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SA labour laws and conceptions of disability

What is the essence of the disability in the picture?



Individual and/or social dimensions of disability: a quest for balance

- Individual definitions:
 - People are disabled because they have impairments (personal tragedy)
 - Solutions emphasise finding ways to 'cure' or, failing that, to provide 'charity' to afflicted persons
 - Medicine, and particular forms of medicine, predominate

- Traditional social definitions
 - emphasise the ways in which societies exclude people whose bodies are atypical in appearance and/or functioning
 - It's not impairments that cause disability; it's our responses to difference
 - influenced by geographical, political, economic, intellectual, cultural realities or ideologies of particular communities at particular times
 - Medical professionals must only treat health implications of impairments (if there are any), but are not equipped to deal with disability

- Interactionist definitions or perspectives
 - It's impairments and how these interact with physical and social environments that cause disability
 - Not realistic to draw stark distinction between impairment and disability
 - Need to focus on how we conceive of impairment, as well as make necessary changes to environment

Notes on the aforementioned definitions

- Diversity and complexity of phenomena that we loosely term 'disability'
- Similarly, there are a variety of potential responses to disability and to disabled people
- Important question is how far society is expected to adapt to include disabled persons

Causes and consequences of responses

- The responses will impact and be impacted by:
 - the type of “experts” we employ to help construct solutions
 - How central disabled persons themselves are to decision-making
 - our views on the nature and extent of environmental changes needed

Labour law: how is disability implicated?

- Access to work
- Prohibition of unfair discrimination
- Occupational health and safety
- Compensation for occupational injuries and diseases
- Dismissal
- Unemployment insurance
- Medical aid

Notes on definitions within labour law

- Impairment is the cornerstone of disability
 - To qualify for protection from unfair discrimination
 - To gain access to compensation for occupational injuries and diseases
 - To gain access to disability benefits in terms of private insurance policies

Unfair discrimination

- Employment Equity Amendment Act 47 of 2013
- Debates as to whether there should be a specific definition of disability
- No, because of unintended consequences
- EEA does define “people with disabilities”

EEA definition of “people with disabilities”

- Long term or recurring
- Physical or mental impairment
- Substantially limits
- Prospects of entry into, or advancement, in employment

Compensation for injuries or diseases

- Functional impairment is the central concern – inability to work, either temporarily or permanently
- 'Meat chart' approach, e.g. loss of a finger = X% incapacity
- Environmental factors are not taken into account. Why?

Interpreting legal requirements

- Why do we want to know who qualifies as being 'disabled'?
- Different for different aspects of labour law
- Does that mean we should have different definitions for different purposes?