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NEWS REPORT

Country:	Belgium
Title:	The consequences of a cancer for the first time recognised as constituting a disability requiring reasonable accommodation
Date:	16 April 2018
Expert:	Bribosia, Emmanuelle
<u>Context</u>	
Issue at stake:	Judgment of the Labour Court which recognises for the first time that the consequences of a cancer can, in certain circumstances, be constitutive of a disability which compels the employer to provide for reasonable accommodation
Ground of discrimination:	Disability
Source:	National equality body (www.unia.be)
Field:	Employment
Applicable law:	Federal Act of 10 May 2007 pertaining to fight certain forms of discrimination (General Anti-discrimination Federal Act)

Content

Case development: On 20 February 2018, the Labour Court of Brussels (3rd Chamber) rendered a judgment on appeal concerning the dismissal of an employee, Mrs. H., who could not take on her working hours, due to the consequences of a cancer she had to face. She came back to work after a long-term sickness leave and asked to reintegrate her position. As she was still impaired by the consequences of her disease, she asked for an adapted schedule. The employer refused this request and finally dismissed her.

In its judgment, the Labour Court considered that this dismissal was in breach of the Anti-Discrimination Federal Act. First, it underlined that the consequences of the cancer Mrs. H. was facing had to be considered in the case at hand as a disability. The Labour Court relied upon the case law of the Court of Justice to reach this conclusion and, notably, on *HK Danmark* (C-335/11 and C-337/11). In this line, the Court underlined that the consequences of the cancer entailed, in the case at hand, a long-term incapacity for the employee. The dismissal therefore constituted a discrimination based on disability in breach of the Anti-discrimination Federal Act.

The Labour Court furthermore stressed that since the employee had to be recognised as a disabled person, she was entitled to ask for a reasonable accommodation from her employer, such as an adjustment of her working schedule.

The Court concluded that Mrs H. provided sufficient evidence of a discrimination founded on her disability (refusal to adapt her working schedule and dismissal). Therefore, the Court condemned the employer to pay damages of 12.443 euros to Mrs. H.

Key points of analysis: This case is the first judgment recognising that the consequences entailed by a cancer could be considered as a disability in Belgium. The Labour Court conscientiously applied the case law of the Court of Justice defining the notion of disability. Placing the burden of proof on the claimant, the Court considered that enough evidence was provided by Mrs. H. as to the incapacity she was facing and the refusal of her employer to consider the consequences of her disease.

Since the incapacity of the employee had to be recognised as a disability because of its durability, she was entitled to receive reasonable accommodation from her employer based on the Anti-Discrimination Act of 2007.

Internet link source:

https://www.unia.be/files/arrest_kanker_redelijke_aanpassingen.pdf (in Dutch).