

NEWS REPORT

Date: 31 December 2014
Expert: Pia Justesen
Title: Dismissal because of disability-related sickness absence
Country: Denmark
Context
Issue at stake: Definition of disability.
Ground of discrimination: Disability
Source: The Maritime and Commercial Court, F-7-10, judgment delivered on 1 December 2014.
Field: Employment
Legislative provisions: Section 1, 2 and 7 in the Act on Prohibition of Discrimination on the Labour Market etc.

Content

Case: On July 14th 2008 A was appointed as a Technical Assistant. On August 21st 2008 A called in sick by e-mailing her employer that she had tenosynovitis in her right hand and that her doctor had told her to rest her arm. In August and September 2008 A gave her employer several doctor's notes documenting her tenosynovitis and incapacity for work. A was dismissed from her job on September 26 2008 with no explanation given.

During the case A explains that she has not had any spells of sickness since then but that she continuously has had to be cautious with her arm.

In the case, A claimed that she was dismissed because of her disability. She referred to CJEU C-335/2011 (Ring) and C-377/2011 (Skouboe Werge) and stated that in order to fall within the concept of disability her limitation should be "long-term". She argued that it is the prognosis for the duration of the physical limitation that is essential for the assessment of whether or not she had a disability when she was dismissed and if a condition such as hers is latent, it is also long-lasting. Thus she argued that her limitation should be covered by the concept of disability, because of the fact that her symptoms would break out if reasonable corrective action was not taken.

Decision of the Court: In its argument, the Court referred to CJEU C-335/2011 (Ring) and C-377/2011 (Skouboe Werge). The Court also referred to medical records stating that A would be completely healthy again and that she would not need to take special account of her condition in her future job search except for making sure that her future workplace was arranged in a reasonable ergonomic way. The Court states that A has not demonstrated that she at the time of the dismissal suffered from a medically diagnosed curable or incurable latent disorder. Thus she did not have a disability encompassed by the Act on Prohibition of Discrimination on the Labour Market etc.

Internet link source and additional information:

<http://domstol.fe1.tangora.com/Domsoversigt.16692/F-0007-10.1476.aspx>