



UNIVERSITY *of the*,  
WESTERN CAPE

## UNIVERSITY OF WESTERN CAPE (UWC)


### POLICY:

Staff with Disabilities Policy

DATE OF APPROVAL: C2013/05


(Implementation Date: 1 January 2014)

Recommended by: SA2013/7

 <p>UNIVERSITY of the WESTERN CAPE</p>	UNIVERSITY OF THE WESTERN CAPE		
	HR POLICY DOCUMENT  POLICY ON STAFF WITH DISABILITIES	Reference Number	
		Implementation Date	
		Revision/ Amendment Number	
		Revision/ Amendment Date	

# POLICY ON STAFF WITH DISABILITIES

## UNIVERSITY OF THE WESTERN CAPE

 UNIVERSITY of the WESTERN CAPE	UNIVERSITY OF THE WESTERN CAPE		
	HR POLICY DOCUMENT  POLICY ON STAFF WITH DISABILITIES	Reference Number	
		Implementation Date	
		Revision/ Amendment Number	
	Revision / Amendment Date		

## 1. Preamble


UWC's mission directs the university, among other things, to the pursuit of a distinctive academic role in South Africa which, through critical and creative ways, seeks to build an equitable and dynamic society. This commitment to equity as key to South Africa's future emphasises that, taken the inequalities of the past, the university must constantly seek to address these inequities and enable those who have been most severely disadvantaged by the apartheid system to participate fully in the life of the nation.

In UWC's more recent Institutional Operating Plan (IOP) plan for the period 2010-201 , this intention to contribute to the creation of a more equitable and just society is also linked to the conceptualisation of UWC's role as an 'engaged university' and to the importance of valuing diversity as part of this role. For UWC, the notion of 'engagement' here is seen to capture the university's emerging sense of itself as a university in a society in transition that is confronted by and must address the significant development challenges shaped by its past and the emerging challenges of becoming an active player in a globalized knowledge economy.

For UWC, this means actively engaging through its knowledge creation and dissemination roles with the complex challenges that emerge from these very different but equally important realities. The IOP recognises that to be such an 'engaged' university, UWC must be able to attract and retain staff with the right skills, knowledge and values able to take forward its envisaged role. It also notes that in pursuit of this objective, UWC stands to benefit substantially from conscious and dedicated efforts to diversify its staff profile. Increased staff diversity is therefore seen to be important to shaping the university's ability to be an 'engaged university' and to redressing the inequalities of the past.

The university recognises that people with disabilities are among those who have been most severely affected by the inequalities of the past. This is especially true in the workplace where people with disabilities have faced severe forms of discrimination which in turn have denied the right to productive employment opportunities and thus the ability to contribute to the economic wellbeing of South Africa.

UWC is also cognisant of the fact that despite important legislation now in place to protect the rights of people with disabilities in the workplace and create equitable employment opportunities, many barriers remain. In line with the provisions of the United Nation's Convention on the Rights of Persons with Disabilities, the university recognises that central to the creation of an equitable and fair workplace for people with disabilities is the removal of specific barriers that restrict participation in the workplace and, closely linked to this, the provision of reasonable accommodation measures that enable people with disabilities to be active and productive members of staff.

 UNIVERSITY of the WESTERN CAPE	UNIVERSITY OF THE WESTERN CAPE		
	HR POLICY DOCUMENT  POLICY ON STAFF WITH DISABILITIES	Reference Number_	
		Implementation Date	
		Revision/ Amendment Number	
	Revision / Amendment Date		

With this background in mind, UWC's Policy on Staff with Disabilities draws strongly from the *Code of Good Practice on the Employment of People with Disabilities*" as part of the *Employment Equity Act, no 55 of 1998*. It has adapted the principles and provisions of the Code to the UWC environment and the needs of a university. The policy specifically aims to:


- Build on and support employment equity efforts taken forward through UWC's Employment Equity Policy;
- Create an enabling framework to address specific barriers in the university workplace that restrict equitable participation and that may (often unintentionally) result in discrimination;

## 2. Contextualising the definition of people with disabilities

There are two 'broad notions about disability which inform how we understand and make meaning of disability. The *social model of disability* forms the basis of the South African government's policy on disability since 1994, including that of the Department of Higher Education and Training. Notions of disability from a social model perspective recognise disability as a social construct that emerges from the interaction between people with impairments and the broader society. More specifically, it recognises that people with particular impairments are disabled by society when it fails to recognise and accommodate diversity, in all its different forms. The social model of disability therefore focuses on the way in which society understands and responds to diversity (Oliver, 1990). In particular, the social model directs attention to the organisational structure of society, in this case our university, and the levels of flexibility and responsiveness that are in place to accommodate the diverse needs of all the people within it, in this case, staff with disabilities.

The medical model of disability on the other hand is a deficit model, that focuses on the impairment itself and the degree to which the person with the impairment is regarded as 'abnormal' or having a deficiency that must be compensated for so that they can fit into the 'normal' society. The medical model, therefore, views disability as a binary and finite concept, rather than a concept that is constantly changing as society changes, is context bound (in this case, the university context) and socially constructed.


In the context of the workplace and drawing from a social model perspective, the scope of protection and accommodation for people with disabilities in employment therefore focuses on *the effect of a disability on the person in relation to the working environment*, and not on the nature of the impairment itself. This policy draws from a social model understanding of disability which informs the principles and provisions that are outlined. The definitions below are helpful in the context of this policy and its intentions.

 UNIVERSITY of the WESTERN CAPE	UNIVERSITY OF THE WESTERN CAPE		
	HR POLICY DOCUMENT  POLICY ON STAFF WITH DISABILITIES	Reference Number	
		Implementation Date	
		Revision/ Amendment Number	
		Revision / Amendment Date	

## 2.1 Definitions;

Section 1 of the Employment Equity Act 55 of 1998 defines people with disabilities as *"people who have a long-term or recurring physical or mental impairment, which substantially limits their prospects of entry into, or advancement in, employment"*

- An impairment may either be physical or mental or a combination of both.
- 'Physical' impairment means a partial or total loss of a bodily function or part of the body. It includes sensory impairments such as being deaf, hearing impaired, or visually impaired.
- 'Mental' impairment means a clinically recognised condition or illness that affects a person's thought processes, judgement or emotions.
- 'Long-term' means the impairment has lasted or is likely to persist for at least twelve months.
- 'Recurring impairment' is one that is likely to happen again and to be substantially limiting (see below). It includes a constant chronic condition, even if its effects on a person fluctuate.
- 'Progressive conditions' are those that are likely to develop or change or recur. People living with progressive conditions or illnesses are considered as people with disabilities once the impairment starts to be substantially limiting. Progressive or recurring conditions which have no overt symptoms or which do not substantially limit a person are not disabilities. .
- An impairment is "substantially limiting" if, in its nature, duration or effects, it substantially limits the person's ability to perform the essential functions of the job for which they are being considered.
- Some impairments are so easily controlled, corrected or lessened, that they have no limiting effects. For example, a person who wears spectacles or contact lenses does not have a disability unless even with spectacles or contact lenses the person's vision is substantially impaired.
- An assessment to determine whether the effects of an impairment are substantially limiting, must consider if medical treatment or other devices would control or correct the impairment so that its adverse effects are prevented or removed.
- For reasons of public policy certain conditions or impairments **may not** be considered disabilities. These include but are not limited to -
  - (a) sexual behaviour disorders that are against public policy;
  - (b) self-imposed body adornments such as tattoos and body piercing;
  - (c) compulsive gambling, tendency to steal or light fires;
  - (d) disorders that affect a person's mental or physical state if they are caused by current use of illegal drugs or alcohol, unless the affected person is participating in a recognized programme of treatment;
  - (e) normal deviations in height, weight and strength; and conventional physical and mental characteristics and common personality traits.

 UNIVERSITY of the WESTERN CAPE	UNIVERSITY OF THE WESTERN CAPE		
	HR POLICY DOCUMENT  POLICY ON STAFF WITH DISABILITIES	Reference Number	
		Implementation Date	
		Revision/ Amendment Number	
		Revision / Amendment Date	


### 3. Reasonable Accommodation For People With Disabilities

Section 1 of the Employment Equity Act 55 of 1998 defines reasonable accommodation as "any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have reasonable access to or participate or advance in employment". As required in the Code of Good Practice on the Employment of People with Disabilities" UWC will commit to the following:

- 3.1 UWC aims to ***reasonably accommodate*** the needs of staff with disabilities. The aim of the accommodation is to reduce the impact of the impairment of the person's capacity to fulfil the essential functions of a job.
- 3.2 UWC will adopt the most cost-effective means that is consistent with effectively removing the barriers to perform the job, and to enjoy equat access to the benefits and opportunities of employment.
- 3.3 The obligation to make reasonable accommodation may arise when an applicant or employee voluntarily discloses a disability related accommodation need or when such a need is reasonably self-evident to the university.
- 3.4 UWC also aim to accommodate employees when work or the work environment changes or impairment varies which affects the employee's ability to perform the essential functions of the job,
- 3.5 UWC will consult the employee and, where reasonable and practical, technical experts to establish appropriate mechanisms to accommodate the employee. The particular accommodation will depend on the individual, the degree and nature of impairment and its effect on the person, as well as on the job and the working environment. Reasonable accommodation may be temporary or permanent, depending on the nature and extent of the disability.
- 3.6 UWC will not accommodate a qualified applicant or an employee with a disability if this would impose an **unjustifiable hardship**. According to the Employment Equity Act 55 of 1998, this is action that requires "*significant or considerable difficulty or expense*". This involves considering, amongst other things, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the university. The Senior Management Committee of UWC will make a final decision regarding such cases.

### 4. Recruitment and Selection:

UWC recognises that the *reasonable accommodation requirement* applies to applicants and employees with disabilities who are suitably qualified for the job and may be required -

 UNIVERSITY of the WESTERN CAPE	UNIVERSITY OF THE WESTERN CAPE		
	HR POLICY DOCUMENT  POLICY ON STAFF WITH DISABILITIES	Reference Number	
		Implementation Date	
		Revision / Amendment Number	
		Revision / Amendment Date	

- (i) during the recruitment and selection processes;
- (ii) in the working environment;
- (iii) in the way work is usually done, evaluated and rewarded; and
- (iv) in the benefits and privileges of employment.

**4.1 During the recruitment and selection process the committee should:**


- Identify the inherent requirements of the vacant position;
- Describe clearly the necessary skills and capabilities required for the job;
- Set reasonable criteria for selection, preferably in writing, for job applicants for such vacant positions.
- The panel may not include criteria that are not necessary to perform the essential functions of the job because selection based on non-essential functions may unfairly exclude people with disabilities.

**4.2 When we advertise posts:**

- It should be accessible to persons with disabilities and, where reasonable and practical, circulated to organisations that represent the interests of people with disabilities.
- On request, and if reasonable in the circumstances, notices and advertisements should be available in a format appropriate to persons with disabilities, such as large print, Braille, or audiotape.

**4.3 Selection panel:**

- Subject to reasonable accommodation, the panel should apply the same criteria to test the ability of people with disabilities as are applied to other applicants.
- The panel should monitor their criteria for selection. If these criteria tend to exclude people with disabilities, they should be reviewed to ensure that they do not unfairly discriminate against persons with disabilities.
- Selection interviews should be objective and unbiased. Interviewers must avoid assumptions about people with disabilities.
- If an applicant has disclosed a disability or has a self-evident disability, the panel must focus on the applicant's qualifications for the work rather than any actual or presumed disability but may enquire and assess if the applicant would, but for the disability, be suitably qualified.
- The panel should ask applicants to indicate how they would perform essential functions and if accommodation is required.
- If the panel is informed in advance that an applicant has a disability, or if the applicant has a self-evident disability, the panel should if necessary, make reasonable accommodation during the interview.

 UNIVERSITY of the WESTERN CAPE	UNIVERSITY OF THE WESTERN CAPE		
	HR POLICY DOCUMENT  POLICY ON STAFF WITH DISABILITIES	Reference Number	
		Implementation Date	
		Revision/ Amendment Number	
		Revision/ Amendment Date	

#### 4.4 Job Offer

- If an applicant with a disability is suitably qualified, the university may make a job offer **conditional** on medical or functional testing to determine an applicant's actual or potential ability to perform the essential functions of a specific job.
- The testing must comply with the statutory requirements and should determine if the applicant is able to perform the essential functions of the job, with or without reasonable accommodation. The university may test only applicants with disabilities for a specific job and not require all other applicants to undergo testing.
- A conditional job offer may only be made to one person at a time, not to all applicants with disabilities that may have applied for the job.
- UWC will withdraw the job offer if the testing shows that accommodation requirement would create unjustifiable hardship; or there is an objective justification that relates to the inherent requirements of the job; or there is an objective justification that relates to health and safety.

#### 4.5 Conditions of employment

- The university may not employ people with disabilities or retain employees who become disabled, on less favourable terms and conditions than employees doing the same work, for reasons connected with the disability.


#### 4.6 Training and Development

- UWC should include disability sensitisation in the orientation/ induction and other relevant training programmes for staff.
- Facilities and materials for training, work organisation and recreation should be accessible to employees with disabilities.
- Employees with disabilities should be consulted in order to ensure input specific to their career advancement.
- Systems and practices to evaluate work performance should clearly identify and fairly measure and reward performance of the essential functions of the job. Work that falls outside the essential functions of the job should not be evaluated.

### 5. Health and Safety

UWC will provide and maintain a safe and healthy working environment. The university will be under no obligation to employ a person if it can demonstrate that a person wit



 UNIVERSITY of the WESTERN CAPE	UNIVERSITY OF THE WESTERN CAPE		
	HR POLICY DOCUMENT  POLICY ON STAFF WITH DISABILITIES	Reference Number	
		Implementation Date	
		Revision/ Amendment Number	
		Revision / Amendment Date	

a disability would represent an actual risk to him or her or other people, which could not be eliminated or reduced by applicable reasonable accommodation. UWC will withdraw a conditional job offer, or will not retain an employee with a disability in the same position, if an objective assessment shows that the work would expose the employee or others to substantial health risk. This would only apply where there is no reasonable accommodation to mitigate the risk.

#### **6. Pre-benefit Medical Examinations**


Employees may be required to submit to medical examination or tests before becoming members of employee benefit schemes that are offered within the employment relationship. The purpose of these examinations is to assess a person's suitability for membership of a benefit scheme and is not relevant to a person's capability to perform the inherent requirements of the job. Therefore UWC may not refuse to recruit, train, promote or otherwise prejudice any person only because that person has been refused membership of a benefit scheme.

#### **7. Retaining people with disabilities**

Employees who become disabled during employment would, where reasonable, be re-integrated into work. UWC will seek to minimise the impact of the disability on employees. If an employee becomes disabled, the line manager will consult with the employee to assess if the disability can be reasonably accommodated. UWC will also maintain contact with the employee and where reasonable encourage early return-to-work. This may require vocational rehabilitation, transitional work programmes and where appropriate, temporary or permanent flexible working time. If an employee is frequently absent from work for reasons of illness or injury, the line manager will consult the employee to assess if the reason for absence is a disability that requires reasonable accommodation. If reasonable, the Dean / Executive member will explore the possibility of offering alternative work, reduced work or flexible work placement, so that employees are not compelled or encouraged to terminate their employment.

#### **8. Termination of employment**

UWC will terminate the employment relationship if the university is unable to retain the employee in employment. When employees who have disabilities are dismissed for operational requirements, UWC will ensure that any criteria used do not either directly or indirectly unfairly discriminate against people with disabilities. UWC will endeavour to appropriately advise all staff on the applicable benefits before they apply for the benefits available and before resigning from employment because of a medical condition. HR will assist employees whose disability arose from a work related illness or accident, to receive the relevant statutory compensation, including compensation from the Compensation Fund and the Unemployment Insurance Fund.

 UNIVERSITY of the WESTERN CAPE	UNIVERSITY OF THE WESTERN CAPE		
	HR POLICY DOCUMENT  POLICY ON STAFF WITH DISABILITIES	Reference Number	
		Implementation Date	
		Revision/ Amendment Number	
		Revision / Amendment Date	

## 9. Confidentiality and disclosure of disability

UWC will, where appropriate, only gather private information relating to employees if it is necessary to achieve a legitimate purpose, with the written consent of the employee. UWC will protect the confidentiality of the information that has been disclosed and will take care to keep records of private information relating to the disability of applicants and employees confidential and separate from general personnel records.


UWC will not disclose any information relating to a person's disability without the written consent of the employee concerned unless legally required. People with disabilities are entitled to keep their disability status confidential, but must keep in mind that if the university is not aware of the disability or the need to be accommodated, it is under no obligation to provide it. This does not absolve the university from the responsibility not to discriminate unfairly, directly or indirectly against job applicants.

A person with a disability may disclose their disability at any time, even if there is no immediate need for reasonable accommodation. If the disability is not self-evident UWC may require the employee to disclose sufficient information to confirm the disability or the accommodation needs. If on reasonable grounds UWC does not believe that the employee is disabled, or that the employee requires accommodation, UWC is entitled to request that the employee be tested to determine the employee's ability or disability, at the expense of the university. As information about disability may be technical, the university should ensure that a competent person interprets the information. If further information is required it must be relevant to a specific Job and its essential functions.

UWC will not reveal the fact of an employee's disability, unless this is required for the health or safety of the person with the disability or other persons. UWC will, after consulting the person with the disability, advise relevant staff that the employee requires accommodation.

## 10. Conclusion

The legislation in relation to the disability policy landscape has been established through the EE Act 55 of 1998 as well as in the Code of Good Practice and the barriers to change have been identified as well as key learnings from relevant parties have been considered. In line with the above considerations as well as our mission statement, UWC commits to the spirit of this policy and endeavour to harness resources and capacity to strengthen diversity.

 UNIVERSITY of the WESTERN CAPE	UNIVERSITY OF THE WESTERN CAPE	
	HR POLICY DOCUMENT	Reference Number
	POLICY ON STAFF WITH DISABILITIES	Implementation Date
		Revision / Amendment Number
	Revision / Amendment Date	

Appendix 1

STAFF WITH DISABILITIES – PROCESS TO ENSURE REASONABLE ACCESS

