

Embracing neurodiversity in the workplace

By [Brett Abraham](#)

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Disability Rights Awareness Month runs from 3 November to 3 December 2022 and is focussed on "empowering persons with disabilities through resourceful, sustainable and safe environments", while recognising that not all disabilities are visible.



Image source: Tara Winstead from [Pexels](#)

Invisible disabilities are physical, mental, or neurological conditions that are not easily perceived by others but can limit a person's full participation in society. These could include neuro-developmental or neurodiverse disorders, which are described as variations in the human brain and cognition affecting areas of sociability, learning, attention, mood, and other mental functions. Examples of such disorders include autism, Attention Deficit Hyperactivity Disorder (ADHD), dyslexia, Tourette syndrome, and obsessive-compulsive disorder.

The concept of "neurodiversity" is related to the concept of "biodiversity". Just as biodiversity is necessary and desirable to conserve ecosystems, neurodiversity advocates that society would benefit from recognising and developing the strengths associated with certain neurodevelopmental disorders. Applied in the workplace, employers are increasingly acknowledging that specialist thinking skills attributed to many neuro-developmental conditions are sought after for employers that require innovation, creative thinking, or meticulous pattern identification to advance specific aspects of their business. Global enterprises such as SAP, Hewlett Packard Enterprise, Microsoft, Ford, and Ernst & Young actively recruit neurodiverse candidates as a talent acquisition strategy.

While "neurodivergent" is not synonymous with "disabled", many neurodivergent employees need disability-like accommodation at work. Existing legislation in South Africa empowers, and in instances obliges, employers to provide such accommodation.

The accommodation of employees who may be incapacitated is typically explored in 'reactive' employment processes, in compliance with an employer's obligations under the Code of Good Practice: Dismissal, Schedule 8 to the Labour Relations Act, 1995 (LRA). Those obligations would include investigating the nature and extent of the incapacity and exploring all alternatives (short of dismissal), such as securing alternative employment or adapting the duties or work circumstances of an employee. If the employee is still not capable of performing the work, it is possible the employee would be regarded as having a disability.

These obligations are enhanced when the neurodiverse condition meets the definition of a disability under the Employment Equity Act, 1998 (EEA).

The Code of Good Practice on the Employment of Persons with Disabilities (Disability Code) issued in terms of the EEA defines Persons with disabilities as: *"persons who have a long-term or recurring physical or mental impairment, which substantially limits their prospects of entry into or advancement in employment."* The Disability Code provides that *"[t]he scope of protection for people with disabilities in employment focuses on the effect of a disability on the person in relation to the working environment, and not on the diagnosis of the impairment."* Neurodiverse conditions such as those described above will fall within this definition where the effect of the condition is to substantially limit prospects of entry into or advancement in employment and it is conceivable that, in many instances, neurodiverse conditions will meet this threshold.

South African concept of Reasonable Accommodation

Item 6 of the Disability Code requires employers to make reasonable accommodation for people with disabilities. Reasonable accommodation means that obstacles should be eliminated in the workplace, and measures should be taken to adapt policies, practices, and the working environment to make the workplace accessible for persons with disabilities, provided that the accommodation does not result in unjustifiable hardship for the employer. Section 15(2)(c) of the EEA enhances these obligations for designated employers, requiring reasonable accommodation for persons with disabilities (a 'designated group' for purposes of the EEA) as one of the affirmative action measures.

Other such measures required of designated employers in respect of persons with disabilities include measures:

- to identify and eliminate employment barriers, including unfair discrimination, which adversely affects persons with disabilities;
- designed to further diversity in the workplace based on equal dignity and respect of all people; and
- to ensure the equitable representation of suitably qualified persons with disabilities in all occupational levels in the workforce, and to retain and develop those employees.

Equally, the Occupational Health and Safety Act (OHSA) legislation places a duty on every employer to maintain, as far as is reasonably practicable, a working environment that is safe. The SANS 45001 standard dealing with Occupational Health and Safety management in South Africa acknowledges that an employer's duty on workplace safety includes the promotion and protection of both its workers' physical *and* mental health.

These obligations require employers to go beyond these 'reactive' processes and the 'problem centred' approach to managing neurodiversity in the workplace. Instead, employers (and particularly designated employers) must proactively seek to manage (and even embrace) neurodiverse conditions in the workplace by promoting neuro-inclusivity.

This is easier said than done. A poor grasp of neurodiverse conditions by an employer, employee, or both, often results in

misunderstanding leading to the deterioration of the employment relationship. This is exacerbated by the fact that employees with neurodivergent conditions may not always:

- identify as having a disability or mental impairment;
- be comfortable disclosing their condition to an employer or prospective employer;
- have a clinical diagnosis of a neurodivergent condition; and
- have knowledge or awareness of neurodevelopmental disorders at all and therefore do not attribute certain difficulties they face in the workplace to an undiagnosed condition.

When addressing the duty to accommodate neurodivergent employees, there is no one-size-fits-all approach. That said, the enhanced obligations on employers mean that, in many instances, an employer would be hard-pressed to demonstrate "unjustified hardship". What may meet this threshold for one employer is unlikely to do so for others and an employer's circumstances may change such that what was not justifiable in the past may become justifiable.

In seeking to achieve this balance, employers must empower themselves, and their employees, with resources and tools required to understand the types of accommodation that are possible before seeking to understand whether they may be practical. Beyond the recommendations of medical practitioners, there is a vast array of web-based resources that may assist employers in seeking to think beyond the normal. To expect this may not be unreasonable, and particularly not in circumstances in which employers were required to rapidly adapt ways of working to cope with the impact of the Covid-19 pandemic.

Dealing with neurodiversity in the workplace

Practical steps that employers could take to empower persons with neurodiverse conditions (and those who will manage them) include:

- providing awareness training that seeks to raise awareness towards neurodiverse conditions and promote tools for understanding and managing neurodiverse conditions for those who may be required to work with persons with neurodiverse conditions;
- putting in place policies, procedures and workplace adjustment mechanisms that can be easily and effectively implemented;
- refining recruitment processes to not only take cognisance of the possibility that candidates may be neurodiverse but also to seek to identify those roles that have attributes that would allow persons with neurodiverse conditions to excel; and
- encouraging channels of communication between persons with neurodiverse conditions and those they work with or are managed by, such that everyone benefits from a better understanding of the shared experiences and 'blind spots' are quickly identified and eradicated.

For designated employers, embracing neurodiversity must be on the radar of Employment Equity Committees and those persons responsible for planning, analysis and reporting under the EEA.

Embracing neurodiversity beyond the problem-centred framework is not only socially responsible (giving effect to the United Nation's sustainability goals 3 (good health and well-being), 8 (decent work) and 10 (reduced inequalities)) but is a necessary consequence of enhancing diversity in the workplace and complying with existing legal obligations. Employers also can't lose sight of the fact that, regardless of whether a neurodevelopmental disorder is strictly classifiable as a disability or not, an employer's treatment of a neurodivergent employee without demonstrating an understanding of that employee's unique needs may amount to discrimination in terms of the EEA.

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