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NEWS REPORT

Country:	Denmark
Title:	High Court ruling on dismissal and disability discrimination
Date:	10 October 2016
Expert:	Pia Justesen
<u>Context</u>	
Issue at stake:	The extent of the employer's obligation to provide reduced working hours as a reasonable accommodation
Ground of discrimination:	Disability
Source:	The Eastern High Court, ruling in Case No. B-477-15 delivered on 30 June 2016
Field:	Employment
Applicable law:	Section 2a and 7 of the Act on Prohibition of Discrimination in the Labour Market etc.

Content

Case:

The claimant had undergone a serious brain surgery. After the surgery she experienced abnormal tiredness and was on sick leave for about 2 months. Thereafter she was on partial sick leave for 8 months. She wanted to go back to her full-time position in the bank where she had been employed for 18 years. However, the extreme fatigue meant that she could not work for more than 12-18 hours a week. The hospital had recommended a "flexible job" with reduced working hours (for people with a reduced ability to work) but the employer rejected this. After this rejection the claimant called in sick again. She was dismissed 3 weeks after.

The claimant argued that her tiredness constituted a disability and that her dismissal was discriminatory. The employer argued that due to the massive sickness absence since the surgery, the employee could not be expected to perform the job she was appointed to do and thus had to be dismissed.

Decision of the Court:

The court argued that based on the medical records of the claimant there were no prospects for her getting back to a full time position in the bank as she was suffering from a "diagnosed disabling fatigue". The Court thus 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 knew about the disability of the employee and thus had an obligation to provide reasonable accommodation. Based on the fact that the employer had refused the complainant a "flexible job" without examining the options more closely, the court concluded that the employer had not provided reasonable accommodation and thus that the dismissal

constituted discrimination based on disability.

The court awarded DKK 503.000 constituting 12 months of salary in compensation (€ 67.550). The court referred to her long employment as well as the “coarseness” in the meaning of seriousness of the violation when determining the amount of compensation.

Key points of analysis:

The case illustrates that if an employee needs reduced working hours because of her disability, the employer must show a willingness to look into possible accommodations like flexible jobs, part-time jobs etc.

If the employer does not respond to such possible accommodations the courts might conclude that the obligation to provide reasonable accommodation has been violated.

Internet link source:

The ruling has not been published.