



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

Enforcing the Law

Learning Objectives

- **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.

Objectives continued...

- Highlight examples for strengthening judicial mechanisms.
- Discuss the pros and cons of administrative enforcement institutions.

Approaches to Enforcement

- Labour Inspectorate.
- Administrative monitoring system such as a National Disability Council, an Ombudsman Institution or an Equality Commission.
- Judicial system in criminal, civil or labour law courts.
- Industrial employment tribunals.
- Combination of the above approaches.

Enforcement Institutions

- Typically, enforcement institutions are established in law which includes:
 - composition;
 - roles;
 - function.

Data Collection

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

Enforcement Entities

- The Labour Inspectorate, within the framework of its usual data collection duties, may be called upon as well to gather data on actions or infringements of a disability law or equality law with a disability dimension.
- Bodies like the Human Rights, Equal Opportunities or Disabilities Commissions may monitor compliance with and the impact of laws, drawing on secondary data, but with the power to undertake investigations.
- Ombudsman Institutes often abuses by public authorities, and could also be used to monitor respect for disability provisions.
- NGOs can monitor compliance, making valuable contributions by investigating strengths and weaknesses of EEO law. They lack, however, the authority and resources to investigate complaints and measure compliance.

Disability Complaints

- Disability complaints can be made at different points in a judicial system, through:
 - constitutional law provisions;
 - criminal law provisions;
 - civil and labor law provisions; and
 - combinations of criminal, civil and constitutional law.

Asserting Rights

- Optional Exercise
 - What is the best vehicle for asserting rights under the law, civil/labor law or constitutional/criminal law?
 - Why is one vehicle better than another?
 - In relation to disability employment non-discrimination legislation should both be options? Why?

Strengthening Judicial Procedures

- National law should contain measures to protect workers against victimization in the case of filing a complaint of discrimination.
- Offer conciliation procedures (such as mediation) as part of a court procedure or pre-hearing process.
- Offer 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 without financial burden.
- The use of simple, straightforward court proceedings (such as civil and labor 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.

Strengthening (continued)

- Allow 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 to lessen emotional burden on the defendant.
- 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.
- The implementation and enforcement of equal employment opportunities 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 requires programmes of briefing and awareness raising specifically aimed at the judiciary, advocates and legal advisors, which should be planned for and adequately resourced.

Common Enforcement Procedures

- Common procedures across typical enforcement entities include:
 - no costs involved for the parties;
 - legal representation is not required; and
 - the decisions of some of the bodies may be non-binding, but still relevant and have impact.

Ombudsman Institutions

- Ombudsman institutions can use human rights law, international labor law and non-discrimination law as a yardstick against which to measure State behaviour.
- They hold hearings using an informal and conciliatory approach.
- The results of their investigations are commonly published, and sent to both parties, and contain, if appropriate, recommendations for the improvement of State behaviour.
- The authority – and possibly the effectiveness – of an order from the Ombudsman will depend on the precise mandate.

Special Commissions

- Special commissions commonly have a very broad mandate to promote and protect the respective bodies of laws.
- These bodies frequently have the task of:
 - starting investigations on their own initiative;
 - conducting independent surveys on human rights compliance/ equal opportunities/ 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.
- Some statutes require employers to lodge reports with such commissions on their efforts to implement the law.

Goal of Positive Duties

- To restructure institutions 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 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. These positive duties can take a number of forms, one of which is contract compliance.

Compliance Requirements

- 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.
- 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 requirement can vary, but the ultimate goal is to increase the participation of people with disabilities in the workforce and, on occasions, to equalize pay and access to benefits.

Specific Obligations

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

Enforcement Summary

- The proper implementation of equal opportunities legislation and policies is a State responsibility.
- When adopting or revising equal opportunities legislation and policies, law and policy makers should pay attention to 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.
- 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 in relation to disability should contain adequate and efficient implementation and enforcement mechanisms.

COURSE SUMMARY

EEO Guiding Principles

- 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 law development process is participatory, with consultation with all stakeholders.

Non-Discrimination Principles

- 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'.

Non-Discrimination (continued)

- 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.

Quota Law Principles

- 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.

Quota Law (continued)

- 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.

Tips for Success

- Design and offer information campaigns, including general and technical information and advice.
- Provide employment support measures.
- Make sure the laws / policies reflect the varying interests and needs of groups in society which are affected.
- Provide extensive systematic consultation with the key stakeholders – organizations of disabled persons, employer and worker organizations, service providers as well as relevant government ministries.
- Make sure consultations are formalized through existing bodies or through task forces set up for the purpose.

Closing Questions

- What insights have you gained from participating in this programme?
- What is the first step that you are considering in applying this information?

