
Vulnerable Workers and Precarious Work in a Changing World
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Disability and the effective implementation of laws for the access to work

Italy and the UK

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FACTS AND FIGURES

Framing the issue

- According to the 2011 World Report on Disability (WHO), people suffering from a disability of any sort amount to 15% of the world population, and this percentage is on the rise due to the ageing of the population.
- As far as Italy is concerned, the National Institute of Statistics (ISTAT) issued a report on people's health status and the use of health care facilities for the year 2004-2005. Significantly, 3.000.000 people in Italy are classified as being disabled, 66% of them are women and 34% are men.

FACTS AND FIGURES

The Employment Rate of the Disabled

- When taking the employment rate of the disabled in Italy into account we observe that 66% of them are out of labour market, 43.9% have entered retirement, 3.5% are employed and 0.9% are looking for employment. If the relationship between gender and occupational status is investigated, statistics reveal that 62% of men with any form of impairment are retired, against 35% of women.
- The gender imbalance is even more pronounced among those who are employed: the percentage of male workers with disabilities is almost four times higher than their female counterpart.
- Moreover, in a survey carried out in 2009 on the status of the implementation of Law No. 68/1999, the Italian Parliament reported that there has been a decrease in the number of disabled who have been assisted in entering the labour market for the year 2008/2009: from 28.306 in 2008 to 20.830 in 2009.
- There has also been a decrease in the number of individuals who are eligible for disability allowances.

FACTS AND FIGURES

registered as disabled and those with legally protected status pursuant to Law No. 68/99. In fact, as of 31 December 2008, there were 769,598 individuals enrolled, with a drop of 1,2% respect to the previous year. Over the year 2009, the total number of those registered as disabled persons underwent a decrease of 18,313 units, mainly because of two reasons. First, the economic downturn, which had a serious impact on the productive system and the labour market, urging the administrative bodies to prioritize the setting down of active policies for beneficial income support measures. It is those eligible for benefits pursuant to Law No. 68/99 who suffered the most from the negative trends of the markets. In addition to this there have been shortcomings in employment promotion strategies, particularly for this category of workers.

2. The Evolution of Labour Laws for Disabled People

2.1. Compulsory Hiring

³ Isfol, *Quinta relazione al Parlamento sullo stato di attuazione della legge 12 marzo 1999, n. 68, 2008-2009*, Roma, 2011.

THE REGULATORY FRAMEWORK

The Evolution of Labour Laws for Disabled People in Italy

- In legal terms, the placement of workers with disabilities currently implemented is the result of a set of constitutional provisions (Art. 2, 3, 4, and 35).
- This was the proposition leading to the enactment of Law No. 482/1968. This set of rules represents the first attempt to bring together the main provisions which protect people with disabilities. Law No. 482/1968 was intended to statutorily protect this category, requiring private and public employers to hire a certain number of disabled workers, irrespective of their reduced ability to work to the employers' actual needs. This was regarded as a "passive" measure, in the sense that an obligation was placed upon employers with more than 35 employees to hire registered disadvantaged persons in a proportion representing 15% of the total workforce. In the public sector, this quota corresponds to 15% for executives and 40% for auxiliary staff.
- This placement service ensured a fixed share of disabled workers were hired by employers, who had thus to submit their request to the employment services only in "numerical terms". However, such an approach was soon considered passé and deemed as illogical by both employers and employees, for it drew on the concept of "disability" as a permanent – and somehow degrading – impairment, which was overcome over the years. Dissatisfaction with this state of affairs led to a number of amendments to relevant provisions.

THE REGULATORY FRAMEWORK

The Evolution of Labour Laws for Disabled People in Italy: 5 main steps

- 1) In the 1960s passive measures were given priority over themes such as integration, which was still unfamiliar to many. Integration was promoted by way of Law No. 482/68 on compulsory hiring and Law No. 118/71 laying down provisions for maimed workers and some categories of disabled workers.
- 2) Over the 1970s, disabled children were given the opportunity to complete compulsory education by the enactment of Law No. 517/1977. Subsequently, Law No. 845/78 made provisions for vocational training of impaired teenagers.
- 3) The Legislator passed Law No. 223/1991 in order to help young people, the unemployed and those who were forced out of the productive system to re-enter the labour market. Over the same year, Law No. 1991 was enacted pursuant to which most disadvantaged workers were exempted from social security contributions.
- 4) On 5 February 1992, Framework Law No. 104 was issued, laying down measures to protect and support the social integration of the disabled.
- 5) Finally, the enactment of Law No. 68/1999 marked a shift – also in ideological terms – from “compulsory hiring” to “effective placement” for people with disabilities.

“EFFECTIVE” PLACEMENT FOR PEOPLE WITH DISABILITIES

Law No. 68 of 12 March 1999 on the rights of people with disabilities

- By passing of the Law on the rights of people with disabilities, the approach adopted to deal with access to employment and social integration for this category of workers was overturned, in order to keep up with changes in culture and in the world of work. Notwithstanding the “passive” measures which marked the previous welfare system, the new provision laid down a number of initiatives aimed at employment promotion and job creation.
- Providing “Effective placement” is the underlying principle of the whole body of law enacted in 1999.
- In this sense, “effective” means employing disabled workers in the most suitable occupation, by assessing their ability to work and evaluating their skills and potential. In any case, the obligation placed upon the employer to hire disabled workers – alongside the administrative sanctions to be paid in the event of non-compliance with such requirement – has remained unscathed, in order to safeguard their rights in terms of social assistance.

“EFFECTIVE” PLACEMENT FOR PEOPLE WITH DISABILITIES

Law No. 68 of 12 March 1999 on the rights of people with disabilities

- Law No. 68/1999 makes provisions for all workers who have a degree of disability of 33% and higher, that should be certified by the relevant authorities (National Institution for Insurance against Accidents at Work - INAIL).
- In addition, priority has been given to a number of measures that help employers to comply with the requirement of hiring a set number of disabled workers. In this sense, compulsory employment quotas for employers in both public and private sectors have been reviewed in order to increase labour demand in some special occupations, smooth access to employment, promote the implementation of certain services, enhance effective placement also by way of recruitment subsidies and, more recently, allocate funds to have workplaces conformed to the special needs of the disabled workers.

“EFFECTIVE” PLACEMENT FOR PEOPLE WITH DISABILITIES

The position of the Supreme Court

- Unlike what was laid down by the legislation previously in force – Law No. 482/1968 – failing to hire disabled workers for the purposes of Law No. 68/1999 does not entail a criminal offence, but just liability for compensation, as specified by the case law of the Supreme Court.

- It is significant in this connection that: *“the employer, who is under the obligation to hire the disabled workers, is liable for the damages resulting from unjustified failing in hiring them. Such liability – resulting from the employer breaching his/her obligation to recruit disabled workers – shall continue to apply until the end of the obligation. The recruitment on the part of another employer leads to termination of the legal obligations concerning the former employer, notwithstanding that he/she is still held liable for compensation for the damages arising from non-compliance with the obligation itself”*

THE BIAGI LAW

The “access-to-work” contract

- Legislative Decree No. 276/2003 (the so called Biagi Law) sets forth some important measures to deal with what was deemed to be “the thorny issue of employment for the disabled persons”.
- More specifically, Art. 54, par. 1, let. f sets forth that “people who have been diagnosed with physical or mental impairment– in accordance with existent legislation” should enter in access-to-work contracts in order to help them access the labour market.
- This legislative initiative – which was actually poorly implemented – was intended to ease the integration of those workers who struggle to find employment, among whom there were those with a disability of any sort.

THE REFORM OF THE LABOUR MARKET

Art 4, par. 27 of Law No. 92/2012 and the “Effective Implementation of Labour Laws for the disabled”

- **A new calculation of quotas:** it widens the number of workers serving as a starting point to calculate the compulsory quota of disabled workers. The new provision establishes that, for the purposes of determining the number of positions reserved for disabled persons, all salaried workers should be included, also those employed under limited-term contracts. While widening the group of workers who might be included in the calculation, the new provision does not take into account those recruited under new contractual relationships, adding to those who were already left out pursuant to Art. 4, par. 1 of Law 68/1999.
- **The Definition of “Personnel” in Construction Sites and the Exemption from Hiring Disabled People in the Building Sector:** provides a wider definition of “personnel in construction sites” in order to determine the cases employers in the building sectors are exempted from recruiting people with disabilities. To also include under the umbrella of “personnel in the construction sites”, workers engaged in activities such as “assembling, designing and maintenance”, widening the number of workers that will be excluded from calculation and thus reducing the amount of job positions available to people with disabilities.
- **The Duty to Notify Employment Services on Non-compliance:** to strengthen controls, provide more transparency and make the exemption system more effective. In this connection, they place on the Local Employment Department (*Direzione Territoriale del Lavoro*) the duty to notify the National Employment Services of the non-compliance with the provision regarding the recruitment of people with disabilities for the purposes of compulsory employment quotas, as well as in the event of applying for exemptions.

THE REFORM OF THE LABOUR MARKET

A First Assessment of the Provision

- On the days immediately following its enactment, there has been an awareness that Law No. 68/1999 will face a number of issues as regards the response of the employers. A number of issues as regards the response of the employers should be considered: the frequency of labour inspections as well as the actual occupational integration of the disabled persons in a working environment – be it for a medium or long term – on the basis of the contractual arrangement established.
- With regard to the first aspect, one must consider that the majority of the employers are more willing to be sanctioned and pay a fine than to hire a person with an impairment of any sort. In fact, it is sufficient to present a self-declaration to dispense with the statutory obligation to recruit people with disabilities. As far as inspections are concerned, one might note that in the 2009, only a few hundred inspections were carried out.
- Besides this, the percentage of disabled persons occupied via “effective placement” amounts to 25%, and half of them are employed under fixed-term contracts. In addition, the financial resources allocated to the Employment Fund for this category of workers who are more limited. As a result, the efforts made by lawmakers to provide higher levels of integration for most vulnerable groups by increasing their job opportunities and tackling the problem of abuses has been dealt with only partly by the passing of art 4, par. 27.
- Indeed, on the one hand the provision favours the obligation to hire disabled workers as included in the number of workers to be counted for the purposes of computing the compulsory employment quota. On the other hand, certain categories of workers have been excluded by such calculation, *de facto* nullifying the foregoing measure. The outcomes of such a move remain to be seen.