



ADHD and reasonable accommodations

What are reasonable accommodations?

Reasonable accommodations (RAs) sit within the Employment Equity Act about marginalised groups. They are defined as *"any modification or adjustment to the job or to the working environment (including assistive devices and technology) that will enable a person from a designated group to have access to, participate or advance in, employment"*

RAs aim *"to ensure that people from designated groups... enjoy equal opportunities and equitable representation in the workforce of a designated employer"*; to ensure the outcomes that persons with disabilities are able to fully and actively participate with life's activities on an equal basis with others.

The responsibility for RAs is enshrined in the constitution, Employment Equity Act, Employment and Prevention of Unfair Discrimination Act, and within the Labour Relations Act.

Employers have a legal **imperative** to provide RAs. The objective of the **National Strategic Framework on Reasonable Accommodations for Persons with Disabilities** (October 2021) to ensure that all public and private sector entities make provision for RAs in service delivery.

Equity not equality

Note that is the Employment **Equity** Act, not Employment Equality Act. Equality is not the same as equity. Equality is ensuring that each person has equal access, that is each person is allowed through the door. Equity is about making sure that each person is able to go through the door. For instance, although everyone is allowed through the door those in wheelchairs are unable to go through the door unless a wheelchair ramp is built. RAs are about building ramps to ensure each person has the same opportunity to go through the door. It is not about treating people equally but treating them differently to allow them to **be** the same.



Where does ADHD fit in?

The definition of RAs refers to marginalised or designated groups, and this includes people with visible and "invisible" disabilities. A disability is defined as "people who have a long-term or recurring physical or mental impairment which substantially limits their entry into or advancement in employment."

I understand - I have been there myself - that saying "I have a disability" is a difficult pill to swallow. It is worth noting though, that determining whether something is a disability or not depends on the context. In a downhill race, someone in a wheelchair bicycle is not at a disability when compared to someone on foot.

Is ADHD a disability? Some would argue no it's not and point to all of the strengths, while others would argue it is and point to all of the challenges.

Your workplace context will be taken into account when determining whether you need RAs (or what type of RAs you need). It is however clear that within the context of many work environments - those designed with a "neuro-typical" or "neuro-majority" workforce in mind - having ADHD and being **differently abled** may mean we require additional support to thrive.

Disclosing your ADHD

I am often asked whether clients should disclose their ADHD. I approach this question with caution. Disclosing your ADHD is not necessarily a bad thing, but it depends on the situation. Employers cannot be expected to provide reasonable accommodations without knowledge of the employee's disability. Disclosing your ADHD can be used as a tool to get the support you need.

It is vitally important to know your rights with regards to disclosure. Disclosure is always voluntary. Your disclosure is confidential. Confidentiality of information must be protected and this type of information should only be accessible on a need-to-know basis for the benefit of ensuring non-discrimination and/or for objective safety concerns related to a specific individual and a specific reasonable accommodation needs. In addition to gaining written consent in the gathering of information from elsewhere, unless legally required, no person may disclose any information related to your disability to anyone else without your written consent.



Unjustifiable hardship

While employers have a legal imperative to provide RAs, RAs must not result in unjustifiable hardship for the employer. This means it should not require significant or considerable difficulty or expense. Employers may use to not implement accommodations when they have a directive to do so. There are various factors that determine what is considered reasonable, and one of those is whether or not the company is big enough, or has sufficient revenue to provide these accommodations. What is considered reasonable for one employer may be considered unjustifiable hardship for another. If an employer states that RAs are an unjustifiable hardship, the onus is on the employer (not the employee) to prove this.

Examples of RAs for ADHD

RAs will depend on the clinical presentation of your ADHD, the type of tasks you need to perform in your job, and your employer's capacity to implement them.

RAs for ADHD often fall in the low tech or no tech category and seldom constitute unjustifiable hardship for the employer.

- Flexi-time; additional preparation time (before meetings), a colour coding system for filing, check lists, changing the format of instructions (from verbal to written)
- Providing decompression areas and allowing time to use them (e.g. 5 minutes between tasks)
- Providing training and education for rest of the employees about ADHD (it is suggested that the person with ADHD do the training with an Occupational Therapist facilitating).
- Working from home, working from a coffee shop, adjusting the office layout or moving desks (moving to a low traffic area / desk in the corner), installing desk or office dividers, alternating working positions (having a sitting/standing desk), alternating workspaces (being able to work in different locations, e.g. moving to a quiet boardroom for when deep focus is required).
- Noise cancelling headphones, voice-to-text software, allowing snacks, fidget toys, resistance bands (on the chair to allow for movement), lap pads.



The process of getting RAs

Depending on your employer you may need a full clinical diagnosis. I would suggest seeing a physician or psychiatrist who has extensive experience with adult ADHD.

You may also need a professional assessment to determine what kinds of RAs you require (although it is important to note that you should always be involved in deciding what accommodations are recommended or decided on). I would highly recommend seeing an occupational therapist (OT) who has experience working with adult ADHD to help you navigate this process. OTs are familiar with all of the legal, human rights, and ethical issues related to RAs, and can help you determine what sorts of accommodations would be reasonable for your employer. OTs can also liaise with your employer or HR department on your behalf or facilitate conversations with your employer if needed.

Know your rights and responsibilities

It is advised that we familiarise ourselves with relevant legislation that has a direct bearing on the issue of disclosure. For example, Section 7 and 8 of the Employment Equity Act, Section 12 and 13 of the South African Schools Act, the Mental Health Care Act and Section 10/28 of the Promotion of Equality and Prevention of Unfair Discrimination Act.

- [NATIONAL STRATEGIC FRAMEWORK ON REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES OCT 2021](#)
- [EMPLOYMENT EQUITY ACT \(55/1998\): CODE OF GOOD PRACTICE: KEY ASPECTS ON THE EMPLOYMENT OF PEOPLE WITH DISABILITIES](#)
- [PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT 4 OF 2000](#)
- [MENTAL HEALTH CARE ACT](#)
- [CASE LAW EXAMPLE](#)

Primary source

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