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The rights of the workers with oncological conditions

edited by Alessandra Servidori and Michele Tiraboschi

Right for health Italy is ahead

Michele Tiraboschi

In his/her lifetime, a European citizen out of three contracts cancer. One out of four dies because of this disease. These worrying data have been collected by the European Parliament, which on 10th April has established a very important measure to support the battle against this disease, involving European Union.
Some aspects of this resolution are very innovative and, therefore, noteworthy. This is the reason why it cannot be considered only by professionals in the field, but it has to be shared and discussed with the others, as well. And that is precisely the purpose of the Parliament. As a matter of fact, it is trying to deal with oncological disease issue with a non-specialist approach, in order to facilitate everybody's understanding.
In addition to it, the resolution considers the problem in general terms, in order to

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July 29th 2008
9,00 – 12,00 Brussels

Workshop

Promoting new measures for the protection of women workers with oncological conditions

The Workshop is organised by Adapt in partnership with Europa Donna and the Marco Biagi Centre for International and Comparative Studies of the University of Modena and Reggio Emilia.
The Research project is co-funded by the European Commission
VP/2007/001 – Budget heading 04.03.03.01 – Industrial Relations and Social Dialogue

Italian Permanent Representation to the European Union Rue du Marteau, 9 – 1000 Brussels

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facilitate the link among different aspects of the disease: clinical, psychological and diagnostic, as well as social and economic factors.
Pathological diseases are indeed caused by many factors. This is the reason why an effective prevention program should be created taking into account all the causes of oncological pathologies, instead of focusing only on one aspect.
One of the most interesting characteristics of the resolution is the fact that the European Commission has the task, by means of legislative measures – whereas necessary – and effective initiatives, to collaborate with as many economic and social partners as possible, especially industrial relations representatives. Thanks to this kind of cooperation, we may prevent cancer, by reducing occupational and environmental exposure to carcinogenic agents and by promoting a healthy lifestyle and acceptable working conditions.
In this perspective, it is important to consider the proposal of the European Parliament, which wants to draft a real charter to safeguard the workers affected by both tumors and chronic illnesses. According to this charter, enterprises should allow patients to maintain their job during the therapy, facilitating also their reintegration.
From this point of view, Italy has a leading position. As a matter of fact, our Country provides one of the most innovative legislative frameworks in Europe and worldwide. In general, the vast majority of other Countries simply provides the temporary interruption of employment relationship for a reasonable period (known as grace period), considering it as any other legitimate absence from work. Thanks to Biagi Act, Italian law provides specific regulation for workers affected by oncological pathologies.
Article 46 of the Legislative Decree No. 276/2003 (such disposition is poorly known, and for this reason it has to be mentioned) does not simply recognize the right to interrupt the employment relationship (with or without retribution). The most significant aspect of it is the effort to reconcile sick worker's needs with working activity, safeguarding the right to work and to health care, both mentioned in the Constitution. To make this possible, and to meet enterprise and worker's expectations, working activity has to be reorganized in a more flexible and effective way, especially if we consider that the length of the grace period might be variable and irregular. This is the reason why Biagi Act provides that all workers affected by oncological pathologies, especially those whose performances are affected by life-saving therapy, have the right to modify their employment contract, converting it from a full-time contract to a part-time one. It represents a real subjective right, which has been granted also to the workers of Public Administration, in order to safeguard sick workers' health, professionalism and social life. In addition to it, the law also provides the opportunity for the worker to return to a full-time contract, whereas his/her health status will make this possible.
In the years of its enforcement, Biagi Act has shown that it is very important to put this resolution into practice. As a matter of fact, only few collective agreements, such as the one of tourism, provide a concrete implementation.
For this reason, the code of good practice and "the charter of rights" for the worker affected by oncological pathologies, which have been taken into consideration by the European Parliament, are of great importance.
Even in this case, Italy might play a leading role in Europe. As a matter fact, Adapt, Italian Cancer League – LILT, and Europa Donna have been entrusted with the pilot scheme promoted by the Directorate-General Employment of the Commission, and our Country has already proposed a detailed manifesto of the sick worker's rights. With the help of the European Parliament, such manifesto might help to consider this issue even if it does not concern us personally.

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Adapt Dossier

3 March 2008, no. 2

Occupazione femminile: una leva per la competitività

edited by Fiorella Kostoris, Alessandra Servidori, Marina Bettoni

Annex

Le politiche per la donna nel mercato del lavoro italiano

edited by Fiorella Kostoris

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Workshop

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Association for International and Comparative Studies in Labour Law and Industrial Relations

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Conclusion

In the European Union, one new case of breast tumour is diagnosed every two minutes. In particular, breast cancer, second only to lung cancer, is the most common form of tumour in Europe. Some 35% of the 275,000 women diagnosed with breast cancer every year are under 55 years of age, and 12% of them are under 45. The high incidence of this type of tumour, together with the relatively young age of the patients, has a major impact not only on the social lives of the patients, but also on their employment. With regard to people with oncological conditions, and in particular to women with breast cancer, one of the most important difficulties to overcome consists of the need to strike a balance between working hours and medical treatment. Adapt and Europa Donna are currently implementing the European Commission project aimed at raising awareness of the effective legal norms regarding women with oncological conditions and at disseminating good practices at the international level. The project will also involve the social parties and associated enterprises in a perspective of Corporate Social Responsibility (CSR) with reference to the actors mostly involved in collective bargaining: trade unions and employee associations at territorial and/or company level.

Participation to the workshop is free.
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Rights of workers with oncological conditions The lack of information

Rosa Rubino and Isabella Spanò

The available information on the protection of the workers with oncological conditions is still inadequate in spite of the significant innovations brought about by the Biagi reform (Legislative Decree No. 276/2003) and the new welfare provisions (Act No. 247/2007).

General principles

The importance of the problem requires awareness of the measures available to strike a balance between the needs of workers or their family members in terms of time to be dedicated to medical treatment (of long or short duration) and those of employers with regard to provisions for working hours.
The needs of the parties are regulated in the legal sources such as the Constitution and labour legislation: (Article 35 of the Constitution), remuneration (Article 36 of the Constitution) and health (Article 32 of the Constitution) with particular regard to Article 38 (2) of the Constitution, and the freedom of private economic initiative that, however, should not «create prejudice to the security, liberty and human dignity» (Article 41 of the Constitution). Article 2087 of the Civil Code states in this regard that «while exercising his entrepreneurial activity, the employer must adopt measures […] to ensure the physical integrity and moral personality of the employees».

The development of the legal framework

One of the best ways to raise awareness of this issue is to examine it from the point of view of its contractual and administrative legal development. It should be noted that before the Biagi reform, only generic statements existed and there were no specific norms protecting individuals with oncological conditions or their family members. For a long time the only provisions reconciling medical treatment and work were laid down in several articles: Article 26 of the Act No. 118/1971, Article 10 of Legislative Decree No. 509/1988 and Act No. 104/1992 (framework law on assistance, social integration and the rights of people with disabilities). From the first two articles mentioned above, the provision of paid leave of absence for medical treatment is limited to a maximum 30 days a year in the case of duly certified disability of at least 50%.
Act No. 104 grants the public or private employee with a serious disability who «needs permanent, continuous and global assistance in the individual or relational sphere» the right to choose the work place nearest to his domicile and such employees cannot be transferred against their will (Article 33 (6)). This form of protection was introduced also for employees in the public and private-sectors and their relatives up to the third-degree – in the case of oncological patients – who provide continuous assistance (Article 33 (5)). The framework law gives a public employee priority in the choice of the place of work in the case of transfer if such an employee has a disability exceeding two-thirds (Article 21).
The disability must be duly certified by a competent medical commission (Article 1, Act No. 295/1990) with the participation of a social expert or specialist in particular cases (Article 4). Act No. 104/1992 lays down the right to paid leave of absence for medical treatment up to 2 hours in a day or 3 days in a month (Article 33 (6)). In the case of part-time work this time is reduced *pro rata* (see Circular of the National Institute for Social Insurance (INPS), No. 133/2000, at *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*). Also a family member up to the third-degree of kinship who is a salaried employee may benefit from paid leave of absence of up to 3 days a month if the disabled person is not in hospital on a full-time basis (Article 33 (3)).
Article 19, Act No. 53/2000, amended Article 33, Act No. 104, providing for intermittent use of daily or monthly leave that was not clear in the original wording of the framework act but was already applied in practice (see INPS Circular No. 37/1999, at *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*). This leave of absence is also covered by social security contributions to enable the individual to preserve and accumulate his/her pension rights.

It should be noted that before the Biagi reform, only generic statements existed and there were no specific norms protecting individuals with oncological conditions or their family members

In addition, the requirement of cohabitation with a disabled person in cases in which a family member asks for the work place nearest to his domicile or does not want to be transferred has been suppressed. The term "cohabitant" referring to the family member of a disabled person who can benefit from the alternative leave of absence even if formally not abrogated in the Article 33 in reality does not have any meaning as Article 20 of the Act No. 53/2000 states: «the provisions of the Article 33 can be applied also to parents and family members of the employees in the private or public-sector who continuously and exclusively assist their parents up to third-degree ascendants even if not cohabiting» (see INPS Circular No. 133/2000, point 2.3, where it is stated that non-cohabitant family member must have both requisites (continuity and exclusiveness) in order to benefit from the right to leave of absence). Further clarification is also to be found in the provisions of the recent INPS Circular No. 90/2007, whereas

for the public-sector reference may be made to Note No. 13, 18th February 2008, of the Ministry of Public Administration issued on the basis of the Court of Cassation judgement, employment section, No. 8436/2003 and Decision No. 13481 of 20th July 2004 (both can be found at *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*).

Act No. 53/2000 recognises also the right to paid leave of absence of 3 working days a year in case of certified serious disability of a spouse or up to second-degree ascendants or an unmarried cohabitant on condition that stable cohabitation is proven. It should be noted that in relation to the remuneration of workers affected by cancer and absent for 30 days a year for medical treatment, there is a Note from the Ministry of Labour of 5th December 2006 in response to the request for clarification of Confartigianato of Prato (see *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*). Referring to the judgements of the Court of Cassation No. 3500/1984 and No. 827/1991, the Ministry states that absence for medical treatment is deemed to be a case of sickness regulated by Article 2110 of the Civil Code with the respective economic treatment. There should be no right for the social security treatment analogously with the INPS provisions with regard to solar therapy, treatment, climatic treatment, psammotherapy and so on. Article 4 (2) of the Act No. 53/2000 establishes the right to leave for a maximum of 2 years for employees in the public or private-sector if requested for serious and documented family reasons among which there are pathologies identified according to section four of the same act, i.e. by means of the Decree of the Ministry of Welfare.

The Decree enacting Article 4 was published in the *Official Journal of the European Communities*, October 2000, No. 278 (see *www.fmb.unimore.it*, A-Z index, *Patologie oncologiche e lavoro*). For the first time it was stated that «serious reasons should be taken to include situations with reference to the individuals […] excluding the applicant […] deriving from the acute and or chronic pathologies determining permanent or temporary reduction or lost of personal autonomy including chronic diseases like cancer» and those «given to the chronic and acute pathologies requiring continuous assistance or frequent clinic, hematochemical and instrumental monitoring».

Article 4, Act No. 53/2000, underlines that the employee on leave of absence has the right to preserve his work place but cannot engage in any work. The period of absence is not taken into account for seniority and social insurance purposes. The employee can pay contributions on a voluntary basis following the established criteria. The enactment regulation provides that leave of absence can be taken on a continuous or periodical basis. The procedural issues regarding the request, concession or denial of leave are regulated by collective agreements «ensuring the dialogue between employee and employer in order to strike a balance between the interests of both parties».

Progress in terms of the measures aimed at ensuring the protection at work of individuals with oncological conditions was made with the amendment introduced by Article 46 of Legislative Decree No. 276/2003 relating to the provisions on part-time work

Act No. 53/2000 initially stated that extraordinary leave was not paid *tout court,* whereas Act No. 388/2000 integrated Act No. 53/2000 with Article 4-*bis*. This article specifies that an employee who is the mother or father, even adoptive, or in the event of their death, a cohabitant brother or sister of the seriously disabled person according to the Act No. 104/1992, has the right for the whole period of leave of absence to a monthly allowance corresponding to the last salary with nominal contribution up to maximum annual amount of about 350 Euros (this amount is updated annually on the basis of the ISTAT consumer price index for workers and their families (for details see INPS Circular No. 64/2001).

In addition with the judgement No. 158 of 18th April 2007 for which INPS with the Circular No. 112/2007 provided clarification (see *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*), a principle was laid down representing significant progress in terms of protection. It established that the cohabitant spouse of a seriously disabled person has priority over other family members as regards the possibility to take paid leave.

Moreover, Legislative Decree No. 151/2001 (provisions relating to the protection of maternity and paternity) widened the range of protective measures. Article 42 (6) states that an employee who is the parent of a seriously disabled person may take leave, absence permits and holidays according to Article 33 of the Act No. 138/2001 (see *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*).

Article 53 provides that an individual who is caring for a seriously disabled person cannot be ordered to work a night shift, Act No. 104/1992.

In 2003 Article 3 (106), Act No. 350/2003, repealed the clause in Article 42, Legislative Decree No. 151/2001, requiring at least 5 years of serious certified disability for the granting of paid leave according to Article 4 (2) of Act No. 53/2000 allowing access to the benefits to a number of family members of the oncological patient (for more details see the provisions of INPS in Circular No. 20/2004).

Progress in terms of the measures aimed at ensuring the protection at work of individuals with oncological conditions was made with the amendment introduced by Article 46 of Legislative Decree No. 276/2003 relating to the provisions on part-time work (Legislative Decree No. 61/2000).

Article 12-*bis* introduced by the Biagi reform provides the right to transform the employment relation from full-time to part-time, both horizontal and vertical, for workers with oncological conditions, also with a reduced working capacity because of the invalidating effects of treatment which must be duly certified by the medical commission at the competent local health authority. The same article also lays down the obligation to transform employment relation from part-time to full-time following the request submitted by the employee: in any case the provisions most favourable for the employee remain valid. The Ministry of Labour,

point 8 of Circular No. 9/2004 (see *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*), underlined the transformation of the employment relation in favour of this particular category of workers.
It is important to note, as confirmed by the Ministry of Labour in Circular No. 40/2005 (see *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*), that the right of the worker to require the transformation of the contract is a subjective right aimed at protecting health, occupational status and labour participation as an important instrument of social integration and participation in the labour market. For these reasons, as specified in the above-mentioned circular, as well as in consideration of the health protection for which the norm is finalised, the legislator regards it as a right that cannot be denied because of the interests of the enterprise. The employee's needs must be adapted to enterprise needs with regard to reduced working hours and work organisation, always considering the needs of the workers as primary.
Another crucial innovation is contained in Act No. 4/2006. Regarding the medical assessment of the person with oncological conditions in the acute phase in order to ensure immediate access to specific benefits, this act established that the medical commission must hand down its opinion within 15 days of the request and that the provision has an immediate effect in terms of access to benefits.
The norm on part-time working in Article 12-*bis* of Legislative Decree No. 61/2000 was modified by Article 1 (44) of Act No. 247/2007 that, explicitly stating that the norm is applicable in the private and public-sector, introduced an important principle: recognition of priority for the transformation of the employment contract from full-time to part-time also in cases where oncological conditions concern the spouse, children or parents of the employee.

The norm on part-time working introduced an important principle: recognition of priority for the transformation of the employment contract from full-time to part-time also in cases where oncological conditions concern the spouse, children or parents of the employee

Another innovative principle introduced by Act No. 247/2007 is the granting of priority in hiring an employee who has transformed the employment relation from full-time to part-time where the activity is the same or equivalent to the part-time employment.

Collective bargaining provisions

As for regulation by means of collective bargaining, Italian legislation grants workers on sick leave the right to remuneration or an allowance and the right to maintain their post for a certain period of time (the maximum waiting time), after which the employer can dismiss the employee pursuant to the legal provisions in force. The determination of these temporary limits is delegated to collective bargaining. However, it must be noted that the specific nature of oncological conditions gives rise to another critical matter in employment management: the fact that medical treatment takes longer than treatment for other diseases.
As a result, at least in some sectors (see *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*), collective bargaining has made a special provision relating to the maximum waiting time in the case of major illness requiring life-saving and other similar therapies (including chemotherapy) stating that the calculation of the number of days of leave of absence must not take account of the days of hospitalisation or day-hospital and any absences for the purpose of duly certified medical treatment (see the following national collective agreements: ministerial workers 16th February 1999; the education-sector 26th May 1999; local authorities 14th September 2000; health-care workers 20th September 2001; non-economic public bodies 14th February 2001; Cassa Depositi e Prestiti 2nd July 2002; tax agencies 28th May 2004).
A number of national collective agreements extend the maximum waiting time. For example the national agreement of 18th July regulating relations between the enterprises and insurance companies extends the maximum waiting time for employees with serious oncological conditions by 3 months (for employees with less than 10 years' seniority) and by 6 (for those with longer seniority) compared to the standard waiting time. The national collective agreement for the rail-sector of 2003 increased the maximum waiting time from 12 to 30 months in the case of oncological conditions. Mention should also be made of the fact that in cases in which the illness exceeds the maximum waiting time, collective contracts can provide the possibility for an employee to apply for a further unpaid waiting time. In this case, even if the employee does not have a right to remuneration, the employment relation is suspended and can normally be resumed at the end of the period of leave of absence thus limiting the risk of dismissal in cases exceeding the waiting time as stated in Article 2110 of the Civil Code. The Ministry of Labour provided clarification about the maximum waiting time in specific situations with regard to oncological conditions in Circular No. 40/2005 which confirms the right of the employee on sick leave to benefit from the extended waiting time.
As a result there are many provisions, although of a fragmentary nature, from which families with a family member with cancer can benefit. Pending the adoption of new measures providing comprehensive protection, the first step would be to raise awareness about what can be done under existing provisions to provide moral and material support for workers with oncological conditions.

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Some practical proposals to support female and male workers affected by oncological diseases

Alessandra Servidori

Besides therapeutic treatment, people affected by cancer also need protection, from a legal and economic point of view. This is the reason why the legal system has to provide effective measures, in order to allow them to live with dignity, despite their disease. In addition, the sick person (whether he is considered a "particular" sick person or a "simple" invalid) has to become acquainted with the rights accorded and granted by the law, in order to facilitate their application. It is also important to develop new programs and laws, to satisfy sick persons' expectations, especially those of people affected by neoplasia. The only way to do this is putting pressure on Government and Parliament, and interacting with associations, because this synergy will help both sick people and our society to deal with issues related to permanent or temporary disabilities. In addition, some measures, such as the prompt assignment of benefits, the entitlement to sick leave, as well as the community sensitivity towards the issue, help sick people to overcome difficulties in everyday life. Such measures can be really effective only if supported by an active co-operation between institutional subjects and social partners. It is important to improve and standardize this institutional co-operation between the State and the Regions, and develop it at a national, regional and territorial level. In this regard, provincial administrations play a leading role, because they have the task of implementing labor policies and developing local vocational training programs, that are fundamental to organize a high quality integration among health services.

Therefore, we need to emphasize the value of collective bargaining and agreements, concluded between the social partners, which are important to encourage protocols of agreement application. In fact, thanks to them, and to service workers' full employment, we can guarantee weaker subject's social and work inclusion, as well as placing greater value on the role of workers with a medical condition.

In this regard, the strong relation between private and public services, and the third-sector is important. In accordance with the most recent European models, the development of new forms of safety net measures, aimed at combining flexibility and safety, requires substantial financial resources. There is also a need to consider all instruments and policies that represent social partners' contribution to the introduction of disability benefits.

They need to be fully informed about their rights and duties during sick leave, taken for surgical operation, subsequent treatments (radiotherapy and chemotherapy)

In Italy, there are many people affected by cancer. Official statistics give us misleading information on the number of workers compelled to leave their jobs (or of those that undergo a "forced dismissal") after having been diagnosed with a tumor. Employment, however, represents one of the biggest issues for cancer patients. In addition, they need to be fully informed about their rights and duties during sick leave, taken for surgical operation, subsequent treatments (radiotherapy and chemotherapy), or depression. Here are some of the most serious consequences of sick worker's absence from work and subsequent reintegration: the grace period may not cover the entire absence; the sick worker might be assigned a new task, due to his or her condition; the employer might be prejudiced against the sick worker, and in some cases this brings about the termination of the employment contract. Therefore, it is fundamental to encourage institutional initiatives, aimed at providing legal, psychological, relational and physiological support, during and after the disease, and intended to raise awareness of the issue on the part of the employer and the public. Obviously, the *Constitution* is one of the main instruments to protect the right to work and to health care. Here are a few examples: Italy is a democratic Republic, founded on labor (Article 1); it is the duty of the Republic to remove those obstacles of an economic and social nature that, by limiting the freedom and the equality of the citizens, impede the full development of the human person and the effective participation of all workers in the political, economic and social organization of the Country (Article 3 (2)); the Republic recognizes the right of all citizens to work and promotes those conditions that will make this right effective (Article 4); all citizens are equal in terms of social dignity and are equal before the law, without distinction as to personal or social condition (Article 3 (1)); health is a fundamental right of the individual and a collective interest (Article 32); workers have the right to be provided with adequate means for their needs and necessities in cases of accidents, illness, disability and old age, and involuntary unemployment (Article 38). As we can see, our legal system includes many rules, that provide protection for those workers that are unable to work, because of an illness. A close reading of Article 2110 helps us to understand the main consequences of the illness on the employment relationship.

The worker, who is absent because of illness, is entitled to collect his or her salary or an equivalent amount (the employer himself will disburse the sickness benefits, deducting the sum advanced from the pension contribution). In addition, the employer cannot dismiss the worker who continues to accrue seniority during this period. These rights, however, have a limited duration. As a matter of fact, the law and the collective agreements provide a time limit for the maintaining of the employment position (the so-called "grace period"). If still unable to work, though, the worker will not be dismissed automatically, at the end of the grace period. The employer

who intends to terminate the contract has to dismiss the worker, according to the rule that regulates individual redundancy. The grace period, then, is a legal instrument that protects the sick worker, allowing him or her to continue in employment, without overlooking the enterprise's requirements. At the end of the time limit for maintaining the employment position, if the worker cannot be reinstated, because of his/her state of health, social security legislation will provide assistance and protection. This, however, should be avoided, as people with cancer might have the opportunity to continue in employment, despite long medical treatment periods. With reference to this issue, Article 46 of the Legislative Decree No. 276/2003 of Biagi reform modifies the regulation on part-time employment. For the first time in Italy, workers with cancer have the right to modify their employment contract, converting it from a full-time contract into a part-time one. In fact, Article 12-*bis*, included in Legislative Decree No. 61/2000, give private-sector workers with an oncological condition (that affect their performance, also because of life-saving therapies) the opportunity to convert their employment relationship. Recently, thanks to Article 44 of Act No. 274/2007, sick public-sector workers have been granted this right (they had been excluded because their labor movement representatives, ARAN, did not support the Biagi Act). In both cases (public and private-sector), however, the worker has the right to return to a full-time contract. This provision is aimed at reconciling working activity with the sick worker's needs. Wherever possible, the worker can ask for a new assignment, more compatible with his or her health status and reduced working activity. In this regard, it is important to point out that the choice of a new assignment does not represent a recognized right for the sick worker (unless it is specified in the contract), even though some contracts of employment provide it. Therefore, it is important to examine all the terms of collective agreement applied by the employer. According to Act No. 104/1992 (Article 33), when a local health authority certifies a disability or a poor state of health, due to oncological pathologies, the worker is entitled to paid sick leave. As an alternative, the worker is entitled to a continuous or intermittent leave of 2 hours a day, or 3 days a month. He/she has also the right to choose the working place that is closer to his/her domicile, and cannot be transferred without his/her consent. In addition, he/she can take up to 30 day paid sick leave for medical treatment every year (Article 10, Legislative Decree No. 509/1988), if the disability is at least 50%.

In most cases, collective bargaining improves protective measures for workers, according to the severity of the condition. Therefore, it is important for them to verify the existence of the above-mentioned provisions in their collective agreement applied by the employer. And bargaining is a useful instrument to avoid worker's dismissal, due to the end of the grace period, and to facilitate his/her reinstatement. As a matter of fact, it introduces several facilities, such as the creation of a new working time or the assignment to more suitable tasks, that allow the sick worker to undergo medical treatment.

Here are some references to national collective bargaining: the CCNL (National Collective Labor Agreement) «that regulates relations between insurance undertakings, and administrative, productive and production-sector» provides that grace period has to be extended up to 3 months for workers with a length of service shorter than 10 years (such period has to be extended up to 6 months for those with a longer service) «in the case of serious oncological pathologies, disabling ictus or multiple sclerosis, vital organs transplantation and fully manifest AIDS». In the Railways Undertakings CCNL, the grace period for such pathologies is even tripled (12 months for sick leave, Article 26 (6), and 30 months for oncological diseases, Article 26 (8)). In the Electricians CCNL, there has been a considerable extension of the grace period, and hospitalization is not included, facilitating the maintaining of the employment. In many public-sector agreements, sick leave for *day hospital* and life-saving treatment, such as chemotherapy and hemodialysis, are not included in the grace period (Public Health, Revenue Authorities, Non-economic Public Bodies CCNL).

As for remuneration during the grace period, most collective agreements make provision for the entire amount for a certain period (usually at the beginning, but it depends on the agreements and length of service), after which it is reduced by 50% (Paper, Footwear Manufacturers, Chemists, Graphic Designers, Metalworkers CCNL). The above-mentioned collective agreements of non-economic public bodies, for instance, provide that «bodies have to promote the adoption of an adequate working time, to meet the needs of individuals undergoing medical treatment and examinations» (Article 21). The same applies in Revenue Authorities or Ministerial Divisions CCNL. At the end of the grace period, some agreements give the worker who is still unable to work the opportunity to ask for further leave, in order to avoid dismissal. If a (certified) medical condition still persists, some collective agreements (Food-producing Cooperatives CCNL, Food Industry CCNL) provide that the worker can ask for sick leave up to a maximum of 8 months, before the end of the existing grace period. In other cases (collective agreements of regional and local autonomies), once the medical condition has been verified, the worker can be assigned to more suitable tasks of the same category, after the grace period. If this is not possible (because of the consequences of the medical condition), the worker might be assigned with his/her consent, to other tasks of a lower category. In the case of Paper Manufacturers CCNL (Article 18), the worker who is unable to perform the same duties as before will be assigned to lower level tasks, and his/her retribution will be reduced in proportion to his new task.

In order to provide more protection for all workers with an oncological condition, a significant change could be the adoption of a code/protocol of agreement, supported by employers' associations, associations such as Italian Cancer League – LILT and by trade-unions. It is also important to understand and acknowledge the importance of the family of the worker with a medical condition.

Therefore, the implementation of a protocol of agreement at a local level, and at the experimental stage, is fundamental, especially if local authorities encourage the development of new policies, aimed at giving workers with a medical condition the opportunity of choosing their working conditions. We also need to consider the role of the worker within the family. Besides working, women workers in the age groups with the highest risk of breast can-

cer often have to look after their children and elderly parents, too.
The main points of the protocol should be:
• to adopt a Charter of the Rights of tumor patients;
• to collect existing legislation and examine its application;
• to experiment with the distribution of vouchers, in order to inform employment service personnel about new ways of integration into the labor market;
• to experiment with incentives for enterprises that include protection measures in the employment contract, and additional leave for medical treatment for the workers with an oncological conditional;
• to take *Socially Responsible Companies*, that is companies that work to meet the needs of workers with a medical condition (by creating, for instance a more flexible working time), as model;
• to increase the number of part-time workers, access-to-work contracts, and more flexible contracts, pursuant to the Legislative Decree No. 276/2003 and Welfare Act No. 274/2007, in order to reconcile working time, lifetime and medical treatment, and providing a determined period to deal with the issue;
• to calculate increased contributions during the work period.
Legal instruments to be used:
• framework agreements between the two sides of industry for continuity of employment and the reinstatement of workers with an oncological condition in the labor market;
• measures to raise awareness on the part of *management*, and *human resources departments*, of *instruments for Corporate Social Responsibility*; creating a link between social responsibility and economic return of employers providing protection measures (*Business case*); communicating the measures used to support workers with a medical condition;
• the adoption of a Code of Ethics, containing company strategy, activity, behavior and problem solving capacity, by companies implementing Corporate Social Responsibility policies;
• the granting of benefits to companies that adopt a Code of Ethics. For instance, they might be exempted from paying tax on productive activities (IRAP) of those workers with an oncological condition.
They might also enjoy a specific contribution system, for workers absent for medical treatment and convalescence. In addition, such companies might be assigned extra points in competitive biddings.
The family of the worker with a medical condition play a major role in dealing with this situation. We strongly believe that workers with a medical condition have the right to assistance from a member of the family, especially during critical periods. The person taking care of the relative with a medical condition has the right to carry out this task full or part-time, reconciling it with employment. This should be a conscious and free choice, and it can be modified at any time.

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Family and social solidarity should develop in a complementary manner. This means that workers with a medical condition have to be supported not only by their relatives, but also by local, regional, and national authorities, which have to recognize and guarantee their social rights. A practical example could be the granting of an integrated sick benefit, provided by local health authorities.
The services of the relative who takes care of the worker with a medical condition should have a legal and economic recognition, because in some cases it replaces and supports government intervention, as well as the local welfare services.
In this regard, the following measures should be provided:
• *employment*: planning of working time, sick leave and holidays, measures for the maintenance and the reinstatement after a suspension, provision of medical, social, and pension assistance;
• *full accessibility*: accessibility to services (transport, accommodation, education, communication, etc.), by means of an economic integration;
• *pension*: pension must be provided after recognizing the status of "relative" that takes care of a non-self-sufficient worker (recognition of care services);
• *recognition of care services*: the relative has to be guaranteed his experience as "carer".
Quality of life. The quality of life of the sick individual and his assistant are interdependent. Therefore, it is necessary to develop measures (precautionary measures against medical conditions, fatigue, stress, overwork, breakdown, etc.) that allow the relative to meet non self-sufficient worker's needs. Such support must be provided by qualified authorized facilities and services.
Right to the intervention of relief. This is a fundamental right, and it should provide support and help in an emergency, as well as substitutes and high quality reception centers, covering the entire period of relative's absence (due to holidays, rest period, health problems, etc.).
Information/Education. Relatives that take care of a non-self-sufficient worker with a medical condition have the right to be informed about his/her rights and duties, and access to all information they need to facilitate and improve their task. Public authorities, together with other representatives (Non-Governmental Organizations, trade unions, social partners and employers' representatives) have to provide an effective information system.
Evaluation. The evaluation process has to be continuous, involving sick individuals, their relatives, and public authorities:
• evaluation of the patient and the relative's needs;
• constant evaluation of services: public authorities have to verify the accomplishment and the quality of the relative's duties, also providing necessary advice;
• evaluation of the quality of assistance, in order to make possible modifications.
In conclusion, I believe that we can do a lot to improve the quality of life and the expectations of workers with oncological conditions. This is in line with the thinking of Professor Biagi, who dedicated himself to labor law, and who taught us that «Today, it is important to analyze female and male workers' employment conditions, their protection, and labor market, especially in Italy, in order to improve them from a juridical point of view».

Alessandra Servidori
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Fight against cancer and protection of workers with oncological conditions: some important steps at EU level

Anna Maria Sansoni

A new guideline has recently emerged at EU-level: to make fight against cancer an European priority, to pursue through an overall strategy involving European institutions, Member States, researchers, health officers and, of course, the patients and their families.

The new priority is manifested in the program of the Slovenian Presidency, in office until the end of June 2008: starting a comprehensive action against cancer is one of the main objectives of its six-month leadership. The first steps have already been discussed during the conference *The Burden of Cancer – How Can it be Reduced?*, organized in Brdo, on 7th and 8th February 2008, addressing the topics of prevention, screening, cure and research. On that occasion, 250 participants exchanged their ideas and good practices in order to increase the probabilities to defeat the cancer and to reduce the disparities that, also from this point of view, divide Member States. Moreover, the Slovenian Presidency has edited a book, *Responding to the Challenge of Cancer in Europe*, co-funded by the European Union, which offers an exhaustive picture about progresses made against the cancer and ongoing challenges.

However, the most interesting contribution – that prefigures a concerted commitment from the main actors on the European stage – comes from the European Parliament. First of all, at the beginning of 2006, some MEP, arriving from different nationalities and parties, created an informal group (MEPs against cancer), aimed at promoting an European action against oncological diseases. Furthermore, on 10th April 2008 the Parliament adopted a Resolution – *Combating Cancer in the Enlarged European Union* – following to the Declaration of 11th October 2007 on the need for a comprehensive strategy to control cancer.

The Resolution seems a key-document, able to make possible a real qualitative leap in EU commitment against cancer.

Considering that in 2006 there were nearly 2,3 million new cancer cases and over 1 million cancer deaths within the EU, the Parliament calls on the Commission, the Council and the Member States to take appropriate action in order to reduce the significant increase in the burden of cancer, including provision of adequate financial support for coordinated actions and appropriate capacity building.

> **... there is a remarkable match of purposes between Adapt's project and the Parliament's proposal, because they both start from the idea that a greater attention to patients' rights is possible only at business level**

Firstly, waiting for the Commission's Communication on cancer scheduled later 2008, the Parliament calls on the Commission to set up an inter-institutional EU Cancer Task Force composed of members from the Commission, the Council and the European Parliament. The Task Force shall meet on a regular basis, to collect and exchange best practices for prevention, screening and treatment and to provide leadership for improved cancer control in Europe. In particular, it should promote new measures that can help increase the proportion of the population taking part in cancer screening measures by at least 50% in each of the Member States by 2018.

Moreover, on one hand, the Parliament stresses the importance of promoting awareness, information and education campaigns on prevention and screening. On the other hand, considering that an average of only 3% of the OECD Countries' total budget for health is spent on prevention as against 97% spent on healthcare and treatment, it asks to rectify this imbalance and to assign more resources to the prevention. The Parliament proposes also to deploy resources from the Structural Funds and the Seventh Framework Programme for Research in order to encourage research and innovation.

Significantly, the Parliament exhorts the Commission to take legislative action, where appropriate, and to ensure that Community legislation contains incentives for industry and researchers to engage in ongoing research with a view to developing new evidence-based medicines and treatments to combat and control cancer.

However, the most important issue, according to our opinion, is the invitation turned to the Commission to draw up a Charter for the protection of cancer patients and chronically sick people in the workplace with a view to requiring companies to enable patients to continue in employment during their treatment and to return to their normal professional activities.

There is a remarkable convergence between the Resolution of the Parliament and the research project carried out by Adapt, thanks to the co-financing from the European Commission. Adapt's project, by anticipating the Parliament, is aimed indeed at drafting a protocol agreement (see the previous article by A. Servidori in this *Dossier*) between the social partners for the protection of workers with cancer and to improve the implementation in the Italian case of the right to part-time work for employees with an oncological condition, as provided by the Biagi Act.

In conclusion, there is a remarkable match of purposes between Adapt's project and the Parliament's proposal, because they both start from the idea that a greater attention to patients' rights is possible only at business level; therefore, social dialogue can play a key-role here and it should hence be promoted and encouraged.

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Labor law for the people: how to protect employees suffering from oncological pathologies and breast tumor

Michele Tiraboschi

Oncological pathologies and breast tumor: implications in the world of work

In Europe, breast tumor represents the 22% of malignant tumor involving women (for an overall analysis of Italian trend in the field of oncological pathologies, please consult E. Crocetti, R. Capocaccia, C. Casella, S. Ferretti, S. Guzzinati, S. Rosso, C. Sacchettini, A. Spitale, F. Stracci, R. Tumino, *Cancer trends in Italy: figures from the cancer registries (1986-1997)*, in *Epidemiol Prevention*, March-April 2004, No. 2, Suppl., 1-112). This type of tumour is the most frequent in women, affecting the 27% of these who suffer from malignant tumour. In Italy, we have 30,000 cases, with a rate of mortality of 1/3 approximately. One woman out of 10 suffers from breast tumour. Although these data are worrying, we need to take into account that this type of cancer has the highest survival rate (the IEO, which is the European Institute of Oncology, reported that 90% of patients recover from tumour. For an overall analysis of oncological pathologies death rate in Europe, please consult J.L. Botha, F. Bray, R. Sankila, D.M. Parkin, *Breast cancer incidence and mortality trends in 16 European Countries*, in *Eur J Cancer*, 2003, 1718-1729).

This is a very serious issue and needs to be considered, as well as its implications in patient's social life. A relevant aspect to point out is the relationship between patients, especially women, and the world of work.

In the battle against tumour, especially breast tumour, there are two factors that help to treat the disease. Undoubtedly, an early diagnosis is fundamental to make possible effective and immediate treatments. But it is also important to have a good state of mind, allowing patients to deal with treatments and to reduce the effects on their life, especially working life (in this regard, please consult S. Prestigiacomo, *L'impegno delle Istituzioni: diagnosi precoce e comunicazione*, e G. Sestini, *L'impegno delle Istituzioni: donne e lavoro*, in the meeting *La comunicazione sulla salute femminile. Un'opportunità di impegno sociale per le aziende*, held on 29th October 2004, in Milan).

If we also consider that women today play a leading role in social and working life, the workplace becomes a key issue. For this reason, a new policy on *Corporate Social Responsibility* (the so-called CSR) has developed recently, mainly directed to the creation of communication network against the disease (in this regard, please consult *Libro verde – Promuovere un quadro europeo per la responsabilità sociale delle imprese*, presented by the Commission on 17th February 2001; the up-to-date *ABC of the main instruments of Corporate Social Responsibility*, edited by the European Commission in 2004; please also consult *Final report & recommendations* by the *European Multistakeholder Forum on CSR*, held in Brussels on 29th June 2004. As for the Italian situation on Corporate Social Responsibility, please consult *Il Contributo italiano alla campagna di diffusione della CSR in Europa*, edited by the Ministry of Labour and Social Policy).

Despite the fact that many communication campaigns encouraged precautionary tests, the enterprises that give their female workers the opportunity to enjoy precautionary health services are still very few (this situation is partially due to the Italian productive market, mainly characterized by small and medium-size enterprises that cannot bear medical preventing costs. In order to understand the adequate practices on CSR, please consult *Responsabilità sociale delle imprese: esempi di buone pratiche italiane*, edited by the Ministry of Labour and Social Policy in 2005). There are also cases that show how the dignity and privacy of workers with oncological pathologies are often affected, clashing with existing laws and basic human values (see the case reported by *La Repubblica* of a Chieti enterprise and its business board, containing the list of absent workers for tumour disease. Cfr. *"Gogna" in azienda per malati di tumore*, in *La Repubblica*, 10th September 2005).

It's also important to point out that, within the same employer-employee relationship, there are additional issues in breast tumour treatment. As a matter of fact, enterprises have difficulties in meeting sick worker's expectations. In most of the cases, they are not prepared to deal with people affected by tumour. Besides problems in reconciling production and disease treatment times, there is also to consider the issues related to professional retraining and reintegration of female workers (this situation is mainly due a lack of information concerning the disease, such as the legal means used to support female workers and her labour relation with the employer in this difficult situation). Therefore, once they win their battle against cancer, they also have to face prejudice, distrust and organizational-management issues, linked to the rigidity of the enterprise context.

In this connection, the enterprise has to represent a social reference point, trough the protection of the public interest in order to facilitate social development and cohesion toward the third party, and also through the creation of a company policy that helps to handle all issues related to the disease and sick female workers.

The fact a female worker has been diagnosed a disease is considered by the company as an immediate loss. To the company, she is useless and unable to produce. Therefore, she is left to her own destiny, and sometimes she is even forced to resign.

This study is an updated version, taking account of the welfare provisions laid down in Act no. 247/2007, of a previous study entitled *Tumore al seno e tutela della donna lavoratrice* (Breast cancer and the protection of women workers), *Europa Donna Informa*, 2006.

Employment relationship: the grace period

When a female worker discovers to have a breast tumour, she has to face all issues directly related to the disease, as well as those linked to her current employment relationship. The surgical operations and life-saving therapies which are necessary to overcome the disease require long times and periodical sickness absences, even after reintegration. This situation calls for suitable means to guarantee the appropriate relationship between recovery and working time.
In order to protect the right to health care (please consult Articles 32 and 30 of Constitutional Charter) and women labour law, and in order to adapt such interests to those of the employer's right to create a firm (please consult Article 41 of Constitutional Charter), the law provides that during predetermined period (called grace period) the employer cannot dismiss the sick worker. Therefore, during the grace period, the female worker affected by a tumour will be able to enjoy retribution, according to legal provisions, collecting bargaining, and the rights guaranteed to the worker in sickness. However, at the end of such period, and in any case in accordance with rules on dismissal, she can be dismissed.
And this is the moment female workers affected by tumour need to be protected, because they need a grace period longer than the one already provided in collective agreements. In this regard, a leading role is played by collective bargaining, that often does not provide appropriate provisions on grace period for those who suffer from oncological pathologies.
Collective bargaining has to specify the duration of the grace period, which depends on worker's professional qualification and length of service. Only in a few cases, employer and worker representatives give special attention to female worker affected by tumour. Because this disease, especially in the first stage, requires specific treatments and a flexibility of the working time, some national collective bargaining employment contracts have provided specific cases of grace period. This points out how collective bargaining could make itself responsible for the issue, through suitable rules and provisions.
In the event of a serious pathology requiring a life-saving therapy, some public service collective agreements, for instance, provide that hospitalization, day-hospital, and all days for treatment must be remunerated and not considered as sickness absences (in this regard, please consult the Local Authority CCNL 14th September 2000, the School CCNL 26th May 1999, the Cassa Depositi e Prestiti CCNL 2nd July 2002, the Ministers CCNL 16th February 1999, at *www.fmb.unimore.it*, Indice A-Z, voce *Patologie oncologiche e lavoro*).

... female workers affected by tumour need to be protected, because they need a grace period longer than the one already provided in collective agreements

In addition to it, the legislator also establishes that grace period can be extended, by conceding special leaves that will be added to the already existing period, provided by national collective bargaining employment contracts. In this case, the legislator (Act No. 104/1992) provides that the female worker can have a leave, in order to undergo necessary treatment. This right is also guaranteed to the sick person's relative, who can look after her during the therapy.
A female worker suffering from tumour is granted two different types of benefits: some of them are provided in case of disability, others in case of «handicap in a situation of gravity».
Recognition of disability can be requested by all women who have undergone a quadrantectomy, a mastectomy or a simple tumorectomy, and such recognition is necessary to obtain social and working facilities (for further information about how to evaluate disability and all facilities linked to its recognition, please watch the interview with E. Quaglia, *Invalidità civile e tumore del seno*, in *Europa Donna Informa*, 2002).
In case of the recognition of a «handicap in a situation of gravity», Article 33 of Act No. 104/1992 provides that the female worker can have, within the working time, a 2 hours' leave in the day, or 3 days' leave in the month.
The law also provides, whereas possible, that the female worker has the right to choose the place of work that is closer to her domicile; it also establishes that the employer must not transfer her to another place of work, without her consent.
Finally, whereas the female worker has a percentage of invalidity higher than 50%, she has also the right to have a 30 days' paid leave every year, even not continuative, for medical treatments linked to her status.
The regulation has been integrated afterwards with Article 3-*bis* added to Article 6 of Legislative Decree No. 4/2006 and the conversion No. 80 of 9th March 2006. According to it, a medical committee has to evaluate the oncological patient's temporary disablement in its acute stage within 15 days after the submission of the request. Moreover, the result of the evaluation allows enjoying of the benefits immediately.
With reference to the 30 days' leave granted for medical treatment, and its remuneration and welfare, the Ministry of Labour has pronounced on 5th December 2006 in reply to an interpellation of the General Confederation of Italian Crafts of Prato. Referring to the consolidate position of the Court of Cassation, the Ministry established that the absence due to the enjoyment of the leave is equivalent to a presumption of disease referred to in Article 2110 Civil Code, and therefore it must be liable to retribution. On the other hand, social security benefits are not included, because they are liable to what it stated by the National Institute of Social Insurance about sun, climatic, and psammo-therapeutic treatments.

Part-time employment relationship: the right to change the employment relationship introduced by Biagi Act in favor of the worker affected by oncological pathologies

The need to conciliate medical treatment and working time, in order to give the female worker the opportunity to protect her right to work and to care about health, cannot be only accomplished by the protection provided in case of sick leave. As a matter of fact, such protection is also necessary at the beginning of

the disease, or immediately after reintegration.
One of the main issues for both the female worker and the employer is to organize the employment relationship in a flexible and suitable way, trying to meet everybody's expectations.
In order to facilitate such agreement, a step forward has been taken with the changes provided in the regulation of the part-time work, through Article 46 of the Legislative Decree No. 276/2003 of the implementation of Biagi Act about market labour reform.
It is important to remember that part-time work is scarcely developed in Italy, whereas is very frequent in the other States of the European Union (for detailed data related to part-time work in Europe, please consult European Commission, *Employment in Europe 2002*, DG Employment and Social Affaire. Please also consult, M. Tiraboschi, *La disciplina del lavoro a tempo parziale, un quadro comparato di sintesi*, in M. Biagi (ed.), *Il lavoro a tempo parziale*, Il Sole 24 Ore, Milano, 2000).
A flexible organization of working time, in terms of duration and adaptability, has facilitated women's social inclusion and their adaptation to many interests (in order to study part-time work in depth, and the way it has been modified by the Biagi Act, please consult A. Russo's comment, *Il lavoro a tempo parziale*, in M. Tiraboschi (ed.), *La riforma Biagi del mercato del lavoro. Prime interpretazioni e proposte di lettura del d.lgs. 10 settembre 2003, n. 276*, Giuffrè, Milano, 2003, 179).
In order to give special attention to female workers affected by tumour, and in order to consider the main purposes of the regulatory scheme, the law (Article 46 (1) (*t*) of the Legislative Decree No. 276/2003) grants to workers affected by oncological pathologies, with residual work capacity especially due to life-saving therapy disabling effects, a vertical or horizontal conversion from a full-time to a part-time job employment relationship (Article 46 (1) (*t*) of Legislative Decree n 276/2003 acts adding Article 12-*bis* to Legislative Decree No. 61/2000).
For female workers affected by breast tumour, such right provides an increase in value of the part-time work contract, that becomes an instrument to combine industrial competitiveness and worker's protection request. The Ministry of Labour and Social Policy itself pointed out this specific purpose with the Circular n. 9 of 8th March 2004.
The entry into force of Legislative Decree n 276/2003 was welcomed by the parties, who have included it in many collective agreements renewed recently (we report, by way of example, the TV and Radio Corporate Workers CCNL of 25th April 2005, on which Article 45 provides the right to conversion from a full-time to a part-time job employment relationship; the Film Distribution Cooperative CCNL of 2nd July 2004; the General Confederation of Italian Commerce and Tourism CCNL of 2nd July 2004. You can consult them at *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*).

It is important to remember that part-time work is scarcely developed in Italy, whereas is very frequent in the other States of the European Union

The right of the female worker to transform her working relationship is subjective, and it is aimed at safeguarding her health and professionalism. For this reasons, the law considers it as a right that cannot be denied.
Interested parties have also to establish the quantification of the reduced working time, as well as the way it has to be organized (vertical or horizontal organization). Considering the reason of the law and the personal nature of the right, however, it can be assumed that working time will be organized according to patient's specific and individual needs.
The law, in Article 46 of Legislative Decree No. 276/2003, also establishes the specific condition that governs the enjoyment of the right: the medical committee of the local health authority (so-called ASL) has to verify female worker's state of health.
Furthermore, in order to safeguard the right to work, the law provides that, on the female worker demand, working employment relationship can be transformed again from a part-time to a full-time contract (some commentators have considered the rule as unconstitutional; its selective criteria and its scope only in relation to people affected by oncological pathologies, would violate the principle of equal treatment, because it could not be applied to people affected by other pathologies, who need a flexible working time for medical treatment as well. In this regard, please consult S. Scarponi, *Il lavoro a tempo parziale*, Working Paper C.S.D.L.E. "M. D'Antona", 2004, n. 31, and its bibliographical references).
Paragraph 44 of Act No. 247 of 24th December 2007 (the so-called "*Pacchetto Welfare*") has taken up Article 46 of Legislative Decree No. 276/2003. The fact the principle contained in the Biagi Act has been taken up entirely, shows the effectiveness of this rule. Yet, Act No. 247/2007 grants the protection of the rights (already conceded to the female worker) also to her relatives – partner, parents, children – as well as to her cohabitant, if the sick worker has a permanent and total incapacity for work, that has been judged "serious" in accordance with Act No. 104/1992 and if the worker has a total permanent invalidity. Such extension is, however, "in a certain sense", because in this case the conversion from a full-time to a part-time contract is no longer a right, but a possibility. As a matter of fact, it can be simply granted as a priority.
The other provision, which is contained in Act No. 247/2007, is very important, yet rather enigmatic in its wording: the female or male worker that has converted his employment relationship in a part-time contract «has the priority for full-time employment in order to perform the same duties as the ones concerning the part-time contract».

Protections against mobbing and vexatious actions

Besides all issues related to working time management, the female worker affected by breast tumour has also to face other difficulties, linked to her employment relationships with her employer and colleagues.
Besides a widespread lack of information and education on the subject, more and more often she has to suffer many forms of discrimination, which in some cases can be considered as mobbing.

The so-called strategic mobbing represents a direct consequence of the news of the disease. It is aimed at causing sick female worker's dismissal, because she is considered useless and dear by the enterprise (in this regard, please consult A. Vallebona, *Mobbing senza veli*, and A. Corvino, *Mobbing: ne vale la Pena?*, both contained in *Boll. Adapt*, 2005, n. 34, at *www.fmb.unimore.it*, and all related bibliographical references).

It is evident, therefore, through a series of unjustified limitations at work, and other actions highlighting the inequality of treatment towards the sick female worker, the attempt of dismissing the worker, considered a non-productive human resource.

At present, the protection provided for mobbed female worker is governed by a variety of rules (concerning transfers, discrimination, equality of treatment, etc.) that are mostly applied in the working environment, as provided by Article 2087 Civil Code, which establishes that employer must commit himself «*to protect workers' physical wellbeing and morals*».

Considering the wide range of rules regulating this case and the protection system contained in Article 2087, mobbed female worker will have difficulties in case of litigation or petition. As a matter of fact, she has to prove her employer and colleagues' poor behaviour (A. Vallebona, *L'onere della prova nel diritto del lavoro*, Cedam, Padova, 1988, 129), as well as her damage suffered.

In addition, even if the female worker succeeds with great effort in making out her case, she will be entitled to be indemnified for damages only if they represent a proven consequence of mobbing, in accordance with the so-called causal connection (proving the criminal offence is "arduous", because the action of misfeasance, which is typical of mobbing, is valid only if it is objectively liable to persecution, and not based on a female worker's specific psychological state. Obviously, in the case of a female worker affected by breast tumour, such psychological state is already unstable).

In order to guarantee a more effective protection for those female workers subject to moral coercion (psychological stress?) on the workplace, the bill of a consolidate act on mobbing, already adopted by the Senate on 25th July 2005, has been introduced recently (the act submitted to the Senate is published and can be consulted in *Boll. Adapt*, 2005, n. 34. The consolidated act, instead, can be consulted in *Boll. Adapt*, 2005, n. 29). The new consolidated act would guarantee a more immediate step against those who are liable for mobbing, and will facilitate mobbed worker's compensation (in this regard, please consult Article 5 concerning the bill of a consolidate act on mobbing).

Only through a proper information and education activity, we will be able to create an effective labour law for the people affected by oncological pathologies and breast tumour

At this rate, a valuable protection against misbehaviours towards the sick female worker is possible (for more details and for a critical examination of the opportunities contained in the bill of the consolidate act, please consult A. Vallebona, *Mobbing senza veli*, cit., 6).

Although the bill aims at providing more protection to mobbed workers, it does not seem to represent a definite answer to all difficulties linked to this issue and to the strategic mobbing towards female workers with breast tumour.

On the other hand, the establishment of a committee composed of company and bargaining agency representatives, one of the changes provided by the bill of the consolidate act, seems to be particularly useful to supervise the phenomenon.

As a matter of fact, deterrent activities aimed at avoiding cases of moral coercion and localize the roots of the matter are extremely effective.

Mobbing towards female workers affected by breast tumour is mainly due to a general lack of information on the disease (on this regard, please consult G. Fiorentini, *La formazione di nuovi manager dell'impresa sociale*, which was part of the meeting named *La comunicazione sulla salute femminile. Un'opportunità di impegno sociale per le aziende*, that took place on 29th October 2004 in Milan). Even in the case of prejudice, then, preventing is the best cure. Such prevention can only be guaranteed by an effective corporate social responsibility, that is the result of information and education activities. This is the only way to develop a corporate culture, useful to help and to protect people with oncological pathologies and breast tumour.

The importance of information and education

Education and information have a leading role not only in preventing the disease, but also during the reintegration of the sick worker.

As a matter of fact, it is important to draw the attention to all issues related to breast tumour. In order to do this, formation should concern both the employer and the female worker.

The education and information activity concerning the company should be aimed at facilitating the maintenance of the female worker's position, especially through a deep understanding of several flexible working opportunities. Identifying the means to combine company and sick female worker's needs and an in depth-knowledge of the disease, might be useful to limit cases of strategic mobbing (please consult the previous paragraph, *Protections against mobbing and vexatious actions*). As a matter of fact, the sick female worker is not a useless resource, but a person who through the proper support, will be operative again.

The formation activity should help the female worker to become acquainted with legal instruments, used to combine working and treatment time and to support her reintegration. Such activity is particularly useful for the worker after a long-time absence from work.

Only through a proper information and education activity, we will be able to create an effective labour law for the people affected by oncological pathologies and breast tumour.

Michele Tiraboschi
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Research project co-funded by the European Commission

Promoting new measures for the protection of women workers with oncological conditions by means of social dialogue and company-level collective bargaining

Summary

Chiara Todeschini

INTRODUCTION

In the EU in recent years awareness of the needs of patients with oncological conditions has significantly increased. The Charter of Paris of 4th February 2000 recognised the need to improve the quality of life of patients as a fundamental objective of the fight against cancer (Article VIII). In addition, the European Parliament has repeatedly taken a position on the rights of people with cancer, and in particular of women with breast cancer. With an initial Resolution of 2003 the European Parliament called for practical measures on the part of the Commission, aimed at bringing the attention of the Member States to this particular disease.
In Italy, the social partners need to play a fundamental role in the provision of protective measures for workers with an oncological condition and in responding to the need to strike a balance between working hours and time off required for medical treatment.
For example, with regard to leave of absence, the legislation delegates to collective bargaining the determination of prolonged periods of leave for workers with a serious oncological condition, or for periods of leave to be taken in a flexible manner, reflecting the need of the worker to receive medical treatment. There is a need to raise the awareness of the social partners of the importance of this issue, particularly in the private-sector, where there are only limited instances of collective bargaining providing specific protective measures for these workers/patients.
Today as ever it is necessary to promote actions aimed at enhancing social dialogue to provide specific protection for these workers and their implementation also by means of close collaboration between the various actors involved (social partners at national and international level. institutions, associations and research centres).

TIMELINE

Duration of activities: 12 months.
Beginning: 14th December 2007.
Deadline for completion: 5th November 2008.

OBJECTIVES

The project is intended to define a Code of Practice and a protocol of intentions between the social partners to facilitate the conditions of persons with oncological conditions, with particular attention to the possibility for women with breast cancer to continue in or return to work making recourse to reduced hours or flexible time arrangements while safeguarding their career prospects. For this purpose the project aims to define new practices within the ambit of corporate social responsibility and models and actions that could be adopted in the workplace also in informal relations between the social partners. As a result studies and research aiming to identify possible theoretical models, and in particular actions between the social partners to raise awareness in relation to women employees with oncological conditions must be developed. The measures should sustain the contribution of social partners to achieve the Lisbon goals and create more and better employment and, in particular, facilitate continuity of employment and a return to the labour market of women employees with oncological conditions as underlined in the recent Resolution of the European Parliament of 26th October 2006.

WAYS TO ACHIEVE THE OBJECTIVES AND EXPECTED RESULTS

- **Organisation of seminars, workshops and conferences** to share the project objectives during which the proposals of code of practice and guidelines of social partners, enterprises and trade unions.
  - To define the programme of the international conference opening 15th March 2008 with the materials to be distributed and registration of the participants.
- **Analysis of statistical data** to consider the coefficient of disability and inability of employees with cancer in Italy and other European Countries
- **Drafting of the questionnaire in different Countries involved** in the survey: analysis of the social implication and individual careers, analysis of the existing micro data, qualitative analysis of the sample of the women employees.
  - Providing the sample of the questionnaire.
  - Final elaboration of all questionnaires distributed between March and June 2008. The results of the questionnaires will be used to draft the final report to be presented to the European Commission.
- **Comparative analysis of good practices in 12 European States**: Italy, Spain, Austria, Denmark, Germany, Sweden, Finland, the Netherlands, France, the United Kingdom, Hungary, Lithuania.
  - By September 2008 the researchers will provide to the updated figures to submit to the international conference by the middle of October 2008.
- **Creation of the area dedicated to Adapt portal** publishing research relating to the project and

its implementation.
This area is available on *www.fmb.unimore.it*, Research session.
- Publication of the project approved by the European Commission, publication of research already done in relation to the topic of the tender at the national and the Community level.
- Publication of the materials relative to the opening of the conference of 19th March 2008 (conference proceedings, materials authorised by the academic staff).
- Publication of the materials relating to the intermediate workshop on evaluation of the work scheduled for the mid May 2008.
- By 15th November 2008: publication of the materials relating to the closing conference of mid October 2008 (conference proceedings, materials presented by the academic staff).

- **Model of the Code of practice**.
By November 2008: definition of the activity to perform in the course of the project in collaboration with the social partners and interested enterprises.
- **Outline protocol of intentions between the social partners**.
- By November 2008: definition of the activities to perform in the course of the preparation of the project in collaboration with the social partners and interested enterprises.
- **Drafting of guidelines** aimed at raising awareness on the part of management and human resources departments.
- By the end of November 2008: definition of the activities to perform in the course of the preparation of the project in collaboration with the social partners and interested enterprises.
- **Drafting of the final report required by the European Commission** (hard copy and digital copy)
- By January 2009: submission of the final report to the European Commission.

PHASES OF WORK

Phase I – *Research phase concerning the issues arising from the employment conditions of people with oncological conditions*
This phase of research, that will involve all the Member States taking part, will consist of the study of the norms and collective bargaining agreements facilitating the return to the labour market in addition to safeguarding career prospects and employment rights in line with European Union equal opportunities policies. The research will include: an analysis of the social implications and individual career development associated with oncological conditions, an analysis of the microdata so far available, and an in-depth qualitative study of a sample of women workers with the design and implementation of a questionnaire.

Meetings held
- *December 2007*: meeting on the analysis of the administrative management of the tender assigned according to the contract VS/2007/0567.
Definition of the sources used during the project and preparation of the opening conference of 19 March 2008 in relation to the tender in question.
- *January 2008*: meeting on scientific, economic and administrative organisation in relation to the tender assigned according to contract VS/2007/0567.
Analysis of the general context of works to start and work drafting of outline: dissemination of the project to the public by means of involvement of social partners, associations of trade unions and employers and others among Adapt and Europa Donna members in order to verify available human resources and intervene at the round table discussion and debates for drafting the Code of Practice and guidelines foreseen by the project (see the points indicated in the paragraph *Expected Results*).
- *January 2008*: round table to exchange information and contacts in order to proceed with work organisation.

Scheduled meetings
- *19th March 2008*: First international conference entitled *Promoting new measures for the protection of women with oncological conditions*.

Programme
14.00-18.00: Special forum organised by Adapt – Europa Donna, *Promoting new measures for the protection of women with oncological conditions*.
Chair:

Mariella Zezza, Rainews24 *presenter*.
Introductory paper:

Tindara Addabbo, *Marco Biagi Foundation – University of Modena and Reggio Emilia, Italy*.

Speakers:
Alessandra Servidori, *Adapt – Marco Biagi Centre for Comparative and International Studies*;

Melina Decaro, *Head of Department for EU Policies of Prime Minister's Department*;
Giovanna Gatti, *Chair of Europa Donna Italy*;

Patrizia Ravaioli, *Director-General Italian Cancer League – LILT;*

Marie-France Mialon, *University of Paris II, Panthéon-Assas, France*.

Phase II – *Involvement of the social partners*
In this phase it is intended to stimulate social dialogue about protective measures and the policies to be adopted (also in terms of company-level and territorial agreements and services) with the involvement of the social partners who will play an active role in gathering materials and critical opinions on the existing provisions allowing workers with oncological conditions to continue working, and to strike a balance between working hours and time off required for medical treatment.

Scheduled meetings
- July 2008: intermediate workshop for assessment of work and to divulgate the result of the Comparative analysis of General legal protection of employees with disabilities including oncological diseases good practices
See on page. 3 in this number.

Phase III – *Drafting of the research report and dissemination of the results*
An integral part of this phase will be the drafting of a Code of Practice and a draft protocol agreement between the social partners for the protection of workers with breast cancer. Each of these measures will be closely linked to the results achieved in the research and negotiation phase between the partners to be utilised at territorial level. A fundamental part of this phase is the drafting of the documentation prepared in the earlier phases and the practices agreed on, the publication of this documentation, and its dis-

semination as a contribution to the documentation of the European Gender Institute.
Period: 1st July 2008-30th September 2008.

Scheduled meetings
• Mid October 2008: closing two-day conference with an overview of the work carried out.

Beneficiaries of the tender

Leaders: Adapt (Association for International and Comparative Studies in Labour Law and Industrial Relations).
Partner 1: Marco Biagi Centre for International and Comparative Studies of the Department of Business Economics – University of Modena and Reggio Emilia.
Partner 2: Comune di Milano/Milan City Council.
Partner 3: Europa Donna Italy.
Partner 4: Europa Donna Sweden.
Partner 5: Europa Donna France.
Partner 6: Europa Donna Netherlands.

Partners

Confindustria; Businesseurope; CGIL; CISL; UIL; UGL; Provincia di Modena; Comune di Modena; Ufficio Consigliere regionale di parità, Regione Emilia Romagna; Provincia di Verona; ABI; Telecom Italia S.p.A.; Confapi; Federalberghi; Manutencoop; Obiettivo Lavoro; SIPO; ABO Project; Federdirigenticredito – Dircredito; Associazione Italiana delle Imprese Cosmetiche – UNIPRO.

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Chiara Todeschini
Project manager Adapt

Workers' rights protection in a new world of work

Patrizia Ravaioli

The Italian Cancer League – LILT not only promotes prevention as a life style, but also assists individuals with oncological conditions in order to safeguard their rights and dignity as well as to provide the necessary social and legal support. These objectives can be achieved through the activity of 103 provincial offices that have for a long time been providing various forms of treatment free of charge at home according to social, healthcare and economic situation of the territory to people with oncological conditions in an advanced phase. Most of these provincial offices have concluded agreements with the area health authority and collaborate with medical practitioners. LILT is also strongly involved in the physical, psychological, social and employment rehabilitation of individuals with oncological conditions. Demand in this area has been continuously increasing in recent years due to the increasing number of cancer survivors for whom is necessary to promote a better quality of life. In order to put these objectives into practice the provincial offices have promoted the following actions:
• strengthening collaboration with the voluntary associations and the health authorities operating in this sector at the national level;
• stimulating group help with the support of LILT;
• activating new rehabilitation services or services within existing health centres.
The provincial offices promote physical and psychological rehabilitation for women who have undergone breast surgery, taking account of the widespread nature of this form of disease and its impact on those concerned.
Voluntary work is a precious resource especially in terms of assistance and rehabilitation. Due to the fundamental role of the voluntary organisations, LILT pays careful attention to their selection and invests heavily in continuous training and retraining. Taking care of individuals with oncological conditions is one of the main tasks of LILT.
In this perspective since 2002 LILT has been the promoter of the Conference of individuals with cancer, providing a space in which patients and their family members can share their experience with the institutions in order to find new ways of fight against cancer.
The need to promote this dialogue starts from an awareness that cancer has become a social problem as every year there are more individuals with oncological conditions. However, medical treatment is not sufficient to deal with this all aspects of the problem. There is a need to pay special attention to the social reintegration of those with cancer and to create the conditions to respect the dignity of these individuals.
The main objectives of the conference of individuals with cancer have been from the beginning and are still the following:
• to give patients and those receiving hospital treatment the chance to express their needs and hopes;
• to provide a point of contact between patients and operators;
• to encourage medical practitioners to reflect on their everyday practice and if necessary to modify it;
• to enable the mass media to iden-

tify the sectors of the population in need of information;
• to provide policy-makers with more information that could be useful for their decisions;
• to support the prevention of oncological conditions as the primary institutional task of LILT.
At the end of the last Conference held in Verona (22nd-23th November 2007) the Code of Practice for Global Assistance to Individuals with Oncological Conditions was adopted. This Code of Practice is to be presented to the President of the Republic in July 2008.

Code of Practice

1. To ensure patients the right to complete and accurate information concerning diagnosis, treatment and rehabilitation, and to safeguard their right to be heard, to have answers to their questions and doubts from the medical practitioners and healthcare workers responsible for communicating with the patient, while adapting the information to their cultural and emotional needs.

2. To provide individuals with oncological conditions the same right of access to diagnosis and medical treatment across the entire national territory.

3. To ensure the continuity of medical treatment in relation to the health conditions of the individual.

4. To take care of terminally ill individuals by means of palliative treatment at home or in a hospice by healthcare workers specially trained for this purpose.

5. To provide continuity of service on the part of voluntary or third-sector organisations providing liaison with the institutions for the sick individuals and their family members.

6. To promote a return to the productive and social role occupied by the individual before the disease.

7. To ensure assistance and social security for the individual with an oncological condition by granting economic or fiscal benefits on the part of the institutions also by means of adequate work organisation according to the personal needs of family members.

8. To provide legal information and advice free of charge in all parts of the national territory to oncological patients and their family members.

9. To ensure the right to privacy, support for better quality of the life (on the basis of the definition of the sick individual) as well as safeguarding the feelings and dignity of each patient.

10. To recognise the right to self determination.

... to achieve better results it is fundamental to have the institutional support and policies aimed to raise the awareness of employers about these problems, but also to inform employees about their rights

There are ten points that cannot and should not remain only words but which LILT intends to put into practice. For this purpose we intensified our commitment first of all by improving our national helpline SOS LILT which offering psychological and legal support responding to point 8 of our Code of Practice: *to provide legal information and advice free of charge in all parts of the national territory to oncological patients and their family members*.
To prevent terminal patients with an oncological condition at the end of their therapy from being suspended in a limbo where nobody takes care of them and they suffer from depression, it is necessary to ensure the reintegration of patients into employment and the social and family context. This protection should be given to the population. The GPF survey commissioned by LILT revealed that cancer is one of the major concerns of Italians: 66.8% have a very strong fear of cancer while 96.4% have quite a strong fear. The problem is that few people really believe in the chance of an active life after cancer.
It is important in this regard to promote and enact two other points of the Code of Practice: 6. *To promote a return to the productive and social role occupied by the individual before the disease*; 7. *To ensure assistance and social security for the individual with an oncological condition by granting economic or fiscal benefits on the part of the institutions also by means of adequate work organisation according to the personal needs of family members*.

To this end it is essential for the Marco Biagi Foundation, Adapt and Europa Donna to collaborate in the promotion of this project

Although the Biagi reform is widely discussed, there is limited awareness of its important contribution to the rights of individuals with oncological conditions.
In fact four benefits introduced by this act are unknown to most of the population. The data presented by Astra for Europa Donna show that of 544 individuals with cancer only 35% are aware of the right to take time off for medical appointments without taking holidays and special leave. 22% are aware of the right to modify their employment position for health reasons, 20% know about the right to take a longer unpaid period waiting, 18% know about the possibility to move to part-time work on a temporary basis. However, the figures show that the use of these norms is limited. Only 2-3% use part-time, long waiting time, and 12% make use of the right to medical treatment without taking holidays. Clearly to achieve better results it is fundamental to have the institutional support and policies aimed to raise the awareness of employers about these problems, but also to inform employees about their rights.
Starting from these figures, LILT decided to make a major effort to improve the living conditions of these individuals.
The LILT panel coordinated by Prof. Servidori drafted the Manifesto to promote the rights of people with oncological conditions in the world of work.

Patrizia Ravaioli
General director
Italian Cancer League – LILT

Il Sole 24 Ore, 7th July 2008

Safeguarding workers affected by cancer

The Manifesto for the human rights of the workers affected by oncological disease will be presented to President Napolitano

Alessandra Servidori

The Manifesto for the human rights of the workers affected by cancer, which has been drafted by Lilt (Italian Cancer League) in cooperation with Adapt, Marco Biagi Foundation and Europa Donna, will be presented to President Napolitano tomorrow. The document has been undersigned by all political parties, many citizens and also by Pierluigi Visci, the editor of *QN* and *Il Resto del Carlino*. By reforming national law and collective bargaining, and by respecting the principle of the equality and the right to health care. The Manifesto provides seven points aimed at improving the legal protection for the worker affected by oncological pathologies.
In addition, the Manifesto provides an employment relationship which allows the worker to undergo the therapy, arranging an appropriate working time and modifying the business organization. This is necessary especially for those individuals that need clinical testing and follow-up treatment. It also highlights the importance of a new assignment, more compatible with the worker's health status and reduced working activity, even by way of derogation of the already existing law.
As for the grace period, in the case of oncological pathologies, disabling ictus or multiple sclerosis, vital organs transplantation and fully manifest AIDS, the Manifesto establishes that it should be extended, according to the worker's length of service. Furthermore, *day hospital* and life-saving treatment, such as chemotherapy and hemodialysis, should not be included in the grace period, and remuneration should be revised as well. As a matter of fact, most collective agreements make provision for the entire amount for a certain period (such period may vary, also depending on length of service) after which it is usually reduced by 50%.
At the end of the grace period, it is also fundamental to give the worker the opportunity to ask for further leave. Moreover, once the medical condition has been verified, the worker can be assigned to more suitable tasks of the same category.
The Manifesto, also approved by numerous men and women living in Emilia-Romagna, makes us very proud for the values it represents, and can be undersigned on *www.lilt.it.*

Alessandra Servidori
Marco Biagi Centre for International and Comparative Studies

Thursday, 10 April 2008 - Brussels

Texts adopted by Parliament

Combating cancer in the enlarged European Union

European Parliament resolution of 10 April 2008 on combating cancer in the enlarged European Union

The European Parliament,
– having regard to Article 152 of the Treaty,
– having regard to Articles 163-173 of the Treaty,
– having regard to Decision No 1350/2007/EC of the European Parliament and of the Council of 23 October 2007 establishing a second programme of Community action in the field of health (2008-13)([1]),
– having regard to the Commission's White Paper "Together for Health: A Strategic Approach for the EU 2008-2013"([2]),
– having regard to Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013)([3]),
– having regard to Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work([4]),
– having regard to reports commissioned by the World Health Organization on cancer, and in particular on health risks for children due to exposure to chemicals([5]),
– having regard to Regulation (EC) No 1901/2006 of the European Parliament and of the Council of 12 December 2006 on medicinal products for paediatric use([6]),
– having regard to the Council Recommendation 2003/878/EC of 2 December 2003 on cancer screening([7]),
– having regard to the Commission's Communication on a European Environment and Health Strategy([8]) and the Commission's Communication on the European Environment & Health Action Plan 2004-2010([9]),
– having regard to its resolution of 15 January 2008 on the Community Strategy 2007-2012 on health and safety at work([10]),
– having regard to its Declaration of 11 October 2007 on the need for a comprehensive strategy to control cancer([11]),
– having regard to its resolution of 25 October 2006 on breast cancer in the enlarged European Union([12]),

(Continua a pagina 20)

Occupation and oncological pathologies

Tindara Addabbo

According to available data, today in Italy 300,000 women discover to have breast tumor in their lifetime. Thanks to research progress and early diagnosis, though, their expectation of life has increased in time (*www.europadonna-italia.it*). In addition, reintegration or engagement, as well as the maintenance of the employment, can have a positive effect on the health of a women, who have just recovered from this kind of pathology.

Yet, such reintegration is often impossible

«Woman suddenly turns into "a patient" or "former patient", that is a person who had a tumor and therefore… She had better stay home, enjoying her life. At this stage, winning a battle against cancer does not mean anything, because a minute later everything a woman has conquered with many sacrifices fades away, and her life crushes. Simply because she is not considered a woman in her entirety, but only a body with a *sick* part. And this does not depend on her».
(*www.europadonna-italia.it*)
As a result, psychological consequences among unemployed people, which have been analyzed by Sen, are more serious in the case of a woman with a oncological pathology who wants to return to work or maintain her old employment (A. Sen, *L'occupazione: le ragioni di una priorità*, in P. Ciocca (edited by), *Disoccupazione di fine secolo*, Bollati Boringhieri, 1997, Torino, Chap. I, 3-20)
Furthermore, if we consider social-demographic data of women who had breast tumour, we realize that in many cases such women represent the point of reference of the family, in terms of unpaid housework.

Does Government support these families?

Are there any supports for women who find themselves in this situation? Are there any instruments that help them to return to normal life?
We may have some news thanks to the legislative decree n. 276/2003. Those affected by oncological pathologies, for instance, have the opportunity to change their *working* status, that is to say from full-time to part-time worker. In addition, they can also modify their reversibility in a full-time employment contract. A recent inquiry, carried out by AstraRicerche for *Europa Donna*, shows that only 18% of women are acquainted with this new decree and its enforcement has not been significant (*Le ripercussioni psico-sociali e professionali del tumore al seno*, an inquiry carried out by AstraRicerche on *www.europadonna-italia.it*).
How effective, then, is this law enforcement? According to their needs, do women change their status from full-time to part-time worker?
If there are laws that facilitate women's job stability and their return to work, which are the differences, in terms of working conditions, between employed women in different contexts (private, public-sector) and with a different contract of employment? An inquiry in this context might be useful to highlight the most frequent issues that women who want to go on with their job (or find a new one) have to deal with, as well as all factors that are necessary to facilitate these steps.

Tindara Addabbo
University of Modena and Reggio Emilia

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– having regard to Decision No 646/96/EC of the European Parliament and of the Council of 29 March 1996 adopting an action plan to combat cancer within the framework for action in the field of public health (1996 to 2000)([13]),
– having regard to Article 88a of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use([14]),
– having regard to the Council Decision 2004/513/EC of 2 June 2004 concerning the conclusion of the WHO Framework Convention on Tobacco Control([15]),
– having regard to Rule 108(5) of its Rules of Procedure,
A. whereas, according to estimates by the International Agency for Research on Cancer (IARC), one in three Europeans is diagnosed with cancer during their lifetime and one in four Europeans dies from the disease,
B. whereas in 2006 there were nearly 2,3 million new cancer cases and over 1 million cancer deaths within the European Union; whereas most deaths were in people with lung cancer, colorectal cancer and breast cancer,
C. whereas cancer is caused by many factors in multiple stages and therefore requires a new cancer prevention paradigm that addresses lifestyle causes and occupational and environmental causes on an equal footing in a manner that reflects the actual combination effects of different causes, rather than focusing on isolated causes,
D. whereas, according to a recent study by the trade unions, at least 8% of annual cancer deaths are directly caused by exposure to carcinogens at the workplace; whereas such exposure could be prevented by the substitution of carcinogens with less harmful substances; whereas employers are moreover legally obliged to substitute carcinogens where possible but, unfortunately, these provisions are poorly implemented and enforced, which is unacceptable,
E. whereas endocrine disrupting chemicals can play an important role in cancer formation, for example in the case of breast cancer or testicular cancer, and therefore require specific action,
F. whereas the Union's ageing population is one of the reasons for the increase in the cancer burden across the Union,
G. whereas death rates from cancer in the new Member States are higher than in the EU-15,
H. whereas the startling and unacceptable differences in the quality of cancer treatment facilities, screening programmes, evidence-based best-practice guidelines, facilities for radiotherapy, and access to anti-cancer drugs are among the reasons for the big differences in the five-year survival rate from most cancers across Europe,
I. whereas the Parliament's above mentioned Declara-

tion on the need for a comprehensive strategy to control cancer calls on the Council and Commission to formulate a comprehensive cancer control strategy addressing the four basic cancer control factors: a) prevention, b) early detection, c) diagnosis, treatment and follow-up, and d) palliative care,

J. whereas during the term of the Commission's Action Plans Against Cancer ("Europe against cancer", most recently covering the period 1996-2002) favourable trends in cancer mortality were established for several common forms of cancer in many countries,

K. whereas the WHO estimates that at least one third of all cancer cases are preventable and that prevention offers the most cost-effective long-term strategy for the control of cancer; whereas another third of cancers could be cured if detected early and treated appropriately,

L. whereas crystalline silica has been classified by the WHO as a class 1 carcinogen and whereas 3,2 million workers in the EU are exposed to this substance during at least 75% of their working time; whereas 2,7% of deaths due to lung/bronchial cancers are estimated to be attributable to occupational exposure to crystalline silica,

M. whereas, according to Organisation for Economic Co-operation and Development (OECD) data, currently an average of only 3% of the OECD countries" total budget for health is spent on prevention as against 97% spent on healthcare and treatment; whereas this gross imbalance needs urgently to be rectified, all the more so as at least one third of all cancer cases are preventable,

N. whereas it is estimated that 25% of all cancer deaths in the Union can be attributed to smoking; whereas smoking causes between 80 and 90% of lung cancer deaths worldwide,

O. whereas a well-designed, well-managed national cancer control programme lowers cancer incidence and mortality, in some cases by more than 70%, and improves the life of cancer patients, no matter what resource constraints a country faces,

P. whereas nationwide implementation of effective, population-based screening programmes – run in accordance with European guidelines if they already exist – significantly improves the quality and accessibility of cancer screening, diagnosis and therapeutic services to the population and thereby also improves cancer control,

Q. whereas national cancer registries in all Member States are essential with a view to providing comparable data on cancer,

R. whereas there are currently considerable, and unacceptable, qualitative inequalities in cancer screening and early detection and follow-up within the EU, particularly with regard to the diagnostic procedures used and the integration of those procedures into Member States" health policy, and whereas screening programmes facilitate early diagnosis, which contributes to a cost-effective and measurable reduction in disease burden,

S. whereas oncology is not recognised as a medical speciality in all Member States, and whereas continuing medical education needs to be provided,

T. whereas EudraCT, the European database for clinical trials at the European Medicines Agency (EMEA), is not open to the general public, and patients have difficulty in locating trials that address their specific condition,

U. whereas the complexity of cancer requires improved communication between the many and varied healthcare professionals involved in cancer patient treatment; whereas psychosocial care of cancer patients can improve their quality of life,

V. whereas cancer patients currently have unequal access to medical information and are in urgent need of more information at every stage of their disease,

1. Calls on the Commission, the Council and the Member States to take appropriate action on prevention, early detection, diagnosis and treatment, including palliative care, in order to reduce the significant approaching increase in the burden of cancer resulting from demographic changes in the coming decades, including provision of adequate financial support for coordinated actions and appropriate capacity building;

2. Calls on the Commission to set up an inter-institutional EU Cancer Task Force composed of Members from the Commission, the Council and the European Parliament which shall meet on a regular basis, to collect and exchange best practice for prevention, (including reducing occupational and environmental exposure to carcinogens and other substances contributing to the development of cancer), screening and treatment and to provide leadership for improved cancer control in Europe; stresses that the EU Task Force should, in particular, promote new measures as well as existing screening projects that can help increase the proportion of the population taking part in cancer screening measures by at least 50% in each of the Member States by 2018;

3. Welcomes the Commission's initiative of adopting a Communication on cancer and a Communication on rare diseases, both scheduled for later this year;

4. Asks the Commission to review the European Code Against Cancer on a regular basis and to promote it by means of awareness, information and education campaigns targeting specific population groups;

5. Urges the Member States to implement statutory cancer registration with European standardised terminology in order to provide the capacity for population-based evaluation of prevention, screening and treatment programmes, survival rates and comparability of data between Member States;

6. Calls on the Commission to revise the existing Recommendation on cancer screening to take account of the rapid development of new technologies and to include:

a) more types of cancers; and

b) additional techniques of early diagnosis when these are warranted scientifically;

7. Calls on the Commission to establish a dynamic, flexible and continuous approach to fighting cancer that is based on scientific progress, and to this end to establish:

a) an advisory committee on cancer prevention to evaluate existing evidence and data;

b) a special advisory committee on early detection of cancer to ensure that future revisions of the recommendation are incorporated rapidly and efficiently;

8. Calls on the Commission to support, within the framework of the Second Public Health Action Programme, networks of national cancer registries with a view to carrying out an EU-wide study of inequalities in cancer incidence and survival;

9. Urges the Governments of the Czech Republic and Italy, which have not yet done so, to ratify the WHO Framework Convention on Tobacco Control, which entered into force in February 2005;

10. Calls on the Commission and all Member States to develop and support strong protocols and guidelines

when implementing the WHO Framework Convention on Tobacco Control and to ensure that resources are available to help low-income countries to meet their obligations under the Convention;

11. Calls on the Commission to act in its role as guardian of the Treaty by taking swift legal action against all Member States that are not fully implementing Directive 2004/37/EC;

12. Calls on the Commission to take legislative action, where appropriate, and to encourage and support initiatives that include a wide range of stakeholders with the aim to prevent cancer through reduction of occupational and environmental exposure to carcinogens and other substances contributing to the development of cancer and promotion of healthy lifestyles, in particular as regards the major risk factors, tobacco, alcohol, obesity, unhealthy diets, lack of physical activity and sun protection, putting a strong emphasis on children and adolescents;

13. Calls on the Commission and the Member States to support and implement comprehensive tobacco control policies including smoke free environments and smoking cessation interventions, as effective methods to reduce the incidence of smoking and thus prevent a large number of cancer deaths, in line with its resolution of 24 October 2007 on the Green Paper "Towards a Europe free from tobacco smoke: policy options at EU level"([16]), the recommendations in which must now be fully implemented;

14. Calls on the Commission, the Member States and the European Chemicals Agency, in the context of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency([17]), to adopt the candidate list of substances of very high concern, which includes substances that are carcinogenic, as a top priority before 1 June 2008, so as to make possible the application of Article 33(2) of REACH, which allows consumers to request information about carcinogens in consumer items, enabling them to avoid such items if they so desire;

15. Calls on the Commission to encourage and support initiatives to prevent the importing of items containing carcinogenic chemicals; calls, furthermore, for EU measures to strengthen food monitoring for chemicals, including pesticides;

16. Calls on the Commission and Member States to ensure that EU wide human bio-monitoring surveys are adequately resourced to monitor carcinogenic substances and other substances contributing to the development of cancer, in order to be able to measure policy effectiveness;

17. Urges the Commission and the Member States to promote information campaigns on cancer screening directed at the general public and all healthcare providers, as well as exchange of best practice on the use of preventive or early-detection measures, such as cost-effective integration of appropriate human papilloma virus (HPV) testing for cervical cancer screening and HPV vaccination to protect young women from cervical cancer, or the prostate specific antigen (PSA) test for the early detection of prostate cancer in men over 50 years of age;

18. Calls on the Commission to initiate a discussion with the Council to ensure that the Recommendation on cancer screening is promoted and implemented effectively; to this end, urges those Member States that have not yet done so to implement the Recommendation, to establish procedures for the adoption of any future changes to the Recommendation and to set up population-based screening programmes in accordance with European quality-assurance guidelines;

19. Calls on the Commission to guarantee medium- and long-term scientific and professional support for adequate and appropriate assistance to the Member States to help them act on the Council Recommendation on cancer screening and monitor, evaluate and coordinate pilot activities and continuous quality improvement;

20. Calls on the Commission to support the development of European accreditation/certification programmes in cancer screening, diagnosis and treatment based on European quality-assurance guidelines, which could also serve as an example for other areas of health care;

21. Calls on the Member States to make nationwide provision for multidisciplinary oncology teams to give optimal individual treatment to all patients, and to improve training of oncologists and healthcare professionals in recognising the psychosocial needs of patients in order to improve their quality of life and reduce anxiety and depression in cancer patients;

22. Urges the Commission and Member States to recognise oncology as a medical speciality and to make provision for lifelong learning for medical oncologists in accordance with agreed guidelines;

23. Calls on the Commission and Member States to encourage and promote palliative care and to establish guidelines for its use;

24. Calls on the Commission to ensure that Community legislation contains incentives for industry and researchers to engage in ongoing research with a view to developing new evidence-based medicines and treatments to combat and control cancer;

25. Calls on the Commission to provide for dissemination, through networks of health professionals, of best practice in treatment and care, with a view to ensuring that citizens have access to the best available treatment;

26. Calls on the Commission to deploy funds from the Structural Funds and the Seventh Framework Programme for Research to create and fund reference networks for rare and difficult-to-treat cancers, in order to pool resources and expertise and improve diagnosis and treatment;

27. Urges the Commission to allocate funds within the Seventh Framework Programme in order to encourage research and innovation in the areas of primary prevention, screening and early detection, and new anti-cancer medicines and treatments;

28. Calls on the Council and Commission to establish an EU standard for the assessment of new innovative diagnostic and therapeutic approaches and identification of best clinical and medical practices;

29. Calls on the Commission to allocate funds under the Seventh Framework Programme to stimulate research on paediatric cancers;

30. Urges the Commission and Member States to ensure that cancer medicines are uniformly available to all patients who need them in all Member States;

31. Encourages the Commission and Member States to examine within the high-level Pharmaceutical Forum how innovative life-saving cancer medicines can be made available more speedily to patients by accelerating fast-track marketing approval through the EU Centralised Procedure and to consider a conditional pricing

and reimbursement process, while data on the value of the medicine is collected on patients in real-life settings;

32. Calls on the Commission to submit a proposal to the European Parliament and the Council by June 2008 at the latest to provide for good-quality, objective, reliable, non-promotional information on medicinal products from multiple sources;

33. Calls on the Commission to revise Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use([18]) (the Clinical Trials Directive) to encourage more academic research on cancer, and in particular research into cancer screening and early detection, whilst recognising the impact of the costs involved for the non-commercial research sector, and to improve the availability of information for patients and the general public on ongoing and completed clinical trials;

34. Calls on the Member States and the Commission to work towards the development of guidelines for a common definition of disability that may include people with chronic illnesses or cancer and in the meantime for Member States, who have not done so, to act quickly possibly to include those people within their national definitions of disability;

35. Calls on the Commission to draw up a charter for the protection of cancer patients and chronically sick people in the workplace with a view to requiring companies to enable patients to continue in employment during their treatment and to return to their normal professional activities;

36. Encourages the Member States to adopt national Charters of patients" rights in accordance with European guidelines and to include patient participation and expertise in the development of health policies;

37. Calls on the Members States and the Commission to develop and strengthen initiatives that provide support for people directly or indirectly affected by cancer, in particular through the initiation and development of psychological care and support throughout the EU for cancer survivors;

38. Calls on the Commission to increase the information available to cancer patients by encouraging initiatives which inform patients about their treatment options and ways to access such treatments;

39. Encourages new Member States to make greater use of the Structural Funds to improve healthcare infrastructure, for example by supporting implementation of the Council Recommendation on cancer screening;

40. Supports the Slovenian EU Presidency, which has made cancer one of its priorities in 2008, and calls on all future presidencies to continue to make cancer a priority;

41. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

Notes

([1]) OJ L 301, 20.11.2007, p. 3.
([2])COM(2007)0630.
([3]) OJ L 412, 30.12.2006, p. 1.
([4]) OJ L 158, 30.4.2004, p. 50.
([5]) Principles for Evaluating Health Risks in Children, WHO, 2006.
([6]) OJ L 378, 27.12.2006, p. 1.
([7]) OJ L 327, 16.12.2003, p. 34.
([8])COM(2003)0338.
([9])COM(2004)0416.
([10])P6_TA(2008)0009.
([11])P6_TA(2007)0434.
([12]) OJ C 313 E, 20.12.2006, p.273.
([13]) OJ L 95, 16.04.1996, p. 9.
([14]) OJ L 311, 28.11.2001, p. 67. Directive as last amended by Directive 2008/29/EC (OJ L 81, 20.3.2008, p. 51).
([15])OJ L 213, 15.06.2004, p. 8.
([16])Texts adopted, P6_TA(2007)0471.
([17]) OJ L 396, 30.12.2006, p. 1. Corrected version in OJ L 136, 29.5.2007, p. 3. Regulation as amended by Council Regulation (EC) No 1354/2007 (OJ L 304, 22.11.2007, p. 1).
([18]) OJ L 121, 1.5.2001, p. 34.

Questionnaire

Promoting new measures for the protection of women workers with oncological conditions by means of social dialogue and company-level collective bargaining

This is the questionnaire's summary adaptation for Italy
(with the legal provisions concerning the protection of workers
with an oncological condition).

Part I. Personal data

- Age

- Place of residence

- How many years you have been resident in this municipality?

- Municipality

- State of birth

- Sex:
  - M
  - F

- Marital status:
  - Single
  - Separated or divorced
  - Widow
  - Married or cohabiting

- Please indicate your level of educational achievement:
  - No
  - Elementary school
  - Middle school
  - High school
  - High school diploma (at least 5 years)
  - Degree
  - Postgraduate education
  - Master or other advanced degrees

- Do you have children?
  - Yes
  - No

- Number of children

- Age of the youngest child

- With who do you live? (more than one answer is acceptable)
  - Alone
  - With my parents
  - With my partner
  - With my partner and children
  - With my friends
  - With my children
  - Other (please specify)

- Are there in your family (even if they do not live in your apartment) older people or people who need assistance?
  - Yes
  - No

Part II. Occupation

- Occupational position:
  - professional status
  - level
  - professional field

- Please specify if you work on:
  - Open-ended full-time contract
  - Open-ended part-time contract
  - Fixed-term full-time contract
  - Fixed-term part-time contract
  - Contract of collaboration
  - Temporary agency work contract
  - Occasional autonomous work contract
  - Association in participation
  - Other

- At what age did you start working?

- For how many years have you been working in this place?
  - How many months (if less than one year)?

- How many years of social insurance contributions do you have?
  - How many months (if less than one year)?

- Do you have various periods of social insurance contributions that have been combined?
  - Yes
  - No

- During the period of the treatment did you receive a health inspection from the institutions authorised to carry out such inspections? (National Institute of

Social Insurance (INPS) and competent local health authority ASL) to verify your absence from the work (between the hours 10/12 – 17/19)?

Part III. Oncological pathologies of the interviewed person

- You are:
  - a smoker
  - an ex smoker
  - a non smoker

- Are the legal provisions on smoking respected in your work place?
  - Yes
  - No

- Are you aware of the legal provisions concerning the protection of workers with an oncological condition?
  - Sick leave for medical treatment and the right to choose a work place nearest to your domicile (Act No. 104/1992);
  - Right to change the labour contract from full-time to part-time (Decree No. 276/2003);
  - Examination to verify civil disability within and not after 15 days after the application (Act No. 80/2006);
  - Right to benefits for the whole period of chemo or radiotherapy (Act No. 18/1980);
  - Exclusion from the calculation of the leave of absence of the days of hospitalization, day-hospital and medical treatment (CCNL Enti Locali 14/09/2000).
  - Act No. 80/2006 that in case of the oncological condition contemplates the iter of rapid ascertainment of disability with the obligation for the medical commission of the competent local health authority to carry out an examination within 15 days after the date of the application.
  - Right to benefits for the entire period of chemo o radiotherapy.

- How did you find out about your rights as a worker with an oncological condition?
  - Information or enterprise communication
  - Association of oncological or health volunteers
  - Trade union
  - Friends
  - Relatives
  - Other (please specify)

- Do you believe that in your workplace there is a clear and efficient information and communication with regard to the protection of the rights of workers with an oncological condition?
  - Yes
  - No

- Do you believe that in your workplace the norms for protection of workers with an oncological condition are applied?
  - Yes
  - No

- Have you had an oncological condition?
  - Yes
  - No

- When?

- Can you indicate a type?
  - Breast
  - Skin
  - Blood
  - Lymphatic system
  - Lung
  - Gastro-intestinal apparatus
  - Other (specify)

- Have you received psychological support during this period?
  - Yes
  - No

- Have you established any contact with associations during this period?
  - Yes
  - No

- During this period have you had problems linked to the working activity in your family in order to support other people (aged or children)?
  - Yes
  - No

- If so, how have you solved these problems? (more than one answer is acceptable, please insert in order starting from 1 as the most important type of help)
  - Major sharing of responsibilities by my partner
  - Help from other family members
  - Help from friends
  - Help from associations
  - Help from public services
  - Other (specify)

- Were you working at the time of the initial diagnosis?
  - Yes
  - No

- If so, are you still working for the same employer?
  - Yes
  - No

- Have you informed your employer about your particular condition?
  - Yes
  - No

- If so, have you been paid attention by your employer?
  - Yes

- No

- Have you received psychological support and comprehension from your colleagues at work?
  - Yes
  - No

- Have you continued with the same work?
  - Yes
  - No

- Have you continued with the same contractual arrangements?
  - Yes
  - No

- Have you used the possibility to change your contract into the part-time one?
  - Yes
  - No

- Have you since changed it back to full-time?
  - Yes
  - No

- If you have not changed the contract, can you specify the reason?
  - Part-time work is more compatible with my contractual arrangements
  - Part-time work is more compatible with my actual family needs
  - The employer did not agree to change my contract to a full-time one
  - Another flexible contract arrangement was adopted

- Upon your return to the workplace how do you see your working condition in comparison with the situation before the first oncological diagnosis?

  - Hours
    Much better
    Sufficiently better
    The same as before
    Just a little bit better
    Worsened

  - Current occupational position
    Much better
    Sufficiently better
    The same as before
    Just a little bit better
    Worsened

  - Career prospects
    Much better
    Sufficiently better
    The same as before
    Just a little bit better
    Worsened

  - Relations with colleagues
    Much better
    Sufficiently better
    The same as before
    Just a little bit better
    Worsened

  - Relations with management
    Much better
    Sufficiently better
    The same as before
    Just a little bit better
    Worsened

  - Remuneration
    Much better
    Sufficiently better
    The same as before
    Just a little bit better
    Worsened

  - Job satisfaction (excluding remuneration)
    Much better
    Sufficiently better
    The same as before
    Just a little bit better
    Worsened

  - Job satisfaction (including remuneration)
    Much better
    Sufficiently better
    The same as before
    Just a little bit better
    Worsened

- How do you see the initiative to promote protection and opportunities for workers with oncological conditions and/or his/her family members?
  - Indispensable
  - Necessary
  - Useful
  - Useless
  - Not important

- From your point of view, what are the priorities?
  - Prevention
  - Hours
  - Waiting period (extension of the waiting period)
  - Subtraction from the waiting period of the days of absence for treatment in the hospital
  - Paid waiting period
  - Contractual flexibility
  - Support from family members
  - Social security and contributions situation
  - Agreements enabling the worker to plan ahead
  - Other (specify)

Comments
Your comment will be entirely written.

To know more

To know more visit the website: *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro* (only in italian).

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