

# What you need to know about employment of persons with disabilities



The Council of Persons with Disabilities is mandated to endeavour to secure the five per cent of all positions in employment in the public and private sectors for persons with disabilities. A person with a Disability is defined under the Persons with Disabilities Act as a

person who has a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation. Article 54 of the Constitution provides for the rights of Persons with Disabilities including dignified treatment, access to educational institutions and facilities and reasonable access to all places. When it comes to employment, Persons with Disabilities may have extra privileges compared to able-bodied employees. In Cause 348 of 2013, the court was of the view that the Employment Act was not sufficient in determining the rights of employees with disabilities and that other laws such as the Persons with Disabilities Act ought to be considered. Below is what you need to know about employment of Persons with Disabilities.

## Employment conditions

Persons with Disabilities Act makes provision for employment of persons with disabilities and prohibits anyone from denying a person with a disability access to opportunities for suitable employment. It also entitles a qualified employee with a disability to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees. Persons with disabilities are also eligible for apprenticeships where their disability is not likely to hamper their performance in particular occupations for periods for which they are hired

## Statutory deductions

Employees with disability are subject to the same statutory deductions as able-bodied employees such as NHIF and NSSF. However, an employee with a disability is entitled to exemption from tax on all income accruing from his employment.

## Prohibition of Discrimination

The Constitution prohibits the discrimination of any person based on disability. Discrimination by employers against a person with a disability is prohibited in relation to advertisement of employment, recruitment, creation, classification or abolition of posts, the determination or allocation of wages and other benefit, training, and separation, the provision of facilities related to or connected with employment or any other matter related to employment. It is however not discriminatory against a person with a disability if the alleged discrimination is not wholly or mainly because of the disability, if the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned or if the employer cannot reasonably be expected to provide special facilities or modifications which are required at the work place to accommodate the person with a disability, The Act Further provides for incentives to employers who employ persons with disabilities in the event they make any adjustments to accommodate an employee with a disability.

## Retirement and termination

The minimum retirement age for persons with a disability is be sixty-five years. An employee with a disability who is forced to retire earlier than the stipulated age could be entitled to the salary they could have earned had they not been forced to retire. This could also be considered discriminatory if the employee can prove that they were still able to work. When terminating the services of a Person with a Disability, it is important to note that they may be affected differently from able-bodied employees. It is therefore important to consider the reasons for termination as well as the effect it may have on the employee and make the necessary adjustments to accommodate an employee with a disability.

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Email: [mail@aip-advocates.com](mailto:mail@aip-advocates.com)

Tel: +254 722367647

