

# **The Employment Protection and Promotion of Disabled Workers: A Comparison of the UK and Italy**

**Universita degli Studi di Bergamo**

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**Alberto Lepore**

**Universita degli Studi Roma Tre**

**Rebecca Gumbrell-McCormick**

**Birkbeck, University of London**

# Introduction and Overview

- Disability still little studied by labour law and employment relations academics, compared to other equality strands
- Yet many countries report a high percentage of disabled people in the active labour force:
  - EU: 12.1% (basic activity difficulty); 17.4% (long-term health problem and/or basic activity difficulty)
  - UK: 11 million disabled people in total; 16% of those of working age. 46.3% of working-age disabled people are in employment compared to 76.4% of working-age non-disabled people.
  - Italy: 24.5 million million employed; only 16 % of working age disabled people (around 300,000); level of inactivity 81.2 % (Fonte ISTAT).
- The underemployment of disabled people prevents individuals from realising their potential, puts a strain on welfare budgets and impairs economic growth.

# Definitions of Disability in UK

- Legal definition: ‘... a physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on [an individual’s] ability to carry out normal daily activities.’ (Equality Act 2010)
- Move from ‘medical’ to ‘social’ definition of disability: how society ‘disables’ the person by creating obstacles to their participation in work or society
- Broader definition and scope than in many other countries; includes long-term diseases and conditions

# Definitions of Disability in Italy

Legal definition: Disability has a different meaning if compared with the past invalidity definition because it is aimed at focusing on the remaining ability of the job seeker and not on the lack of ability to perform the job.

But it is still a “medical definition” and very narrow, whereas in other European countries and at European level a social definition of disability prevails (see CGE, 18 December 2014, N. C- 354/13 “Kalstof case”): it is more efficient to remove obstacles in the workplace as well as in the society.

# Legal Provisions regarding Disability in UK

- Equality Act 2010 supersedes Disability Discrimination Act 1995 and revised Act 2005; broadens definition of disability (see above) and extends protection against discrimination; treatment of disabled workers can be 'more favourable' than to non-disabled workers
- 'Public sector duty' established in 2005; reinforced in 2010. Public sector bodies must actively promote employment of disabled workers
- 'Reasonable adjustment' provision introduced in 1995 reaffirmed in 2010: employer must adapt workplace, working hours and/or job content for disabled worker
- But main recourse for disabled worker against discrimination remains Employment Tribunals – difficult burden of proof

# Legal Provisions regarding Disability Italy

- Law 12 March 1999 (n. 68) on the placement of disabled job-seekers: it is based on the “quota” system for employment and based on the activity of the public provincial centres for employment
- Decree 9 July 2003 (n. 216) imposes on the employer duties not to discriminate against the disabled employee from the start until the end of the employment relationship.
- Law 1 March 2006 (n. 67) provides a judicial claim as an “interim relief” but only with a partial reversion of the burden of proof

# Regulation and Social Policy: from Theory to Practice in UK

- High level of legal protection contrasts with continued discrimination by employers and lower labour force participation rate; contradictions in government policy
- Protection of law is impaired by increased fee for claims to Employment Tribunals – up to £ 1200 (2013)
- Cuts in government 'Access to Work' scheme of partial funding for reasonable adjustments from 2011
- Conservative government's provisions on disability benefits, including more stringent tests for benefits and end to 'disability work allowance' deter disabled people from work

# Regulation and Social Policy: from Theory to Practice in Italy

- All protection is concentrated on recruitment by the “quota system” and less protection is accorded to disabled workers during the employment relationship; this quota are rarely applied esp. in private sector
- Principle of targeted placement but not well developed (art. 2 law n. 68/99).
- Stronger protection compared to other employees with dismissal (see art. 2, par. 4, of decree n. 23 /2015); but new article 2103 code civil enacted by the *Jobs Act* can jeopardise the acquired professional position of the disabled worker;
- No provisions in decree on active labour market policies (14 September 2015, n. 150) for disabled jobseekers and workers.



# Conclusion

- UK and Italy have interesting points of comparison and also contrast; both countries could do more and learn from each other
- In Italy principle of reasonable adjustments inspired by the UK law could be enacted
- In UK more attention could be paid to interaction of law and public policy
- Law in both countries should be more focused on the specific needs of disabled job-seekers
- Trade Unions and NGOs should do more (presence in workplaces, collective bargaining) esp. to include disabled people and represent their interests