

**Tripartite Meeting of Experts on the Management
of Disability at the Workplace**Geneva
3-12 October 2001

Report of the discussion

Introduction

1. At its 277th Session (March 2000), the Governing Body decided to convene a Tripartite Meeting of Experts on the Management of Disability at the Workplace, and approved the Meeting's agenda. The Meeting was held in Geneva from 3 to 12 October 2001.
2. The agenda of the Meeting consisted of a single item: examination and adoption of a code of practice on managing disability in the workplace.

Participants

3. Twenty-seven experts were invited to the Meeting, nine nominated by the Governments of Australia, Canada, Chile, China, Dominican Republic, Finland, France, Hungary and South Africa, nine after consultation with the Employers' group and nine after consultation with the Workers' group of the Governing Body.
4. Several observers also attended the Meeting, representing the International Organization of Employers (IOE), the International Confederation of Free Trade Unions (ICFTU), the Office of the High Commissioner for Human Rights (OHCHR), Disabled Peoples' International (DPI), Inclusion International, the International Confederation of Nurses (ICN) and the International Organization for the Provision of Work for Persons with Disabilities and who are Occupationally Handicapped (IPWH).
5. The list of participants is annexed to this report.

Opening address

6. The Meeting was opened by the representative of the Director-General of the ILO, Mr. Pekka Aro, Director of the InFocus Programme on Skills, Knowledge and Employability. He welcomed the participants to the Meeting and thanked them for making available their time, knowledge and experience. He observed that the mandate of the ILO with regard to persons with disabilities concerned the promotion of training and employment opportunities based upon the principles of equality of opportunity and treatment. He traced the history of ILO action addressing the participation of persons with disabilities in the world of work, noting as major milestones the adoption in 1955 by the International Labour Conference of a Recommendation (No. 99) on vocational rehabilitation, and in 1983 of a Recommendation (No. 168) and a Convention (No. 159) on

the vocational rehabilitation and employment of disabled persons. The Convention had achieved 73 ratifications to date, including 14 in the last three years, indicating that constituents still considered it to be a relevant international instrument. He noted that the expected outcome of this Meeting – the code of practice under consideration – would complement Convention No. 159. He further noted the growing role of the social partners, as well as organizations of disabled persons, in promoting the participation of persons with disabilities in the world of work, and that disability issues had increasingly become human rights issues. Mr. Aro stated that with the right skills and appropriate support, persons with disabilities could participate productively in the workplace, and that a strong business case could be made for the recruitment and retention in employment of workers with disabilities. He concluded by observing that disability management had emerged as an approach used in an increasing number of countries, with Canada having led the way by adopting in 2000 a national code of practice for disability management.

Election of the Chairperson and Reporter

7. Mr. Michael Carleton, the expert nominated by the Government of Canada, was unanimously elected as Chairperson of the Meeting. Ms. Christine Langsford, the expert nominated by the Government of Australia, was unanimously elected as Reporter of the Meeting.

Presentation of the draft code of practice

8. Ms. Barbara Murray, the deputy representative of the Director-General and coordinator on equity issues in the IFP/Skills Programme, introduced the draft code. She noted that since the adoption of Convention No. 159 there had been significant changes worldwide in the way disability was understood, as reflected in government policy, in how persons with disabilities find employment in the labour market, and in requests for guidance received from employers and their organizations. She explained that written comments on the draft code had been received from eight employers' organizations, eight workers' organizations, 34 governments and five non-governmental organizations. She noted that the objective of the code was to provide practical guidance. She then described the various sections of the draft code, noting that unlike Convention No. 159 which was directed towards governments, the code was directed largely towards employers – public and private, production and service, rural and urban, in industrialized and developing countries.

General comments on the draft code

9. The Chairperson invited general comments from the experts. The Employer experts' spokesperson commended the Office on its preparatory work on the code, and expressed the appreciation of the Employer experts, noting that the draft code was one of only a few ILO instruments focusing on employers. She emphasized that support to employers was essential, as stated in the draft code, and underscored the importance of putting the provisions of the draft code to a "reality test" – will this code make a difference to persons with disabilities? Will this code be useful to all employers? The Employer experts' spokesperson outlined five important issues: (1) economics – employment of a person with a disability has to be a good business decision, requires a suitable person for the job, and is related to the economic context; (2) cost-benefit analysis is necessary for any good business decision; (3) community support structure is required so that an employer can find and hire the best person for the job; all must be involved – government, local community, disabled persons, as well as employers; (4) the code must be carefully explained – how it differs from other ILO codes and instruments; (5) there are differences between

enterprises, between countries; what works well for one enterprise or country may not work well in another – one size does not fit all.

10. The Worker experts' spokesperson expressed the pleasure of the Worker experts to participate in this Meeting on an issue of such great concern. He cited the positive features of the draft code: it includes both work-related and non-work-related disabilities, it outlines responsibilities for both recruitment/promotion and job retention, and it makes progress in bridging the gap between the medical and social model of disability. He also cited concerns of the Worker experts: the draft code lacks adequate reference to existing legislation and standards – there is no economic incentive to employ persons with disabilities without anti-discrimination and other legislation. There should be no exemption for self-employed, informal sector and sheltered employment. There should be clear statements on the rights and responsibilities of workers and workers' representatives in disability management. The code needs a discussion on appropriate dispute mechanisms. A clarification is needed about the different needs of disabled workers – those disabled before the job (recruitment) and those disabled during employment (retention). The relationship of disability management to occupational health and safety requires explanation. The code lacks reference to income support and the risks of losing such support when employed. And finally, the code needs to use updated terminology and to take into greater consideration the social model of disability.
11. The Government expert from South Africa congratulated the drafters of the code and noted that her country was also engaged in finalizing a code of good practice on key aspects of disability in the workplace.
12. During the general discussion on the draft code, the observer from Disabled Peoples' International emphasized the need for the code to differentiate between countries at different levels of development. She suggested that the code should relate to general legislation on occupational safety and health as well as on employment in a country. She also suggested that the structure of the code should follow the employment cycle. She emphasized the need for the code to address employers' need for support, as they may have difficulty applying the disability management measures in the code without support. The idea of a technical manual on how to apply the code in different situations was also proposed.

Title and preface of the draft code

13. Several experts suggested that the preface was too long, and could be limited to several parts, such as background, key points and glossary. Other experts proposed to shift parts of the preface to the appendix. The Employer experts proposed a new, shortened preface, which received support as a starting point for the discussion.
14. The Worker experts' spokesperson said that the preface should define the target audience for the code, and put forward information on: (1) existing relevant international conventions; (2) the benefits of disability management; and (3) a glossary of terms. He suggested that the preface required more balance regarding the roles of the social partners, as well as an explanation of what a code is. He emphasized that a code of practice, not guidelines, on disability management was being examined.
15. A Government expert suggested that if the preface singled out women with disabilities for attention, it should do the same for other special groups. Other experts stated that it was important to make reference in the code to the disadvantages faced by women with disabilities in accessing employment.

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16. The experts agreed with the interchangeable use in the code of the terms “people with disabilities” and “disabled persons”. Several experts suggested that the “medical model” of disability, that focuses on the anatomical impairment of an individual, was less useful in the consideration of employment and training of a person with a disability than the “social model” of disability, that focuses on the physical and social barriers facing disabled persons in society and the workplace. Several Government and Worker experts cited the “International Classification of Functioning” (ICF) – formerly entitled ICIDH-2 – recently published by the World Health Organization, that focuses on the “activity limitation” of an individual, rather than on his or her impairment, and suggested that this concept would be more useful in the context of disability management. It was proposed that the definition of “disabled person” as presented in the draft preface be changed by replacing the word “impairment” with “disability”. The Employer experts, while appreciating the concepts introduced by the “social model”, found the term “impairment” useful, noting that it was the term used in the Convention No. 159 definition of “disabled person”. It was finally agreed to modify the definition of “disabled person” for the purposes of the code by introducing the term “returning to” employment, to retain the term “impairment”, and to add the terms “sensory” and “intellectual” impairment. It was also agreed to move the definition from the preface to the general provisions section of the code.
 17. The experts debated at length about the inclusion in the preface of a reference to persons with disabilities “living in poverty”, and eventually decided against its inclusion, as poverty was not unique to persons with disabilities in many countries, nor did “living in poverty” characterize all persons with disabilities.
 18. The experts also discussed at length the notion of the necessity of economic growth to achieve increased employment opportunities for persons with disabilities. The Employer experts believed that the economic context would be a significant factor in determining the success of disability management efforts, especially the recruitment of persons with disabilities. The Worker experts expressed their belief that disability management in the workplace would produce results no matter what the economic context, noting that in many developing countries significant economic growth was unlikely. The code was applicable during good times as well as bad. A Government expert noted that when economic growth was favourable, it should be exploited, and when not, increased attention to employment policies and measures was necessary to increase employment opportunities. The Meeting agreed to the inclusion in the preface of a reference recognizing the importance of economic growth to create increased employment opportunities.
 19. The Meeting agreed that the code was not legally binding and that it should be applied according to national conditions. It was agreed to include in the preface that the code’s application should be according to “national law and practice”.
 20. The experts reached early agreement on a proposal to include reference to “organizations of persons with disabilities” as entities to be consulted, in all relevant paragraphs in the code, including the preface. The definition of “organizations of persons with disabilities” in the general provisions section was subsequently expanded to include organizations “of and for” persons with disabilities.

General provisions

21. The Meeting agreed that the objective of the code was to provide practical guidance on the management of disability issues in the workplace, with a view to ensuring that persons with disabilities have equal opportunity. The experts, however, debated at length about whether the code should include among its aims “equal treatment”. The Employer experts pointed out that a prescription of equal treatment might discourage the very

accommodations – reduced hours, modification of the job content – that make it possible for some disabled persons to work. The Worker experts emphasized that “equal” did not mean “same”, and that the concept of equal treatment was important to discourage employers from hiring employees with disabilities on less favourable conditions than employees without disabilities. They also noted that Convention No. 159 (Article 4) specifies “equality of opportunity and treatment”. The Meeting finally agreed to amend the title of the definition of “equality of opportunity and treatment in employment and occupation”, by agreeing that the definition was best titled “equal opportunity”. It was also agreed to delete all references in the code to “equal treatment”, retaining use of the term “equal opportunity” as defined.

22. The experts agreed that efforts to promote safety and health in the workplace were linked to disability management, and that the disability management process could inform such efforts. Proposals to extend the efforts to include providing “hazard-free” workplaces and undertaking “risk analysis” of job adaptations, adjustments and accommodations, were discussed at length, resulting only in the inclusion of the concept of risk analysis, while recognizing that no workplace could be hazard-free.
23. The Worker experts proposed, as additional principles, the principle that effective disability management practices be based on evidence, best practice and experience, and the principle that disability management practice should be based on a consensus among governments, workers, employers and persons with disabilities. For the latter, the importance of cooperation was stressed and the principle was further expanded to include worker representatives, employers’ organizations and organizations of persons with disabilities.
24. The experts agreed that the code should be applicable to both large and small employers, and to all countries, regardless of the level of economic development. It was also agreed that the code was intended to be of benefit to persons with disabilities, regardless of the cause or nature of the disability, as well as to organizations of persons with disabilities in their role of promoting employment opportunities for disabled persons.
25. Several other definitions in the code provoked active discussion. One concerned the term “intellectual disability”. The observer from Inclusion International described the term as unfair, as no other type of disability was defined, and therefore it suggested unequal treatment of people with intellectual impairments. The entire definition was stigmatizing, demeaning and unacceptable. The experts agreed and the definition was deleted from the code.
26. Several experts noted the connection between the term “job retention” and the term “return to work”, and suggested that they were not compatible in their present formulations. One Employer expert noted that it may not always be possible for some injured workers to return to the same job. A Worker expert agreed, stating that return to work and job retention were two different things, and proposed a change in the definition of return to work, to emphasize that it was a process. The change was agreed by the Meeting.
27. A proposal to add “training and retraining” to the definition of “vocational rehabilitation” resulted in a close examination of the process of vocational rehabilitation. Several Government and Worker experts noted that vocational rehabilitation services in some countries often included training or retraining. The addition was agreed by the Meeting.

General duties of employers and workers' representatives, and responsibilities of competent authorities

28. An Employer expert emphasized that disability management at the workplace should be relevant and possible not only for large employers with large structures, but also for small employers. The provisions of the code should encourage both small and large employers to formulate and implement a strategy for disability management. The experts agreed that coordination of disability management at the workplace may not require a formal representational structure, especially in small workplaces. A Worker expert agreed with this point and noted that the code should be applicable to both unionized and non-unionized workplaces.
29. The concept of “reasonable” adjustment and accommodation was examined at length by the experts who, while agreeing that it was the responsibility of the employer to make the adjustment or accommodation, suggested that it was the responsibility of the competent authority to set criteria for determining what is “reasonable” with regard to adjustments and accommodation required by an individual with a disability for employment. Such criteria would be in accordance with national law and practice.

Framework for the management of disability issues in the workplace

30. Several experts noted that women with disabilities in many developing countries were at a particular disadvantage, often facing barriers to employment due to gender roles in the social cultural context. The experts discussed at length about whether the code should simply recognize the fact that many women with disabilities face particular barriers to employment, or whether it should suggest that specific actions to promote employment opportunities for women with disabilities be considered. It was agreed by the Meeting that the competent authority should consider specific actions to promote the employment, job retention and return to work of women with disabilities.
31. Similarly, the difficulties faced by workers who have family responsibility for a disabled person or persons was discussed. The Employer experts suggested that such a concern was outside the scope of disability management, while the Worker experts believed that provisions for such workers could be an important element in disability management practice. The Meeting agreed that the disability management strategy could consider provisions for workers who hold such family responsibilities.
32. The importance of senior management demonstrating commitment to the disability management strategy was emphasized by a Worker expert, who suggested that this could be done through a policy statement, letter or other means. A Government expert agreed, emphasizing the value of “setting a good example” for other employers. The Employer experts also agreed, suggesting that the employer could decide to do so through whatever measures they deemed appropriate.
33. The experts examined how best to monitor progress and evaluate the effectiveness of the disability management strategy in the workplace, suggesting that it was important to do so, while not wishing to create a burden on employers in terms of record keeping. A Government expert noted that statistical information on the recruitment, job retention and return to work of persons with disabilities was often unavailable, and such record keeping would be useful to governments. A Worker expert emphasized that any data collected should be confidential to protect the worker. It was agreed that evaluating the effectiveness was more important than monitoring the progress of the strategy, and that employers

should do so with the participation of workers' representatives. It was also agreed that information was necessary for evaluating the effectiveness of the disability management strategy, but that it should be collected, stored and reported in a confidential, anonymous manner.

Recruitment, promotion, job retention, adjustments, confidentiality

34. The use of a work experience opportunity as means of facilitating the employment of a person with a disability was discussed by the experts, who agreed that work experience organized by an employer could be beneficial to both the jobseeker and the employer. An Employer expert noted, however, that work experience was not the same as on-the-job training. The experts agreed to substitute "work experience" for "on-the-job training" wherever it appeared in the draft code. It was also suggested that for work experience to be successful, a support person, such as a senior worker or job coach, might be assigned to assist the person.
35. The experts also examined measures for job retention, to make it possible for employees who acquire a disability while in employment to continue to work for the same employer. It was agreed that access to available medical and other supports might be important for some workers returning to work after an injury or illness. It was recognized that the cost of such supports could not be the responsibility of the employer. The experts agreed to include in the code the right of access to such supports so that any existing condition would not be exacerbated.
36. The issue of procedures for the termination of workers with disabilities was raised by the Worker experts, who suggested that this was an important issue that should be included within the strategy of disability management in the workplace. The Employer experts suggested that the issue was adequately addressed by other international instruments, as well as national laws and practices. The Meeting agreed that before such a step is taken, accommodation measures should be fully considered in order to utilize the residual skills and potential of the worker with a disability.
37. The Worker experts proposed a new provision to ensure that emergency planning for the workplace takes into consideration persons with disability, and provides for their safe evacuation from the workplace area. The Employer experts agreed with the provision, but noted that in emergency planning there were always exceptional circumstances that make a comprehensive plan impossible.

Appendices

38. The Meeting agreed to the inclusion in the appendix "Other related ILO Conventions and Recommendations" two additional Conventions, the Equal Remuneration Convention, 1951 (No. 100), and the Termination of Employment Convention, 1982 (No. 158). It was also agreed to add as a second appendix, the "Relevant international disability initiatives", originally found in the draft preface. A third appendix "Examples of legal and policy frameworks concerning disability adopted by some ILO member States", incorporating sections from the draft preface, was also agreed.

Adoption of the code of practice and of the report

39. After examining the text of the draft code of practice on managing disability in the workplace, the experts adopted the code of practice as amended.
40. After examination of the report, the experts adopted it as amended. Thereafter, the experts adopted the report and the code of practice as a whole.

Geneva, 12 October 2001.

(Signed) Mr. Michael Carleton,
Chairperson.

(Signed) Ms. Christine Langsford,
Reporter.