



Dr Roselyn Borg
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“Disability”

*“a long-term **physical, mental, intellectual or sensory impairment** which in interaction with various barriers may hinder one’s full and effective participation in society on an equal basis with others”*

Article 2
Equal Opportunities (Persons with Disability) Act



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“Person with Disability”

*“a person, being over compulsory school age, who, **by reason of injury, disease, congenital deformity or other physical or mental incapacity,** is substantially handicapped in obtaining or keeping employment or in undertaking work on his own account, of a kind which apart from that injury, disease, deformity or incapacity would be suited to his age, experience and qualifications”*

Article 2

Persons with a Disability (Employment) Act



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Quota

- Employers are obliged to employ persons with a disability based on certain quotas determined by the number of persons in employment
- This obligation shall immediately apply to employers at any point when vacancies occur where the filling in of these vacancies would result in the application of the quota
- Exceptions may be made to consider a person with a disability who is not registered with Jobsplus to be considered as such when employed with a certain employer



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Calculating the Quota

- The quota is currently established at **2% of one's current workforce, and applies to any employer with a minimum of 20 persons**
- To calculate the quota, if this results in a fraction of less than $\frac{1}{2}$ then that fraction is disregarded
- If a fraction of over $\frac{1}{2}$ is determined, then the nearest higher whole number shall apply



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Calculating the Quota

- A severely disabled person (officially certified as such) shall count as two units in terms of the quota – Jobsplus shall give preference to such persons when communicating with recruiters and special facilities must be provided for them
- In calculating the number of persons in employment, persons who are related to the employer could be excluded from the calculation – **this exception will now be removed**
- Employers are permitted to make an application to Jobsplus to have their percentage reduced if it is proven that the quota is too great in the circumstances - reductions are given for no more than 12 months



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Calculating the Quota

- Employers depending on temporary agents/contractors or seasonal work may calculate the size of their workforce by establishing a fraction **counting an employee as 1 over the number of days actually worked** between 1 January and 31 December
- Employers may be exempted from the quota if they prove that they are providing equivalent hours to work to persons with a disability who are outsourced or through an in-service work arrangement employed by another person



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Hitting the Quota

- If you hit your quota, you are obliged to take on a person with a disability among the next recruits. At that point you are totally prohibited from taking on a person without disabilities first.
- Equally, you are prohibited from dismissing any employee with a disability if upon such dismissal you would fall below your quota (unless you have a good and sufficient cause)
- Genuine recruitment efforts, discussions or work trials will not exonerate an employer from the quota obligation



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Keeping Registers

- Employers must keep a register showing:
 - The number and details of persons employed
 - The number and details of registered persons with disabilities employed
 - Such other matters related to compliance with the laws regarding the Persons with Disability (Employment) Act



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Failing to Reach the Quota

- Employers who fail to reach the quota must make an **annual contribution** as follows:
 - €2,400 for every person with a disability that should be in employment
 - Up to a maximum of €10,000
 - The €10,000 maximum shall not apply to group companies duly registered as separate entities



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The Equal Opportunities Act

- The Equal Opportunities (Persons with Disability) Act provides a detailed brief as to:
 - Fundamental rights of disabled persons
 - What constitutes disability discrimination
 - Prohibited acts which constitute discrimination against disabled persons
- A specific section of the Act is also dedicated to the rights of disabled persons **in employment**.



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Disability Discrimination & Employment

- So long as a disabled person is **adequately qualified** to carry out a specific job, an employer may never discriminate against such persons on the grounds of disability in any of the following circumstances:
 - Recruitment & selection
 - Promotions
 - Dismissal
 - Compensation
 - Training
 - Any other employment terms, conditions or privileges



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Disability Discrimination & Employment

Discrimination on the grounds of disability during employment shall arise if the employer:

- **limits, segregates or classifies** such a person in a way that adversely affects the opportunities or status of such a person
- participates in any **contract, or other arrangement or relationship**, the implementation of which has the effect of subjecting such a person to discrimination;



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Disability Discrimination & Employment

- uses **standards, criteria or methods of administration** that have an adverse effect on the opportunities, status or benefits of such a person
- fails to make **reasonable accommodation** for the disability of such a person, unless the employer can prove that the required alterations would unduly prejudice the operation of the trade or business run by such employer



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Disability Discrimination & Employment

- **denies employment opportunities** to such a person where such denial is based on the need of the employer to make alterations for the disability of such a person
- uses **qualification standards, employment tests, or other selection criteria that screen out or tend to screen out a person or a class of persons with a disability** unless the employer can prove that the standards, tests or other selection criteria are an essential qualification or requirement for the position in question



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Disability Discrimination & Employment

- fails to select and to administer tests concerning employment in the manner most effective to ensure that, when the test is administered to such a person and such person happens to have a disability that impairs sensory, manual or speaking skills, the results of such tests accurately reflect the skills or aptitudes of such a person



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Reasonable Accommodation

necessary alterations not imposing a disproportionate or unjustifiable burden, where needed in a particular case, to ensure to persons with disability the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms



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Reasonable Accommodation

- The possibility and extent of the provision of reasonable accommodation shall be dependent on the employer's resources, among other factors, and may include:
 - Making existing facilities more accessible
 - Job restructuring and reassignment, modifying work schedules
 - Adjusting examination/training materials and policies
 - Providing interpreters
 - Assist with vocational career guidance (through Jobsplus)



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Reasonable Accommodation

Employers may be obliged to make reasonable accommodation, where this is possible and feasible. In these cases, the employer may consider the following factors to assess whether the alterations will be prejudicial to the business in general:

- Nature and cost of alterations
- Financial resources to maintain alterations
- How many employees require alterations
- Effect on resources and expenses of the business



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Reasonable Accommodation

- Overall financial resources of the employer
- Overall size of the business
- Location of the business
- Type of operations carried out
- Composition, structure and functions of the workforce
- Possibility of financial assistance (grants)



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Christopher Zammit Dimech vs. Cherry Ltd

- Zammit suffered from a heart condition, and he required serious operations, and was therefore allowed a work-from-home period
- He was eventually told to start a phased return to the office or resign and work freelance – he was told to manage this transition himself
- Zammit worked well from home, however the company complained of lacking staff interaction and plans to start new projects
- Employee felt safer working from home (due to his condition) and did not wish to return, and he was dismissed on the basis of abandonment of employment



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Christopher Zammit Dimech vs. Cherry Ltd

- The Tribunal noted that his condition constituted a “disability” under the Equal Opportunities Act
- The law obliges employers to provide “**reasonable accommodation**” – telework was considered to be one such accommodation
- This arrangement posed no significant prejudice or detriment on the employer
- Furthermore, teleworkers must be treated equally as with other employees



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Medical Checks

- Employers are prohibited from:
 - Subject a person to medical examinations which may detect the existence or severity of that person's disability
 - Asking whether a person (whether directly to that person or to others) suffers from a certain disability
 - Asking about the severity of a person's known disability
- An exception to the above applies if the purpose is to:
 - Ascertain the person's capability to perform a job/task
 - Assess financial or other resources required to support such person



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Recruitment Checks

- Any information on disabilities collected during examinations for potential hires (which exam cannot be applied selectively) must be kept **in separate records and files and remain strictly confidential**
- The employer may however inform the supervisors and managers of any restrictions and alterations that may be required, and may also inform safety personnel of any required precautions and potential emergency treatment that may become necessary
 - The above shall only apply with regard to successful candidates



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Discrimination by Association

- Discrimination is not directly attached to the person who alleges s/he is the victim of the discrimination
- This occurs when a person claims that they are being discriminated against not because of a protected characteristic they possess, but because of such characteristic possessed by another person with whom they are associated
- *Coleman vs. Attridge Law*:
 - It was concluded that an employee who was not disabled but who was the primary carer of a disabled person (ex. child) could be discriminated against by association



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THANK YOU



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