

Briefing

TUC
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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.

The social model of disability

The TUC has adopted the social model of disability to explain the relation between disabled people and employment. This is the idea that workplaces - not workers - need to be adapted or "fixed." There are no jobs that cannot objectively be done by disabled people. Rather, employers should make reasonable adaptations to avoid disabling workers from particular jobs based on their impairments. A worker with an impairment becomes disabled only when hit by artificial societal barriers created by environment, people's attitudes, and workplaces.

EU and disability rights

EU law has improved disabled workers rights in the UK.

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 (Council Directive 2000/78/EC) was adopted in 2000 that required legal rights for disabled workers across the EU.

The EU Directive also led in turn 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 (whose judgements the UK must follow) has also taken a positive and wide-ranging approach to disability rights.

For example, in a British case brought by the mother of a disabled child, the ECJ recognised that full equality for disabled people cannot be achieved if the people who support disabled workers 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 Council Directive 2000/78/EC (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 (UNCRPD). Since then the EU has taken action to comply with the Convention, 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 (ECJ) 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.

The UK government has ratified the UNCRPD too and on August 2017, the UK's progress against the Convention was reviewed by a group of international experts in Geneva who made over 80 recommendations.

These included work specific recommendations calling for the government to: introduce and monitor an effective employment policy for disabled people; ensure that reasonable adjustments are made; ensure that the process of assessing the ability to work, including the Work Capability Assessment, takes into account the various barriers to work that disabled people face; and to ensure that the support disabled people need in order to work is not conditional upon disabled people seeking jobs.

However, UNCRPD does not have the force that EU law has in the UK. The UK's legislative framework protecting disabled workers from discrimination would be significantly strengthened if the UK agreed to keep pace with EU changes to employment law, equality law and health and safety standards which will be further enhanced as the EU and ECJ continue to be influenced and embed the UNCRPD.

European Health Insurance Card

Brexit also risks the loss of the European Health Insurance Card (EHIC) which entitles citizens of European Economic Area (EEA), i.e. EU countries, Iceland, Norway, Liechtenstein, and those from Switzerland, to state-provided medical treatment while visiting a qualifying country through a reciprocal agreement.

It covers pre-existing medical conditions and emergency care for people traveling for work or vacation. No one from a qualifying country is refused access to the provision and, as such, disabled workers are able to travel within the EEA and have their healthcare needs met with no, or minimal, additional costs for treatment.

Loss of this reciprocal arrangement will make traveling for work more costly for disabled people or those with pre-existing health conditions as these groups will need to purchase travel insurance that is often offered at higher rates, where it is offered at all.

A Brexit without ensuring the EHIC reciprocal agreement is maintained could reduce the ability of disabled people or those with pre-existing health conditions to travel, or significantly increase the risk of their travelling without insurance.

It is important this does not happen and disabled people and workers and those with pre-existing health conditions continue to access travel for work and vacation without additional and unequal barriers being set up as a result of a poor final deal or no deal.

Risks of Brexit

Brexit brings real risks to disabled workers' rights. Not only would it move the UK out of the jurisprudence of the ECJ, which interprets disability discrimination law in light of the UNCRPD but it also means that UK will not have to keep pace with any improvement secured at EU level going forward.

Additionally future governments would have unconstrained freedom in those areas currently governed by EU law relevant to employment enabling them to scrap existing protections at a future date. Or, where there is not a complete repeal of the rights, to bring in changes that undermine or narrow them.

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 by this government. When we left the EU, the government would also be able to apply this policy to disability discrimination, which would mean victims being less likely to receive compensation that fully reflects the harm caused to them. Judgements of the ECJ would also have less influence in the UK, which would mean equality rights would be more narrowly interpreted affecting fewer people and types of discrimination. The UK would

also have minimal influence and would not fully benefit from future developments at EU level. This would mean disabled workers missing out on any new protections.

EU law and rights for all workers

In addition to the legislative protections for disabled workers derived from the EU are wider rights and protections for all workers.

These protections are wide reaching with every worker exposed to one or more of them. These rights include:

- protection against discrimination at all stages of employment, from access to employment, through treatment at work including pay, to dismissal, and even including post-employment victimisation
- protection against sex discrimination and unequal pay between men and women
- protection against pregnancy discrimination
- protection against discrimination at work on the basis of racial or ethnic origin
- protection of those in insecure work
- working parents' rights
- rights to working time and holiday pay
- health and safety standards

When we leave the EU all these protections are at risk.

Priorities for workers' rights

The TUC is clear: the UK voted to leave the EU. But workers must not pay the price of Brexit. Currently, the best option to protect jobs, rights at work and the Good Friday Agreement looks like staying in the single market and customs union. There may be other approaches that could guarantee workers' rights – and specifically rights for disabled workers - but no-one has shown us one yet.

EU workers' rights – won by trade unionists across Europe – are a key part of the patchwork of our protections from discrimination at work. And while they may be imperfect and incomplete, we don't want to lose them. Instead, we want the UK where workers' rights get better, to keep pace with the changing world of work. That means unions organising in more workplaces. And on Brexit, it means the UK and the EU agree on a level playing field on workers' rights, so that hardworking disabled Brits do not find existing rights are diluted or fall behind when workers in the EU get new rights in the future.

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