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Work and Chronic Diseases: An «Industrial Relations Law» Perspective

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Why Engage in a Legal Analysis on Chronic Diseases?

- An increasing number of people from the economically active share of the population is **unable** or **partly able to engage in work**, either **temporarily or not**
- Ongoing and future **demographic changes** make **the responses provided by labour law and social protection ineffective when it comes to the emerging issue of chronic diseases**
- New and unsolved issues concerning **inclusion and social justice** lie behind chronic diseases, as do questions concerning the **solidity of welfare and healthcare systems** and problems related to current **work organisation and production models**
- The labour market participation of people with chronic diseases will be necessary in the medium and long run to deal with the **decline in labour supply**. Concurrently, new issues will emerge related **to work productivity and quality** (absenteeism; presenteeism)

What do we Mean by Chronic Diseases?

- «**Chronic diseases**» refer to **irreversible pathological alterations** requiring special rehabilitation and long-term monitoring and care. This makes people unable to work (inability could also be temporary or limited).
Examples include:
 - Cardiovascular and Respiratory diseases
 - Musculoskeletal disorders, multiple sclerosis
 - Different types of tumours
 - Diabetes, obesity and epilepsy
 - Depression and other mental disorder
- This is a new phenomenon for labour law and industrial relations actors which **goes beyond the boundaries of the already complicated relationship between traditional diseases and work** (also because of demographic changes and an increase in the number of chronic diseases, which are taking place at a faster pace than ageing)
- Chronic diseases affect both those concerned and their family (**caregivers**)

Which are the shortcomings of current legislation/public policies?

- Rigid classification of chronic diseases («**medicalisation**» and early exit from the labour market): a push for accessing social security/assistance benefits due to **the lack of activation policies targeting those concerned and their social inclusion**
- The recourse to **standardised social protection** while the consequences of – and the response to – chronic diseases vary **individually and depend on the type of disease**
- Challenges at the time of **suspending work** and legal shortcomings when it comes to **dismissal** due to absence, poor performance, unfitness for work
- A considerable set of **formal safeguards** (work suspension, right to part-time work, adjustments of working hours, anti-discrimination legislation) which go **unimplemented in the context of the employment relationship due to the characteristics** of chronic disease
- The exclusion of **self-employed, atypical and temporary workers**

Which are the Policies Promoting their Employability?

- UN Convention of December 2006: the **condition of disability** is not based on the idea of limitations as an intrinsic quality/condition of individuals, but on the interaction between **disadvantaged people** and physical/behavioural/environmental **barriers** which prevent their **participation in society**
- Besides vocational rehabilitation and psychological/therapeutic/pharmacological support, a **change of paradigm** is also necessary in the way law and institutions deal with people affected by chronic diseases: the focus should be on their **abilities** rather than on their **disabilities**
- One should move from providing benefits, quotas, **passive policies to putting in place activation, work-life balance, and retention measures**. This is the approach taken in Denmark, The Netherlands, Sweden, UK ...
- The issue should be dealt with in terms of **employability, labour market access and re-access**. It is a question associated to **labour market and policies** not to be solved only in medical terms. It concerns **work sustainability and the reasonable adjustment of the work environment**

Which Development Strategies should be used for a Legal Analysis?

- «**Labour market law**» should be enhanced: In addition to rethinking employment services targeting vulnerable groups, **new skills** should be provided helping one to manage the relationship between disease and work
- Social security and assistance measures should be reviewed and considered as unrelated to the contractual schemes put in place: «**Person centered welfare**» should be pursued
- Work-life balance and equal opportunities policies needs reviewing and should be based on work organisation models (agile working, occupational welfare): «**work-health-life balance**» should be pursued
- Promoting the **prevention** of chronic diseases (both the primary and secondary type) starting from the workplace (so-called wellness at work), and moving beyond the legal barriers that affect organisational strategies
- Rethinking **the employment contract: sustainability** should be seen as tool balancing the **contractual exchange** through which the **fulfilment** of the performance is assessed

A Possible Answer from «Industrial Relations Law»

- The protection supplied to people with chronic diseases cannot rest only on legislation, nor can it concern the individual dimension on an exclusive basis. Law should be **adaptable** in order to strike an **overall balance** – to be defined on a case-by-case basis – between the needs for social justice and employers' productive needs (**Industrial Relations Law**)
- Moving **beyond formal legal provisions and good practices** (longer leave, income support, rescheduling of working time, agile working, company-based welfare measures, caregivers' protection). The point is **to make any reasonable accommodations at the company level** according to each worker's needs and actual possibilities and to **the type of company/task/disease**
- Rethinking **productivity** in terms of **work sustainability**: industrial relations should be tasked with reviewing the legal concepts of “**workplace presence**”, “**work performance**”, “**exact fulfilment of a contractual obligation**”, along with the relative work organisation models

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