



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Denmark
Title:	Supreme Court ruling on disability discrimination and dismissal
Date:	27 May 2016
Expert:	Pia Justesen
Update of flash report nr	99-DK (2015)
<u>Context</u>	
Issue at stake:	The extent of the employer's obligation to provide reasonable accommodation
Ground of discrimination:	Disability
Source:	Supreme Court, judgment delivered on 13 April 2016 in Case HR-98/2015
Field:	Employment
Applicable law:	Section 2a of the Act on Prohibition of Discrimination in the Labour Market etc.

Content

Case:

The claimant was an engineer in a municipality who shortly after she was appointed, had an accident and injured her right arm. She was later diagnosed with Complex Regional Pain Syndrome for which 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.

The Danish Maritime and Commercial Court in its judgment of April 29, 2015 (Case F-9-12) had awarded compensation for indirect discrimination because of disability, See Flash Report 99-DK (2015). The municipality appealed the judgment to the Supreme Court.

Decision of the Court:

The Supreme Court argued that the claimant 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 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.

With regard to reasonable accommodation, the court stated that the employer did not have an obligation to provide for a part-time position of 20 hours a week, which would have met the claimant's needs for accommodation. The Court argued that for the

municipality to provide for such a position, the municipality would have to divide a current full-time position into two part-time positions. The Court stated that for objective reasons this organisational change in a small department consisting of 3 employees would constitute a disproportionate burden to the employer. The Court acquitted the municipality.

Key points of analysis:

The case illustrates that an employer is not obliged to divide a full-time position into two part-time positions if there are objective reasons for a current position to be full-time. It also illustrates that employers are given a wide discretion when it comes to expedient organization of their operation and service.

Internet link source:

No internet source to be found.