



# Striving for an inclusive labour market in Germany

Positive actions and reasonable accommodation to facilitate hiring and employment of persons with disabilities involving employers and employer initiatives

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# **Striving for an inclusive labour market in Germany**

Positive actions and reasonable accommodation to facilitate hiring and employment of persons with disabilities involving employers and employer initiatives

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## 1 Executive summary

### 1.1 Support and incentives directed at employers to promote the employment of persons with disabilities, including guides on good practice, websites and advice services

Employers in Germany, if they have more than 20 employees, are obliged to ensure that 5 % of them are persons who are recognised as severely disabled. If they do not comply, they must pay a levy. The levy is used exclusively for supporting the employment of persons with disabilities, in particular for employer support, through integration offices (*Integrationsämter*) and the *Länder* authorities. The Federal Employment Agency, Statutory Pension Insurance and Occupational Accident Insurance also support the employment of persons with disabilities. For persons who are, in principle, qualified for working in sheltered workshops or on the open labour market, there is special employer support ('budget for work') from the social assistance authorities. Employers are obliged to provide reasonable accommodations at the workplace to the extent that they employ recognised severely disabled persons, and the authorities support this. There is no system of special tax or contributions relief. Employers are supported by newly established regional single points of contact.

One source is the publication *Schwerbehinderte Menschen im Betrieb: Ein Ratgeber für Arbeitgeber* (Severely disabled people in the workplace: A guide for employers), published by the Federal Employment Agency and the Federal Association of Integration Offices and Main Welfare Centres.

An important website is [www.rehadat.de](http://www.rehadat.de), which is run by the *Institut der deutschen Wirtschaft e.V.* (IW) (German Economic Institute).

The quota system with a levy is, in principle, robust, and it helps employers to achieve compliance with the employment quota and supports those who employ persons with disabilities. One weakness, however, is that this system is exclusively designed for those recognised as 'severely disabled persons'. Other persons with disabilities and their employers can be supported by other authorities. Moreover, the system seems to be more effective for persons who are already in employment when they become disabled. The levy should perhaps be higher to strengthen its effectiveness. The Government has announced a rise in the levy for employers who do not employ persons with severe disabilities at all. In addition, a deduction from the levy is given for employers who buy goods or services from sheltered workshops. This reduces the effect on employment on the open labour market.

### 1.2 Support and partnerships available to employers to assist them in making reasonable accommodations

The integration offices, the Federal Employment Agency, Statutory Pension Insurance and Occupational Accident Insurance support employers by providing financial and logistical assistance for technical aids (technical auxiliaries) and personal assistance (work assistance and supported employment). They offer advice and counselling services, and they finance the integration services (*Integrationsfachdienst*) which support employers.

The integration offices, the Federal Employment Agency, Statutory Pension Insurance and Occupational Accident Insurance work together in the Federal Association for Rehabilitation (*Bundesarbeitsgemeinschaft für Rehabilitation*), which also includes the federal organisations for trade unions (*Deutscher Gewerkschaftsbund*) and employers (*Bundesvereinigung Deutscher Arbeitgeberverbände*) as members.

The German system is robust and effective in principle. However, the multitude of public authorities leads to a lack of coordination and cooperation. Coordinating institutions are lacking at the regional level, and this is an obstacle to effective support especially for smaller and medium-sized enterprises. Works councils (*Betriebsrat*) and severely disabled persons' representatives (*Schwerbehindertenvertretung*) are helpful for establishing structures inside enterprises to make the existing laws effective. Again, however, smaller and medium-sized enterprises often miss out on these benefits.

### **1.3 Illustrative examples of good employer practice for providing reasonable accommodations for persons with disabilities**

The first example is the publication *Schwerbehinderte Menschen im Betrieb: Ein Ratgeber für Arbeitgeber* (Severely disabled people in the workplace: A guide for employers), published by the Federal Employment Agency and the Federal Association of Integration Offices and Main Welfare Centres from June 2017; and the brochure '*Fair in den Job! Leitfaden für diskriminierungsfreie Einstellungsverfahren*' (Guide to discrimination-free recruitment procedures), published by the Federal Anti-Discrimination Agency in October 2019.

Good information sources on the internet include [www.rehadat.de](http://www.rehadat.de) on practical questions (e.g. about occupational auxiliaries) and [www.reha-recht.de](http://www.reha-recht.de) on legal questions.

There is no evidence of the effectiveness or strengths and weaknesses of the above-mentioned guides and sources.

### **1.4 Recommendations**

#### **Recruitment and Hiring**

The authors recommend complying with the legal obligations for equal opportunities and reasonable accommodations in the hiring process, in accordance with the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz – AGG*)<sup>1</sup> and Social Code Book Nine – Rehabilitation and Participation of Persons with Disabilities (SGB IX).<sup>2</sup> The authors recommend specifying the steps to be taken in cooperation with representatives of severely disabled persons (SBV) and works councils – if possible in an inclusion agreement.

#### **Initial employment**

The authors recommend complying with the legal obligations, in particular under SGB IX, on reasonable accommodation and cooperating with integration offices, the Federal Employment Agency, Statutory Pension Insurance and Occupational Accident Insurance. The authors also recommend specifying all steps to be taken with the

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<sup>1</sup> See: [https://www.gesetze-im-internet.de/englisch\\_agg/](https://www.gesetze-im-internet.de/englisch_agg/).

<sup>2</sup> See: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=&p\\_isn=60647&p\\_classification=08.01](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=60647&p_classification=08.01).

inclusion commissioner, representatives of severely disabled persons (SBV) and the works councils – if possible in an inclusion agreement.

### **Promotion and Career Development**

The authors recommend complying with the legal obligations, in particular SGB IX, on reasonable accommodation, and cooperating with integration offices, the Federal Employment Agency, Statutory Pension Insurance and Occupational Accident Insurance. The authors further recommend specifying all steps to be taken with the inclusion commissioner, representatives of severely disabled persons (SBV) and the works councils – if possible in an inclusion agreement.

### **Retention**

The authors recommend complying with the legal obligations to carry out occupational integration management (BEM) (Section 167 SGB IX) with the participation of works councils, representatives of severely disabled persons (SBV) and occupational physicians in all cases where employment is at risk and using this process to find reasonable accommodation and ensure it is suitable, as well as cooperating with integration offices, the Federal Employment Agency, Statutory Pension Insurance and Occupational Accident Insurance. The authors recommend specifying all steps to be taken with the inclusion commissioner, representatives of severely disabled persons (SBV) and the works councils – if possible in an inclusion agreement.



## 2 Support and incentives directed at employers to promote the employment of persons with disabilities, including guides on good practice, websites and advice services

### 2.1 Employment quotas

There is a legally binding quota for employing severely disabled people in Germany. The quota applies to all organisations with at least 20 employees and is set at 5 % for private businesses (Section 154(1) s. 1 SGB IX – Rehabilitation and Participation) and at 6 % in the public sector (Section 154(1) s. 1 and Section 241(1) SGB IX).<sup>3</sup> The status of being severely disabled is determined by the maintenance department, a public authority (Section 152(1) s. 1 SGB IX). It applies to those persons who have been recognised as having a degree of disability of 50 to 100 (Section 2(2) SGB IX). Persons with a degree of disability of 30 to 40 receive a status equivalent to severely disabled people from the Federal Employment Agency (Section 151(2) SGB IX) if they cannot keep or obtain employment without this status (Section 151(2) SGB IX). The level of compensatory levy for cases of non-fulfilment depends on how far below the quota an employer falls, and ranges from EUR 125 to EUR 320 per month for every missing disabled employee (Section 160 SGB IX). Under Section 223 SGB IX, the employer may deduct half of the invoice amount attributable to the performance of orders placed with sheltered workshops. The revenues from the compensatory levy finance the work of the integration offices, which are public authorities. Some 82 % of the revenue remains with the integration offices, and 18 % is transferred to the federal compensation fund (Section 160(6) SGB IX and Section 36 s. 1 of the Regulation on the Compensatory Levy for Severely Disabled Persons – SchwbAV).<sup>4</sup> All of the levy revenue is spent on supports for the individual employment of severely disabled people (Section 160(5) SGB IX). The specific use of this revenue by integration offices is governed by Section 14 of the SchwbAV. Priority is given to services to promote employment and vocational training, and to the provision of financial support and assistance in working life (including actions on information, training and education). The revenues are given to institutions for occupational participation assistance and for the implementation of research and model projects for participation in working life. During the COVID-19 pandemic, 10 % of the revenues were used to compensate for a reduction in the wages paid to persons with disabilities working in sheltered workshops, due to the pandemic.<sup>5</sup>

Benefits can be provided to employers and severely disabled persons as well as to institutions, facilities and companies (Section 17 SchwbAV). The compensation fund supports, in particular, supra-regional measures to promote the participation of severely disabled people in working life but also the development of technical working aids and the allocation of funds to the Federal Employment Agency for integration and training subsidies (Section 41(1) SchwbAV). The resources of the compensation fund

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<sup>3</sup> See also Welti, F. (2019), 'Work Disability Policy in Germany: Experiences of Collective and Individual Participation and Cooperation' in: MacEachen, E. (ed.), *The Science and Politics of Work Disability Prevention*; Deinert, O. (2022) in: Deinert, O., Welti, F., Luik, S. and Brockmann, J., *Pflichtquote*, from p. 1 180.

<sup>4</sup> See: [https://www.gesetze-im-internet.de/schwabav\\_1988/](https://www.gesetze-im-internet.de/schwabav_1988/); see also Deinert, O. (2022) in: Deinert, O., Welti, F., Luik, S. and Brockmann, J., *Ausgleichsabgabe*, from p. 142.

<sup>5</sup> See also Tabbara, A. (2020), 'Corona und die Auswirkungen auf Institutionen der Behindertenhilfe und Inklusionsbetriebe', *Soziale Sicherheit*, pp. 344-347.

are to be used primarily for the integration of severely disabled people into the general labour market (Section 41(2) SchwbAV).

The non-fulfilment of the quota is an administrative offence, punishable by a fine, notwithstanding the obligation to pay the compensatory levy (238(1) no.1 SGB IX). However, the imposition of fines is a rare exception.

The employment obligation still exists even if the levy is paid, i.e. the levy is not constructed as a free-purchase instrument (Section 160(1) s. 2 SGB IX).<sup>6</sup> In 2019, 104 492 companies in Germany had to pay the levy.<sup>7</sup> A large number of companies pay a levy rather than employing severely disabled people, and therefore the question arises whether the measure is sufficient to promote an inclusive labour market. There is an ongoing discussion about raising the levy and improving the conditions for the employment of persons with disabilities. In their coalition agreement, the parties forming the German Government have committed themselves to raising the levy for those enterprises that do not employ severely disabled persons at all. Another question arises in relation to the ability of employers to reduce the compensatory levy by placing orders with sheltered workshops, since this could contribute to stabilising segregated work environments instead of building an inclusive labour market. An additional problem is that the quota depends on the status of being severely disabled. People with disabilities who do not have the status of being severely disabled and are not equivalent to severely disabled, but who cannot – even with reasonable accommodation – find adequate employment, do not fall into the scope of the special protection of the quota.

## **2.2 Tax relief / reduced social security contributions / wage subsidies for employers employing persons with disabilities**

Benefits for employers to promote the employment of persons with disabilities are set out in Section 50 SGB IX and are part of the benefits for occupational participation assistance.<sup>8</sup> They apply to both public and private sector employers. The benefits include training subsidies for training services in the company, inclusion subsidies, subsidies for work aids in the company, and partial or full reimbursement of costs for a temporary trial employment. The bodies responsible for providing services under Section 50(1) SGB IX are the rehabilitation providers (Section 6(1) n. 2-5 SGB IX): the Federal Employment Agency, Occupational Accident Insurance, Statutory Pension Insurance and pensions offices (Versorgungsamt).

The inclusion subsidy is a subsidy on wages to compensate for under-performance in order to integrate persons in the labour market who find it difficult to secure a job because of reasons related to their individual impairments (Section 88 SGB III). For the employment of persons with disabilities subject to social security contributions, employers can get a subsidy up to 70 % of the salary, depending on the type and

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<sup>6</sup> See DIMR (2019), *Wer Inklusion will, sucht Wege. Zehn Jahre UN-Behindertenrechtskonvention in Deutschland*, Berlin, Deutsches Institut für Menschenrechte, [https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Wer\\_Inklusion\\_will\\_sucht\\_Wege\\_Zehn\\_Jahre\\_UN\\_BRK\\_in\\_Deutschland.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Wer_Inklusion_will_sucht_Wege_Zehn_Jahre_UN_BRK_in_Deutschland.pdf), p. 39.

<sup>7</sup> See REHADAT *Ausgleichsabgabe, Statistik zur Beschäftigung schwerbehinderter Menschen*, <https://www.rehadat-ausgleichsabgabe.de/hintergrund/statistik/>.

<sup>8</sup> There are some special provisions for employment promotion by the Federal Employment Agency in SGB II and III, e.g. for integration subsidies.

severity of the disability as well as the effect of the disability on work performance (Sections 89 and 90 SGB III – Employment Promotion, and Section 50(1) no. 2 and (4) SGB IX). The subsidy can apply for up to 24 months. After 12 months, the inclusion subsidy is generally reduced by 10 % but will amount to at least 30 % of the salary. In the case of severely disabled persons who are particularly affected (Section 155(1) SGB IX) the subsidy can be maintained for up to 60 months and, from the age of 55, for up to 96 months (Section 90(2) SGB III). If the employer terminates the employment before the end of the subsidy period or in a certain post-employment period without good cause (the employer is obliged to keep the person in employment for the same number of months as the subsidy was available but for no longer than one year), part of the subsidy must be repaid (Section 92(2) SGB III and Section 50(4) SGB IX).

Costs for temporary trial employment of persons with disabilities, severely disabled persons and persons of equal status within the meaning of Section 2 SGB IX can be reimbursed to the employer up to the full amount for a period of up to three months, if this increases the likelihood of participation in working life or if complete and permanent participation in working life may be achieved (Section 46(1) SGB III and Section 50(1) no. 4 SGB IX).

Inclusion companies (SGB IX, from Section 215), which provide a form of employment that attracts social security contributions for severely disabled people, can get different kinds of support. A prerequisite for an inclusive company is that it employs at least 30 % of persons with severe disability, who face particular difficulties in finding work in the general labour market. Under Section 217 SGB IX, companies can receive financial benefits for construction, expansion, modernisation and equipment, business management advice and special expenses. Inclusion subsidies and other support for participation in working life under SGB II, III and IX (see above) are also available, as with other employers. Inclusion companies that regularly employ at least 40 % severely disabled persons and thus have the status of a non-profit special purpose enterprise (within the meaning of Section 68 no. 3 c of the Tax Code – *Abgabenordnung*<sup>9</sup>) are entitled to tax relief on turnover tax and are exempt from corporation tax.

The budget for work (Section 61 SGB IX) is another wage subsidy that is available to employers for the employment of persons with disabilities subject to social security contributions. It is paid by the *Eingliederungshilfe*, a social assistance organisation for persons with ‘essential’ disabilities, at a municipal or regional level. The wage subsidy can amount to up to 75 % of the employee’s gross wage, but not more than 40 % of the monthly reference base, which is related to the development of salaries as a whole, amounting to EUR 39 480 a year in 2022 in the western *Länder* and EUR 37 800 in the eastern (former GDR) *Länder*. Individual *Länder* may increase this percentage of the reference base through their own legislation (Section 61(2), sentence 4, SGB IX), which leads to varying benefit regulations (e.g. 48 % of the monthly reference base in Bavaria and 60 % in Rhineland-Palatinate).<sup>10</sup> The budget for work also provides guidance and support for the workplace and can be granted to persons with disabilities who are entitled to benefits in a sheltered workshop (Section 58 SGB IX). The duration and scope of benefits are determined by the nature and severity of the disability of the

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<sup>9</sup> See [https://www.gesetze-im-internet.de/englisch\\_ao/](https://www.gesetze-im-internet.de/englisch_ao/).

<sup>10</sup> For the implementation of the budget for work in the *Länder*, particularly with regard to deviations from the wage subsidy, see Falk, A., *Landesrechtliche Abweichungen vom bundesgesetzlichen Lohnkostenzuschuss nach Section 61 Abs. 2 S. 4 SGB IX (Budget für Arbeit) - Ein Überblick zum Umsetzungsstand in den Bundesländern, Beitrag A2-2019*, [www.reha-recht.de](http://www.reha-recht.de).

individual person. However, the budget for work is basically intended as a permanent solution for permanent employment contracts. The budget for work can be combined with other benefits for occupational participation assistance under Sections 49 onwards of SGB IX (e.g. assistive devices and sign language interpreters).

Employers may also benefit from employing persons with disabilities within the framework of supported employment (Section 55 SGB IX). Within a period of 24 to 36 months, the responsible rehabilitation provider and the integration office assist and train the person directly at the workplace without contractual obligations or financial costs for the employer until the person can be employed in the company subject to social security contributions. After the employment has been established, the employee can receive vocational assistance to ensure the necessary support and crisis intervention to stabilise their employment. These services are to be provided by the competent rehabilitation provider or, in case of severe disability, by the integration office (Section 55(3) SGB IX). The services are provided as long as, and to the extent that, they are necessary to secure employment due to the nature or severity of the disability.

There are no tax reliefs for employers when employing persons with disabilities. Moreover, the inclusion subsidies must be taxed, but the wages paid to the employee can be claimed as business expenses in the employer's tax declaration.<sup>11</sup> As shown above, there is an exception for non-profit special purpose enterprises (within the meaning of Section 68 no. 3 c of the Tax Code), which are entitled to tax relief on turnover tax and are exempt from corporation tax.

The support schemes aim at employment in the general labour market subject to social security contributions, and there is no reduction of the social security contributions. Under Section 44 SGB V (Statutory Health Insurance), all employees, regardless of disability, are entitled to sick pay from the day on which a practitioner determines their incapacity for work. However, the employee retains a claim to remuneration against the employer for up to six weeks (under Section 3 of the Continuation of Remuneration Act – *Entgeltfortzahlungsgesetz* – EntgFG). After this period, Statutory Health Insurance provides sick pay benefits. Employees who are ill receive a maximum of 78 weeks of sick pay benefit from Statutory Health Insurance for the same illness within three years.

The wage subsidies can be a good incentive for employers to employ a person with disability. There is no literature assessing the strengths and weaknesses of any of the subsidies aimed at employers that are described in this section. However, as regards persons with severe disabilities who are on the threshold of occupation in sheltered workshops, supported employment and the budget for work should be used more widely.<sup>12</sup>

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<sup>11</sup> See FG Hess. v. 13.2.2013 - 4 K 1346/11, EFG 2013, 764 (Rev. VIII R 17/13); von Beckerath in: Kirchhof and Seer, Income Tax Act, § 3 Nr. 2 (employment promotion); left open by Federal Fiscal Court but approving the result, BFH v. 29.8.2017 - VIII R 17/13, BStBl. II 2018, 408.

<sup>12</sup> Statistical data suggest that the transition from sheltered workshops to the first labour market resp. receiving the budget is well below 1 %. See Mattern, L., *Das Budget für Arbeit - Diskussionsstand und offene Fragen, Teil 1: Eckpunkte, Umsetzungsstand und leistungsberechtigter Personenkreis*, Beitrag D5-2020, [www.reha-recht.de](http://www.reha-recht.de), pp. 3-5.



### 2.3 Reasonable accommodation

For persons who have the status of being severely disabled (by having a degree of disability of 50 to 100), there are specific labour rights, including a clearly defined catalogue of reasonable accommodations at work (Section 164(4) SGB IX). Persons with disabilities who are not severely disabled and do not have a status equivalent to severely disabled persons (by having a degree of disability of 30 or 40 and not being able to keep or get employment without this status) fall within the scope of the General Equal Treatment Act (AGG). The AGG implemented Directive 2000/78/EC but, despite the requirement of this directive to oblige the employer to provide for reasonable accommodation, such an obligation does not appear explicitly in the AGG. The employer's obligation under Section 12 AGG does not give rise to a legal claim to reasonable accommodation on the part of the employee.<sup>13</sup> In recent case law, the Federal Labour Court concluded that the right to reasonable accommodation can be included in the employer's obligation to provide for the welfare of their employees (Section 241(2) of the Civil Code (*Bürgerliches Gesetzbuch*)).<sup>14</sup> This conclusion is based on the fact that the EU legislation on equal treatment and the CRPD are both integral parts of the German legal system and are applicable therein. Accordingly, the employer's obligation is to be interpreted in line with Article 5 of Directive 2000/78/EC and Article 27(1), sentence 2, Paragraph (i) of the CRPD. Therefore, even though the right to reasonable accommodation cannot be found literally in the AGG, it has to be considered when examining whether a claim of unequal treatment in employment is admissible. So far, a definition of reasonable accommodation has been given only in the Act on Equal Opportunities for Persons with Disabilities (*Gesetz zur Gleichstellung von Menschen mit Behinderungen – BGG*),<sup>15</sup> Section 7(2)), which applies to public authorities.<sup>16</sup> Beyond that, recognised severely disabled persons can claim the necessary technical tools for work (e.g. specialised software or a special seat) under SGB IX (Section 164(4), sentence 1, no. 5).

According to Article 27(1), sentence 2, Paragraph (i) of the CRPD, States Parties must 'ensure that reasonable accommodation is provided to persons with disabilities in the workplace'. In its concluding observations, the Committee on the Rights of Persons with Disabilities criticised the inadequate implementation of reasonable accommodations and recommended ensuring that reasonable accommodation provisions are enshrined in law as an immediately enforceable right in all areas of law and policy, with an explicit definition in the law in line with Article 2 CRPD, and that the denial of reasonable accommodation is recognised and punishable as a form of discrimination.<sup>17</sup> Even though the case law of the Federal Labour Court recognises the right to reasonable accommodation, it should appear verbatim in the AGG. The implementation of EU law and the CRPD requires that reasonable accommodation is clearly defined so that it becomes clear to everyone who is affected by it. This has

<sup>13</sup> Eichenhofer, E. (2018), *Angemessene Vorkehrungen als Diskriminierungsdimension im Recht* (Reasonable Accommodation as a Dimension of Discrimination in Law), p. 72.

<sup>14</sup> BAG, 19. Dezember 2013 - 6 AZR 190/12.

<sup>15</sup> See <https://www.gesetze-im-internet.de/bgg/>.

<sup>16</sup> There is an ongoing discussion about the impact, especially for social security authorities. See Frankenstein, A., Hlava, D. and Welti, F. (June 2019), '*Angemessene Vorkehrungen und Sozialrecht*' (Reasonable Accommodation and Social Law) in: *Die Sozialgerichtsbarkeit (SGB)* 6.2019, pp. 317-325.

<sup>17</sup> Committee on the Rights of Persons with Disabilities, '*Concluding observations on the initial report of Germany*', 13 May 2015 (CRPD/C/DEU/CO/1), Paras. 13 and 14.

been explained and stated in an expert opinion for the Federal Anti-Discrimination Agency by Eberhard Eichenhofer.<sup>18</sup>

## 2.4 Other relevant actions targeted at employers

The integration assistance services in the regions (*Integrationsfachdienst*; Section 192 SGB IX) are primarily financed by the integration offices, and they also carry out work for the Federal Employment Agency and Statutory Pension Insurance. They advise and support employers for the employment and special needs provision of severely disabled persons with 'multiple problems', such as persons with psychosocial disabilities and blind or deaf persons.

After the Participation Strengthening Act (*TeilhabeStärkungsgesetz*),<sup>19</sup> entered into force in January 2022, 'single points of contact for employers' were introduced (Section 185 a SGB IX). The integration offices are obliged to commission the integration assistance services or other suitable providers to act as single points of contact for employers in an advisory and supportive capacity. These single points of contact are to approach employers to raise their awareness about the employment of persons with disabilities. In addition, they are to provide information, advice and support on all issues relating to the training, recruitment and (continued) employment of people with a severe disability or equal status, which includes submitting applications to the responsible rehabilitation providers.

This could be an important step for increased participation in working life by severely disabled persons. In many cases such employment fails because employers are overloaded due to a complex and sometimes confusing range of support services, but this could be resolved with the help of single points of contact. However, this service does not apply to the employment of persons with disabilities who are not severely disabled and do not have an equivalent status.

## 2.5 Examples of good practice

A central support and incentive measure for employers is the integration subsidy. The prerequisite for the subsidy is the assumption that applicants do not yet have the knowledge required for the job and that the process could take longer than usual. Both the amount and the duration of the subsidy depend on the individual case. Studies confirm that the employment of people who face barriers to recruitment can be promoted and sustainable integration into the labour market achieved.<sup>20</sup> An implementation study by the Institute for Work and Qualification (IAQ) in cooperation with the Institute for Employment Research (IAB) notes that specialists in employment agencies and job centres often have a routine way of dealing with the integration

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<sup>18</sup> Eichenhofer, *Angemessene Vorkehrungen als Diskriminierungsdimension im Recht*.

<sup>19</sup> See:

[https://www.bgbli.de/xaver/bgbli/start.xav?startbk=Bundesanzeiger\\_BGBli&jumpTo=bgbli121s1387.pdf#\\_bgbli\\_%2F%2F%5B%40attr\\_id%3D%27bgbli121s1387.pdf%27%5D\\_1652468671477](https://www.bgbli.de/xaver/bgbli/start.xav?startbk=Bundesanzeiger_BGBli&jumpTo=bgbli121s1387.pdf#_bgbli_%2F%2F%5B%40attr_id%3D%27bgbli121s1387.pdf%27%5D_1652468671477).

<sup>20</sup> See Oschmiansky, F., Sell, S., Schultheis, K. and Becher, L. (2020), *Förderung der Aufnahme einer Erwerbstätigkeit*, Bonn, Bundeszentrale für politische Bildung (bpb), <https://www.bpb.de/themen/arbeit/arbeitsmarktpolitik/325316/foerderung-der-aufnahme-einer-erwerbstaetigkeit/>.

subsidy, which is also familiar to many company personnel managers.<sup>21</sup> The subsidy has therefore proved to be a tried and tested instrument.<sup>22</sup>

Another proven measure is the reimbursement of costs for the trial employment of people with disabilities as well as employees of sheltered workshops (WfbMs) for up to three months. This can smooth the transition to full and permanent employment and thus (re-)entry into the labour market. Employers are given an opportunity to get to know the employees and their skills and, if necessary, to find suitable skilled workers. The costs of trial employment are reimbursed by the employment agency or job centre. This includes wage or salary costs (including the employer's social security contributions), benefits based on statutory or collectively agreed regulations, apportionments and contributions to the employers' liability insurance association. For employees who previously worked in a WfbM, companies can also apply for 'benefits to compensate for extraordinary burdens' from the integration office.<sup>23</sup>

The availability of investment subsidies for the disability-friendly redesign and reorganisation of workplaces and for maintaining places of training is becoming established as a proven funding measure. All work equipment for a disability-friendly design of the workplace, such as computer systems for blind and visually impaired people or special office chairs, are subsidised in individual cases.<sup>24</sup> The procurement, maintenance and servicing of all measures and the adaptation of aids, as well as the necessary training for this, all attract funding.<sup>25</sup> The integration offices assume a large share of the costs as part of the benefits for participation in working life. The funding is financed through the compensatory levy paid by companies. In 2019, the integration offices paid out a total of EUR 556 million in subsidies, of which EUR 26.57 million was for the disability-friendly furnishing of workplaces and training places. Spatial accessibility now represents an essential goal of inclusion policy, but awareness-raising for digital accessibility receives comparatively little attention.<sup>26</sup>

There is no further research or analysis on the above-mentioned measures.

## **2.6 Good practice guides, websites and advice services directed at employers**

A variety of good practice guides, websites and advisory services are available, with different focuses.

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<sup>21</sup> See Brussig, M., Schwarzkopf, M. and Stephan, G. (2011), 'Eingliederungszuschüsse. Bewährtes Instrument mit zu vielen Varianten', IAB-Kurzbericht, Aktuelle Analysen aus dem Institut für Arbeitsmarkt- und Berufsforschung, No. 12, Nürnberg, <https://doku.iab.de/kurzber/2011/kb1211.pdf>, p. 3.

<sup>22</sup> Aktion Mensch (2021), *Inklusionsbarometer Arbeit. Ein Instrument zur Messung von Fortschritten bei der Inklusion von Menschen mit Behinderung auf dem deutschen Arbeitsmarkt*, Vol. 9, Bonn, <https://delivery-aktion-mensch.stylelabs.cloud/api/public/content/inklusionsbarometer2021?v=ad527273>, p. 13.

<sup>23</sup> See: <https://www.talentplus.de/foerderung/neueinstellung/probebeschaeftigung/index.html>.

<sup>24</sup> Employees apply for highly personalised aids themselves.

<sup>25</sup> See: <https://www.talentplus.de/foerderung/hilfen-im-arbeitsleben/arbeitsplatzausstattung/index.html>.

<sup>26</sup> See *Aktion Mensch* (2021), pp. 25 and 27.

### Example 1

The first example is the publication *ZusammenArbeiten: Inklusion in Unternehmen und Institutionen – Ein Leitfaden für die Praxis* (A guide for practice),<sup>27</sup> which the Federal Ministry of Labour and Social Affairs (BMAS) published in December 2014. The Federal Ministry is the supreme federal authority for labour market policy, labour law, protection and medicine, pensions and social security, the integration of persons with disabilities, and labour and social courts, and was therefore chosen as a key source. The guide is aimed at companies, institutions and organisations and shows how an inclusive approach can succeed. First, individual components of the creation of an action plan are presented (from 'initiating an action plan' and 'naming fields of action' to 'monitoring success'). This includes not only measures for corporate management, addressing and recruiting potential trainees and employees and creating accessible workplaces, but also measures for designing accessible products and appropriate marketing and sales. Practical examples and further links accompany the explanations.<sup>28</sup> Such publications are widely available on Federal Government websites as well as on the websites of associations, federations and institutions. The inArbeit 4.0 project, which was coordinated by the Research Institute for Technology and Disability (FTB) of the *Evangelische Stiftung Volmarstein* from 2015 to 2018 and funded by the BMAS, complements the guide in its consideration of information technology in the workplace.<sup>29</sup>

### Example 2

The second good practice example is the publication *10 Gründe Menschen mit Behinderung zu beschäftigen: Ein Leitfaden für Unternehmer* (10 reasons to employ people with disabilities: A guide for entrepreneurs)<sup>30</sup> by *Aktion Mensch*, which is the largest private (lottery-funded) funding organisation in Germany supporting social projects for people with and without disabilities, and which is therefore a central source. The guide is aimed at employers who wish to employ people with disabilities in their company. The publication provides an overview of the employment of skilled workers and trainees, and contains recommendations for action, information on funding opportunities, counselling centres and accessibility, as well as examples of good practice.

### Example 3

The third example is REHADAT, which is a prominent source of information on occupational participation and inclusion of people with disabilities. Its various web portals, publications, apps and seminars are accessible barrier-free and free of charge. REHADAT is a project of the *Institut der deutschen Wirtschaft Köln e.V.*, which is connected to employers' organisations and is financed through the federal compensatory levy fund. Its interlinked information reaches different target groups and is continuously updated. The topics mainly relate to different aspects of the occupational participation of people with disabilities, including aids, practical examples, legal issues, contact details of relevant organisations, literature, research, statistics,

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<sup>27</sup> See: [https://www.bmas.de/SharedDocs/Downloads/DE/Publikationen/a755-nap-leitfaden.pdf?\\_\\_blob=publicationFile&v=1](https://www.bmas.de/SharedDocs/Downloads/DE/Publikationen/a755-nap-leitfaden.pdf?__blob=publicationFile&v=1).

<sup>28</sup> See: [https://www.bmas.de/SharedDocs/Downloads/DE/Publikationen/a755-nap-leitfaden.pdf?\\_\\_blob=publicationFile&v=1](https://www.bmas.de/SharedDocs/Downloads/DE/Publikationen/a755-nap-leitfaden.pdf?__blob=publicationFile&v=1).

<sup>29</sup> See: <https://inarbeit4punkt0.de/content/2-profile/2-begleiten/a755-nap-leitfaden-ergaenzung.pdf>.

<sup>30</sup> See: <https://delivery-aktion-mensch.stylelabs.cloud/api/public/content/b67035ab0a3844f18098e79b07902813?v=5c10ff47>.



workshops, compensatory levies and further training.<sup>31</sup> REHADAT produces a special publication for managers and personnel managers of small and medium-sized enterprises, in particular *PERSONALKOMPASS INKLUSION: A Guide to the Employment of People with Disabilities*, which was updated and revised in 2020.<sup>32</sup> This guide provides an overview of general information, legal principles and funding opportunities, and presents practical examples. Its main topics are: recruitment, training, work organisation and work design, staff retention and development, and corporate and human resources strategy.

In the *Zugänglichkeit – Inklusion – Partizipation – Nachhaltige Teilhabe an Arbeit durch Recht* (ZIP-Natar) project, laws, administrative practices and court rulings on disability rights, focused on labour law and social law, are described and discussed for and with persons from the rehabilitation authorities and working in Human Resources and Severely Disabled Representatives (SBV). The results have been presented online ([www.reha-recht.de](http://www.reha-recht.de)). The project is funded by the federal compensatory levy fund and is being carried out by the German Rehabilitation Association (*Deutsche Vereinigung für Rehabilitation*, DVfR) in cooperation with *Humboldt-Universität zu Berlin*, the University of Kassel, Martin Luther University Halle-Wittenberg and the Centre for Social Research in Halle (ZSH).

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<sup>31</sup> See: <https://www.rehadat.de/ueber-uns/>.

<sup>32</sup> See: <https://www.rehadat.de/export/sites/rehadat-2021/lokale-downloads/rehadat-publikationen/personalkompass-inklusion-2020.pdf>.

### **3 Support and partnerships available to employers to assist them in making reasonable accommodations**

#### **3.1 Support available to employers for making reasonable accommodation**

Employers can receive loans or grants up to the full amount of the necessary costs for making the workplace individually accessible through individualised reasonable accommodations for persons with disabilities insofar as this is necessary to achieve or secure permanent participation in working life (Section 46(2) SGB III and Section 50(1) no. 3 SGB IX). In addition, if persons are severely disabled, employers can receive subsidies under Section 185(3) no. 2 a SGB IX, and Section 26 SchwbAV to enable, facilitate or secure the long-term employment of severely disabled persons in companies in a manner that is as suitable as possible for their disabilities, including through the accessible design of workplaces or the establishment of part-time jobs, especially if this is necessary because of the nature or severity of the disability. According to Section 26(2) SchwbAV the type and amount of the benefit is to be determined according to the circumstances of the individual case, in particular taking into account whether an obligation on the part of the employer to make a reasonable accommodation under Section 164(3) and (4) SGB IX exists and is being fulfilled, and whether severely disabled persons are employed without an employment obligation or in excess of the quota (Section 154 SGB IX) or within the framework of the fulfilment of the special employment obligation vis-à-vis severely disabled persons who are particularly affected in terms of participation in working life (Section 154(1) s. 2 and Section 155 SGB IX). An appropriate contribution of the employer to the total costs is a prerequisite (Section 26(3) SchwbAV).

For the creation of new suitable workplaces for severely disabled persons in companies, including by acquiring the necessary equipment to meet their needs, employers can receive funding from the integration office to cover their costs under certain circumstances: for example, if severely disabled persons are employed without a legal obligation, in excess of the binding quota or following employment in a sheltered workshop, if working conditions can be improved or if a threatened dismissal is averted. An appropriate contribution by the employer to the total costs is a prerequisite. In addition, posts must be reserved for severely disabled persons for a long-term period, to be determined according to the situation of the individual case (Section 15 SchwbAV).

Employers may receive subsidies to compensate for extraordinary burdens associated with the employment of a severely disabled person who is particularly affected by the nature or severity of their disability in their working life (Section 155(1) no. 1 a-d SGB IX) or who has been employed following employment in a sheltered workshop or on a part-time basis (Section 158(2) SGB IX), especially if the employment would be jeopardised without these benefits (Section 185(3) no. 2 e SGB IX and Section 27 SchwbAV). Extraordinary burdens are above-average financial expenses or other burdens which an employer incurs in employing a severely disabled person, even after all other possibilities of support (e.g. accessible design of the workplace in individual cases) have been exhausted, and where it is unreasonable for the employer to bear the costs because of their nature or amount (Section 27(2) SchwbAV). Section 26(2) SchwbAV applies *mutatis mutandis* to these subsidies (see above).

Employers can receive a premium from the integration office for the introduction of occupational integration management (*Betriebliches Eingliederungsmanagement – BEM*) (Section 185(3) no. 2 d SGB IX). BEM is a form of providing reasonable accommodation (Section 167(2) SGB IX). The aim is to overcome incapacity for work as far as possible, to prevent renewed incapacity for work and to preserve the job of the employee concerned. Integration offices, rehabilitation service providers and other bodies support BEM. For more detail, see Section 3.2.<sup>33</sup>

Benefits must be applied for through the competent rehabilitation provider, which, in most cases, is the Federal Employment Agency or Statutory Pension Insurance. If an occupational accident or disease is the cause of the disability, Statutory Accident Insurance may have responsibility. For persons with a severe disability, the integration office can be the competent provider, depending on the legal basis of the claim.

The integration office also provides advice and information on all issues related to the employment of severely disabled people, in particular on issues of prevention, individualised accessible design of workplaces and difficulties at the workplace. Moreover, it offers courses and educational provision focused on the participation of severely disabled people in working life (Section 185(3) no. 4 SGB IX and Section 29 SchwbAV). Advice is also provided by the assistance services of the integration office. The technical advisory services of the integration offices provide support in equipping new or existing workplaces in an accessible way. Integration offices advise employers, severely disabled employees and occupational integration teams (see Section 3.2) on technical and organisational issues relating to the employment of severely disabled persons, including ergonomics, accessibility, workplace suitability and workplace design. The offices also provide technical advice on the creation, equipping and modernisation of inclusive companies. In the area of protection against dismissal, the technical advisory service provides expert technical advice on options for continued employment.<sup>34</sup>

Integration assistance services are third-party services, which are intended to support the participation of people with disabilities in the general labour market. They are commissioned by the integration offices (Section 185(3) no. 3 SGB IX) or by the rehabilitation service provider (Section 49(6) no. 9 SGB IX) to accompany and support employees with severe disabilities. They are important contacts for employers when employing severely disabled people with a special need for work support. They advise and inform employers on all matters relating to the employment of severely disabled people, including the individualised accessible design of workplaces, psychosocial issues and possible benefits, and they offer support for the application process. They provide employers who wish to offer employment to severely disabled people with suitable applicants, and they prepare applicants for their intended training or job and provide on-site support (see also Section 193(1) no. 2 and (2) no. 9 SGB IX).<sup>35</sup>

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<sup>33</sup> See also Welti, F., *Das betriebliche Eingliederungsmanagement nach § 84 Abs. 2 SGB IX - sozial- und arbeitsrechtliche Aspekte NZS 2006*, pp. 623 and 626.

<sup>34</sup> See position paper of the technical advisory services of the integration offices (*Positionspapier der Technischen Berater der Integrationsämter*) (2017), [https://www.bih.de/fileadmin/user\\_upload/TBD\\_Positionspapier\\_2017.pdf](https://www.bih.de/fileadmin/user_upload/TBD_Positionspapier_2017.pdf).

<sup>35</sup> See also *Bundesarbeitsgemeinschaft der Integrationsämter und Hauptfürsorgestellen* (Federal Association of Integration Offices and Main Welfare Centres) (BIH) (2018), *Die Schwerbehindertenvertretung* (the representative body for severely disabled employees), <https://www.bih.de/integrationsaemter/aufgaben-und-leistungen/integrationsfachdienst/>.

There is a comprehensive system of support measures for employers in the application of reasonable accommodation. Due to the complexity of the system, the different service providers and the different conditions of support, employers sometimes feel uncertain about employing persons with disabilities. This can lead to a reluctance to employ people with disabilities at all. The new single points of contact for employers could help here, with their expertise and as independent guides, thus contributing to the promotion of employment. Unfortunately, however, this service does not apply to the employment of persons with disabilities who are not severely disabled and not have an equivalent status.

### **3.2 Partnerships to assist employers to make reasonable accommodations**

Integration offices, the Federal Employment Agency, Statutory Pension Insurance and Occupational Accident Insurance work together in the Federal Association for Rehabilitation (*Bundesarbeitsgemeinschaft für Rehabilitation*, BAR, Sections 39-41 SGB IX). The federal organisations for trade unions (*Deutscher Gewerkschaftsbund*) and employers (*Bundesvereinigung Deutscher Arbeitgeberverbände*) are also members. The BAR has the task of setting out the legal framework for rehabilitation in common guidelines. It also annually reports on rehabilitation in Germany, organises the participation of disabled persons' organisations and supports research on rehabilitation. However, a similar framework at *Länder* level is lacking. Moreover, there are still no common guidelines for occupational integration management, despite the German Parliament recommending this in 2016.<sup>36</sup>

#### **Representative body for severely disabled employees, inclusion commissioner, interest groups – occupational inclusion teams**

The third part of SGB IX (the law on severely disabled persons) promotes cooperation between different actors to improve the participation of severely disabled persons in working life, including by supporting the employer in providing reasonable accommodation.

The representative body for severely disabled employees (*Schwerbehindertenvertretung* – SBV), which is the elected body representing the interests of severely disabled employees and employees with equal status, is an important actor. According to Section 177(1) SGB IX, a representative body for severely disabled persons is required in companies in which at least five severely disabled persons are employed on a more than temporary basis. The core task of the representative body is to promote the participation of severely disabled persons in the working life of the company and to assist and advise them. To this end, the SBV must be consulted by the employer on all relevant issues concerning the employment of individual severely disabled persons and of all persons with disabilities, and it monitors the employer's compliance with all disability laws. According to Section 176 SGB IX, interest groups (e.g. the works council) shall promote the inclusion of severely disabled persons and make sure that the employer fulfils their legal obligations, including with regard to reasonable accommodation (Sections 176 and 164(4) SGB IX), and they are involved in the recruiting and dismissal of persons with severe disabilities. The SBV can, often in cooperation with the works council, negotiate collective agreements in the enterprise on the employment of disabled persons (inclusion agreements). It is also a

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<sup>36</sup> Deutscher Bundestag, BT-Drucksache 18/10528, 30 November 2016.

source of relevant information. Moreover, the employer must appoint an inclusion commissioner to represent them responsibly in matters relating to severely disabled persons. The task of the inclusion commissioner is to support the employer in complying with their legal obligations (Section 181 SGB IX). The appointment of an inclusion commissioner is obligatory irrespective of whether a representative body for severely disabled persons has been elected, and this still applies even if only one severely disabled person is to be employed.

The employer, the inclusion commissioner, the SBV and interest groups (e.g. works council) should work closely together for the participation of severely disabled persons in working life (Section 182(1) SGB IX). Sometimes the SBV, the inclusion commissioner and the works council form an 'occupational inclusion team' to make this cooperation even closer, thus preventing those involved from acting in an uncoordinated way. These bodies, the integration offices and its services, as well as the rehabilitation service provider, are to support each other to fulfil their tasks to increase participation (Section 182(2) SGB IX), for example by designing workplaces that are individually accessible for people with disabilities through reasonable accommodations.

### **Occupational integration management (*Betriebliches Eingliederungsmanagement* – BEM) under Section 167(2) SGB IX**

The various actors mentioned above form a partnership when carrying out occupational integration management (BEM). The aims of BEM are to overcome incapacity for work as far as possible, to prevent renewed incapacity for work and to retain the job of the employee concerned, as a process leading to the implementation of individual reasonable accommodations. For employees who are incapacitated for work for more than six weeks within one year, the employer is obliged to carry out BEM (Section 167(2) SGB IX). It is irrelevant whether the incapacity for work is causally related to the workplace or not. With the consent of the person concerned, the employer is obliged to first involve interest groups within the meaning of Section 176 SGB IX, e.g. the works council. If the person concerned is severely disabled, the employer must also involve the SBV. Where necessary, the occupational physician is also consulted (Section 167(2) s. 4 SGB IX). If benefits for occupational participation or accompanying aids in working life (e.g. the equipment of workplaces) are taken into consideration, the Federal Employment Agency, Statutory Pension Insurance and (in the case of severely disabled persons) the integration office should be consulted by the employer (Section 167(2) s. 5 SGB IX). Pursuant to Section 167(2) s. 6 SGB IX, the works council or other interest groups and representatives of severely disabled persons can demand the implementation of BEM by the employer; thus, they ensure that the employer fulfils their obligations with regard to BEM (Sections 178(1) s. 2 no. 1 and 167(2) s. 7 SGB IX).

BEM brings together internal and external, medical, legal and operational expertise and can help to reduce the amount of sick leave taken by the employee, therefore reducing costs for the employer, and it helps to determine whether and under what circumstances the employment can be retained. The new single points of contact for employers (Section 185 a SGB IX; see Section 2.4) can play an important role in supporting BEM.



## **Inclusion agreements and Section 166 SGB IX**

Different actors cooperate when an inclusion agreement is concluded to improve the inclusion of severely disabled people in working life in a planned manner.<sup>37</sup> Section 166 SGB IX obliges the employer to conclude a binding inclusion agreement with the SBV and interest groups (e.g. the works council) in cooperation with the employer's inclusion commissioner. The SBV has the right of initiative to negotiate the conclusion of an inclusion agreement. If there is no SBV, the right of application is exercised by the general representatives of workers' interests, in most cases the works council. The integration office can be involved at the instigation of all parties to support the negotiations and should work towards overcoming differences of opinion (Section 166(1) s. 5 SGB IX). Due to its neutral position, the integration office can do so by proposing possible solutions to promote the conclusion of inclusion agreements. The actors involved are equal partners whose task it is to reach a consensus. By contributing their expertise and weighing up their respective interests, they agree on common rules which are supported by all and for which all are responsible. The concluded agreement is forwarded to the Federal Employment Agency and the integration office (Section 166(1) s. 6 SGB IX). The inclusion agreement contains regulations on the participation of severely disabled persons in working life, personnel planning, workplace design, the design of the working environment, work organisation, working hours and implementation of the agreed targets (Section 166(2) s. 1-2 SGB IX). The equal participation of severely disabled persons in working life should be considered from the beginning when designing work processes and framework conditions (Section 166(1) s. 2 SGB IX). That means that efforts should be made to ensure that the working environment is accessible from the beginning by consciously and comprehensively considering the special needs of persons with disabilities when designing and implementing internal structures and processes.

The interests of women with severe disabilities should be given special consideration (Section 166(2) s. 3 SGB IX). The procedure for BEM can be set out through inclusion agreements under Section 166(3) no. 5 SGB IX.

As regards persons with severe disabilities, there are helpful partnerships between the different actors involved. However, most regulations do not apply to persons with disabilities who do not have the status of being severely disabled or equivalent status. The integration office and its services, which are very important for inclusion at the workplace, are only responsible for persons with severe disabilities. Adequate solutions still need to be found here.

There is no information or analysis of the effectiveness or strengths and weaknesses of the partnership programmes.

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<sup>37</sup> See BIH, *Die Schwerbehindertenvertretung*, p. 87.

## 4 Illustrative examples of good employer practice for providing reasonable accommodations for persons with disabilities

### 4.1 Good practice guides for employers regarding reasonable accommodation

In Germany, there are guides on reasonable accommodation aimed at employers. Among them are publications on technical solutions, working arrangements, training and awareness-raising measures.

#### Example 1

The first example is the publication *Schwerbehinderte Menschen im Betrieb: Ein Ratgeber für Arbeitgeber* (Severely disabled people in the workplace: A guide for employers)<sup>38</sup> by the Federal Employment Agency and the Federal Association of Integration Offices and Main Welfare Centres, from June 2017. The guide, which is a central source for explaining reasonable accommodation, is aimed at employers who train or wish to employ people with a disability (including a severe disability). Oriented to the various phases of training, recruitment and employment, the publication presents essential support instruments and their procedural steps – from training subsidies and integration subsidies to work assistance. Finally, the guide refers to the counselling services offered by employment agencies, job centres and integration offices. The guide mainly appears on the websites of associations as relevant stakeholders in different fields of practice.

#### Example 2

The second example is the brochure *'Fair in den Job! Leitfaden für diskriminierungsfreie Einstellungsverfahren'* (Guide to discrimination-free recruitment procedures)<sup>39</sup> by the Federal Anti-Discrimination Agency, from October 2019. The Anti-Discrimination Agency is a professionally independent point of contact at the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) for persons affected by discrimination. It was produced in accordance with the General Equal Treatment Act and has therefore been used as a key source for answering questions on reasonable accommodation. The publication focuses on recruitment procedures and is aimed at employers at small, medium-sized and large companies, managers, staff and works councils, employees in AGG complaints offices and equality, diversity and disability officers. The brochure deals with aspects of job advertisements, applicant selection and the job interview, and it generally refers to discrimination in working life based on a person's ethnic origin, gender, religion or belief, disability, age and sexual identity. However, there are also explicit references to people with disabilities and chronic illnesses as well as to people with disabled relatives in relation to the above-mentioned subject areas. The publication contains further information in addition to concrete recommendations for action and examples (from case law), and can be found on some websites of the target groups mentioned, including those of associations, consultancies and public institutions.

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<sup>38</sup> See: [https://www.arbeitsagentur.de/datei/dok\\_ba013802.pdf](https://www.arbeitsagentur.de/datei/dok_ba013802.pdf).

<sup>39</sup> See: [https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Leitfaeden/leitfaeden\\_fair\\_in\\_den\\_job.pdf?\\_\\_blob=publicationFile&v=3](https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Leitfaeden/leitfaeden_fair_in_den_job.pdf?__blob=publicationFile&v=3).

## 4.2 Any other sources of information regarding good practice for employers regarding reasonable accommodation

Another source of information is the website of the Chambers of Industry and Commerce (IHK), which are regionally organised, cross-sectoral statutory public associations of companies. The Chambers provide legal information, occupational training for people with disabilities, central contact points and further information.<sup>40</sup> In addition, the *'Inklusion gelingt'* (Inclusion succeeds) internet platform should be highlighted: it compiles recommendations for action, an overview of support measures, the contact addresses of central service providers and authorities, practical examples of reasonable accommodations, publications and event information for companies. It is run by the umbrella organisations of German business and is hosted by the Federal Ministry of Labour and Social Affairs (BMAS).<sup>41</sup> A further source of information is *'Inklusion gestalten'* (Shaping Inclusion), produced by the Centre of Competence for Skilled Workers (KOFA), a dossier that brings together information, recommendations for action and checklists on the topics of contact and recruitment, training and employment of persons with disabilities.<sup>42</sup> A compilation of working materials on inclusion in companies can be found in the publication *'Wegweiser: Inklusion im Betrieb'* (Guide for Inclusion in Companies) from September 2019, which was created in cooperation with *Aktion Mensch*.<sup>43</sup>

## 4.3 Examples of individual reasonable accommodations which reveal good practice

### Work design for a nurse with a hearing impairment in a hospital<sup>44</sup>

The employer is a healthcare company with about 3 400 employees, to which several hospitals are affiliated. The woman is a nurse who works part-time in shifts in the paediatric cancer ward. She has a hearing impairment and has only limited perception in certain situations, (e.g. if there is noise or other acoustic disturbances, or when using the telephone). Due to this, audible information must be amplified, specially filtered or adapted. The woman's hearing impairment is equivalent to a severe disability, with a degree of disability (GdB) of 40. First, the signalling equipment on the ward was reinforced: the monitoring screens could be connected to the nurse call system via their signal output, so that signals could also be displayed on the central display at the nurses' station and in the corridors. A radio signalling system was also installed, which sends acoustic signals from the Infusomats by radio to a receiver that the nurse wears on her body. In addition, a new wireless telephone was installed, which has volume control, a vibration setting, flashing light indicators and a Bluetooth connection. This allows the phone to be switched directly to the nurse's hearing aids. The individual arrangements can be considered good practice as they enable the nurse to continue

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<sup>40</sup> See, e.g.: <https://www.ihk.de/stuttgart/fuer-unternehmen/fachkraefte-und-ausbildung/personalgewinnung-und-entwicklung/fachkraefte-finden/menschen-mit-behinderung-3693362>.

<sup>41</sup> See: <https://www.inklusion-gelingt.de/>.

<sup>42</sup> See: <https://www.kofa.de/dossiers/inklusion-gestalten>.

<sup>43</sup> See: [https://www.unternehmens-netzwerk-inklusion.de/news/projekt/news-projekt/news/wegweiser-inklusion-im-betrieb/?tx\\_news\\_pi1%5Bcontroller%5D=News&tx\\_news\\_pi1%5Baction%5D=detail&cHash=19f59c0f0e815dd48886632a4a3e42ea#:~:text=Der%20neue%20Leitfaden%20enth%C3%A](https://www.unternehmens-netzwerk-inklusion.de/news/projekt/news-projekt/news/wegweiser-inklusion-im-betrieb/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=19f59c0f0e815dd48886632a4a3e42ea#:~:text=Der%20neue%20Leitfaden%20enth%C3%A).

<sup>44</sup> See: [https://www.rehadat-gutepaxis.de/praxisbeispiele/nach-behinderungsarten/sinnesbehinderungen/index.html?reloaded&sort=aenderungsdatum\\_pra+desc&page=31&mode=detail&listtitle=](https://www.rehadat-gutepaxis.de/praxisbeispiele/nach-behinderungsarten/sinnesbehinderungen/index.html?reloaded&sort=aenderungsdatum_pra+desc&page=31&mode=detail&listtitle=).



practising her profession. The aids could be installed mainly by in-house staff, and they allow colleagues to improve communication and awareness of important information (using signal displays in nurses' rooms and in corridors). This is an example of good practice since, with the reasonable accommodations that were made, the nurse with the hearing impairment could work in the hospital and was thereby able to enjoy her right to work on the open labour market.

## **5 Recommendations and guidance regarding good practice and reasonable accommodation**

### **5.1 Recommendations regarding good practice and reasonable accommodation in recruitment and hiring**

Under Section 164(1) SGB IX, the employer is obliged to check whether vacancies can be filled with severely disabled persons before filling any position. The Federal Employment Agency must be involved in this process and can propose severely disabled persons who are registered as unemployed or seeking work to the employer. Furthermore, the employer must involve the SBV or the representatives named in Section 176 SGB IX, in particular the works council. The SBV has the right to participate in the interview. The employer, works council and SBV should use this arrangement systematically to recognise the strengths and needs of disabled job applicants and to find cooperative ways to meet their needs through reasonable accommodation.

Employers should work together more closely with the Federal Employment Agency, Statutory Pension Insurance and integration offices, and they should make use of the support offered by the new single points of contact for employers. These authorities should use their supportive measures systematically and take into account that employers need quick decisions and immediate action when they decide to hire a person in need of reasonable accommodation.

The guidelines of the Federal Anti-Discrimination Agency (see Section 4.1) state that job advertisements should generally be formulated in a discrimination-sensitive way. According to the text of the guidelines, no personal characteristics under Section 1 AGG may influence the weighting for the job – either indirectly or directly. Regarding people with disabilities, it makes sense to be careful when formulating health requirements and to weigh up which physical, mental and social skills are required for the job. In addition, the guidelines state that only qualifications are of crucial importance when selecting applicants. Employers are generally not allowed to ask questions about personal characteristics under the AGG in the job interview. Questions about a severe disability are permissible with the aim of wanting to initiate the provision of reasonable accommodation.

### **5.2 Recommendations regarding good practice and reasonable accommodation in initial employment**

Employers should work with and towards good cooperation between the SBV, the works council and the inclusion commissioner, if possible based on an inclusion agreement, and they should support the formation of an inclusion team. They should work closely together with the inclusion team and the integration office and its services.

One appropriate arrangement for newly hired employees is to use work assistance benefits for severely disabled employees who depend on regular and permanent support to carry out their professional activities, such as from readers for visually impaired people or assistants for severely physically disabled employees. Auxiliary activities and handouts are provided through work assistance.

Integration offices and other authorities should take into account the fact that special needs are individual, and so are the initial arrangements for reasonable accommodation.

### **5.3 Recommendations regarding good practice and reasonable accommodation in promotion and career development**

According to Section 164(4) no.1-3- SGB IX, severely disabled persons have a right to employment by their employers in which they can fully utilise and further develop their skills and knowledge and receive preferential consideration for in-house vocational training in order to advance their career, with reasonable facilitation in participating in external vocational training. This is to be understood as a right to individual reasonable accommodation in vocational training.

Employers should work with and towards good cooperation between the SBV, interest groups (e.g. the works council) and the inclusion commissioner, if possible based on an inclusion agreement, and they should support the formation of an inclusion team. They should work closely together with the inclusion team and the integration office and its services.

Appropriate arrangements to facilitate the promotion or career development of employees shall include training and education in the spirit of lifelong learning. These measures shall serve to maintain and expand professional knowledge, to adapt to technological developments or to facilitate career advancement. Employees with disabilities (including severe disabilities) can be supported through appropriate funding, either from the integration office (if there is no responsible rehabilitation agency), via the employer's obligation to provide benefits or through special consideration for in-house training measures.

The Federal Employment Agency, Statutory Pension Insurance and integration offices should develop and offer a wide range of supportive and accessible advanced on-the-job training for persons with disabilities.

### **5.4 Recommendations regarding good practice and reasonable accommodation in retention, i.e. enabling people to stay in work if they develop an impairment or their impairment changes**

One appropriate arrangement for existing employees is company prevention, which is intended to counter difficulties in the employment relationship and to supplement occupational integration management (*Betriebliches Eingliederungsmanagement – BEM*) for periods of incapacity to work.

According to Section 167(2) SGB IX, occupational integration management (BEM) should be made obligatory and effective by legislation. The Federal Employment Agency, Statutory Pension Insurance, health insurance companies and integration offices should support obligatory BEM and develop common guidelines for this process and for their cooperation in supporting employers and employees with an illness in stabilising their employment.

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