

Reasonable Accommodations: Obstacles and Opportunities to the Employment of Persons with a Disability

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National Disability Authority

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Executive Summary

In October 2015, the Government published the ten-year **Comprehensive Employment Strategy for People with Disabilities 2015-2024**, with a view to significantly increasing the proportion of people with disabilities in employment in Ireland. At present, persons with a disability are more than twice as likely to be unemployed than persons without a disability.

Persons with a disability can face a range of individual and structural barriers at different stages of employment including recruitment, retention and re-entering the workforce. The integration of reasonable accommodations into routine recruitment and employment processes is an important element in addressing the barriers and challenges that adversely affect the employment of persons with disabilities.

Reasonable accommodations are effective and practical changes that an employer is required to put in place to enable a person with a disability to carry out their work on an equal footing with others. Reasonable accommodations take a variety of forms and can include flexible working arrangements, assistive technology or an adaptation of the physical workplace.

The process for providing reasonable accommodations is multifaceted and typically comprises a number of stages, including the:

- making of a request for reasonable accommodations by a person with a disability
- evaluation of such a request by an employer and the process followed in reviewing such a request
- implementation of any approved reasonable accommodation measure
- monitoring of implemented reasonable accommodation measures

In a seamless process, employees and employment candidates are comfortable disclosing their disability and requesting reasonable accommodations; and employers follow correct procedures, provide any reasonable accommodation measures required under employment equality legislation and monitor implemented reasonable accommodations.

This report seeks to identify the practical obstacles in the way of a seamless reasonable accommodation process and highlight good practices as to how such barriers can be addressed. It comprised of a literature review and a review of decisions from the Workplace Relations Commission and the Labour Court relating to reasonable accommodation, as well as consultation with key

stakeholders, including persons with a disability. As part of the consultations, four separate focus groups were also organised comprising of EmployAbility job coaches; Disability Liaison Officers in the public service; employees with a disability in a private sector organisation; and trade union representatives.

Reasonable Accommodation under the Employment Equality Acts 1998-2015

The **Employment Equality Acts 1998-2015** oblige employers to provide reasonable accommodations to both employment candidates and employees with disabilities, unless these measures would impose a disproportionate burden on them. The factors to be taken into account in assessing whether a reasonable accommodation request would impose a disproportionate burden on the employer include, in particular:

- The financial and other costs entailed in providing the accommodation
- The resources available to the employer's business
- The possibility of obtaining public funding or other assistance

Employers also have a duty to make reasonable accommodations under European Union law and the **United Nations Convention on the Rights of Persons with Disabilities**.

Under domestic employment equality legislation, the legal requirement to provide reasonable accommodations entails both substantive and procedural components. The procedural component requires an employer to take certain steps, such as to understand the employee's disability-related needs and to afford adequate consideration to a request for reasonable accommodation. The substantive element relates to the reasonableness of the accommodation offered or the employer's justification for not providing a requested accommodation.

The Supreme Court offered guidance on the extent of an employer's duty to provide reasonable accommodation in the 2019 case of **Daly v Nano Nagle School**, in particular as regards consultation with a person with a disability. The Supreme Court confirmed that there is no mandatory duty to consult with an employee on their request for a reasonable accommodation in each and every case. Nonetheless, the Supreme Court commented that "a wise employer will provide meaningful participation in vindication of his or her duty under the Act", in particular in light of the importance of fair procedures under Irish employment law.

Review of Decisions from the Workplace Relations Commission and Labour Court

A review was carried out of 82 Workplace Relations Commission and Labour Court decisions relating to an alleged failure to provide reasonable accommodations. The purpose of this review was to:

1. analyse the types of issues, which arise in practice, in cases concerning reasonable accommodation
2. identify the difficulties, or indeed the perceived difficulties, employers encounter in providing reasonable accommodation
3. highlight examples of good and poor practice amongst employers in the provision of reasonable accommodations

It should be noted that this review was undertaken prior to the Supreme Court judgment in **Daly v Nano Nagle School**.

Decisions where there was a breach of the requirement to reasonably accommodate and where there was no such breach

In almost 60% of cases (49/82) examined, the relevant employer was found not to have breached the requirement to provide reasonable accommodation under employment equality legislation. The relevant employer was deemed to have breached their obligation to provide reasonable accommodation in 40% of cases (33/82).

Decisions concerning a current or former employee and a prospective employee

Overall, the number of decisions concerning an alleged failure to provide reasonable accommodation at the access to employment stage was quite low, accounting for just 8 out of 82 cases. Current or former employees brought the vast majority of complaints (74/82).

Decisions concerning a private sector employer, a public sector employer and a community or voluntary sector employer

The majority of complaints alleging a breach of the reasonable accommodation requirement in the review were taken against private sector employers (55/82). Less than 25% of cases related to public sector employers (19/82). Four cases were taken against community or voluntary sector employers. In four other cases, the nature of the employment was unclear.

Types of disability cited by employees and prospective employees

The most frequently cited disabilities in the case review were back issues (14), depression (12), anxiety (8) and stress / workplace stress (6). Persons with autism and persons with an intellectual disability did not feature in the analysis.

Decisions where a breach of the reasonable accommodation requirement was found

Of the 33 decisions where the employer was deemed to have breached their obligation to provide reasonable accommodations, 27 of those related to failures to adhere to procedural elements of the duty. These related to instances of an employer failing to:

1. undertake sufficient enquiries to determine the extent of the employee's disability
2. consider whether special treatment and facilities could be provided
3. consult with the employee at all stages of the process

There were four decisions where the employer failed to meet the substantive components of the duty. In three of these cases, alternative working arrangements were denied to the employee, such as part-time working hours or a home-working arrangement. In the other decision, an employer failed to reasonably accommodate a wheelchair user seeking employment at the interview stage.

In two of the decisions, a breach of the requirement to provide reasonable accommodation arose because of delays in dealing with the request or implementing the approved accommodation.

Decisions where a breach of the reasonable accommodation requirement was not found

In 49 cases, the complaint of an alleged failure to provide reasonable accommodation was dismissed. In 19 of these decisions, the Workplace Relations Commission or the Labour Court deemed that the employer had taken sufficient measures to fully comply with the procedural and substantive duties placed on them by equality legislation in the provision of reasonable accommodations. In a further 11 cases, the Workplace Relations Commission or Labour Court determined that there was no breach of the reasonable accommodation requirement because the employee would not have been fully competent to undertake the role even with an accommodation.

Other common reasons why complaints were dismissed included that the employee either did not inform the employer of their disability or failed to request a reasonable accommodation (5). The employee was judged not to have

a disability within the meaning of employment equality legislation in another five decisions. In three cases, the Workplace Relations Commission or Labour Court found that the reasonable accommodation sought would impose a disproportionate burden on the employer, and in a further three decisions, the employee failed to establish a prima facie case that their employer had failed to provide reasonable accommodations. In one case, the claim was dismissed as the complainant was not considered an employee.

Key learnings and areas for improvement arising from the review

The key lessons and areas for improvement arising from the review of Workplace Relations Commission and Labour Court decisions relating to reasonable accommodation are that employers should:

1. Carry out a full assessment of the needs of the person with a disability and of the measures necessary to accommodate that person's disability. It is necessary to ascertain the factual position concerning the employee's capability, including the degree of impairment arising from the disability and its likely duration. The employer may be obliged to engage with the person with a disability and obtain appropriate expert advice, including medical advice
2. Consider with an open mind what special treatment or facilities could realistically overcome any obstacles to the person doing the job for which they are otherwise competent
3. Consult with the person concerning their request for reasonable accommodation at every stage of the decision-making process. The employee should be allowed an opportunity to influence the employer's decision and should be allowed present relevant medical reports and submissions¹
4. Have specific policies and procedures that deal with reasonable accommodations for employment candidates and employees with a disability
5. Respond to requests for reasonable accommodation and implement any approved accommodations in a timely manner
6. Provide requested reasonable accommodations to employment candidates and employees with a disability, in particular alternative working

¹ The review of Workplace Relations Commission and Labour Court decisions was undertaken prior to the Supreme Court judgment in *Daly v Nano Nagle School*.

arrangements, subject to the proviso that these measures do not impose a disproportionate burden on the employer

Summary of Key Findings – Obstacles to Attaining and Providing Reasonable Accommodations

Various factors may impede a seamless reasonable accommodation process, such as, lack of human resources capacity; the affordability of obtaining medical or psychological reports etc. However, a number of key obstacles featured regularly in the literature review; the review of Workplace Relations Commission and Labour Court decisions relating to reasonable accommodation; and consultations with stakeholders.

While not an exhaustive list, the eight obstacles examined in this report are:

1. The reluctance of some employees and prospective employees to disclose their disability to an employer and to request reasonable accommodations
2. The failure of some employers to have policies and procedures in place regarding reasonable accommodations and to follow the procedures required by law
3. The failure to provide reasonable accommodation in a timely manner
4. The low awareness of the legal obligations on employers to provide reasonable accommodations and the types of reasonable accommodations available
5. The failure to provide reasonable accommodations arising from low levels of understanding and awareness of disabilities as well as negative attitudes towards reasonable accommodations
6. The low awareness of financial supports available to employers in the provision of reasonable accommodations
7. The limitations of existing financial supports available to employers to provide reasonable accommodations
8. The lack of provision for monitoring and reviewing reasonable accommodations

The reluctance of some employees and prospective employees to disclose their disability to an employer and to request reasonable accommodations

Employees can be reluctant to disclose their disability to an employer and request reasonable accommodations due to the perceived negative consequences of doing so. This sense of fear about disclosing a disability is primarily threefold:

fear of being treated differently after disclosure, fear of disclosure affecting promotional opportunities and fear of being labelled. Concerns regarding disclosure can be particularly acute for those seeking access to employment and those with a hidden disability. The particular concerns which persons with a mental health issue can have regarding disclosure, including the timing of disclosure, were raised in one of the focus groups.

The failure of some employers to have policies and procedures in place regarding reasonable accommodations and to follow the procedures required by law

The review of Workplace Relations Commission and Labour Court decisions revealed that the most common reason why employers were found to have breached the reasonable accommodation duty was for failing to meet the procedural elements of the duty. Formal, written policies and procedures dealing with reasonable accommodations are extremely important in addressing these shortcomings. Policies and procedures provide employers with a structure or framework for dealing with requests for reasonable accommodation, offer guidance for decision-making and assist in complying with the various procedural requirements under employment equality legislation. In particular, employers should engage with persons with disabilities themselves in identifying reasonable accommodations, and recognise those persons as experts in their own disability.

Concerns were voiced in one of the focus groups that policies and procedures in some private sector organisations, particularly smaller and medium sized enterprises, can be lacking. Feedback from two focus groups highlighted that even where workplace policies and procedures on reasonable accommodations are in place, there can be low awareness amongst employees of their existence.

The failure to provide reasonable accommodation in a timely manner

Employers do not always treat requests for reasonable accommodations in an efficient manner. While delays arise from lack of proactivity on the part of employers, delays may also arise due to circumstances beyond their control. For instance, concerns have been raised about the length of time it takes the Department of Employment Affairs and Social Protection to process applications for financial grants and implement any approved measures. Information received from one of the focus groups indicates that waiting times for the **Workplace Equipment and Adaptation Grant** are inconsistent and vary from area to area.

The low awareness of the legal obligations on employers to provide reasonable accommodation and the types of reasonable accommodations available

There exists low knowledge amongst some employers about the extent of their obligation to provide reasonable accommodations under employment equality legislation. This includes both the employer's procedural and substantive obligations. Some employers are also unaware of the types of reasonable accommodations which may be available and appropriate, for instance the reasonable accommodations which may be appropriate in the case of a person with a mental health issue.

Similarly, there is low awareness amongst some persons with disabilities as to their specific rights concerning reasonable accommodation in the workplace. Feedback from two focus groups indicates that employees with disabilities do not have a good understanding of the law relating to reasonable accommodations. Low awareness amongst management and employees without disabilities of the needs of people with disabilities, reasonable accommodations and the relevant law can create difficulties for persons with a disability in the workplace.

There is a demand amongst employers for more training and information resources concerning reasonable accommodation and supporting employees with disabilities more generally. However, there also exists low levels of awareness amongst some employers about information and training supports which are currently available, including the **Disability Awareness Support Scheme**. This point was reinforced in one of the focus groups.

There is no dedicated, centrally-based national resource of peer advice and information for employers on the employment of persons with disabilities.

The failure of employers to provide reasonable accommodations arising from low levels of understanding and awareness of disabilities as well as negative attitudes towards reasonable accommodations

Employees and job applicants with disabilities can be denied reasonable accommodations owing to an employer's low level of understanding and awareness of disabilities. This can have a particular adverse effect on those seeking reasonable accommodations at the recruitment stage, where discrimination can be more difficult to prove. Some employers can also have negative attitudes towards reasonable accommodations themselves e.g. an employer may consider some forms of reasonable accommodations, such as part-time or flexible working hours, as inconvenient.

The low awareness of financial supports available to employers in the provision of reasonable accommodations

There is low awareness amongst some private sector employers of the financial supports provided by the Department of Employment Affairs and Social

Protection to assist in accommodating the needs of prospective and current employees with disabilities. This point was also highlighted in one of the focus groups. Other than the **Wage Subsidy Scheme**, the number of applications for information and financial support granted through the **Disability Awareness Support Scheme** and the **Reasonable Accommodation Fund** are small.

The limitations of existing financial supports available to employers to provide reasonable accommodations

Concerns have been reported about specific issues and conditions associated with individual financial supports and incentives available through the Department of Employment Affairs and Social Protection, as well as of the overall structure of the supports. For instance, the **Workplace Equipment and Adaptation Grant** is only available on a refund basis, thereby requiring employers to purchase equipment prior to receipt of funding. This can cause difficulties for smaller and medium sized employers. Additionally, funding for a Sign Language Interpreter under the **Job Interview Interpreter Grant** is only available at the interview and induction stages, and at no other time during the employment relationship, such as performance management reviews or training opportunities. Concerns were also expressed in one of the focus groups regarding the qualifying criteria relating to the **Wage Subsidy Scheme**, in particular that the employee work for a minimum of 21 hours per week.

The lack of provision for monitoring and reviewing reasonable accommodations

Formalised structures for periodically reviewing implemented reasonable accommodations in the workplace are generally lacking. Participants in three focus groups reported that there was an absence of formalised structures for monitoring and reviewing reasonable accommodations in the workplace.

For many employers, the provision of the accommodation is the end stage in the process, and there is no further consultation with the employee to determine how the accommodation is operating in practice or whether it needs to be adapted or replaced. Mixed views were expressed in some of the focus groups about the need to monitor or review reasonable accommodations.

Good practice for employers in the provision of reasonable accommodations

There exists a range of general, evidence-based good practices regarding the provision of reasonable accommodations which can support employers in making an individual analysis of an accommodation request and tailoring an individual solution to meet a person's needs. By adhering to good practices, employees and

employment candidates with disabilities will be more likely to request reasonable accommodations, and employers will be less likely to breach the reasonable accommodation requirement.

In addition to reducing the risk of litigation, the provision of reasonable accommodations also makes business sense by helping employers to enhance business outcomes by maximising the engagement and skills of employees in the workplace, increasing productivity, creating a positive working environment that is free from discrimination, retaining skilled staff, eliminating the cost of training new employees and promoting equality.²

Good employment practices are also important in building a disability inclusive environment that encourages disability disclosure and reduces the likelihood of negative consequences for employees and applicants who request reasonable accommodations.

Good practices in the provision of reasonable accommodation can assist employers at every stage of the recruitment and employment process; from job design, interview and assessment, through to making an offer, assisting an employee to continue in employment and decisions over the retention of existing employees.

Summary of Recommendations

Below is a summary of the recommendations arising for policy and practice concerning the provision of reasonable accommodations in the employment context:

- Both guidance and a code of practice concerning the provision of reasonable accommodations in the employment context, including the recruitment process, should be developed. A code of practice would explain the complexities of the law in this area, and direct employers about how they can comply with their statutory obligations under the **Employment Equality Acts**.³ A code of practice would also assist persons with a disability who are

² Equality Authority (2011) **Equality and mental health: what the law means for your workplace**, Roscrea: Equality Authority, p.3.

³ The Irish Human Rights and Equality Commission is preparing a new legal code of practice to promote greater employment of people with disabilities. Irish Human Rights and Equality Commission, **'Discrimination Against People with Disabilities in Employment a Persistent and Pernicious Roadblock to Worker's Dignity and Inclusion'** [press release], available from their website at <<https://www.ihrec.ie/discrimination-against-people-with-disabilities-in-employment-a-persistent-and-pernicious-roadblock-to-workers-dignity-and-inclusion/>>.

seeking to understand their entitlements in this area. It is envisaged that guidelines would be broader than a Code of Practice, with the latter focused on legal requirements and compliance, and admissible in evidence in court proceedings. Guidelines on reasonable accommodations would provide a non-mandatory, practical resource for employers and promote good practice, which in many cases extends beyond minimum legislative requirements

- There is no specific national employer information and training resource currently available to guide employers on disability matters. Consideration should be afforded to creating a dedicated national resource of peer advice and information for employers on the employment of persons with disabilities, including reasonable accommodations. This resource should build on the learning of the Employer Disability Information service pilot initiative and draw on international experience and good practice, such as the Job Accommodation Network. The NDA advises that such a resource could assist in building awareness and understanding amongst employers of disabilities, reasonable accommodations and their obligations under employment equality legislation. It could also provide guidance to employers as to how reasonable accommodations can be implemented in practice
- An information campaign could be undertaken to build awareness amongst persons with disabilities of their right to reasonable accommodation in the employment context. Such a campaign would help in educating both persons with disabilities and employers of their rights and responsibilities under employment equality legislation in relation to reasonable accommodations
- A national awareness campaign may be of benefit in increasing understanding of the important contribution persons with disabilities make and the skills they bring to the workforce.⁴ Such a campaign would be an important measure in combating discrimination and negative attitudes towards employees and employment candidates with a disability. Following the conclusion of the national awareness campaign, the NDA advises that a survey be undertaken amongst employers to assess its effectiveness
- Further consideration is necessary to understand the reasons for the low numbers of published cases concerning reasonable accommodation at the access stage, as well as the absence of cases by persons with intellectual disabilities and autism. A discrete piece of research could examine whether

⁴ The Department of Justice and Equality has committed to undertaking such a campaign as part of the Comprehensive Employment Strategy for People with Disabilities 2015-2024. Government of Ireland (2019) **Comprehensive Employment Strategy: Phase Two Action Plan 2019-2021**, Dublin: Stationery Office, p.35.

there is reticence to bring employment equality claims related to access to employment in general, and whether there are any particular obstacles, which persons with a disability encounter in making such claims. The NDA further notes that persons with autism and persons with intellectual disabilities did not feature in the review of Workplace Relations Commission and Labour Court decisions, despite the specific challenges they face in the workplace. Any such research could also consider whether persons with certain types of disability encounter greater difficulties bringing employment equality claims

- The Department of Employment Affairs and Social Protection could consider a review of the adequacy and effectiveness of the training and financial supports available for employers to provide reasonable accommodations, including the **Reasonable Accommodation Fund**, the **Wage Subsidy Scheme** and the **Disability Awareness Support Scheme**. Consultation with employers, employer representative groups, persons with disabilities and disability organisations should form part of these reviews. The adequacy of existing levels of grant assistance should also be examined. The NDA notes that reviews of the **Reasonable Accommodation Fund** and **Disability Awareness Support Scheme** are scheduled to take place in 2019 and would welcome a similar exercise with the **Wage Subsidy Scheme**
- Notwithstanding the outcome of the reviews of the **Reasonable Accommodation Fund** and the **Disability Awareness Support Scheme**, the Department of Employment Affairs and Social Protection could consider an information campaign to build awareness amongst employers of the financial supports available to provide reasonable accommodations. Such a campaign could be useful in addressing the information deficit which exists amongst some employers of the various financial supports and incentives available to them to assist in reasonably accommodating employees and employment candidates with a disability

Chapter I - Introduction and Background

I.1. Context

Census data compiled by the National Disability Authority (NDA) shows that the unemployment rate for persons with a disability is 26.6% compared to 11.5% for persons who do not have a disability.⁵ Therefore, the unemployment rate for persons with a disability is 2.3 times greater than persons without a disability. While the reasons for this are complex and varied, it has long been recognised that persons with disabilities face unique barriers - physical, organisational and attitudinal - which can prevent them from accessing and/or retaining employment.

The **Comprehensive Employment Strategy for People with Disabilities 2015-2024** is a response by government to maximise employment opportunities and address the obstacles that occur on the pathway to employment for those with disabilities who wish to work.⁶ This strategy sets out a ten-year approach, with a view to ensuring that persons with disabilities who are able to, and want to work, are supported and enabled to do so. One of the commitments detailed therein is to work with employers to guide how flexible work arrangements, modified tasks and other supports or accommodations can be provided to persons with disabilities.⁷

The **National Disability Survey 2006** revealed that persons with disabilities in employment, seeking employment or willing to undertake employment could benefit from a range of supports, including:

- Flexible work arrangements (45%)
- Modified tasks (29%)
- Appropriate parking (14%)
- Accessible buildings (13%)
- Modified work stations (13%)
- Human support (7%)

⁵ National Disability Authority (2019) **NDA Factsheet 2: Employment**, available at their website <<http://nda.ie/Resources/Factsheets/NDA-Factsheet-2-Employment/NDA-Factsheet-2-Employment.html>>.

⁶ Government of Ireland (2015) **Comprehensive Employment Strategy for People with Disabilities 2015-2024**, Dublin: Stationery Office.

⁷ Government of Ireland (2015) **Comprehensive Employment Strategy for People with Disabilities 2015-2024**, Dublin: Stationery Office, p.34.

- Assistive technology or physical adjustments (4%)⁸

Many of these workplace requirements could be considered reasonable accommodations.

Reasonable accommodations are practical changes which employers are obliged to make so that employees or employment candidates with a disability can carry out their work or access employment on an equal footing with others.⁹ Examples of reasonable accommodations include:

- Ensuring recruitment and selection procedures are accessible to all
- Adapting the working environment
- Modifying working times and other working arrangements
- Providing screen-reader software and other assistive technologies¹⁰

Therefore, to overcome the barriers that disadvantage persons with disabilities from entering, retaining, advancing in and returning to employment, reasonable accommodations may be required. The failure to provide such accommodations can hinder the participation of persons with a disability in the workforce.¹¹

Research commissioned by the NDA, and undertaken by the Economic and Social Research Institute (ESRI), found that flexible working conditions, such as reduced working hours, modified job tasks and accessibility modifications are important in enabling persons with a disability to take up and retain employment.¹² Research also demonstrates that reasonable accommodations have the potential to both improve employment outcomes for persons with disabilities in the workforce, and reduce the risk of termination of employment.¹³

⁸ Central Statistics Office (2010) **National Disability Survey 2006 – Volume 2**, Dublin: Stationery Office p.91.

⁹ **Employment Equality Acts 1998-2015**, section 16. A consolidated version of the legislation is available at the website of the Law Reform Commission <www.lawreform.ie>.

¹⁰ World Health Organisation & World Bank (2011) **World Report on Disability**, Geneva: WHO, p.241.

¹¹ Parliamentary Assembly Committee on Equality and Non-Discrimination (2018) **For a disability-inclusive workforce**, Strasbourg: Council of Europe, p.3.

¹² Economic and Social Research Institute (2015) **Educational and Employment Experiences of People with a Disability in Ireland: An Analysis of the National Disability Survey**, Dublin: ESRI.

¹³ Chow, C. M., Cichocki, B., & Croft, B. (2014), 'The Impact of Job Accommodations on Employment Outcomes Among Individuals With Psychiatric Disabilities', **Psychiatric Services**,

However, providing reasonable accommodations is not just a crucial element of promoting good practice in the employment of persons with disabilities or diversity in the workplace.¹⁴ It is also a legal requirement under employment equality legislation.

Under law, the obligation on employers to provide reasonable accommodations entails both substantive and procedural duties. The procedural component requires an employer to take certain steps, such as to understand the employee's disability-related needs and to investigate potential accommodation measures to address those needs. The substantive element relates to the reasonableness of the accommodation offered or the employer's justification for not providing a requested accommodation.

Importantly, the employer's obligation to reasonably accommodate can only be triggered once an employment candidate or an employee discloses that they have a disability (unless the employer has constructive knowledge of the disability). Therefore, the work culture and environment must be disability-friendly and inclusive to ensure that employees and employment candidates feel comfortable in disclosing their disability and initiating the reasonable accommodation process.

The reasonable accommodation process itself is a multifaceted one. The process typically comprises a number of stages, including the:

- making of a request for reasonable accommodations by a person with a disability
- evaluation of such a request by an employer and the process followed in reviewing such a request
- implementation of any approved reasonable accommodation measure
- monitoring of implemented reasonable accommodation measures

In practice, obstacles in the provision of reasonable accommodations can be encountered at every stage of the recruitment and employment process, and in both the public and private sector; from job design, interview and assessment, through to making an offer, assisting an employee to continue in employment and decisions over the retention of existing employees. As a consequence, persons

65(9), 1126–1132. See also Clayton, S., Barr, B., Nylén, L., Burström, B., Thielen, K., Diderichsen, F., Dahl, E., & Whitehead, M. (2012), 'Effectiveness of return-to-work interventions for disabled people: A systematic review of government initiatives focused on changing the behaviour of employers', **European Journal of Public Health**, 22(3), 434-439.

¹⁴ International Labour Office (2016) **Promoting Diversity and Inclusion Through Workplace Adjustments: A Practical Guide**, Geneva: ILO, p.21.

with disabilities may be denied their legal right to reasonable accommodations which would enable them to access or continue in employment.

1.2. Aims of the report

The purpose of this report is twofold.

1. The report identifies the practical obstacles in the way of a seamless reasonable accommodation process from the perspective of employers, employees and potential employees
2. The report highlights good practices as to how these obstacles can be addressed

This work was considered timely for a number of reasons.

1. This work was undertaken in the context of Strategic Priority Six of the **Comprehensive Employment Strategy for People with Disabilities 2015-2024**, which seeks to advance employer engagement. The Strategy's Phase Two Action Plan 2019-2021 commits the NDA to examining the current provision of reasonable accommodation in the employment context to guide good practice.¹⁵
2. Ireland's initial State report under the **UN Convention on the Rights of Persons with Disabilities (UNCRPD)** is due for submission in the first half of 2020. The need to embed reasonable accommodations in legislation and practice is regularly raised in the UN Committee on the Rights of Persons with Disabilities' Concluding Observations on Article 27, concerning the right to work and employment.¹⁶
3. The Government has committed to increasing the statutory public service employment target for employees with a disability from a minimum 3% to 6% by 2024.¹⁷ Under Part 5 of the Disability Act 2005, the NDA has a role to monitor the progress public bodies are making every year to promote and support the employment of persons with disabilities.¹⁸ The NDA's

¹⁵ Government of Ireland (2019) **Comprehensive Employment Strategy: Phase Two Action Plan 2019-2021**, Dublin: Stationery Office, p.32.

¹⁶ See for instance UN Committee on the Rights of Persons with Disabilities (2018) **Concluding observations on the initial report of Bulgaria**, Geneva: Office of the United Nations High Commissioner for Human Rights, p.9. See also UN Committee on the Rights of Persons with Disabilities (2017) **Concluding observations on the initial report of Canada**, Geneva: Office of the United Nations High Commissioner for Human Rights, p.11.

¹⁷ Government of Ireland (2015) **Comprehensive Employment Strategy for People with Disabilities 2015-2024**, Dublin: Stationery Office, p.3.

¹⁸ **Disability Act 2005**, section 48.

monitoring work has highlighted the importance of reasonable accommodations in ensuring that persons with disabilities enter and retain public service employment.¹⁹ It is the NDA's view that reasonable accommodations will have a greater role to play in ensuring that public bodies meet the new 6% target.

4. Reasonable accommodations play a crucial role in demonstrating organisational commitment to human rights, equality, inclusion and diversity in both the public and private sectors. As ever more employers recognise the benefits of a diverse and inclusive workforce, employers must be proactive about providing reasonable accommodations in order to ensure their organisation is disability-inclusive. Reasonable accommodations enable persons with disabilities to overcome barriers in the workplace.

1.3. Structure of the report

Chapter 1 of this report outlines the context and background to the project. It also describes the methodology used to carry out the research.

Chapter 2 sets out the legislation relating to reasonable accommodation and relevant case law.

Chapter 3 details the main findings of an analysis of 82 Workplace Relations Commission and Labour Court decisions concerning reasonable accommodation.

Chapter 4 identifies eight key issues arising from the literature review, consultations and review of Workplace Relations Commission and Labour Court decisions which can impede a seamless reasonable accommodation process.

Chapter 5 provides a select compendium of good practices for employers on ways to provide reasonable accommodation to current and prospective employees with a disability, informed by the literature review, consultations and review of Workplace Relations Commission and Labour Court decisions.

Chapter 6 offers some conclusions based on the literature review, consultations and review of Workplace Relations Commission and Labour Court decisions.

¹⁹ RSM PACEC & National Disability Authority (2018) **Research on good practice in the employment of people with disabilities in the public sector**, Dublin: RSM PACEC & NDA, p.39.

Chapter 7 identifies the implications of the report’s main findings for policy and practice.

1.4. Research strands and consultation

The two primary research strands comprised a literature review and a select review of Workplace Relations Commission and Labour Court decisions relating to reasonable accommodation under the **Employment Equality Acts 1998-2015**. Bilateral and focus groups consultations were also undertaken to capture a broad range of views on the provision of reasonable accommodations in practice.

1.4.1. Literature Review

The literature review examined obstacles encountered and good practices in the provision of reasonable accommodations to persons with disabilities to determine the key relevant themes in this area. Different search terms were used for the literature review. These search terms included: “good practice in employing people with disabilities”, “good practice on making reasonable accommodation”, “good practice on workplace adjustments”, “disclosure of disability in employment”, “reasonable accommodations in the workplace”, and “equality legislation”.

1.4.2. Review of Workplace Relations Commission and Labour Court decisions

The Workplace Relations Commission operates an online database of equality decisions.²⁰ A search of this database was undertaken in January 2019. The search was limited to cases under the “Employment Equality Acts” and to results which included the search term “reasonable accommodation”. This search produced 400 case results and the first 100 (most recent) of these were analysed. Some of the decisions were not relevant for the purposes of this review. For example, in some cases, the complainant did not attend the hearing or a preliminary jurisdictional issue was successfully raised, such as, the complaint was not submitted within the statutory time limits. In other decisions, reasonable accommodation was mentioned in the context of pregnancy, not disability.

Following an initial review, it was determined that the number of decisions concerning reasonable accommodation in the context of access to employment was low. A further search was undertaken of the database. This time the search was narrowed to cases under the “Employment Equality Acts” concerning “Section 16 – Reasonable Accommodation” and which included the search term “access to employment”. This search produced 30 results, and all of these

²⁰ The NDA notes that the Workplace Relations Commission launched a redesigned website in May 2019.

decisions were reviewed as part of the study. Again, a number of these results were not relevant to the paper because the complainant did not attend the hearing etc.

It is important to note that in some of the cases examined, a number of reasons form the basis for the decision. However, this report sought to identify the principal or overriding basis for each of the decisions.

1.4.3. Consultations with stakeholders²¹

Bilateral consultations

Bilateral consultations were held with a range of relevant individuals and statutory and non-statutory stakeholders including, but not limited to, 'key informants' who provided lived experience; a private sector employer; the Public Appointments Service; and the Irish Business and Employers Confederation. These consultations were undertaken with a view to exploring barriers in attaining and providing reasonable accommodations, as well as ensuring a thorough examination of good practice in this area.

Focus Groups

Four focus groups were held as part of this report. Focus groups were held with EmployAbility job coaches; Disability Liaison Officers in the public service; employees with disabilities in a private sector organisation; and trade union representatives.

The objective of each focus group was to identify obstacles in the provision of reasonable accommodations and capture examples of good practice in employing persons with disabilities in the public and private sector.

Three focus groups considered the following questions:

- What measures do employers take to encourage employees and employment candidates to disclose their disability?
- What policies and procedures do employers have in place to deal with requests for reasonable accommodations?
- What barriers do employers encounter in providing reasonable accommodations e.g. information, financial etc.?
- What barriers do employees or employment candidates with disabilities encounter in requesting or receiving reasonable accommodations?

²¹ Participation in a consultation does not mean endorsement of the report.

- What processes do employers have in place to monitor and review reasonable accommodations?
- What good practices exist in the provision of reasonable accommodations?

One focus group was also held with employees with a disability to discuss their experiences of reasonable accommodations in the workplace. Focus group questions for employees concerned the following topics:

- What barriers they encountered in requesting or receiving reasonable accommodations?
- What measures, if any, are employers taking to encourage persons with disabilities to request reasonable accommodations?
- What processes, if any, employers have in place to provide reasonable accommodations where a request has been made?
- What fears or concerns, if any, might an employee with a disability have about requesting reasonable accommodation?
- How can a person with a disability be best supported to request reasonable accommodations or articulate their accommodation needs?
- What processes do employers have in place to monitor and review reasonable accommodations?
- What good practices exist in the provision of reasonable accommodations?

Chapter 2 - Reasonable Accommodation under the Employment Equality Acts 1998-2015

2.1. The Right to Reasonable Accommodations²²

2.1.1. Employment Equality Acts 1998-2015

The **Employment Equality Acts 1998-2015** (“the Employment Equality Acts”) prohibit discrimination in employment and in access to employment on nine different grounds, including disability.²³ Discrimination is defined as treating one person in a less favourable way than another person in a comparable situation based on any of the nine protected grounds.²⁴ The **Employment Equality Acts** cover all aspects of the working relationship, starting with the recruitment process, including selection arrangements, pre-employment medical screening and occupational health assessments, job adverts and the conduct of interviews.²⁵

The scope of the legislation also includes all of the terms and conditions and policies in employment, pay, collective agreements, overtime, shift work, transfers, promotion, grievance and disciplinary measures, counseling, work experience, training and vocational training. It also extends to layoffs, redundancies and dismissals.²⁶

The **Employment Equality Acts** apply to employees and potential employees in both the public and private sectors in a wide range of employments including full-time, part-time and temporary employees. Unlike general unfair dismissals legislation, there is no minimum service requirement.²⁷

In addition to prohibiting less favourable treatment, the **Employment Equality Acts** legally oblige employers to take reasonable steps to accommodate the

²² This report is intended for information purposes only. This is not a legal document and should not be taken as legal advice.

²³ The other grounds are age, sexual orientation, gender, civil status, family status, race, membership of the Traveller Community and religion.

²⁴ **Employment Equality Acts 1998-2015**, section 6.

²⁵ Barry, E. (2013) **Case Law Review on Mental Health in the Workplace**, Dublin: See Change, p.4.

²⁶ Barry, E. (2013) **Case Law Review on Mental Health in the Workplace**, Dublin: See Change, p.2.

²⁷ In general, a person must have at least 12 months’ continuous service with an employer before bringing a claim for unfair dismissal under the **Unfair Dismissals Acts 1977-2015**. However, there are certain exceptions to this rule.

needs of both employees and job applicants with disabilities, except where to do so would impose a disproportionate burden on them. Denial of reasonable accommodation can be a freestanding cause of action under the **Employment Equality Acts** and amount to discrimination on the disability ground.²⁸

As well as the **Employment Equality Acts**, the **Disability Act 2005** places obligations on **public bodies** to, in so far as practicable, take all reasonable measures to promote and support the employment by it of persons with disabilities, and to meet compliance targets relating to the recruitment and employment of persons with disabilities.²⁹

There are also a number of other employment statutes that may provide protection and avenues of redress for persons with a disability, including the **Unfair Dismissals Acts 1977–2015** and the **Safety, Health and Welfare at Work Act 2005** (as amended). However, they do not deal with reasonable accommodations.

2.1.2. Employment Equality Directive - Directive 2000/78/EC

The Framework Directive on equal treatment in employment and occupation of 2000 (“the **Employment Equality Directive**”)³⁰ requires European Union Member States to prohibit discrimination on the grounds of disability in the fields of employment, occupation and vocational training. This Directive also requires employers to provide reasonable accommodation to employees and prospective employees with disability, to the extent that doing so would not impose a disproportionate burden to the organisation.³¹ The **Employment Equality Acts** are the principal means by which the State has transposed, or given effect to, the Employment Equality Directive into Irish law.³²

²⁸ See **Government Department v Worker EDA 0612**. See also **Complainant v Employer DEC–E2008–068**.

²⁹ There is a commitment in the **Comprehensive Employment Strategy for People with Disabilities** to progressively increase the statutory target of 3% of employees with disabilities in the public sector towards 6% by 2024. Government of Ireland (2015) **Comprehensive Employment Strategy for People with Disabilities 2015-2024**, Dublin: Dublin: Stationery Office, p.3.

³⁰ **Council Directive 2000/78/EC of 27 November 2000** establishing a general framework for equal treatment in employment and occupation.

³¹ For a comprehensive overview of the obligation to provide reasonable accommodation under the **Employment Equality Directive** and protections across European Union Member States, see Ferri, D. & Lawson, A. (2016) **Reasonable accommodation for disabled people in employment**, Brussels: European Commission.

³² Concerns have been raised about the need to amend the **Employment Equality Acts** in light of the **Employment Equality Directive**. See Quinlivan, S. & Quinn, G. (2003) “Disability

2.1.3. UN Convention on the Rights of Persons with Disabilities

Article 27(1) of the **UN Convention on the Rights of Persons with Disabilities** (UNCRPD) recognises the right of persons with disabilities to work, on an equal basis with others. Article 27 of the **UNCRPD** further requires States Parties to safeguard and promote the realisation of the right to work of persons with disabilities by taking appropriate steps to ensure that reasonable accommodation is provided to persons with disabilities in the workplace. The **UNCRPD** limits the obligation on employers to provide reasonable accommodation where to do so would impose a disproportionate or undue burden on them.³³ Legislation must stipulate that both public and private-sector employers are responsible for providing reasonable accommodation to individual employees with disabilities.³⁴

2.2. Key Stakeholders

There are a number of statutory bodies responsible for dealing with legal cases on reasonable accommodation, and providing policy advice and research on reasonable accommodations in the employment context.

2.2.1. Workplace Relations Commission

The Workplace Relations Commission (WRC) is an independent, statutory body with a number of functions concerning the resolution of industrial disputes and the implementation of employment laws. The WRC is the body charged with adjudicating on complaints under the **Employment Equality Acts**, including complaints concerning alleged denial of reasonable accommodation. The WRC was established under the **Workplace Relations Commission Act 2015**, and subsumed the functions of a number of bodies, including the Equality Tribunal. Previously, the Equality Tribunal dealt with employment equality cases.

2.2.2. Labour Court

Decisions under the **Employment Equality Acts** can be appealed from the Workplace Relations Commission to the Labour Court. The **Labour Court**, established under the **Industrial Relations Act 1946**, is the single appeals body dealing with employment rights and industrial relations matters, including appeals under employment equality legislation.

Discrimination: The Need to Amend the Employment Equality Act 1998 in Light of the EU Framework Directive on Employment?" in Costello, C. & Barry, E. (eds.) **Equality in Diversity: The New Equality Directives**, Dublin: Irish Centre for European Law.

³³ **United Nations Convention on the Rights of Persons with Disabilities**, article 2.

³⁴ Fasciglione, M. (2015) 'Article 27 of the CRPD and the Right of Inclusive Employment of People with Autism' in Della Fina V. & Cera R. (eds.), **Protecting the Rights of People with Autism in the Fields of Education and Employment**, Rome: Springer International.

2.2.3. Irish Human Rights and Equality Commission

The Irish Human Rights and Equality Commission (IHREC) is an independent public body, appointed by the President and directly accountable to the Oireachtas. The Commission has a statutory remit set out under the **Irish Human Rights and Equality Commission Act 2014** to protect and promote human rights and equality in Ireland, and build a culture of respect for human rights, equality and intercultural understanding in the State.

Under its statutory powers, IHREC can provide legal assistance, advice and representation to a person bringing a claim under the **Employment Equality Acts** to the Workplace Relations Commission or the Labour Court.³⁵ IHREC also provides information to members of the public on the **Employment Equality Acts**³⁶ and has a statutory role to keep under review the effectiveness of the working of the **Employment Equality Acts**³⁷.

2.2.4. National Disability Authority

The National Disability Authority (NDA) was established in June 2000, under the **National Disability Authority Act 1999**. It is the independent statutory body which provides information and advice to the Government on policy and practice relevant to the lives of persons with disabilities, and promotes universal design. The NDA also has a role to assist the Minister for Justice and Equality in the co-ordination of disability policy.

The NDA has a statutory role in monitoring employment of persons with disabilities in the public sector, arising from Part 5 of the **Disability Act 2005** and reports annually to the Minister on compliance of public sector bodies. In addition, the NDA publishes an annual independent assessment of progress in the implementation of the **Comprehensive Employment Strategy for People with Disabilities 2015-2024**.³⁸ The NDA also conducts research and advises the government on matters relevant to progressing access to and retention of employment for persons with a disability.

³⁵ **Irish Human Rights and Equality Commission Act 2014**, section 40.

³⁶ **Irish Human Rights and Equality Commission Act 2014**, section 30(1)(b).

³⁷ **Irish Human Rights and Equality Commission Act 2014**, section 30(1)(b).

³⁸ National Disability Authority reports on **Compliance with Part 5 of the Disability Act on the Employment of People with Disabilities in the Public Sector** are available on the NDA website <<http://nda.ie/Publications/Employment/Employment-Publications/>>.

2.3. Reasonable Accommodation under the Employment Equality Acts 1998-2015

2.3.1. Definition of Disability

The obligation on an employer to provide ‘reasonable accommodation’ extends only to a person with a disability. Section 2 of the **Employment Equality Acts** defines disability as follows:

- a) “the total or partial absence of a person’s bodily or mental functions, including the absence of a part of the person’s body,
- b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
- c) the malfunction, malformation or disfigurement of a part of a persons body,
- d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- e) a condition, illness or disease which affects a person’s thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour,

and shall be taken to include a disability which exists at present or which previously existed but no longer exists, or which may exist in the future or which is imputed to a person.”³⁹

By contrast, the **Disability Act 2005** sets out the following definition for disability:

“disability”, in relation to a person, means a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment.⁴⁰

The NDA notes that the definitions of “disability” under both pieces of legislation are different. The definition under the **Disability Act 2005** reflects the social model of disability, where the disability is framed as a restriction in the individual’s ability to participate by virtue of society’s constraints rather than as a

³⁹ **Employment Equality Acts 1998-2015**, section 2.

⁴⁰ **Disability Act 2005**, section 2(1).

medical condition. While broader than the **Disability Act 2005**, the definition under employment equality legislation reflects a medical model of disability.⁴¹

Experts have found that the definition of “disability” under the **Employment Equality Acts** is interpreted broadly in this jurisdiction, and complainants have not faced much resistance in convincing decision-makers that they have a disability.⁴²

2.3.2. Scope of the substantive duty to provide reasonable accommodation

Reasonable accommodations are also known as “appropriate measures” under Section 16 of the **Employment Equality Acts**.⁴³ Reasonable accommodations are defined as effective and practical changes that an employer is required to put in place to enable a person with a disability to access employment or carry out their work on an equal footing with others, unless this would give rise to a disproportionate burden on the employer.⁴⁴ Reasonable accommodations may include, but are not limited to:

- Adapting the premises or the equipment
- Patterns of working times
- Providing training or other supports
- Distribution of tasks⁴⁵

A wide range of measures have been recognised in case-law as constituting reasonable accommodations. Ultimately, these reflect the facts of the case.⁴⁶ However, in line with the need for measures to be “effective and practical”, there must be a connection between the measure sought and facilitating participation in employment.⁴⁷ For instance, in **An Employee v A Government Department DEC-E2012-063**, the employee was on long-term sick leave due to depression

⁴¹ O'Neill, A. & Urquhart, C. (2011) ‘Accommodating Employees with Disabilities: Perceptions of Irish Academic Library Managers’, **New Review of Academic Librarianship**, 17(2), 234-258.

⁴² Purdy, A. (2015) **Equality Law in the Workplace**, Dublin: Bloomsbury Professional, para. 17.17.

⁴³ **Employment Equality Acts 1998-2015**, section 16(3)-(4).

⁴⁴ **Employment Equality Acts 1998-2015**, section 16(4)(a).

⁴⁵ **Employment Equality Acts 1998-2015**, section 16(4).

⁴⁶ Bell, M. (2018) ‘Pitfalls and Progress: Reasonable Accommodation for Workers with Disabilities in Ireland’, **Dublin University Law Journal**, 41, 77-96.

⁴⁷ Bell, M. (2018) ‘Pitfalls and Progress: Reasonable Accommodation for Workers with Disabilities in Ireland’, **Dublin University Law Journal**, 41, 77-96.

and panic attacks. She argued that she should continue to receive annual salary increments as a reasonable accommodation. The former Equality Tribunal rejected her contention, finding that the reasonable accommodation sought would not have facilitated her return to work.

In **A Worker v An Employer [2005] ELR 159**, the Labour Court stated:

“The provision of special treatment or facilities is not an end in itself. It is a means to an end and that end is achieved when the person with a disability is placed in a position where they can have access to, or as the case may be, participate in or advance in employment or to undergo training. This can involve affording the person with a disability more favourable treatment than would be awarded to an employee without a disability. Thus it may be necessary to consider such matters as adjusting the person’s attendance hours or to allow them to work partially from home. The duty to provide special treatment may also involve relieving a disabled employee of the requirement to undertake certain tasks which others doing similar work are expected to perform. The scope of the duty is determined by what is reasonable, which includes consideration of the costs involved. This is an objective test which must have regard to all the circumstances of the particular case.”

The Labour Court has also provided guidance on the obligations of an employer where a reasonable accommodation measure, which results in the employee being relieved of certain tasks, can have a detrimental impact on the employee in the future. In **A Government Department v An Employee (Ms. B) EDA061**, the employee had a serious eye condition and worked as a Clerical Officer in the civil service. Owing to her disability, she was only permitted to undertake non-computerised work. The volume of such work diminished over time, which in turn progressively restricted the range of experience available to her in the different duties and tasks involved in running the office. Ultimately, this had the effect of hindering her opportunities for promotion.

The Labour Court held that the employer should have anticipated the effects of these arrangements on her promotional prospects. According to the Labour Court, if a reasonable accommodation results in a diminution of the person’s prospects of advancement in employment, then the employer should consider if any countervailing measures could be taken to ameliorate that disadvantage. In the absence of such consideration, the employer was found to have breached the obligation to provide reasonable accommodation.

Reasonable accommodation must only be provided where the provision of such measures would not impose greater than a disproportionate burden on the employer. The factors to be taken into account in assessing whether a reasonable accommodation request would impose a disproportionate burden on the employer include, in particular:

- The financial and other costs entailed in providing the accommodation
- The resources available to the employer's business
- The possibility of obtaining public funding or other assistance⁴⁸

There have been relatively few decisions on what constitutes a disproportionate burden.⁴⁹ In **Multinational Employer v A Worker EDA 1435**, the employee sought the installation of a toilet on the floor where she worked. She had a colectomy in 2001, which meant she needed ready access to a toilet, as well as two knee replacements in 2005 which limited her mobility. The employer argued that the cost of such a measure, €22,000, would impose a disproportionate burden on them and that the employee could use facilities elsewhere in the building. Given the resources available to the employer, and taking into account the benefit that others would also gain from the additional toilet facilities, the Labour Court determined that the cost of the reasonable accommodation did not impose a disproportionate burden on the employer.

In **An Employee v Health Services DEC-E2016-088**, the employee had a physical disability, which restricted her mobility. She sought assistance with certain tasks, such as photocopying and filing. Her employer provided her with some accommodations, such as a ground floor office space, but would not provide the specific assistance she had requested on the basis of the “challenging fiscal environment” (the case arose during the recession). Nevertheless, the former Equality Tribunal found that the cost of the accommodation was “trifling” in the context of “a major state funded organisation with an extensive property portfolio, a very large number of staff and a significant budget” and determined that the employer failed to provide reasonable accommodation.

⁴⁸ **Employment Equality Acts 1998-2015**, section 16(3)(c).

⁴⁹ Purdy, A. (2015) **Equality Law in the Workplace**, Dublin: Bloomsbury Professional, p.286.

2.3.3. Scope of the procedural duty to provide reasonable accommodation

In addition to the substantive duty to provide reasonable accommodation, there are procedural obligations on employers in considering what an appropriate reasonable accommodation is. In particular, there is a strong obligation on employers to follow fair procedures when considering whether measures can be taken to remove or mitigate any barriers to participation in employment.⁵⁰ If the employer does not follow fair and effective procedures when handling a request for a reasonable accommodation, then this will constitute a breach of the legislation, irrespective of the substantive dimension.⁵¹

The **Employment Equality Acts** do not contain any express requirements with regards to the procedures that employers should follow when considering the provision of reasonable accommodations.⁵² The basis of the procedural aspect is to ensure that employers have sufficient information at their disposal to evaluate their compliance with the substantive obligation.⁵³

In **Humphreys v Westwood Fitness Club**⁵⁴, the Circuit Court held that employers are required to undertake a two-stage enquiry when evaluating requests for reasonable accommodation. Firstly, they have to establish the employee's capacity to undertake their duties. Secondly, if it is apparent that the employee is not fully capable, the employer is required to consider what, if any, special treatment or facilities may be availed of by which the employee can become fully capable. The nature and extent of the enquiry depends upon the particular circumstances of each case but "...an employer should ensure that he or she is in full possession of all of the material facts concerning the employee's condition..." and "The employee must also be allowed an opportunity to influence the employer's decision".

In addition, the Labour Court expressed the view that the process for evaluating a request for reasonable accommodation "normally" entails the gathering of

⁵⁰ Bell, M. (2018) 'Pitfalls and Progress: Reasonable Accommodation for Workers with Disabilities in Ireland', **Dublin University Law Journal**, 41, 77-96.

⁵¹ Bell, M. (2018) 'Pitfalls and Progress: Reasonable Accommodation for Workers with Disabilities in Ireland', **Dublin University Law Journal**, 41, 77-96.

⁵² Bell, M. (2018) 'Pitfalls and Progress: Reasonable Accommodation for Workers with Disabilities in Ireland', **Dublin University Law Journal**, 41, 77-96.

⁵³ Barry, E. (2013) **Case Law Review on Mental Health in the Workplace**, Dublin: See Change, p.30.

⁵⁴ **Humphreys v Westwood Fitness Club [2004] E.L.R. 296.**

medical evidence by the employer and the opportunity for the employee to present medical evidence.⁵⁵

The proactive nature of the reasonable accommodation process was confirmed by the Labour Court in a different case as follows:

“The duty to provide special treatment or facilities is proactive in nature. It includes an obligation to carry out a full assessment of the needs of the person with a disability and of the measures necessary to accommodate that person’s disability”.⁵⁶

In another decision, the Labour Court also confirmed that an **objective test** applies and that the extent of the special treatment and facilities required:

“...may also involve relieving a disabled employee of the requirement to undertake certain tasks which others doing similar work are expected to perform. The scope of the duty is determined by what is reasonable, which includes consideration of the costs involved. This is an objective test which must have regard to all the circumstances of the particular case”.⁵⁷

In **Farrell v Kerry Group Serviced Ltd DEC-E2012-109**, it was noted that the process-orientated approach:

“places an obligation upon an employer to embark upon a process of ascertaining the real implications for the employee's ability to do the job, taking appropriate expert advice, consulting with the employee concerned and considering with an open mind what special treatment or facilities could realistically overcome any obstacles to the employee doing the job for which s/he is otherwise competent and assessing the actual cost and practicality of providing that accommodation.”

In the recent decision of **Nano Nagle School v Marie Daly [2019] IESC 63**, the issue of consultation with an employee on a request for reasonable accommodations arose. This case centred on Marie Daly, a Special Needs Assistant (‘SNA’), who had worked for the Nano Nagle School for children with learning and physical disabilities since 1998. In 2010, she had an accident which

⁵⁵ Bell, M. (2018) ‘Pitfalls and Progress: Reasonable Accommodation for Workers with Disabilities in Ireland’, **Dublin University Law Journal**, 41, 77-96.

⁵⁶ **A Worker -v- A Hotel [EDA0721]**.

⁵⁷ **An Employer v A Worker [EDA0413]**.

left her paralysed from the waist down and requiring the use of a wheelchair. After a period of rehabilitation, in 2011 she sought to return to work. A medical report found that while Ms Daly could perform many of the tasks of an SNA, there were some which she could not.

She sought to be accommodated as a 'floating' SNA, which would necessitate the reorganisation of the duties of other SNAs. Following a review, the School Board concluded that Ms Daly did not have the capacity to undertake the full set of duties associated with a SNA, and nor would she in the future, and so decided not to permit her to return to work.

The school sought to rely on a provision in section 16 of the **Employment Equality Acts**, which states that an individual does not have to be recruited, promoted or retained in a position if they will not, or cannot, undertake the duties attached to that position. Ms Daly argued that the school had failed to fully consider the redistribution of tasks among all the SNAs to relieve her of those duties she was unable to perform. She also claimed that the school failed to fully consult with her regarding her request for reasonable accommodations.

The Supreme Court held that while there is no mandatory duty of consultation with an employee in each and every case, "a wise employer" will provide meaningful participation in vindication of their duty to provide reasonable accommodation. The IHREC, which intervened as an amicus curiae in the case,⁵⁸ has expressed the view that the judgment creates "an expectation of consultation of employees on reasonable accommodation".⁵⁹

An employer must also act without delay when it has been brought to its attention that reasonable accommodation is required for an employee with a disability to carry out their work.⁶⁰ The Labour Court's decision in **A Government Department v A Worker (ADE-0516)** discusses the issue of delay in the provision of reasonable accommodation:

⁵⁸ IHREC's legal powers include the power to apply to the High Court, Court of Appeals or the Supreme Court for liberty to appear before the courts as amicus curiae (friend of the court) in proceedings that involve or are concerned with human rights or equality. More information is available from their website at <<https://www.ihrec.ie/our-work/legal-activity/amicus-curiae-power/>>.

⁵⁹ Irish Human Rights and Equality Commission, '**Supreme Court Significantly Clarifies Rights of Persons with Disabilities to Reasonable Workplace Accommodation**' [press release], available from their website at <<https://www.ihrec.ie/supreme-court-significantly-clarifies-rights-of-persons-with-disabilities-to-reasonable-workplace-accommodation/>>.

⁶⁰ **A Nurse v A Hospital ADJ-00000278.**

... “I note that it was nearly 6 months after the complainant went on sick leave after she was moved from her office before the respondent had a meeting with the complainant and her union representative and engaged actively in seeking a resolution to the issue. This meeting took place on the 13th of December 2007. I note that the respondent was very slow in responding to IMPACT and before the respondent actively engaged with the issue IMPACT had to raise the matter under the grievance procedures. It is clear from the evidence that the respondent was not proactive in any way in seeking a single office near a toilet for the complainant.... The decision to ignore her request for a single office on her own near a toilet had serious consequences for the complainant in that her condition was exacerbated.”

In **Sea and Shore Safety Services v Byrne ESDA I 43**, one of the reasons why the employer was found to have breached the requirement to provide reasonable accommodations was for a delay in adopting effective measures of accommodation. Similarly, in **Clews v DSG Retail DEC-E2014-081**, an employee with a visual impairment had resigned after a considerable delay in responding to his request for reasonable accommodation. While the employer eventually gave serious consideration to his request, the delay was sufficient to breach the reasonable accommodation duty.

It is important to emphasise that reasonable accommodation is a legal right for employees and employment candidates with a disability, and a legal obligation for employers. However, procedural duties can also extend to an employee or employment candidate. A failure on the part of the employee to cooperate with the employer’s efforts to facilitate reasonable accommodation will be taken into account when deciding whether the employer has complied with their obligations under the **Employment Equality Acts**.⁶¹

In **Ms A v A Charitable Organisation DEC-E2011-049**, the former Equality Tribunal determined that an employer had not breached the obligation to provide reasonable accommodation in circumstances where the employee had frustrated efforts by the employer to organise meetings and discuss ways to facilitate her return to work. Similarly, in **An Employee v A Food Services Company DEC-E2016-020** there was

⁶¹ Bell, M. (2018) ‘Pitfalls and Progress: Reasonable Accommodation for Workers with Disabilities in Ireland’, **Dublin University Law Journal**, 41, 77-96.

no failure on the part of the employer arising from the fact that the employee had obstructed the employer's efforts to gather medical evidence in order to consider what reasonable accommodations would be appropriate.

2.3.4. Knowledge of the Disability and Need for Reasonable Accommodations

Reasonable accommodations are a response to the needs of an individual; section 16(3)(b) of the **Employment Equality Acts** states that "the employer shall take appropriate measures where needed in a particular case". Typically, the obligation to provide reasonable accommodation is triggered once the employer receives a request from an employee with a disability. However, if the employer has knowledge of the employee's disability, they are required to make enquiries about the potential need for reasonable accommodation. Knowledge may consist of actual knowledge of the disability or constructive knowledge, in that the employer ought reasonably to have known of the existence of the disability, and that the disability gave rise to a need for reasonable accommodation.⁶²

In **Connacht Gold Cooperative Society v A Worker EDA0822**, the employee claimed that the employer had failed to make adequate enquiries about the potential need for reasonable accommodation. The employer argued that they had no knowledge that the relevant employee had depression, as they had received certificates stating that the employee was unfit for work due to "illness/medical illness" and "stomach trouble". The Labour Court found that the employer "was not aware of the [employee's] disability and furthermore, there was no indications/signs to alert it to enquire about his need for reasonable accommodation".

In **Swan O'Sullivan Accountants & Registered Auditors v Seamus Counihan EDA1810**, the Labour Court examined the constructive knowledge test for employers in a case of alleged discriminatory dismissal based on disability. Mr Counihan experienced a seizure during his probationary period as a trainee accountant. According to Mr Counihan, he was assessed as having probable epilepsy and was prescribed anti-epileptic medication as a precautionary measure. A few months later, Mr Counihan was dismissed based on poor performance having failed to pass his probationary period. He claimed that the dismissal was because of his disability. The employer refuted this claim, submitting that they were not aware Mr Counihan had epilepsy until the matter was referred to the Workplace Relations Commission.

⁶² Barry, E. (2013) **Case Law Review on Mental Health in the Workplace**, Dublin: See Change, p.9.

The Labour Court concluded that the doctrine of constructive notice of the employee's disability did not apply in the circumstances. The Labour Court determined that Mr Counihan had not been diagnosed with epilepsy. At no point had he supplied his employer with a medical certificate nor had he discussed the management of his condition with his manager or colleagues other than to say that the seizure he suffered was a one-off occurrence. In addition, despite numerous queries regarding his health, he was reluctant to discuss it.

The Labour Court did not dispute that if Mr Counihan had epilepsy, this would almost certainly have come within the broad definition of disability under the **Employment Equality Acts**. However, the employer "could not have had direct or constructive knowledge to indicate" that Mr Counihan "was suffering from an illness that amounted to such a disability".

Similarly, in **A Cleaning Operative v A Contract Cleaning Company DEC-E2010-089**, the employer sought to argue that he was not aware that the employee had a disability. The medical certificates supplied by the employee stated that she had an illness, but did not specify that it was high blood pressure (which satisfied the definition of "disability" under the Employment Equality Acts). The Equality Officer found that the employer "did not ask the [employee] about her health nor did they request further certification". The Equality Officer also noted that the employer had facilitated the employee's request to transfer from night shifts to day shifts. Day shifts were requested on foot of a medical report indicating that night shifts were having a negative impact on the employee's health. In such circumstances, the Equality Officer was satisfied that the employer was aware that the employee had a disability.

However, in some circumstances, the employee will need to communicate clearly to their employer or prospective employer the type of reasonable accommodation they are seeking.⁶³ In **A Worker v An Employer [2005] 16 ELR 159**, an employee with multiple sclerosis had been provided with a reasonable accommodation which relieved him of driving duties. The employee argued that relieving him of driving duties had caused stress and anxiety, and resulted in his resignation. The Labour Court rejected the employee's claim, finding that the employer had no "actual or constructive knowledge that the arrangements in place whereby he was not required to drive were a source of difficulty or distress for the complainant".

⁶³ Bell, M. (2018) 'Pitfalls and Progress: Reasonable Accommodation for Workers with Disabilities in Ireland', **Dublin University Law Journal**, 41, 77-96.

2.3.5. Defences and Exemptions

Employers are not obliged to provide anything that the person would normally provide for themselves.⁶⁴ For example, an employer would not be expected to provide hearing aids for a person with a hearing difficulty.⁶⁵ Additionally, employers are not required to employ, retain or promote someone who will not undertake the duties or is not fully competent or capable of doing the **essential duties** of the job.⁶⁶ However, in law, a person with a disability is considered fully competent and capable of undertaking any duties, if the person would be fully competent and capable when reasonably accommodated by the employer.

In **Nano Nagle School v Marie Daly**⁶⁷, the Supreme Court determined that where a person is not fully competent or capable of doing the essential duties and functions of the job, an employer is obliged to consider whether these tasks or duties could be redistributed. However, this is subject to the proviso that the redistribution of tasks or duties does not impose a disproportionate burden on the employer. The Supreme Court noted that the test “is one of reasonableness and proportionality”; where the redistribution of tasks is such as to effectively create a different job entirely, this would almost inevitably impose a disproportionate burden on an employer.

Additionally, while there is no explicit exemption in relation to health and safety in the **Employment Equality Acts**, the exemption on competence and capacity includes a competence and capacity to do the job in a safe manner.⁶⁸ However, even where genuine health and safety concerns do exist, the reasonable accommodation duty may require the employer to consider possible alternative positions within their employment.

There are also specific exemptions for certain types of employment. A specific exemption is provided to the Defence Forces which precludes employment equality cases on the disability ground.⁶⁹ The **Employment Equality Acts** also

⁶⁴ **Employment Equality Acts 1998-2015**, section 16(4)(c).

⁶⁵ This example is cited on the website of the Irish Human Rights and Equality Commission at <<https://www.ihrec.ie/guides-and-tools/human-rights-and-equality-for-employers/what-does-the-law-say/disability-and-reasonable-accommodation/>>. In **An Employee v A Company DEC-E2010-62**, an employer was not required to provide therapeutic treatments for the clinical management of a disability.

⁶⁶ **Employment Equality Acts 1998-2015**, section 16(1)(b).

⁶⁷ **Nano Nagle School v Marie Daly [2019] IESC 63.**

⁶⁸ Barry, E. (2013) **Case Law Review on Mental Health in the Workplace**, Dublin: See Change, p.8.

⁶⁹ **Employment Equality Acts 1998-2015**, section 37(5).

provide that it is an occupational requirement for employment in an Garda Síochána, prison service or any emergency service that persons employed therein, are fully competent and available to undertake, and fully capable of undertaking, the range of functions that they may be called upon to perform so that the operational capacity of an Garda Síochána or the service concerned may be preserved.⁷⁰

⁷⁰ **Employment Equality Acts 1998-2015**, section 37(3).

Chapter 3 – Review of Decisions from the Workplace Relations Commission and Labour Court

3.1. Purpose

Given the longstanding employment equality protections, which are in place for those with disabilities, the NDA considered that an analysis should be undertaken of a select number of Workplace Relations Commission and Labour Court decisions concerning alleged failures by employers to provide reasonable accommodation. The purpose of this review was to:

1. analyse the types of issues, which arise in practice, in cases concerning reasonable accommodation
2. identify the difficulties, or indeed the perceived difficulties, employers encounter in providing reasonable accommodation
3. highlight examples of good and poor practice amongst employers in the provision of reasonable accommodations

The findings of this review are detailed below.

The NDA recognises that this limited analysis does not capture the full spectrum of issues which arise in the reasonable accommodation context. It represents an overview of relevant decisions which were published over a certain period.

Additionally, as a case law analysis, only claims which were pursued to adjudication are examined. A person may decide to settle a claim prior to adjudication or may decide not to proceed with a complaint. Regarding the latter, the UN Committee on the Rights of Persons with Disabilities states that people with disabilities can encounter barriers accessing justice and equal access to the law, including physical, communication, information and cost barriers.⁷¹ While there is no charge for lodging a complaint with the Workplace Relations Commission, the NDA notes that the Workplace Relations Commission cannot award legal costs to either side and that civil legal aid is not available for employment equality claims, irrespective of the complexity of the case or the needs of the individual.⁷²

⁷¹ UN Committee on the Rights of Persons with Disabilities (2018) **General Comment No.6 on equality and non-discrimination**, Geneva: Office of the United Nations High Commissioner for Human Rights, p.13.

⁷² The Workplace Relations Commission has not been “prescribed” as a tribunal for the purposes of section 27(2)(b) of the **Civil Legal Aid Act 1995** and therefore civil legal aid is not available in employment equality cases.

3.2. Findings

3.2.1. Decisions analysed where there was a breach of the requirement to provide reasonable accommodations and decisions analysed where there was no such breach

82 decisions were considered relevant to this review. Each of the decisions examined related to a complaint against a current or prospective employer that had allegedly failed to provide reasonable accommodation. In almost 60% of cases examined, it was judged that there was no breach of the reasonable accommodation requirement. The reasons for such decisions were varied and are explored in greater detail later in this section.

Nevertheless, in a significant number of cases, totalling 40% of those reviewed, it was determined that the employer had failed in their duty to make reasonable accommodations. Again, the rationale for these decisions is examined in more depth below.

Table 1: Number of decisions analysed where there was a breach of the obligation to provide reasonable accommodation and where there was no such breach

Decisions analysed	Number of decisions
Decisions where there was a breach of the reasonable accommodation requirement	33
Decisions where there was no breach of the reasonable accommodation requirement	49
Total number of decisions analysed	82

3.2.2. Decisions analysed concerning a current or former employee and a prospective employee

Overall, the number of decisions concerning **access to employment** on the disability ground was quite low. The vast majority of complaints were brought by current or former employees as opposed to prospective employees.⁷³

Table 2: Number of decisions analysed concerning a current or former employee and a prospective employee

⁷³ A complaint must be filed with the Workplace Relations Commission within six months of the date of the alleged breach of the Employment Equality Acts. **Employment Equality Acts 1998-2015**, section 77(5).

Decisions analysed concerning a current or former employee and prospective employee	Number of decisions
Decisions concerning a current or former employee	74
Decisions concerning a prospective employee	8
Total number of decisions analysed	82

3.2.3. Decisions analysed concerning a private sector employer, a public sector employer and a community or voluntary sector employer

In the majority of decisions analysed as part of this review, employees took cases against private sector employers. Cases against public sector bodies represented less than 25% of all those which were examined. Four cases were taken against community and voluntary sector employers. In four other cases, the nature of the employment was unclear.

In 2012, Bolger, Bruton and Kimber reported that many of the cases taken against employers in this jurisdiction have been against public sector employers.⁷⁴ The reason for the reduction in cases against public sector employers since then is unclear, however, it may indicate that improvements have been achieved for those with disabilities seeking access to or currently employed within the public service, or that good policies and procedures on reasonable accommodation exist in the public sector.

⁷⁴ Bolger, M., Bruton, C. & Kimber, C. (2012) **Employment Equality Law**, Dublin: Round Hall.

Table 3: Number of decisions analysed concerning a private sector employer, a public sector employer and a community or voluntary sector employer

Decisions analysed concerning private sector employer, a public sector employer and a community or voluntary sector employer	Number of decisions
Decisions concerning a private sector employer	55
Decisions concerning a public sector employer	19
Decisions concerning a community and voluntary sector employer	4
Not clear	4
Total number of decisions analysed	82

3.2.4. Types of disability cited by employees and prospective employees

The review revealed that cases had been taken against employers for failure to provide reasonable accommodations connected to a wide range of disabilities. The most commonly cited disability in this analysis was back issues. Mental health related issues, in particular depression, anxiety and stress / workplace stress, also featured prominently. Notably, there were no cases involving either persons with intellectual disabilities or persons with autism in this review.

In some decisions, more than one disability was cited, and each was included in the table below. In a limited number of cases, the nature of the disability was unclear, and in others, the disability cited was found not to constitute a disability within the meaning of Section 2 of the **Employment Equality Acts**.

Table 4: Types of disability cited by employees and prospective employees

Types of disability cited by employees and prospective employees	Number of decisions
Back issues	14
Depression	12
Anxiety	8
Stress / Workplace Stress	6
Physical disability (unspecified)	4
Multiple Sclerosis	4
Fibromyalgia	3
Epilepsy	3
Cancer (various types)	3
Deafness / hearing loss / hearing difficulties	3
Unclear	2
Adult Attention Deficit Disorder	2
Panic attacks	2
Agoraphobia	2
Shoulder injury	2
Crohn's Disease	2
Eye condition	2
Schizophrenia	1
Mental health issues (unspecified)	1
Hypertension	1
Chronic pain syndrome	1
Delusional Disorder	1
Rheumatoid arthritis	1
Fatigue	1
Acquired brain injury	1
Visual impairment	1
Stammer	1
Musculoskeletal condition	1
Lupus	1
Ankylosing spondylitis	1
Hip injury	1

Types of disability cited by employees and prospective employees	Number of decisions
Neck injury	1
Ulcerative Colitis	1
Prolapsed bladder	1
Carpal Tunnel Syndrome	1
Dyslexia	1
Mixed Connective Tissue Disease	1
Spondylosis	1
Tourette's Syndrome	1
Post cancer/post chemotherapy fatigue	1
Osteoarthritis	1
Chest pains	1
No disability	1

3.2.5. Decisions where a breach of the reasonable accommodation requirement was found

Of the 33 cases where a breach of the reasonable accommodation requirement was found to have occurred, 27 of these related to instances where the employer failed to comply with procedural aspects of the duty to reasonably accommodate. These included employers failing to undertake sufficient enquiries to determine the extent of the employee's disability; to consider whether special treatment and facilities could be provided; and to consult with the employee at all stages of the process.

In a very small number of cases, the employer was found to have breached the substantive component of the reasonable accommodation duty. Other breaches arose because the employer delayed excessively in providing reasonable accommodations.

Table 5: Decisions where a breach of the reasonable accommodation requirement was found

Reason for decisions where there was a breach of the reasonable accommodation requirement	Number of decisions
The employer failed in their procedural obligations to undertake sufficient enquiries to determine the extent of the employee's disability and/or to consider whether special treatment and facilities could be provided and/or to consult with the employee at all stages of the process	27
The employer failed to make accommodations which were reasonable (substantive component)	4
The employer delayed excessively in providing reasonable accommodations	2
Total number of decisions where there was a breach of the reasonable accommodation requirement	33

Reason 1: The employer failed in their procedural obligations to undertake sufficient enquiries to determine the extent of the employee's disability and/or to consider whether special treatment and facilities could be provided and/or to consult with the employee at all stages of the process

The review revealed that the most common reason for a breach of the obligation to provide reasonable accommodation was the failure of the employer to comply with procedural aspects of the duty. Case law illustrates that the reasonable accommodation process must meet certain minimum procedural requirements to comply with employment equality legislation.⁷⁵

This failure to comply with the procedural requirements of the duty manifested in the review in a number of ways.

1. In a number of cases, the employer failed to make adequate enquiries or was not in full possession of the material facts regarding the employee's disability before making a decision on a requested accommodation. For example, in some of the cases, the employer failed to take proactive steps to source relevant information from the employee, particularly medical information, regarding the nature or extent of their disability. In others, the employer failed to refer the employee to an occupational health practitioner for an independent medical assessment. By failing to obtain relevant information concerning an employee's disability, the employer is deemed not to be in a position to objectively evaluate

⁷⁵ See Section 2.3.3.

the degree to which appropriate reasonable accommodation can be made so as to render the employee capable of accessing or continuing in employment.

In one of the cases examined as part of the review, **An Operator Technician v A Contractor ADJ-0000628**, the employee was a rail technician and had a stammer. He was dismissed from his position due to health and safety concerns. The Adjudication Officer determined that, prior to the dismissal, the employer did not make adequate enquiries regarding the impact of the employee's stammer on his ability to do the job and had not adequately consulted with the employee regarding the impact of the stammer on his role. In particular, no written report was provided from a Speech and Language Therapist until after the employee had lodged an equality complaint and such report was only supplied to the employee some months after his dismissal. Accordingly, the employer had failed to provide reasonable accommodation.

2. Employers failed to give adequate consideration as to whether any special treatment or facilities could be afforded to the employee which would render them fully capable of the role. In a number of such cases, employers were found to have "closed [their] mind" to considering what, if any, adjustments could be made in respect to the employee's work requirements.⁷⁶ In these particular situations, the breach arose not because the employer failed to provide special facilities or treatment, but because the employer did not consider whether they could have been provided. It is possible that the provision of such special facilities or treatment would not have been feasible.

In **Desmond v Thomas Clarke & Co DEC-E2010-130**, a prospective employee - who was deaf - applied for the position of book-keeper. An interview was arranged and the prospective employee's friend subsequently contacted the prospective employer to request the assistance of a sign language interpreter for the interview. During this conversation, the prospective employer made comments which were premised on the fact that the prospective employee was deaf and in his opinion, his disability would present him with considerable difficulty performing the tasks associated with the post. The Adjudication Officer found that the prospective employer gave no consideration at all as to what accommodation he might afford the prospective employee to enable him undertake the tasks involved with the post. Therefore, the employer had breached the reasonable accommodation requirement.

3. A number of employers failed to discharge the onus on them to engage and consult with the employee regarding their disability when determining whether

⁷⁶ See for instance **A Receptionist v A Hotel DEC-E2017-051**.

or not reasonable accommodation should be provided. Although not mandatory in each and every case, a wise employer will provide meaningful participation to employees and prospective employees in the process for evaluating requests for reasonable accommodation at all levels.⁷⁷

In A Production Operator v A Manufacturing Company ADJ-00010072, the employee had anxiety and experienced panic attacks. She claimed that she was assigned to an area in her employer's factory which exacerbated and triggered her symptoms and she sought to move to a different role. The Adjudication Officer determined that the employer failed to comply with their obligation to adopt a process-orientated approach and to fully engage and consult with the employee regarding her request for reasonable accommodation, in particular the reasons why she found it difficult to work in the relevant area. The Adjudication Officer also held that the employer, while on notice of the employee's disability, did not have adequate knowledge as to how to deal with the situation which was unfolding and failed to discharge their duty to provide reasonable accommodation.

4. In a smaller number of decisions, the Adjudication Officer noted that the employer did not possess a working knowledge of reasonable accommodation as defined in Irish legislation and did not have a policy dedicated to reasonable accommodation.

In Complainant v Respondent ADJ-00009293, the employee, who had depression, sought to change his shift schedule, from evening work to day work. The employer refused to accommodate this request. The Adjudication Officer found that the employer, while on clear notice of the employee's disability, did not possess a working knowledge of reasonable accommodation as defined in Irish legislation. Additionally, the employer neither had a policy dedicated to reasonable accommodation, nor was there a visible precedent mentioned at the company. In finding a breach of the reasonable accommodation requirement, the Adjudication Officer further stated that she was struck by the lack of consideration given to the employee's request for reasonable accommodation.

Reason 2: The employer failed to provide a reasonable accommodation (substantive component)

In 4 out of the 33 cases, the employer breached the substantive component of the reasonable accommodation duty. A reasonable accommodation is always an

⁷⁷ The Supreme Court decision in **Daly v Nano Nagle School** has clarified the extent of the employer's duty to consult with an employee.

individually tailored solution and is based on an individual analysis of the needs of the person, the specific working conditions and the employer's resources.

In one case analysed as part of the study,⁷⁸ the prospective employee had notified her prospective employer that she was a wheelchair user. She was assured that the building and the interview room would be accessible to her. However, when the prospective employee arrived for the interview, she found that her access to the building was restricted as the wheelchair ramp was blocked and the elevator was broken. The prospective employee alleged that these access difficulties affected her performance at the interview and constituted a failure to provide reasonable accommodation. The Equality Officer in the former Equality Tribunal found that the prospective employer had discriminated against the prospective employee on the disability ground by failing to provide special facilities at the interview stage.

In **A Claimant v An Employer ADJ-00008968**, the employee, who was a researcher, was diagnosed with breast cancer in late 2013. She subsequently stopped working to undergo chemotherapy and returned to work in 2016. On her return, the employee experienced difficulties with post-cancer/post-chemotherapy fatigue, which was exacerbated by her daily commute from Blessington to Dublin City Centre. She sought and was denied a home working arrangement, where she would work in the office two days a week and work from home the other three days. The employer outlined a number of alternative options to the employee, including work-sharing, special leave without pay, a shorter working year or a career break. The employee noted that all of these options involved reduced hours and reduced pay.

The Adjudication Officer found that while the employer was in possession of all the medical facts pertaining to the employee's post-cancer/post-chemotherapy fatigue, the medical advice provided seemed to have been ignored. The Adjudication Officer underlined that there is a duty on employers to redistribute work or remove barriers that presented as an obstacle in the way of an employee's ability to carry out their functions, and had failed to do so in this particular instance. Accordingly, the employer could not objectively justify its refusal to reasonably accommodate the employee with a home working arrangement.

In **A Worker v A Manufacturing Company ADJ-00000557**, the employee had depression and was absent from work for about 10 months between 2014 and 2015. Her evidence was that her shift pattern, which included day and night

⁷⁸ **Harrington v East Coast Area Health Board DEC-2002-00.**

shifts, caused her significant sleep deprivation and exacerbated her depression. She asked for an accommodation in the form of day shift work, as recommended by her doctor. The company's occupational health physician examined the employee in early 2015 and found while she was not fit to work for 12 months, she could then return to day shift work, if she could be accommodated.

The employer advised the employee that there were no day shift vacancies available. In particular, the employer stated that there was considerable competition for day shift places and referred to a long-standing collective agreement with a trade union that controlled shift transfers.

The Adjudication Officer noted that the statutory right of an employee with a disability to reasonable accommodation was not intended to be a grace-and-favour affair dependent on whether a suitable alternative position happens to come up just at the right moment when it was needed, and for which the employee must compete with others. The Adjudication Officer stated that the right to reasonable accommodation was not dependent on any such operational contingencies, but was limited only by the financial resources of an employer and whether the measures identified as necessary placed a disproportionate financial burden on an employer.

The Adjudication Officer found that that the employer treated the matter of the employee's disability as a normal transfer request in line with its union agreement rather than as a statutory obligation to provide reasonable accommodation. Considering the likely costs involved in replacing the employee on the day shift, he did not accept that the burden on the employer would have been disproportionate. Based on the foregoing, the Adjudication Officer determined that the employer's refusal to allow the employee to work day shifts amounted to a breach of the reasonable obligation requirement.

In another decision which formed part of the review, the employer sought – unsuccessfully – to argue that the proposed reasonable accommodation would impose a disproportionate burden on them.

In this decision,⁷⁹ the employee, who was a business manager in a car motor dealership, had lupus and was out of work. She advised her employer of her inability to return to work in a full-time position and requested part-time hours. This request was rejected by the employer on account of the associated financial costs, including the cost of hiring another part-time staff member.

⁷⁹ **Business Manager v A Motor Dealership ADJ-00011959.**

The Adjudication Officer held that while it might be a logistical challenge for the employer to accommodate the needs of the employee with part time hours, it would not be unreasonable. The Adjudication Officer formed the view that the relevant company was not a small one and that a reorganisation to facilitate the employee was not insurmountable. Accordingly, the employee's request for part-time hours was deemed not to impose a disproportionate burden on the employer and the failure to provide part-time hours to the employee amounted to a breach of the reasonable accommodation requirement.

Reason 3: The employer delayed excessively in providing reasonable accommodations

In a very small proportion of cases, 2 out of a total of 33, a breach of the employer's obligation arose from delay in the provision of reasonable accommodation. In particular, the Adjudication Officer found that the proactivity required of employers to respond to and implement requests for reasonable accommodation was lacking; the employer took an unreasonable length of time to accommodate the employee's disability and the employee suffered as a consequence.

In **A Nurse v A Hospital ADJ-00000278**, the employee had back pain and requested that she be moved from the ward she was working in, where heavy manual work was required. She made her initial request in April, was put on leave in June and returned to work in November. The Adjudication Officer held that an employer must act without delay when it has been brought to its attention that reasonable accommodation is required for an employee with a disability to carry out their work. In this case, the Adjudication Officer found that the required proactivity was missing; the employer delayed excessively in accommodating the employee's disability. In the opinion of the Adjudication Officer, the employer failed in their duty to reasonably accommodate as there were too many delays along the way and the employee suffered as a consequence.

3.2.6. Decisions where a breach of the reasonable accommodation requirement was not found

In 19 out of 49 cases, the Workplace Relations Commission / Labour Court deemed that the employer had taken sufficient measures to fully comply with the substantive and/or procedural duties placed on them by equality legislation in the provision of reasonable accommodations. In a further 11 cases, the Workplace Relations Commission / Labour Court determined that there was no breach of the reasonable accommodation requirement because the employee would not have been fully competent to undertake the role even with an accommodation.

Other common reasons why complaints were dismissed included that the employee did not inform the employer of their disability, the employee failed to

request a reasonable accommodation or the employee did not have a disability within the meaning of employment equality legislation. In three cases, the Workplace Relations Commission / Labour Court found that the reasonable accommodation sought would impose a disproportionate burden on the employer, and in a further three decisions, the employee failed to establish a prima facie case that their employer had failed to provide reasonable accommodations. In one of the cases, the claim was dismissed as the complainant was not considered an employee.

Table 6: Decisions where a breach of the reasonable accommodation requirement was not found

Reason for decisions where there was no breach of the reasonable accommodation requirement	Number of decisions
Reasonable accommodation was provided to the employee or prospective employee / The employer made sufficient enquiries to evaluate a request for reasonable accommodations	19
The employee was not considered fully competent to undertake, and fully capable of undertaking, the role even with an accommodation	11
The employee did not inform the employer of their disability / The employee failed to request a reasonable accommodation	7
The employee did not have a disability	5
The reasonable accommodation sought would impose a disproportionate burden on the employer	3
The employee failed to establish a prima facie case that their employer had failed to provide reasonable accommodations	3
The complainant was not considered an employee	1
Total number of decisions where there was no breach of the reasonable accommodation requirement	49

Reason 1: Reasonable accommodation was provided to the employee and/or the employer made sufficient enquiries to evaluate a request for reasonable accommodations

In a significant number of cases, the Workplace Relations Commission / Labour Court deemed that the employer had taken sufficient measures to fully comply with the responsibilities placed on them by equality legislation in relation to providing reasonable accommodation. Specifically, the complaints were rejected on the basis that the employer had either complied with the process-orientated approach to reasonably accommodate required under case law and/or provided an appropriate reasonable accommodation.

In **Allen Hogan v Vistamed DEC-E2018-022**, the employee experienced a lower back injury and was temporarily out of work. He argued that his employer failed to provide him with reasonable accommodation. This contention was rejected by the Adjudication Officer who determined that reasonable accommodation had been afforded to the employee. In particular, it was noted that the employee had been facilitated with a phased return to work and had two helpers to assist him with challenging physical tasks as needed. Given that his back problems kept flaring up, the employee was subsequently facilitated with an alternative role, which he could carry out sitting down and which did not involve any strenuous physical labour. His wages were "red-circled" and the employer invested in a so-called "vacuum lifter", which obviated the employee's need to lift heavy products. The Adjudication Officer described the conduct of the employer in this case as "exemplary" and dismissed the employee's complaint.

In **An Employee v An Post DEC-E2018-005**, the employee had anxiety and had been suspended from work following a workplace incident. The employer subsequently arranged a disciplinary hearing at its regional office in Galway. The employee stated that because of her particular anxiety, agoraphobia, the meeting should be held at her place of work, not at the regional office. The employer informed her that disciplinary hearings are not held in operational units and further advised that an accommodation had already been made for the employee as such meetings are usually held in Dublin. The employee argued that the employer breached their obligation to provide reasonable accommodation by refusing to hold the meeting at her place of work.

The employer sought medical opinion and direction with regard to the requirement for such an accommodation. The Chief Medical Officer was of the view that the employee was fit to engage with management at the scheduled meeting in the regional office. Nevertheless, as an exceptional measure, the employer agreed to hold the meeting at the employee's place of work. The Adjudication Officer found that the employer had satisfied their obligation to provide reasonable accommodation by moving the meeting to the regional office in Galway. In conducting the hearing at the employee's place of work, the employer had provided an "additional accommodation".

In another case, the Adjudication Officer found that the employer had acted reasonably in refusing to provide a reasonable accommodation until the employee had provided medical evidence substantiating her request.

In **A Production Operator v A Manufacturer of Automotive Cameras DEC-E2017-004**, the employee returned to work after having been successfully treated for cancer. She was allocated a standing role and requested a seat. The employer did not provide the accommodation until the employee provided

medical evidence of the requirement for a seated position. While noting that there was a delay of a few months in providing the requested accommodation, the Adjudication Officer found that this was a reasonable timeframe given the employee's delay in submitting the medical report and the nature of the employer's production processes. Accordingly, there was no breach of the reasonable accommodation requirement.

Reason 2: The employee was not considered fully competent to undertake, and fully capable of undertaking, the role with an accommodation

In just under a quarter of all cases where no breach of the reasonable accommodation requirement was found, the Adjudication Officer was satisfied that it was not possible for the employer to put any special measures or facilities in place which would have rendered the employer capable of performing their duties or a modified variation thereof.

Under the **Employment Equality Acts**, an employer is not required to employ, retain or promote someone who will not undertake the duties or is not fully competent or capable of doing the essential duties of the job. However, in law, a person with a disability is considered fully competent and capable of undertaking any duties, if the person would be fully competent and capable when reasonably accommodated by the employer. As a result, employers are not obliged to recruit or retain someone who could not undertake the duties of the job if so accommodated.

In one case examined as part of the review,⁸⁰ the relevant employee commenced employment as a railway-crossing keeper in 2004. The employee had epilepsy, though he had not disclosed this to his employer. In 2015, the employee fell ill and was unable to attend work for a period of time. Before returning to work, he was referred for a medical assessment, where he disclosed that he had epilepsy. The Labour Court found that the employee withheld information from his employer regarding his disability in his original application form in 2004 and again in 2009. The Labour Court accepted medical evidence from the employer that the employee's disability rendered him unemployable in a safety critical role and that he would not have been employed into such a role had he declared his disability in 2004.

The Labour Court further accepted medical evidence from the employer that no accommodation for the employee's disability would render him capable of undertaking the work for which he was employed or any other safety critical role

⁸⁰ **Iarnrod Eireann v Michael Flanagan EDA1716.**

in the company. The employer in this case also sought to identify a suitable non-safety critical role for the employee but was not successful. Consequently, the Adjudication Officer determined that the decision to place the employee on ill health retirement under the terms of the employer's superannuation scheme was justified in the circumstances.

Reason 3: The employee either failed to inform their employer of their disability and/or failed to request reasonable accommodations

In seven of the cases analysed as part of this review, the employee either failed to inform their employer of their disability or failed to request reasonable accommodations. As a result, the Workplace Relations Commission / Labour Court determined that the employers did not have any actual or constructive knowledge of special arrangements required to be put in place for the employee.

In **A Customer Sales Agent v A Department Store ADJ-00008698**, the employee, who worked as a customer sales agent and had mental health issues and Tourette syndrome, sought a transfer to another store. This request was refused on account of the employee's poor punctuality and absence record. The employee argued that this refusal amounted to a breach of his employer's obligation to reasonably accommodate employees with a disability. The Adjudication Officer found that the employee neither informed his employer of his disability nor requested reasonable accommodations for any such disability. Accordingly, there was no breach of the employer's obligation to provide reasonable accommodation.

Reason 4: The employee did not have a disability within the statutory meaning

In five of the cases considered, the Adjudication Officer determined that the employee did not have a disability within the statutory meaning. Employers are only required to provide reasonable accommodation where the prospective or current employee has a disability within the meaning of the legislation. Disability has a broad definition under the **Employment Equality Acts** and it also covers particular medical conditions, which are potentially chronic, long-term, debilitating or that get progressively worse over time.⁸¹

In **An Employee v A Cleaning Company DEC-E2017-065**, the employee, who was a cleaner at Dun Laoghaire Harbour Terminal, had been on sick leave, as a result of chest pains, for an extended period. When she sought to return to work, the employee was informed that her cleaning position was no longer

⁸¹ Irish Human Rights and Equality Commission “**Your Employment Equality Rights Explained Guide to the Employment Equality Acts 1998-2011**” available on the IHREC website <https://www.ihrec.ie/download/pdf/ihrec_employment_equality_rights_explained.pdf>.

available, as Stena Line had not renewed their contract with Dun Laoghaire Harbour. The employer offered the employee a number of other temporary positions, but these were refused for reasons such as their location, the hours involved and the lack of permanency. The Adjudication Officer distinguished between a person being on sick leave from work due to illness and a person who has a disability and concluded that the employee in this particular case was not a person with a disability within the meaning of employment equality legislation. Accordingly, the issue of reasonable accommodation was deemed not to arise.

Reason 5: The reasonable accommodation sought would impose a disproportionate burden on the employer

Three complaints of an alleged failure to provide reasonable accommodation were dismissed on the basis that the requested adjustments would impose a disproportionate burden on the employer.

In the case of **A Community Facilitator v A Community based Disability Support service DEC-E2017-082**, the employee, who had Adult Attention Deficit Disorder, was dismissed by his employer. His role involved providing support for adults in respite services who had learning difficulties and mental health issues. The Adjudication Officer held that, prior to the dismissal, the employer had made extensive inquiries into the extent of the employee's disability and consulted with him before coming to the conclusion that the accommodations recommended by the occupational health physician were too burdensome. The occupational health physician had recommended that the employer hire another individual to supervise the employee during sleepover shifts and closely supervise and mentor the employee during retraining. The Adjudication Officer accepted the employer's argument that the proposed accommodations would place a disproportionate financial burden on them and therefore, there was no breach of the obligation to reasonably accommodate.

Reason 6: The employee failed to establish a prima facie case that their employer had failed to provide reasonable accommodations

In three different cases, the employee failed to establish a prima facie case that their employer had failed to provide reasonable accommodation. Under employment equality legislation, an employee must, in the first instance, establish facts from which a failure to provide reasonable accommodation may be inferred (known as a prima facie case).⁸² If such facts are established, the onus shifts to the

⁸² Community Law and Mediation (2017) **Guide to Taking an Employment Equality Case**, Dublin: Community Law and Mediation, p.19.

employer to prove that they did provide reasonable accommodation, or if they did not, that it was justified.⁸³

In **G4S Cash Solutions Ireland v Darius Mucha EDA1845**, the employee failed to establish a prima facie case of discrimination. The employee was a cash operative and had been on long-term certified sick leave, due to depression. The employee argued that he had been forced to resign due to the failure of his employer to make reasonable accommodation for his disability. The Labour Court determined that the employee's decision to resign was based not on the employer's failure to make reasonable accommodations, but on the employee's own perception that his disability made him an unsuitable candidate for the job in question. As a result, the Labour Court took the view that the employee had failed to establish a prima facie case such as to shift the burden of proof to the employer.

In **Hatem Mohamed v Accenture Ireland Limited ADJ-00014519**, the employee, who had depression, worked from Sunday to Thursday. The employer requested that the employee change his work schedule and work Fridays instead of Sundays. The employee objected to this because of family commitments and a potential reduction in pay. The employer subsequently agreed that the employee could continue with his Sunday – Thursday work schedule. Thereafter, the employee sought shorter working hours to ensure that he was home by 5pm each day to care for his child. While the employee's manager agreed to allow the employee work a shorter working day, he was informed that he would have to make up one hour at month-ends, but not on Sunday, when there wasn't enough work to do. The employee said that this arrangement didn't suit him.

Following a number of weeks during which the employee did not carry out his job to the standard expected of his managers, he was put on a performance improvement plan. The employee rejected this plan out of hand and saw it as an example of his managers' efforts to punish him for his tenacity in getting a working time schedule suitable to his needs. The Adjudication Officer found that the employee had failed to discharge the burden of proof required to demonstrate that the employer had failed to provide him with reasonable accommodation for his depression. He concluded that the employee was under pressure on a daily basis to ensure that he could be home for 5pm due to family commitments and this was the root of many of his workplace problems.

⁸³ Community Law and Meditation (2017) **Guide to Taking an Employment Equality Case**, Dublin: Community Law and Meditation, p.19.

Reason 7: The complainant was not considered an employee

The **Employment Equality Acts** provide certain protections to prospective, current and former employees. The following types of employees are covered by the employment equality legislation:

- Public and private sector employees
- Full-time employees
- Part-time employees
- Agency workers (in certain circumstances)
- Self-employed contractors
- Apprentices⁸⁴

The **Employment Equality Acts** not only apply to employers, but also to bodies offering vocational training and certain other organisations, for example:

- an organisation of workers or of employers
- a professional or trade organisation
- a body which controls entry to, or the carrying on of, a profession, vocation or occupation
- partnerships⁸⁵

⁸⁴ Irish Human Rights and Equality Commission “**Your Employment Equality Rights Explained Guide to the Employment Equality Acts 1998-2011**” available on the IHREC website <https://www.ihrec.ie/download/pdf/ihrec_employment_equality_rights_explained.pdf>.

⁸⁵ Community Law and Meditation (2017) **Guide to Taking an Employment Equality Case**, Dublin: Community Law and Meditation, p.5.

Chapter 4 – Obstacles to Attaining and Providing Reasonable Accommodations

4.1. Reasonable accommodation process

This chapter explores common obstacles which can impede a seamless reasonable accommodation process. In a seamless process, employees and employment candidates are comfortable disclosing their disability and requesting reasonable accommodations; and employers follow correct procedures, provide any reasonable accommodation measures required under employment equality legislation and monitor implemented reasonable accommodations.

4.2. Obstacles impeding a seamless reasonable accommodation process

The reasonable accommodation process is a multifaceted one. The process typically comprises a number of stages including the:

1. Making of a request for reasonable accommodations by a person with a disability
2. Evaluation of such a request by an employer and the process followed in reviewing such a request
3. Implementation of any approved reasonable accommodation measure
4. Monitoring of implemented reasonable accommodation measures

Persons with a disability and employers make decisions about requesting or providing reasonable accommodations based on multiple factors in this process.

Various factors may impede a seamless reasonable accommodation process, such as, lack of human resources capacity; the affordability of obtaining medical or psychological reports etc. However, a number of key obstacles featured regularly in the literature review; the review of Workplace Relations Commission and Labour Court decisions relating to reasonable accommodation; and consultations with stakeholders.

While not an exhaustive list, the eight obstacles considered are:

1. The reluctance of some employees and prospective employees to disclose their disability to an employer and to request reasonable accommodations
2. The failure of some employers to have policies and procedures in place regarding reasonable accommodations and to follow the procedures required by law
3. The failure to provide reasonable accommodation in a timely manner

4. The low awareness of the legal obligations on employers to provide reasonable accommodation and the types of reasonable accommodations available
5. The failure to provide reasonable accommodations arising from low levels of understanding and awareness of disabilities as well as negative attitudes towards reasonable accommodations
6. The low awareness of financial supports available to employers in the provision of reasonable accommodations
7. The limitations of existing financial supports available to employers to provide reasonable accommodations
8. The lack of provision for monitoring and reviewing reasonable accommodations

4.2.1. The reluctance of some employees and prospective employees to disclose their disability to an employer and to request reasonable accommodations

Disclosure is a complex issue faced by persons with a disability during recruitment and when in employment.⁸⁶ The **Employment Equality Acts** do not impose a legal obligation on a person with a disability to make such a disclosure either when seeking employment or while in employment.⁸⁷ Therefore, the decision to disclose a disability – including when to disclose and to whom – is a deeply personal one.

One of the primary obstacles to a seamless reasonable accommodation process is the reluctance of employees and prospective employees to disclose their disability and to request reasonable accommodations. The “process” cannot be initiated, unless the employee discloses their disability to an employer, except where an employer ought reasonably to have been aware that the employer had such a disability.⁸⁸

⁸⁶ Australian Human Rights Commission (2016) **Willing to Work National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability**, Sydney: Australian Human Rights Commission, p.172.

⁸⁷ However, there is such an obligation under section 23 of the **Safety, Health and Welfare at Work Act 2005** where the disability is likely to cause the employee to expose themselves or another person to danger or risk of danger at work.

⁸⁸ Information on actual and constructive knowledge is available in Section 2.3.4.

Research conducted by the NDA found that there is a general sense of fear about disclosing a disability in the workplace and is primarily threefold:

1. fear of being treated differently after disclosure
2. fear of disclosure affecting promotional opportunities
3. fear of being labelled⁸⁹

Past negative experiences with requesting accommodations and the perception that employers lack a genuine desire to provide accommodations are other significant barriers to disclosure and requesting accommodations.⁹⁰

NDA research indicates that disclosure can be viewed as somewhat of a 'catch-22' for persons with disabilities.⁹¹ While disclosure should lead to better working conditions, including the provision of reasonable accommodations, some people will not disclose their disability due to the perceived negative consequences of doing so, including the fear that the employer will focus on their disability rather than their ability.⁹²

NDA research also indicates that concerns regarding disclosure are more pertinent for those with hidden disabilities such as mental health issues.⁹³ The type of disability an employee experienced had a significant influence on disclosure. In terms of visible versus invisible disabilities, there was a general perception among employees that invisible disabilities, such as, mental health issues, were viewed more negatively or even stigmatised.⁹⁴

The reluctance of employees with hidden or invisible disabilities to disclose requires employers to consider ways in which they might educate and

⁸⁹ National Disability Authority (2009) **Disclosing Disability in the Workplace a Review of Literature and Practice in the Irish Public Sector**, Dublin: NDA, p.74.

⁹⁰ MacDonald-Wilson, K., Fabian, E. & Dong, S. (2008) 'Best Practices in Developing Reasonable Accommodations in the Workplace: Findings Based on the Research Literature', **The Rehabilitation Professional**, 16(4), 221-232.

⁹¹ National Disability Authority (2009) **Disclosing Disability in the Workplace a Review of Literature and Practice in the Irish Public Sector**, Dublin: NDA, p.74.

⁹² Health and Safety Authority (2009) **Employees with Disabilities: An employer's guide to implementing inclusive health and safety practices for employees with disabilities**, Dublin: HSA, p.3.

⁹³ National Disability Authority (2009) **Disclosing Disability in the Workplace a Review of Literature and Practice in the Irish Public Sector**, Dublin: NDA, p.75.

⁹⁴ National Disability Authority (2009) **Disclosing Disability in the Workplace a Review of Literature and Practice in the Irish Public Sector**, Dublin: NDA, p.72.

communicate with managers and employees about disabilities, promote efforts to de-stigmatise such disabilities and encourage disclosure and requests for reasonable accommodations from those with hidden disabilities.⁹⁵

For those with a non-visible disability, the timing of disclosure was an added consideration.⁹⁶ Participants in one focus group agreed that employees, in particular those with mental health related issues, oftentimes face difficulties deciding when is the most appropriate time to disclose.

Disclosure may happen at the application stage, at the interview stage, or after a job has been secured. Additionally, a person may choose to work with an employer for a particular timeframe and disclose their disability when they feel more comfortable in their workplace. Participants in one focus group noted instances where persons with disabilities disclosed only after completion of their probationary period.

For those with a disability in a recruitment process, fears regarding the potential negative consequences, discrimination or stigma related to disclosure of a disability can be compounded further. Pressures of the recruitment and selection setting may deter many individuals from bringing their disability or need for a reasonable accommodation to the employer's attention.⁹⁷ Individuals can be unsure whether disclosing their disability in their application would put them at risk of being denied an opportunity to progress through the recruitment process.⁹⁸

Some organisations have expressed public concern about possible discrimination against persons with a disability in accessing employment. For example, Dyslexia Ireland noted that the biggest fear that job applicants with dyslexia have is that if they declare their dyslexia they may never get to the interview stage, never mind

⁹⁵ Raymond, M., Olsen, J., Ainsworth, S., Lotia, N., Harbridge, R. & Holland, A. (2019) **Improving Access and Inclusion in Employment for People with Disabilities - Implementation of Workplace Adjustments in 'Best-Practice' Organisations**, Melbourne: University of Melbourne, p.13.

⁹⁶ National Disability Authority (2009) **Disclosing Disability in the Workplace a Review of Literature and Practice in the Irish Public Sector**, Dublin: NDA, p.72.

⁹⁷ Raymond, M., Olsen, J., Ainsworth, S., Lotia, N., Harbridge, R. & Holland, A. (2019) **Improving Access and Inclusion in Employment for People with Disabilities - Implementation of Workplace Adjustments in 'Best-Practice' Organisations**, Melbourne: University of Melbourne, p.14.

⁹⁸ Australian Human Rights Commission (2016) **Willing to Work National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability**, Sydney: Australian Human Rights Commission, p.173.

getting a job offer.⁹⁹ MS Ireland also stated that one of the main reasons persons with Multiple Sclerosis did not disclose their disability to an employer was the “worry of discrimination”.¹⁰⁰ Epilepsy Ireland further note that persons with epilepsy are reluctant to disclose their disability out of fear of how a future employer might react.¹⁰¹

The disclosure of a disability at the access to employment stage can depend on both the degree to which the organisation is perceived as being proactive and supportive of disability inclusion, as well as, the mind-set of the employment candidate.¹⁰² As employment candidates may not feel comfortable disclosing their disability, employers need to be proactive and take the initiative in asking applicants whether they need a reasonable accommodation for a disability.

However, this proactivity is not always present. In a limited survey carried out by the Employer Disability Information service¹⁰³, which had 250 respondents, many employers stated that they do not ask applicants whether they have any special requirements or reasonable accommodation needs at interview or application stage.¹⁰⁴

⁹⁹ For more information see the website of Dyslexia Ireland <<http://www.dyslexia.ie/information/adults-and-the-workplace/disclosure/>>.

¹⁰⁰ Multiple Sclerosis Ireland (2016) **Working with MS: Employment Resource for People with Multiple Sclerosis**, Dublin: MS Ireland, p.4.

¹⁰¹ Epilepsy Ireland (2015) **Epilepsy in the Workplace: An Employers Information Resource**, Dublin: Epilepsy Ireland, p.3.

¹⁰² Raymond, M., Olsen, J., Ainsworth, S., Lotia, N., Harbridge, R. & Holland, A. (2019) **Improving Access and Inclusion in Employment for People with Disabilities - Implementation of Workplace Adjustments in ‘Best-Practice’ Organisations**, Melbourne: University of Melbourne, p.15.

¹⁰³ The Employer Disability Information service operated as a pilot initiative until January 2019. Its purpose was to provide employers with an expert peer source of advice and information on employing staff with disabilities, with a view to enhancing the confidence and competence of individual employers to employ, manage and retain staff with disabilities. The service was managed by a consortium of employer organisations - Chambers Ireland, Ibec and ISME - and was funded through the National Disability Authority.

¹⁰⁴ Employer Disability Information (2018) **Employers Attitude To Employing People With Disabilities: Survey Results**, Dublin: EDI, p.12. The survey of employers was administered from June until September 2018 and had 250 respondents. The survey was promoted to enterprises associated with the three national employer organisations (Chambers Ireland, Ibec and ISME), to the Employer Disability Information (EDI) Employer Peer Network and via social media channels.

Employment candidates with disabilities can also find it difficult to make accommodation requests due to online automated recruitment processes and lack of 'human contact' until well into the selection process.¹⁰⁵ Difficulties dealing directly with employers and in-house recruiters regarding requests for reasonable accommodation were also identified as issues in one of the focus groups.

4.2.2. The failure of some employers to have policies and procedures in place regarding reasonable accommodations and to follow the procedures required by law

Policies and procedures are critically important in the context of the reasonable accommodation process. The review of the Workplace Relations Commission and the Labour Court decisions illustrated that there are varying levels of compliance amongst employers with the procedures required by law when dealing with requests for reasonable accommodation.

Whilst not explicit in legislation, jurisprudence as developed by the Workplace Relations Commission and the courts places a number of procedural demands on employers in the context of reasonable accommodations. The employer must be proactive and make themselves aware of the extent of the employee's disability once disclosed. Employers are also required to take into account the employee's disability, including any medical evidence that the employee may proffer, when taking a decision on a requested accommodation and consider whether appropriate measures, special treatment or facilities would enable the employee to be capable of performing the tasks of the position. To be in full possession of the facts, some form of assessment, be it medical, occupational or ergonomic, will generally be required.¹⁰⁶

The Workplace Relations Commission and Labour Court review also highlights the importance of consulting with employees regarding their accommodation request; a point which is also emphasised in research commissioned by the NDA¹⁰⁷ and most recently, in the Supreme Court decision in **Nano Nagle v Marie Daly** case. As experts in their own disability, the employee or

¹⁰⁵ Australian Human Rights Commission (2016) **Willing to Work National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability**, Sydney: Australian Human Rights Commission, p.281.

¹⁰⁶ Purdy, A. (2015) **Equality Law in the Workplace**, Dublin: Bloomsbury Professional, para. 17.84.

¹⁰⁷ RSM PACEC & National Disability Authority (2018) **Research on good practice in the employment of people with disabilities in the public sector**, Dublin: RSM PACEC & NDA, p.40.

employment candidate may have practical and effective solutions to removing the barriers they face.¹⁰⁸ Seeking to understand how the person with a disability views their own disability, and thus the accommodations they may require, is critical. Dialogue between the employee and the employer on the nature of the disability, the types of barriers experienced and the possible avenues through which they can be removed or mitigated is therefore essential.¹⁰⁹

The failure of employers to comply with the procedural requirements of the duty suggests a low level of understanding amongst some of them regarding the appropriate law and procedures and the extent of their obligations under employment equality legislation.

Additionally, the failure of employers to adhere to correct procedures is emblematic of the fact that employers do not always have formal, written policies and procedures in place regarding the provision of reasonable accommodation. Policies and procedures provide employers with a structure or framework for dealing with requests for reasonable accommodation and offer guidance for decision-making. They also assist employers to comply with and understand the requirements of employment equality legislation.

As discussed, in a small number of Workplace Relations Commission and Labour Court decisions examined as part of the review, the Adjudication Officer referred to the fact, that the employer neither had a policy dedicated to reasonable accommodation nor a working knowledge of reasonable accommodation, when determining that they had breached their procedural obligations. The failure to develop a policy on reasonable accommodation can be taken into consideration when determining whether an employer has breached their procedural obligations.¹¹⁰

Participants in one focus group noted that most private sector employers, particularly small and medium sized enterprises, do not have policies and procedures in place to deal with accommodation requests.¹¹¹ Participants in another focus group agreed that while public bodies generally have policies and

¹⁰⁸ Webster, B. (2014) **A Mental Health Policy Document for the Workplace**, Dublin: See Change.

¹⁰⁹ Lawson, A. (2008) 'People with Psychosocial Impairments or Conditions, Reasonable Accommodation and the Convention on the Rights of Persons with Disabilities' in McSherry, B. (ed.), **International Trends in Mental Health Laws**, Sydney: Federation Press.

¹¹⁰ See for instance **Complainant v Respondent ADJ-00009293**.

¹¹¹ These concerns relate to public bodies carrying out their own recruitment campaigns as opposed to recruitment campaigns run by the Public Appointments Service.

procedures in place for employees with a disability, they generally do not extend to prospective employees. Participants in this focus group noted that for some recruitment campaigns conducted directly by government departments or statutory agencies, outside of the centralised recruitment system provided by the Public Appointments Service, reasonable accommodations are granted through informal processes, and typically without difficulty. However, participants agreed that it was preferable to have standardised, formal policies and procedures in place for recruitment processes.

According to the International Labour Organisation, a formal procedure should exist within an organisation to handle requests for reasonable accommodations and such procedures should identify who the appropriate decision-maker is in relation to accommodation requests. Such procedures help to ensure consistency in how organisations respond to requests from staff in different roles and build expertise regarding any legal obligations they might have in this regard.¹¹²

The existence of clear policies and procedures for reasonable accommodations are also important for employees and prospective employees. The existence and awareness of written policies and assessment procedures ensures that potential and existing employees understand the process involved in requesting reasonable accommodations and their responsibilities when engaging in the process. Employees are also more likely to disclose their disability if they know about the relevant policies and procedures, and potential measures to support them.¹¹³

Low awareness amongst employees of the existence of specific policies on reasonable accommodation was highlighted in two focus groups.

4.2.3. The failure to provide reasonable accommodations in a timely manner

Unnecessary delays in responding to or implementing a reasonable accommodation can result in a breach of the **Employment Equality Acts**. In a very small proportion of Workplace Relations Commission and Labour Court cases reviewed as part of the study, a breach of the requirement to reasonably accommodate arose as a result of an employer taking an unreasonable length of time to accommodate the employee's disability. As part of their procedural

¹¹² International Labour Organisation (2016) **Promoting Diversity and Inclusion Through Workplace Adjustments: A Practical Guide**, Geneva: ILO, pp.36-37.

¹¹³ Equality Authority (2011) **Equality and mental health: what the law means for your workplace**, Roscrea: Equality Authority, p.10.

obligations, an employer must be proactive and act without delay when an employee with a disability requests a reasonable accommodation.¹¹⁴ The process for evaluating a request for reasonable accommodation should commence as soon as the request is received. Prompt evaluations of requests for reasonable accommodations are particularly important for those engaged in the recruitment process, where there is typically a short timeframe between the closing date for applications and the holding of a test/assessment or interview. However, prompt evaluation and implementation of reasonable accommodation measures are also important for employees with a disability, who may not be able to work effectively without the relevant accommodation.

The **UK's Civil Service Diversity and Inclusion Strategy, A Brilliant Civil Service**, emphasises that requests for workplace adjustments should be responded to, and put in place, in a timely manner.¹¹⁵ Participants in one focus group expressed the view that requests for reasonable accommodations are generally evaluated and implemented in a short turnaround time, although one participant acknowledged that delays infrequently occur. A participant in another focus group noted that they were aware of a case where a reasonable accommodation took 12 months to implement.

While delays can result from employers failing to deal with requests for accommodations in an efficient and proactive manner, delays in the provision of reasonable accommodation can also arise as a result of inefficiencies in other parts of the system. While these issues did not arise in the review of Workplace Relations Commission and Labour Court decisions, the Employer Disability Information service has reported that financial grants provided by the Department of Employment Affairs and Social Protection to assist employers in making reasonable accommodations can take a long time to complete, approve and put in place.

The Employer Disability Information service noted that the current grant structure requires an employer to employ someone with a disability, apply for the relevant grant and wait for 6/8 weeks for approval prior to purchasing supports.¹¹⁶ This means that an employer may be expected to employ and pay a

¹¹⁴ **A Nurse v A Hospital ADJ-0000278.**

¹¹⁵ UK Cabinet Office (2017) **A Brilliant Civil Service: becoming the UK's most inclusive employer, The Civil Service Diversity and Inclusion Strategy**, London: UK Cabinet Office, p.10.

¹¹⁶ Employer Disability Information service, **Report to the Department of Employment Affairs and Social Protection Report dated 30th May 2016**, available at the Employer

person with a disability who is unable to take up the offered work until their supports are in place and can act as a “...deterrent for employers trying to employ people with disabilities”.¹¹⁷

Information received during one of the focus groups facilitated by the NDA indicates that waiting times for the **Workplace Equipment and Adaptation Grant** (WEAG) are inconsistent and vary from area to area, with average waiting times ranging from between one to three months.¹¹⁸ Some participants in this focus group stated that private sector employers can be deterred from applying for the WEAG due to the timeframes involved.

4.2.4. The low awareness of the legal obligations on employers to provide reasonable accommodation and the types of reasonable accommodations available

4.2.4.1. Employers

Some employers have low knowledge and understanding of the types of reasonable accommodations available and their legal obligations towards employees with disabilities. The delivery of training and the provision of information to employers on types of appropriate measures or reasonable accommodations available for people with a disability in the workplace, and relevant legislation, including the legal obligation to provide reasonable accommodation, are key in this regard.

In some of its Concluding Observations, the UN Committee on the Rights of Persons with Disabilities (“the UN Committee”) has expressed concern about lack of information and the low level of awareness among employers about reasonable accommodation at the workplace in other jurisdictions.¹¹⁹ With this in mind, the UN Committee has recommended that certain States Parties to the **UNCRPD** raise awareness among public and private companies about

Disability Information service website

<<http://www.employerdisabilityinfo.ie/about/submissions/deasp-report>>.

¹¹⁷ Employer Disability Information service, **Report to the Department of Employment Affairs and Social Protection Report dated 30th May 2016**, available at the Employer Disability Information service website

<<http://www.employerdisabilityinfo.ie/about/submissions/deasp-report>>.

¹¹⁸ More information on this grant is available in Section 4.2.6. and 4.2.7.

¹¹⁹ See for instance See for instance UN Committee on the Rights of Persons with Disabilities (2018) **Concluding observations on the initial report of Bulgaria**, Geneva: Office of the United Nations High Commissioner for Human Rights, p.9. See also UN Committee on the Rights of Persons with Disabilities (2019) **Concluding observations on the combined second and third periodic reports of Spain**, Geneva: Office of the United Nations High Commissioner for Human Rights, p.11.

reasonable accommodation at work.¹²⁰ The UN Committee has also previously recommended that regular training on reasonable accommodation be made available to employers.¹²¹

As discussed, the failure of employers to comply with their procedural obligations under the reasonable accommodation duty can indicate an information deficit or a low level of understanding amongst some of them regarding the appropriate law and procedures and the extent of their obligations under employment equality legislation. Ensuring employers understand their obligations under legislation to provide reasonable accommodations helps organisations be more inclusive of employees with disabilities.¹²²

Participants in one of the focus groups cited low knowledge amongst employers about the legal requirement to provide reasonable accommodation and the types of reasonable accommodations available more generally as obstacles in the provision of reasonable accommodations. Low levels of understanding amongst those dealing with accommodation requests of the particular needs of persons with certain disabilities was also cited as a barrier in another focus group. Participants also agreed that employers do not know where to go to get this information.

In the absence of such knowledge and understanding, participants in one focus group noted that employers can be fearful of employing persons with disabilities.

¹²⁰ See for instance UN Committee on the Rights of Persons with Disabilities (2018) **Concluding observations on the initial report of Bulgaria**, Geneva: Office of the United Nations High Commissioner for Human Rights, p.9. See also UN Committee on the Rights of Persons with Disabilities (2018) **Concluding observations on the initial report of Malta**, Geneva: Office of the United Nations High Commissioner for Human Rights, p.9.

¹²¹ See for instance UN Committee on the Rights of Persons with Disabilities (2016) **Concluding observations on the initial report of Slovakia**, Geneva: Office of the United Nations High Commissioner for Human Rights, pp.8-9. See also UN Committee on the Rights of Persons with Disabilities (2018) **General Comment No.6 on equality and non-discrimination**, Geneva: Office of the United Nations High Commissioner for Human Rights, p.16. The issue of training on reasonable accommodation in the employment context was also raised in the context of the European Union's review under the UNCRPD. UN Committee on the Rights of Persons with Disabilities (2015) **Concluding observations on the initial report of the European Union**, Geneva: Office of the United Nations High Commissioner for Human Rights, p.9.

¹²² Holland, A., Harbridge, R., Olsen, J.E., & Raymond, M. (2017) **Research Insights: Improving access and inclusion in employment for people with disabilities**, Melbourne: University of Melbourne, p.9.

These reservations can relate to saying or doing the wrong thing, or facing potential litigation if the employment does not work out.

With specific regard to reasonable accommodations, some employers can lack understanding of the various forms of appropriate measures or reasonable accommodations, which could be provided to the person.¹²³ For example, an employer may be unsure of an appropriate reasonable accommodation in the case of a person with a mental health issue.

Additionally, employers are not always clear how to assess a request for reasonable accommodations and, in particular, whether such a request would impose a disproportionate burden on them. One of the points raised by participants during the public consultation process on the **Comprehensive Employment Strategy for People with Disabilities 2015-2024** was the need to “provide employers with a realistic sense of how much it costs for reasonable accommodation”.¹²⁴ Additionally, the review of the Workplace Relations Commission and Labour Court cases revealed instances where employers unsuccessfully argued that the provision of reasonable accommodations to an employee would impose a disproportionate burden on them.¹²⁵

More generally, research conducted by the Employer Disability Information service found that lack of information about how to support employees with disabilities was one of the main reasons why employers are reluctant to hire persons with disabilities. 47.8% of employers who participated in a limited survey undertaken by the Employer Disability Information service reported that information support would encourage them to employ persons with disabilities.¹²⁶

Until January 2019, the Employer Disability Information service operated as a pilot project. It was designed to provide employers with an expert peer source of advice and information on the employment and recruitment of persons with disabilities in Ireland. This included, though was not limited to, information and

¹²³ Australian Human Rights Commission (2016) **Willing to Work National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability**, Sydney: Australian Human Rights Commission, p.192.

¹²⁴ Government of Ireland (2015) **Comprehensive Employment Strategy for People with Disabilities 2015-2024**, Dublin: Stationery Office, p.71.

¹²⁵ See for instance **A Business Manager v A Motor Dealership ADJ-00011959**. See also **Complainant v Respondent ADJ-00009293**.

¹²⁶ Employer Disability Information (2018) **Employers Attitude To Employing People With Disabilities: Survey Results**, Dublin: EDI, p.2.

advice on the provision of reasonable accommodations. The service ceased operations following the conclusion of a three year pilot phase.¹²⁷ At present, there is no dedicated, centrally-based national resource of peer advice and information for employers on the employment of persons with disabilities.

The provision of training, information and advice to employers on reasonable accommodations takes different forms in various jurisdictions. For instance, in Australia, “JobAccess” is the national hub for workplace and employment information for persons with a disability and employers, including information about how to make reasonable accommodations.¹²⁸ In addition to a telephone advice line and online information on disability types and the rights and responsibilities of employers, JobAccess have also developed employer toolkits, which contain practical ideas and solutions aimed at providing reasonable accommodations in the workplace.¹²⁹ The Australian Government funds the service.

In the United States of America, the Department of Labor funds the Job Accommodation Network. The Job Accommodation Network provides free, expert and confidential guidance to employers, individuals and other professionals (medical professionals, trade union representatives and legal representatives) on workplace accommodations and disability employment issues.¹³⁰ In addition to a web resource, the Job Accommodation Network offers one-on-one guidance on workplace accommodations, relevant legislation, and self-employment and entrepreneurship options for people with disabilities. This guidance is available via telephone and online channels, to public and private employers, trade union representatives, and persons with disabilities and their families.

In Northern Ireland, the Equality Commission runs free half-day employer training sessions on specific topics, such as “promoting equality in employment for persons with disabilities” and “the disability reasonable adjustment duty in the

¹²⁷ In May 2019, the Minister of State at the Departments of Employment Affairs and Social Protection, Justice & Equality and Health with special responsibility for Disabilities indicated that he is currently working with employer representative bodies to develop a follow-on initiative that supports employers when recruiting and retaining people with disabilities. Seanad Debates, Comprehensive Employment Strategy for People with Disabilities 2015-2024: Statements, 16 May 2019.

¹²⁸ More information is available on the JobAccess website <<https://www.jobaccess.gov.au/>>.

¹²⁹ JobAccess has developed an Employer Toolkit which is available on their website <<https://www.jobaccess.gov.au/employers/employer-toolkit/>>.

¹³⁰ More information is available on the Job Accommodation Network website <<https://askjan.org/index.cfm>>.

recruitment and selection process”.¹³¹ A Code of Practice has also been developed entitled **Disability Code of Practice: Employment and Occupation** which provides information to employers and employees on anti-discrimination law, including reasonable accommodation.¹³²

There is a **Code of Practice for the Employment of People with a Disability in the Irish Civil Service** which covers issues related to reasonable accommodation.¹³³ However, this only relates to public and civil service employers. In October 2019, IHREC announced that they would use their statutory powers to prepare and bring forward a new legal code of practice to promote greater employment of persons with disabilities, which will cover reasonable accommodations.¹³⁴ Once completed, this code will be legally admissible in evidence in court, Workplace Relations Commission and Labour Court proceedings.

In addition, the NDA is grant funding four organisations to develop employer awareness-raising materials that aim to promote disability confidence across the public and private sectors. The training materials will be made available to employers as interconnected modules via an eLearning portal. The content will cover a range of topics including:

- understanding disability
- understanding employers’ statutory obligations regarding disability
- understanding how best to support persons with disabilities in employment
- considering human resources and equality issues
- ensuring disability-friendly and inclusive work-places

¹³¹ More information is available on the Equality Commission for Northern Ireland website <<https://www.equalityni.org/Employers-Service-Providers>>.

¹³² Equality Commission for Northern Ireland (2018) **Disability Code of Practice: Employment and Occupation**, Belfast: Equality Commission.

¹³³ Department of Finance (2007) **Code of Practice for the Employment of People with a Disability in the Irish Civil Service**, Dublin: Department of Finance.

¹³⁴ Irish Human Rights and Equality Commission, ‘**Discrimination Against People with Disabilities in Employment a Persistent and Pernicious Roadblock to Worker’s Dignity and Inclusion**’ [press release], available from their website at <<https://www.ihrec.ie/discrimination-against-people-with-disabilities-in-employment-a-persistent-and-pernicious-roadblock-to-workers-dignity-and-inclusion/>>.

- considering all stages of the employment journey such as recruitment, interviews, career progression, etc.

4.2.4.2. Persons with a disability

Low knowledge of the types of reasonable accommodations available, as well as rights and entitlements in this area, also extends to employees and job applicants with disabilities. Participants in two focus groups agreed that persons with disabilities are unaware of the employment equality protections which are in place and the right to reasonable accommodation in the workplace. Without this knowledge, persons with disabilities are unlikely to be in a position to advocate for their right to reasonable accommodation.

In addition, participants in one focus group were unaware of the meaning of reasonable accommodations; although many of them were in fact receiving reasonable accommodations, they did not term or identify the measures in that way. One participant added that while the form of a reasonable accommodation may be obvious for certain disabilities, for instance a physical disability, others are not always so clear (for example, accommodations which may be available for persons with mental health related issues may include time off to attend medical appointments, mentoring and peer support within the workplace etc.). As a result, people with certain types of disabilities may be unsure of their entitlements.

4.2.4.3. Management and colleagues

In addition to employers, other important staff members can lack the required knowledge in this area, such as supervisors and managers. Lack of information and experience in working with people with disabilities can lead to fears and concerns about what might be required in order to manage a person with a disability.¹³⁵ The World Health Organisation, in its 2011 **World Report on Disability**, emphasised the importance of supervisors, line managers and human resource personnel being familiar with the legal obligations on employers to provide reasonable accommodation to persons with disabilities.¹³⁶ Participants in one focus group suggested that line managers should be provided with adequate training on reasonable accommodations and should be more proactive about encouraging wellbeing in the workplace.

¹³⁵ Byrne, J.P. & Ring, F. (2009) **Demystifying Disability in the Workplace: Practical Guidelines for Managers & Supervisors**, Dublin: AHEAD, p.49.

¹³⁶ World Health Organisation & World Bank (2011) **World Report on Disability**, Geneva: WHO, p.251.

Additionally, in some cases, a reasonable adjustment will not succeed without the cooperation of other workers and managers. Colleagues and managers have an important role in ensuring that persons with disabilities feel supported in the workplace and that reasonable accommodations are carried out in practice. Difficulties can sometimes arise where colleagues do not have an adequate understanding of reasonable accommodations or are not sensitive to the needs of a person with a disability.

In the NDA's 2017 **National Survey of Public Attitudes to Disability in Ireland**, the majority of respondents indicated that they would feel at ease working with someone with a disability.¹³⁷ People were most comfortable working with persons with physical disabilities and least comfortable working with persons with mental health issues.¹³⁸ Reasons for feeling uncomfortable about having a work colleague with a disability ranged from the suitability of work or work environment and to the belief that there would be more work for the person or their colleague, to personal discomfort and behavioural concerns.

Good quality training and information for staff and managers can build awareness and understanding of disability in the workplace. The UN Committee has previously recommended that regular training on reasonable accommodation be made available to employees without disabilities.¹³⁹

The **Disability Awareness Support Scheme**, administered by the Department of Employment Affairs and Social Protection, provides funding so that private sector employers can buy in disability awareness training for staff who work with a colleague who has a disability.¹⁴⁰ The purpose of the training is to deliver clear and accurate information about disability and to address questions or concerns that employers and employees may have about working with persons with disabilities.

¹³⁷ National Disability Authority (2017) **National Survey of Public Attitudes to Disability in Ireland 2017**, Dublin: NDA, p.45.

¹³⁸ National Disability Authority (2017) **National Survey of Public Attitudes to Disability in Ireland 2017**, Dublin: NDA, p.45.

¹³⁹ See for instance UN Committee on the Rights of Persons with Disabilities (2017) **Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland**, Geneva: Office of the United Nations High Commissioner for Human Rights, p.12.

¹⁴⁰ More information is available on the Department of Employment Affairs and Social Protection website <http://www.welfare.ie/en/Pages/Disability-Awareness-Training_holder.aspx>.

According to the Department of Employment Affairs and Social Protection, the training should be aimed at providing participants with an understanding and awareness of the issues surrounding disability, including:

- An overview of relevant anti-discrimination and equal opportunities legislation
- General and specific information on disabilities, perceptual awareness exercises and disability etiquette
- Information on dealing with mental health issues in the workplace¹⁴¹

The scheme is described as demand-led, where expenditure arises in response to applications received.¹⁴² There is no pre-approved list of **Disability Awareness Support Scheme** training providers.¹⁴³ Difficulties finding an appropriate trainer were cited during one of the focus groups.

The table below illustrates that few applications from employers have been granted under the **Disability Awareness Support Scheme**.

Table 7: Expenditure on the Disability Awareness Support Scheme, 2012-2019

Year	€
2012	2,430
2013	834
2014	3,760
2015	12,967
2016	9,270
2017	62,275

¹⁴¹ More information is available on the Department of Employment Affairs and Social Protection website <http://www.welfare.ie/en/Pages/Disability-Awareness-Training_holder.aspx>.

¹⁴² Minister of State at the Department of Employment Affairs and Social Protection, the Department of Justice and Equality and the Department of Health with special responsibility for Disability Issues, Finian McGrath TD, **Parliamentary Question, 4 December 2018, 50434/18.**

¹⁴³ Minister of State at the Department of Employment Affairs and Social Protection, the Department of Justice and Equality and the Department of Health with special responsibility for Disability Issues, Finian McGrath TD, **Parliamentary Question, 27 June 2019, 27321/19.**

Year	€
2018	20,214
2019 (up to April 2019)	1,418

Source: Minister for Employment Affairs and Social Protection, Regina Doherty TD, **Parliamentary Question, 11 June 2019, 23589/19.**

Table 8: Total applications granted under the Disability Awareness Support Scheme, 2012-2019

Year	2012	2013	2014	2015	2016	2017	2018	2019 (up to April 2019)
Number of Applications granted	1	1	3	5	2	11	5	1

Source: Minister for Employment Affairs and Social Protection, Regina Doherty TD, **Parliamentary Question, 11 June 2019, 23589/19.**

These figures suggest that awareness of this training support is low. The highest number of applications granted under the scheme in a given year has been eleven. On average, approximately four applications were received per year over the 2012-2018 period. It is unclear the extent to which the Department of Employment Affairs and Social Protection undertakes awareness-raising measures for the scheme.

The Department has noted that the uptake of this grant has been low and intends to commence a focused policy review of the scheme in 2019.¹⁴⁴

4.2.5. The failure to provide reasonable accommodations arising from low levels of understanding and awareness of disabilities as well as negative attitudes towards reasonable accommodations

Low levels of awareness, understanding and expectations of employing persons with a disability can perpetuate negative attitudes towards employees or employment candidates with a disability.¹⁴⁵ Employers' negative attitudes towards

¹⁴⁴ Minister of State at the Department of Employment Affairs and Social Protection, the Department of Justice and Equality and the Department of Health with special responsibility for Disability Issues, Finian McGrath TD, **Parliamentary Question, 27 June 2019, 27321/19.**

¹⁴⁵ Australian Human Rights Commission (2016) **Willing to Work National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability**, Sydney: Australian Human Rights Commission, p.188.

persons with disabilities, particularly in the recruitment and hiring process, and towards reasonable accommodations themselves, can lead to discriminatory behaviour and act as an obstacle to the provision of reasonable accommodations. Again, disability awareness training has an important role to play in terms of increasing disability confidence amongst employers, challenging negative perceptions of people with a disability and enabling employers to see people with a disability as competent, capable, contributing members of the workforce.

Limited knowledge and understanding of disabilities can mean that an employer subjects a person with a disability to negative stereotypes, such as, that they are less capable, unreliable, present an increased compensation risk or are in need of expensive reasonable accommodations.¹⁴⁶ Such opinions can be formed about persons with disabilities and their capabilities with little or no evidence to support them.¹⁴⁷

Discrimination against persons with disabilities in the employment context is an issue in Ireland. Research undertaken by the ESRI and IHREC shows that when persons with disabilities are looking for work, or in the workplace, the odds of experiencing work-related discrimination were twice as high compared to those without disabilities.¹⁴⁸ Disability claims to the Workplace Relations Commission under employment equality legislation accounted for 22% of all claims in 2016, 18% in 2017¹⁴⁹ and 16% in 2018¹⁵⁰. Disability was the second most-cited ground of discrimination for all three years. However, discrimination against persons with disabilities may be under-reported, with ESRI-IHREC research attributing the low

¹⁴⁶ Australian Human Rights Commission (2016) **Willing to Work National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability**, Sydney: Australian Human Rights Commission, p.173.

¹⁴⁷ Equality Authority and the Department of Justice, Equality and Law Reform (2003) **Disability Resource Pack: Positive Action for the Recruitment and Retention of People with Disabilities in the State Sector**, Dublin: Equality Authority.

¹⁴⁸ Economic and Social Research Institute and Irish Human Rights and Equality Commission (2018) **Disability and Discrimination in Ireland: Evidence from the QNHS Equality Modules 2004, 2010, 2014**, ESRI and IHREC: Dublin, p.57.

¹⁴⁹ Workplace Relations Commission (2018) **Annual Report 2017**, Dublin: Workplace Relations Commission, p.23.

¹⁵⁰ Workplace Relations Commission (2019) **Annual Report 2018**, Dublin: Workplace Relations Commission, p.22.

prevalence of reporting of labour market discrimination by persons with disabilities to lower rates of labour market participation.¹⁵¹

Furthermore, since its establishment in 2014, disability-related queries have accounted for the highest number of queries to IHREC, the statutory body responsible for providing information on employment equality legislation.¹⁵² For example, in 2017, 31% of all queries under the **Employment Equality Acts** related to disability,¹⁵³ whilst in 2018, this figure stood at 30%¹⁵⁴. Recent figures released by IHREC show that 36% of employment queries from members of the public related to disability discrimination in the first half of 2019.¹⁵⁵

Assumptions as to the abilities of persons with a disability can act as a barrier to employment rather than the actual disability itself.¹⁵⁶ In a survey carried out by the Employer Disability Information service with 250 respondents, employers were asked to nominate their main reasons for not employing a person with a disability. The reasons supplied included that the work was not suitable for a person with a disability, the person was not suited for the type of role and that the workplace environment was not suitable.¹⁵⁷ The results highlight the perception amongst some employers that disability may cause difficulty in the workplace and may be complex and expensive to accommodate.

¹⁵¹ Economic and Social Research Institute and Irish Human Rights and Equality Commission (2018) **Disability and Discrimination in Ireland: Evidence from the QNHS Equality Modules 2004, 2010, 2014**, ESRI and IHREC: Dublin, p.57.

¹⁵² **Irish Human Rights and Equality Commission Act 2014**, section 10(2)(a).

¹⁵³ Irish Human Rights and Equality Commission (2018) **Annual Report 2017**, Dublin: IHREC, p.68.

¹⁵⁴ Irish Human Rights and Equality Commission (2019) **Annual Report 2018**, Dublin: IHREC, p.53.

¹⁵⁵ Irish Human Rights and Equality Commission, **‘Discrimination Against People with Disabilities in Employment a Persistent and Pernicious Roadblock to Worker’s Dignity and Inclusion’** [press release], available from their website at <<https://www.ihrec.ie/discrimination-against-people-with-disabilities-in-employment-a-persistent-and-pernicious-roadblock-to-workers-dignity-and-inclusion/>>.

¹⁵⁶ Irish Human Rights and Equality Commission, **Submissions on Behalf of the Amicus Curiae, The Irish Human Rights and Equality Commission, Nano Nagle School v Marie Daly**, available at the Irish Human Rights and Equality Commission website <<https://www.ihrec.ie/rights-of-persons-with-disabilities-to-reasonable-workplace-accommodation-at-question-in-supreme-court-case-2/>>.

¹⁵⁷ Employer Disability Information (2018) **Employers Attitude To Employing People With Disabilities: Survey Results**, Dublin: EDI, p.11.

Feedback from one focus group was that employers are more likely to provide reasonable accommodations where they have personal experience of a disability or have a family member with a disability. In the NDA's 2017 **National Survey of Public Attitudes to Disability in Ireland**, people who were at risk of social isolation, and who rarely or never had contact with someone with a disability, had lower levels of comfort of having colleagues with certain disabilities.¹⁵⁸

In Concluding Observations on some countries, the UN Committee on the Rights of Persons with Disabilities expressed concern about the persistence of discrimination based on disability in the employment context and called on States Parties to combat prejudices and stereotypes against persons with disabilities in the labour market.¹⁵⁹ IHREC has recently launched a "Because we're all human. Means we're all equal." national awareness campaign which aims to inform attitudes towards persons with disabilities across all areas of life, including at work.¹⁶⁰ The Minister of State at the Department of Employment Affairs and Social Protection, the Department of Justice and Equality and the Department of Health with special responsibility for Disability Issues has indicated that an awareness raising campaign to promote the benefits of employing persons with disabilities will be undertaken in 2020 as part of the **Comprehensive Employment Strategy for People with Disabilities 2015-2024**.¹⁶¹

In addition to negative attitudes towards persons with a disability, studies of employer attitudes toward the provision of accommodations in the workplace have also indicated a negative bias.¹⁶² Employers can view certain accommodations, such as reduced working hours and restructuring the work environment, as overly burdensome and negative attitudes may cause employers

¹⁵⁸ National Disability Authority (2017) **National Survey of Public Attitudes to Disability in Ireland 2017**, Dublin: NDA, p.45.

¹⁵⁹ See for instance UN Committee on the Rights of Persons with Disabilities (2019) **Concluding observations on the initial report of Norway**, Geneva: Office of the United Nations High Commissioner for Human Rights, p.11.

¹⁶⁰ More information on the "Because we're all human. Means we're all equal." national awareness campaign is available on the Irish Human Rights and Equality Commission website <<https://www.ihrec.ie/allhumanallequal>>.

¹⁶¹ Government of Ireland (2019) **Comprehensive Employment Strategy: Phase Two Action Plan 2019-2021**, Dublin: Stationery Office, p.35.

¹⁶² MacDonald-Wilson, K., Fabian, E. & Dong, S. (2008) 'Best Practices in Developing Reasonable Accommodations in the Workplace: Findings Based on the Research Literature', **The Rehabilitation Professional**, 16(4), 221-232.

to perceive employees who utilise such accommodations as being less capable or responsible.¹⁶³

Research from the Organisation for Economic Cooperation and Development (OECD) further indicates that employers may be reluctant to hire job applicants with disabilities as they form a view that the various imposed responsibilities (including reasonable accommodation costs) are collectively so onerous, that they feel it is safer not to hire any workers with potential disabilities.¹⁶⁴

Participants in one focus group stated that difficulties occasionally arise in the provision of reasonable accommodations due to the negative attitude of employers. Specifically, some employers are inflexible and reluctant to change existing workplace practices in order to provide reasonable accommodations because they have traditionally done things in a certain way.

Difficulties can also arise where colleagues have negative perceptions of the equity and fairness of reasonable accommodations, for example, where a person with a hidden disability is afforded part-time working hours as a reasonable accommodation. The attitudes of management and co-workers towards persons with a disability and reasonable accommodations can contribute to negative workplace cultures and present challenges to employers in the provision of reasonable accommodations.¹⁶⁵

The impact of both low levels of understanding about disability in the workplace and the negative attitude of some employers can particularly affect those seeking access to employment, where discrimination can be difficult to prove.¹⁶⁶ Research commissioned by the NDA, carried out in part through a survey consisting of 73 respondents from 26 organisations, indicates that public service employers are

¹⁶³ See for instance Blanck, P. & Marti, M. (2000) 'Attitudes, Behavior, and ADA Title I', in Blanck P. (ed) **Employment, Disability and the Americans with Disabilities Act: Issues in Law, Public Policy and Research**, Illinois: Northwestern University Press.

¹⁶⁴ Organisation for Economic Co-operation and Development (2010) **Sickness, disability and work: breaking the barriers. A synthesis of findings across OECD countries**, Paris: OECD, p.135.

¹⁶⁵ Australian Human Rights Commission (2016) **Willing to Work National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability**, Sydney: Australian Human Rights Commission, p.189.

¹⁶⁶ Parliamentary Assembly of the Council of Europe (2018) **Discrimination in access to employment**, Strasbourg: PACE, p.5.

less likely to provide accommodations at the recruitment stage than to those already in the workplace.¹⁶⁷

In one study from the United States of America, researchers compared those with and without a disability applying for sales positions at clothing retailers. They found that people with disabilities were only 27 per cent as likely to receive a job offer or advance as far in the hiring process as their equally qualified counterparts without a disability.¹⁶⁸ They describe this as a ‘no foot in the door’ discrimination pattern which gives no opportunity for people with disabilities to explain or demonstrate their suitability for the job.¹⁶⁹

A National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability found that disclosure at the recruitment stage ‘can result in job seekers with disability being concerned about discrimination or other elimination from the selection process’.¹⁷⁰ Individuals expressed to the Inquiry a strong sense that ‘employers put up a red flag’ when people disclose their disability. The Inquiry also heard from individuals who received more recruitment offers when they did not disclose their disability, while others reported offers of employment having been withdrawn following disclosure.¹⁷¹

Where a disability is disclosed in the context of a recruitment process, employers are required to provide prospective employees with disabilities with any necessary reasonable accommodations to help them complete job application forms, competency/assessment tests and to attend interviews. However, persons with disabilities may be less likely to request reasonable accommodations in the

¹⁶⁷ RSM PACEC & National Disability Authority (2018) **Research on good practice in the employment of people with disabilities in the public sector**, Dublin: RSM PACEC & NDA, p.7.

¹⁶⁸ Bendick, M. (2018). ‘Employment discrimination against persons with disabilities: Evidence from Matched Pair Testing’, **The International Journal of Diversity in Organisations, Communities, and Nations: Annual Review**, 17(1), 11-25.

¹⁶⁹ Bendick, M. (2018). ‘Employment discrimination against persons with disabilities: Evidence from Matched Pair Testing’, **The International Journal of Diversity in Organisations, Communities, and Nations: Annual Review**, 17(1), 11-25.

¹⁷⁰ Australian Human Rights Commission (2016) **Willing to Work National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability**, Sydney: Australian Human Rights Commission, p.173.

¹⁷¹ Australian Human Rights Commission (2016) **Willing to Work National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability**, Sydney: Australian Human Rights Commission, p.173.

context of a recruitment process, where they may be more vulnerable to discrimination, as opposed to when they are in employment.

The review of Workplace Relations Commission and Labour Court decisions revealed that the number of persons taking cases on the basis that a prospective employer had allegedly failed to provide reasonable accommodation, was very low. Taken at face value, this would indicate that persons with disabilities rarely encounter difficulties when seeking reasonable accommodations at the access stage, which conflicts with the literature in this area and information received during consultations.

It is unclear why there is a discrepancy between the literature in this area and the numbers of people taking cases relating to reasonable accommodation at the access stage to the Workplace Relations Commission. However, there may be a number of factors at play:

1. There is limited redress available at the access stage for employment equality claims. The Workplace Relations Commission does not have the power to instruct an employer to hire a prospective employee and compensation awards at the access stage are relatively low (the maximum award is €13,000)¹⁷²
2. Given that compensation awards are lower at the access stage, employers may be more likely to enter mediated settlements, which are not published online
3. Persons with a disability, particularly those with a hidden disability, may be reluctant to take a case given that the decision may be published online, thereby revealing details of their disability¹⁷³
4. Discrimination cases at the access stage can be difficult to prove¹⁷⁴
5. There may be less demand for reasonable accommodations at the recruitment stage. Research undertaken by the Willing Able Mentoring

¹⁷² **Employment Equality Acts 1998-2015**, section 82(4).

¹⁷³ In certain sensitive cases, the parties may ask to have their names withheld.

¹⁷⁴ Parliamentary Assembly of the Council of Europe (2018) **Discrimination in access to employment**, Strasbourg: PACE, p.5.

(WAM) programme¹⁷⁵ found that 79% of WAM applicants did not require accommodations at the interview stage¹⁷⁶

6. Awareness of the obligation on employers to provide reasonable accommodations to prospective employees may be low, which may result in lower number of complaints to the Workplace Relations Commission. In an online survey undertaken as part of research commissioned by the NDA, only a small number of employees (9.6% of those with a disability and 9% of those without disabilities) were aware if their organisations provided people with disabilities with reasonable accommodations at the recruitment stage¹⁷⁷

Further research in this regard may be merited.

4.2.6. The low awareness of financial supports available to employers in the provision of reasonable accommodations

The provision of reasonable accommodation does not necessarily involve a financial outlay. Evidence from the OECD suggests that accommodation costs are close to zero in around one-third of all cases, and substantial in only a few cases.¹⁷⁸ This suggests that in many cases it is flexibility, which is required of an employer in the provision of reasonable accommodations, not expenditure.

However, it is recognised that the provision of certain forms of reasonable accommodations, such as the adaptation of premises or the hiring of a sign language interpreter for an interview, can involve expense. Research indicates that employers can be reluctant to hire an individual with a disability due to the perceived financial burdens associated with the reasonable accommodation requirement and slow to make accommodations for existing employees for these same reasons.¹⁷⁹ In a limited survey undertaken by the Employer Disability

¹⁷⁵ Willing Able Mentoring (WAM) is a work placement programme which aims to promote access to the labour market for graduates with disabilities and build the capacity of employers to integrate disability into the mainstream workplace. More information is available at their website <<https://www.ahead.ie/wam>>.

¹⁷⁶ McGrotty C. (2018) 'The WAM Programme - Key Facts & Figures from AHEAD', **AHEAD Journal**, 7.

¹⁷⁷ RSM PACEC & National Disability Authority (2018) **Research on good practice in the employment of people with disabilities in the public sector**, Dublin: RSM PACEC & NDA, p.38.

¹⁷⁸ Organisation for Economic Cooperation and Development (2010) **Sickness, disability and work: breaking the barriers. A synthesis of findings across OECD countries**, Paris: OECD, p.134.

¹⁷⁹ Long, A. (2014) 'Reasonable Accommodation as Professional Responsibility, Reasonable Accommodation as Professionalism', **UC Davis Law Review**, 47, 1753-1805.

Information service in 2018, which had 250 respondents, 46.7% of participating employers reported that financial support would encourage them to employ persons with disabilities.¹⁸⁰ Participants in one focus group also noted that employers can be concerned about the financial cost of any reasonable accommodation measure.

As part of the process to provide reasonable accommodations, employers are required to determine whether the specific request would impose a disproportionate burden on them. This includes a consideration of the costs involved, and whether there is a possibility of obtaining some form of public funding.¹⁸¹ A number of financial supports are available to private sector employers in providing reasonable accommodation to employees or employment candidates with a disability, including the Department of Employment Affairs and Social Protection's **Reasonable Accommodation Fund for the Employment of People with Disabilities** ("the Reasonable Accommodation Fund").

The stated purpose of the **Reasonable Accommodation Fund** is to assist persons with disabilities to gain access to the open labour market by providing grants for reasonable accommodations in the private sector and to support private sector employers in the employment of persons with disabilities.¹⁸² The following grants are available through the **Reasonable Accommodation Fund**:

1. **Workplace Equipment and Adaptation Grant:** Grant assistance is available for employers of staff with disabilities who need an adapted or more accessible workplace or the purchase of specialised equipment, in order to do their job. The grant can be applied for if the person with a disability is already employed or is about to be employed. A maximum grant of €6,350 is available towards the cost of adaptations to premises or equipment.¹⁸³
2. **Personal Reader Grant:** If an employer hires a person who is blind or visually impaired and who needs assistance with job-related reading, they may

¹⁸⁰ Employer Disability Information (2018) **Employers Attitude To Employing People With Disabilities: Survey Results**, Dublin: EDI, p.2.

¹⁸¹ The Supreme Court reinforced this point in the *Daly v Nano Nagle School* decision.

¹⁸² More information on the Reasonable Accommodation Fund is available on the Department of Employment Affairs and Social Protection website <http://www.welfare.ie/en/Pages/Reasonable-Accommodation-Fund_holder.aspx>.

¹⁸³ More information on the **Workplace Equipment and Adaptation Grant** is available on the Department of Employment Affairs and Social Protection website <<http://www.welfare.ie/en/Pages/Workplace-Equipment-Adaptation-Grant.aspx>>.

be entitled to a grant to allow them employ a Personal Reader. Examples of situations for which the grant may be given are where:

- The individual is employed in the private sector and needs assistance with work-related reading
- Their prospects for promotion are restricted because of reading difficulties due to visual impairment¹⁸⁴

3. **Job Interview Interpreter Grant:** Under the **Job Interview Interpreter Grant Scheme**, the Department of Employment Affairs and Social Protection will normally pay a set fee for a three hour period to provide for the services of an interpreter to support speech or hearing impaired persons who wish to attend job interviews. Travel costs for the interpreter are paid at a fixed rate.¹⁸⁵

4. **Employee Retention Grant:** The purpose of the **Employee Retention Grant Scheme** is to assist private sector employers to retain employees who acquire an illness, condition or impairment which impacts on their ability to carry out their job. This scheme assists in maintaining the employability of the employee when s/he acquires an illness, condition or impairment (occupational or otherwise) by providing funding to:

- Identify accommodation and/or training to enable the employee to remain in his/her current position (maximum funding is €2,500)
- Re-train the employee so that s/he can take up another position within the company (maximum funding is €12,500)¹⁸⁶

Similar to the **Disability Awareness Support Scheme**, the **Reasonable Accommodation Fund** is a demand-led scheme where expenditure arises in response to applications received.¹⁸⁷ Action 3.2 of the **Comprehensive**

¹⁸⁴ More information on the **Personal Reader Grant** is available on the Department of Employment Affairs and Social Protection website < <http://www.welfare.ie/en/Pages/Personal-Reader-Grant.aspx>>.

¹⁸⁵ More information on the **Job Interview Interpreter Grant** is available on the Department of Employment Affairs and Social Protection website < <http://www.welfare.ie/en/Pages/Job-Interview-Interpreter-Grant.aspx>>.

¹⁸⁶ More information on the **Employee Retention Grant** is available on the Department of Employment Affairs and Social Protection website <<http://www.welfare.ie/en/Pages/Employee-Retention-Scheme.aspx>>.

¹⁸⁷ Minister of State at the Department of Employment Affairs and Social Protection, the Department of Justice and Equality and the Department of Health with special responsibility for Disability Issues, Finian McGrath TD, **Parliamentary Question, 4 December 2018, 50434/18.**

Employment Strategy for People with Disabilities 2015-2024 commits to continuing to support persons with disabilities to access further training and employment opportunities through relevant programmes that include the **Reasonable Accommodation Fund**.¹⁸⁸

However, while these supports are both welcome and necessary, it appears that low awareness of the **Reasonable Accommodation Fund** is limiting its effectiveness. The Employer Disability Information service reports that some employers are unaware of the supports and funding available through the Department of Employment Affairs and Social Protection and they can miss deadlines for applications as a result.¹⁸⁹ In the limited survey undertaken by the Employer Disability Information service in 2018, which had 250 respondents, 56% of employers were unaware of the financial supports available from the Department of Employment Affairs and Social Protection. While this figure represented an improvement of 9% in awareness of these supports since 2016, it illustrates that low awareness among employers about the available financial supports, and how to access them, remains an issue.

Participants in one focus group were of the view that, in general, employers have low levels of awareness of the financial and training supports available to them to accommodate the needs of employees with disabilities.

The Department of Employment Affairs and Social Protection states that it does engage in awareness-raising activities to increase awareness of the **Reasonable Accommodation Fund**. According to the Department of Employment Affairs and Social Protection, it promotes the scheme through employer engagement initiatives. In addition, the Department states that its' own employment case officers' and the staff of the **EmployAbility** service disseminate information on the **Reasonable Accommodation Fund** to both persons with disabilities and private sector employers on a regular basis.¹⁹⁰

Nevertheless, as the following figures show, the number of applications for and expenditure on the existing grants suggest that more could be done to publicise

¹⁸⁸ Government of Ireland (2015) **Comprehensive Employment Strategy for People with Disabilities 2015-2024**, Dublin: Stationery Office, p.56.

¹⁸⁹ Employer Disability Information service, **Report to the Department of Employment Affairs and Social Protection Report dated 30th May 2016**, available at the Employer Disability Information service website
<<http://www.employerdisabilityinfo.ie/about/submissions/deasp-report>>.

¹⁹⁰ Minister of State at the Department of Employment Affairs and Social Protection, the Department of Justice and Equality and the Department of Health with special responsibility for Disability Issues, Finian McGrath TD, **Parliamentary Question, 20 June 2017, 27072/17**.

these financial supports and encourage their take-up. The Phase Two Action Plan 2019-2021 for the **Comprehensive Employment Strategy for People with Disabilities 2015-2024** states that the Department of Employment Affairs and Social Protection will undertake an information campaign to raise awareness among employers of its services and supports for the recruitment and retention in employment of persons with disabilities.¹⁹¹

Table 9: Expenditure on the Reasonable Accommodation Fund for People with Disabilities, 2012-2018

Year	2012	2013	2014	2015	2016	2017	2018
	€	€	€	€	€	€	€
Workplace Equipment and Adaptation Grant	71,176	81,724	61,776	58,108	54,041	69,254	100,023
Personal Reader Grant	27,274	27,526	14,499	11,866	16,537	31,619	12,338
Job Interview Interpreter Grant	6,355	2,767	1,589	3,950	7,244	5,714	6,361
Employee Retention Grant	4,320	0	0	0	0	0	1,900
Total	109,125	112,017	77,864	73,925	77,822	106,587	120,622

Source: Minister of State at the Department of Employment Affairs and Social Protection, the Department of Justice and Equality and the Department of Health with special responsibility for Disability Issues, Finian McGrath TD, **Parliamentary Question, 4 December 2018, 50434/18** and Finian McGrath TD, **Parliamentary Question, 15 January 2019, 1167/19**.

¹⁹¹ Government of Ireland (2019) **Comprehensive Employment Strategy: Phase Two Action Plan 2019-2021**, Dublin: Stationery Office, p.31.

Table 10: Total applications granted under the Reasonable Accommodation Fund for People with Disabilities, 2012-2018

Year	2012	2013	2014	2015	2016	2017	2018 (to Oct.)
Workplace Equipment and Adaptation Grant	33	44	36	64	39	39	39
Personal Reader Grant	49	71	49	71	49	56	32
Job Interview Interpreter Grant	42	29	18	63	26	28	34
Employee Retention Grant	2	6	8	0	0	0	1
Total	126	150	111	198	114	123	106

Source: Minister of State at the Department of Employment Affairs and Social Protection, the Department of Justice and Equality and the Department of Health with special responsibility for Disability Issues, Finian McGrath TD, **Parliamentary Question, 4 December 2018, 50434/18.**

The relatively small number of applications granted across all of the grant schemes appear to reinforce the findings of the Employer Disability Information service that awareness of the available financial supports amongst employers is low. For instance, over the course of 2015-2017, no applications for the **Employee Retention Grant** were granted and there was no expenditure on the scheme from 2013 until 2017. Additionally, while annual expenditure on the **Workplace Equipment and Adaptation Grant** is comparatively high, the number of applications granted has never risen above 64 per annum.

Research commissioned by the NDA and undertaken by the Work Research Centre in 2012 also found that levels of expenditure and levels of uptake of the **Workplace Equipment and Adaptation Grant** were very low in Ireland in

comparison to the Access to Work scheme in the UK.¹⁹² A more proactive approach in promoting and publicising the different forms of grant assistance available to employers was recommended.¹⁹³ A previous NDA publication also indicated that there is scope for more active promotion of these grant support schemes.¹⁹⁴

By contrast, there appears to be considerably more awareness of the **Wage Subsidy Scheme**. Under the **Wage Subsidy Scheme**, an employer is provided with a general subsidy for any perceived productivity shortfall in excess of 20% for a person with a disability, in comparison to a colleague without a disability.¹⁹⁵ The rate of subsidy is €5.30 per hour and the amount of the subsidy is based on the number of hours worked. The maximum annual subsidy payable is €10,748 per year based on a 39 hour week.

In 2017, €20.83 million was spent on the scheme and expenditure totalled €18.55 million over the January-October 2018 period.¹⁹⁶ In October 2018, 1,663 employers were claiming subsidies under the scheme in respect of 2,606 employees with disabilities.¹⁹⁷

¹⁹² Work Research Centre (2012) **Research on the provision of Assistive Technology in Ireland and other countries to support independent living across the life cycle**, Dublin: NDA, p.150.

¹⁹³ Employer Disability Information service, **Report to the Department of Employment Affairs and Social Protection dated 30th May 2016**, available at the Employer Disability Information service website <<http://www.employerdisabilityinfo.ie/about/submissions/deasp-report>>.

¹⁹⁴ National Disability Authority (2005) **Disability and Work: The picture we learn from official statistics**, Dublin: NDA, p.12.

¹⁹⁵ More information on the **Wage Subsidy Scheme** is available on the Department of Employment Affairs and Social Protection website <http://www.welfare.ie/en/Pages/Wage-Subsidy-Scheme_holder_3176.aspx>.

¹⁹⁶ Minister of State at the Department of Employment Affairs and Social Protection, the Department of Justice and Equality and the Department of Health with special responsibility for Disability Issues, Finian McGrath TD, **Parliamentary Question, 4 December 2018, 50427/18**.

¹⁹⁷ Minister of State at the Department of Employment Affairs and Social Protection, the Department of Justice and Equality and the Department of Health with special responsibility for Disability Issues, Finian McGrath TD, **Parliamentary Question, 4 December 2018, 50427/18**.

4.2.7. The limitations of existing financial supports available to employers to provide reasonable accommodations

As noted, the potential cost implications of accommodating the needs of persons with disabilities can act as a deterrent to employing persons with disabilities and providing them with workplace accommodations. The availability of funding or compensation for reasonable accommodation measures represents an incentive to organisations and debilitates the cost argument of employers when refusing the provision of reasonable accommodation.¹⁹⁸ The need for specific incentives and supports for reasonable accommodation measures has been recognised by the UN Committee on the Rights of Persons with Disabilities.¹⁹⁹

In the 2018 survey conducted by the Employer Disability Information service, which had 250 respondents, employers were asked to nominate their main reasons for not employing a person with a disability. The reasons cited included the cost of new equipment, software and furniture, and that the workplace environment was not suitable. The financial cost of any reasonable accommodation measure to employers was also raised as a concern during one of the focus groups.

Whilst the relatively small number of employers applying for financial support from the Department of Employment Affairs and Social Protection highlights low awareness of the scheme, it also raises concerns regarding potential limitations or inadequacies with the existing supports. The Employer Disability Information service have identified a number of specific issues with the individual financial supports available through the Department of Employment Affairs and Social Protection, and have also raised concerns about the overall structure of the supports. These include:

- The **Workplace Equipment and Adaptation Grant** works on a refund basis, therefore employers must invest in the equipment prior to receiving the money. This financial outlay can present difficulties for employers, especially smaller and medium sized private enterprises

¹⁹⁸ Austrian Institute for SME Research (2008) **Practices of providing reasonable accommodation for persons with disabilities in the workplace**, Austrian Institute for SME Research: Vienna.

¹⁹⁹ See for instance UN Committee on the Rights of Persons with Disabilities (2018) **Concluding observations on the initial report of Poland**, Geneva: Office of the United Nations High Commissioner for Human Rights, p.13. See also UN Committee on the Rights of Persons with Disabilities (2018) **Concluding observations on the initial report of Slovenia**, Geneva: Office of the United Nations High Commissioner for Human Rights, p.11.

- The **Job Interview Interpreter Grant** provides funding for an Irish Sign Language (ISL) interpreter at interview and induction stages and at no other time during the employment relationship²⁰⁰
- The **Disability Awareness Support Scheme** is advertised as offering funding to private sector employers to provide Disability Awareness Training for staff who work with a colleague who has a disability.²⁰¹ However, such training is beneficial for all staff whether they have a colleague who has disclosed a disability or not
- The **Employee Retention Grant** scheme assists employers to support the re-training of an employee who has acquired a disability but doesn't support productivity shortfalls²⁰²

Issues have also been identified with certain conditions pertaining to the **Wage Subsidy Scheme**, which may disincentivise employers from providing certain forms of reasonable accommodations, such as part-time or reduced working hours. To avail of the Wage Subsidy Scheme, an employee must work for at least 21 hours per week.²⁰³ Concerns were voiced in one of the focus groups that this threshold is too high and employers cannot access the scheme in respect of employees who are working part-time below 21 hours. Additionally, employers are only provided with assistance under the Wage Subsidy Scheme where the employee is less than 12 months in that employment. Participants in one focus group expressed the view that the scheme should be available for those who

²⁰⁰ The **Irish Sign Language Act 2017** now recognises ISL as a native and independent language.

²⁰¹ “The Disability Awareness Support Scheme offers funding to private sector employers to provide Disability Awareness Training for staff who work with a colleague who has a disability.” More information is available on the website of the Department of Employment Affairs and Social Protection < http://www.welfare.ie/en/Pages/Disability-Awareness-Training_holder.aspx>. The Application Form questions whether the proposed course participants work with a colleague who has a disability. If not, the employer is required to explain why these participants are being proposed for disability awareness training. The Application Form is available on the website of the Department of Employment Affairs and Social Protection <<http://www.welfare.ie/en/pdf/DisabilityAwarenessTrainingApplication.pdf>>.

²⁰² Employer Disability Information service, **Report to the Department of Employment Affairs and Social Protection Report dated 30th May 2016**, available at the Employer Disability Information service website <<http://www.employerdisabilityinfo.ie/about/submissions/deasp-report>>.

²⁰³ According to the Minister for Employment Affairs and Social Protection, the rationale in relation to the Wage Subsidy Scheme having a minimum of 21 subsidised hours is to increase the likelihood of people with disabilities obtaining and sustaining employment in the open labour market. Regina Doherty TD, **Parliamentary Question, 19 February 2019, 7896/19**.

acquire a disability after 12 months in order to provide the employer with a financial incentive to retain the employee. The NDA is concerned that the scheme, in its current form, may mitigate against employers retaining employees who have acquired a disability after one year of employment.

Participants in one focus group also highlighted a perceived recent change of practice, which means that employers now only receive a backdated **Wage Subsidy Scheme** payment from the date of application for the scheme as opposed to the date of commencement of employment. However, information received from the Department indicates that there has not been a change of practice; the **Wage Subsidy Scheme Guidelines** were updated in April 2019 to correct an ambiguity in the previous guidelines, which had resulted in differing local interpretations on the matter of backdating payments to the date of commencement of employment.

In particular, the Department advised that some employers mistakenly believed that they could employ a person with a disability on a 'trial' basis for a few months, and subsequently, if they decided to retain the employee, retrospectively apply for the **Wage Subsidy Scheme**, and backdate their subsidy to the date at which the employee started working for them. There had been local interpretations allowing this practice under the previous guidelines but the updated guidelines ensure that this is not permissible. According to the Department, this was never the intention of the scheme and the Department's policy position has not changed.

More generally, the financial and training supports are only available to private sector employers. As a result, public sector employers, as well as state-funded community and voluntary organisations, are ineligible for such grant assistance. Concerns were also raised in one focus group that state-funded schools are not eligible for these supports.

Additionally, the financial supports available to private sector employers are dependent on the needs of a particular employee or employment candidate. There is no separate financial assistance for workplace supports and access grants, which would enable an employer to prepare themselves for the employment of persons with disabilities. For example, access supports could assist an employer to ensure their workplace is accessible prior to advertising their vacancy. Unless the employer is confident that they are ready to

accommodate a variety of physical disabilities, they may be fearful of the potential litigious reprisal when they are interviewing a candidate.²⁰⁴

In addition to the foregoing, the amount of grant assistance funding provided to employers has remained unchanged since 2004.²⁰⁵ A participant in one of the focus groups noted that while the minimum wage has increased in recent years, the rate of subsidy for the Wage Subsidy Scheme has not.

OECD research also found that employers in many countries indicated their willingness to try to employ a person with reduced work capacity and productivity where financial support is easy to apply for and does not require much time investment.²⁰⁶ However, in Ireland, application forms for grant supports and financial incentives must be downloaded and sent by post to the employer's local Department of Employment Affairs and Social Protection's INTREO Centre. There is no online application system for the **Reasonable Accommodation Fund**.

The Department intends to undertake a review of the **Reasonable Accommodation Fund** in 2019 with a view to assessing how its operations could be more effective.²⁰⁷ The NDA advises that the above considerations could be helpful in this review process.

²⁰⁴ Employer Disability Information service, **Report to the Department of Employment Affairs and Social Protection Report dated 30th May 2016**, available at the Employer Disability Information service website

<<http://www.employerdisabilityinfo.ie/about/submissions/deasp-report>>.

²⁰⁵ Employer Disability Information service, **Report to the Department of Employment Affairs and Social Protection Report dated 30th May 2016**, available at the Employer Disability Information service website

<<http://www.employerdisabilityinfo.ie/about/submissions/deasp-report>>.

²⁰⁶ Organisation for Economic Cooperation and Development (2010) **Sickness, disability and work: breaking the barriers. A synthesis of findings across OECD countries**, Paris: OECD, p.137.

²⁰⁷ Minister of State at the Department of Employment Affairs and Social Protection, the Department of Justice and Equality and the Department of Health with special responsibility for Disability Issues, Finian McGrath TD, **Parliamentary Question, 4 December 2018, 50433/18**.

4.2.8. The lack of provision for monitoring and reviewing reasonable accommodations

The provision of reasonable accommodations should be viewed as an ongoing process, not a onetime event.²⁰⁸ Accordingly, all implemented reasonable accommodations should be monitored and reviewed on a regular basis and such monitoring and review systems should be incorporated into formal processes supporting the provision of reasonable accommodations.

By periodically consulting with employees receiving accommodations, employers will understand how the adjustments are being received, whether they are effective and whether further adjustments are necessary.²⁰⁹ In particular, employers may need to review accommodations if there is a change in the employee's circumstances, disability or job role and the question of reasonable accommodations may need to be revisited. A formal feedback process may also provide employees who are hesitant to raise issues with an opportunity to tweak their accommodations.²¹⁰

Research commissioned by the NDA underscored the importance of regularly reviewing reasonable accommodations as the employee's needs, their environment, or their work duties can change.²¹¹ The UK's Civil Service **Workplace Adjustments Line Manager's Best Practice Guide** also stresses that adjustments should be reviewed regularly to ensure that they remain effective.²¹² Furthermore, the International Labour Organisation advises

²⁰⁸ MacDonald-Wilson, K., Fabian, E. & Dong, S. (2008) 'Best Practices in Developing Reasonable Accommodations in the Workplace: Findings Based on the Research Literature', **The Rehabilitation Professional**, 16(4), 221-232.

²⁰⁹ Raymond, M., Olsen, J., Ainsworth, S., Lotia, N., Harbridge, R. & Holland, A. (2019) **Improving Access and Inclusion in Employment for People with Disabilities - Implementation of Workplace Adjustments in 'Best-Practice' Organisations**, Melbourne: University of Melbourne, p.12.

²¹⁰ Raymond, M., Olsen, J., Ainsworth, S., Lotia, N., Harbridge, R. & Holland, A. (2019) **Improving Access and Inclusion in Employment for People with Disabilities - Implementation of Workplace Adjustments in 'Best-Practice' Organisations**, Melbourne: University of Melbourne, p.12.

²¹¹ RSM PACEC & National Disability Authority (2018) **Research on good practice in the employment of people with disabilities in the public sector**, Dublin: RSM PACEC & NDA, p.43.

²¹² UK Civil Service Human Resources (2018) **Workplace Adjustments Line Manager's Best Practice Guide**, p.12.

undertaking periodic reviews to determine how a reasonable accommodation is functioning in practice.²¹³

The UN Committee on the Rights of Persons with Disabilities has also raised concerns regarding the lack of monitoring of the provision of reasonable accommodation in the workplace in other jurisdictions and called for measures to ensure the effective monitoring of the provision of reasonable accommodations.²¹⁴

The extent to which reviews are formally integrated into the reasonable accommodation process is unclear. Participants in three focus groups reported that there was an absence of formalised structures for monitoring and reviewing reasonable accommodations in the workplace. Feedback received indicates that it is incumbent on the person who has been provided with reasonable accommodation to report any difficulties they may be experiencing with an implemented accommodation.

Participants in one focus group stated that reviews do occur in organisations, at least for the first period after a person commences employment. However, participants were unclear as to how formalised these structures were.

There was mixed views expressed in some of the focus groups about the need to monitor or review reasonable accommodations. Some participants favoured the idea, while others expressed the view that employees are comfortable following up with their line manager about any potential need to alter their reasonable accommodation. Participants in one focus group expressed some reservations about the workload associated with monitoring or reviewing accommodations within larger organisations or bodies and the appropriateness of same.

²¹³ International Labour Organisation (2016) **Promoting Diversity and Inclusion Through Workplace Adjustments: A Practical Guide**, Geneva: ILO, p.70.

²¹⁴ See for instance UN Committee on the Rights of Persons with Disabilities (2017) **Concluding observations on the initial report of Luxembourg**, Geneva: Office of the United Nations High Commissioner for Human Rights, pp.9-10.

Chapter 5 - Good practice for employers in the provision of Reasonable Accommodations

5.1. Introduction

Employers are legally obliged to provide reasonable accommodations to employees and employment candidates with disabilities, so long as the measures do not impose a disproportionate burden on the employer. Reasonable accommodations vary in form, but are always an individually tailored solution, as per the requirements of employment equality legislation. Accordingly, an assessment of a request for reasonable accommodations must involve an individual analysis of the individual needs of the person, the specific working conditions and the resources of the employer, and result in an accommodation that meets those specific needs; generalised or blanket measures are not acceptable.

It is not possible to compile a definitive list determining what kind of accommodations are required for certain disabilities or particular workplace situations, as this would not be in keeping with the aim of individual solutions.²¹⁵ However, there are certain general, evidence-based good practices regarding the provision of reasonable accommodations which can support employers in making an individual analysis of an accommodation request and tailoring an individual solution to meet a person's needs. As such, by recognising the following good practices, employees and employment candidates with disabilities will be more likely to request reasonable accommodations, and employers will be less likely to breach the reasonable accommodation requirement.

In addition to reducing the risk of litigation, the provision of reasonable accommodations also makes business sense by helping employers to enhance business outcomes by maximising the engagement and skills of employees in the workplace, increasing productivity, creating a positive working environment that is free from discrimination, retaining skilled staff, eliminating the cost of training new employees and promoting equality.²¹⁶

At the individual level, the provision of reasonable accommodations ensures that a person with a disability has equal opportunities when applying for work, when

²¹⁵ Austrian Institute for SME Research (2008) **Practices of providing reasonable accommodation for persons with disabilities in the workplace**, Austrian Institute for SME Research: Vienna.

²¹⁶ Equality Authority (2011) **Equality and mental health: what the law means for your workplace**, Roscrea: Equality Authority, p.3.

in employment or when seeking promotion. Reasonable accommodations can help to ensure that a person with a disability takes up employment, progresses in employment, retains employment, or returns to employment following a period of absence. Employees who feel appreciated and supported in the workplace tend to be more productive and are more likely to return to work after acquiring a disability.²¹⁷

While there is some degree of overlap, particularly, with regards to encouraging disability disclosure in the workplace, the following good practices primarily focus on the provision of reasonable accommodations in the employment context, as opposed to the broader area of good practices in the employment of persons with disabilities.²¹⁸ The following good practices are drawn from the literature review, consultations and review of Workplace Relations Commission and Labour Court decisions.

5.2. Promoting Disability Disclosure and a Disability Inclusive Work Environment

As discussed, failure to disclose a disability can act as a barrier to initiating the reasonable accommodation process.²¹⁹ Disclosure of a disability allows the employer to provide various supports to the employee that can assist them in the work environment or in accessing employment. The employer should therefore strive to provide a safe and inclusive environment, where an employee feels comfortable in disclosing their disability, feels able to ask for any supports needed, and is assured that such disclosure will not have a negative impact on her/his career.²²⁰ Trust plays a vital role in creating an environment for disclosure.

In the NDA's research **Disclosing Disability in the Workplace a Review of Literature and Practice in the Irish Public Sector**, participants were asked to comment on what they felt would help facilitate disclosure. Suggestions included ensuring support was available for those who disclosed; increased disability awareness training, which would in turn impact on attitudes towards

²¹⁷ National Disability Authority (2015) **Retaining employees who acquire a disability: A guide for employers**, Dublin: NDA, p.11.

²¹⁸ The following good practice is drawn from the review of Workplace Relations Commission and Labour Court decisions relating to reasonable accommodation, from international and domestic literature relevant to reasonable accommodation and from consultation with various stakeholders. It does not constitute legal advice and should not be taken to be a comprehensive statement of the law.

²¹⁹ See Section 4.2.1 for further discussion.

²²⁰ Irish Business and Employers Confederation (2012) **Mental health and wellbeing: A Line Manager's Guide**, Dublin: Ibec, p.15.

disability; having role models with disabilities working in their work environment; and ensuring accommodations were put in place for those who disclosed a disability.²²¹

The following measures constitute good practice in building a disability inclusive work environment:

- Directors, Chief Executive Officers and Senior Management across the public and private sectors should demonstrate leadership by producing written commitments and action plans to creating inclusive work environments that promote and support the recruitment and retention of persons with disabilities and environments where employees feel comfortable and supported disclosing a disability
- Employers should consider taking positive action measures and recruiting persons with disabilities.²²² Such action may contribute to ensuring greater diversity and promoting an open and supportive work environment, which can assist employees in deciding whether to disclose that they have a disability.²²³ Employers should consider advertising vacant positions through a variety of ways, such as through the internet and radio, as a means of reaching out to persons with disabilities and encouraging them to apply for vacancies
- Employers should consider ways of encouraging persons with disabilities to apply for promotional opportunities as a way of ensuring that persons with disabilities are represented in senior positions. The importance of having role models with a disability within an organisation, particularly in senior level positions, was highlighted in previous NDA research on disability disclosure²²⁴
- Employers should provide management and employees with disability awareness training and employment equality training to ensure that the culture of the organisation supports a work environment where everyone, including persons with disabilities, feels included and supported. Such training should encompass the various types of disability and incorporate the need for the provision of reasonable accommodations to employees with disabilities

²²¹ National Disability Authority (2009) **Disclosing Disability in the Workplace a Review of Literature and Practice in the Irish Public Sector**, Dublin; NDA, p.64.

²²² Positive action as regards disability is regulated under section 33 of the **Employment Equality Acts**.

²²³ Irish Business and Employers Confederation (2012) **Mental health and wellbeing: A Line Manager's Guide**, Dublin: Ibec, p.16.

²²⁴ National Disability Authority (2009) **Disclosing Disability in the Workplace a Review of Literature and Practice in the Irish Public Sector**, Dublin; NDA, p.64.

Disability awareness training provides an opportunity for new ideas and information; it allows people to explore and reflect on information and ideas that they may be hearing for the first time, and to reflect on their own experiences and beliefs.²²⁵ It also alerts employees to an employer's legislative responsibilities as regards reasonable accommodation and can increase discussion around disability in general²²⁶

- While recognising that it is a personal decision, employers should encourage employees to disclose disabilities and request reasonable accommodations. Within the public service, some public bodies have published articles in staff newsletters and on the intranet and undertook campaigns to raise awareness of disability or to promote the positive benefits of disclosing a disability²²⁷
- Employers should clearly communicate to employees the supports that are available for persons with existing and acquired disabilities so that employees feel comfortable disclosing their disability²²⁸
- Both public and private sector employers should consider designating Disability Liaison Officers to assist their respective Senior Management teams and HR Departments to create and maintain an inclusive working environment and to provide supports for employees with disabilities²²⁹
- Employers and managers should be willing to have conversations with employees and should utilise neutral and non-stigmatising opportunities to talk about any issues an employee may be having in the workplace. Such opportunities may include regular work planning sessions, appraisals or informal chats about progress. If an employer demonstrates an ability to open up and be empathetic, an employee will be more likely to disclose sensitive information honestly²³⁰

²²⁵ Webster, B. (2014) **A Mental Health Policy Document for the Workplace**, Dublin: See Change, p.15.

²²⁶ National Disability Authority (2009) **Disclosing Disability in the Workplace a Review of Literature and Practice in the Irish Public Sector**, Dublin: NDA, p.75.

²²⁷ RSM PACEC & National Disability Authority (2018) **Research on good practice in the employment of people with disabilities in the public sector**, Dublin: RSM PACEC & NDA, p.6.

²²⁸ National Disability Authority (2018) **Report on Compliance with Part 5 of the Disability Act 2005 for 2017**, Dublin: NDA, p.4.

²²⁹ National Disability Authority (2018) **Report on Compliance with Part 5 of the Disability Act 2005 for 2017**, Dublin: NDA, p.4.

²³⁰ Irish Business and Employers Confederation (2012) **Mental health and wellbeing: A Line Manager's Guide**, Dublin: Ibec, p.16.

Research undertaken by the NDA on disclosure in the workplace indicates that there was a general perception among employees that invisible disabilities, such as, mental health issues were viewed more negatively or even stigmatised.²³¹ Feedback from a number of focus groups echoed the point that persons with hidden disabilities, particularly mental health related issues, may be more reluctant to disclose. The following are some good practices in this regard:

- Employers could provide appropriate staff with Mental Health First Aid Training. In the UK Civil Service, over 1,000 people have been trained as Mental Health First Responders.²³² The Responders are trained to spot the signs of mental health issues, offer initial help and guide a person towards support. The programme is also designed to build employees' confidence to have open conversations around mental health and break the stigma. In April 2017, the Health Service Executive announced a project partnership with Mental Health First Aid Ireland to make such training more widely available in Ireland²³³
- Employers could participate in workplace campaigns which aim to start positive conversations around mental health and break the silence of stigma, such as See Change's month long national **Green Ribbon Campaign**.²³⁴ Such campaigns can assist in creating a workplace environment where people can be open about their mental health issues and promote a greater understanding and acceptance of mental health related issues
- Employers should encourage line managers to take a proactive interest in the wellbeing of staff and to recognise when there is a need for external support.²³⁵ Reducing stress, promoting work-life balance and developing a culture of workplace support can help to reduce the likelihood of work-

²³¹ National Disability Authority (2009) **Disclosing Disability in the Workplace a Review of Literature and Practice in the Irish Public Sector**, Dublin: NDA, p.72.

²³² UK Cabinet Office (2017) **A Brilliant Civil Service: becoming the UK's most inclusive employer, The Civil Service Diversity and Inclusion Strategy**, London: UK Cabinet Office, p.31.

²³³ Health Service Executive, '**HSE announces project partnership with Mental Health First Aid Ireland**' [press release], available on the HSE website <<https://www.hse.ie/eng/services/news/media/pressrel/hse-announces-project-partnership-with-mental-health-first-aid-ireland.html>>.

²³⁴ More information on See Change's "**Green Ribbon Campaign**" is available on their website <<https://seechange.ie/green-ribbon/>>.

²³⁵ Equality Commission for Northern Ireland (2019) **Mental Health Charter**, available on the Equality Commission for Northern Ireland website <<https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/MentalHealthCharter.pdf>>.

related mental health issues and promote mental wellbeing.²³⁶ Additionally, employees with mental health issues can sometimes be reluctant to seek help initially, therefore line managers may benefit from greater awareness as they may be more likely to notice a change in manner from individuals experiencing such issues²³⁷

- Employers should support managers and staff through proactive coaching, training and advice to be confident in engaging with staff experiencing mental health issues, and explain how the obligation to provide reasonable accommodations applies to persons with mental health related issues.²³⁸ This can assist in developing a workplace culture which is sensitive to and inclusive of the needs of those with mental health related issues
- Employers should positively engage employees who have disclosed a mental health issue and their representatives in the development, monitoring and review of all relevant employment policies.²³⁹ The expertise of those with lived experience can assist in ensuring that employment policies are responsive to those with mental health issues

5.3. General Considerations

- The duties placed by employment equality legislation on employers are owed to individuals with disabilities with whom they have dealings.²⁴⁰ There is no duty owed to persons with disabilities in general. Nevertheless, it is good practice for employers, insofar as is possible, to pre-empt requests for accommodations. One good practice tip from the Equality and Human Rights Commission (EHRC) is to be prepared for making reasonable

²³⁶ Irish Business and Employers Confederation (2012) **Mental health and wellbeing: A Line Manager's Guide**, Dublin: Ibec, pp.10-13.

²³⁷ Irish Business and Employers Confederation (2012) **Mental health and wellbeing: A Line Manager's Guide**, Dublin: Ibec, p.10.

²³⁸ Equality Commission for Northern Ireland (2019) **Mental Health Charter**, available on the Equality Commission for Northern Ireland website
<<https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/MentalHealthCharter.pdf>>.

²³⁹ Equality Commission for Northern Ireland (2019) **Mental Health Charter**, available on the Equality Commission for Northern Ireland website
<<https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/MentalHealthCharter.pdf>>.

²⁴⁰ Equality Commission for Northern Ireland (2018) **Disability Code of Practice: Employment and Occupation**, Belfast: Equality Commission, p.20.

accommodations.²⁴¹ For example, employers could carry out an accessibility audit of their workplace and identify any improvements which may be necessary to accommodate persons with disabilities

- Employers should ensure that their workplaces are universally designed. In doing so, the work environment becomes more accessible and inclusive, and the need for reasonable accommodations is reduced.²⁴² The **Centre for Excellence in Universal Design at the NDA** has developed a range of resources on universal design in the workplace covering areas such as communications, the built environment and technology²⁴³
- Employers should provide information concerning accessibility, including the accessibility of buildings and equipment, on their website. Such information could include facilities such as wheelchair accessible seating, loop systems, elevators to all floors, double door access to meeting rooms, parking bays for persons with disabilities etc. The provision of such publicly accessible information may obviate the need for an employment candidate to request a reasonable accommodation
- Employers should be proactive about their obligations to provide reasonable accommodations and be alert for indications or signs to enquire about the need for reasonable accommodation²⁴⁴

5.4. Policies and Procedures

- Employers should develop formal, written policies and procedures on the provision of reasonable accommodations.²⁴⁵ Such policies and procedures should detail the steps involved in dealing with requests for an accommodation, including engaging and consulting with the employee at all levels of the process, undertaking enquiries to determine the extent of the employee's disability and affording sufficient consideration to the request. The

²⁴¹ Equality and Human Rights Commission (2014) **Good equality practice for employers: equality policies, equality training and monitoring**, London: EHRC, p.33.

²⁴² Alban-Metcalf, J. (2008) **Effective Leadership and Organisational Culture for the Recruitment and Retention of People with Disabilities in the Irish Public Sector**, Dublin: NDA, p.79.

²⁴³ More information is available on the website of the Centre for Excellence in Universal Design at the NDA <<http://universaldesign.ie/>>.

²⁴⁴ Barry, E. (2013) **Case Law Review on Mental Health in the Workplace**, Dublin: See Change, p.32.

²⁴⁵ Job Accommodation Network, **'Five Practical Tips for Providing and Maintaining Effective Job Accommodations'**, available on the Job Accommodation Network website <<https://askjan.org/publications/index.cfm>>.

relevant policies and procedures should cover both employment candidates and employees with disabilities. Written policies and procedures can help make sure that all employees are aware of the policies and procedures, help ensure consistency when processing accommodation requests, and help document employers' efforts to provide effective accommodations.²⁴⁶ For instance, the Equality Commission for Northern Ireland have developed a model policy and procedure on handling requests for flexible working²⁴⁷

- Employers should designate someone to be responsible for implementing and overseeing reasonable accommodation policies and procedures and for dealing with accommodations requests.²⁴⁸ Employees should be made aware of the relevant contact point
- Employers should ensure that all employees, including supervisors, managers and staff, are aware of policies and procedures concerning reasonable accommodation.²⁴⁹ Employers should explain in general terms why the policy is in place and who the policy impacts on. Policies and procedures will not be effective unless everyone knows about them. This could be done, for example, through staff briefings, contracts of employment, staff handbooks, notice boards, circulars, written notifications to individual employees, equal opportunities training, induction training, management training, training manuals, etc²⁵⁰
- Employers should provide publicly accessible information on procedures for dealing with requests for reasonable accommodation from employment candidates with disabilities. The Public Appointments Service have published a “Reasonable Accommodations Requests – Process Flowchart” on their website which details the steps involved in evaluating a request for reasonable

²⁴⁶ Job Accommodation Network, ‘**Five Practical Tips for Providing and Maintaining Effective Job Accommodations**’, available on the Job Accommodation Network website <<https://askjan.org/publications/index.cfm>>.

²⁴⁷ More information is available on the Equality Commission for Northern Ireland website <<https://www.equalityni.org/Employers-Service-Providers>>.

²⁴⁸ Job Accommodation Network, ‘**Five Practical Tips for Providing and Maintaining Effective Job Accommodations**’, available on the Job Accommodation Network website <<https://askjan.org/publications/index.cfm>>.

²⁴⁹ Job Accommodation Network, ‘**Five Practical Tips for Providing and Maintaining Effective Job Accommodations**’, available on the Job Accommodation Network website <<https://askjan.org/publications/index.cfm>>.

²⁵⁰ Equality Commission for Northern Ireland (2018) **Disability Code of Practice: Employment and Occupation**, Belfast: Equality Commission, p.23.

accommodations and the type of information which job applicants are expected to provide in support of same²⁵¹

- Employers should engage with employees, including employees with disabilities, and other relevant stakeholders, such as trade union representatives, in the development of policies and procedures relating to reasonable accommodations.²⁵² Such engagement can provide an opportunity to identify and address barriers to employment encountered by persons with a disability and create awareness about disabilities, disclosure and reasonable accommodations, as well as demonstrate organisational commitment to implementing the relevant policies and procedures
- Employers should evaluate requests for a reasonable accommodation on a case-by-case basis and adjustments should be designed to meet individual needs. Employers should also ensure that they have sufficient information at their disposal when making decisions on applications for reasonable accommodation. In this regard, case law demonstrates that it may be useful, and sometimes necessary, for an employer to consult with human resources personnel and other relevant experts where necessary, including obtaining medical advice where appropriate²⁵³
- Employers should ensure that the relevant policies and procedures cover, step-by-step, all stages of the reasonable accommodation process, from the point of an enquiry/request for a reasonable accommodation through an assessment of the request, a decision-making process and an appeals process.²⁵⁴ There should be a clear allocation of responsibility, accountability and, insofar as is possible, timelines for each stage of the process
- Employers should develop standard pro-forma documents to support a seamless reasonable accommodation process, such as a request form for reasonable accommodations, a decision-making form/checklist and appeals forms.²⁵⁵ **See Change**, an organisation dedicated to ending mental health

²⁵¹ More information is available on the Public Appointments Service website <<https://www.publicjobs.ie/documents/Process-Flowchart-Reasonable-Accommodations.pdf>>.

²⁵² Equality Commission for Northern Ireland (2018) **Disability Code of Practice: Employment and Occupation**, Belfast: Equality Commission, p.23.

²⁵³ See Section 2.3.3.

²⁵⁴ Webster, B. (2014) **A Mental Health Policy Document for the Workplace**, Dublin: See Change, p.9.

²⁵⁵ Webster, B. (2014) **A Mental Health Policy Document for the Workplace**, Dublin: See Change, p.9.

stigma, informed by people with lived experiences of mental health issues, have developed a Reasonable Accommodation Checklist for employers²⁵⁶

- Employers should familiarise themselves with the training and financial supports which may be available to them both to provide reasonable accommodations and to create a disability inclusive workplace.²⁵⁷ For instance, private sector employers should acquaint themselves with the supports available through the Department of Employment Affairs and Social Protection for personal readers, workplace adaptations, disability awareness training etc. The availability of these grants supports should be taken into account when an employer is determining whether an accommodation will impose a disproportionate burden on them
- Employers should ensure that a review or appeals mechanism is available to an employee or an employment candidate where they have been denied a reasonable accommodation. The International Labour Organisation has noted that if an employee is dissatisfied with the decision made in respect of their request for an accommodation, there should be an opportunity to appeal that decision to senior management²⁵⁸
- Employers should ensure that requests for reasonable accommodation are dealt with in as expeditious a manner as possible and agreed reasonable accommodations should be implemented quickly and satisfactorily. The **UK's Civil Service Diversity and Inclusion Strategy, A Brilliant Civil Service**, states that adjustments should be put in place in a “timely manner”.²⁵⁹ Where delays are encountered in the evaluation of an accommodation request or in the provision of an agreed accommodation, the employee or prospective employee should be consulted and kept abreast of the reasons for any such delay
- Employers should ensure that policies and procedures on reasonable accommodations contain a built-in review process to examine the

²⁵⁶ Webster, B. (2014) **A Mental Health Policy Document for the Workplace**, Dublin: See Change, pp.23-24.

²⁵⁷ Equality and Human Rights Commission (2014) **Good equality practice for employers: equality policies, equality training and monitoring**, London: EHRC, p.33.

²⁵⁸ International Labour Organisation (2016) **Promoting Diversity and Inclusion Through Workplace Adjustments: A Practical Guide**, Geneva: ILO, p.84.

²⁵⁹ UK Cabinet Office (2017) **A Brilliant Civil Service: becoming the UK's most inclusive employer, The Civil Service Diversity and Inclusion Strategy**, London: UK Cabinet Office, p.10.

effectiveness of implemented accommodations.²⁶⁰ Once a reasonable accommodation is implemented, the employer or another appropriate member of staff should periodically check to ensure that the adjustment is meeting and continues to meet, the needs of the employee. It is important to recognise that additional or altered accommodations may be required if there is a change in circumstances, condition or job role. It has been recommended that reasonable accommodations be reviewed every 3-6 months to allow for changes in the employee's needs²⁶¹

- Employers should encourage employees to communicate with them when their needs change or when issues arise with an implemented accommodation, and should provide employees with details of who to contact for assistance²⁶²
- Employers should maintain appropriate records pertaining to reasonable accommodations.²⁶³ Details of any requests for reasonable accommodations, including the reason why a request has been granted or declined should be recorded, as well as the details of any implemented adjustment. Such records eliminate the need for employees to renegotiate accommodations if they move internally, gain promotion or change supervisor / manager.²⁶⁴ All such information, including requests for reasonable accommodations, must be treated confidentially and in line with data protection and privacy laws
- Employers should ensure that policies and procedures on reasonable accommodations are accessible to all employees, including employees with disabilities²⁶⁵

²⁶⁰ National Disability Authority (2015) **Retaining employees who acquire a disability: A guide for employers**, Dublin: NDA, p.14.

²⁶¹ RSM PACEC & National Disability Authority (2018) **Research on good practice in the employment of people with disabilities in the public sector**, Dublin: RSM PACEC & NDA, p.43.

²⁶² Job Accommodation Network, '**Monitoring Reasonable Accommodations**', available on the Job Accommodation Network website <<https://askjan.org/publications/index.cfm>>.

²⁶³ Equality Authority and the Department of Justice, Equality and Law Reform (2003) **Disability Resource Pack: Positive Action for the Recruitment and Retention of People with Disabilities in the State Sector**, Dublin: Equality Authority.

²⁶⁴ Raymond, M., Olsen, J., Ainsworth, S., Lotia, N., Harbridge, R. & Holland, A. (2019) **Improving Access and Inclusion in Employment for People with Disabilities - Implementation of Workplace Adjustments in 'Best-Practice' Organisations**, Melbourne: University of Melbourne, p.9.

²⁶⁵ Equality Commission for Northern Ireland (2018) **Disability Code of Practice: Employment and Occupation**, Belfast: Equality Commission, p.24.

- Employers should audit and review existing organisational policies, procedures and practices to ensure that they are compatible with their reasonable accommodation policy, for example, a HR policy which prohibits part-time working hours may not be compatible with the obligation to provide reasonable accommodations to employees with a disability. Additionally, disciplinary and grievance policies and procedures may need to be adjusted to accommodate persons with a disability²⁶⁶

5.5. Job and Person Descriptions

- As stipulated, it is good practice for employers to pre-empt accommodation requests and be prepared for making reasonable accommodations. Therefore, when devising job descriptions, employers should bear in mind that people may need an accommodation to undertake a specific role or task. Where there are different ways of performing a task, job descriptions should not specify how the task should be done.²⁶⁷ Instead, the job description should state what outcome needs to be achieved. For example, a requirement to possess a driving licence might discriminate against individuals with a visual impairment or who are not medically permitted to drive (for example, due to epilepsy or arthritis), unless driving is an essential requirement of the job.²⁶⁸ This can be replaced with, “required to travel throughout the region’. The candidate may be able to fulfil this requirement by using alternative forms of transport
- Employers should not specify working hours or working patterns in job descriptions that are not necessary to the job in question.²⁶⁹ If a job could be done either part-time or through job share arrangements, this should be stated in the job description
- Employers should consider whether combining job tasks in different ways could open up opportunities to work for persons with disabilities who may have difficulties fulfilling some of the particular tasks or duties that are specified

²⁶⁶ Barry, E. (2013) **Case Law Review on Mental Health in the Workplace**, Dublin: See Change, p.31.

²⁶⁷ Equality and Human Rights Commission (2011) **Equality Act 2010 Code of Practice – Employment Statutory Code of Practice**, London: EHRC, p.220.

²⁶⁸ Health Service Executive - Employers Agency (2006) **Guidelines on the Equal Opportunities Aspects of Employing People with Disabilities in the Health Service**, Dublin: HSE, p.7.

²⁶⁹ Equality and Human Rights Commission (2011) **Equality Act 2010 Code of Practice – Employment Statutory Code of Practice**, London: EHRC, p.220.

5.6. Application Forms

- Employers should ensure that there is a section on the job application form for the applicant to identify any reasonable accommodations they may require for the pre-interview (if applicable) or interview stage.²⁷⁰ The text should reassure the applicant that this information is being sought in order to accommodate the needs of persons with disabilities²⁷¹
- Employers should ensure that the application form contains clear instructions, in Plain English, that are easy to follow. The questions should focus on work-related information, for example educational attainments, skills, knowledge and abilities. The application form and any documentation on the job should be available on request in different formats such as large print, Braille, or e-mail, so that they are accessible to persons with disabilities
- Employers should ask candidates for their preferred method of contact on job application forms, for example, email, phone, Braille etc.

5.7. Advertising Stage

- Employers should ensure that job advertisements contain inclusive messaging and encourage those with a disability to apply for the available position. A job advertisement should stipulate that the employer is an equal opportunities employer and that applications are welcome from those with a disability. As noted, those in the recruitment process, particularly those with hidden disabilities, may be reluctant to request reasonable accommodations.²⁷² Accordingly, employers should be proactive when advertising positions and compiling job application forms to reassure candidates with disabilities that reasonable accommodations will be provided
- Employers should ensure that job advertisements explicitly state that reasonable accommodations will be provided to any candidate with a disability. By contrast, a job advertisement should not include wording that suggests that reasonable accommodations will not be made for persons with

²⁷⁰ RSM PACEC & National Disability Authority (2018) **Research on good practice in the employment of people with disabilities in the public sector**, Dublin: RSM PACEC & NDA, p.37.

²⁷¹ RSM PACEC & National Disability Authority (2018) **Research on good practice in the employment of people with disabilities in the public sector**, Dublin: RSM PACEC & NDA, p.37.

²⁷² See Section 4.2.1.

disabilities, or that persons with disabilities will be discriminated against, or that they should not apply²⁷³

- Employers should ensure that information concerning vacancies is available in accessible formats. The Equality and Human Rights Commission states that employers should take steps to ensure that information is provided in an accessible format.²⁷⁴ Job advertisements should use a font that is easy and large enough to read and should be in a format that is compatible with assistive software. Where a job advertisement is in written form, the employer should consider alternative formats
- Employers should ensure that online application forms are accessible to persons with disabilities. If online application forms are not accessible to persons with disabilities, the form should be available and provided in an alternative way
- Where an application is submitted in an accessible format, an employer must not discriminate against an applicant with a disability in the way that it deals with these applications.²⁷⁵ Similarly, where an employment candidate requests a reasonable accommodation, such information should not be used to treat that application in a less favourable manner
- Employers should ensure that the relevant job advertisement outlines a clear contact route or identifies a contact person (including email address and telephone number) within the organisation in order for a person with a disability to request and discuss any necessary reasonable accommodation

5.8. Pre-Interview Stage

- Employers should provide reasonable accommodations to an applicant with a disability where a test or assessment is involved. Examples of reasonable accommodations may include:
 - providing written instructions in an accessible format, such as documents with an enlarged font
 - allowing a person with a disability extra time to complete the test
 - permitting a person with a disability the assistance of a reader or scribe during the test

²⁷³ Equality and Human Rights Commission (2011) **Equality Act 2010 Code of Practice – Employment Statutory Code of Practice**, London: EHRC, p.225.

²⁷⁴ Equality and Human Rights Commission (2014) **Good equality practice for employers: equality policies, equality training and monitoring**, London: EHRC, p.40.

²⁷⁵ Equality and Human Rights Commission (2011) **Equality Act 2010 Code of Practice – Employment Statutory Code of Practice**, London: EHRC, p.228.

- allowing an applicant with a disability to take an oral test in writing or a written test orally
- allowing an applicant with a disability to use a laptop, with or without assistive software
- permitting a person with a disability to sit the test or assessment in a separate room
- putting the test onto different coloured paper²⁷⁶
- Employers should pre-empt any accommodation requests at the pre-interview stage. For instance, assessment or test centres, or any location where a test or assessment is being held, should be accessible to persons with disabilities
- Employers should ask employment candidates whether reasonable accommodations are required for the pre-interview stage. Adequate notice of a test or assessment should be afforded to candidates in order to ensure that there is sufficient time for an accommodation to be requested, considered and implemented
- Employers should provide information about the interview process to candidates in advance of the interview. Research shows that for some persons with autism spectrum disorders providing them with information prior to the interview about the interviewers and the types of questions candidates would be asked can alleviate their anxiety about the event.²⁷⁷ It also helps them to prepare for the interview. The NDA has published a guide to assist those who are working as line managers, or in a HR role, to better understand autism and to effectively recruit, work with and support staff with autism in the workplace²⁷⁸
- Employers should consider using alternative selection processes to assessments or psychometric testing e.g. psychometric testing could be dispensed with or a job trial may give an employer a better idea of the skills and capacities of some job applicants with disabilities
- A reasonable accommodation for an applicant may include making reasonable modifications to the pre-employment screening process. Screening checks should not discriminate against persons with a disability

²⁷⁶ Equality and Human Rights Commission (2011) **Equality Act 2010 Code of Practice – Employment Statutory Code of Practice**, London: EHRC, p.232.

²⁷⁷ RSM PACEC & National Disability Authority (2018) **Research on good practice in the employment of people with disabilities in the public sector**, Dublin: RSM PACEC & NDA, p.8.

²⁷⁸ National Disability Authority (2018) **Assisting People with Autism in Employment – Guidance for Line Managers and HR Professionals**, Dublin: NDA.

- Employers should instruct agents making recruitment decisions of their practical responsibilities, including as regards the provision of reasonable accommodations to employment candidates²⁷⁹

5.9. Interview Stage

- Reasonable accommodations should be provided to employment candidates at the interview stage. Reasonable accommodations at the access to employment stage can include:
 - organising sign-language interpreters
 - allocating suitable car parking spaces
 - ensuring that the interview room and toilet facilities are accessible²⁸⁰
 - providing additional interview time to a candidate
 - adjusting the lighting in the interview room etc.
- By the interview stage, an employer should already have asked a prospective employee whether reasonable adjustments are needed for the interview itself. However, the interviewer should double-check and ask again on the day if any accommodations are needed for the interview²⁸¹
- Employers should ensure that interviewers are properly trained on requirements under employment equality legislation, including as regards reasonable accommodation, and are well aware of the particular skills required for the position.²⁸² For instance, where a person with autism discloses a disability before an interview, the relevant interviewers, as a reasonable accommodation, may need to allow for lack of eye contact and minimise the use of facial expressions and body language.²⁸³ The Public

²⁷⁹ Barry, E. (2013) **Case Law Review on Mental Health in the Workplace**, Dublin: See Change, p.31.

²⁸⁰ For more information, see Centre for Excellence in Universal Design at the National Disability Authority (2010) **Building for Everyone: A Universal Design Approach – Sanitary facilities**, Dublin: CEUD.

²⁸¹ Equality and Human Rights Commission (2011) **Equality Act 2010 Code of Practice – Employment Statutory Code of Practice**, London: EHRC, p.233.

²⁸² Equality Authority and the Department of Justice, Equality and Law Reform (2003) **Disability Resource Pack: Positive Action for the Recruitment and Retention of People with Disabilities in the State Sector**, Dublin: Equality Authority.

²⁸³ National Disability Authority (2015) **Reasonable Accommodations for people with Autism Spectrum Disorder**, Dublin: NDA, p.14.

Appointments Service is developing e-learning modules for interviewers on the avoidance of unconscious bias

- Employers should ensure that the interview location is physically accessible and that the interview room itself is sensitive to the needs of persons with disabilities. For instance, employers should consider whether the physical environment is suitable for different types of disability, avoiding difficult sensory impacts such as noise or lighting where possible
- Employers should be flexible regarding the timing and scheduling of an interview to facilitate the needs of certain persons with disabilities, such as the need to take medication at a certain time of the day. Furthermore, employers should consider providing alternative methods of interview other than face-to-face interviews, such as by video conference. In some instances, persons with disabilities may be unable to drive to an interview location or may have difficulty accessing public transport
- Employers should consider using alternative selection processes to the traditional job interview, for example, a job trial may give an employer a better idea of the skills and capacities of some job applicants with disabilities

5.10. New Employees

- Where possible prior to commencement, and where a new employee has disclosed their disability, employers should discuss accommodation needs with an employee for the purposes of ensuring that the workplace is safe and accessible and any supports which may be required are already in place
- Employers should consider creating a “buddy system” which may assist in integrating the employee into the social aspects of the work environment. A number of different workplace programmes currently utilise the “buddy system”, including those accessing the **Willing Able Mentoring** programme (WAM)
- Employers should invite employees to disclose their disability and request a reasonable accommodation, through a standardised process, which involves asking all new hires to complete a form for disclosure of needs.²⁸⁴ A census of all public sector employees, where each employee is invited to identify themselves as having a disability or not, is undertaken as part of the Part 5 monitoring process (**Disability Act 2005**)

²⁸⁴ Raymond, M., Olsen, J., Ainsworth, S., Lotia, N., Harbridge, R. & Holland, A. (2019) **Improving Access and Inclusion in Employment for People with Disabilities - Implementation of Workplace Adjustments in ‘Best-Practice’ Organisations**, Melbourne: University of Melbourne, p.9.

- Employers should invite newly recruited employees with a disability, particularly those with sensory or mobility disabilities, to do a walkthrough of the workplace before they commence their first day of employment. This walkthrough may provide the employee with the opportunity to familiarise themselves with their new environment and identify the reasonable accommodations they would need to have in place before they commence employment. Such invitations must always be optional
- Employers should check to ensure that all induction processes are accessible to persons with disabilities. During the induction process, all employees, including employees with disabilities, should be made aware of the supports that are available to them (for example, wellbeing programmes, mental health supports, access to a Disability Liaison Officer in the public service etc.) and provided with contact details for same.²⁸⁵ Employees should also be informed of the availability of reasonable accommodations

5.1.1. Current Employees

- Employers should provide employees with disabilities, including those who acquire a disability whilst in employment, with reasonable accommodations. Reasonable accommodations for existing employees may include:
 - Time off to attend medical appointments
 - Mentoring and peer support within the workplace
 - Adjusting an employee's attendance hours or allowing them to work at home
 - Relieving an employee of certain tasks, and substituting other equivalent duties, in consultation with the employee
 - Provision of assistive technology
 - Modifying the physical environment to allow for wheelchair access
 - Provision of relevant training to support the employee to carry out their duties etc.
- Employers should appoint a Disability Liaison Officer or Disability Champion within an organisation. This person should be given appropriate training to enable him/her to provide information, advice and support to employees with disabilities, including as regards the provision of reasonable accommodations. Within the public service, Disability Liaison Officers have been appointed in each government department. Their role is to act as a point of contact for

²⁸⁵ RSM PACEC & National Disability Authority (2018) **Research on good practice in the employment of people with disabilities in the public sector**, Dublin: RSM PACEC & NDA, p.8.

staff with disabilities, their managers and Human Resource Section, facilitate increased awareness of disability throughout the organisation and promote self-disclosure²⁸⁶

- Employers should make efforts to ensure that employees are supportive of colleagues who are receiving reasonable accommodations. Employers should provide disability awareness training to managers and staff which can help to promote good communications, challenge preconceived ideas and stereotypes and foster a positive working environment in which the employee can realise their potential. Good quality training and information is likely to yield benefits by defusing any tensions that may arise at the workplace over situations where accommodations are provided and, where necessary, ensuring staff are sensitive to the needs of a person with a disability²⁸⁷
- Where a person is exhibiting difficulties in work, such as poor attendance and/or a change in work performance or interaction with colleagues, an employer or manager should ask them whether they require a reasonable accommodation. Sometimes, poor performance or difficult behaviours at work may relate to the onset of a disability or a mental health issue, which the person may not have acknowledged themselves, nor have disclosed at work²⁸⁸
- Employers should be flexible and open-minded in dealing with and considering requests for reasonable accommodations.²⁸⁹ For instance, while flexible working hours may not necessarily be convenient for an employer, this may be an appropriate accommodation in a given situation due to extra difficulties a person with disabilities may face in accessing transport or in order to accommodate appointments with a healthcare professional

5.12. Training and Promotional Opportunities

- Employers should ensure that employees are provided with reasonable accommodations in order to avail of all available training and promotional opportunities. In this regard, employees with disabilities should be reassured

²⁸⁶ More information is available on the Department of Public Expenditure and Reform website <<https://hr.per.gov.ie/disability/>>.

²⁸⁷ International Labour Organisation (2016) **Promoting Diversity and Inclusion Through Workplace Adjustments: A Practical Guide**, Geneva: ILO, p.40.

²⁸⁸ National Disability Authority (2015) **Retaining employees who acquire a disability: A guide for employers**, Dublin: NDA, p.15.

²⁸⁹ Equality Authority and the Department of Justice, Equality and Law Reform (2003) **Disability Resource Pack: Positive Action for the Recruitment and Retention of People with Disabilities in the State Sector**, Dublin: Equality Authority.

that reasonable accommodations will be provided at more senior levels.²⁹⁰ Employers should ensure that training venues are accessible and that training materials are available in an accessible format

- Employers should encourage employees with disabilities to put themselves forward for promotional opportunities and assure them that reasonable accommodations will be provided for any promotional competitions.²⁹¹ In one government department, an advertisement for an internal promotional recruitment campaign was accompanied by a message from senior level management detailing that promotional opportunities are available to all, that the organisation is an inclusive one and that reasonable accommodations will be made available at interview for anyone with a disability who requires them

5.13. Returning Employees

- Where an employee with a disability is absent from work, an employer should consult with them about the potential need for workplace accommodations before their return. These accommodations should be in place before the employee returns to work.²⁹² Some common accommodations for those returning from an absence from work include:
 - Phased return to work starting with a few hours a day and building up to their usual hours
 - Reduced hours or changed work pattern
 - Later start time – some medication can make individuals drowsy early in the morning and they may require some flexibility with their start time to accommodate
 - Changes to workload
 - Changes to work environment
 - Instead of a long lunch break - a series of short breaks throughout the day can be useful

²⁹⁰ Equality Authority and the Department of Justice, Equality and Law Reform (2003) **Disability Resource Pack: Positive Action for the Recruitment and Retention of People with Disabilities in the State Sector**, Dublin: Equality Authority.

²⁹¹ Equality Authority and the Department of Justice, Equality and Law Reform (2003) **Disability Resource Pack: Positive Action for the Recruitment and Retention of People with Disabilities in the State Sector**, Dublin: Equality Authority.

²⁹² National Disability Authority (2015) **Retaining employees who acquire a disability: A guide for employers**, Dublin: NDA, p.3.

- Accommodation of time off for medical or counselling/therapeutic appointments²⁹³
- Employers should maintain regular, supportive contact with an employee, while they are absent. This can assist them in returning to work and is beneficial to the employer and the employee.²⁹⁴ The objective of this contact is to ensure that the employer is providing the employee with any necessary supports or accommodations they may require. However, this contact needs to be managed sensitively. More information on how best to manage this process is contained in the NDA publication (2015) **Retaining employees who acquire a disability: A guide for employers**
- Employers should ensure that any existing employee who is absent from work (such as those on long-term sick leave, and those working part-time or remotely) are informed of any vacancies that become available so they can consider whether to apply. They should also be informed that reasonable accommodations will be provided for any recruitment campaign
- Employers should hold a return to work meeting with the returning employee. This meeting provides an opportunity to discuss any possible concerns the employee may have about returning to work and reasonable accommodations which may be put into place. These meetings should be private, positive and supportive.

²⁹³ Irish Business and Employers Confederation (2012) **Mental health and wellbeing: A Line Manager's Guide**, Dublin: Ibec, p.24.

²⁹⁴ National Disability Authority (2015) **Retaining employees who acquire a disability: A guide for employers**, Dublin: NDA, p.17.

Chapter 6 - Conclusions

It is clear from this paper that a range of factors can impede a seamless reasonable accommodation process. The net effect of these barriers is that persons with disabilities are denied reasonable accommodation measures which can assist them in accessing and retaining employment. It is important to emphasise that reasonable accommodation measures are not optional “add ons”; the right to reasonable accommodations is legally enforceable and remedies are available where such measures are unlawfully denied.

A number of key findings emerged from the review of 82 Workplace Relations Commission and the Labour Court decisions. These included:

- In almost 60% of cases examined as part of the Workplace Relations Commission and Labour Court review, the relevant employer was found not to have breached the requirement to provide reasonable accommodations under employment equality legislation (49/82)
- The relevant employer was deemed to have breached their obligation to provide reasonable accommodations in 40% of cases (33/82)
- The most common reason why employers were found to be in breach of the obligation to provide reasonable accommodation in the Workplace Relations Commission and the Labour Court review was for failing to comply with the procedural components of the duty. In particular, employers failed to:
 - undertake sufficient enquiries to ascertain the extent of the employee’s disability and the factual position concerning the employee’s capability
 - consider what, if any, special treatment or facilities may be available by which the employee could become fully capable of undertaking the full range of duties associated with his or her post
 - consult with and allow the employee concerned a full opportunity to participate at each level of the process
- The review of the Workplace Relations Commission and Labour Court decisions highlighted that some employers are not aware of the extent of their procedural and substantive obligations to provide reasonable accommodation under employment equality legislation and that some employers do not have policies and procedures in place to deal with requests for reasonable accommodation
- There was a low number of decisions concerning an alleged failure to provide reasonable accommodations at the access stage (8/82). The overwhelming majority of complaints were brought by persons with disabilities who were in employment, as opposed to those applying for employment (74/82)

- The majority of complaints alleging a breach of the reasonable accommodation requirement in the review were taken against private sector employers. Less than 25% of cases related to public sector employers. Four cases were taken against community or voluntary sector employers. In four other cases, the nature of the employment was unclear
- The most frequently cited disabilities in the review were back issues, depression, anxiety and stress, including workplace stress. There were no cases concerning persons with intellectual disabilities or autism in the review

The key lessons and areas for improvement arising from the review of Workplace Relations Commission and Labour Court decisions relating to reasonable accommodation are that employers should:

1. Carry out a full assessment of the needs of the person with a disability and of the measures necessary to accommodate that person's disability. It is necessary to ascertain the factual position concerning the employee's capability, including the degree of impairment arising from the disability and its likely duration. The employer may be obliged to engage with the person with a disability and obtain appropriate expert advice, including medical advice
2. Consider with an open mind what special treatment or facilities could realistically overcome any obstacles to the person doing the job for which they are otherwise competent
3. Consult with the person concerning their request for reasonable accommodation at every stage of the decision-making process. The employee should be allowed an opportunity to influence the employer's decision and should be allowed present relevant medical reports and submissions²⁹⁵
4. Have specific policies and procedures that deal with reasonable accommodations for employment candidates and employees with a disability
5. Respond to requests for reasonable accommodation and implement any approved accommodations in a timely manner
6. Provide requested reasonable accommodations to employment candidates and employees with a disability, in particular alternative working arrangements, subject to the proviso that these measures do not impose a disproportionate burden on the employer

The main findings of the literature review, the review of Workplace Relations Commission and Labour Court decisions and the consultations are as follows:

²⁹⁵ Again, it should be noted that the review was undertaken prior to the Supreme Court judgment in **Daly v Nano Nagle School**.

- Employees can be reluctant to disclose their disability to an employer and request reasonable accommodations due to the perceived negative consequences of doing so. This sense of fear about disclosing a disability is primarily threefold: fear of being treated differently after disclosure, fear of disclosure affecting promotional opportunities and fear of being labelled. Concerns regarding disclosure can be particularly acute for those seeking access to employment and also those with a hidden disability
- Employers do not always treat requests for reasonable accommodations in an efficient manner. While delays arise from lack of proactivity on the part of employers, delays may also arise due to circumstances beyond their control. For instance, concerns have been raised about the length of time it takes the Department of Employment Affairs and Social Protection to process applications for financial grants and implement any approved measures
- Formal, written policies and procedures dealing with reasonable accommodations are extremely important in the employment context. Policies and procedures provide employers with a structure or framework for dealing with requests for reasonable accommodation, offer guidance for decision-making and assist in complying with the various procedural requirements under employment equality legislation. In particular, employers should engage with persons with disabilities themselves in identifying reasonable accommodations, and recognise those persons as experts in their own disability
- There exists low knowledge amongst some employers about the extent of their obligation to provide reasonable accommodations under employment equality legislation. This includes both the employer's procedural and substantive obligations. Some employers are also unaware of the types of reasonable accommodations which may be available and appropriate, for instance the reasonable accommodations which may be appropriate in the case of a person with a mental health issue

Similarly, there is low awareness amongst some persons with disabilities as to their specific rights concerning reasonable accommodation in the workplace. Lack of awareness amongst management and employees without disabilities of the needs of people with disabilities, reasonable accommodations and the relevant law can create difficulties for persons with a disability in the workplace

- Employees and job applicants with disabilities can be denied reasonable accommodations owing to an employer's low level of understanding and awareness of disabilities. This can have a particular adverse effect on those seeking reasonable accommodations at the recruitment stage, where discrimination can be more difficult to prove. Some employers can also have

negative attitudes towards reasonable accommodations themselves e.g. an employer may consider some forms of reasonable accommodations, such as part-time or flexible working hours, as inconvenient

- There is a demand amongst employers for more training and information resources concerning reasonable accommodation and supporting employees with disabilities more generally. However, there also exists low levels of awareness about information and training supports which are currently available, including the **Disability Awareness Support Scheme**
- There is low awareness amongst some private sector employers of the financial supports provided by the Department of Employment Affairs and Social Protection to assist in accommodating the needs of prospective and current employees with disabilities. Other than the **Wage Subsidy Scheme**, the number of applications for information and financial support granted through the **Disability Awareness Support Scheme** and the **Reasonable Accommodation Fund** are small
- Concerns have been reported about specific issues and conditions associated with individual financial supports and incentives available through the Department of Employment Affairs and Social Protection to assist employers in the provision of reasonable accommodations, as well as of the overall structure of the supports
- There is no dedicated, centrally-based national resource of peer advice and information for employers on the employment of persons with disabilities
- Formalised structures for periodically reviewing implemented reasonable accommodations in the workplace are lacking. For many employers, the provision of the accommodation is the end stage in the process, and there is no further consultation with the employee to determine how the accommodation is operating in practice and whether it needs to be adapted or replaced

Chapter 7 - Implications for Policy and Practice

The implications for policy and practice described in this chapter are based on the aforementioned findings of this report. The report identifies a number of areas for improvement at both the policy and practice levels. Areas where further consideration or research may be merited are also detailed below. In specifying the implications, the NDA considered the measures necessary to ensure a more seamless reasonable accommodation process.

In this context, the NDA advises that consideration be given to the following actions:

- Both guidance and a code of practice concerning the provision of reasonable accommodations in the employment context, including the recruitment process, should be developed. A code of practice would explain the complexities of the law in this area, and direct employers about how they can comply with their statutory obligations under the **Employment Equality Acts**.²⁹⁶ A code of practice would also assist persons with a disability who are seeking to understand their entitlements in this area. It is envisaged that guidelines would be broader than a Code of Practice, with the latter focused on legal requirements and compliance, and admissible in evidence in court proceedings. Guidelines on reasonable accommodations would provide a non-mandatory, practical resource for employers and promote good practice, which in many cases extends beyond minimum legislative requirements
- There is no specific national employer information and training resource currently available to guide employers on disability matters. Consideration should be afforded to creating a dedicated national resource of peer advice and information for employers on the employment of persons with disabilities, including reasonable accommodations. This resource should build on the learning of the Employer Disability Information service pilot initiative and draw on international experience and good practice, such as the Job Accommodation Network. The NDA advises that such a resource could assist in building awareness and understanding amongst employers of disabilities, reasonable accommodations and their obligations under

²⁹⁶ The Irish Human Rights and Equality Commission is preparing a new legal code of practice to promote greater employment of people with disabilities. Irish Human Rights and Equality Commission, '**Discrimination Against People with Disabilities in Employment a Persistent and Pernicious Roadblock to Worker's Dignity and Inclusion**' [press release], available from their website at <<https://www.ihrec.ie/discrimination-against-people-with-disabilities-in-employment-a-persistent-and-pernicious-roadblock-to-workers-dignity-and-inclusion/>>.

employment equality legislation. It could also provide guidance to employers as to how reasonable accommodations can be implemented in practice

- An information campaign could be undertaken to build awareness amongst persons with disabilities of their right to reasonable accommodation in the employment context. Such a campaign would help in educating both persons with disabilities and employers of their rights and responsibilities under employment equality legislation in relation to reasonable accommodations
- A national awareness campaign may be of benefit in increasing understanding of the important contribution persons with disabilities make and the skills they bring to the workforce.²⁹⁷ Such a campaign would be an important measure in combating discrimination and negative attitudes towards employees and employment candidates with a disability. Following the conclusion of the national awareness campaign, the NDA advises that a survey be undertaken amongst employers to assess its effectiveness
- Further consideration is necessary to understand the reasons for the low numbers of published cases concerning reasonable accommodation at the access stage, as well as the absence of cases by persons with intellectual disabilities and autism. A discrete piece of research could examine whether there is reticence to bring employment equality claims related to access to employment in general, and whether there are any particular obstacles, which persons with a disability encounter in making such claims. The NDA further notes that persons with autism and persons with intellectual disabilities did not feature in the review of Workplace Relations Commission and Labour Court decisions, despite the specific challenges they face in the workplace. Any such research could also consider whether persons with certain types of disability encounter greater difficulties bringing employment equality claims
- The Department of Employment Affairs and Social Protection could consider a review of the adequacy and effectiveness of the training and financial supports available for employers to provide reasonable accommodations, including the **Reasonable Accommodation Fund**, the **Wage Subsidy Scheme** and the **Disability Awareness Support Scheme**. Consultation with employers, employer representative groups, persons with disabilities and disability organisations should form part of these reviews. The adequacy of existing levels of grant assistance should also be examined. The NDA notes that reviews of the **Reasonable Accommodation Fund** and **Disability**

²⁹⁷ The Department of Justice and Equality has committed to undertaking such a campaign as part of the Comprehensive Employment Strategy. Government of Ireland (2019) **Comprehensive Employment Strategy: Phase Two Action Plan 2019-2021**, Dublin: Stationery Office, p.35.

Awareness Support Scheme are scheduled to take place in 2019 and would welcome a similar exercise with the **Wage Subsidy Scheme**²⁹⁸

- Notwithstanding the outcome of the reviews of the **Reasonable Accommodation Fund** and the **Disability Awareness Support Scheme**, the Department of Employment Affairs and Social Protection could consider an information campaign to build awareness amongst employers of the financial and training supports available to provide reasonable accommodations. Such a campaign could be useful in addressing the information deficit which exists amongst some employers of the various financial supports and incentives available to them to assist in reasonably accommodating employees and employment candidates with a disability

²⁹⁸ The Wage Subsidy Scheme was last reviewed in 2016. Minister of State at the Department of Employment Affairs and Social Protection, the Department of Justice and Equality and the Department of Health with special responsibility for Disability Issues, Finian McGrath TD, **Parliamentary Question, 4 December 2018, 50433/18.**

References

Alban-Metcalf, J. (2008) **Effective Leadership and Organisational Culture for the Recruitment and Retention of People with Disabilities in the Irish Public Sector**, Dublin: NDA

Australian Human Rights Commission (2016) **Willing to Work National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability**, Sydney: Australian Human Rights Commission

Austrian Institute for SME Research (2008) **Practices of providing reasonable accommodation for persons with disabilities in the workplace**, Austrian Institute for SME Research: Vienna

Barry, E. (2013) **Case Law Review on Mental Health in the Workplace**, Dublin: See Change

Bell, M. (2018) 'Pitfalls and Progress: Reasonable Accommodation for Workers with Disabilities in Ireland', **Dublin University Law Journal**, 41, 77-96

Bendick, M. (2018). 'Employment discrimination against persons with disabilities: Evidence from Matched Pair Testing', **The International Journal of Diversity in Organisations, Communities, and Nations: Annual Review**, 17(1), 11-25

Blanck, P. & Marti, M. (2000) 'Attitudes, Behavior, and ADA Title I', in Blanck P. (ed) **Employment, Disability and the Americans with Disabilities Act: Issues in Law, Public Policy and Research**, Illinois: Northwestern University Press

Bolger, M., Bruton, C. & Kimber, C. (2012) **Employment Equality Law**, Dublin: Round Hall

Byrne, J.P. & Ring, F. (2009) **Demystifying Disability in the Workplace: Practical Guidelines for Managers & Supervisors**, Dublin: AHEAD

Central Statistics Office (2010) **National Disability Survey 2006 – Volume 2**, Dublin: Stationery Office

Centre for Excellence in Universal Design at the National Disability Authority (2010) **Building for Everyone: A Universal Design Approach – Sanitary facilities**, Dublin: CEUD

Chow, C. M., Cichocki, B., & Croft, B. (2014), 'The Impact of Job Accommodations on Employment Outcomes Among Individuals With Psychiatric Disabilities', **Psychiatric Services**, 65(9), 1126–1132

Civil Legal Aid Act 1995

Clayton, S., Barr, B., Nysten, L., Burstrom, B., Thielen, K., Diderichsen, F., Dahl, E., & Whitehead, M. (2012), 'Effectiveness of return-to-work interventions for disabled people: A systematic review of government initiatives focused on changing the behaviour of employers', **European Journal of Public Health**, 22(3), 434-439

Community Law and Meditation (2017) **Guide to Taking an Employment Equality Case**, Dublin: Community Law and Meditation

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

Department of Employment Affairs and Social Protection, **Disability Awareness Support Scheme** <http://www.welfare.ie/en/Pages/Disability-Awareness-Training_holder.aspx> (accessed 6th November 2019)

Department of Employment Affairs and Social Protection, **Employee Retention Grant** <<http://www.welfare.ie/en/Pages/Employee-Retention-Scheme.aspx>> (accessed 6th November 2019)

Department of Employment Affairs and Social Protection, **Job Interview Interpreter Grant** < <http://www.welfare.ie/en/Pages/Job-Interview-Interpreter-Grant.aspx>> (accessed 6th November 2019)

Department of Employment Affairs and Social Protection, **Personal Reader Grant**, < <http://www.welfare.ie/en/Pages/Personal-Reader-Grant.aspx>> (accessed 6th November 2019)

Department of Employment Affairs and Social Protection, **Reasonable Accommodation Fund** <http://www.welfare.ie/en/Pages/Reasonable-Accommodation-Fund_holder.aspx> (accessed 6th November 2019)

Department of Employment Affairs and Social Protection, **Wage Subsidy Scheme** <http://www.welfare.ie/en/Pages/Wage-Subsidy-Scheme_holder_3176.aspx> (accessed 6th November 2019)

Department of Employment Affairs and Social Protection, **Workplace Equipment and Adaptation Grant**,

<<http://www.welfare.ie/en/Pages/Workplace-Equipment-Adaptation-Grant.aspx>>
(accessed 6th November 2019)

Department of Finance (2007) **Code of Practice for the Employment of People with a Disability in the Irish Civil Service**, Dublin: Department of Finance

Disability Act 2005

Economic and Social Research Institute (2015) **Educational and Employment Experiences of People with a Disability in Ireland: An Analysis of the National Disability Survey**, Dublin: ESRI

Economic and Social Research Institute and Irish Human Rights and Equality Commission (2018) **Disability and Discrimination in Ireland: Evidence from the QNHS Equality Modules 2004, 2010, 2014**, ESRI and IHREC: Dublin

Employer Disability Information (2018) **Employers Attitude To Employing People With Disabilities: Survey Results**, Dublin: EDI

Employer Disability Information service, **Report to the Department of Employment Affairs and Social Protection Report dated 30th May 2016**, <<http://www.employerdisabilityinfo.ie/about/submissions/deasp-report>> (accessed 5th November)

Employment Equality Acts 1998-2015

Epilepsy Ireland (2015) **Epilepsy in the Workplace: An Employers Information Resource**, Dublin: Epilepsy Ireland

Equality and Human Rights Commission (2011) **Equality Act 2010 Code of Practice – Employment Statutory Code of Practice**, London: EHRC

Equality and Human Rights Commission (2014) **Good equality practice for employers: equality policies, equality training and monitoring**, London: EHRC

Equality Authority (2011) **Equality and mental health: what the law means for your workplace**, Roscrea: Equality Authority

Equality Authority and the Department of Justice, Equality and Law Reform (2003) **Disability Resource Pack: Positive Action for the Recruitment and Retention of People with Disabilities in the State Sector**, Dublin: Equality Authority

Equality Commission for Northern Ireland (2018) **Disability Code of Practice: Employment and Occupation**, Belfast: Equality Commission

Equality Commission for Northern Ireland (2019) **Mental Health Charter**, <<https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/MentalHealthCharter.pdf> > (accessed 5th November 2019)

Fasciglione, M. (2015) 'Article 27 of the CRPD and the Right of Inclusive Employment of People with Autism' in Della Fina, V. & Cera, R. (eds.), **Protecting the Rights of People with Autism in the Fields of Education and Employment**, Rome: Springer International

Ferri, D. & Lawson, A. (2016) **Reasonable accommodation for disabled people in employment**, Brussels: European Commission

Government of Ireland (2015) **Comprehensive Employment Strategy for People with Disabilities 2015-2024**, Dublin: Stationery Office

Government of Ireland (2019) **Comprehensive Employment Strategy: Phase Two Action Plan 2019-2021**, Dublin: Stationery Office, p.32.

Health and Safety Authority (2009) **Employees with Disabilities: An employer's guide to implementing inclusive health and safety practices for employees with disabilities**, Dublin: HAS

Health Service Executive, '**HSE announces project partnership with Mental Health First Aid Ireland**' [press release], <<https://www.hse.ie/eng/services/news/media/pressrel/hse-announces-project-partnership-with-mental-health-first-aid-ireland.html>> (accessed 6th November 2019)

Health Service Executive - Employers Agency (2006) **Guidelines on the Equal Opportunities Aspects of Employing People with Disabilities in the Health Service**, Dublin: HSE

Holland, A., Harbridge, R., Olsen, J.E., & Raymond, M. (2017) **Research Insights: Improving access and inclusion in employment for people with disabilities**, Melbourne: University of Melbourne

Industrial Relations Act 1946

International Labour Organisation (2016) **Promoting Diversity and Inclusion Through Workplace Adjustments: A Practical Guide**, Geneva: ILO

Irish Business and Employers Confederation (2012) **Mental health and wellbeing: A Line Manager's Guide**, Dublin: Ibec

Irish Human Rights and Equality Commission Act 2014

Irish Human Rights and Equality Commission (2019) **Annual Report 2018**, Dublin: IHREC

Irish Human Rights and Equality Commission (2018) **Annual Report 2017**, Dublin: IHREC

Irish Human Rights and Equality Commission, '**Discrimination Against People with Disabilities in Employment a Persistent and Pernicious Roadblock to Worker's Dignity and Inclusion**' [press release], <<https://www.ihrec.ie/discrimination-against-people-with-disabilities-in-employment-a-persistent-and-pernicious-roadblock-to-workers-dignity-and-inclusion/>> (accessed 6th November 2019)

Irish Human Rights and Equality Commission, **Submissions on Behalf of the Amicus Curiae, The Irish Human Rights and Equality Commission, Nano Nagle School v Marie Daly**, <<https://www.ihrec.ie/rights-of-persons-with-disabilities-to-reasonable-workplace-accommodation-at-question-in-supreme-court-case-2/>> (accessed 5th November 2019)

Irish Human Rights and Equality Commission, '**Supreme Court Significantly Clarifies Rights of Persons with Disabilities to Reasonable Workplace Accommodation**' [press release], <<https://www.ihrec.ie/supreme-court-significantly-clarifies-rights-of-persons-with-disabilities-to-reasonable-workplace-accommodation/>> (accessed 6th November 2019)

Irish Human Rights and Equality Commission "**Your Employment Equality Rights Explained Guide to the Employment Equality Acts 1998-2011**", <https://www.ihrec.ie/download/pdf/ihrec_employment_equality_rights_explained.pdf > (accessed 5th November 2019)

Irish Sign Language Act 2017

Job Accommodation Network, '**Five Practical Tips for Providing and Maintaining Effective Job Accommodations**', <<https://askjan.org/publications/index.cfm>> (accessed 5th November 2019)

Job Accommodation Network, '**Monitoring Reasonable Accommodations**', <<https://askjan.org/publications/index.cfm>> (accessed 5th November 2019)

Long, A. (2014) 'Reasonable Accommodation as Professional Responsibility, Reasonable Accommodation as Professionalism', **UC Davis Law Review**, 47, 1753-1805.

MacDonald-Wilson, K., Fabian, E. & Dong, S. (2008) 'Best Practices in Developing Reasonable Accommodations in the Workplace: Findings Based on the Research Literature', **The Rehabilitation Professional**, 16(4), 221-232

McGrotty C. (2018) 'The WAM Programme - Key Facts & Figures from AHEAD', **AHEAD Journal**, 7

Multiple Sclerosis Ireland (2016) **Working with MS: Employment Resource for People with Multiple Sclerosis**, Dublin: MS Ireland

National Disability Authority Act 1999

National Disability Authority (2018) **Assisting People with Autism in Employment – Guidance for Line Managers and HR Professionals**, Dublin: NDA

National Disability Authority (2005) **Disability and Work: The picture we learn from official statistics**, Dublin: NDA

National Disability Authority (2009) **Disclosing Disability in the Workplace a Review of Literature and Practice in the Irish Public Sector**, Dublin: NDA

National Disability Authority (2017) **National Survey of Public Attitudes to Disability in Ireland 2017**, Dublin: NDA

National Disability Authority (2019) **NDA Factsheet 2: Employment**, <<http://nda.ie/Resources/Factsheets/NDA-Factsheet-2-Employment/NDA-Factsheet-2-Employment.html>> (accessed 5th November 2019)

National Disability Authority (2015) **Reasonable Accommodations for people with Autism Spectrum Disorder**, Dublin: NDA

National Disability Authority (2018) **Report on Compliance with Part 5 of the Disability Act 2005 for 2017**, Dublin: NDA

National Disability Authority (2015) **Retaining employees who acquire a disability: A guide for employers**, Dublin: NDA

O'Neill, A. & Urquhart, C. (2011) 'Accommodating Employees with Disabilities: Perceptions of Irish Academic Library Managers', **New Review of Academic Librarianship**, 17(2), 234-258.

Organisation for Economic Cooperation and Development (2010) **Sickness, disability and work: breaking the barriers. A synthesis of findings across OECD countries**, Paris: OECD

Parliamentary Assembly of the Council of Europe (2018) **Discrimination in access to employment**, Strasbourg: PACE

Parliamentary Assembly Committee on Equality and Non-Discrimination (2018) **For a disability-inclusive workforce**, Strasbourg: Council of Europe

Purdy, A. (2015) **Equality Law in the Workplace**, Dublin: Bloomsbury Professional

Quinlivan, S. & Quinn, G. (2003) "Disability Discrimination: The Need to Amend the Employment Equality Act 1998 in Light of the EU Framework Directive on Employment?" in Costello, C. & Barry, E. (eds.) **Equality in Diversity: The New Equality Directives**, Dublin: Irish Centre for European Law

Raymond, M., Olsen, J., Ainsworth, S., Lotia, N., Harbridge, R. & Holland, A. (2019) **Improving Access and Inclusion in Employment for People with Disabilities - Implementation of Workplace Adjustments in 'Best-Practice' Organisations**, Melbourne: University of Melbourne

RSM PACEC & National Disability Authority (2018) **Research on good practice in the employment of people with disabilities in the public sector**, Dublin: RSM PACEC & NDA

Safety, Health and Welfare at Work Act 2005

UN Committee on the Rights of Persons with Disabilities (2019) **Concluding observations on the combined second and third periodic reports of Spain**, Geneva: Office of the United Nations High Commissioner for Human Rights

UN Committee on the Rights of Persons with Disabilities (2018) **Concluding observations on the initial report of Bulgaria**, Geneva: Office of the United Nations High Commissioner for Human Rights

UN Committee on the Rights of Persons with Disabilities (2017) **Concluding observations on the initial report of Canada**, Geneva: Office of the United Nations High Commissioner for Human Rights

UN Committee on the Rights of Persons with Disabilities (2017) **Concluding observations on the initial report of Luxembourg**, Geneva: Office of the United Nations High Commissioner for Human Rights

UN Committee on the Rights of Persons with Disabilities (2018) **Concluding observations on the initial report of Malta**, Geneva: Office of the United Nations High Commissioner for Human Rights

UN Committee on the Rights of Persons with Disabilities (2019) **Concluding observations on the initial report of Norway**, Geneva: Office of the United Nations High Commissioner for Human Rights

UN Committee on the Rights of Persons with Disabilities (2018) **Concluding observations on the initial report of Poland**, Geneva: Office of the United Nations High Commissioner for Human Rights

UN Committee on the Rights of Persons with Disabilities (2016) **Concluding observations on the initial report of Slovakia**, Geneva: Office of the United Nations High Commissioner for Human Rights

UN Committee on the Rights of Persons with Disabilities (2018) **Concluding observations on the initial report of Slovenia**, Geneva: Office of the United Nations High Commissioner for Human Rights

UN Committee on the Rights of Persons with Disabilities (2015) **Concluding observations on the initial report of the European Union**, Geneva: Office of the United Nations High Commissioner for Human Rights

UN Committee on the Rights of Persons with Disabilities (2017) **Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland**, Geneva: Office of the United Nations High Commissioner for Human Rights

UN Committee on the Rights of Persons with Disabilities (2018) **General Comment No.6 on equality and non-discrimination**, Geneva: Office of the United Nations High Commissioner for Human Rights

UN Convention on the Rights of Persons with Disabilities

UK Cabinet Office (2017) **A Brilliant Civil Service: becoming the UK's most inclusive employer, The Civil Service Diversity and Inclusion Strategy**, London: UK Cabinet Office

UK Civil Service Human Resources (2018) **Workplace Adjustments Line Manager's Best Practice Guide**

Unfair Dismissals Acts 1977-2015

Webster, B. (2014) **A Mental Health Policy Document for the Workplace**, Dublin: See Change

Work Research Centre (2012) **Research on the provision of Assistive Technology in Ireland and other countries to support independent living across the life cycle**, Dublin: NDA

Workplace Relations Commission Act 2015

Workplace Relations Commission (2019) **Annual Report 2018**, Dublin: Workplace Relations Commission

Workplace Relations Commission (2018) **Annual Report 2017**, Dublin: Workplace Relations Commission

World Health Organisation & World Bank (2011) **World Report on Disability**, Geneva: WHO