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FLASH REPORT

Country:	Belgium
Title:	The lay-off of an employee suffering from multiple sclerosis constitutes direct discrimination and violates the obligation of reasonable accommodation
Date:	22 July 2015
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<u>Context</u>	
Issue at stake:	On 9 March 2015, the Labour Tribunal of Mons and Charleroi ruled that the lay-off of an employee suffering from multiple sclerosis constituted direct discrimination and violated the obligation of reasonable accommodation. It convicted the defendant to pay 17.319,48 euro compensation for damages corresponding to six months' salary.
Ground of discrimination:	Disability
Source:	National court decision: Labour Tribunal of Mons and Charleroi
Field:	Employment
Applicable law:	<ul style="list-style-type: none">- Articles 4, 7, 8, 14, 18, 28 of the Federal Act of 10 May 2007 pertaining to fight certain forms of discrimination (General Anti-discrimination Federal Act)- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

Content

Case: The case concerns an employee (henceforth: the applicant) working in a funeral company (henceforth: the defendant). On 14 July 2009, the applicant was hired under an indefinite employment contract.

In January 2013, the applicant gave to the defendant a medical certificate requesting modifications of his schedules and the nature of his tasks because of medical problems. On 24 January 2013, a meeting was held between the two parties in order to find an agreement. At this occasion, the applicant explained to the manager of the company that he suffered from multiple sclerosis. No agreement was found. On 29 January, the defendant laid off the applicant. A few weeks later, the applicant asked for explanations about his dismissal. The defendant explained that the applicant's work quality was insufficient for several months. The applicant brought his case before the Labour Tribunal of Mons and Charleroi. He claimed that he had been discriminated against and asked for compensation for damages corresponding to six months' salary.

Decision of the Tribunal: In the ruling of 9 March 2015, the Labour Tribunal of Mons and Charleroi ruled in favour of the applicant. The Tribunal concluded that the defendant

had discriminated against the applicant (direct discrimination) and had failed to put in place reasonable accommodation.

First, it acknowledged that the burden of proof shifted to the defendant since the applicant brought some evidence – his medical problems, the medical certificate and the fact that the defendant was aware of the applicant's disease – that discrimination had occurred (art. 28 General Anti-discrimination Federal Act). The Tribunal also concluded that multiple sclerosis could be considered as a disability.

Concerning the question of direct discrimination, on the basis of the explanations brought by the defendant, the Tribunal ruled that it could not be excluded that the applicant's dismissal was linked to his disease. In this context, it concluded that the defendant did not demonstrate that the applicant had been treated differently without discrimination. Furthermore, it considered that the defendant did not justify in which extent the modifications of the applicant's schedule and working tasks were not reasonable and constituted a disproportionate burden. Therefore, the defendant failed to put in place reasonable accommodation. As a consequence, the Tribunal convicted the defendant to pay 17.319,48 euro compensation for damages corresponding to six months' salary.

Key points of analysis:

- The lay-off of an employee suffering from multiple sclerosis is discriminatory
- The employer directly discriminated against his former employee and failed to put in place reasonable accommodation

Internet link source: The decision is available on the following link: <http://www.diversite.be/tribunal-du-travail-de-mons-et-charleroi-9-mars-2015>.