

## **The Limits of the Reasonable Accommodation Duty under Zambian Law: A Comparative Legal Perspective**

**Dumisani J. Ngoma**

### **Introduction: What is the issue?**

This article discusses how Zambian law addresses the employer's obligations regarding support for individuals with disabilities in the workplace. It focuses on the legal requirement to provide 'reasonable accommodation' to enable employees with disabilities to perform their work. This can include adjustments to work hours, duties, equipment, or the physical environment. While Zambian legislation refers to this obligation, it does not define what constitutes 'reasonable,' specify circumstances for refusal of accommodation, or outline procedures for determining job performance capability. As a result, employers and employees may lack clear guidance about their respective rights and responsibilities.

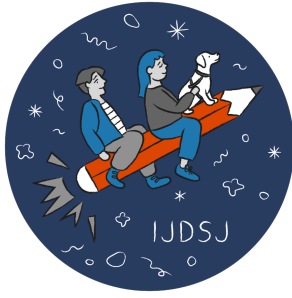
### **Zambia's Legal Framework: A Gap in Practical Guidance**

Zambia has two main laws on this topic: the Persons with Disabilities Act (2012) and the Employment Code Act (2019). These laws say employers must not discriminate against people with disabilities and must provide reasonable accommodation unless it would be an 'undue burden' or the person cannot meet the 'inherent requirements of the job.' However, the laws do not define what 'reasonable,' 'undue burden,' or 'inherent requirement' really mean in practice. As a result, employers have too much room to interpret these terms as they wish, and people with disabilities may find it difficult to challenge unfair treatment.

### **Key Concepts Explained**

The article breaks down three key legal ideas. First, reasonable accommodation is about making fair changes to support an employee with a disability. These changes can be physical, like ramps, or procedural, like adjusting working hours. Second, undue burden means that if an accommodation is too costly or difficult, the employer might be excused from providing it. Third, the concept of an 'inherent job requirement' enables employers to argue that an individual with a disability is unable to perform a job if the disability prevents them from fulfilling essential job duties. However, without clear guidelines, these defences can easily be misused.

### **Lessons from Other Countries**



To offer solutions, the article looks at how other countries have handled similar legal challenges. South Africa has created detailed guidelines to help employers understand how to support workers with disabilities. These guidelines are not legally binding but are widely respected and followed. South Africa also uses the term ‘unjustifiable hardship,’ which sets a higher standard than Zambia’s ‘undue burden.’ Employers must prove that accommodating an employee would seriously disrupt their business before they can refuse.

In the United States, employers also have to provide reasonable accommodations unless it would cause ‘undue hardship.’ However, courts in the United States often focus heavily on financial cost, and employers are sometimes allowed to deny support if it is not cost-effective. This approach can limit real inclusion for people with disabilities.

Canada uses what is known as the *Meiorin* Test. This test says that employers must show a job requirement is truly necessary, that it is applied in good faith, and that the person could not be accommodated without major difficulty. This test puts more responsibility on employers to justify any refusal to accommodate.

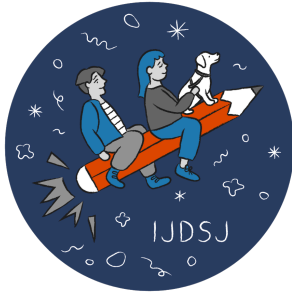
The United Kingdom also uses a principle called proportionality. Employers must show that any requirement that affects a disabled person is both necessary and fair. Guidance documents in the UK offer practical examples to help employers and courts apply these rules.

The article also refers to the United Nations Convention on the Rights of Persons with Disabilities. The committee that monitors this treaty recommends that countries view accommodation as effective if it helps the person do their job, not just whether it is cheap or easy. The committee also says that the employer must prove any refusal is justified.

### **Challenges Specific to Zambia**

While Zambia has shown some effort to improve access for people with disabilities, such as through the TEVETA guidelines for vocational education, these efforts fall short. The guidelines are limited in scope and do not apply to all employment settings. More importantly, they do not provide clear definitions or practical steps that employers can follow. Without national codes of practice or detailed regulations, people with disabilities in Zambia often face barriers when trying to get or keep a job. This legal vacuum allows employers to use subjective opinions or stereotypes when refusing to hire or accommodate someone with a disability. It also makes it difficult for workers to challenge discrimination or seek justice.

### **Recommendations for Legal Reform**



The article argues that Zambia needs to make several changes to its laws and policies. First, the country should create official guidelines or codes of practice that define reasonable accommodation and undue burden. These should include practical examples and procedures. Second, employers should be required to assess whether a person with a disability can perform the job with accommodation before concluding that they cannot meet its inherent requirements. Third, the burden of proof should be placed on the employer to explain why accommodation is not possible. Finally, the author encourages the use of African values such as Ubuntu, which emphasizes dignity, community, and mutual support. This cultural perspective can help reshape how disability rights are understood and respected in the workplace.

### **Conclusion**

In summary, the article highlights serious gaps in Zambia's current legal protections for employees with disabilities. The concept of reasonable accommodation is recognized in law but not fully supported by clear rules or enforcement mechanisms. Without better guidance, both employers and workers are left uncertain, and discrimination can go unchallenged. By looking at how other countries have addressed these issues, Zambia can adopt a stronger, fairer, and more practical approach. The goal is to move beyond vague promises and create a system where people with disabilities are truly included in all aspects of working life.

### **How to find out more**

To learn more about issues affecting persons with disabilities in Zambia, visit the Zambia Agency for Persons with Disabilities at <https://zapd.org.zm>.

### **About the author**

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