



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

### NEWS REPORT

<b>Country:</b>	Denmark
<b>Title:</b>	Refusal to hire a gardener because he was deaf
<b>Date:</b>	7 June 2017
<b>Expert:</b>	Pia Justesen
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Whether a refusal to hire a gardener because he was deaf amounted to disability discrimination
<b>Ground of discrimination:</b>	Disability
<b>Source:</b>	Board of Equal Treatment, decision No. 9155 of February 27, 2017
<b>Field:</b>	Employment
<b>Applicable law:</b>	Section 2, 2a, 7 and 7a of the Act on Prohibition of Discrimination in the Labour Market etc.

### **Content**

**Case:** The claimant was working in a job training internship program at a cemetery. He sent a text to the manager of the cemetery telling him, that he would like to apply for a position as a gardener at the cemetery. Several gardening jobs had just been posted as permanent positions at the cemetery. The manager replied by text that he was looking for gardeners who could independently make arrangements with relatives about gardens and maintenance. The manager wrote: "Your disability makes this impossible. I'm sorry."

The claimant argued that he had been discriminated against because of his hearing impairment. The employer argued that a gardener at a cemetery must be able to provide a professional customer service. According to the employer, relatives of newly deceased will often come to the cemetery unannounced. They are in great grief and expect professional advice. On that background, the employer argued that it would be impossible for the claimant being deaf to solve this task.

**The decision of the Board:** The Board described that according to The Act on Compensation for Persons with Disabilities in the Labour Market, the claimant could get a sign language interpreter from the government for up to 20 hours a week. The Board then argued that the employer never did a concrete assessment of whether the claimant could have performed the communicative tasks with customers - or the most important aspects thereof - if reasonable accommodation had been established in the form of sign language interpretation or a reorganization of tasks. Furthermore, the Board argued that the employer had not disputed that the claimant was qualified for the tasks that were not related to customer communication or service.

On that basis, the Board concluded, that it was not clarified and thereby not proven by the employer that it would have imposed a disproportionate burden to appoint the

claimant in the position as the gardener. According to the Board, the employer also had not proven that the claimant was not competent, capable and available to perform the most important functions of the job.

The court awarded DKK 25.000 in compensation (€ 3.360).

**Key points of analysis:** The case illustrates that the employer must show that a concrete evaluation of the possible accommodations as well as the competence of the applicant has taken place.

**Internet link source:** <https://www.retsinformation.dk/Forms/R0710.aspx?id=186904>.