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NEWS REPORT

Country:	Denmark
Title:	Eastern High Court judgment on disability discrimination and dismissal
Date:	22 July 2015
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<u>Context</u>	
Issue at stake:	The burden is on the employer to prove that reasonable accommodation imposes a disproportionate burden
Ground of discrimination:	Disability
Source:	The Danish Maritime and Commercial Court judgment of April 29, 2015. Case F-9-12
Field:	Employment
Applicable law:	Section 1, 2, 2a and 7a of the Act on the Prohibition of Discrimination in the Labour Market etc.

Content

Case: A was an engineer in a municipality. Shortly after she was appointed, she had an accident and injured her right arm. She was later diagnosed with Complex Regional Pain Syndrome. She was partly absent owing to illness for more than a year. Her request for a part time position was rejected by the municipality because of a general practice not to employ engineers in her kind of job in part time positions. She was dismissed due to her sickness absence and argued that she had been discriminated against because of disability.

Decision of the Court: The parties of the case agreed that A at the time of the dismissal had an impairment, which in interaction with various types of working tasks hindered her full and effective participation in the working life on an equal basis with other employees. The employer, however, challenged that the impairment was long term. The Court referred to the definition of disability in CJEU C-335/2011 (Ring) and C-377/2011 (Skouboe Werge) and stated that according to the information provided by the doctor, the diagnosis was Complex Regional Pain Syndrome. The doctor also informed that this illness often lasted a couple of years but that it was unpredictable and that it could last for both a shorter and a longer period of time. The Court concluded that the impairment at the time of the dismissal could be characterized as long term and that it constituted a disability encompassed by the Act on the Prohibition of Discrimination in the Labour Market etc.

The court emphasized that A was dismissed because of sickness absence and that the question to be resolved in the case dealt with indirect discrimination on account of disability. To answer that question the Court assessed whether the employer had fulfilled the obligation to provide reasonable accommodation. Based on the information of the case, the Court argued that a part-time position of 20 hours a week would meet the

needs of A for reasonable accommodation. The Court further argued that the municipality did not look into and concretely evaluate whether a part time position or other solutions would be possible. The municipality just referred to a general policy and on that background, the Court stated that the municipality did not prove that it would constitute a disproportionate burden to appoint A in a part time position. Thus the Court concluded that the dismissal constituted indirect discrimination because of disability.

A was awarded a compensation of 6 month of salary for indirect discrimination because of disability. In this regard the Court stated that the fact that A's disability derived from a work accident could not lead to a higher compensation.

Key points of analysis: The judgment illustrates that an employer in concrete terms must look into and evaluate various possibilities of accommodation, including a part time position. Thus, the burden is on the employer to prove that reasonable accommodation would impose a disproportionate burden. In a case like this, if the employer does not establish reasonable accommodation the Court will conclude that indirect discrimination on account of disability has taken place.

The judgment also illustrates that a work accident causing a disability does not necessarily lead to higher compensation in cases of disability discrimination.

Internet link source:

<http://domstol.fe1.tangora.com/Domsoversigt.16692/F-9-12.1555.aspx>.