

Developing a national policy framework for early return to work in South Africa: Meeting international obligations and standards

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Overview

- ▶ South African legal framework: Disability protection
- ▶ Introducing an early Return to Work policy framework
- ▶ (Further) pointers emanating from the UNCRPD and other instruments
- ▶ Conclusions



South African legal framework: Disability protection

- ▶ Constitutional regulation (1993 Constitution)
 - Ambit of protection and presumptions
 - Progressive affirmative action regulation
- ▶ Labour law and related protection
 - Employment Equity Act (1998)
 - Labour Relations Act (1995)
 - Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) (2000)



South African legal framework: Disability protection (cont)

- ▶ Essential components of protection
 - Comprehensive prohibition on discrimination
 - Limited notion of disability
 - Positive discrimination/Affirmative action measures
 - Reasonable accommodation
 - Numerical targets
 - Dismissal protection



Introducing an early Return to Work policy framework

- ▶ Current focus of workers compensation system on compensation – despite some enabling rehabilitation/reintegration-oriented provisions in the main legal instrument (COIDA)
- ▶ The need for conceptual remodelling
 - Understanding rehabilitation and reintegration as constituent parts of providing social security
 - An expanded notion of “disability”
- ▶ Functional restoration
- ▶ Societal integration

Introducing an early Return to Work policy framework (cont)

- ▶ Aligning the legal and policy framework
 - Introducing transformative dimensions (e.g. providing for both incentives and sanctions in the legal framework to promote early RTW)
 - Regulating protective and enabling interventions
 - Job retention/employment security
 - Reasonable accommodation measures
 - Addressing policy inconsistencies/deficiencies
- ▶ Aligning the institutional framework

(Further) pointers emanating from the UNCRPD and other instruments

- ▶ Involvement of those affected in policy development (macro-level) and individual rehabilitation plans (micro-level) (UNCRPD art 4(3))
- ▶ Promoting individual autonomy and independence (UNCRPD arts 3(a), 19 & 26(1))
- ▶ Promoting societal inclusion and participation (UNCRPD arts 3(c) & 26(1)(b))
- ▶ Introducing appropriate training
 - Professionals & staff (UNCRPD arts 4(1)(i) & 26(2))
 - PWD (UNCRPD art 27(1)(d))

(Further) pointers emanating from the UNCRPD and other instruments (cont)

- ▶ Right to work (UNCRPD art 27)
 - No employment discrimination; reasonable accommodation (UNCRPD arts 27(1)(a) & 27(1)(i))
 - Just & favourable conditions of work (UNCRPD art 27(1)(b))
 - Access to training (UNCRPD art 27(1)(d))
 - Opportunities, assistance and job protection (UNCRPD art 27(1)(e))
 - Promote opportunities for self-employment (UNCRPD art 27(1)(f))
 - Promotion of vocational & professional rehabilitation, job retention, as well as RTW programmes (UNCRPD art 27(2))

(Further) pointers emanating from the UNCRPD and other instruments (cont)

- ▶ Multi-faceted rehabilitation
 - Early and multi-disciplinary assessment (UNCRPD art 26(1)(a); see also art 25)
 - Voluntary nature (UNCRPD art 26(1)(a))
- ▶ Social and professional integration (SADC Social Charter art 13; SADC Code on Social Security art 14)
- ▶ Tanzania: Interesting framework provisions in the Workmen's Compensation Act (2008)

Conclusions

- ▶ Need for conceptual remodelling & institutional and legal innovation to appropriately accommodate early RTW interventions
 - Despite extensive disability regulation & protection
- ▶ Standards and benchmarks contained in, among others, the UNCRPD and SADC regional instruments provide valuable pointers

