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NEWS REPORT

Country:	Sweden
Title:	Indirect disability discrimination in working life
Date:	9 July 2018
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<u>Context</u>	
Issue at stake:	Does the use of a requirement that, for a person to be eligible for inclusion in a job pool or access to a temporary job, he or she must have a separate main employment, constitute direct or indirect discrimination when applied to a person with a sickness benefit of 50% related to a disability?
Ground of discrimination:	Disability
Source:	Labour Court decision 2018-06-20 (AD 2018 nr 42)
Field:	Employment
Applicable law:	Discrimination Act (2008:567)

Content

Case law: AA (represented by the Swedish Equality Ombudsman – the DO) had applied several times to be included in a job pool for temporary workers and/or a temporary job. She was told that to be eligible she had to have a separate main employment (basically constituting a job that meant employment of at least 50%). The employer said she was ineligible since her sickness benefit of 50% due to diminished work capacity was not considered to be a main employment, referring among other things to the terms of the relevant collective agreement concerning temporary employment reached by the employers' organisation and the union.

Decision of the Court: The use of this eligibility requirement, given the facts of the case, constituted indirect discrimination on the ground of disability. Even though the eligibility requirement of a separate main employment had been agreed to by the labour market parties through a collective agreement, and the requirement was considered to have a legitimate purpose, its application in this case involved indirect discrimination of persons with a disability.

Key points of analysis: The goal of the collective agreement was avoiding abuse by employers of the possibilities related to temporary employment. Nevertheless, the effect of the implementation of the separate main employment requirement was not shown to be suitable and appropriate, thus leading to the judgment of indirect disability discrimination.

Internet link source:

Labour court's website

<http://www.arbetsdomstolen.se/pages/page.asp?lngID=4&lngNewsID=1668&lngLangID=1>.

The whole case is at

<http://www.arbetsdomstolen.se/upload/pdf/2018/42-18.pdf>.