whether trade unions are generally supportive of the employment of workers with disabilities. Some trade unions may perceive their membership to be made up of non-disabled workers and may therefore feel “threatened” by greater efforts to promote the employment of workers with disabilities. On the other hand, trade unions may already be actively involved in promoting the employment of people with disabilities, and be able to provide a valuable insight into effective policies and problems faced. Some trade unions, especially those representing workers doing labour-intensive or hazardous work where disabilities are more likely to occur, have first-hand experience and knowledge in dealing with rehabilitation and return of disabled workers to their jobs. Furthermore, because many trade unions represent workers who engage in the same industry, they are the most knowledgeable about the working conditions that may lead to disability or injuries, and therefore they are in the best position to advise workers and employers on ways to prevent them.

The International Association of Machinists and Aerospace Workers (IAMAW)

Example

The IAMAW sponsors and financially supports an organization called IAM CARES (The International Association of Machinists Center for Administering Rehabilitation and Employment Services). IAMCARES runs programmes in the US and Canada for airline industry workers who are displaced from their jobs for a variety of reasons. Among their services are more than 25 different programmes that specifically cater to those workers who become disabled to help them return to their jobs or to other jobs in the industry. The union is affiliated with a non-profit agency called IAM CARES SOCIETY that is run as a charitable organization offering free employment assistance and support services to people with all types of disabilities and/or chronic conditions, and many of its staff are registered rehabilitation professionals. In 1989, the US experience and expertise with their non-profit, helped spawn a Canadian IAM CARES SOCIETY but in Canada, the IAMAW is partnered with the Steelworkers union and is funded through Service Canada. IAM CARES SOCIETY has two offices, one in British Columbia and the other in Montreal Quebec, that offer a full range of services leading to full inclusion in the workplace. IAM CARES SOCIETY is the only union-sponsored employment placement programme in Canada.

Another factor is that trade unions often feel that their primary role is to help workers who become disabled attain the social insurance benefits to which they are entitled. Thus, they may be more vested in advocating for benefits than in helping the worker stay in the job or find new work. In any case, policy makers should consider approaches to encouraging unions to become active in promoting return to work

Conclude by reviewing the following example, from page 65 of the Primer highlighting the process used by the European Union.

Whenever **the European Union** is considering proposing new European labour law, it is obliged to consult the social partners - representatives of employers and workers - on the desirability of adopting law in the proposed area. If the European Union decides to go ahead and propose legislation in that area, it must then consult the social partners on the content of that legislation.

e. Consulting Service Providers

Start by asking participants to generate a list of the types of service providers that typically work with individuals with disabilities. Document participant responses on flip chart paper. Responses should cover the full spectrum including independent and community living providers, employment services and vocational training providers, social and recreational providers, etc. Emphasize that consultation should include all these providers.

1 hour



OPTIONAL EXERCISE: Begin this exercise by breaking participants down into small groups of 4-5 individuals. Assign each group a type of provider identified in the opening exercise/question or an employer/business representative. Explain to participants that the country is currently drafting disability employment non-discrimination legislation and that a decision was made NOT TO INCLUDE the group they represent in the consultation process. Provide each group 30 minutes to make an argument for why they should be consulted during the drafting process and tell them to be prepared to make their argument to the entire class. Allow 30 minutes for the individual arguments and debriefing.

1 hour



OPTIONAL EXERCISE: Begin this exercise by breaking participants into small groups of 4-5 individuals. Using the list of providers identified in the opening exercise/question, ask each group to generate a list of actual entities within their country that should be consulted in the event of developing disability employment non-discrimination legislation. Provide each group 45 minutes to compile their lists emphasizing that the list they generate will be an important resource in the event that they are actually involved in drafting disability legislation. Where information gaps exist for participants, tell them to brainstorm about possible people or organizations that might be able assist them in identifying potential resource people/ organizations in that area. Use the last 15 minutes to discuss the exercise, asking participants to share where information gaps existed and help to connect participants to one another to assist in filling these gaps.

Referring to section 6.1.4 of the Primer, use **Transparency 108** to explain that during consultation, law and policy makers should consider how the experience and expertise of such bodies could best be used to promote the open employment of people with disabilities. Account needs to be taken of the fact that some specialized service providers will see demand for their services decrease if more people with disabilities are able to enter the open employment market and will be obliged to adapt and change. Some specialized services may already be actively supporting the employment of people with disabilities in the open labour market, for example, through job

placement schemes or support while in employment. These organizations will be able to provide valuable advice on what works and what does not work, as well as serving as models to other agencies.

f. Consulting Other Interested Parties

Explain to participants that there may be other key stakeholders other than those referenced already who may need to be consulted in the drafting process.

Solicit participants to suggest other possible parties who may need to be consulted and document participant responses on flip chart paper. These might include parents and families of individuals with disabilities and the organizations that represent them; religious institutions, charitable organizations, specialty organizations like those that focus on alcoholism and substance abuse; and other government agencies like small business administration and economic development entities, to name a few.

Emphasize that, as referenced earlier, a public position paper could be used to facilitate consultation with other interested parties who may have direct experience in supporting people with disabilities (in employment). Referring to section 6.1.5 of the Primer, use **Transparency 109** to conclude by outlining some tips for soliciting consultation during the legislation drafting process.

- Make sure, when adopting or revising a disability law or policy, to consult with a wide array of persons and organizations, especially people with disabilities and organizations representing them, trade unions and employers, all of whom will have valuable experience regarding problems faced and possible policy instruments and approaches.
- Independent expert consultants might also be able to play a role, as can bodies already involved in administering quota schemes or monitoring non-discrimination legislation. In this way, problems faced can be recognized and adequately addressed.
- Involving and consulting organizations of people with disabilities requires considering alternative means or communication to ensure that the experience and knowledge of these persons can be fully tapped when drafting or revising legislation or policy measures.
- Public authorities should endeavour to use the experience and insight of the social partners to help them develop appropriate legal and policy measures. For example, in carrying out an objective assessment of the need for a quota and the form which that quota should take; or in developing anti-discrimination measures.

1 hour



6.2 Standard Lecture

The Consultation Process Itself

- a. Using **Transparency 110** outline the steps of a typical drafting/consultation process.
 - Step One: Explain that the process begins with a need for legislation or policy being identified. This need can be identified either by the legislature and policy makers themselves or at a grass roots level. This is the start of the consultative process. While individuals or groups with a vested interest may initiate the identification of the need for certain legislation or policy, it is important at this step in the process to also begin identifying additional stakeholders and supports.
 - Step Two: This is the part of the process to begin conceptualizing and framing the issues and needs that have been raised. What at the outset may appear to be a rather simple and one dimensional issue, may turn out to be a complex, three-dimensional issue. This step includes some additional fact-finding. For example, statistics may be referenced that highlight the extremely low employment rates of individuals with disabilities. While at face value that revelation may point to the need for non-discrimination legislation or policies, the statistics may in fact be completely unrelated to discriminatory practices. Perhaps the country has substantial numbers of individuals with disabilities participating in the disability insurance programme and the current programme provides for no incentives to leave the benefit rolls to pursue work. Another central issue may be that there are inadequate numbers of job placement organizations to match the need for jobs. Fact finding is critical to ascertaining the primary problem and targeting appropriate legislation and policies.
 - Step Three: This step begins to frame the issue by continuing to refine consultation from parties that can provide a more comprehensive picture of the issue and experiences which may need to be addressed. It is important to recognize that at this step what started out as potentially a very specific issue may become more generalized or what may have started out very generally may become much more specific based on the input solicited and provided.
 - Step Four: Explain that once the issues have been framed, a proposal or white paper can be developed that can then be publicized in order to reach consensus on the issue and frame the needed legislation or policy. The decision on who writes this position paper will be dependent on how the issue has surfaced. If it is a grass roots issue, the position paper may be the vehicle used to draw the issue to the attention of policy makers. If the issue has been identified by policy makers, they may turn to contracted or other legislative investigatory bodies to aid them in compiling a position paper on the issues.
 - Step Five: Once the conceptual proposal has been publicized to all key stakeholders, it is important to once again vet the paper, to ensure

that the issues are correctly represented. This is a process in which the author(s) of the paper works with the body that requested the paper to identify reviewers representative of the constituents whose views are depicted in the paper to ensure that they have done an accurate job of outlining the issues, potential remedies and public policy strategies.

- Step Six: Refining the legislative or policy proposal is a critical step that requires balancing the needs of the many. This step involves the art of negotiation as an attempt is made to establish mutual gains for all parties involved.
- Step Seven: Ideally the final step is a first draft of a legislative or policy proposal. The consultation process may involve several stages, however, before a draft leaves the line ministry and is sent to the Justice Ministry or its equivalent, and thereafter to Cabinet and the relevant Parliamentary Committee for tabling. How the draft legislation is developed is dependent on the country crafting the legislation and again probably reflective of how the issue surfaced.

Explain to participants that consultation on disability-related laws and policies frequently involves persons with disabilities and their representatives, and disability-related service providers. This consultation is often accomplished through task forces established for the specific purpose of advising on the legislation, or through existing national committees or councils representing government ministries and organizations of and for persons with disabilities. In some cases, the consultation takes place on an ad hoc basis, through a meeting or meetings called by the government.

Use **Transparency 111** to present examples from Australia, Cambodia, China, Kenya, Mauritius, Tanzania Mainland, and the United Kingdom as outlined on page 68 of the Primer that illustrate the approaches as referenced above.

"In **Australia**, the National Disability Advisory Council advises the Commonwealth Government through the Ministry for Family and Community Services. Established in 1996, the NDAC members are selected based on their experience of and expertise in disability issues. The Council plays an important role in facilitating consultation with disability consumer organizations, families, careers and service providers on major Government initiatives. It also maintains links with similar disability advisory bodies operating at State and Territory levels."

"In **Cambodia**, the Disability Action Council was set up in 1999 to advise Government on disability strategy and legislation, as well as to act as a coordination body for disability-related programmes and services. The DAC Executive Board includes representatives of Government, disabled persons and non-governmental organizations. DAC involves the social partners through working groups established for specific purposes."

"In **China**, when formulating laws and policies concerning disabled persons, the Government consults the Chinese Federation of Disabled Persons, the All China Federation of Trade Unions and the China Enterprise Confederation. In addition, when implementing national policies, frequent contact is also maintained with the Federations for Disabled Persons, trade unions and enterprise organizations."

“In **Kenya**, a Disability Task Force was set up in 1992 to review laws relating to persons with disabilities. One of the key recommendations was the adoption of a proposed Persons with Disabilities Bill. An Act of this name was adopted in 2003, following extensive further consultation with disabled persons organizations and service providers.”

“In **Mauritius**, the Training and Employment of Disabled Persons Board, established by law in 1996, is consulted by government on the implementation of national policy. This Board comprises representatives of disabled persons and of employers.”

“In **Tanzania Mainland**, organizations of employers and workers are called upon to cooperate in the application of disability legislation through the Vocational Education and Training Authority and the National Advisory Council.”

“In the **United Kingdom**, the Disability Rights Task Force was established in December 1997 to examine the full range of issues that affect disabled peoples’ lives and to advise the Government on what further action it should take to promote comprehensive and enforceable civil rights.”

Finally, explain that to be effective and to realistically reflect the needs of the country, consultations on disability-related legislation and policy should also involve the social partners – representatives of employers’ and workers’ organizations – as well as disabled persons’ representatives.

Use **Transparency 112** to illustrate social partner considerations. Emphasize the importance of beginning by examining the process of labour law development and reform in different countries. In some cases, such consultations take place through existing tripartite bodies, and in other cases through bodies set up specifically for the purpose or through more informal arrangements. The Ministry of Labor’s direct contacts with the social partners and the issuing of White Papers can be another consultation route. Sometimes the consultation process is enhanced by national or international consultants, who are hired to assist in the drafting of the law.

Reference and highlight the examples of consultation through Ad Hoc Tripartite Task Forces and existing Tripartite Bodies on pages 69-70 of the Primer.

Examples: Consultation through *ad hoc* Tripartite Task Forces

“In **Kenya**, a coordinated process of labor law reform is underway, with support from the ILO, which will lead to revised and updated laws. The new laws will foster strengthened social dialogue in a legal framework consistent with ILO standards ratified by Kenya. A tripartite Labor Law Task Force appointed in May 2001, carried out nationwide consultations on what the new labour laws should contain. There was active participation in these consultations: in the first round of media calls for public comment, approximately 40 institutions, NGOs, and individuals shared their views. The Task Force submitted its Final Report and the draft legislations to the Minister of Labor and Human Resource Development in Spring 2004.”

“In **Indonesia**, in response to the social impact of the Asian Financial Crisis and the collapse of an authoritarian regime in favor of democratic political reforms, a Tripartite-Plus Task Force was established in 1999 by Decree of the Minister of

Manpower Participants. The Task Force included representatives of the Government, employers, workers, and other interested civil society groups. Through a broadly consultative process, involving workshops held through the Department of Manpower, the Tripartite-plus constituents reviewed and revised the labour laws to be responsive to a democratic and modern labour market.”

Examples: Consultation through existing Tripartite Bodies.

“In **South Africa**, the National Economic Development and Labor Council (NEDLAC) was created in 1995. It reflects the post-apartheid Government’s commitment to seeking representative consensus on major economic, social, and development policies. In light of the particular needs of South Africa, it is composed of the traditional social partners, plus organizations which represent community interests. Its objectives include considering all proposed labour legislation relating to labour market policy before it is introduced in Parliament. It has reached agreement on a wide array of legislation, including the Employment Equity Act, 1998 which prohibits discrimination on the ground of disability, as well as other grounds.”

“In **Hungary**, the Labor Code of 1992 recognized the National Interest Conciliation Council (NICC). The NICC comprises the social partners and the Labor Ministry. It is responsible for ensuring consultation on labor relations and employment issues of national importance, notably labor law reform. The social partners also have statutory rights to information.”

Conclude by summarizing that whether a formal arrangement is chosen or an informal approach is taken, the consultation process provides a unique opportunity to bring together the different parties with an interest in and affected by disability-related legislation and policy. Such a consultative process, involving government, employers’, workers’ and disabled persons’ representatives, as well as other interested parties, will go a long way to ensuring that the varying interests are adequately reflected in the law and policy.

Also suggest that seminars to finalize the text of a law with as wide a stakeholder involvement as possible, have proved useful. Law and policy makers should make the necessary efforts to consult both the social partners and civil society.



Evaluating Impact

Prior to closing the session, ask participants to take a moment to complete the Training Programme Survey provided in Appendix A and Module 6 Learning Objectives Evaluation provided in Appendix I. Upon completion, ask participants to turn them in. Tabulate the responses to gauge overall instructor effectiveness and extent to which specific learning objectives were attained. Take time to specifically note where the lecture and learning experience could have been enriched to enhance learning.



Online Resources

<http://www.un.org/esa/socdev/enable/disovlf.htm>

This **Overview of International Legal Frameworks for Disability Legislation** explores the role of disability legislation; international legal framework; and, application of international conventions, standards and norms to domestic law.



References and Readings

1. **Change from Within: International Overview of the Impact of Disabled Politicians and Disability Policy Bodies on Governance: Final Report of the International Disability Exchanges and Studies (IDEAS) Project for the New Millennium, 1999-2004; editors: Barbara Duncan, Rehabilitation International and Jennifer Geagan, World Institute on Disability, Oakland, CA; 2005; funded by the U.S. National Institute on Disability and Rehabilitation Research, Project#H133A990006.**

This multiple country study looks at the impact that politicians with disabilities are having around the globe. Their presence in either elected or appointed positions is affecting both policies towards persons with disabilities in their countries as well as impacting positively on the attitudes and understanding of their non-disabled political peers.

Available online:

Zeitzer, Ilene. "Disabled Persons in Positions of Governance: An Analysis"

http://www.disabilityworld.org/12-02_05/gov/pwdingov.shtml

2. **Dhir, A. (2004). Human rights treaty drafting through the lens of mental disability: The proposed international convention on protection and promotion of the rights and dignity of persons with disabilities. *Cornell Law School LL.M. Paper Series*, 2, 1-37.**

The paper explores whether, if established, the proposed International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities will be an effective way to limit abuses of the rights of persons diagnosed with mental disabilities.

3. **Fahrenhorst, R., & Kleiner, B. (2001). How to write non-discrimination policies effectively. *International Journal of Sociology and Social Policy*, 21(8/9/10), 148-155.**

This article focuses primarily on writing non-discrimination policies effectively. It also touches slightly on how to implement these policies effectively within the workplace. In addition, suggestions are given about how to reduce employers' liability.

Available Online:

<http://www.emeraldinsight.com/Insight/ViewContentServlet?Filename=Published/EmeraldAbstractOnlyArticle/Pdf/0310210815.pdf>

Notes

Notes



*Achieving Equal Employment Opportunities for People with Disabilities through Legislation
An Education and Training Guide*

Enforcing the Law

This final module emphasizes the importance during the drafting stage of legislation for planning the ways in which the laws and policies will be enforced. This requires consideration of what the laws and policies will look like in practice and how rights will be asserted. Strategies for strengthening judicial mechanisms as well as administrative enforcement institutions are reviewed as are other approaches such as contract compliance.



Time Frame

4 - 7 hours
(based on extent
of optional
exercises selected
to reinforce
learning)



Learning Objectives

At the completion of this seminar course participants will be able to:

✓	Define the importance of legislative enforcement.
✓	Identify approaches for enforcement of the law.
✓	Describe implications of putting a law into practice.
✓	Outline the importance of judicial and/or administrative procedures on assertion of an individual's rights under the law.
✓	Highlight examples for strengthening judicial mechanisms.
✓	Discuss the pros and cons of administrative enforcement institutions.



Key Concepts

This module focuses on the basic premise that law and policy-makers should consult widely when seeking to draft or revise laws designed to promote the employment of persons with disabilities as well as when developing policies to implement these laws. Widespread consultation will enable law and policy makers to profit from the expertise that exists in the community and help to ensure the effectiveness of any law and policy that is eventually adopted.

Glossary of Terms



Enforcement: To compel observance of, or obedience to, a regulation; e.g., *to enforce a law*.

Ombudsman: An individual or agency that investigates complaints and mediates fair settlements, especially between aggrieved parties.



Training Outline



Getting Started: Introduction

15 minutes



- a. To start this session, have **Transparency 113** on the screen.
- b. Make sure “Ground Rules” are still clearly visible to participants and that other flipchart papers are not covering them.
- c. Provide participants with a general overview of the learning objectives for this session using **Transparencies 114-115**.
- d. Remind participants that you will continue to log questions in the “Parking Lot” that arise during the seminar which may or may not be relevant to the topic being discussed (see pp 13 and 16).

1 hour



7.1 Standard Lecture The Law In Practice

- a. Emphasize that it is very important at the drafting stage to plan the ways in which laws and policies will be enforced. There are several primary functions that are needed and these include, but are not limited to, central administrative data collection, inspection and investigations, dispute resolution and complaints, and decision making and judgments. Use **Transparency 116** to outline the variety of ways that enforcement of a law may be foreseen through: the Labour Inspectorate; an administrative monitoring system such as a National Disability Council, an Ombudsman Institution or an Equality Commission; the judicial system in criminal, civil or labour law courts; industrial employment tribunals or a combination of the above approaches.
- b. Use **Transparency 117** to explain that legislation concerning the employment of persons with disabilities generally contains sections dealing with institutional structures charged with the enforcement of the law; announcing its establishment, if it is a new structure (for example, a National Disability Council); and outlining its composition, role and functions. The role of the labour courts may also be described in the law, along with complaint procedures, and sanctions (administrative or penal fines, imprisonment, civil actions).
- c. Explain to participants that the tasks of monitoring and evaluating compliance with equal employment opportunity policies and legislation can be left to the enforcement agencies involved and/or assigned to special bodies or independent researchers.

Policies and laws often impose a duty on employers to collect data on the number of people with disabilities employed and report such data to a special agency. Such data can be used to promote equal employment opportunities within the firm, and social partners when drafting or evaluating Collective Labour Agreements. The collection of such data involves a restriction on the right to privacy of the disabled persons concerned given that information on these persons and the presence or absence of disabilities is collected and supplied to others.

Explain that careful consideration is needed concerning how this need for information can be balanced with the promotion of equal employment opportunities for a disadvantaged and under-represented group. Reconciling information collection with the right to privacy presupposes the adoption of laws stipulating the exact purposes and clearly defined circumstances under which such information on individuals can be collected and passed on.

OPTIONAL EXERCISE: Ask participants to break up into small groups of 3-5 individuals and to respond to the following questions (as illustrated in **Transparency 118**):

- Why is it important to collect data regarding the employment status of the population with people with disabilities?
- How might collection of data compromise individuals with disabilities?
- What approaches could be taken to minimize this risk but at the same time provide much-needed information/data?

Each group should allow 10 minutes to respond to each question and be prepared to report their findings to the larger group. Allow 15 minutes for groups to summarize. Debrief by illustrating how France has dealt with this issue in the example below excerpted from the French Labour Code.

"For example, in the **French Labour Code** (L. 520), provision is made for the collection of statistics, for example on the number of disabled people in employment, but not of the names of individuals."

- d. Use **Transparency 119** to outline the other entities that might have data collection and/or enforcement responsibilities. Explain to participants that the Labour Inspectorate, within the framework of its usual data collection duties, may be called upon also to gather data on actions or infringements of a disability law or equality law with a disability dimension.

The task of monitoring compliance with and evaluating the effects of, equal employment opportunity policies and legislation can also be assigned to such bodies as a Human Rights, Equal Opportunity or Disability Commission. These bodies are usually dependent on the data provided by individual employers, but often have the power to start investigations on their own initiative.

Ombudsman Institutes often have administrative functions to check abuses



45 minutes

by public authorities, and could also be used to monitor compliance with disability provisions. Individuals can usually make complaints to such institutes.

The task of monitoring compliance can be partly carried out by NGOs, such as organizations representing people with disabilities. These bodies can make valuable contributions by investigating the strengths and weaknesses of equal employment opportunities policies and law. They lack, however, the authority – and often the resources – to investigate complaints and measure compliance by individual employers, as a result of which the task of monitoring cannot be solely left to these bodies.

Close this subsection by emphasizing that responsibility for performing these tasks can be assigned to various organizations and bodies. In order to be effective, however, these organizations and bodies should have sufficient means (information, staff, and resources) and the necessary powers to carry out these tasks.

15 minutes



7.2 Standard Lecture

Asserting Rights Under The Law

- a. Explain to participants that the effectiveness of an equal employment law and regulations to implement these laws depends on the availability and accessibility of judicial and/or administrative procedures to individuals. Individuals, and those who represent their interests, must be enabled to enforce the principle of non-discrimination or to claim appropriate compensation through individual cases or group actions taken before the courts.

Using **Transparency 120** outline that disability complaints can be made at different points in a judicial system through: constitutional law provisions; criminal law provisions; civil and labour law provisions; and, combinations of criminal, civil and constitutional law.

30 minutes



OPTIONAL EXERCISE: Ask participants to break up into small groups of 3-5 individuals. Ask participants to respond to the following questions (as illustrated in **Transparency 121**):

- What is the best vehicle or method for asserting rights under the law – civil or labour law or constitutional or criminal law and why? In many countries (as referenced in 2.4 in Module 2), it is easier and less intimidating to bring a complaint under civil and labour law as they typically confer in greater detail and emphasize employment rights including the general scope of the law, precise definitions regarding discriminatory practice and protected classes.
- Why is one means better than another? While constitutional law sets the national tone and elevates the importance of disability issues in a country,

guaranteeing rights of people with disabilities, generally they do not have the level of specificity detailed in civil and labour law as specified above.

- In relation to disability employment non-discrimination legislation, should both types of law be options? Why? As mentioned above, both are critical. Constitutional law guarantees inalienable rights, while civil and labour laws specify the details regarding discriminatory practice and protected classes.

Allow groups 15 minutes to process the question and 10 minutes for the group report and consensus building. In the last five minutes conclude by reiterating, as was previously stated in Section 2.4, that it is easier and less intimidating, in many countries, to bring a complaint under civil and labor law, than under constitutional law or criminal law. Explain that while court procedures are important, their effectiveness in promoting equal employment opportunities for people with disabilities should not be overestimated. Individual workers who consider themselves wronged because of an alleged discriminatory form of treatment should nevertheless be provided with the opportunity to bring legal actions before an independent court.

7.3 Standard Lecture

Strengthening Judicial Mechanisms



1 hour

- Explain that judicial procedures can be strengthened by taking several actions. Use **Transparencies 122-123** to highlight and discuss individual strategies.
 - National law should contain such measures as are necessary to protect workers against victimization – that is, punishment or retaliation by the employer in response to an individual bringing a complaint of discrimination.
 - Harm to the interpersonal relationship between parties can frequently be prevented, or at least reduced, by offering conciliation procedures (such as mediation or other forms of prevention and settlement) as part of a court procedure or pre-hearing process.
 - The financial burden for individuals seeking the enforcement of their rights can be, and according to human rights law should be, alleviated by positive State actions (such as financial assistance or the provision of legal experts) to allow individual applicants to present their cases properly and satisfactorily before a court;
 - The use of simple, straightforward court proceedings – such as civil and labour court cases – should be preferred, as these are less intimidating.
 - The duration of legal procedures can be reduced by imposing strict time periods and by ensuring that there are a sufficient number of judges.
 - The emotional burden on the defendant can be alleviated by allowing non-governmental organizations (NGOs) or trade unions to support individual applicants by becoming associated with the case or bringing the case on behalf of the applicant.
 - NGOs and trade unions might be given the right to lodge complaints in

their own name (collective complaint procedure).

- The burden of proof for the applicant can be lessened by partially reversing this burden. This means that it will suffice for an applicant (i.e. disabled person) to establish facts suggesting that adverse treatment on the grounds of disability has occurred. Once this has happened, the defending party must prove that the measure was not discriminatory.
- Lastly, the implementation and enforcement of equal employment opportunity laws and regulations through the courts presupposes knowledge and sensitivity on the part of members of the judiciary and legal advisors about discrimination issues. This situation requires adequately planned and resourced programmes to brief and raise the awareness of the judiciary, advocates, and legal advisors.

Emphasize that when adopting or revising equal employment opportunity legislation, lawmakers should provide for court procedures, but should not rely solely on such individual enforcement mechanisms to ensure effective implementation of the law.

30 minutes



OPTIONAL EXERCISE: Ask participants to break up into small groups of 3-5 individuals and to discuss strategies that they feel would strengthen judicial procedures, while at the same time minimizing the burdens and stress that these types of processes might have on individuals with disabilities seeking to assert their rights. Common initial responses may be found in [Transparencies 122-123](#). Participants should be encouraged to go beyond those strategies that have already been discussed.

1 hour



7.4 Standard Lecture

Administrative Enforcement Institutions

- a. Explain that some of the risks and disadvantages associated with court procedures can be reduced by making available administrative enforcement procedures to workers who consider that their right to non-discrimination has been violated. Review the most common types of enforcement agencies that were already detailed in [Transparency 116](#) (such as Ombudsman institution and/or a Human Rights, Equal Opportunities or Disability Commission).

Using [Transparency 124](#), review the types of procedures these bodies usually have in common: there are no costs involved for the parties; legal representation is not required; and the decisions of these bodies are non-binding. Explain that as a result, the procedures before these bodies often have a less formal character and there is a greater degree of co-operation on the part of the employer and other parties.

Make sure that participants understand how the fact that the decisions of Ombudsman institutions and the commissions are legally non-binding does not mean that they lack legal relevance. On the contrary, these bodies have been established in view of the specialist expertise required in the respective

fields. This arrangement implies that the decisions of these expert bodies are influential, with the expectation that they will be followed by the parties, and that weight is attached to them by courts during court proceedings.

b. The Ombudsman Institution

Explain that in many countries one or more Ombudsman institutions have been established to promote good State practices towards citizens. Such institutions traditionally have the task of investigating written or oral complaints from individuals against the government and/or other public organizations. Given their focus on promoting good practices, they do not usually have the power to investigate complaints against private employers.

Referring to section 7.4.1 of the Primer, and using **Transparency 125**, describe the process by which an Ombudsman Institution might investigate a complaint. Explain that when investigating a complaint, Ombudsman Institutions can use human rights law, international labour law, and non-discrimination law as a baseline against which to measure behaviour, although their mandate is usually not confined to these sources of law. They hold hearings using an informal and conciliatory approach. The results of their investigations are commonly published and sent to both parties, and if appropriate, contain recommendations for the improvement of behaviour. The authority and possibly the effectiveness of an order from the Ombudsman will depend on the precise mandate.

Referencing the examples on page 77 of the Primer, explain that the precise mandate of the Ombudsman Institutions differs, both within and between countries. In some countries, such as Sweden, there are specialized Ombudsman Institutions for various grounds of discrimination. In others, such as the **Netherlands**, there is a single National Ombudsman with a broad mandate with respect to State acts and omissions.

"In **Norway**, the Equality Ombudsman has permanent administrative responsibility for the promotion of equal rights and opportunities, and for monitoring compliance with the Equal Status Act. The Office may receive complaints, issue recommendations (and, exceptionally, orders) and take a case to the Equal Rights Board, which has limited authority to make orders (none at all in matters of hiring and firing). One clear advantage of this system is that an employee who makes use of it incurs no costs."

"In **Finland**, there is a similar system, with the difference that, at the initiative of the Equality Ombudsman, the Equality Council may issue an injunction to stop discriminatory behaviour in violation of the Equality Act, No. 609 of 1986."

c. A Human Rights, Equal Opportunity or Disability Commission

Explain that in various countries, Human Rights Commissions, Equal Opportunity Commissions and Disabilities Commissions have been established to promote and protect human rights, equal treatment law and the rights of people with disabilities. These bodies are sometimes empowered to receive individual complaints, both against public and private persons and

bodies. The adjudication of individual complaints is usually just one – though arguably the most important one – of the many tasks assigned to such bodies.

Referring to section 7.4.2 of the Primer, and using **Transparency 126**, describe the process by which these commissions commonly have a very broad mandate to promote and protect the respective bodies of laws. Emphasize that in view of this, these bodies frequently have the task of starting investigations on their own initiative, conducting independent surveys on human rights compliance/ equal opportunity/ the rights of people with disabilities, publishing independent reports and making recommendations on issues falling within the realm of their mandates, and providing assistance to victims of human rights/ non-discrimination law/ disability law violations such as public information campaigns, referral for legal advocacy and support, etc. Some statutes require employers to lodge reports with such commissions on their efforts to implement the law.

Conclude this subsection by highlighting the example from Australia provided on page 78 of the Primer.

“In **Australia**, the tasks referenced in **Transparency 126** are performed by a single body: the Human Rights and Equal Opportunity Commission that is composed of a President and four separate Commissioners – Sex, Disability, Human Rights, and Indigenous Peoples. There seems to be an international trend, for reasons of efficiency, of bringing together the knowledge and expertise of the various specialist bodies in a single human rights and equal treatment commission.”

1 hour



7.5 Standard Lecture

Other Approaches

- a. Explain to participants that policy-makers in a number of countries have attempted to address the problems of discrimination and under representation and those associated with individual law enforcement using other approaches to enforcement.

For example, in a few countries, South Africa, Mexico, Malawi and Namibia, disability issues have been elevated to status offices within the Presidency or Prime Minister's office (Namibia), while South Africa was the first country to establish such an office in the Presidency. In South Africa, The Office on the Status of Disabled People is a unit set up to coordinate, facilitate, monitor and evaluate programmes that serve or are designed to integrate persons with disabilities into mainstream society. The role of such offices is not service delivery, that is the responsibility of each Ministry or governmental department, but rather, to make sure that services are actually provided. In short, this office is a policing body. Former President of Mexico, Vincente Fox created the Office of Representation and Social Integration for Persons with Disability to coordinate public policy towards people with disabilities.

In turn, that office immediately asked every Ministry in the Government to develop one specific programme including or focusing on disabled people. The office also created a National Council on Disabilities in which five ministries – Health, Labour, Education, Communications and Transportation and Social Development – were all members. In Malawi, the job of the Minister Responsible for Persons with Disabilities in the President’s office is to communicate the concerns of disabled Malawians to the Parliament and the Cabinet. Specifically, their policies are written by DPOs, civil society and governmental officials, but that office’s job is monitoring and oversight of every Ministry to make sure that when they work on any policy or change, they consider the perspective of disabled people. In short, in countries that use this model, the elevation of the office of disabled persons to the Presidency imparts both a perceived and a real importance that inclusion and mainstreaming are everyone’s responsibility.

They have addressed these issues through the imposition of positive duties on employers to promote the employment of people with disabilities and to promote equality.

Use **Transparency 127** to explain that the goal of these positive duties is to restructure covered institutions (e.g. private companies, public sector agencies, etc.) so as to ensure that they are more open to the employment of people with disabilities (and other disadvantaged and under-represented groups). The duty is therefore triggered as a result of evidence of structural discrimination, including chronic under-representation of people with disabilities in particular types of work or positions of power. As a result of the positive duties, action is required to achieve change. Explain that these positive duties can take a number of forms, one of which is contract compliance.

b. Contract Compliance.

Explain that under a contract compliance programme, public authorities can require that all contractors, or all firms wishing to contract with the public authorities, have a good record with regard to the employment of workers with disabilities (and other disadvantaged and under-represented groups). Where this compliance is not demonstrated, these contractors can be required to take active measures to promote the employment of people with disabilities.

Referring to section 7.5.1 of the Primer, use **Transparency 128** to explain that the requirement to be met may be nothing more than a record of compliance with disability employment legislation, often evidenced by the ‘certification’ of the employer by one of the commissions described above. It may amount to meeting a higher standard, however, or include the taking of action to remedy any perceived problem. Compliance with a quota scheme could also be a requirement. The precise obligation under contract compliance schemes can vary, but the ultimate goal is to increase the participation of people with disabilities in the workforce and, on occasion, to equalize pay and access to benefits.

Using **Transparency 129**, describe examples of specific obligations that could exist for employers under a contract compliance scheme:

- Monitoring and reporting on the number of existing employees with disabilities.
- Undertaking periodic reviews of employment practices.
- Where under-representation is revealed, engaging in affirmative action to improve the representation of people with disabilities in the workforce.

Explain that complying with contract compliance obligations can be a participatory process involving trade unions in the process of drawing up an equity plan, to remedy any perceived discrepancies. Adherence to contract compliance obligations should be monitored by a statutory body that actively investigates employment policies and employment records of covered undertakings, or by one of the commissions described above.

Close this subsection by summarizing the examples from the United States and Northern Ireland provided on pages 80-81 of the Primer.

“Such positive duties have been pioneered in the **United States**, where government contractors are required not merely to abstain from unlawful discrimination, but also to take positive measures to increase the representation of minorities in the workforce. This requirement, which is estimated to apply to about 300,000 federal contractors, employing about 40 per cent of the working population, has had a significantly more powerful influence on employers than individual complaint led investigations and prosecutions.”

“In **Northern Ireland**, public authorities have a duty to take due regard of the need to promote equality of opportunity when carrying out their functions. Each public authority is required to draw up an equality scheme which must state the authorities’ arrangements for consultation and assessment of the likely impact of policies on the promotion of equality of opportunity; for monitoring any adverse impact of such policies; for publishing results of its assessments; for training staff; and for ensuring public access to information and services. Such schemes must be approved by the Northern Ireland Equality Commission.”

- c. Conclude by summarizing the salient points provided in **Transparency 130**.
- The proper implementation of equal opportunity legislation and policies seeking to realize the aspirations contained in these laws is a State responsibility. When adopting or revising equal opportunity legislation and policies, law and policy makers should therefore pay attention to the monitoring and evaluation of these tools.
 - The adequate monitoring and implementation of laws and policies presupposes that the responsible organization or body has the necessary means and powers to perform these tasks. These powers need to be provided for from the date the law enters into force.
 - The enforcement of laws and policies by way of court-based or other enforcement mechanism is not solely a task of individuals. The State is also obliged to introduce administrative or institutional enforcement mechanisms.

- Laws concerning persons with disabilities should contain adequate and efficient implementation and enforcement mechanisms. Enforcement bodies should be considered as well as mechanisms such as that of an Ombudsman Institute or Human Rights Commission or Equality Authority.

Course Summary



1 hour

- a. Put up **Transparency 131** and remind participants that the guidelines provided in the Primer were developed for policy-makers, lobbyists and those involved in drafting national or federal legislation concerning the employment of persons with disabilities. The exercises provided through the training, coupled with the guidelines, will hopefully prove useful in developing and reforming such legislation, so that it becomes more effective in practice.

Further, remind participants that while the primary focus of the guidelines was on the main types of civil and labor law and related policy currently in place to promote employment opportunities for persons with disabilities, the focus has also been on how non-discrimination legislation can be enhanced through the concept of reasonable accommodation and quota laws to maximize their practical impact.

- b. Using **Transparency 132**, explain that the following principles are critical when considering the adoption of a law specifically promoting equal employment opportunities for people with disabilities or the formulation of policies seeking to implement such a law:
- Disability laws and policies are in full conformity with international human rights law.
 - The provisions are compatible with other national laws and policies.
 - The definition or definitions of disabilities used reflect the fact that people with disabilities may be prevented from participating in the open employment market by both individual and environmental barriers.
 - Provision is made for affirmative action measures, which provide some temporary preferential treatment to groups of disadvantaged persons.
 - The gender dimension of disability is always taken into account.
 - The process of developing the laws and policies is participatory, involving consultation with all stakeholders, including employers' organizations, workers' organizations, disabled persons' organizations and other interested parties.
- c. Using **Transparencies 133-134**, explain that the following guidelines and principles are critical when considering the adoption of a law aimed at prohibiting discrimination on grounds of disability in the labour market.

Legislation prohibiting discrimination should:

- Explicitly refer to disability as a protected ground.
 - Exercise caution in defining disability.
 - Cover all four forms of discrimination: direct discrimination, indirect discrimination, harassment, and instruction to discriminate.
 - Make provision for reasonable accommodation, defining what this involves while recognizing the defense of 'disproportionate burden'.
 - Allow for genuine occupational requirements, which are to be applied narrowly.
 - Stipulate that the burden of proof shifts to the person who allegedly discriminated, once the complaining party has provided facts suggesting the existence of discrimination.
 - Be accompanied by social policy measures.
 - Allow for affirmative action measures.
- d. Using **Transparencies 135-136**, explain that the following principles are critical when considering the adoption of quota laws. Quota laws should:
- Be aimed at assisting disabled job-seekers to get jobs.
 - Be backed up with a sanction, such as a compensatory levy and an effective enforcement mechanism to encourage compliance by employers.
 - Offer employers other optional ways of meeting the quota obligation, in addition to recruiting disabled persons and/or paying a levy.
 - Be based on clearly identified policy goals and be targeted at a clearly specified group of people with disabilities.
 - Be based on a registration/identification system which guarantees real benefits to those identified as disabled.
 - Be tailored to the economic situation and employment pattern in the State in question.
- e. Use **Transparency 137** to review conditions upon which the eventual success of equal opportunities legislation and policy measures are dependent. These conditions and consideration include:
- Information campaigns, including general and technical information and advice.
 - Employment support measures.
 - The extent to which the laws / policies reflect the varying interests and needs of groups in society which are affected.
 - Extensive systematic consultation with the key stakeholders – organizations of disabled persons, employer and worker organizations, service providers as well as relevant government ministries.
 - Consultations, ideally formalized through existing bodies or through task forces set up for the purpose.
- f. Remind participants that effective enforcement of the law requires provision

for procedures to allow individuals to bring legal actions to court. In addition, it is important to provide for enforcement through agencies such as Ombudsman institutions or Rights Commissions. Enforcement procedures should be planned from the outset, and adequately resources.

- g. Close the programme by going around the room and asking participants to share a response to the questions highlighted in **Transparency 138**.
- What insights have you gained from participating in this programme?
 - What is a first step that you are considering in applying this information?

Evaluating Impact



Prior to closing the session, ask participants to take a moment to complete the Training Programme Survey provided in Appendix A and Module 7 Learning Objectives Evaluation provided in Appendix J. Upon completion, ask participants to turn them in. Tabulate the responses to gauge overall instructor effectiveness and the extent to which specific learning objectives were attained. Take time to specifically note where the lecture and learning experience could have been enriched to enhance learning.

References and Readings



1. Shrey, D., & Hursh, N. (1999). Workplace disability management: International trends and perspectives. *Journal of Occupational Rehabilitation*, 9(1), 45-59.

The social and economic cost of injury and disability in the workplace has had an adverse impact on employers and societies throughout the world. International trends in worksite disability management policies and practices, as surveyed by the International Labor Organization, are explored. The impact of formal training for Disability Management Coordinators is discussed, as relates to reductions in unnecessary lost time and workplace disability costs. A disability management audit system is summarized, as a strategic planning process for developing return-to-work programmes for workers with disabilities.

Available Online:

<http://linkresolver.library.cornell.edu:4550/resserv?sid=google&auinit=DE&aulast=Shrey&atitle=Workplace+Disability+Management:+International+Trends+and+Perspectives&title=journal+of+occupational+rehabilitation&volume=9&issue=1&date=1999&page=45&isn=1053-0487>

2. Thornton, P., & Lunt, N. (1997). Employment policies for disabled people in eighteen countries: A review. Social Policy Research Unit, University of York, United Kingdom.

This paper is composed of policy and institutional context, definitions of disability, statistics, employment support services, open employment sheltered employment, summary, references and legal obligations, financial measures and rights for a long list of countries. Including Australia, Sweden, Italy, Finland and Greece, to name a few, a great deal of important disability employment policy information is available on an international scale.

Other Available Resources:

Case Studies of Disability Policies in Various Countries

1. Comprehensive Disability Policy Framework for Kosovo

http://www.see-educoop.net/education_in/pdf/compr_disability_policy_frmwrk_kos-yug-kos-enl-t02.pdf

The objective is to provide disability groups in Kosovo with a voice in policy planning to ensure that the needs of disabled people are taken into account whenever policy is being formulated. Proposals have been made (subject to the availability of resources) for the establishment of a Disability Office in the Office of the Prime Minister with the task of implementing the Comprehensive Disability Policy Framework at all levels of government in Kosovo. It is also intended that the current UNMIK Task Force on Disability will be transformed into a Disability Council, to serve as a consultative, advisory and monitoring structure on disability matters.

2. Country Profile on Disability (Sri Lanka)

<http://www.ilo.org/public/english/region/asro/bangkok/ability/activitiesinsc.htm#SriLanka>

Sri Lanka is moving forward in its efforts to address workplace rights and the services disabled persons need to exercise their rights, to decent work. The ILO has provided technical assistance to the various Government ministries, the Employers' Federation of Ceylon, and NGOs and co-sponsored meetings and activities to assist in this effort for more than a decade.

3. Disability and Citizenship in Post-Soviet Ukraine: An Anthropological Critique

http://www.ukrainianstudies.uottawa.ca/pdf/P_Phillips_Danyliw05.pdf

Examines Ukraine's burgeoning disability rights movement through the lens of citizenship to illustrate the complex processes through which certain categories of people are transforming themselves – and being transformed – into particular types of citizens in a changing welfare state.

4. Disability Law in Germany: An Overview on Employment, Education and Access

<http://www.germanlawjournal.com/article.php?id=515>

Under German law, people with disabilities are entitled to help and assistance in order to avert, eliminate or improve their disability. The general goal is to overcome, as much as possible, the disability's effects, and to enable the disabled to participate in all areas of society, especially in the labor market and in community life. The federal Government is obliged to provide barrier-free designs in the construction of public buildings, streets, etc., and to provide barrier-free access to communication, especially in the field of administrative Internet sites, official forms, and notifications. In the area of public transportation, all facilities and means of transportation (bus, train, aircraft) are also required to be barrier-free and the same barrier-free rules apply to restaurants


5. The Right to Equal Opportunity and Treatment: Employment of Persons with Disabilities in Slovenia.

<http://www.intjrehabilres.com/pt/re/intjrr/abstract.00004356-200412000-00011.htm;jsessionid=GvxZZrnQyyjNpsp5xTmwJJXXtFnhQMxLzHTI92NVyJZfhh7pQ7pS!-1734750035!-949856144!8091!-1>

The article presents a brief description of the research carried out at the Institute for Rehabilitation in 2002/2003. In the first part of the article, policies, programmes and measures for promoting vocational rehabilitation and employment of persons with disabilities adopted by Slovenia in the period 1999-2002 are analyzed. The key finding is that the situation of persons with disabilities in the labor market is significantly weaker than that of the non-disabled. The second part includes the empirical part of the research and addresses the problem of the attitudes of the employers towards the employment of persons with disabilities.

Notes

Notes



*Achieving Equal Employment Opportunities for People with Disabilities through Legislation
An Education and Training Guide*

Appendixes

Appendix A

Training Programme Survey

Training Programme Survey		
1.	Gender.	<input type="checkbox"/> female <input type="checkbox"/> male
2.	Do you yourself experience a disability?	<input type="checkbox"/> yes <input type="checkbox"/> no
3.	The primary disability group served by you and your organization.	<input type="checkbox"/> intellectual disabilities / developmental disabilities <input type="checkbox"/> psychiatric / psychosocial disabilities <input type="checkbox"/> brain injury <input type="checkbox"/> physical disabilities <input type="checkbox"/> visual disabilities <input type="checkbox"/> hearing disabilities <input type="checkbox"/> other (specify) <input type="checkbox"/> do not currently cater to persons with disabilities
4.	The length of time you have been employed in your position.	<input type="checkbox"/> less than 1 year <input type="checkbox"/> one to 3 years <input type="checkbox"/> over 3 years <input type="checkbox"/> not applicable
5.	What best describes your job title?	<input type="checkbox"/> Government <input type="checkbox"/> Employers' Organization <input type="checkbox"/> Workers' Organization <input type="checkbox"/> Employment Service <input type="checkbox"/> Vocational Training Organization <input type="checkbox"/> other (specify)

1

Appendix A

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Appendix A

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Please enter the appropriate rating (1 through 5) for the questions below. 1 = Poor, 5 = Excellent

6. Training programme matches learning objectives.

☐

Comments:

.....

7. Overall organization of content.

☐

Comments:

.....

8. Training environment (set-up, temperature, etc.).

☐

Comments:

.....

9. Appropriateness of the degree of difficulty of training content.

☐

Comments:

.....

10. The use and adequacy of printed materials to support programme content.

☐

Comments:

.....

11. Overall relevance and usefulness of the training exercises.

☐

Comments:

.....

12. The effectiveness of media used (films, overheads, etc.) to support and supplement the programme content.

☐

Comments:

.....

13. Overall rating of this training.

☐

Comments:

.....

14. Instructor's level of knowledge and preparedness.

☐

Comments:

.....

15. Instructor's ability to engage participants.

☐

Comments:

.....

16. Availability of resources for future reference and follow-up.

☐

Comments:

.....

Appendix B

2

Appendix B

Learning Objectives Evaluation

Please take a moment to help us understand how well the course prepared you to perform the following tasks.

Tasks	Poorly	Seldom	Very Well
Understand the role of the ILO in supporting the development of equal employment opportunity for people with disabilities.			
Reflect on their personal beliefs and attitudes regarding the experience of disability as a human rights issue.			
Explain the principle of non-discrimination.			
Outline the potential location of disability within legislation.			
Define disability within a context of who is a beneficiary of legislation.			
Identify specific goals for targeting a definition of disability in statute.			
Outline basic human principles leading to equality.			
Explain the two-pronged approach to equal employment opportunity.			
Understand the potential role that gender plays in secondary discrimination.			

Appendix C

Optional Exercise

APPLIED LEARNING CASE STUDIES

CASE STUDY 1: Lars

Lars is employed in a large corporation as an assembly-line worker. He has cerebral palsy and his speech is sometimes slow and laboured. He maintains an exceptional working relationship with his supervisor and they speak frequently during the course of the day. Lars frequently engages in conversation with other workers on the line. Recently, he has noticed that two older men who work behind him often make fun of the way he talks and mimic parts of his conversation. On two occasions, he has attempted to address it with them but they simply mimic his style of talking and walk away laughing. Recently he has noticed that others have stopped talking to him.

CASE STUDY 2: Camilla

Camilla is responsible for posting two new jobs for her company. She works in human resources. The one job is for a data processor and she has recycled an old job posting for that position. The other job is for a front gate guard position. The job simply requires sitting in a traffic booth for 8 hours and screening people's security passes as they approach. She listed the major job duties and put in a requirement that the individual have a high school diploma and a valid driver's license even though the job only requires reading at a Grade Six Level and does not require the individual to drive a vehicle.

CASE STUDY 3: Genevieve

Genevieve has worked for Corporation XYZ for 10 years in the same capacity. She is well-liked by her peers and been documented as a highly effective and productive employee. Genevieve has a chronic back problem. She noticed a posting for a job promotion that she is well-suited for given her skills set and approached the supervisor for the new position to express her interest in applying. The supervisor laughed and told her she did not have the stamina for the position and further that folks with disabilities need not apply as it required being on call 24/7.

CASE STUDY 4: Toma

Toma is an individual with mental retardation who works as a janitor's assistant at a fast food establishment. Toma has a job coach and participates every year in the Special Olympics. Toma hung a poster (with his supervisor's approval) soliciting sponsors for a walk-a-thon he was going to participate in to raise money for the Special Olympics. One of his co-workers upon seeing the sign tore it down and told him "no one wants to sponsor a bunch of retards to do something they can't really do anyway". He then spoke to his two buddies in the back and told them to tell Toma the same.

Appendix D

3

Appendix D

Optional Exercise

Case Studies in Reasonable Accommodation

Connor

The store manager of a large store that sells mechanical equipment, Connor loves his work and is very good at what he does. He has a knack for leading people and has achieved a solid track record of performance. He is knowledgeable in all aspects of the retail operation and inspires the trust of everyone he works with. He is excellent with customers and coaches others to help them improve their sales techniques.

Six months ago, while driving home from a party, Connor was in a car accident that left him with a spinal cord injury. Though his upper extremities have not been affected, this injury did affect his lower extremities and he now uses a wheelchair. After going through extensive physical therapy and rehabilitation, Connor feels he would like to consider returning to work.

You are Connor's district manager. He has requested a meeting with you to try to determine the next steps.

Please discuss the following questions about this scenario:

1. What might be some reasonable accommodations that could be appropriate for Connor?
2. Choose two of the accommodations you described above. For each, consider...
 - a. What might you need to do as a supervisor to ensure that these accommodations are in place and that they are effective?
 - b. What might be the cost of each of these accommodations? (an estimate is OK.)
3. Connor's yearly salary is \$40,000. According to research by the Saratoga Institute, it will cost about 1.5 times his annual salary to replace him if he leaves the job. This equals about \$60,000. By comparison, what would the reasonable accommodations cost? What is the difference?

Case Studies in Reasonable Accommodation

Gerald

The principal of a large high school, Gerald is proud of his accomplishments. He has gained the trust of everyone who works with him; he has created innovative new programmes for teachers' professional development; he has played a key role in major renovations in his school building. Six months ago, Gerald was referred for further testing when a routine medical test picked up something suspicious. A few days later, he heard the words no person wants to hear, "you have cancer".

After two months of surgery and chemotherapy, Gerald feels he would like to return to work, even though he still has some chemotherapy treatments left. You are the superintendent of his school district and he has asked to meet with you to discuss his return to work.

Please discuss the following questions about this scenario:

1. What might be some reasonable accommodations that could be appropriate for Gerald?
2. Choose two of the accommodations you described above. For each, consider...
 - a. What might you need to do as a supervisor to ensure that these accommodations are in place and that they are effective?
 - b. What might be the cost of each of these accommodations? (an estimate is OK.)
3. Gerald's yearly salary is \$60,000. According to research by the Saratoga Institute, it will cost about 1.5 times his annual salary to replace him if he leaves the job. This equals about \$90,000. By comparison, what would the reasonable accommodations cost? What is the difference?

Case Studies in Reasonable Accommodation

Cindy

At age 50, Cindy was at the top of her game – quite literally. The coach of a highly successful women’s basketball team in a large university, Cindy’s work was her life. Being in the field of physical education, Cindy had always prided herself on her health. So she was shocked when she found out that the fatigue she was experiencing was not just over-work. It was Type II diabetes.

After taking two weeks off to adjust to her new set of life circumstances, Cindy has requested a meeting with you, the university’s athletic director, to discuss a return to her job.

Please discuss the following questions about this scenario:

1. What might be some reasonable accommodations that could be appropriate for Cindy?
2. Choose two of the accommodations you described above. For each, consider...
 - a. What might you need to do as a supervisor to ensure that these accommodations are in place and that they are effective?
 - b. What might be the cost of each of these accommodations? (an estimate is OK.)
3. Cindy’s yearly salary is \$60,000. According to research by the Saratoga Institute, it will cost about 1.5 times her annual salary to replace her if she leaves the job. This equals about \$90,000. By comparison, what would the reasonable accommodations cost? What is the difference?

Case Studies in Reasonable Accommodation

Gail

As an administrative assistant in a training consulting firm, Gail found herself at the center of many of the team's projects. She scheduled trainings, tracked training projects, entered evaluation data and served on several committees. One day, while helping to load boxes of books for a training session, a box fell from a top shelf and hit her head with force enough to render her unconscious. Co-workers called an ambulance and she was admitted to the hospital. Tests revealed a major concussion.

As with most brain injuries, the extent of the impact on her functioning was unclear during the initial days of her injury. But gradually, over the next 3 – 4 weeks, Gail regained more and more of her previous level of function.

Now after two months, Gail would like to attempt to return to work. You are her supervisor and she has requested a meeting with you to discuss her re-entry into her previous job.

Please discuss the following questions about this scenario:

1. What might be some reasonable accommodations that could be appropriate for Gail?
2. Choose two of the accommodations you described above. For each, consider...
 - a. What might you need to do as a supervisor to ensure that these accommodations are in place and that they are effective?
 - b. What might be the cost of each of these accommodations? (an estimate is OK.)
3. Gail's yearly salary is \$35,000. According to research by the Saratoga Institute, it will cost about 1.5 times her annual salary to replace her if she leaves the job. This equals about \$53,000. By comparison, what would the reasonable accommodations cost? What is the difference?

Case Studies in Reasonable Accommodation

Sandy

A lab technician at the biotechnology department of a major university, Sandy loved every aspect of the research process. She had moved beyond her original role as a data entry technician and was now involved in many aspects of the research process, from collecting data to reporting findings. She did most of her work at the computer, but also participated in lab research, including running samples through analysis and setting up a lab for an experiment.

Her severe back pain came on very suddenly and her doctor told her she had a musculoskeletal disorder of an unknown origin. But even though she could not explain the cause, one thing was apparent: it was a major disrupting factor in her life and it did not seem likely it was going away. After taking four weeks off work and seeing several doctors, she still did not have any solid answers about what she could do to get her life back on track. But she decided that, no matter what the cause or solution to her problem, returning to work was a necessary part of her healing. She just wanted her life to get back to normal. That is why she contacted you, her supervisor, to discuss what could be done to help her return to work.

Please discuss the following questions about this scenario:

1. What might be some reasonable accommodations that could be appropriate for Sandy?
2. Choose two of the accommodations you described above. For each, consider...
 - a. What might you need to do as a supervisor to ensure that these accommodations are in place and that they are effective?
 - b. What might be the cost of each of these accommodations? (an estimate is OK.)
3. Sandy's yearly salary is \$35,000. According to research by the Saratoga Institute, it will cost about 1.5 times her annual salary to replace her if she leaves the job. This equals about \$53,000. By comparison, what would the reasonable accommodations cost? What is the difference?

Appendix E

Learning Objectives Evaluation

Tasks	Poorly	Seldom	Very Well
Outline the importance of disability non-discrimination.			
Understand the potential scope of disability law.			
Explain the different forms that discrimination can take.			
Define reasonable accommodation.			
Provide examples of reasonable accommodation.			
Describe the concept of burden of proof.			

Appendix F

4

Appendix F

Quota Simulation Worksheet

Is there additional information the Task Force needs to assist them in reaching consensus? If so, what types of additional information are needed?

.....

Which type of quota is preferable given the circumstances described? (quota-levy; binding quota with no sanction; or non-binding quota)

.....

If a quota-levy system how would you administer and enforce the scheme?

.....

If a binding quota with no sanction, what might the potential outcome be?

.....

If a non-binding quota, what might the potential outcome be?

.....

What target group should be identified for the quota?

.....

How would you define eligibility?

.....

Should the quota favor certain left-handers over others?

.....

Should standard or varying quota rates apply?

.....

What would the appropriate quota percentage be?

.....

Who would the quota be imposed on?

.....

Appendix G

Learning Objectives Evaluation

Please take a moment to help us understand how well the course prepared you to perform the following tasks.

Tasks	Poorly	Seldom	Very Well
Define quota schemes as an affirmative action measure.			
Identify the three basic schemes that quota systems can be divided into and issues pertaining to each.			
Outline effective strategies to make a quota system work in practice.			
Identify which people with disabilities should be targeted and eligible for quota schemes.			
Discuss the pros and cons of whether a quota should favor certain people with disabilities.			
Determine standard quota or varying quota rates.			
Identify what an appropriate quota percentage should be and types and size of employers to be targeted.			

Appendix H

5

Appendix H

Learning Objectives Evaluation

Please take a moment to help us understand how well the course prepared you to perform the following tasks.

Tasks	Poorly	Seldom	Very Well
Define the importance of a social marketing campaign in planning for the implementation of disability non-discrimination legislation.			
Identify the three basic forms of employment support measures that can be taken to support legislative implementation.			
Outline the importance of providing specialized work-related equipment and adaptation grants as a form of employment support.			
Outline the importance of providing specialized equipment for daily living as a form of employment support.			
Identify approaches for promoting safe and appropriate transportation to and from work for people with disabilities.			
Discuss other types of technical advisory and support services to assist and support employers in meeting the demands of disability non-discrimination legislation.			
Identify different approaches for providing financial supports for people with disabilities to encourage and support employment.			
Identify options for providing financial subsidies for employers to encourage employment of the protected status.			

Appendix I

Learning Objectives Evaluation

Please take a moment to help us understand how well the course prepared you to perform the following tasks.

Tasks	Poorly	Seldom	Very Well
Define the importance of consultation in the legislative development process.			
Identify the four primary groups to be targeted for consultation when developing equal employment and disability non-discrimination legislation and policy.			
Describe a typical consultative legislative process.			
Highlight examples from at least three countries of their experiences in consulting with specific targeted stakeholders in their legislative development process.			

Appendix J

7

Appendix J

Learning Objectives Evaluation

Please take a moment to help us understand how well the course prepared you to perform the following tasks.

Tasks	Poorly	Seldom	Very Well
Define the importance of legislative enforcement.			
Identify approaches for enforcement of the law.			
Describe implications of putting a law into practice.			
Outline the importance of judicial and/or administrative procedures on assertion of an individual's rights under the law.			
Highlight examples for strengthening judicial mechanisms.			
Discuss the pros and cons of administrative enforcement institutions.			

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