

DISABILITY RIGHTS

Risks of Brexit

Introduction

Legislation against disability discrimination was adopted in the UK more than 20 years ago. Several years later EU law followed. The UK played a positive role in shaping it and disabled workers rights' improved further in the UK as a result.

EU improves disability rights

The UK's Disability Discrimination Act (DDA) 1995 was the product of campaigns by disabled people, including disabled trade unionists, to be seen not as recipients of charity but as full citizens with rights to equal treatment in the workplace and wider society. The DDA, especially its reasonable adjustment duty which requires businesses to remove barriers, was influential in shaping EU law. An EU Directive was adopted in 2000 that required legal rights for disabled workers across the EU.

The EU Directive led to improvements in the DDA. For example: it ended the exemption for small businesses; it closed the loophole that allowed an employer to justify direct discrimination because of disability; and it introduced specific rights to protect people from disability-related harassment.

The European Court of Justice has also taken a positive and wide-ranging approach to disability rights and the UK must follow its judgements. For example, in a British case brought by the mother of a disabled child, it recognised that full equality for disabled people cannot be achieved if the people who support them are penalised in the workplace (*Sharon Coleman v Attridge Law*). This led to a re-writing of UK law in the Equality Act 2010 (which replaced the DDA) to give carers protection from discrimination too.

As well as strengthening rights in the UK, EU law guarantees those rights for the future. The UK cannot go below the minimum set out in the Directive (although it could do more if it wished). EU law also requires effective sanctions against businesses that do not comply – which is why there is no cap on compensation for victims of disability discrimination.

EU LAW AND THE UNCRPD

In 2009, the EU ratified the UN Convention on the Rights of Persons with Disabilities. Since then the EU has taken action to comply with it, including publishing a draft EU Accessibility Act. This Act will create common accessibility requirements for manufacturers and service providers across the EU. The European Court of Justice has also referred to the UNCRPD in recent cases and its positive influence on EU law could grow (and subsequently UK law if we remain in the EU). In particular, the ECJ has recognised the social model approach of the UNCRPD. Under this approach, disability is not just determined by a medical report. The role of environmental and social barriers in creating disabilities is also recognised. The UK government has ratified the UNCRPD too. For example, the UN is currently investigating the impact of welfare reform on disabled people and whether it complies with the UNCRPD. However, it does not have the force that EU law has in the UK.

Risks of Brexit

When the coalition government launched its Red Tape Challenge website in 2010, the Equality Act was the first piece of legislation to feature on it and the government asked whether it should be scrapped. EU law helped defend most of the rights contained in the Act but the government found some things to repeal that were not required by EU law. For example, it got rid of the power of Employment Tribunals to make recommendations to prevent other workers suffering discrimination – in one case a tribunal had used this power to recommend managers attend mental health awareness training after it was found they had made fun of a worker's disability.

Conservative MPs and advisers have said on a number of occasions that they want to limit compensation in discrimination cases. And the limit on compensation for unfair dismissal, which is not protected in EU law, has recently been lowered. If that was applied to disability discrimination, it would mean victims being less likely to receive compensation that fully reflects the harm caused to them.

Judgements of the ECJ would have less influence in the UK, which would mean equality rights are likely to become more narrowly interpreted and affect fewer people and fewer types of discrimination. The UK would also have minimal influence and would not fully benefit from future developments at EU level like the draft EU Accessibility Act.

For more information go to www.tuc.org.uk/euref

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