



Department of
Education
and Training

EMPLOYMENT OF PEOPLE WITH DISABILITIES

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1 POLICY

The Department of Education and Training Western Australia has a working environment that is free from discrimination or harassment. Line Managers will make every reasonable effort to provide for new employees who have a disability and employees who develop a medical condition or disability during the course of their employment.

2 BACKGROUND

2.1 DEFINITION

A person with a disability includes people with a physical or intellectual disability, a person who has had a disability in the past or who is assumed to have a disability. It is against the law to discriminate against a person because of disability in certain areas of public life. These are:

- Work
- Accommodation
- Education
- Provision of goods, services and facilities
- Gaining access to places and vehicles
- Membership of clubs and incorporated associations
- Application forms
- Advertisements
- Superannuation
- Sport

2.2 GENERAL

The Department of Education and Training Western Australia values diversity in its working environment and is committed to management practices that are free from bias and discrimination.

3 RELEVANT LEGISLATION OR AUTHORITY

Equal Opportunity Amendment Act 1992

Commonwealth Disability Discrimination Act 1992.

The Commonwealth *Disability Discrimination Act 1992* forbids the harassment of people with a disability when seeking employment, or by an employer or another employee.

4 PROCEDURES

4.1 RECRUITMENT OF PEOPLE WITH DISABILITIES

4.1.1 JOB DESIGN

Modification of the working environment, job re-design and the need for ongoing support are to be considered at the time a position is being established and prior to the position being advertised.

Line managers are to consider the purchase of items of equipment as recommended by the treating practitioner to assist the employment of a person with a disability or to enable an employee to remain in his/her substantive position. (Financial assistance is available from the Manager, Client Service Branch, Facilities and Services Directorate).

4.1.2 RECRUITMENT AND SELECTION

Recruitment and selection processes are to be conducted in compliance with the relevant Public Sector Standards in Human Resource Management. The need for adjustments to the job and/or work environment to accommodate a person with a disability is not to detract from application of the merit principle. Position advertisements are to state that people with disabilities are encouraged to apply. Job advertisements must state the availability of flexible working conditions.

4.1.3 SALARIES AND CONDITIONS OF EMPLOYMENT

An employee with a disability is to receive the same salary and conditions of service as other public sector employees.

A person with a disability may be employed under the national Supported Wage System (SWS) via an Individual Workplace Agreement when the disability impacts on their productivity to the extent that they cannot obtain or retain employment at full award wages.

4.1.4 SELECTION CRITERIA

Selection criteria are to accurately express the essential requirements of the job. Job descriptions are not to contain any physical or other requirements that are not essential to job performance.

4.1.5 RECRUITMENT

Line managers are to consider the potential of employing someone with a disability. (The Coordinator Disability Employment in the Ministry of Premier and Cabinet can assist in identifying potential candidates).

4.1.6 SELECTION

Selection panel members are to be familiar with *Winning Staff the EEO Way*, produced by the Director of Equal Employment Opportunity, Public Sector Standards Commission. Panelists are to focus on a person's ability to meet the selection criteria. Including a person on the interview panel with an understanding of the issues faced by people with disabilities is not a substitute for ensuring all panel members have some knowledge of disability issues. When it is known that an applicant has a disability, the applicant is to be asked if they require any special arrangements. Questions regarding a person's disability may be asked if they relate to the job. Questions about previous workers' compensation claims may be asked to protect an applicant from further injury. The Department may seek independent medical advice regarding the risks associated with employing a person with a disability.

4.1.7 SHORTLISTING

It is unlawful to discount an applicant with a disability on the basis of stereotypes or assumptions about their disability.

4.1.8 INDUCTION

The induction program is to be modified to assist an employee with a disability by consulting with the new employee prior to commencement about whether they wish any information to be provided to their co-workers about their disability; inviting the new employee to visit the workplace before commencement day; providing a mentor – a person responsible for introducing the new employee to work routines, car parks, lunch facilities and other necessary information; and if necessary, assigning a co-worker to assist in the event of an emergency evacuation of the workplace.

4.1.9 PERFORMANCE MANAGEMENT

All staff members of the Education Department have a responsibility to demonstrate and be accountable for their performance in relation to the implementation of organisational and workplace goals.

4.1.10 EXCEPTIONS

Employers are required to make "reasonable adjustment" to the work environment to take account of a person's disability. Reasonable adjustment may involve swapping some duties between a worker with a disability and other people in a team; adapting usual equipment or technology or providing specially designed technology; or rearranging the physical layout of the workplace to accommodate a person in a wheelchair.

There are certain instances in which it is not unlawful to discriminate against a person because of an impairment. That is because there are situations in which providing special services or facilities to a person with an impairment would impose unjustifiable hardship.

For example, the employment of a person with a mobility disability when the employer's leased offices are on the second floor of a building without lifts or escalators. To force the employer to install a lift may be regarded as an unjustifiable hardship.

Exceptions include:

- Unjustifiable hardship
- Where the person with a disability cannot reasonably carry out the work or activity
- Domestic workers in private households
- Measures to meet special needs
- Genuine occupational qualification
- Superannuation and insurance based on statistical evidence
- Application forms
- Access to places and vehicles physically inaccessible (Note: Buildings built after August 1985 not excepted)
- Accommodation in private households
- Clubs, services and accommodation for people with a particular disability.

4.2 MANAGING AN EMPLOYEE WHO HAS ACQUIRED A MEDICAL CONDITION OR DISABILITY

4.2.1 GENERAL

Line managers are responsible for case managing permanent employees who acquire a medical condition or disability during the course of their employment that is not covered by workers' compensation. They should consult with a vocational rehabilitation provider and a medical practitioner nominated by the Department; monitor the employee's progress and ensure that mechanisms are in place to maintain support during the case management process; ensure that any alternative job placement is undertaken within the framework of the Public Sector Standards on Human Resource Management and Education Department's staffing policies; and ensure that other staff working with the employee with the medical condition/disability are provided with sufficient information about the situation to minimise any negative consequences.

Temporary employees who develop a medical condition/disability during the period of their contract that can be managed by job modification or with the assistance of equipment, are to be managed in the same way as permanent employees. Their medical condition/disability is not to be a factor when considering them for re-employment. Renewal of a contract for a temporary employee with a medical condition will be dependent on their ability to continue to perform the requirements of their position.

Reasonable efforts are to be made to modify the workplace or job to support the continued employment of the person. Modification of the workplace or job is not required if it will cause unjustifiable hardship to the employer. Line managers are to ensure that details of the process undertaken to manage an employee with a medical condition or disability are documented as a formal record. Line managers are to maintain adequate records relating to the case management of an employee with a medical condition or disability and keep this information confidential.

4.2.2 MEDICAL ASSESSMENT

Line managers will be guided by the assessment of the employee's condition made by their medical adviser(s). The Department may nominate a medical practitioner to make an assessment if further information is required. When the employee's medical adviser recommends that the employee undertake only 'light duties', clarification of what this involves should be sought from the employee's medical adviser or a vocational rehabilitation provider (where one has been engaged).

4.2.3 COSTS

Costs of any medical assessment by a medical practitioner nominated by the Department will be borne by the Department of Education and Training Western Australia. The employee is responsible for costs associated with medical assessment by their medical adviser. Costs of engaging a recognised vocational rehabilitation provider will be borne by the relevant cost centre. If the employee's medical condition/disability later becomes subject to a workers' compensation claim that is accepted, all monies are to be reimbursed. The 'home' cost centre is responsible for paying an employee who has been placed in a different location on a temporary basis for training or upskilling. The cost of providing teacher relief where a teacher has a graduated return to work is borne by the 'home' cost centre.

4.3 CASE MANAGEMENT OF AN EMPLOYEE WHO HAS ACQUIRED A MEDICAL CONDITION OR DISABILITY CASE MANAGEMENT OF AN EMPLOYEE

Line managers have responsibility to:

- a) consult with the employee, their medical adviser(s), and other relevant professionals in order to gain a comprehensive understanding of the employee's medical condition and needs in the workplace;
- b) consult with an approved Vocational Rehabilitation Provider, where relevant, about job redesign and modifications to the workplace that may assist the employee;
- c) seek advice if necessary from staff from Employee Support Services in Central Office about workers' compensation, rehabilitation and occupational health and safety issues;
- d) develop a return to work program for the employee with the assistance of a vocational rehabilitation provider if required. The program should cover the duties to be undertaken and include a timeframe;
- e) meet with the employee on a regular basis (eg monthly) to monitor their progress and to ensure workplace modifications or provision of equipment is effectively supporting them. A review of the situation should be conducted after six months and the case management process concluded if there are no ongoing problems;
- f) identify, in accordance with the Redeployment and Transfer Standards, an alternative placement for an employee who has been medically assessed as fit for employment but is unable to remain in their substantive position due to a medical condition/disability. An alternative permanent appointment under these Standards may be available if all of the following criteria can be met:
 - o a vacancy is available within the Department at the same level as their substantive level

- the salary range of the new vacancy falls within the 80-110% range of the previous position
- there is best match between the skills and experience of the new vacancy to the previous position
- there is a match in the location of the new vacancy to the previous position.

The employment of the person with a disability may be terminated, if it is clear, following assessment by the employee's medical adviser(s) and confirmation by a medical practitioner nominated by the Department, that the employee cannot continue in employment either in their substantive position or an alternative position.

For further information on these matters contact Workforce Development on 9264 5155 or Workplace Relations on 9264 4728.

5 GUIDELINES

5.1 GENERAL

The Department of Education and Training Western Australia strives for a best-practice approach to the employment of people with disabilities and expects all staff to be familiar with this and related policies and procedures. Staff are also expected to model and promote professional practice and personal behaviour which is free from impairment discrimination and harassment; monitor practices, structures and procedures in the workplace to ensure they comply with the *Employment of People with Disabilities - Policy and Procedures*; model leadership practices which manage and address issues of impairment discrimination and harassment; ensure staff have access to awareness raising training, support materials and documents which will increase their knowledge and understanding of impairment issues; report to the Equal Employment Opportunity Diversity Advisory Committee on the implementation of the *Employment of People with Disabilities - Policy and Procedures*.

5.2 VOCATIONAL REHABILITATION PROVIDERS

Vocational Rehabilitation Providers can assist an injured worker remain in or return to work, through the provision of specialist services. These services may include worksite assessments (clarification of the physical demands to ensure a safe return to work) and job modifications (which may include advising on the use of aides and equipment in the workplace).

The Education Department has a recommended list of Vocational Rehabilitation Providers assigned to Districts who are familiar with Education Department systems and practices. (Contact Employee Support Services – 9264 5347 – for details.) Line managers may contract specific services from the Vocational Rehabilitation Provider such as a Worksite Assessment. Costs for this service should be negotiated prior to commencement.

If the injured worker has a workers' compensation claim, and a decision on liability has not been made, vocational rehabilitation options may be discussed with a designated workers' compensation officer in Employee Support Services, Central Office.

5.3 COUNSELLING AND ADVICE

Free, confidential counselling is available to employees through Occupational Services (WA) (formerly INDRAD) on 9225 4522 (metropolitan callers) or 1800 198191 (country callers).

5.4 USEFUL RESOURCES

Accent on Ability – Equity Resource Kit 1996, The Office of Equal Employment Opportunity.

Winning Staff the EEO Way – Recruitment and Selection Guidelines 1996, Director of Equal Opportunity in Public Employment.

Equal Opportunity Impairment Discrimination Guidelines, Equal Opportunity Commission.

Occupational Rehabilitation Guidelines 1997, Education Department of WA.

Occupational Rehabilitation Policy 1997, Education Department of WA.