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If you want to know more visit the website of the School for Advanced Studies in Industrial and Labour Relations of Adapt – Marco Biagi Foundation
www.fmb.unimore.it

The rights of the workers with oncological conditions

edited by Alessandra Servidori and Michele Tiraboschi

Healthcare rights: Italy plays a leading role

Michele Tiraboschi

In the course of his/her lifetime, one European citizen in three is expected to get cancer, and one in four to die from a disease of this type.
These alarming figures were brought to the attention of the European Parliament, which on 10 April 2008 passed a key resolution in support of the battle against this disease, urging the European Union to take action.
Certain aspects of the resolution of the European Parliament were particularly innovative and noteworthy. Cancer-related issues are a matter not only for healthcare professionals, but also to be shared and discussed among the wider public. And that was precisely the aim of the European Parliament, in an attempt to deal with cancer-related issues by means of a non-specialist approach, in order to facilitate a greater understanding on the part of the

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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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general public.
The resolution considers the problem in general terms, highlighting the link between different aspects of the disease: the clinical, psychological and diagnostic aspects, as well as the social and economic factors. Oncological diseases are caused by many factors. This is why an effective programme of prevention should be promoted taking into account all the causes of oncological pathologies, instead of focusing only on one aspect.
One of the most interesting aspects of the Resolution is the fact that the European Commission is given the task, by means of legislative measures and effective initiatives, to collaborate with as many economic and social actors as possible, especially industrial relations actors. Thanks to this kind of cooperation, cancer prevention can be strengthened, 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 to draft a charter to safeguard workers with cancer and chronic illnesses. Under this charter, employers would have to allow patients to keep their jobs while they are receiving treatment, and to facilitate also their reintegration.
From this point of view, Italy is playing a leading role. It may be said that Italy provides one of the most innovative legislative frameworks in Europe and worldwide. In general, most countries simply make provision for the temporary interruption of the employment relationship for a reasonable period (known as grace period), considering it to be like any other legitimate reason for absence from work. However, in Italy the Biagi Act, provides specific regulation for workers affected by oncological pathologies.
Article 46 of Legislative Decree No. 276/2003 (that is not very well known, and for this reason is worth mentioning) does not simply recognize the right to interrupt the employment relationship (with or without pay). The most significant aspect is the effort to reconcile the sick worker's needs with employment, safeguarding the right to work and to health care, both mentioned in the Constitution. To make this possible, and to respond to the needs of the enterprise and worker's expectations, working hours have to be reorganized in a more flexible and effective way, especially if we consider that the duration of the grace period might be variable and irregular. This is the reason why the Biagi Act provides that all workers with oncological conditions, especially those whose working capacity is affected by life-saving treatment, have the right to modify their employment contract, moving from a full-time contract to a part-time one. This is a right of the individual worker, that has been extended also to public employees, in order to safeguard the right to health care of sick workers, their occupational lives and social life. In addition, the law also provides the opportunity for workers to return to full-time working, as and when their health will allow it.
Since the Biagi Act came into force, it has become clear that it is important to put this provision into practice. However, only a few collective agreements, such as the one for the tourist industry, have implemented these provisions. For this reason, the Code of Good Practice and the Charter of Rights for workers with oncological conditions, the importance of which was highlighted by the European Parliament, are of great importance.
In this connection, Italy could play a leading role in Europe: Adapt, the Italian Cancer League – LILT, and Europa Donna have been entrusted with a pilot scheme promoted by the Directorate-General for Employment of the European Commission, and Italy has promoted a manifesto of the rights of the sick worker. With the support of the European Parliament, this manifesto might help us to reflect on 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

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

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9,00 – 12,00

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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 information gap

Rosa Rubino and Isabella Spanò

Information on the protection of the workers with oncological conditions is still inadequate in spite of the significant innovations brought in 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 an awareness of the measures available to strike a balance between the needs of workers and 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 rights 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 enterprise that, however, should not undermine "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 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 the following articles: Article 26 of the Act No. 118/1971, Article 10 of Legislative Decree No. 509/1988 and Act No. 104/1992 (the framework law on assistance, social integration and the rights of people with disabilities). On the basis of 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 public or private employees with a serious disability who "need permanent, continuous and global assistance in the individual or relational sphere" the right to choose the work place nearest to their home 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 workers with cancer – who provide continuous assistance (Article 33 (5)). The framework law gives public employees priority in the choice of the place of work in the case of transfer in cases in which these employees have a disability greater than two-thirds (Article 21).
The disability must be duly certified by a medical panel (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 of up to two hours a day or three days a month (Article 33 (6)). In the case of part-time work this 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*). A family member up to the third-degree of kinship who is a salaried employee may also benefit from paid leave of absence of up to three days a month if the disabled person is not in hospital on a full-time basis (Article 33 (3)).

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

Article 19, Act No. 53/2000, that amended Article 33, Act No. 104, provided for intermittent use of daily or monthly leave that was not clear in the original wording of the framework act but was 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. In addition, the requirement of cohabitation with a disabled person in cases in which a family member asks for the work place closest to home or does not wish to be transferred has been abolished. The term "cohabitant" for 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 practical terms no longer has any meaning as Article 20, Act No. 53/2000 states: "the provisions of the Article 33 can be applied also to parents and family members of 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, 18 February 2008, of the Ministry of Public Administration is-

sued on the basis of the Court of Cassation judgment, employment section, No. 8436/2003 and Decision No. 13481 of 20 July 2004 (both can be found at *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*).

Act No. 53/2000 recognises the right to paid leave of absence of three working days a year in the case of certified serious disability of a spouse, ascendants up to the second degree of kinship, or an unmarried cohabitant on condition that stable cohabitation is proven. It should be noted that in relation to the remuneration of workers with cancer and absent for 30 days a year for medical treatment, there is a Note circulated by the Ministry of Labour of 5 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 judgments 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 related right to pay. There should be no right to social security benefit by analogy with the INPS provisions with regard to solar therapy, treatment, climatic treatment, psammotherapy and so on. Article 4 (2) of Act No. 53/2000 establishes the right to leave of absence for up to two years for employees in the public or private sector if requested for serious and documented family reasons among which there are pathologies identified pursuant to section four of the same Act, i.e. by means of the Decree of the Ministry of Welfare.

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

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 keep his/her job 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 a periodic basis. The procedural issues regarding the application for, granting or refusal to grant leave are regulated by collective agreements "ensuring dialogue between employee and employer in order to strike a balance between the interests of both parties".

Act No. 53/2000 initially stated that extraordinary leave was not paid at all, 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 a seriously disabled person pursuant to Act No. 104/1992 has the right for the entire 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 judgment No. 158, 18 April 2007, as clarified by INPS Circular No. 112/2007 (see *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*), a principle was established 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, periods of absence and annual leave pursuant to Article 33 of Act No. 138/2001 (see *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*).

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

In 2003 Article 3 (106), Act No. 350/2003, repealed the clause in Article 42, Legislative Decree No. 151/2001, requiring at least five years of serious certified disability for the granting of paid leave pursuant to Article 4 (2) of Act No. 53/2000 allowing access to the benefits to a number of family members of the person with cancer (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, to 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 most favourable provisions for the employee are to be adopted. 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, 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 an individual right aimed at protecting health, occupational status and labour market participation as an important instrument of social integration. For these reasons, as specified in the above-mentioned circular, and 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 the enterprise needs with regard to reduced working hours and work organization, always considering the needs of the workers as primary.
Another crucial innovation is contained in Act No. 4/2006. Regarding the medical assessment of persons with oncological conditions in the acute phase, in order to ensure immediate access to specific benefits, this measure established that the medical commission must issue an opinion within 15 days of the request and that the provision shall take 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 stated that the norm is applicable in the private and public-sector, and introduced an important principle: the recognition of priority for changing the employment contract from full-time to part-time also in cases where the person with an oncological condition is the spouse, children or parents of the employee.
Another innovative principle introduced by Act No. 247/2007 is the 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.

> **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**

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 amount 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 time 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 in the case of other conditions.
As a result, at least in some sectors (see *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*), collective bargaining makes special provisions relating to the maximum waiting time in the case of major illness requiring life-saving and other similar treatment (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 16 February 1999; the education sector 26 May 1999; local authorities 14 September 2000; health-care workers 20 September 2001; non-economic public bodies 14 February 2001; Cassa Depositi e Prestiti 2 July 2002; tax agencies 2h May 2004).
A number of national collective agreements have extended the maximum waiting time. For example the national agreement of 18 July 2008 regulating relations between the enterprises and insurance companies extends the maximum waiting time for employees with serious oncological conditions by three months (for employees with less than 10 years' seniority) and by six (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 agreements can make provision for an employee to apply for 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, confirming the right of the employee on sick leave to benefit from extended waiting time.
As a result there are many provisions, although of a fragmentary nature, that families with a family member with cancer can benefit from. 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 workers (both women and men) with oncological diseases

Alessandra Servidori

In addition to medical care, people with cancer need protection, from a legal and financial point of view. This is why the legal system has to provide effective measures, in order to allow these individuals to live with dignity, despite their condition. In addition, the sick person (whether considered sick or disabled) has to become acquainted with the rights granted by the law, in order to facilitate their application. It is also important to develop new programmes and laws, to satisfy the needs of people with a serious medical condition, especially those with neoplasia. The only way to do this is by putting pressure on the Government and Parliament, and working together with associations, because this synergy will help both sick people and society to deal with issues relating to permanent or temporary disabilities. In addition, measures such as the prompt assignment of benefits, the entitlement to sick leave, as well as community awareness of the issue, help sick people to overcome difficulties in everyday life. Such measures can be effective only if supported by active co-operation between institutional actors and the 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 can play a key role, because they have the task of implementing labour policies and developing local vocational training programmes, that are fundamental to achieving a high quality integration among health services.

We therefore need to emphasise the value of collective bargaining and agreements, concluded between the social partners, as a way to encourage application protocols. In this way, we can promote the inclusion of weaker individuals, as well as placing greater value on the role of workers with a medical condition.

In this connection, strong links between private and public services, and the voluntary 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 security, requires substantial financial resources. There is also a need to consider all instruments and policies to encourage the social partners and joint bodies to contribute to 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 forced to leave their jobs (by means of "voluntary" or involuntary dismissal) after having been diagnosed with a tumour. Employment is 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 surgery, subsequent treatment (radiotherapy and chemotherapy), or depression. Some of the most serious consequences of the sick worker's absence from work and subsequent reintegration include the following: the grace period may not cover the entire period of absence; the sick worker may be assigned a new task, due to his or her condition; the employer may 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. Clearly, the *Constitution* is one of the main instruments for safeguarding the right to work and health care. Some of the key Constitutional provisions are as follows: Italy is a democratic Republic, founded on labour (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 Italy (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, the Italian 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 of the Civil Code 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 maintaining the employment position (the "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 rules regulating individual redun-

dancy. 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 of part-time employment. For the first time in Italy, workers with cancer have the right to modify their employment contract, changing from a full-time contract to a part-time one. In fact, Article 12-*bis*, Legislative Decree No. 61/2000, gives private-sector workers with an oncological condition (that affect their capacity to work, also because of life-saving treatment) the opportunity to change their employment relationship. Recently, Article 44 of Act No. 274/2007 granted this right to sick workers in the public sector (they had been excluded because the negotiating body, ARAN, did not support the Biagi Act). In both cases (public and private sector), however, the worker has the right to return to full-time employment. This provision is aimed at reconciling working activity with the needs of the sick worker. Wherever possible, the worker can ask for a new assignment, more compatible with his or her health conditions and reduced working capacity. In this regard, it is important to point out that the choice of a new assignment is not 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 the terms of collective agreement applied by the employer. Pursuant to Act No. 104/1992 (Article 33), when a local health authority certifies a disability or a poor state of health, due to oncological conditions, the worker is entitled to paid sick leave. As an alternative, workers are entitled to a continuous or intermittent leave of two hours a day, or three days a month. They also have the right to choose the workplace that is closest to their home, and cannot be transferred without their consent. In addition, they can take up to 30 days' paid sick leave for medical treatment every year (Article 10, Legislative Decree No. 509/1988), if the degree of 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 to verify the existence of these provisions in the collective agreement applied by the employer. Collective bargaining is a useful instrument to prevent the dismissal of workers, worker's dismissal, due to the end of the grace period, and to facilitate their reinstatement. In fact it introduces several facilities, such as new working time or an assignment to more suitable tasks, to allow the sick worker to undergo medical treatment.

The following provisions of national collective bargaining are significant in this respect: the CCNL (National Collective Agreement) "that regulates relations between insurance undertakings, and administrative, productive and production-sector" provides that grace period has to be extended up to three months for workers with a length of service up to 10 years (such period has to be extended up to six months for those with longer seniority) "in the case of serious oncological pathologies, disabling ictus or multiple sclerosis, vital organ transplantation and full-blown AIDS". In the collective agreement for the Rail industry, the grace period for such pathologies is tripled (12 months for sick leave, Article 26 (6), and 30 months for oncological diseases, Article 26 (8)). In the Electricians' Collective Agreement, there has been a considerable extension of the grace period, and hospitalization is not included, facilitating the maintenance of employment. In many public-sector agreements, sick leave for day hospital and life-saving treatment, such as chemotherapy and dialysis, are not included in the grace period (Public Health, Revenue Authorities, Non-economic Public Bodies Collective Agreement).

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 Collective Agreement). 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 Collective Agreement. At the end of the grace period, some agreements give the worker who is still unable to work the opportunity to request further leave, in order to avoid dismissal. If a (certified) medical condition still persists, some collective agreements (Food-producing Cooperatives Collective Agreement, Food Industry Collective Agreement) provide that the worker can request sick leave up to eight 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 ascertained, the worker can be assigned to more suitable tasks of the same category, after the grace period. If this is not possible (due to the consequences of the medical condition), the worker may be assigned with his/her consent, to other tasks of a lower category. In the case of Paper Manufacturers Collective Agreement (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 reduced in proportion to the 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 the 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. In addition to work, women workers in the age groups with the highest risk of breast cancer 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 cancer 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 reintegration into the labour market;
- to experiment with incentives for enterprises that include protection measures in the employment contract, and additional leave for medical treatment for 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 (for instance by adopting more flexible working time), as a model;
- to increase the number of part-time workers, access-to-work contracts, and more flexible contracts, pursuant to Legislative Decree No. 276/2003 and Act No. 274/2007, in order to reconcile working time, personal life and medical treatment, and providing a specific 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 labour 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 studies); communicating the measures used to support workers with a medical condition;
- the adoption of a Code of Ethics, containing company strategy, activity, behaviour and problem-solving capacity, by companies adopting 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.

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, that have to recognize and safeguard their social rights. A practical example could be the granting of supplementary sick benefit, provided by local health authorities.

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

The support of the relative who takes care of the worker with a medical condition should have a legal and economic recognition, because in some cases this support 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*: relatives should be granted recognition as "carers".

Quality of life. The quality of life of the sick individual and thus providing assistance 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 labour law, and who taught us that "Today, it is important to analyse the employment conditions of workers (both men and women), their protection, and labour market, especially in Italy, in order to improve them from a juridical point of view".

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The 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 the fight against cancer a European priority, to be pursued by means of 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 programme 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 were discussed during the conference *The Burden of Cancer – How Can it be Reduced?*, organized in Brdo, on 7-8 February 2008, addressing the topics of prevention, screening, cure and research. On that occasion, 250 participants exchanged ideas and good practices in order to increase the chances of defeating cancer and reducing the disparities that, also from this point of view, divide Member States. Moreover, the Slovenian Presidency has published a book, *Responding to the Challenge of Cancer in Europe*, co-funded by the European Union, which offers an overview of progress made against cancer and ongoing challenges.

> **... 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**

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

The Resolution seems to be a key document, capable of leading to a real qualitative leap in the 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 to reduce the significant increase in the burden of cancer, including provision of adequate financial support for coordinated actions and appropriate capacity building.

Pending publication of 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 of 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, the Parliament stresses the importance of promoting awareness, information and education campaigns on prevention and screening. At the same time, 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 calls on Governments 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, a key issue, in our opinion, is the invitation 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 occupational 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. The Adapt project, by anticipating the Parliament, is aimed 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 of the right to part-time work for employees with an oncological condition, as provided by the Biagi Act.

In conclusion, there is a close connection 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 company level; social dialogue can play a key-role in this connection and it should be promoted and encouraged.

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Labour law for the people: how to protect employees suffering from oncological conditions and breast cancer

Michele Tiraboschi

Oncological conditions and breast cancer: implications in the world of work

In Europe, breast cancer accounts for 22% of malignant tumours among women (for an overall analysis of cancer trends in Italy, reference may be made 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 cancer is the most frequent among women, affecting 27% of these who suffer from malignant cancer. In Italy, we have 30,000 cases, with a rate of mortality of approximately 1 in 3. In the course of her lifetime, one woman out of 10 suffers from breast tumour. Although these data are cause for grave concern, 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 caner. For an overall analysis of cancer mortality rates in Europe, see 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 serious issue that needs to be considered, as well as its implications for the 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 cancer, especially breast cancer, there are two factors that help to treat the disease. Undoubtedly, an early diagnosis is fundamental to make possible effective and immediate treatment. But it is also important to have a positive state of mind, allowing patients to deal with treatment and to reduce the effects on their life, especially working life (in this regard, see 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 29 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 site of engagement. For this reason, a new policy on *Corporate Social Responsibility* (CSR) has developed recently, mainly with the aim of setting up a communication network in connection with the disease (in this connection, see *Green Paper – Promoting a European Framework for Corporate Social Responsibility,* presented by the Commission on 17 February 2001; the up-to-date *ABC of the main instruments of Corporate Social Responsibility*, edited by the European Commission in 2004; see also *Final report & recommendations* by the *European Multistakeholder Forum on CSR*, held in Brussels on 29 June 2004. As for the Italian situation on Corporate Social Responsibility, see *Il Contributo italiano alla campagna di diffusione della CSR in Europa*, published by the Ministry of Labour and Social Policy).

Despite a number of awareness-raising campaigns promoting preventive screening, the initiatives that give female workers the opportunity to make use of preventive health services are still very few (this situation is partially due to the Italian system of production, mainly characterised by small and medium-size enterprises that are reluctant to meet medical costs. In order to understand CSR good practices, reference may be made to *Responsabilità sociale delle imprese: esempi di buone pratiche italiane*, published 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 conditions are often affected, clashing with existing laws and basic human rights (see the case reported by *La Repubblica* of a Chieti enterprise and its notice board, containing a list of workers absent for oncological conditions. Cfr. *"Gogna" in azienda per malati di tumore*, in *La Repubblica*, 10 September 2005).

It is also important to point out that, in the employment relationship, there are additional issues relating specifically to breast cancer treatment. In this connection, enterprises have difficulties in meeting sick worker's needs. In most cases, they are not prepared to deal with people with cancer. In addition to problems in reconciling productive needs and medical appointments, there is also a need to consider issues related to vocational retraining and the reinstatement of women workers (this is mainly due a lack of information concerning the disease, such as the legal means used to support women workers and their relations with the employer in this difficult situation).

Once they win their battle against cancer, they also have to face prejudice, distrust and organizational/management issues, due to the rigidity of the enterprise context.

In this connection, the enterprise has to provide a lead, promoting the public interest in order to facilitate social development and cohesion, and also by adopting a company policy to deal with all the issues related to the health problems of women workers.

In many cases the fact that a woman worker has been diagnosed with a serious medical condition is considered by the company as an immediate loss. To the company, she is useless and unable to produce. As a result, she is left to her own destiny, and sometimes she is even forced to quit.

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 worker finds out that she has breast cancer, she has to face all issues directly related to the disease, as well as those linked to her current employment position. The surgical operations and life-saving treatments that are necessary to combat the disease require a considerable amount of time and periodic absences for sickness, even after the woman has returned to work. This situation calls for suitable means to strike a balance between medical needs and working time.
In order to protect the right to health care (see Articles 32 and 30 of Constitution) and the rights of women in the labour market, and in order to adapt their needs to those of the employer (Article 41 of Constitutional Charter), the law provides that during the grace period, the employer cannot dismiss the sick worker. As a result, during the grace period, a worker with cancer will continue to receive remuneration, according to legal provisions, collecting bargaining, and the rights guaranteed to the worker on sick leave. However, at the end of this period, and in any case in accordance with the rules on dismissal, she can be dismissed.
This is when women workers with cancer are particularly in need of protection, because they may need a grace period longer than the one provided in collective agreements. In this regard, a leading role is played by collective bargaining, that often does not provide appropriate provisions for the grace period for those with oncological conditions.
Collective bargaining has to specify the duration of the grace period, which depends on the worker's employment grade and length of service. In only a few cases, employer and worker representatives pay special attention to women workers with cancer. Since this condition, especially in the initial stages, requires specific treatment and flexibility of the working time, some national collective bargaining agreements have made specific provisions for the grace period. This shows how collective bargaining could take responsibility for the issue, through suitable rules and provisions.

... 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 the event of a serious disease requiring a life-saving treatment, some public service collective agreements, for instance, provide for hospitalisation, day-hospital, and absence for treatment to be remunerated and not to considered as sick leave (in this regard, see Local Authority Collective Agreement 14 September 2000, the School Collective Agreement 26 May 1999, the Cassa Depositi e Prestiti Collective Agreement 2 July 2002, the Ministeriral Collective Agreement 16 February 1999, at *www.fmb.unimore.it*, Indice A-Z, under the heading *Patologie oncologiche e lavoro*).
In addition, the legislator also provides that the grace period can be extended, by granting special leave that can be added to the existing period provided by national collective agreements. In this case, Act No. 104/1992 provides that the women workers to take leave, in order to undergo necessary treatment. This right is also granted to the sick person's relative, who can look after her during treatment.
A woman worker with cancer is granted two different types of benefits: some of them are provided in case of permanent disability, others in the case of "disability of a grave nature".
An application for disability benefits can be submitted by all women who have undergone a quadrantectomy, a mastectomy or a simple tumorectomy, and this recognition is necessary to obtain social benefits and working facilities (for further information about how to evaluate disability and all facilities linked to its recognition, see the interview with E. Quaglia, *Invalidità civile e tumore del seno*, in *Europa Donna Informa*, 2002).
In case of the recognition of "disability of a grave nature" Article 33, Act No. 104/1992 provides that the worker is entitled to two hours' leave a day, or three days' leave a month.
The law grants the worker the right to choose the place of work that is closer to her home, wherever possible; it also establishes that the employer must not transfer her to another place of work without her consent.
Finally, in cases in which the worker has a percentage of invalidity higher than 50%, she also has the right to take up to 30 days' paid leave a year, not necessarily on a continuous basis, for medical treatment relating to her condition.
The regulation was supplemented by Article 3-*bis* added to Article 6 of Legislative Decree No. 4/2006 and the conversion No. 80 of 9 March 2006. Pursuant to this provision, a medical panel has to assess the oncological patient's temporary disability in the acute stage within 15 days of the submission of the application. Moreover, the result of the assessment enables the worker to receive benefits immediately.
With reference to the 30 days' leave granted for medical treatment, and its remuneration and welfare, the Ministry of Labour issued an opinion on 5 December 2006 in reply to a request for clarification on the part of the General Confederation of Italian Crafts of Prato. Referring to the consolidated position of the Court of Cassation, the Ministry established that absence due to the taking of leave is indicative of the presence of a medical condition referred to in Article 2110 Civil Code, and therefore it must be calculated as paid leave. On the other hand, social security benefits are not paid, because they are subject to the provisions of the National Institute of Social Insurance relating to solar, climatic, and psammo-therapeutic treatments.

Part-time employment: the right to change the employment relationship introduced by Biagi Act in favour of workers with oncological conditions

The need to conciliate medical treatment and working time, to allow the female worker the opportunity to protect her right to work and to receive medical treatment, cannot be dealt with only by the protection provided in case of sick leave. This protection is also necessary in the initial stages of the disease, and immediately after the return to work.
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 respond to the needs of both parties.

In order to facilitate agreement, a step forward was taken with the changes provided in the regulation of part-time work, through Article 46 of Legislative Decree No. 276/2003 implementing the Biagi Act on labour market reform.

It is important to remember that part-time work is not particularly widespread in Italy, whereas it is very frequent in the other Member States of the European Union (for detailed data relating to part-time work in Europe, see European Commission, *Employment in Europe 2002*, DG Employment and Social Affaire. See also 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). The flexible organization of working time, in terms of duration and adaptability, has facilitated the social inclusion of women (for an in-depth study of part-time work, and the way it has been modified by the Biagi Act, see 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, Milan, 2003, 179).

With reference in particular to workers with breast cancer, and to consider the main purposes of the regulatory scheme, Article 46 (1) (*t*) of the Legislative Decree No. 276/2003 allows workers with oncological conditions, whose working capacity is limited especially due to the effects of life-saving treatment, the option to move from full-time to part-time employment (Article 46 (1) (*t*) of Legislative Decree n 276/2003 provides supplementary provisions in relation to Article 12-*bis*, Legislative Decree No. 61/2000).

For women with breast cancer, the value of the part-time work contract is that it makes it possible to combine industrial competitiveness and worker's protection. The Ministry of Labour and Social Policy brought attention to this specific purpose in Circular no. 9, 8 March 2004.

The entry into force of Legislative Decree n 276/2003 was generally welcomed by the social partners, who have included it in many recently renewed collective agreements (mention should be made, by way of example, of the TV and Radio Corporate Workers Collective Agreement, 25 April 2005. Article 45 of this agreement provides the right to change over from full-time to part-time employment; the Film Distribution Cooperative Collective Agreement of 2 July 2004; the General Confederation of Italian Commerce and Tourism Collective Agreement of 2 July 2004. These agreements are available at *www.fmb.unimore.it*, A-Z Index, *Patologie oncologiche e lavoro*).

The right of the worker to change over from full-time to part-time is an individual right, and it is aimed at safeguarding the worker's health and occupation. For this reason, the law considers it to be a right that should always be granted.

The parties have to agree on the reduced working hours, and the distribution of hours over a certain number of days. Considering the rationale of the law and the individual nature of the right, however, it can be assumed that working time will be organized according to the worker's specific individual needs.

Article 46 of Legislative Decree No. 276/2003 also lays down a specific condition governing the enjoyment of the right: the medical panel of the local health authority (ASL) has to certify the worker's state of health.

Furthermore, in order to safeguard the right to work, the law provides that, at the request of the worker, she has the right to change back from part-time to a full-time working. Some commentators have considered the rule as unconstitutional; its selective criteria and its scope only in relation to people affected by oncological conditions would appear to violate the principle of equal treatment, because it could not be applied to people affected by other pathologies, who need flexible working hours for medical treatment. In this connection, see S. Scarponi, *Il lavoro a tempo parziale*, Working Paper C.S.D.L.E. "M. D'Antona", 2004, n. 31, and the references therein.

Paragraph 44, Act No. 247, 24 December 2007 ("*Pacchetto Welfare*") incorporates Article 46 of Legislative Decree No. 276/2003. The fact the principle contained in the Biagi Act has been incorporated entirely shows the effectiveness of this rule. However, Act No. 247/2007 grants the rights already granted to women workers also to their relatives – partners, parents, children – as well as to their co-habitants, if the sick worker has a permanent and total incapacity for work, that has been judged "serious" pursuant to Act No. 104/1992 and if the worker has a total permanent invalidity. This extension is, however, limited in scope, because in this case the change from full-time to part-time work is no longer a right, but an option.

> **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 other provision contained in Act No. 247/2007 is important, yet rather enigmatic in its wording: a worker (male or female) who has changed to a part-time contract "has priority for full-time employment in order to perform the same duties as those relating to the part-time contract".

Protection against mobbing and harassment

In addition to the issues relating to working time management, the worker with breast cancer also has to face other difficulties, linked to her relationship with her employer and colleagues.

In addition to a widespread lack of information and awareness of the issue, in many cases the worker is subject to various forms of discrimination, which in some cases can be considered as mobbing.

What is known as "strategic mobbing" is often a direct consequence of the news of the disease. It is aimed at causing worker's dismissal, because she is considered useless by the enterprise, that is concerned about costs (in this regard, see 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*, including the bibliographical references).

In some cases the worker is considered to be unproductive, and pres-

sure is brought to bear to encourage her to quit. At present, the protection of workers subject to harassment of this kind is governed by a variety of rules (concerning transfers, discrimination, equality of treatment, etc.) that are mostly applied in the workplace, provided by Article 2087 Civil Code, which establishes that employer is required "*to protect the workers' physical and moral wellbeing*".

Considering the wide range of rules regulating this case and the protection laid down in Article 2087, a woman worker subjected to harassment of this kind will have difficulty in the case of litigation. In taking legal action she would have to demonstrate her employer and colleagues' poor behaviour (A. Vallebona, *L'onere della prova nel diritto del lavoro*, Cedam, Padova, 1988, 129), as well as providing evidence of the damage suffered.

In addition, even if the worker succeeds in making her case, she will be entitled to compensation only if the damage suffered is a proven consequence of harassment, as a causal connection. Making a case is arduous, because the action of misfeasance, which is typical of harassment, is valid only if it is of an objective nature, and not based on the worker's specific psychological state. Workers with breast cancer are clearly in a vulnerable psychological condition.

In order to provide more effective protection for women workers subject to psychological stress in the workplace, a proposal for a Consolidating Act on mobbing, presented to the Senate on 25 July 2005, was recently introduced (the proposal submitted to the Senate can be consulted in *Boll. Adapt*, 2005, no. 34; The Consolidating Act can be consulted in *Boll. Adapt*, 2005, no. 29). The new Consolidating Act makes provision for a more immediate see Article 5 of the proposal for a Consolidating Act on mobbing).

In this way, greater protection against misbehaviour towards sick women workers can be achieved (for more details and for a critical examination of the opportunities contained in the proposal for a Consolidating Act, see A. Vallebona, *Mobbing senza veli*, cit., 6).

Although the proposed legislation aims to provide more protection for mobbed workers, it does not seem to provide a definite response to all difficulties linked to this issue and to strategic mobbing towards women workers with breast cancer.

Rather, the setting up of a committee consisting of company and bargaining agency representatives, one of the changes provided by the proposed Consolidating Act, seems to be particularly useful for monitoring this issue. Preventive measures aimed at avoiding cases of moral coercion are extremely effective.

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

The harassment or mobbing of female workers with breast cancer is mainly due to a general lack of awareness of the disease (see G. Fiorentini, *La formazione di nuovi manager dell'impresa sociale*, which was part of the meeting on *La comunicazione sulla salute femminile. Un'opportunità di impegno sociale per le aziende*, that took place in Milan on 29 October 2004). Even in the case of prejudice, then, prevention is the best cure. But prevention can only be ensured by effective corporate social responsibility, resulting from information and education activities. This is the only way to develop a corporate culture, useful to help and to protect people with oncological conditions in general and breast cancer in particular.

The importance of information and education

Education and information can play a leading role not only in cancer prevention, but also when the worker returns to work following treatment. For this reason it is important to draw attention to breast-cancer issues. In order to do this, awareness-raising initiatives should concern both employers and women workers. These initiatives should be aimed at facilitating continuity of employment for the worker, especially through an understanding of flexible working opportunities. Identifying the means to balance company needs and thos of the worker and an in depth-knowledge of cancer issues might be useful to limit cases of strategic mobbing (see the previous paragraph, *Protections against mobbing and vexatious actions*). Employers need to consider workers with cancer as a human resource that can serve the company in the future.

Awareness-raising initiatives should help working women to become acquainted with legal provisions to balance working life and medical needs and to support their return to work. This is particularly useful for workers after a prolonged absence from work. By means of awareness-raising initiatives, we will be able to create an effective labour law for the workers with an oncological condition in general and breast cancer in particular.

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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 In the EU in recent years awareness of the needs of patients with oncological conditions has significantly increased. The Charter of Paris of 4 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. An initial Resolution of the European Parliament in 2003 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 are being called on 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.
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: 14 December 2007.
Deadline for completion: 5 November 2008.

OBJECTIVES

The project is intended to draft 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 by changing to reduced hours or flexible arrangements while safeguarding their career prospects. For this purpose the project aims to define innovative practices within the framework of corporate social responsibility, and models that could be adopted in the workplace also at an informal level 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 support 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 26 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 to launch the initiative on 19 March 2008 with the materials to be distributed and registration of the participants.

• **Analysis of statistical data** to consider the degree of disability and reduced working capacity of workers with cancer in Italy and other European Countries.

• **Drafting of the questionnaire in the countries involved** in the survey: analysis of the social implications and individual careers, analysis of the existing micro data, qualitative analysis of the sample of women employees.
- Definition of the sample for 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**: Austria, Denmark, Finland, France, Germany, Hungary, Italy, Lithuania, the Netherlands, Spain, Sweden and the United Kingdom.
- By September 2008 the researchers will provide the updated figures to submit to the international conference by the middle of October 2008.

• **Creation of the dedicated area of the Adapt portal** for the publication of research relating to the project and its implementation.
This area is available at:

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

• **Model 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 intent 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 dealing with the scientific, economic and administrative organisation in relation to the tender assigned according to contract VS/2007/0567.
Analysis of the general context of work in the initial phase and drafting of outline: dissemination of the project to the public with the 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

• *19 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 that 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 good practices.
See on page. 3 of this issue.

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 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 revising of the documentation prepared in the earlier phases and the practices agreed on, the publication of this documentation, and its dissemination as a contribution to the documentation of

the European Gender Institute.
Period: 1 July 2008-30 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.

HOW TO CONTACT US TO COLLABORATE ON THE PROJECT

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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 103 provincial offices that for a long time have been providing various forms of home-based treatment free of charge. These services aim to respond to the social, healthcare and economic needs of individuals with an oncological condition 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 work with the support of LILT;
• activating new rehabilitation services or services within existing health centres.
The provincial offices promote the physical and psychological rehabilitation of 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 to promote the 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 for promoting 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 identify 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 (22-23 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 be given answers to their questions and doubts by the medical practitioners and healthcare workers responsible for communicating with the patient, while adapting the information to their cultural and emotional needs.

> **... 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**

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

These are ten points that cannot and should not remain only words but which LILT intends to put into practice. For this purpose LILT has reinforced its efforts first of all by improving our national helpline SOS LILT 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 treatment from being suspended in a limbo where nobody takes care of them and they suffer from depression, it is necessary to ensure the return of patients to employment and the social and family context. This safeguard should be offered 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 at least 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 implement 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 in a sample of 544 individuals with cancer, only 35% are aware of the right to take time off for medical appointments without taking annual leave orspecial leave; 22% are aware of the right to change their employment contract for health reasons; 20% know about the right to take a longer unpaid grace period; 18% know about the possibility to change 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 work and a longer gracer period, and 12% make use of the right to medical treatment without taking annual leave. Clearly to achieve better results it is fundamental to have institutional support and policies aimed at raising 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 has drafted a Manifesto to promote the rights of people with oncological conditions in the world of work, and this is the starting point for future initiatives.

Patrizia Ravaioli
General director
Italian Cancer League – LILT

Il Sole 24 Ore, 7 July 2008

Safeguarding workers with cancer

The Manifesto for the human rights of workers with oncological conditions will be presented to President Giorgio Napolitano

Alessandra Servidori

The Manifesto for the human rights of the workers with cancer, drafted by Lilt (Italian Cancer League) in cooperation with Adapt, Marco Biagi Foundation and Europa Donna, is to be presented to President Giorgio Napolitano on 8 July. The document has been signed by all political parties, many citizens and by Pierluigi Visci, the editor of *QN* and *Il Resto del Carlino*. The Manifesto makes the case for legislative and collective bargaining provisions upholding the principle of the equality and the right to health care, and consists of seven points aimed at improving the legal protection for workers with cancer.

In particular, the Manifesto promotes employment conditions that allow the worker to receive treatment, by making arrangements for convenient working hours by modifying the business organisation. This is particularly important for those who need diagnostic tests and follow-up treatment. It also highlights the importance of new arrangements, more compatible with the worker's health status and reduced working activity, even by way of derogation from the existing law.

With regard to the grace period, in the case of oncological pathologies, disabling ictus or multiple sclerosis, vital organ transplantation and full-blown AIDS, the Manifesto proposes 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 reconsidered. Most collective agreements make provision for the worker to receive full pay for a certain period (this period may vary, depending on the length of service) after which it is usually reduced by 50%.

At the end of the grace period, it is fundamental to give the worker the opportunity to ask for further leave. Moreover, once the medical condition has been ascertained, the worker should be assigned to more suitable tasks in the same employment grade.

The Manifesto, supported by a large number of people living in Emilia-Romagna, is a source of pride due to the values it represents, and it can be signed 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]),
- having regard to Decision No 646/96/EC of the Euro-

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Occupation and oncological pathologies

Tindara Addabbo

According to the available data, in Italy 300,000 women discover that they have breast cancer at some stage in their life. However, thanks to research progress and early diagnosis, their life expectancy has increased in recent years (*www.europadonna-italia.it*). In addition, reintegration, in the sense of a return to work, can have a positive effect on the health of women who have recovered from breast cancer.

However, such reintegration is often impossible

"The woman suddenly turns into 'a patient' or 'former patient', that is a person who has had cancer and therefore… 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 is crushed. 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*)

The psychological consequences of unemployment, as analysed by Sen, are more serious in the case of a woman with an oncological condition who wants to return to work or continue in her previous 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 the socio-demographic data of women who have had breast cancer, it becomes clear that in many cases these women take care of the whole family, providing unpaid housework and services as carers.

Does the Government provide support for these families?

Is there any support for women who find themselves in this situation? Are there any instruments that help them to return to an active life?

Certain innovations were introduced by Legislative Decree no. 276/2003. Those affected by oncological conditions, for instance, have the chance to change from full-time to part-time work. In addition, they can also return at a later date to full-time employment. A recent inquiry, carried out by AstraRicerche for *Europa Donna*, shows that only 18% of women are acquainted with this new decree and its implementation has been limited (*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 the implementation of this legal provision? On the basis of their needs, do women change from full-time to part-time work?

If there are laws that facilitate employment stability for women and their return to work, what are the differences, in terms of working conditions, between employed women in different contexts (private, public-sector) and with different employment contracts? An inquiry into these questions might be useful to highlight the most frequent issues that women who want to continue in their old job (or find a new one) have to deal with, as well as the measures that are required to provide them with adequate support.

Tindara Addabbo
University of Modena and Reggio Emilia

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pean 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 Declaration on the need for a comprehensive strategy to control cancer calls on the Council and Commission to for-

mulate 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 interinstitutional 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 avail-

able 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.

Adapt Bulletin

The ADAPT Newsletter or Bollettino, produced in collaboration with the Marco Biagi Centre for International and Comparative Studies, consists of a series of electronic newsletters providing updated information on labour and industrial relations issues.

There are three types of Adapt newsletter:

Bollettino Ordinario

A weekly newsletter providing updated information on labour law and industrial relations. It includes extensive documentation from international, EU, national, regional and local sources, divided by section. Particular attention is paid to: certification, Italian case law, employment agencies, employment services, staff leasing, education, training, apprenticeships, research, higher education, mobility of labour, immigration, collective bargaining, health and safety, working hours, and undeclared labour. In addition it includes statistical surveys, economic notes and institutional reports, news about calls for tenders, competitions and awards, and the activities of Adapt/the Marco Biagi Centre for International and Comparative Studies.

Bollettino Speciale

Distributed since November 2005, this newsletter provides a forum for in-depth study on thematic issues relating to labour law, industrial relations, and training based on the same sections as the Bollettino Ordinario.

Dossier

This supplement includes comment, articles and research reports by Adapt researchers and by external experts on matters of particular national and international importance. Since September 2006 the Dossier has provided in-depth reports on topical issues relating to the labour market, the application of collective agreements, and recent legislative changes.

Registration for the Bollettino is free of charge. To subscribe to the Bollettino, send an email to the following address: csmb@unimore.it, specifying on the subject line: iscrizione bollettino. In order to unsubscribe, send another email specifying on the subject line: cancellazione.

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.
Please do not give any information that can identify you

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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