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Accommodation without presumed incapacity: autism, reasonable accommodation and career protection in public and private employment

Adaptar sem incapacitar: autismo, adaptações razoáveis e proteção da trajetória profissional nos setores público e privado

Adaptar sin presumir incapacidad: autismo, ajustes razonables y protección de la trayectoria profesional en los sectores público y privado

Leonardo Novaes Bastos
Public Prosecutor at the Public Prosecution Service of the State of Alagoas. Master of Laws.

Abstract:
How can workplace accommodation be secured without turning support needs into presumed incapacity? Through legal and documentary analysis and a narrative review, this article examines autistic workers' protection in public and private employment. It develops three criteria: a barrier–task–adjustment nexus; separation of accessibility, health and accountability purposes; and reasoned continuity of support. Success achieved with an accommodation does not establish that it is unnecessary. The contribution delineates accommodation decisions, maintenance and review, preserving differences between employment regimes, relevant assessments and career protection.

Keywords:
Autism; Reasonable accommodation; Right to work; Non-discrimination; Data protection.

Resumo:
Como assegurar adaptações laborais sem converter a necessidade de apoio em presunção de incapacidade? Mediante análise jurídico-documental e revisão narrativa, o artigo examina a proteção de trabalhadores autistas nos setores público e privado. Desenvolve três critérios: nexo entre barreira, tarefa e ajuste; separação das finalidades de acessibilidade, saúde e responsabilização; e continuidade fundamentada dos apoios. Sustenta que o êxito obtido com uma adaptação não demonstra sua dispensabilidade. A contribuição delimita decisões de concessão, manutenção e revisão, preservando diferenças entre regimes, avaliações pertinentes e proteção da trajetória profissional.

Palavras-chave:
Autismo; Adaptações razoáveis; Direito ao trabalho; Não discriminação; Proteção de dados.

Resumen:
¿Cómo garantizar ajustes laborales sin convertir la necesidad de apoyo en presunción de incapacidad? Mediante análisis jurídico-documental y revisión narrativa, el artículo examina la protección de trabajadores autistas en los sectores público y privado. Desarrolla tres criterios: vínculo entre barrera, tarea y ajuste; separación de las finalidades de accesibilidad, salud y responsabilidad; y continuidad motivada de los apoyos. El desempeño satisfactorio con ajustes no demuestra que sean prescindibles. La contribución delimita decisiones de concesión, mantenimiento y revisión, preservando diferencias entre regímenes, evaluaciones pertinentes y protección de la trayectoria profesional.

Palabras clave:
Autismo; Ajustes razonables; Derecho al trabajo; No discriminación; Protección de datos.

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Introduction

A person may perform the duties of their job and still need accommodations to continue doing so. This statement contains no contradiction: the observed outcome depends on the conditions under which the work is performed. However, a request for reduced sensory exposure, written communication or a different organization of time may elicit two symmetrical responses. In the first, previous performance is used to deny the need for support. In the second, the request itself is treated as sufficient evidence of professional incapacity. The legal problem addressed in this article lies in this double bind: the person needs to demonstrate a barrier to obtain accessibility, but that demonstration may improperly be used to restrict their career.

This article does not claim that this mechanism occurs in every workplace or that its frequency in Brazil has been established. It presents a hypothesis of institutional risk, whose plausibility is examined in light of equality standards and research documenting difficulties in requesting adjustments and the costs of camouflaging autistic traits. These studies do not support an estimate of the national prevalence of the problem; they allow us to question the equivalence between an appearance of adaptation to the environment and the absence of a need for support (Davies et al., 2022; Pryke-Hobbes et al., 2023).

Law No. 12,764/2012 recognizes a person with autism spectrum disorder as a person with a disability for all legal purposes. The Brazilian Inclusion Law, in turn, covers access to and retention in employment and prohibits requiring full fitness. These provisions make an approach that confines inclusion to entry or hiring inadequate, but they do not dispense with identifying the activities, barriers and conditions necessary to perform the work (Brasil, 2012, art. 1, § 2; Brasil, 2015, art. 34).

The research question is: how can the granting, maintenance and review of reasonable accommodations for autistic workers in the public and private sectors be structured without turning information provided for inclusion into self-sufficient grounds for incapacity, segregation or career disadvantage? The aim is to formulate interpretive and procedural criteria connecting accessibility, health, privacy and professional continuity. The scope focuses on autistic workers rather than caregivers' rights, although a decision concerning caregivers is considered because of its implications for the statutory regime.

The hypothesis is that protection becomes legally more consistent when three issues are addressed together. First, the need for an adjustment must be examined through the relationship between barrier, task and conditions of performance, rather than through a global judgment about the person. Second, accessibility procedures, health assessments and accountability must

retain their own objects and safeguards. Third, success observed under accommodated conditions is not sufficient to justify withdrawing those conditions. The article calls this last difficulty the paradox of success under accommodation, as an explanatory tool, without claiming to have discovered a universally unprecedented phenomenon.

The expression “accommodation without presumed incapacity” does not deny the existence of impairments, illness or situations of actual incapacity. It denotes the prohibition of an inference: needing an adjustment does not, in itself, allow the conclusion that someone cannot perform their role. The argument does not replace legally required examinations, create immunity from professional accountability or guarantee any form of work regardless of the circumstances. Its purpose is to prevent a measure intended to remove a barrier from being converted, without additional grounds, into a new barrier.

1 Method, corpus and scope of the contribution

The research combines legal doctrinal and documentary analysis with a focused narrative literature review. The normative corpus was selected according to three criteria: application to the right to work of persons with disabilities; relevance to implementing adjustments; and bearing on the use of health information. Versions available from official sources up to September 25, 2026 were consulted, with attention to differences in hierarchy, addressees and powers. The investigation is neither a systematic review of case law nor a survey of all state and municipal statutes.

The core comprises the Convention on the Rights of Persons with Disabilities, promulgated by Decree No. 6,949/2009, Laws No. 12,764/2012 and No. 13,146/2015, federal statutory legislation, the Consolidation of Labor Laws and the General Personal Data Protection Law. Law No. 9,784/1999 is used within its federal scope; Regulatory Standards No. 7 and No. 17 are examined according to their fields of application; and CNMP Resolution No. 237/2021 appears as an example of sector-specific regulation. It is not presumed that the same working-hours rule or the same decision-making body exists for every employment relationship.

General Comments No. 6 and No. 8 of the Committee on the Rights of Persons with Disabilities guide the interpretation of equality and the right to work. They are interpretive documents issued by the body monitoring the Convention, not amendments to the treaty or autonomous Brazilian laws. The International Labour Organization guide and the British Health Adjustment Passport are examined as procedural precedents, without attributing domestic normative force to them. Supreme Federal Court Theme 1,097 is used for the scope of its

holding concerning state and municipal public servants, rather than as a general authorization for remote work.

The scientific review selected original studies with accessible full texts that directly address requests for accommodations, workplace camouflaging, perceptions of costs and autistic employment experience. Searches used combinations of “autistic adults”, “workplace adjustments”, “masking”, “reasonable accommodation”, “autismo”, “trabalho” and “incapacidade”. Selection was purposive and guided by the legal question; it does not purport to represent the entirety of academic production. Each study's design, sample composition, outcomes and limitations were examined. There was no participant data collection, ethics committee review for field research or implementation experiment.

The Brazilian works by Mello (2016) and Cabral (2024) help situate the distinction between disability and incapacity and the problem of institutional barriers. The former analyzes an experience of research ethics review; the latter, a recruitment notice for entry into the labor judiciary. Neither is presented as national research on accommodations for autistic workers. This delimitation prevents a conceptual critique or a case study from being turned into proof of widespread practices.

The intended originality is interpretive and integrative: connecting the purpose of processing information, continuity of support and career protection across different legal relationships. The article does not claim to have created the interactive process, adjustment records, accessibility or the prohibition of discrimination. Nor does the research demonstrate the empirical superiority of a new model. It develops criteria whose legal validity can be criticized and whose administrative effects depend on subsequent evaluation.

2 Disability, capacity and work: necessary distinctions

2.1 The right to accommodation does not depend on proof of failure

The Convention recognizes the interaction between impairments and barriers and includes denial of reasonable accommodation in the concept of discrimination. Its incorporation followed the procedure in art. 5, § 3, of the Constitution. Article 27 places accommodations in the context of freely chosen or accepted work, in an open, inclusive and accessible environment. Thus, the purpose of an adjustment is neither to reward exceptional performance nor to permit participation as an act of tolerance, but to ensure equality in the exercise of a right (Brasil, 2009, arts. 1, 2, 5 and 27).

In autism, legal recognition of disability does not determine a uniform catalogue of measures. Two people with the same diagnosis may face different barriers; the same person may need different support depending on the task, environment, stage of life or organizational changes. Individualized assessment does not serve to reopen legal recognition of the condition indefinitely. It serves to understand which obstacles are relevant and which response is appropriate. Requiring proof of total incapacity to grant accessibility would reverse the purpose of protection: continued employment would be conditional on the very failure the adjustment seeks to prevent.

General Comment No. 6 distinguishes accessibility of general scope from individual accommodation, which is required in response to a specific need, including when the responsible party should have perceived it. It also separates the relevance and effectiveness of an adjustment from the assessment of disproportionate burden. A measure does not cease to be appropriate merely because it requires resources; financial or organizational limits must be examined at a separate stage (Committee on the Rights of Persons with Disabilities, 2018, §§ 23–27).

An important temporal distinction follows. Accommodation may serve a preventive purpose. A person who is still delivering results but reports a persistent barrier and a substantiated need for change does not necessarily have to wait for leave from work, a serious error or exhaustion to obtain an assessment. Prevention does not mean accepting every perception as conclusive evidence; it means recognizing that protection includes making performance of the activity sustainable. The fact that harm has not yet materialized does not eliminate the existence of the obstacle.

2.2 Four questions that must not be conflated

Recognition of disability, the need for accommodation, fitness for an activity and responsibility for particular conduct answer different questions. The first identifies a legally protected condition. The second examines the relationship between the activity and the obstacle. The third may require a specific professional health and safety assessment. The fourth requires its own facts, duties and safeguards. Information may be relevant to more than one procedure, but it does not acquire the same meaning in all of them.

Mello (2016) highlights, in the context of research ethics, the risk of bringing disability, vulnerability and incapacity together without preserving their differences. The transposition to work made in this article is analytical, not an empirical finding of that study. The point is to

examine whether protection recognizes the person as a participant in decisions concerning them or turns them, in advance, into an object of guardianship. The need for support and personal agency can coexist; they are not mutually exclusive terms.

The preservation of civil capacity under the Brazilian Inclusion Law (LBI) does not automatically resolve a question of occupational fitness. Conversely, a limitation in a particular task does not amount to general civil or professional incapacity. Conceptual care protects against two excesses: denying any health assessment in the name of autonomy and using a diagnosis to replace actual assessment of working conditions. General Comment No. 8 rejects the automatic association between disability classification and restriction of the right to work (Brasil, 2015, art. 6; Committee on the Rights of Persons with Disabilities, 2022, § 57).

An implicit selection of those deemed worthy of inclusion must also be avoided. The right does not belong only to autistic people with higher education, fluent oral communication, high performance or skills valued by employers. People with intensive support needs, coexisting conditions or alternative forms of communication do not disappear from the scope of protection. The LBI provides for individualized support in employment inclusion. This does not mean presuming that everyone can perform any activity, but requiring that possibilities and support be examined before exclusions based on generic categories (Brasil, 2015, art. 37).

3 What the studies support — and what they do not

Davies et al. (2022) analyzed responses from 181 autistic adults in the United Kingdom concerning requests for and receipt of adjustments. The accounts identify obstacles between recognizing a need, communicating it and obtaining appropriate implementation. The sample does not represent the entire autistic population and concentrates certain sociodemographic profiles. Its usefulness for this article is to show that the formal existence of a right does not equal the practical availability of support, without estimating the frequency of this difficulty in Brazil.

Pryke-Hobbes et al. (2023) examined workplace camouflaging experiences in a British sample of 411 adults: 272 autistic, 78 non-autistic neurodivergent and 61 neurotypical adults. The study records motivations and costs associated with social presentation in the workplace, without characterizing all behavioral adaptation as pathological or exclusive to autism. Because it relies on accounts and non-probability selection, it does not establish that a given organizational requirement causes illness in every worker. It does, however, allow us to reject

as a universal premise the idea that appearing comfortable demonstrates an absence of significant effort.

The study by Scott et al. (2017) examined the perceptions of 59 Australian employers, comparing autistic and non-autistic employees in similar jobs. Its findings do not support a general assumption of extraordinary costs in employing autistic people. Selection of people already employed and the range of profiles included limit generalization. The work does not demonstrate that every accommodation has zero cost, that hiring is always financially advantageous or that Australian figures can be converted directly into Brazilian estimates.

Nishith et al. (2025) investigated the experiences of 85 autistic adults and brought together personal, environmental and occupational factors. Acceptance, communication and support conditions are among the dimensions examined. The study includes autistic participation in developing practical proposals, but it is not a causal trial proving the universal effectiveness of those measures. Its contribution to legal analysis is to shift the explanation of difficulties from a supposed exclusively individual deficit to interaction with the conditions under which work is performed.

The four studies converge on the relevance of examining the environment, but their populations, methods and outcomes are not identical. There is no basis for adding their samples together and announcing a single accommodation success rate. Nor do the data justify equating all autistic workers with professionals in the sectors or profiles most represented. The inference adopted is narrower: the need for support and its effects cannot be assessed solely from the appearance of sociability, the raw history of outputs or abstract expectations of cost.

The legal contribution does not depend on proving that including autistic people maximizes profits. An exclusively economic argument would leave unprotected the person whose accommodation produces no measurable financial return. Costs and feasibility are relevant to assessing burden, but equality does not arise from a profitability calculation. Likewise, the language of extraordinary talents may replace a negative stereotype with another and make protection conditional on an exceptional contribution in return. The standard is the exercise of work under legally appropriate conditions.

In the Brazilian literature, Cabral (2024) analyzes programmatic barriers in a recruitment notice for the labor judiciary. The text confirms that criticism of institutional obstacles already has an earlier legal development. This article neither reproduces that assessment of the notice nor examines the current situation of that recruitment process. It uses this precedent to delimit a different question: after entry, how can the granting and review of support be prevented from reproducing exclusion filters in the form of everyday management?

4 A decision criterion: the link between barrier, task and adjustment

4.1 The necessary task and the customary way of performing it

The starting point should not be “which accommodation corresponds to this diagnosis?” but “which barrier affects this person in performing this activity?”. The difference is decisive. “Difficulty interacting” is a broad description; participation in meetings without agendas, repeated changes in priorities and a requirement for uninterrupted communicative availability are conditions that can be examined. Identifying the barrier makes it possible to discuss a specific response without reducing the person to an inventory of limitations.

The task must also be described precisely. Serving users, producing opinions, operating equipment and participating in collective decisions may be legitimate duties. The need to carry out these activities does not, in itself, demonstrate that they must always be performed in the same place, at the same time or through the same channel. The test requires distinguishing the purpose of the work from its customary form. An organizational tradition does not become an essential requirement merely because it is old; a personal preference, on the other hand, does not eliminate a genuinely demonstrated functional requirement.

Assessment must consider frequency, duration, consequences and alternatives. “Contact with the public”, for example, may mean a continuous shift in a noisy environment or scheduled appointments allowing communication aids and breaks. The generic category does not resolve the question. The same applies to physical presence: material activities may require it, while some tasks in an on-site position may be performed by other means. Examination by task does not authorize duties outside the position or unilateral transformation of the post; it clarifies what truly needs to be preserved.

NR-17 establishes the adaptation of working conditions to workers' psychophysiological characteristics and includes work organization within its scope. It covers the employment relationships provided for in the standard itself, focusing on employees governed by the Consolidation of Labor Laws (CLT); its application should not be converted into a universal statutory rule. Nevertheless, within its applicable scope, it reinforces that analysis does not stop at furniture and equipment: the way activity is organized also matters (Brasil, 2022b, items 17.1 and 17.2).

4.2 Participation, appropriateness and the person's preference

Describing the need requires accessible listening. The person may prefer to submit the request in writing, gather documentation at different times or participate with support of their choice. Communication need not reproduce the barrier that prompted the request. Nor may dialogue be turned into a test of charisma, eye contact or ability to advocate orally for a claim. Its purpose is to clarify conditions and possibilities, not to measure social conformity.

The ILO (2016) already organizes the adjustment process into stages of request, assessment, implementation and follow-up, with attention to confidentiality. This precedent prevents the simple interactive workflow from being presented as an innovation. The specification developed here concerns control of the inferences produced at each stage: information about a need for accessibility should not automatically be transformed into a conclusion of unfitness, and subsequent improvement should not, without further analysis, be converted into proof that support is unnecessary.

Participation is not merely consultative. General Comment No. 8 states that the person's preferred solution should be implemented unless it imposes a disproportionate or undue burden; in that case, alternatives must be identified. This interpretive guidance does not create an absolute preference for any requested measure, but neither does it legitimize a unilateral choice based solely on managerial convenience. An alternative is relevant when it effectively addresses the barrier and can be discussed with the person experiencing it (Committee on the Rights of Persons with Disabilities, 2022, § 45).

Cost must be described, not presumed. Acquisition, installation, support, effects on tasks and available resources must be identified, considering alternatives and the relevant scale of the organization. Burden analysis must not be confused with prohibiting all expenditure or transferring the cost to the person. Nor does it authorize disregarding safety, legal impossibility or demonstrated material impact. The mere assertion that everyone could request the same treatment does not demonstrate an undue burden: the analysis remains individualized (Committee on the Rights of Persons with Disabilities, 2018, § 26).

4.3 A non-prescriptive repertoire of accommodations

Sensory measures may involve changes to lighting, noise reduction, a more private workstation, equipment compatible with safety or access to a break area. Communication

adjustments may include advance agendas, written instructions, defined priorities, records of decisions and adequate response time. At the organizational level, predictable schedules, fewer unnecessary interruptions, task segmentation and accessible training methods may be examined. The following table organizes possibilities for individual analysis, without turning frequent preferences into universal needs.

Table 1 — Barriers, possible adjustments and limits of analysis

Barrier or condition	Adjustments to examine	Question that remains individual
Persistent noise, light or interruptions	Private workstation; adjustable lighting; compatible acoustic protection; fewer interruptions	Which stimulus interferes with the task? Does the measure preserve safety?
Ambiguous instructions and competing priorities	Written guidance; agenda; examples; records of decisions and priorities	Does the information allow performance of the activity without eliminating professional choices?
Poorly predictable routine changes	Advance notice where possible; calendar; channel for urgent changes	Which changes are unavoidable and what predictability can be preserved?
Continuous social exposure or inaccessible communication	Scheduled appointments; alternative channels; breaks; communication support	Which interaction is indispensable and how can it be made accessible?
Travel or an on-site environment that creates a barrier	Remote or hybrid work; local adjustment; organization of time	Which tasks require presence? Which alternatives are effective and legally possible?
Intensive support for organization or communication	Assistive technology; individualized support; accessible training	Does the person participate in choosing? Does support expand autonomy and opportunities?

Source: analytical compilation based on the LBI (Brasil, 2015), NR-17 (Brasil, 2022b), ILO (2016) and the literature examined. This is neither a clinical prescription nor an automatic list of rights by diagnosis.

An apparently protective measure can also produce exclusion. Removing someone from all collective projects, preventing contact with users or assigning only repetitive tasks is not a neutral solution. Appropriateness requires consideration of development, professional choice and the possibility of performing relevant activities. The person should not be forced to exchange career opportunities for a reduction in avoidable barriers. Adjusting organization does not mean preemptively narrowing the horizon of participation.

5 Granting, maintenance and review: protection over time

5.1 An access procedure, not a performance dossier

Implementation should begin with an identifiable, accessible channel, a record of receipt and information about the competent authority. The request must contain sufficient elements to understand the barrier and intended measure, without imposing unrestricted disclosure of clinical history. When information is insufficient, the appropriate step is to clarify what is missing and why it is necessary, rather than repeatedly demanding an undifferentiated set of documents.

Recognition of autism as a disability does not eliminate every documentary requirement. However, diagnosis, intensity of support in a clinical context and the concrete demands of an activity are not interchangeable. A report may be relevant to explaining functional repercussions and recommended measures; this does not authorize demanding intimate information unrelated to the decision. When the regime requires assessment by a team or board, the questions must be proportionate to the legal object. The institutional pathway cannot function as a general test of the diagnosis's legitimacy with every request.

An accommodation plan may record the relevant barrier, agreed adjustment, who enables it and under what circumstances it will be reviewed. It need not contain medical records, detailed descriptions of crises, personality judgments or daily behavioral assessments. The operational record sent to management should preferably contain implementation instructions and relevant limits; clinical grounds remain within a restricted-access circuit when their retention is necessary. The record protects continuity of support rather than instituting special surveillance of the worker.

The British Health Adjustment Passport experience uses a document controlled by the person to facilitate conversations about work needs. It is a useful precedent for continuity and communication, not a model automatically applicable in Brazil. Portability must be voluntary and cannot transform sensitive information into a mandatory register accessible to future employers. Hiring should not depend on submitting a complete history of accommodations (Department for Work and Pensions, 2026).

In urgent cases, a safe interim measure should be examined, especially when investigation may take time. This article proposes neither automatic approval of every request nor waiver of required assessments. It argues that processing time forms part of the accessibility

problem: a formally correct response delivered after the avoidable loss of employment or worsening of the barrier may frustrate the purpose of protection. The possibility and scope of temporary action depend on the applicable authority's powers.

5.2 The paradox of success under accommodation

Consider a worker who maintains quality and regularity after receiving written instructions and protection against unnecessary interruptions. If the organization concludes that the accommodation can be withdrawn because “there is no longer any difficulty”, it confuses the outcome of a condition with the absence of a need for that condition. The observed fact is performance in an accommodated environment. The relevant hypothesis for withdrawal concerns performance and accessibility in another environment. Moving from one to the other requires additional justification.

This is a problem of inference, not a demonstration of causality in favor of every accommodation. Support may have ceased to be necessary, a technological change may remove the barrier or another measure may be more appropriate. Satisfactory performance may also depend on different factors. What is unsupported is using success alone as proof of dispensability. The same caution applies to assessments preceding diagnosis: past success does not demonstrate that work took place without barriers or without significant cost to the person.

Reasoned continuity is presented as an interpretation of equality and the purpose of accommodation, not as an express rule of irrevocability contained in a single legal provision. Review must indicate what has changed, what evidence allows support to be reexamined and how the new solution will preserve access and participation. A change of manager or a generic preference for returning to the previous standard, without examining needs, does not explain why the measure is no longer appropriate.

Experimental withdrawal of support should not be required so that the person encounters difficulties again and thereby proves its usefulness. Review may use current information, task changes, ergonomic assessment, the person's account and proportionate alternatives. When a consensual test of a new organization takes place, the duration, possibility of returning and protection against disadvantages arising from the experience must be defined. The right cannot be conditional on repeated demonstrations of suffering.

The stability of the condition and variability of needs are not incompatible. Autism need not “disappear” for an accommodation to change; nor should an accommodation expire merely because the diagnosis is old. Relevant follow-up concerns the relationship between work and

barriers, not a periodic demand for a cure. Updating information may be justified when it changes the decision. Repeating assessments without an identifiable new object requires proportionate justification, particularly where there is cost, exposure or a risk of discontinuity.

5.3 Adverse decisions and the possibility of challenge

A decision denying a request must make its reasoning intelligible: which measure was examined, which need was recognized, which alternatives were considered and which concrete impediment remains. Repeating expressions such as “the interests of the service”, “equal treatment”, “company culture” or “incompatibility with the position” is insufficient. The generality of these terms does not allow a real limit to be distinguished from an organizational preference. The reasons must be understandable to the person and reviewable by the competent authority.

The substantive duty to justify an undue burden must not be confused with automatic reversal of the procedural burden in every dispute. Judicial allocation of proof follows the rules relevant to the proceedings and legal relationship. This article's argument comes earlier: those controlling information about tasks, organization and resources must explain why they regard a particular solution as unfeasible. Informational asymmetry cannot make the person responsible for guessing data held only by the institution.

In federal administrative proceedings, arts. 48–50 of Law No. 9,784/1999 provide parameters for decisions and reasons; the thirty-day period in art. 49 runs after the investigation is completed, rather than indiscriminately from any application. This period is not transferred as if it were a national rule for private relationships. Outside that scope, the requirement of timely treatment must be connected to applicable legislation and the effectiveness of the right itself, without fabricating a nonexistent uniform deadline (Brasil, 1999).

6 A common foundation and distinct legal regimes

6.1 Work in the public sector

The administration's obligation to comply with legality is not an authorization to maintain barriers until each measure is described in detail in regulations. The Convention and the LBI form part of the legal standard for action. However, authority to decide, effects on remuneration, changes in working hours and reorganization of duties must respect the specific

regime. Realizing the right requires combining the duty of inclusion with these limits, rather than presenting legality and accessibility as mutually exclusive terms.

Article 98, § 2, of Law No. 8,112/1990 provides special working hours for public servants with disabilities when need is demonstrated by an official medical board, without requiring make-up hours. Paragraph 3 covers a spouse, child or dependent with a disability. This provision contains no single reduction percentage applicable to every autistic person. Nor should the requirement to make up hours under the regime for public servants who are students, provided for in a different situation, be imported into disability provisions (Brasil, 1990).

In Theme 1,097, concerning Extraordinary Appeal No. 1,237,867/SP, the Supreme Federal Court (STF) established the application of art. 98, §§ 2 and 3, to state and municipal public servants. The original proceedings concerned a caregiver of a person with a disability; the wording of the holding includes both paragraphs. Its scope should not be converted into an automatic right to full-time remote work or a rule of salary or working-hours reduction for all private contracts. The reference to the provision retains the relevance of need and applicable requirements (STF, 2022).

CNMP Resolution No. 237/2021 provides an example of specific regulation: it covers special conditions, remote work without increased productivity requirements and protection against discrimination in access to employment benefits and opportunities. It also provides for assessments and possibilities of review. Its existence does not turn the rule into a general statute for public servants or employees; it shows that accessibility and career protection can be integrated within an institution (CNMP, 2021, arts. 2, 5, 6 and 10).

The same instrument requires careful reading: it refers to the absence of expenditure for the Public Prosecutor's Office and compatibility with the public interest. The tension with the Convention's standard of disproportionate burden, which does not mean zero cost, should not be concealed. The interpretive argument proposed here is that sector-specific clauses should be applied consistently with the duty of accommodation, through concrete analysis, without presuming judicial invalidation of provisions not examined in this study. Nor does the rule establish an absolute prohibition of reassessment (CNMP, 2021).

Accommodation does not necessarily amount to statutory reassignment, which has its own prerequisites and consequences. Changing lighting, communication or the form of participation may allow performance of the duties of the same position. Converting every request into the automatic opening of a procedure to change the person's role would erase that difference. When a relevant assessment indicates a need for another action, it must follow the

corresponding powers and safeguards, rather than being presumed from the mere request for accessibility (Brasil, 1990, art. 24).

6.2 Private employment and relationships governed by the CLT

In private relationships, the employer's power to organize work encounters the duties of non-discrimination and accommodation. Hiring through reserved positions and removal of barriers are distinct legal mechanisms: compliance with an entry policy does not exhaust the conditions for retention. Conversely, the right to accommodation does not depend on admission through a specifically reserved position or diagnosis before hiring. What matters is the applicability of protection and the concrete need within the employment relationship (Brasil, 2012; Brasil, 2015).

Article 75-F of the CLT gives persons with disabilities priority in allocation to positions whose activities can be performed remotely. Priority for compatible positions is not synonymous with an abstract right to convert any position into full-time remote work. This does not end the analysis: an individual request must still be examined in light of the duty of accommodation. The labor provision does not authorize disregarding a barrier merely because the company did not previously classify a particular position as remote (Brasil, 1943, art. 75-F).

Nor can the special working hours under Law No. 8,112/1990 be automatically transferred to every private contract. Working hours, remuneration, the contract and collective rules require their own examination. Adjustments to starting and finishing times, breaks, task distribution and remote arrangements can be discussed without always having the same effects. A reduction in working hours with unchanged remuneration requires specific legal grounds, rather than an analogy presented as an undisputed result. Distinguishing regimes does not eliminate the common duty of inclusion.

A small company may face different limits from a large organization. This requires contextual analysis of burden, not automatic exemption from accommodation or an abstract obligation to create unlimited infrastructure. Simple measures may remove significant obstacles; simple measures may also be insufficient. Examination should not be confined to a catalogue of inexpensive actions when the barrier requires another response. Choice must engage with needs and actual implementation capacity, without shifting the entire cost of equality onto the person.

Law No. 9,029/1995 prohibits discriminatory practices in access to and maintenance of employment and provides consequences for discriminatory termination. An autism diagnosis alone does not amount to absolute protection against any dismissal. On the other hand, the possibility of ending the contract does not authorize using the adjustment request as an unlawful ground for exclusion. Establishing discrimination and its consequences depends on the facts and applicable regime, without anticipating compensation or litigation outcomes (Brasil, 1995).

Table 2 — Common foundation and differences between regimes

Issue	Statutory public sector	Private employment and employment under the CLT
Duty of accommodation	Convention and LBI, connected to the statute and applicable powers	Convention and LBI, connected to the CLT and relevant rules
Special working hours	Art. 98, §§ 2 and 3, of Law No. 8,112/1990; Theme 1,097; examination of requirements and employment relationship	No automatic transposition of the federal statute; examine the measure's grounds, contract and collective rules
Remote work	Individual analysis and institutional regulation; no abstract right to any arrangement	Priority under art. 75-F for compatible positions, alongside examination of individual accommodation
Decision and review	Competent authority; reasons; applicable administrative procedure and oversight	Accessible procedure; reasons for any refusal; relevant means of challenge
Health and information	Assessments under the specific regime; restricted access and defined purpose	NR-7 and other applicable rules; the PCMSO is not personnel selection
Career path	Equal opportunities, subject to legal criteria for the position and career	Equal opportunities and prohibition of discrimination within employment

Source: Brasil (1943; 1990; 1999; 2009; 2015; 2018; 2022a) and STF (2022). The table does not equate all regimes for public agents or exhaust local and collective rules.

6.3 Remote work is not synonymous with accessibility

Remote work may reduce travel and exposure to adverse environments, but it may also preserve communication barriers, intensify digital interruptions or restrict access to information and opportunities. Assessment of need cannot start from the premise that every autistic person prefers isolation or that home is always the most appropriate environment. Inclusive organization must allow choices and combinations compatible with tasks, without turning an arrangement into the compulsory destination of a category.

When physical presence is necessary, that conclusion should not end the search for adjustments. The question becomes how to ensure accessibility during that presence: spatial organization, predictability, communication, equipment, support and appropriate recovery periods. When presence is unnecessary for some activities, requiring it must still be assessed against the purpose and alternatives. In both cases, the aim is to enable work, rather than to debate abstractly whether on-site or remote work is superior.

7 Health, sensitive information and career protection

7.1 Assessment with a defined purpose

Prevention of occupational risks protects the person and third parties. It should not be excluded from accommodation analysis. NR-7 links health monitoring to the risks of activities and states explicitly that the Occupational Health Medical Control Program (PCMSO) must not serve as personnel selection. This distinction allows safety and conditions of performance to be examined without turning monitoring into a generic filter against disability (Brasil, 2022a, items 7.2 and 7.3).

An assessment may legitimately be required by law or by facts relevant to the activity, such as concrete risk, changes in tasks or a relevant clinical situation. The problem lies in the automatic transition from an accessibility request to suspicion of unfitness. The application may justify clarification of the need and form of adjustment; it does not, by itself, authorize a negative conclusion about performance of the position or job. Documentary requirements must have an identifiable purpose, a competent professional and the possibility of knowledge and challenge under the applicable regime.

Clinical care recommendations and occupational assessment do not necessarily serve identical functions. Disagreement does not make either document irrelevant by definition. Their analysis requires explaining the point of disagreement, activities considered, environmental conditions and technical grounds. Conclusive expressions are inappropriate without examining whether the environment was described or the alternative genuinely considered. Workers should not be required to resolve, through personal effort, a disagreement that depends on technical and institutional dialogue.

Separating procedures does not mean preventing all legitimate circulation of information. If there is a concrete fact relevant to safety or an indication of conduct requiring investigation, the institution may act through the competent channels. Access must be limited

to what is necessary and accompanied by the appropriate safeguards. The argument is that a document produced to remove barriers cannot be used as a shortcut dispensing with demonstration of the requirements of another procedure. Protecting purpose does not amount to granting immunity.

7.2 Confidentiality as a condition of access

Health data are sensitive personal data. The General Data Protection Law (LGPD) requires appropriate purpose, necessity and protection; processing is not automatically legitimized by managerial convenience. In employment, asymmetry between the parties prevents a signature on broad consent from being treated as unrestricted authorization. Appropriate legal bases must be identified, including the specific circumstances in art. 11, together with the scope of each instance of access (Brasil, 2018, arts. 5, 6 and 11).

Information separation may be implemented in two layers. The first brings together strictly necessary technical or clinical elements, retained by those with the authority and duty of confidentiality. The second contains operational instructions for implementing the adjustment: environmental conditions, communication channels, schedules or procedures. Managers need to know how to make work accessible; this does not mean they must know the entire diagnostic, therapeutic or family history. The ILO guide already recommends limited access and separation of accommodation records from other personnel files (ILO, 2016).

This arrangement does not create absolute confidentiality against legal obligations. Valid requests, defense of rights and health authorities' powers must be considered, with justified purpose and scope. At the same time, the exceptional possibility of sharing does not legitimize routine disclosure to the team. Explaining a reorganization of work does not require announcing the diagnosis of the person who requested it. Collective communication about routines can take place without identifying the individual clinical grounds.

The person must be able to access records concerning them and request correction of inaccuracies as provided by law. Statements such as “cannot tolerate working”, when the request describes difficulty with noise in a specific situation, are not neutral summaries: they change the object of the account and may contaminate later decisions. A correction mechanism must address this kind of improper reduction, preserving the authorship and grounds of technical opinions without turning every disagreement into a right to erase valid documents (Brasil, 2018, art. 18).

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7.3 Access must not come at the price of ending a career

An accommodation may have been formally granted yet be materially emptied of effect through side effects: exclusion from training, inability to compete for roles, removal from projects or assessments based on presence in inaccessible spaces. The LBI protects equal opportunities in advancement and access to training and incentives. Thus, assessment of an adjustment does not end with authorization of equipment or a schedule; it includes checking whether the measure has become a marker of lower professional worth (Brasil, 2015, art. 34, §§ 3 and 4).

This does not automatically guarantee promotion, bonuses or positions of trust. It requires the criteria used to be relevant, accessible and not to penalize the need for support in itself. A duty may require availability during certain periods, but the organization must demonstrate its relationship to the work and examine alternatives. Confusing unrestricted availability, informal social participation or tolerance of overload with merit prevents recognition of different ways of performing the role appropriately.

Performance assessment remains possible, subject to the requirements of the employment relationship and the conditions actually provided. What is rejected is a penalty incorporated into the accommodation itself: requiring extra output as automatic compensation for access, disregarding legitimately accommodated restrictions or assessing the person as if promised support had been implemented when it had not. The question concerns the relevance and equality of criteria, not the absence of assessment or a presumed reduction of essential requirements.

The same protection must extend to transitions between managers and units. Recognized conditions should not depend on a supervisor's informal memory or the goodwill of the person taking over. Minimal operational information can ensure continuity without exposing clinical documents to wider circulation. When a new activity changes the need, review becomes relevant; when only the manager changes, the person should not be treated as though they had never demonstrated their condition and obtained a decision.

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8 Contrasting applications, objections and future evaluation

8.1 Three hypothetical situations

Consider first an autistic analyst under a statutory regime who delivers adequate work but demonstrates barriers related to noise and interruptions. A favorable history does not end the analysis. The administration must connect the request to tasks, examine local adjustments and any compatible remote work, respecting the competent authority. Special working hours follow their own requirements. There is no need to presume incapacity to investigate the request or turn its approval into a conclusion that the public servant cannot take on relevant tasks.

In the second case, an autistic worker at a small clinic performs procedures requiring physical presence. A request for fully remote work does not resolve performance of these tasks. This conclusion, however, does not dispense with examining the environment, schedule, communication, support and other possible changes. Safety limits must be specified through relevant assessment, without generalization from the diagnosis. Refusal of a particular measure does not mean there is no duty to seek an appropriate accommodation.

In the third, a professional at a private company maintains good results under a hybrid arrangement and, after a management change, is ordered to return full-time on the grounds that she is already “fully adapted”. The observed improvement does not prove that support can be withdrawn. Changes in tasks, persistence of the barrier and alternatives must be examined. The previous plan can inform this analysis while preserving privacy. If there is another legitimate ground for reorganization, it must be addressed; a history of adjustments does not make every aspect of the contract immutable.

These situations are neither court cases nor field findings. They show where the three criteria change the institutional question: from global classification of the person to the concrete barrier; from undifferentiated circulation of documents to delimited purposes; and from automatic review to explaining what has changed. They do not allow the assertion that every application will produce the same result or prevent every dispute.

8.2 Relevant objections

The first objection is redundancy: the Convention, the LBI and international guidance already require adjustments and non-discrimination. This criticism is valid against any claim to

invent these rights. This study's contribution is more delimited: to explain a sequence of inferences that may frustrate them and connect controls over information, maintenance and career. The argument's usefulness depends on clarifying concrete decisions, rather than creating a new acronym or another bureaucratic structure.

The second objection holds that separating procedures prevents identification of risks. The answer lies in the scope of separation: it does not block prescribed examinations or relevant facts; it prevents replacing the grounds of one procedure with the mere existence of another. An occupational risk must be demonstrated in relation to the activity and possible measures. The duty of protection is not fulfilled when the organization avoids understanding risk and prefers to remove an entire category.

The third objection is economic and organizational. Not every desired measure is feasible, and accommodations may affect third parties. The test preserves examination of impossibility and undue burden. Its requirement is that the limit be explained using relevant information, rather than presumed from the diagnosis or generic opposition to difference. A decision refusing a particular adjustment may be defensible; an undifferentiated refusal to engage in dialogue or examine alternatives is not justified by the same reasoning.

The fourth objection questions continuity: maintaining support may entrench unnecessary solutions. The argument does not establish absolute permanence. It requires a reason related to need or conditions of performance in order to review support. Review may reduce, expand or replace support; it need not reproduce the initial measure forever. Protection against withdrawal based solely on success precisely preserves the possibility of distinguishing real change from mistaken inference.

Finally, there is a risk of excessive proceduralization. Documenting everything can multiply costs, expose information and hinder simple measures. Accordingly, the proposed plan is minimal and proportionate, uses existing records and does not require complex assessment for every change. Its purpose is to enable accessibility, not to prove daily that the person deserves to remain in employment. Procedures that produce more barriers than they remove must be reviewed.

8.3 How to evaluate implementation without monitoring the worker

Future research could compare accommodation procedures across different organizations and regimes, recording response time, actual implementation, continuity, challenges and access to opportunities. It must control for differences in tasks, size, resources

and workforce composition. The design cannot deny an accommodation that is due in order to create a control group. Staged implementation of procedural improvements, with individual rights preserved, may offer a methodological alternative to be validated.

People's experience must form part of evaluation, with accessible participation, protection against identification and relevant ethical criteria. Job retention is insufficient: someone may remain under unsustainable conditions or without opportunities. Nor is it enough to reduce requests and complaints, since a decline may result from barriers to the channel. Clinical information or individual productivity should not, unnecessarily, become permanent indicators for surveillance of autistic people.

Unfavorable outcomes must also be examined: additional delays, data exposure, unequal access between sectors, use of plans as instruments of stigmatization and measures unable to address the barrier. The object of evaluation is how implementation functions, not the existence of the right to equality. If the procedure hinders simple accommodations or facilitates unfounded restrictions, its operation must be corrected or abandoned while preserving the legal duty it sought to realize.

Conclusion

Autistic people's right to work is not realized through entry alone and should not depend on demonstrating incapacity to obtain support. The analysis identifies a specific risk: information presented to remove barriers may be used to presume unfitness, limit opportunities or justify withdrawing the conditions that made the observed performance possible. This risk requires legal precision, not denial of occupational health or the actual limits of activities.

The link between barrier, task and adjustment allows need to be examined without confusing professional purpose with the customary mode of performance. Separation of purposes prevents accessibility documents, by themselves, from replacing the grounds and safeguards of health or accountability assessments. Reasoned continuity, in turn, rejects the inference that success under accommodation demonstrates its uselessness. The three criteria connect granting, implementation and review without establishing an automatic outcome for every case.

The public and private sectors share an anti-discrimination foundation, but not a single statute governing working hours, remuneration, powers or procedure. Article 98 of Law No. 8,112/1990, Theme 1,097, sector-specific rules and art. 75-F of the CLT must retain their objects. Differences between regimes require appropriate grounds; they do not authorize

turning accommodations into discretionary favors or dispensing with examination of the barrier.

The scientific evidence used supports the relevance of context and the limits of inferring needs from appearances. It does not demonstrate the universal effectiveness of a protocol, the Brazilian frequency of all barriers or a uniform causal relationship between adjustments and health. The article's contribution is interpretive: explaining how law can protect access without allowing its exercise to become a self-sufficient ground for exclusion. Its operationalization remains subject to empirical verification and review.

Accommodation without presumed incapacity therefore means preserving the measure's meaning: removing an obstacle to work does not produce a general judgment against the person facing it. The existence of support does not, by definition, diminish its recipient's capacity or professional worth; its necessity, effectiveness and possible review must be examined under the actual conditions of the activity. Protection is consistent when it enables accessible work and continued recognition as a participant in one's own career.

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