



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

Current Trends in Disability Legislation



Learning objectives

- Understand ILO role – equal employment opportunities for persons with disabilities.
- Reflect on beliefs and attitudes regarding disability as human rights issue.
- Explain principle of non-discrimination.
- Understand significance of location of disability within legislation.
- Define disability in terms of beneficiaries, specific goals of law.
- Outline basic principles of equality.
- Explain two-pronged approach to equal employment opportunity.
- Understand potential role of gender in intensifying discrimination.



International Labour Organization

- A specialized tripartite agency within the United Nations dedicated to promoting decent and productive work opportunities for women and men everywhere.
- Set up in 1919.
- Main aims:
 - promote rights at work;
 - encourage decent work;
 - enhance social protection; and
 - strengthen social dialogue.



Declaration of Philadelphia 1944

“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 and dignity, of economic security, and equal opportunity...”



Historical Context

- **1925:** Workers' Compensation (Minimum Scale) Recommendation
 - Provision for vocational rehabilitation of injured workers.
- **1944:** Employment (transition from War to Peace) Recommendation No. 71
 - Persons with disabilities should, wherever possible, be trained in company with other persons, under the same conditions and with the same pay.
 - Training should continue to the point where the disabled person is able to enter employment in the trade or occupation they were trained.
 - Special measures to ensure equality of employment opportunity.
- Call for equality of employment opportunities and affirmative action for workers with disabilities.



ILO Contributions to equal employment opportunities

- ILO Convention concerning Equal Remuneration, 1951 (No. 100).
- ILO Convention concerning Employment and Occupation Discrimination, 1958 (No. 111):
 - People with disabilities - not specifically noted.
 - Special measures to meet requirements of people with disabilities among others, introduced in consultation with representative employers' and workers' organizations – but not deemed discrimination.
- ILO Convention concerning Equality of Treatment (Social Security), 1962 (No. 118).



ILO Contributions (2)

- **1955:** Recommendation No. 99 concerning Vocational Rehabilitation of the Disabled:
 - call for special support measures to facilitate labour market integration.
- **1983:** Vocational Rehabilitation and Employment (Disabled Persons) Convention, (No. 159).
 - States required to adopt national policy based on principles of equal opportunity and equal treatment.
 - Special positive measures not discriminatory.
 - Access to existing services for workers generally, where possible and appropriate, with necessary adaptations.



ILO Contributions (3)

- **1988:** Employment Promotion and Protection against Unemployment Convention, (No. 168).
 - explicit prohibition of disability discrimination.
- **1998:** ILO Declaration on Fundamental Principles and Rights at Work
- **2001:** ILO Code of Practice on Managing Disability in the Workplace



Shifting Disability Paradigm

Medical Model	Social Model
<ul style="list-style-type: none"> ▪ 'Fix' the person 	<ul style="list-style-type: none"> ▪ 'Fix' society
<ul style="list-style-type: none"> ▪ Focus on disability, limitations 	<ul style="list-style-type: none"> ▪ Focus on ability, what a person <i>can</i> do
<ul style="list-style-type: none"> ▪ Adjustment to the norm 	<ul style="list-style-type: none"> ▪ Acceptance of differences
<ul style="list-style-type: none"> ▪ Impairment must be overcome 	<ul style="list-style-type: none"> ▪ Environment must be changed
<ul style="list-style-type: none"> ▪ Encourage acceptance 	<ul style="list-style-type: none"> ▪ Encourage independence
<ul style="list-style-type: none"> ▪ Little consultation 	<ul style="list-style-type: none"> ▪ Person-centered decision-making
<ul style="list-style-type: none"> ▪ Institution-based provision 	<ul style="list-style-type: none"> ▪ Community-based services
<ul style="list-style-type: none"> ▪ Exclusion 	<ul style="list-style-type: none"> ▪ Inclusion, participation, citizenship



Human rights

- All human beings have equal rights, including right to full enjoyment of the right to work.
- Everyone is entitled to human rights without discrimination.
- States have duty to protect, respect and fulfil.
- Human rights law and Government obligations.
- Disability issues – now seen as issues of human rights.



Disability Through Time

Optional Exercise:

- What were the fads?
- What were the scientific discoveries?
- Who were the idols?
- Where did you see people with disabilities?



Growing focus on Disability Issues

- **From 1980s:** explicit reference to people with disabilities in human rights charters, conventions and initiatives.
- **1992:** Council of Europe Coherent Policy for the Rehabilitation of Persons with Disabilities.
- **1993:** UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities.
- **2001:** UN General Assembly Resolution 56/168 establishing Ad Hoc Committee to consider convention on rights and dignity of persons with disabilities.



The UN Convention

- Convention on the Rights of Persons with Disabilities and its Optional Protocol, adopted 13th December 2006.
- Opened for signature on 30th March 2007.
- Entered into force on 3rd May 2008.
- Major milestone.



Principle of Non-Discrimination

- Now in all major human rights conventions.
- UN Convention on Rights of Persons with Disabilities:
 - Article 2: defines disability discrimination;
 - Article 5: specific measures not considered discrimination.



Non-discrimination legislation

- Prohibits disability discrimination in employment through:
 - general employment laws;
 - disability specific laws.

- Aims for:
 - inclusion of persons with disabilities;
 - equal employment opportunities.



Forms of Laws and Policies

- Non-discrimination laws can protect people with disabilities from unequal treatment in:
 - employment;
 - transportation;
 - access to services;
 - access to housing;
 - any others?



Additional Grounds of Discrimination

- Prohibited grounds of discrimination can include gender, ethnic origin, race or religion among others, as well as disability.
- Other protected status?
- Non-discrimination law can:
 - help raise awareness;
 - contain provisions for equal treatment.



Location of disability within law

- Constitutional Law (usually the highest law of the land)
 - Lays out the State's responsibility to citizens and citizens' rights.
- Civil Law
 - Concerns the private rights of individuals.
- Labour Law
 - Concerns employment issues.
- Criminal and Penal Law
 - Concerns crimes such as theft or prohibition of certain acts.
- Provisions may include:
 - statements of basic rights of people with disabilities;
 - principles of solidarity or justice;
 - means to prevent discrimination.



Constitutions mentioning persons with disabilities: Examples

Brazil	Mongolia
Cambodia	Seychelles
Canada	Slovenia
China	South Africa
Ethiopia	Sudan
Fiji	United Republic of Tanzania
Germany	Uganda



Special Measures - Examples

- The Constitution of Malawi, Article 13:
 - State obliged to adopt and implement policies and legislation aimed at ensuring for persons with disabilities:
 - fair opportunities in employment;
 - greater access to public places; and
 - the fullest possible participation in all spheres of Malawian society.



Discrimination Prohibition Example

- Federal Republic of Brazil – Constitution Article 7:
 - Prohibition of discrimination of any kind concerning the recruitment of, or salaries paid to, persons with disabilities.



Oversight Bodies

Example

- Constitution of South Africa
 - Human Rights Commission established to:
 - promote respect for human rights and a culture of human rights;
 - promote the protection, development and attainment of human rights; and
 - monitor and assess the observance of human rights in the Republic of South Africa.



Civil Law - Possible Scope

- Non-discrimination provisions.
- Quota provisions.
- Burden of proof.
- Enforcement mechanisms.



Penal Code - Example

- French Penal Code, Article 225.1:
 - Disability-based discrimination prohibited in:
 - recruitment, sanctioning, or dismissal from employment;
 - the exercise of any given economic activities; and
 - the provision of goods and services.
 - Punishment of two years' imprisonment and a fine specified for infringements.



Goals affecting Definition of Disability

- Eliminate disadvantages faced by people with disabilities.
- Dismantle exclusionary barriers that people with disabilities face in society.
- Promote employment opportunities for people with disabilities.



Defining Disability

- Limited impairment-related definition
 - identifies a narrow, beneficiary group, most in need of support.

- Broad, inclusive definition
 - aims to protect from disability discrimination:
 - people with disabilities;
 - people associated with them; or
 - people wrongly assumed to have a disability.



Terms used to describe disability

- Some terms may be considered offensive:
 - ‘Invalids’;
 - ‘Handicapped’;
 - ‘Retarded’;

- Legislation should include terms consistent with respect for the dignity of human beings:
 - Persons with disabilities;
 - Disabled persons.



Person-first Language

Optional Exercise:

- Disabled person
- The mentally retarded
- The mentally impaired
- Wheelchair-bound
- Midget
- The epileptic



Equality

- Article 1 of the Universal Declaration of Human Rights (1948).
 - “All human beings are born free and equal in dignity and rights.”

- ILO Declaration of Philadelphia (1944).
 - “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 and dignity, of economic security, and equal opportunity.”



Defining Equality in Law

- Notion of human dignity.
- Should differences that cause disadvantages be ignored or taken into account?
- Various ways to define:
 - formal equality;
 - equality of opportunity;
 - equality of results.



Formal Equality

- Persons who are situated alike should be treated in the same way.
- Individual and contextual differences and disadvantages frequently ignored as irrelevant.
- Denial of identical treatment prohibited.
- No requirement to make accommodations.
- No provision to meet support needs of people with disabilities.



Equality of Opportunity

- Provides for equal chances, not equal results.
- Account taken of individual and group differences, external barriers.
- Disability ignored, if stereotypes are basis for action.
- Disability taken into account if changes needed to promote access and inclusion.



Equality of Results

- Concerned with securing same outcomes for all.
- Individual and group differences acknowledged in determining questions of equality (e.g. equal pay).
- No clear indication where responsibility lies for meeting needs of the person with a disability.
- Not clear whether an individual's merits are seen to justify unequal results.



Social Policies

- Related to promotion of equality of opportunity or results.
- Beneficiaries include underprivileged groups.
- Examples:
 - illiteracy campaigns;
 - unemployment strategies;
 - homelessness policies;
 - women in the workplace policies;
 - others?
- Not non-discrimination measures.



Affirmative Action

- Aim to promote equality of opportunity.
- Time-bound preferential treatment to compensate for structural disadvantage.
- Does not constitute discrimination.
- Example:
 - obliging employers to employ a number or percentage of workers with disabilities.
- Disadvantaged people treated preferentially, as a group, until structural disadvantage is overcome.



Women with disabilities

- More vulnerable to discrimination.
- Less likely to be referred for vocational training and rehabilitation.
- More likely to remain unemployed or work in part-time jobs.
- As workers, they experience:
 - unequal hiring and promotion standards;
 - unequal access to training and retraining;
 - unequal pay for equal work;
 - occupational segregation.

