

FACT SHEET

DISABILITY AND EMPLOYMENT: THE SABPP DISABILITY PROFESSIONAL PRACTICE STANDARD



INTRODUCTION



The Constitution of the Republic of South Africa (Act 108 of 1996) provides the legal foundation for the country. It is admired all over the world, especially Chapter 2 – the Bill of Rights, which guarantees the freedom of its citizens¹. It also sets out the rights and the duties of the citizens as well as defining the structure of the government². The Constitution gives people with disabilities equal value and rights just like any other citizen of the republic. Globally, people with disabilities are marginalised and excluded from full participation in society. In South Africa, they face many challenges, such as access to health care services, employment and education³. People with disability also experience higher levels of poverty than people who are not. Furthermore, section 9 of the Constitution allows for positive measures to be taken to promote the achievement of equality for persons previously disadvantaged by unfair discrimination, which includes people with *disabilities*.

Chapter 2 of the Constitution of the Republic of South Africa protects the rights of all citizens to their human dignity, equality and freedom and the Constitution further provides that the state must respect, protect, promote and fulfill these rights; with some limitations contained or referred to in section 36, or elsewhere in the Bill of Rights. Therefore, any form of discrimination on grounds such as race, gender, sex, pregnancy, marital status, ethnic or social origin, sexual orientation, age, *disability* and religion, amongst others, is prohibited⁴.

A terrible example of a breach of human dignity by the acts of state employees occurred recently in South Africa, when mental health patients were transferred from “places of safety”, where their needs and rights were observed, to places where their human dignity was severely compromised. Acts such as these clearly show that there is still a mammoth task to be carried out in enlightening all citizens about their responsibilities, ensuring ethical practices as well as observing the law.

This Fact Sheet will cover different aspects of disability and will detail the Disability Professional Practice Standard, as developed by SABPP (Please note that the Practice Standard will be issued for general publication in the near future, and may differ in some respects from the version published in this Fact Sheet).



1. <https://www.brandsouthafrica.com/governance/constitution-sa-glance/myconstitution-my-rights-a-plain-language-guide-to-the-bill-of-rights>
2. https://en.wikipedia.org/wiki/Constitution_of_South_Africa
3. Research on disability and equality in South Africa 2013-2017 (SAHRC)
4. <http://www.justice.gov.za/legislation/constitution/chp02.html>

DEFINITION OF DISABILITY

Disability has over the years been defined in various ways as a result of how different entities perceive and understand it. The strict legal definition is contained in the Employment Equity Act (No. 55 of 1998), which promotes fairness and protects employees from any form of discrimination in the workplace. This Act refers to people with disability as people who have a long-term or recurring physical, including sensory, or mental impairment which substantially limits their prospect of entry into or advancement in employment⁵. The International Classification of Functioning, Disability and Health (ICF) defines disability as an umbrella term for impairments, activity limitations and participation restrictions; and as the interaction between individuals with a health condition (e.g. cerebral palsy, Downs syndrome and depression) and personal and environmental factors (e.g. negative attitudes, inaccessible transportation and public buildings, and limited social supports).

According to the World Health Organisation (WHO), disability is not just a health problem but a complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which he or she lives. Overcoming the difficulties faced by people with disabilities therefore requires interventions to remove environmental and social barriers⁶.

Building on these definition approaches, the SABPP defines for the human resources profession the employment of people with disabilities as "the systematic process of identifying, removing and preventing barriers and increasing opportunities for the meaningful employment, full inclusion and retention of people with disabilities in the workplace in order to support their full participation in the labour market:".

Disability is now understood to be a human rights issue. People are disabled by society, not just by their bodies. These barriers can be overcome, if governments, non-governmental organisations, professionals and people with disabilities and their families work together. (WHO)



⁵ <https://mywage.co.za/decent-work/work-and-illness/disability>

⁶ <https://www.who.int/topics/disabilities/en/>

LEGAL PROVISIONS PROTECTING PEOPLE WITH DISABILITIES

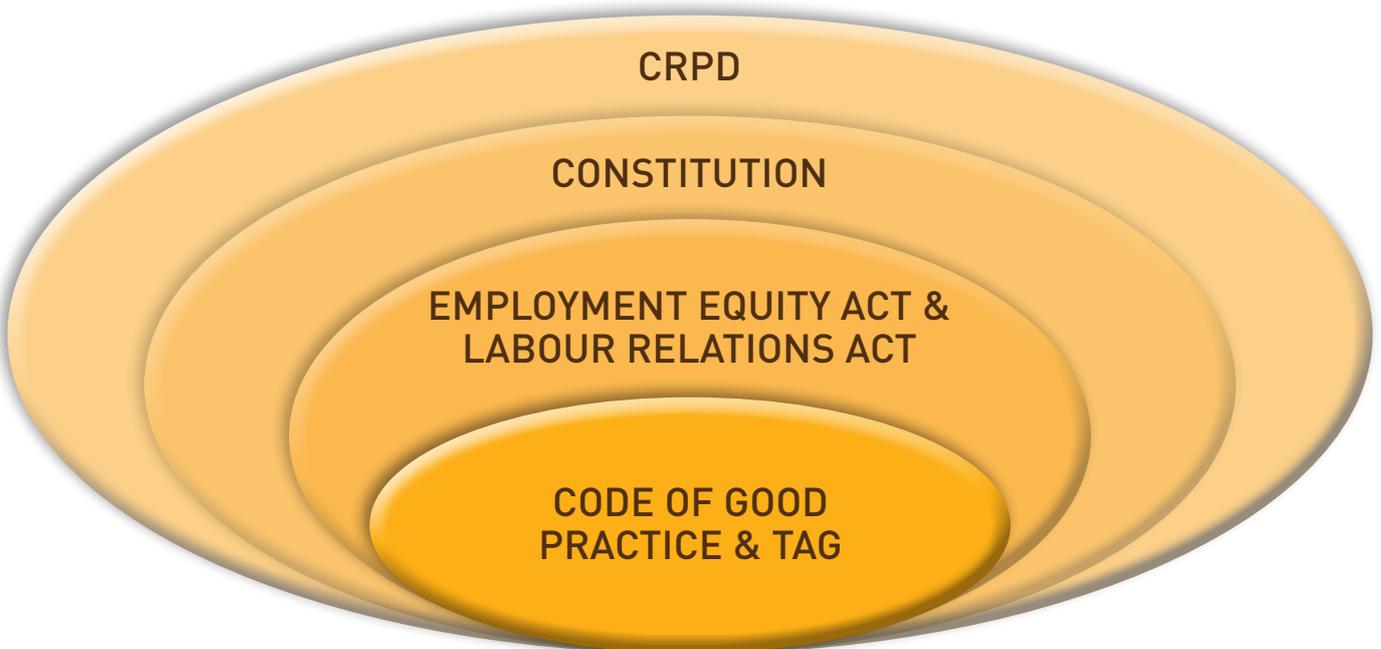
South Africa has a comprehensive set of laws concerning protection of human rights, which would apply in the case of employment of people with disabilities.

It is thus imperative that employers must have a good understanding of concepts concerning disability and what it means practically, as well as the legislative mandates. This will enable good governance practices and thereby eliminate any form of discrimination in the workplace. Employees also, with or without disabilities, should be familiar with the legislative provisions so that they exercise their rights responsibly. The information is available, and guidelines are in the public domain to equip employers with knowledge and understanding of their role in employment. The disability toolkit issued by the South African Human Rights Commission (SAHRC) is one of the documents that are available for ease of reference and as a guideline in dealing with this issue⁷.

The SA HRC Toolkit uses the following diagram to place legislative requirements in context. (CRPD is the United Nations Committee on Representation of People with Disabilities).

South Africa has a strong legislative framework that guarantees the rights of people with disabilities. This standard draws from both South Africa’s local and international legislation as reflected below - providing employers and human rights practitioners with a solid framework to manage and implement disability workplace programmes and plans.

- The Constitution of the Republic of South Africa (1996)
- The United Nations Convention on the Rights of Persons with Disabilities (Article 27)
- The Employment Equity Act 55 of 1998
- The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000
- The Labour Relations Act 66 of 1995
- Relevant Codes of Good Practice issued by the Department of Labour
- The Occupational Health and Safety Act 85 of 1993
- The National Building Regulations Part S
- The Broad Based Black Economic Empowerment (BBBEE) Act.



7. <https://www.sahrc.org.za>



RIGHTS OF EMPLOYEES WITH DISABILITIES

Rights for people with disabilities include:

- the right to equal protection and benefit of the law
- the right to recourse and redress in the event that their rights are violated
- the right to enjoy the same opportunities and benefits as people without disabilities
- the right to reasonable accommodation
- the right to a safe and non-discriminatory workplace
- the right to non-disclosure of their disability status
- the right to be treated fairly and with respect
- the right to be included in decisions that affect them.



KEY FACTS ABOUT DISABILITY AND HOW PEOPLE WITH DISABILITIES ARE AFFECTED

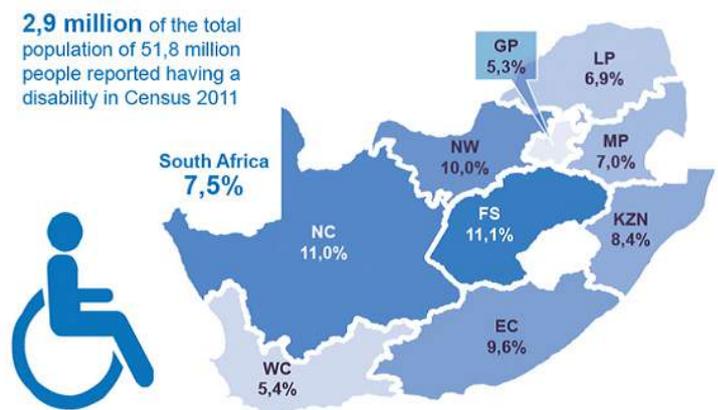
According to research⁸, over a billion people are estimated to live with some form of disability. This corresponds to about 15% of the world's population. Between 110 million (2.2%) and 190 million (3.8%) people 15 years and older have significant difficulties in functioning. Furthermore, the rates of disability are increasing in part due to ageing populations and an increase in chronic health conditions. While some health conditions associated with disability result in poor health and extensive health care needs, others do not. However, all people with disabilities have the same general health care needs as everyone else, and therefore need access to mainstream health care services. Often people with disabilities experience unfair treatment from part of the society. In public places, there is often a misunderstanding of how they need to be treated and be looked at. Other people will show empathy while others would ignore them, or they will be treated in a manner that is not acceptable to them. This is the indication that the society is not well equipped with knowledge on disability. Other members of society, and often even family members, shy away from bringing their disabled fellows into public. This behaviour does not help as it only exacerbates the condition of the person trying to live with their disability by depriving them their rights and access to facilities, such as health services.

Another important factor is that disabilities can be visible or invisible, temporary or long term, chronic or episodic. Often society looks at visible impairments such as people who are in wheelchairs or blind people. Those with invisible impairments either suffer silently or may struggle to get the same treatment or benefits as those with visible impairments. Socio-economic inequality is also rife in South Africa, where poor people often don't have access to decent health care facilities and any other form of assistance they might need, as compared to those who can afford. This makes the plight of people with disabilities, who are also mostly poor, even worse. The reality is that disability affects all of us at some point of

our lives, either directly or through a family member, close friend or a colleague.

According to the SAHRC, people with disabilities currently account for 5.1% of the population aged 5 years and older in South Africa. Despite this low percentage, they lack access to adequate health and basic education and are at risk of economic isolation with no prospect of securing employment⁹.

The last full South African census in 2011 provided valuable information on the disability statistics in South Africa¹⁰.



Statistics SA figures for 2016 show that 4.2% of South Africans aged 5 years and older were classified as disabled.

Despite the legislation, there is still a very high level of unemployment for people with disabilities. Possible factors include, but are not limited to, ignorance, fear and stereotypes. Within the estimated number of 2.9 million people having disabilities in South Africa (1 in 18 people), less than 1% of all people employed in this country are those with disabilities¹¹.

8. <https://www.who.int/news-room/fact-sheets/detail/disability-and-health>

9. <https://www.sahrc.org.za/index.php/focus-areas/disability-older-persons/disability>

10. <http://www.statssa.gov.za/?p=3180>

11. <https://mywage.co.za/decent-work/work-and-illness/disability>

Individuals aged 5 years and older with disability by gender and province, 2018

INDICATOR	STATISTIC (Number in thousands)	PROVINCE									
		WC	EC	NC	FS	KZN	NW	GP	MP	LP	RSA
Male	Number	93	138	35	61	175	102	187	71	151	1 013
	Percent	3.1	5.0	6.7	4.9	3.7	5.9	2.8	3.6	6.4	4.0
Female	Number	117	151	36	77	229	124	217	107	180	1 240
	Percent	3.8	5.0	6.2	5.7	4.4	7.0	3.3	5.2	6.6	4.7
TOTAL	Number	210	290	71	139	405	225	404	178	332	2 253
	Percent	3.5	5.0	6.4	5.3	4.0	6.4	3.0	4.4	6.5	4.4
Subtotal	Number	5 833	5 481	1 034	2 473	9 619	3 274	12 887	3 831	4 758	49 190
Unspecified	Number	12	19	1	4	33	5	54	12	14	155
TOTAL	Number	6 055	5 790	1 106	2 616	10 057	3 504	13 346	4 021	5 103	51 599

The table shows that 4,4% of South Africans aged 5 years and older were classified as disabled in 2018. A larger percentage of women (4,7%) than men (4,0%) were classified as disabled. Limpopo (6,5%), Northern Cape and North West (both 6,4%) presented the highest prevalence of disability in the country. Since older populations are more likely to have a higher prevalence of disability, the lower prevalence in Gauteng (3,0%) and Western Cape (3,5%) could be ascribed to the relatively youthful population that is often associated with net in-migration in these provinces.

Equality of opportunity and treatment in employment and occupation is a very important aspect of the overall principle of equality, which is now almost universally endorsed. It is one of the most fundamental principles underlying any democratic society and is set forth in many international instruments, national constitutions and laws. However, despite the substantial progress made, great inequality persists in almost all parts of the world, between women and men, between races and on such grounds as religion, political opinion, national extraction and social origin.¹²



Unfair disability discrimination is perpetuated in many ways, such as:

- Setting employment criteria that exclude disabled people (for example, stressing that an employee must own and drive a car);
- Keeping disabled employees in low status jobs, earning lower than average remuneration;
- Inaccessible workplaces (lack of wheelchair access or ablution facilities for the disabled, for example);
- Lack of appropriate technical workplace support;
- Inappropriate or non-existent training for people with disabilities;
- Bias and stigma.

South Africa commemorates National Disability Rights Awareness Month annually between 3 November and 3 December.

3 December is the International Day of Persons with Disabilities and is also commemorated as National Disability Rights Awareness Day.

Disability is the consequence of an impairment that may be physical, cognitive, mental, sensory, emotional, developmental, or some combination of these. A disability may be present from birth or occur during a person's lifetime.¹³

¹² <https://www.ilo.org/legacy/english/dialogue/ifpdial/llg/noframes/ch7.html>

¹³ <https://www.gov.za/DisabilityRightsAwarenessMonth2019>

PROFESSIONAL PRACTICE STANDARD

DISABILITY AND EMPLOYMENT



WHERE DOES DISABILITY AND EMPLOYMENT FIT INTO THE HRM SYSTEM?



Fair employment practices in relation to Disability are mandated by the South African Constitution and various pieces of employment related legislation and Codes of Good Practice. People with disabilities are included in the definition of South Africa's designated groups (i.e. those who have suffered discrimination in the past). Employers are required to give preference to suitably qualified designed groups in employment.

Within the SABPP HRM System, Disability and Employment covers practices in all 13 of the elements of the System Model.

What are the fundamental requirements for good disability and employment practices?

1. The executive leadership of the organisation should demonstrate commitment, allocate resources including knowledgeable HR practitioners, and ensure that the workforce is informed about disability issues in order to achieve successful disability outcomes.
2. Disability should be included into all people practices. This means that a disability policy should be developed, or all other HR policies should be amended to include disability issues as applicable to each policy. For example, the recruitment policy should include specific provisions on how applicants and employees can safely disclose a disability; the training & development policy and practices should make specific reference to people with disabilities. Consultations on the development/ amendment of these policies should always include people with disabilities.
3. The organisation should show alignment in its HR strategy to the advancement of people with disabilities.
4. The definition of Disability to be used and incorporated into people practice decisions is that of the United Nations Convention on the Rights of Persons with Disabilities as reflected below:

“Disability is an evolving concept... disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.”

5. People with disabilities should be afforded the right to choose work which is meaningful to them and is in line with their knowledge, skills and abilities.
6. Employees and/or external consultants who conduct risk assessments and assessments of reasonable accommodation should have the skills and knowledge to apply general principles to individual circumstances.
7. Specific communication, information and awareness building should be provided to support the organisations' people practices on disability.
8. The organisations' progress on employment, inclusion and retention of people with disabilities should be monitored and tracked.



WHAT SHOULD THE PROCESS LOOK LIKE?



Specific areas of attention in each part of the process include:

1. Employment Equity Plan – should include an Accessibility Audit (see the SAHRC Toolkit)
2. Source, recruit and select
 - a. Refer to the Checklist for Hiring Persons with Disability in the SAHRC Toolkit.
 - b. Disclosure of a non-visible disability should be verified with a medical certificate where appropriate or other reference-based methods of verifying the impairment.
 - c. Any selection practice such as the use of psychometric tests should be reviewed to identify any barriers to recruitment of people with disabilities.
 - d. Reasonable accommodation measures should be determined and agreed upon before appointment. Documentation on reasonable accommodation measures should be maintained. Refer to the section on reasonable accommodation in the SAHRC toolkit.
3. Learning and Development
 - a. Onboarding should include sensitisation of the immediate manager and work team plus other affected employees. Coaching and mentoring of the recruited candidate and those around him/her can be effective.
 - b. Barriers to accessing learning and development activities for employees with disability should be proactively identified and mitigation measures taken (for example, physical access to training facilities; audio translation of visual training materials).
4. Performance Management
 - a. Ensure that KPI's and work targets are set appropriately for people with disabilities (this should be part of reasonable accommodation).
 - b. Include performance management aspects in the sensitisation process to avoid distortion through too much sympathy or insufficient empathy.
5. Rewards and Recognition
 - a. The total reward structure for people with disabilities should be flexible enough to include elements such as flexible working arrangements.
 - b. Recognition programmes could include focus on successful inclusion of people with disabilities.
6. Employee Wellness
 - a. Wellness programmes and facilities should be reviewed to ensure appropriateness for people with disabilities.
 - b. Safety management measures such as evacuation routes should be reviewed for each individual employee with a disability.
7. Employment Relations
 - a. Disciplinary procedures should be reviewed to cater for non-disclosure to avoid difficulties with non-performance which turn out to be related to an impairment.
8. Organisation Development
 - a. Organisational diagnostic exercises should include feelings of inclusion/exclusion by people with disabilities in order to identify barriers to full participation in the workforce.
 - b. Refer to the section on common attitudinal barriers employees with disabilities will face in the SAHRC Toolkit, and the section on how to raise awareness.

IMPORTANT ELEMENTS



1. Progress in ensuring equitable opportunities in the organisation for people with disabilities is unlikely to be made without a Disabilities Champion, who has good knowledge and skills (or access to external sources of knowledge and skills) on the complexities of disability management and can therefore align a sound disability management approach with the organisation's processes and practices.

- The SABPP has a National Diploma NQF 5 qualification in Disability Employment Practice, which is recommended for all Disability Champions.

2. The definition of disability adopted by the United Nations and endorsed by South Africa is: "Those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others"

Interpretations of this definition need to be made in relation to specific work situations. For example, some conditions of sensory impairment (touch, heat, pressure, balance) should be considered as aspects of physical impairment. Chronic diseases such as fibromyalgia and chronic fatigue syndrome should also be considered

See Appendix 2 for a fuller discussion of this definition

3. It is important to create a pipeline for the employment of people with disabilities, by identifying suitable schools and tertiary education institutions where bursaries can be offered

4. Get involved with networks and voluntary organisations which promote employment of people with disabilities.



CONCLUSION

It is important that the employer and HR departments lead awareness of good practice standards on disability. It is also important that the stakeholders be involved to ensure clear understanding of the importance of adhering to the constitutional rights for persons with disabilities.

Well said by Dr Rowland **“nothing about us without us”**.

Nothing About Us Without Us! (Latin: “Nihil de nobis, sine nobis”) is a **slogan** used to communicate the idea that no policy should be decided by any representative without the full and direct participation of members of the group(s) affected by that policy. This involves **national, ethnic, disability-based**, or other groups that are often thought to be **marginalized** from political, social, and economic opportunities¹⁴



“I’m officially disabled, but I’m truly enabled because of my lack of limbs. My unique challenges have opened up unique opportunities to reach so many in need.” –Nick Vujicic

“Your success and happiness lie in you. Resolve to keep happy, and your joy and you shall form an invincible host against difficulties.” –Helen Keller

“Equality is the public recognition, effectively expressed in institutions and manners, of the principle that an equal degree of attention is due to the needs of all human beings.” –Simone Weil

“Part of the problem with the word ‘disabilities’ is that it immediately suggests an inability to see or hear or walk or do other things that many of us take for granted. But what of people who can’t feel? Or talk about their feelings? Or manage their feelings in constructive ways? What of people who aren’t able to form close and strong relationships? And people who cannot find fulfillment in their lives, or those who have lost hope, who live in disappointment and bitterness and find in life no joy, no love? These, it seems to me, are the real disabilities.”

–Fred Rogers, *The World According to Mister Rogers: Important Things to Remember*

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¹⁴ <https://www.revolvy.com/page/Nothing-About-Us-Without-Us>



APPENDIX 1 REFERENCES

1. The SA Human Rights Commission has developed a Disability Toolkit that provides clear directives to assist employers to improve employment outcomes for people with disabilities
This is available as a free download on <https://www.sahrc.org.za/home/21/files/SAHRC%20Disability%20toolkit%20FOR%20CD.pdf>
2. The Department of Social Development has issued the Integrated National Strategy for Disability
3. The Department of Labour has issued the Code of Good Practice and Technical Assistance Guideline Document on Disability in the workplace
4. The regulators maintain lists of recommended disabled people's organisation for further information
5. SAE4D is a forum for employers to discuss and share approaches and practices in the disability arena. A membership fee is charged for this. www.sae4d.co.za



APPENDIX 2 CLARIFICATION OF DEFINITION

In order for there to be a disability, the following criteria must be met:

- There must be an impairment. The impairment may either be physical or mental or a combination of both.
 - A physical impairment means “a partial or total loss of a bodily function or part of the body”.
 - It also includes sensory impairments, such as hearing and visual impairments.
 - A mental impairment is a clinically recognised condition or illness that affects a person’s thought process, judgement or emotions.
- **It must be long Term or Recurring**
 - Long-term means the impairment has lasted for or is likely to persist for at least twelve months.
 - Recurring means the impairment is one that is likely to happen again and to be substantially limiting.
 - The condition can go away for a certain period of time and return again but it is incurable.
 - It includes a constant chronic condition, even if its effects on a person fluctuate, such as some forms of multiple sclerosis or other progressive or chronic illnesses.

Progressive Conditions

- Progressive conditions are those that are likely to develop, change or recur.
 - Persons with progressive conditions or illnesses are considered as Persons with Disabilities once the impairment starts to be substantially limiting.
 - Progressive or recurring conditions which have no overt symptoms or which do not substantially limit a person are not disabilities - for example, a person with cancer, tuberculosis or HIV would not be covered under the Employment Equity Act until the symptoms are substantially limiting the person’s ability to perform their job.
- It must be Substantially Limiting
 - The impairment is substantially limiting if its nature, duration or effects substantially limit a person’s ability to perform essential functions of the job for which he/she is being considered.
 - If the effects of the impairment are not substantially limiting (i.e. functionally limiting), even if they are physical and/or mental, are long-term or recurring, then the person is not covered under the EE Act.
 - Where the impairment is not evident, existing or historical information or qualified expertise may be used to ascertain impairment and functional limitations.

FACT SHEET

DATE	NUMBER	SUBJECT
2016		
February	1	PRODUCTIVITY BASICS
March	2	SERVICE LEVEL AGREEMENT
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May	4	BUILDING ORGANISATIONAL CAPABILITIES
June	5	CHANGE MANAGEMENT
July	6	INNOVATION IN HR
August	7	HR TECHNOLOGY
September	8	HR IN BUSINESS SUSTAINABILITY
October	9	THE LEARNING & DEVELOPMENT LANDSCAPE IN SA
2017		
February	1	MODERN SLAVERY
March	2	PENSION LAW FOR EMPLOYERS
April	3	THE GAME CHANGER: ROLE OF HR
May	4	HR GOVERNANCE
June	5	INTEGRATING SKILLS DEVELOPMENT, EMPLOYMENT EQUITY AND B-BBEE TRANSFORMATION
July	6	STRESS MANAGEMENT
August	7	REMUNERATION: RECENT TRENDS
September	8	HOW CEOs AND CHROs CAN USE THE SABPP TO CREATE EXCELLENCE IN HR MANAGEMENT
October	9	PEOPLE WITH DISABILITIES
November	10	RETRENCHMENT
December	11	THE SOUTH AFRICAN LEADERSHIP STANDARD

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FACT SHEET

DATE	NUMBER	SUBJECT
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2018

February	1	STRATEGIC HUMAN RESOURCE MANAGEMENT
March	2	BULLYING IN THE WORKPLACE
April	3	LISTERIOSIS AND FOOD SAFETY IN THE WORKPLACE
May	4	FLEXIBLE WORK PRACTICES
June	5	YOUTH EMPLOYMENT SERVICE
July	6	HR PRACTITIONERS AS EX-OFFICIO COMMISSIONERS OF OATHS
August	7	NATIONAL MINIMUM WAGE (NMW)
September	8	EMPLOYEE RETRENCHMENT
October	9	THE FUTURE OF YOUTH IN SOUTH AFRICA
November	10	BOARD EXAMINATIONS: A SIGNIFICANT STEP FORWARD FOR HR PROFESSIONALISATION
December	11	CHRONIC DISEASE MANAGEMENT: CANCER IN THE WORK PLACE

2019

February	1	EMPLOYER VALUE PROPOSITION
March	2	QUALITY COUNCIL FOR TRADES AND OCCUPATIONS
April	3	RECENT TRENDS ON REMUNERATION GOVERNANCE
May	4	THE PROTECTED DISCLOSURES ACT
June	5	HR SERVICE DELIVERY MODELS
July	6	CREATING A SPEAK UP CULTURE AT WORK
August	7	JOB PROFILES
September	8	ETHICS HOTLINE MANAGEMENT: BEST PRACTICE GUIDE FOR SOUTH AFRICAN EMPLOYERS
October	9	DISABILITY AND EMPLOYMENT: THE SABPP DISABILITY PROFESSIONAL PRACTICE STANDARD

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