# Employment Department comments

## ‘General Comment on Equality and Non-discrimination (Article 5)’

**V. Normative Content**

**ii. Art.5 (1) Equal protection and equal benefit of the law.**

***[…]Reasonable accommodation may be incorporated into employment laws that prohibit discrimination through denial of reasonable accommodation. […]***

Section 46A of the Employment Act 1995 prohibits an employment decision against a worker on the grounds of the worker’s disability, and whether this covers the UN Recommendation is yet to be ascertained in the practical application of this section.

**VI. General obligations of States parties under the Convention relating to non-discrimination and equality**

**33. *Article 5 and 4 (1) (a) CRPD demand that States parties adopt anti-discrimination legislation that is both, comprehensive and specific. Comprehensive anti-discrimination law relating to disability has a broad material scope, covering education, employment, social protection, and goods and services, for example IT services and housing.***

Section 46A of the Employment Act 1995 prohibits an employment decision against a worker on the grounds of the worker’s disability, and whether this covers the UN Recommendation is yet to be ascertained in the practical application of this section.

**xi. Article 27 – Work and employment**

1. **To achieve true equality in terms of the Convention and attain full economic and social participation, State parties need to ensure that there is no discrimination on the grounds of disability in connection to work and employment. In order to ensure reasonable accommodation under Article 5(3) and to achieve or accelerate de facto equality in the work environment under Article 5(4), [...]**

The National Employment Policy: the Policy upholds and promotes non-discrimination in the workplace as underlined by its policy objective N°1: **‘to promote full, productive and freely chosen employment without discrimination’,** through various strategies categorised into promotion of gender equality, discrimination against people living with disabilities.

Article 46A ―Prevention of discrimination‖ of the Employment Act 1995

(a) “ Where an employer makes an employment decision against a worker on the grounds of the worker‟s age, **gender**, race, colour, nationality, language, religion, disability, HIV status, sexual orientation or political, trade union or other association, the worker may make a complaint to the Chief Executive stating all the relevant particulars.

(b) The Chief Executive shall hold an inquiry into the complaint, make a determination and communicate the determination to the worker and the employer, and where an act of discrimination is held to have been established, the determination shall include such directions to the employer as are necessary to redress the grievance complained of.

(c) An employer to whom a direction is issued under subsection (2) shall comply with the direction.”

Safe and healthy conditions of work are guaranteed for all workers under the Constitution.

The Occupational Safety and Health Decree (1978) impose a general duty on employers to ensure health, safety and welfare at work of the employees (Art 4 Occupational Safety and Health Decree, 1978).

The Act also puts a duty on employees, whilst at work, to take reasonable care for the health, safety and well-being of him and others (Art 8 Occupational Safety and Health Decree, 1978).

The provisions of the Act apply to both men and women equally ensuring that employers provide appropriate measures to safeguard employees.