

2015 Disability Report

Compiled and edited by the IBA Disability Working Group

The Disability Working Group (“Working Group”) of the International Bar Association (“IBA”) is pleased to present this report to the IBA Global Employment Institute (“GEI”), reflecting the results of the Working Group’s survey of law firms and global employers on issues concerning the accommodation of disabled employees in the workplace. The survey was developed by Working Group Officers Philip Berkowitz, Regina Glaser, and Ronnie Neville, and coordinated by Dirk Jan Rutgers, Vice Chair of the GEI, with support from Maria Hickey and Eva Jagt.

I. Introduction

The concept of disability, from both a social and legal perspective, is evolving. Disability is defined not only by visible conditions; for example, it might be defined as any impairment that limits the ability to carry out activities that are of importance to one’s daily life. Mental health related problems appear to have increased in the working environment of the 21st century. However, new technologies and medical advances often allow individuals to eliminate or reduce the effect of physical or mental impairment. This raises the question of whether any definition of disability should be flexible in order to permit the possibility that the condition is episodic, of a short duration, in remission, or otherwise not subject to ready characterization or even recognition.

In some jurisdictions, the law has expanded the definition of disability far beyond “simple” notions of disability, and prohibits measures reducing or mitigating the impact of the impairment in the determination of whether an individual is disabled. The law has progressed in a few jurisdictions to such a degree that an individual is protected against discrimination even if he or she has no impairment – some countries forbid discrimination on the basis of perceived (or “imputed”) impairment. The law in many countries also imposes broad obligations on employers to make a reasonable accommodation for the disabled individual. The scope of these obligations varies widely, but the idea is the same. Employers must actively engage with the employee (and in some jurisdictions, the job applicant) to determine how the employer might provide a reasonable accommodation for the disability.

Indeed, it may be that we are all disabled to some degree. One person may see a psychoanalyst to treat anxiety that he faces in his law practice, and he may take medication to help him cope with that. A colleague may have a spinal complaint that causes him to walk in a stooped fashion and not to present in an attractive way. Another colleague is deaf and as a consequence has difficulty hearing and speaking. Another colleague is less than

five feet tall and very heavy. He is perhaps not morbidly obese in a medical sense, but he is not particularly attractive in a conventional sense. Who, within the diverse group described, is disabled?

The legal definition of disability is not uniform. Nor is the manner in which countries try to prevent discrimination. Some countries impose quotas on employers requiring that they employ a certain percentage of disabled workers. Companies may, in some circumstances, be able to ignore those quotas if they are willing to pay a fine. In other countries, quotas are not permitted, as they are themselves considered a kind of discrimination, and may cause the disabled to be singled out as “token” employees, rather than being embraced as part of the employer’s corporate culture.

Thus, the limitations that a disability may have on an individual – both in employment and social consequences – and the need for society and employers to make accommodation, cannot be ignored. Certainly, businesses have not ignored these, nor have the courts and legislatures. We have witnessed, as the laws prohibiting discrimination and requiring accommodations evolve, major changes in the ways multinationals recruit and retain their employees. This study aims to examine how multinational enterprises work to establish an “inclusive corporate culture” as part of their corporate social responsibility strategies.

Changes in the concept of disability include the following new challenges:

- a. Legal issues: the evolution of local, national and international regulations
- b. Evolving social expectations and their impact on the labour market
- c. Factors that influence companies to undertake, or to avoid taking, initiatives
- d. What employers are doing in response to these issues

We address this topic with a global approach, and we identify potential legal and cultural differences within the individual regions/countries.

The report will use as its bases surveys of multinational employers and law firms concerning these issues. The results are compared for a global view. It focuses on the key aspects identified and discusses, among other things:

- a. How the concepts of disability vary in different countries;
- b. How to overcome impediments to employ disabled individuals;
- c. If and how multinational companies and law firms see the recruiting of disabled persons as part of their workforce diversity and if there is a “inclusive corporate culture” as a part of their global strategies;

- d. The motivations that multinationals have to employ and/or to promote disabled individuals; and
- e. The main accomplishments resulting from these disability-related activities.

We hope this report provides insight into different concepts of disability and legal impairment in each region, the evolving obligations of employers, and the way in which employers view and implement these obligations and therefore make a most important contribution to the legal discussion concerning disability on the workplace.

II. The Survey

The Working Group identified law firms and multinational companies who were willing to respond to the survey. In particular, the survey was sent to 43 law firms in the following countries:

Countries and lawyers

Argentina

Ignacio Funes de Rioja – Funes de Rioja

Australia

Jason Noakes – Norton Rose

Belgium

Chris van Olmen – Van Olmen Wynant

Brazil

Isa Soter – Veirano

Canada

Patrick Benaroché – Stikeman Elliott

Chile

Jamie Carey - Carey

China

Lucy Lu – King & Wood

Colombia

Catalina Santos - Brigard & Urrutia

Czech Republic

Peter Suba – Havel, Holásek & Partners

Denmark

Anders Etgen Reitz – IUNO

England

Jane Fielding - Wragge Lawrence Graham & Co LLP

Finland

Anu Keisko – Castrén & Snellman

France

Olivier Kress – Flichy Grangé

Germany

Regina Glaser – Heuking Kühn Lüer Wojtek

Greece

Betty Smyrniou - Bahas, Gramatidis & Partners

India

Vikram Shroff - Nishith Desai Associates

Ireland

Ronnie Neville – Mason Hayes & Curran

Israel

Orly Gerbi - Herzog, Fox & Neeman

Italy

Massimo Audisio - Audisio e Associati

Japan

Hideki Thurgood Kano – Anderson Mori & Tomotsune

Hong Kong

Dominic Hui - Ribeiro Hui Solicitors

Luxembourg

Guy Castegnaro – Castegnaro

Malaysia

Vijayan Venugopal – Shearn Delamore & Co

Mexico

Oscar de la Vega – Littler Mendelson

Netherlands

Dirk Jan Rutgers – Rutgers & Posch

New Zealand

Rob Towner – Bell Gully

Nigeria

Ishaya Amaza - AELEX – Legal Services

Norway

Emily Sandnes - Selmer

Pakistan

Naeem Shahzad – Lahore Law Associates

Poland

Thomas Sancewicz – CMS

Russia

Valeriy Fedoreev - CMS International B.V

Scotland

Alan Thomson – McClure Naismith LLP

Singapore

Kelvin Wong – Allen & Gledhill

South Africa

Stuart Harrison – Edward Nathan Sonnenbergs

South Korea

Kevin Todd – Kim & Chang

Spain

Iván Suárez – Bufete Suárez de Vivero

Sweden

Paula Hogéus - Ernst and Young

Switzerland

Ueli Sommer – Walder Wyss Ltd

Taiwan

Jackie Lin – Tsar & Tsai

Turkey

Kemal Mamak - Hergüner Bilgen Özeke

Ukraine

Oksana Voynarovska – Vasil Kisil & Partners

United Arab Emirates

Rebecca Ford - Clyde and Co Dubai

United States of America

Philip Berkowitz - Littler

We received good responses from numerous multinational companies, who generally requested anonymity in their responses.

A. Questions to Law Firms

The questions posed to law firms were as follows:

1. How would you describe the concept of disability in your country or region? When is an individual considered disabled?
2. What is the legal protection afforded to a person who is disabled? Who may benefit from disability discrimination legislation?
3. Have there been any significant developments or changes over the last 20 years in respect of the definition of disability, or in the scope of disability protection in your country or region?
4. Are there sanctions by law if companies do not employ sufficient disabled people?
5. In your country, are there any incentives for companies to employ more people with disabilities? If so, what kind of incentives?
6. Are there historical, social or legal prejudices concerning people with disabilities? If so, can you characterize these prejudices?
7. What changes have there been in your laws concerning discrimination in the workplace by reason of disability?
8. Is there any significant disability-related case law in recent years?
9. Are there any plans by government to extend or limit rights for people with disabilities?
10. In your view, will the concept of disability change in the next years? If so, how?

B. Questions to Multinationals

The questions posed to multinational companies were:

1. How would you describe the concept of disability in your country or region? When is an individual considered disabled?
2. Do you keep records of how many disabled individuals your company employs? If so, is this permitted, or required, by local law? How many disabled individuals does your company currently employ (both as a specific number and separately, as a percentage of the total workforce)?
3. Does your company have an inclusive culture? Does your company have policies promoting an inclusive culture, or diversity generally, in the workforce? If so, since when? If not, is your company planning to establish such policies in the future?
4. Does your company have policies dealing with the recruitment, promotion, training or retention of employees with disabilities?
5. How does your company overcome impediments to employing more disabled individuals? Does your company have specific recruitment techniques to address recruitment of people with disabilities?
6. Have you witnessed changes over the last number of years in the way your company recruits employees?
7. What are the main motivations to recruit and/or promote people with disabilities?
8. Does your company make accommodations for disabled employees to allow them actively participate and advance in the Company? If so, what kind of accommodations does your company make?
9. Does your company engage in activities that focus on advancing the skills and professional development of students with disabilities, such as organizing career counseling, skills training, on-the-job training and internships?
10. What do you consider the main advantages of a diverse workforce?
11. Have you identified any changes or consequences (either positive or negative) in your company as a result of employing people with disabilities?
12. Has your company experienced disadvantages/obstacles/difficulties in the workplace due to the employment of disabled individuals? If so, describe any such difficulties and describe how you deal with these issues?
13. Have you identified conflict in your company between disabled and non-disabled employees? If so, please describe and please outline how your company has sought to address this?
14. In your view, will the concept of disability change in the next years? If so, how?

III. Summary of Responses

1. Different concepts of disability (regional differences)

The results confirmed the Working Group's expectation that the concept of disability varies strikingly from one nation to the other, but that there is general agreement that the concept is evolving to take account of greater categories and numbers of individuals.

Some countries view a disability as a condition that serves to alienate the individual from the social world, or that hinders the individual's ability to participate in "society" or to fully undertake day-to-day activities (*e.g.* Greece); others focus on alienation of the individual from the working world; and some take account of both issues (*e.g.* France, which looks to "undue disadvantage in ... personal and professional life").

Definitions may focus on "social integration" (*e.g.* Colombia), while others focus on "professional integration" (*e.g.* Denmark). Some countries look to numerical calculations of impairment ("degrees of disability" from 20-100, as in Germany), whereas others look to the earning of the disability on the individual's earning capacity – *e.g.* Greece (which measures from one-fifth of amount usually earned by a person "who is physically and intellectually health, of the same level of education", to one-half), and Sweden (which more generally looks to "earning capacity").

Also, some countries require, for an individual to be considered disabled, that he or she be negatively impacted for some minimum period of time (*e.g.* six months in Germany), or even that the disability be considered permanent or at least "long term" (*e.g.* Nigeria) where as others like Ireland have no reference to the longevity of the condition, such that short terms conditions over a number of weeks (like whiplash) can be a disability.

Many countries have adopted the U.N. Convention on the Rights of Persons with Disabilities ("CRDP") and hence utilize the guidelines in that document.

Many countries have recognized that disabilities take account of both psychiatric and physical impairments, "intellectual or psychological" disabilities (*e.g.* New Zealand and Australia) and even a "condition which affects a person's thought processes, perceptions of reality, emotions or judgment..." like in Ireland. On the other hand, the UAE correspondent notes that "sensory disabilities and mental or psychological disorders are types of disabilities which have yet to attain widespread recognition and focus".

Interestingly, in Singapore, the definition of disability takes account of two components: a medical one, and "an assessment of the level of functionality of the person, not only by medical standards, but more holistically with regard to a person's overall social functionality."

Some countries require that an individual be certified as disabled by a medical doctor in order to be so considered (*e.g.* Russia and Spain); but it may be that these countries require this certification in order for the individual to receive monetary benefits, as opposed to

being protected by laws prohibiting discrimination, and so this possible conflation of definitions must be taken into account.

In the United States, the concept of disability is complicated by the presence of federal laws, which provide quite broad definitions including physical and mental disorders, and state and local laws, whose concepts can be even broader. The analysis has become quite detailed, thus rejecting the notion that mitigating factors (such as medication) might resolve an individual's disability for the purpose of protection against discrimination. Also, the United States (like Australia and a number of European countries) prohibits discrimination against not only individuals who are disabled, but those who are *perceived to be* disabled, or where disability is imputed. Further, the United States prohibits discrimination against individuals who are *associated with* disabled individuals.

And, perhaps unsurprisingly, in the United States, the notion of "disability" has been expanded to include those who are (using a medical term) morbidly obese, and even, in some jurisdictions, those who are simply considered unattractive (as in the District of Columbia, which prohibits discrimination based on "appearance").

2. Developments during the last twenty years in the concept of disability

Whereas there have been significant changes regarding the inclusion of disabled people in the work environment and their protection against discrimination in general, developments in the concept of disability vary widely.

Some countries did not experience any significant changes in the definition of disability as such (*e.g.* China, England, India, Luxembourg, the Netherlands, Russia, Spain). However, in numerous countries, the definition has evolved over time – whether by legislation or by case law (*e.g.* Chile, Finland, Israel, Nigeria, Norway, Singapore, UAE, the United States).

Interestingly, in Australia, the definition of disability has been modified to include a "genetic predisposition to a disability and behavior that is a symptom or manifestation of a disability".

3. Current employment situation

While only a few of the corporate respondents record the number of their disabled employees at all, it is common practice among other corporations to gather these statistics. However in many countries, disabled workers have no obligation to mention their status to the employer. This has to be kept in mind when regarding the received company data which show that, among respondents, the relative number of disabled employees ranges between 0 and only about 3 percent of the overall staff.

4. Legal protection of disabled persons

Here, the laws vary widely. Some jurisdictions have only limited prohibitions against discrimination in employment. For example, in India and Sweden, prohibitions of

discrimination are limited to the public sector. In other countries, disabled individuals are protected against job discrimination by virtue of laws that prohibit arbitrary termination of employment (*e.g.* Chile). Malaysia only prohibits discrimination against current employees.

Singapore has no laws *per se* prohibiting discrimination in employment, but only guidelines to which employers are “encouraged to abide.” The UAE requires equal opportunity for all citizens, including the right to work, but this is limited only to nationals. The Dubai Disability law goes further, but also appears to be limited to nationals.

Other countries, of course, have far more robust prohibitions against disability discrimination in employment, requiring employers to make reasonable accommodation for disabled employees (*e.g.* Australia, Brazil, Canada, Colombia, Denmark, Finland, Ireland, Israel, Norway, the United Kingdom, the United States, among others); some countries impose quotas (*e.g.* France, Germany, Israel, Russia, Spain, Turkey).

From a European perspective, disability by association does not form part of the Framework Directive, but many European countries include disability by association in their local discrimination law (like Ireland and the UK). Also, some countries allow or provide for affirmative action or positive action (Ireland, Finland, Turkey, Ukraine and United Arab Emirates), where such treatment may otherwise constitute discrimination.

5. Penalties for companies who do not employ persons with disabilities

Many countries impose quotas, and the failure to meet the quota may be sanctioned with a fine (*e.g.* China, France, Germany, Italy, the Netherlands, Russia, South Korea, Spain, Taiwan, Turkey, Ukraine).

Some of the countries mandating quotas require disabled individuals to register as such with the state or otherwise to self-identify with their employers.

Some countries, whether or not they impose quotas, permit disabled individuals to bring unfair dismissal or discrimination lawsuits and recover a penalty for violations (*e.g.* Brazil, Canada, England, Finland, France, Germany, Ireland, the Netherlands, New Zealand, Norway, Sweden, the United States).

6. Incentives for companies to employ persons with disabilities

A number of countries provide tax or reimbursement incentives for hiring disabled individuals (*e.g.* Australia, China, Colombia, Finland, France, Greece, India, Ireland, Italy, Malaysia, Norway, Russia, Taiwan, the United States).

Other countries permit employers to pay disabled employees less than the minimum wage in certain circumstances (*e.g.* New Zealand and South Korea).

And it seems that most countries have schemes, whether federal or local, for providing incentives or reimbursements for the expense of physical structures designed to accommodate the disabled.

7. CSR policies, diversity strategies and disability-related activities

Most companies appear to be trying to establish an inclusive corporate culture and promote diversity. While some diversity and inclusion strategies have been in practice for many years, there is also a certain number of companies for whom this is relatively new terrain or do not have an official policy at all. However, these companies expect that they will implement such kind of policies in the near future.

Among our respondents, policies dealing explicitly with the recruitment, promotion, training or retention of employees with disabilities seem to be rare. On the other hand, as for recruitment techniques in particular, some multinationals have established partnerships for the service of disabled workers at a government-run Employment Administration or other service providers.

It is a general attempt of almost every multinational to treat disabled individuals just as non-disabled employees.

8. Views regarding the advantages and disadvantages of a diverse workforce

Many corporations, of course, are trying to establish a diverse workforce, including people with disability. Generally, the main advantages of a diverse workforce appear to be the benefits of having employees with a mixture of different cultures and backgrounds. Different views are often brought to the table and awareness is being created which some companies can use to service their client portfolio. Moreover, multinationals see a diverse workforce as part of their corporate social responsibility, and that diversity enables each individual employee to reach their full potential, which eventually serves the interest of the company.

Furthermore, diversity is seen by many as a stimulus for being an innovative company and to better serve clients' needs around the world. Some companies have the goal to "foster a culture that embraces differences and celebrates unique ideas, perspectives, experiences and talents".

However, in some jurisdictions (*e.g.* Finland) employment of disabled individuals is a controversial topic due to the Finnish pension system which involves a relatively high economical risk to recruit people with disabilities, because if they retire because of the disability there are direct economic consequences to the company.

Interestingly, in Belgium, it has been suggested that whilst anti-discrimination law may protect those already in employment, it may act as a deterrent to hiring disabled persons.

9. Accommodations in the workplace

Many companies provide accommodations for disabled employees in order to allow them to actively participate and advance within the company. Reasonable accommodations include workplace/station configurations, additional breaks or home-office possibilities.

Some companies indicated that they do not accommodate disabled employees with adjusted workplace or equipment. Only a very few respondents indicate that they engage in activities that focus on advancing the skills and professional development of students with disabilities in particular.

10. Difficulties and conflicts in the workplace due to the employment of disabled individuals

Interestingly, most companies do not report any obstacles to be overcome at the workplace. Occasional difficulties are mainly related to the daily organization of work, potential absenteeism, and a perception that some disabled employees need more help or time than their non-disabled co-workers.

Not a single company identified conflicts between disabled and non-disabled employees.

11. Existing forms of historical, legal and social prejudices

Most correspondents reported that their societies have viewed disabled individuals as unable to contribute in the workplace, and so, rather than meeting mandated quotas, employers have chosen to make the mandatory financial contributions required for failing to do so. Some correspondents said that social prejudices against disabled individuals in general linger as they may be considered to be unwilling to or incapable of “fending for themselves” (Nigeria).

Some correspondents report that mental health problems continue to be a subject of prejudice. The South Korea correspondent interestingly said that a 2012 report on the Korea media “tends to portray people with mental disabilities as being violent / dangerous, unpredictable, identifiable, a subject of pity, incapacity ... socially awkward, not trustworthy, a liability to society and someone who should be locked up and segregated from society.”

Others noted the view of some societies that disabled individuals are “victims” or “second class citizens” (historically Australia) and hence that at least historically, accommodations have been viewed as “charitable” and “personal” in light of their status as a “vulnerable group” (e.g. Brazil, Finland, Israel, Malaysia, the Netherlands).

12. Disability-related case law and governmental plans for reform

In some countries, case law is scant and efforts by the government seem to be limited or in planning stages (e.g. Brazil, China, Finland, India, Luxembourg, Nigeria, Russia, Singapore, UAE). In fairness, some civil law jurisdictions may have limited published decisions as well.

On the other hand, other countries have had, to varying degrees, a great deal of activity in the area of disability rights, reflected both in case law and legislative or administrative developments (*e.g.* Australia, Canada, Colombia, Denmark, England, France, Germany, Greece, Ireland, Israel, Italy, Malaysia, the Netherlands, Norway, South Korea, Spain, Sweden, Switzerland, Taiwan, Turkey, and the United States).

In Denmark, for instance, a Court ruled in 2011 that ADHD was regarded as a disability but denied that for alcoholism in 2014. As obesity is a widespread problem, especially but not limited to “developed” countries, it is interesting that the European Court of Justice ruled in 2014 that obesity itself – generally – does not constitute a disability but can cause limitations which can eventually lead to a disability. In Ireland, obesity was held to constitute an “imputed disability”.

Some countries expect a further extension of rights for people with disabilities and have – to varying degrees – national action programs or disability strategies (*e.g.* Australia, Brazil, Finland, Israel, New Zealand, Nigeria, South Korea, Spain, Switzerland, Turkey, Ukraine, UAE).

A few countries appear to have no pending disability related legislative reforms or projects, nor do they expect significant changes in this matter (*e.g.* Canada, China, Greece, India, Norway, Russia, Singapore), whereas others report that mental health related issues will stay on the agenda (*e.g.* England).

13. Possible future developments of the concept of disability

Again, as might be expected, the responses to these queries were mixed. Correspondents from countries which have not seemed to have made much progress in recognizing the rights of disabled individuals in employment seem resigned to little progress in the next few years (*e.g.* China, Greece [because of the economic crisis], India, Malaysia). Other jurisdictions believe that – due to different reasons – there will not be any significant changes in the concept itself (*e.g.* China, France, Greece, India, Luxembourg, Malaysia, the Netherlands, Norway, Russia, Spain, Taiwan).

Other countries suggest change to the concept of disability and perhaps moderate advancement of these rights (*e.g.* Brazil, Chile, Colombia, Denmark, Finland, Singapore, South Korea, Turkey). For example, respondents in some countries expect that the concept of disability will be broader or has already been broadened in recent times (*e.g.* Australia, Brazil, Denmark, UAE, the United States).

In Brazil, in 2010, about 14.5 % of the population had been classified with some disability, whereas in 2010 this number increased to 23.9 %. Finland believes that due to its aging society, “age-related disabilities” will come into focus. In South Korea, insomnia or emotional disorders are currently being discussed to be recognized as legitimate disabilities.

Other countries – perhaps notably Nigeria and the UAE – feel that there is likely to be significant progress in this area. Countries whose laws are more developed in this area – notably North America and most European countries – expect protection to continue to develop in the areas of mental illness, stress, anxiety, emotional impairments, and morbid obesity.

Some correspondents noted that the ability to mitigate these conditions might result in a narrowing of the definition of disability (*e.g.* Brazil). Switzerland, for example, assumes that the barriers between disabled and non-disabled may become more “blurred” due to technical measures.

Finally, and interestingly, several correspondents made reference to increasing “awareness by society” of the issue (*e.g.* Chile, Ireland, New Zealand), a “culture of inclusion [and] more tolerant society (Colombia), increased “perception” of the issue (England), a focus on a diverse workforce (Australia, Germany and India), “more awareness in society” (Nigeria), “change in a positive manner” and “inherent dignity” (Turkey), and a nation’s “pride” that might be reflected in the way it treats disabled people (UAE).

III. Conclusion

Our survey found a variety of approaches to the issues posed by disabled individuals in the workplace. Virtually every jurisdiction, to one degree or other, recognizes that disabled individuals must be accommodated in the workplace, and acknowledges the broad goals of incorporating disabled individuals broadly in society. Interestingly, progress is across all spectrums of nations, from highly developed to developing.

Further, countries seem to be running along parallel tracks, in terms of recognizing new challenges with regard to stress and mental illness. Additionally, the law increasingly protects not only disabled individuals but those with perceived disabilities and those who are associated with disabled individuals.

On the other hand, we see a wide variety of ways to provide these remedies. Some jurisdictions seem to require individuals to identify themselves as disabled in order to be qualified to receive special benefits (for example, to be included in any mandatory hiring quotas imposed by the government). The approach of imposing quotas, too, is not universal. Some nations seem to see this as their first and best way to implement change, while other nations empower individuals to bring claims before employment tribunals or in the court to enforce laws prohibiting discrimination and imposing requirements of reasonable accommodation on employers.

Responding companies uniformly recognized the need to accommodate disabled employees and identified this as a worthwhile goal. Of course, perhaps depending on the organization’s size and geography, progress in this area varied. But each respondent, to a greater or lesser degree, embraced social responsibility as a key value, and bettering opportunities for disabled individuals as a worthy effort. Notably, some corporate

respondents indicated that having a diverse workforce in issues of gender, disabled persons, religions, age, etc., is simply good for business.

Despite the disparity in definitions of disability, legal obligations imposed by the law with respect to non-discrimination, and the forward progress of a particular nation, our study demonstrates, we believe, that opportunities for disabled individuals will become a matter of greater visibility, and that progress in favor of disabled individuals' rights will continue to grow in a positive manner.

IV. Original (structured) answers of the law firms

We present the following survey responses. While we have edited these to fit the structure below, the text is otherwise unedited.

I. Different concepts of disability (regional differences and developments in the last 20 years)

Belgium

In its 2011 World Report on Disability, the World Health Organization emphasized the dynamic and multidimensional aspects of the notion of disability: people are not only disabled by their bodies, but also by environmental factors. Disability therefore not only refers to physical impairments (i.e. problems in body functions or structure such as for example, blindness or paralysis) but to all difficulties encountered in other areas of human functioning, such as difficulties in executing activities (e.g. walking or eating) or in participating in various areas of life, for instance in employment or transportation. Certain aspects of this definition are echoed in Belgian legislation.

In essence, the complex Belgian institutional framework has resulted in a multitude of definitions of the concepts 'handicap' and 'professional disability'. On the one hand, there are definitions related to the social and professional integration of disabled people, which is a Regional matter. These Regional definitions have the following elements as a common denominator: the limitation which results in particular from physical, mental, psychological or sensorial impairments and which hinders the social integration and professional participation of the person concerned. This definition is very similar to the concept of 'handicap' as defined by the European Court of Justice in its decision of 11 July 2006 with regard to the equal treatment of disabled people in employment and occupation.

On the Federal level, the notion of disability is defined in terms of social security and social welfare allowances that are granted to disabled people who are not active on the labour market. These allowances fall into two categories: (i) an allowance in lieu of wages granted to those whose ability to earn money is less than one third of what a person normally would earn on the general labour market and (ii) an insertion allowance for those with limited abilities of self-sufficiency. This second allowance is not necessarily linked to any (former) professional activity, but is meant to facilitate one's daily activities.

Brazil

According to both the *International Convention for Disabled People* (Decree # 6449/2009) and the *Inter-American Convention on the Elimination of All Forms of Discrimination against Disabled Individuals* (Decree # 3956/2001) which have been ratified by Brazil, a disabled person is someone with a physical, mental, sensorial or multiple limitation that does not enable him/her to lead a normal life and, as a result of this lack of ability, this person has problems in participating in the community in the same conditions as those of people with

no apparent disability. In other words, the disability itself must prevent the individual from developing his/her body's regular activities.

According to the Ministry of Labor and Employment in Brazil, the name used to refer to people with physical, mental or sensory limitation has taken many different forms over the years. Expressions such as *"invalid"*, *"unable"*, *"exceptional"* that were used by the community when referring to these individuals and that had a discriminatory connotation have been replaced by "disabled", after the enactment of CRFB/88, influenced by the International Movement for People with Disabilities. Therefore, the term "disabled person" has been incorporated for all legal purposes. In addition, lately, many people refer to them as *"people with special needs"* or *"special people"*. According to the Ministry of Labor, the use of such expressions demonstrates a change of treatment by the community towards the disabled individuals. People with special needs are a general group in which old people, pregnancy women, among others are included.

Finally, the inclusion of disabled people in the work environment has been through significant changes due to big historical happenings such as the development of the capitalism, technological improvements, world wars etc., but also due to the enactment of laws that have contributed for both government and society to think about them as Individuals who are able to work.

Canada

A handicap or disability ("Disability") may be the result of a physical limitation, an ailment, a social construct, a perceived limitation or a combination of all of these factors. The analysis is holistic and the existence of a handicap must be assessed on the basis of all these circumstances and factors.

Thus, the concept of Disability is broadly defined and the Courts have adopted a liberal interpretation of the term, finding in particular that the following can constitute Disabilities: musculoskeletal diseases and injuries, psychiatric or psychological diseases, acute migraines, insomnia, respiratory problems, hearing problems, pathological obesity, psychological dependence (alcoholism, drug addiction, gambling), etc.

Most human rights statutes prohibiting discrimination on the basis of disability have been in force in Canadian jurisdictions for more than 20 years (but less than 40 years). However, in the last 20 years, case law and legislative reform led to numerous significant developments, most important of which is the development of an effect-focused definition of Disability. Thus, whereas earlier case law tended to focus more on the source of Disability than its effects, courts ultimately defined Disability in terms of limiting effects as opposed to sources of disability. This allowed for a recognition of temporary and perceived limitations as forms of Disability.

China

According to Law of the PRC on the Protection of the Disables (revised and effective on July 1, 2008), disability refers to the abnormalities or loss of a certain organ or function,

psychologically or physiologically, or in anatomical structure and has lost in whole or in part the ability to perform an activity in the way considered normal. If an individual is suffering from visual, hearing, speech or physical disabilities, mental retardation, mental disorder, multiple disabilities and/or other disabilities, then he/she may be viewed as disabled person. [...]

From the perspective of the law, there is no significant change in the definition and scope for disability since 1990, when the Law of the PRC on the Protection of the Disabled was enacted. However, the protection of the disabled has been strengthened overwhelmingly over the last 20 years. In the 1990s, the system of quotas employment of disabled employee was just established and the disabled were treated differently with normal employees in many aspects such as salary and welfare. Such situation was gradually changed since a series of laws regarding protection/anti-discrimination of the disabled took effect since 2007, and law enforcement for this became stricter and stricter in recent years.

Chile

Currently in Chile the concept of disability is focused not only on the physical and mental condition of a person, but rather on the social participation constraints and limitations on essential activities experienced by disabled people in their daily interaction with the environment. In fact, according to the definition of disability under Law No. 20,422 (2010), an individual is considered disabled when he/she has one or more physical or mental impairment, due to psychic, mental or sensory causes, temporarily or permanently, that in interaction with various barriers in the environment, impedes or restricts their full and effective participation in society on an equal basis with others.

The definition of disability has evolved over time as a result of the new prevailing paradigms, which have passed the medical disability perspective, understanding disability as a complex sum of conditions, most of them social. One of the main changes in relation to disability protection in Chile has been Law No. 19,284 (1994), which regulated for the first time in Chile disabled people's rights with a cross-sectoral approach, for the purpose of promoting the integration of people with disabilities. Likewise, after the ratification of the United Nations Convention on the Rights of Persons with Disabilities, in 2010, Law No. 20,422 was passed, setting forth the right to equal opportunities of disabled people in order to obtain their complete social inclusion, assuring the enjoyment of their rights and eliminating any way of discrimination based on their disability. Law No. 20,422 sets forth the principles of independent life, universal access, "design for all", cross-sectoral approach, participation and social dialogue. As mentioned above, Law No. 20,609 (2012) on Measures Against Discrimination has also become a significant development in the scope of disability protection in Chile.

Colombia

According to Law 1618 of 2013, individuals experiencing disabilities are those who have physical, mental, intellectual or sensory deficiencies, which in interaction with various

barriers such as attitudinal deficiencies, may hinder their full and effective participation in society on an equal basis with others.

The legal development of the disability concept is relatively new. The first progress related to the protection of individuals experiencing disability was enacted with the Constitution, in its article 13, issued in 1991. Such article establishes that all individuals are born free and equal before the law and they will receive equal protection and treatment by the authorities and enjoy the same rights, freedoms and opportunities without discrimination. The State shall promote the conditions for real and effective equality, and will adopt measures for discriminated and marginalized groups. Moreover, such article states that the State especially protect those people whose condition economic, physical or mental, are in vulnerable circumstances manifest and punish any abuse or mistreatment perpetrated against them.

Furthermore, Law 361 of 1997 established the mechanisms of social integration for persons with limitations. Afterwards, Law 1346 of 2009 adopted the Convention on the Rights of Persons with Disabilities, and finally, the Law 1618 of 2003 established the provisions to ensure the exercise of the rights of persons with disabilities. Moreover, through case law the protection with individuals with disability has been extended, with reinforced stability and special protection in the workplace.

Denmark

There is no legal definition of the concept in Danish legislation. Instead, the concept has its origin from EU directives and has been evolved through case law – mainly from the European Court of Justice, according to which the concept of disability is a *“condition caused by an illness medically diagnosed as curable or incurable where that illness entails a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers, and the limitation is a long-term one”*, see the joined cases C-335/11 and C-337/11 from the EU-court.

The last major development as to the scope of disability protection in Denmark came with the amendment of the Danish Act on Prohibition against Discrimination in Respect of Employment, as described above. As to the definition of disability the concept has recently been evolved through case law.

England

The Equality Act 2010 (the collective legislation covering all types of discrimination) states that an individual is considered disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. An impairment has a long-term effect if it has lasted at least 12 months; the period for which it lasts is likely to be 12 months; or it is likely to last for the rest of the life of the individual affected. Some conditions are automatically deemed to be

disabilities such as blindness, severe disfigurements, cancer, HIV and multiple sclerosis. Some conditions are stated not be impairments, such as addiction to alcohol, nicotine or any other substance; tattoos and body piercings; and hayfever.

For an individual to assert that they are disabled the cause of their impairment is irrelevant. The focus is on the effect the impairment has and not its cause. However, where an individual is treating their impairment with medication the focus should be on what the effects of the condition would be without it.

Before the Equality Act 2010 came into force, the rules on disability discrimination were contained in the Disability Discrimination Act 1995, which have since been consolidated, with other discrimination laws, in the Equality Act 2010. Apart from some tidying up, the definition of disability has remained broadly the same.

Whether or not this legal test is met however, and whether there has been discrimination in respect of someone who is classified as disabled, has been the subject of extensive case law. The Disability Discrimination Act 1995 set out three types of disability discrimination that could occur in the employment context: (1) direct discrimination on the grounds of a person's disability; (2) discrimination for a reason related to a person's disability; and (3) a failure to make reasonable adjustments in relation to a disabled person.

A housing decision (*London Borough of Lewisham v Malcolm*) in 2008 potentially limited the number of people likely to be able to rely on grounds (2) by saying that the court need not look at the underlying reason for an action/treatment when assessing the appropriate comparator but would look at a non-disabled person in the same circumstances to determine whether the treatment was discriminatory (in this case, that would be a non-disabled person who had illegally sublet their flat). To address this potential narrow interpretation of a comparator, the Equality Act 2010 introduced discrimination arising from disability.

Finland

In Finland, the concept of disability is not defined precisely in the legislation. Laws do not provide, for example, any lists of illnesses, injuries or detriments that could cause 'disability'. Hence, the concept is based on general provisions of various laws and interpretation thereof. The legislative history operates on the principle that disability is a state arising out of the relation between the individual and the impediments in the environment. The concept of disability may thus vary depending on the situation of the individual and his/her environment. In general, a disabled person is considered to be a person who, due to a disability or illness, has special long-term difficulties in managing the normal functions of everyday life. In general, the concept of disability is considered to comprise *e.g.* mentally handicapped, sensory disabled persons (*e.g.* blind, deaf) and physically disabled persons. The disability may be congenital or it may occur at a later phase, *e.g.* as a consequence of an illness or injury.

The concept of disability may be defined or interpreted somewhat differently under different laws. For example, special laws providing protection to disabled persons in general or to certain specified group of disabled persons may bind the concept of disability under that specific law more closely to the duration of the impairment and the age of the person or to the mental development of the person.

As mentioned, the concept of disability has not been defined unambiguously and it may vary depending on the situation. However, it can be stated that the concept of disability has broadened over the years due to, among other things, the development of enactments providing protection as well as legal praxis. For example, the amendments to the Non-Discrimination Act have improved the protection of disabled persons. In addition, the protection afforded by various special laws (*e.g.* in the form of financial support, equipment etc.) has developed over the previous decades. In addition, the Government has prepared a Disability Policy Programme, which aims at improving the quality of life of these persons by emphasising their possibilities and entitlement to various means of support.

France

The law of 11 February 2005 has offered, for the first time in French legislation, a definition of disability. Its article 2 contains the following formulation: *“For the purposes of this Law, disability is a limitation to the life activity or a restriction to the fulfillment of a role in life society faced in his/her environment by a person because of one or several substantial, sustainable or irreversible defects in physical, sensory, mental, cognitive or psychological functioning, or because of a polyhandicap or an incapacitating health problem”*. This definition describes disability as the environmentally effect of an impairment that, in interaction with other factors and within a specific context, is likely to cause an individual to experience an undue disadvantage in his or her personal and professional life.

As regards professional life, according to the Labour Code, *“is considered as disabled worker any individual whose prospects of getting a job and of retaining in employment are reduced as a result of one or several defects in physical, sensory, mental, cognitive or psychological functioning”*; *“the quality of disabled worker is recognized by the ‘Commission on Rights and Independence for people with disability’ (...). This recognition goes along with guidance on a work help center, on labour market or on a vocational training center. This guidance implies the recognition of disabled worker status”* (articles L.5213-1 et L.5213-2).

The following definition contains the constituent elements: the reference to physical or mental impairment as original cause of disability; a recognition procedure that determines who should be considered disabled, and the established entitlement to measures which help to secure equality of treatment on the labour market. This calls for a case-by-case approach for recognizing disability. [...]

The context of disabilities French policies can be defined with reference to three laws:

- The law of 30 June 1975 (n°75-534), which was the first to adopt a global approach to the problems faced by disabled persons, especially that of social reintegration;

- The law of 10 July 1987 (n°87-517), favoring the employment of disabled workers through a regulation including quotas;
- The law of 11 February 2005 (n°2005-102) which enshrines the principle of equality of opportunity in vocational and social integration.

The law of 30 June 1975 defines a national obligation towards disabled persons but does not give any definition of disability. It rests on the paradigm of disability as an unpredictable misfortune, or a personal tragedy, and illustrates a policy aimed at guarantying disabled persons social protection, care of the state. Thereafter, the politics of disability have slowly evolved. The principle of equality of opportunity is becoming more grounded. The goal of the social policy is henceforth to consider that disability is not constituted by the impairment itself but by the social consequences of an impairment – like a more difficult situation on the labour market – which are likely to be overcome. The law of 11 February 2005 embodies these policy since it describes disability as the environmentally effect of an impairment.

Germany

Sec. 2 para 1 SGB IX (Book 9 of the Social Code) defines disabled people as persons whose physical functions, mental capabilities or psychological health are highly likely to deviate, for more than six months, from the condition which is typical for the respective age and whose participation in social life is therefore impaired.

A deviation from the typical condition means the loss of or restrictions with regard to physical, mental or psychological structures that are normally present at the respective age. Such an impairing deviation is deemed to be a disability if the impairment leads to a particular restriction that has an effect on at least one area of life. The minimum six-month period excludes only temporary abnormalities.

A person's disability is stated in degrees from 20 to 100. The degree is recognized in a formal procedure by the competent integration office. There are administrative guidelines for the evaluation of disabilities and the recognition of disability degrees. A degree of at least 50 constitutes a severe disability. About 8% of the German population qualifies for this status.

The Equal Treatment Act prohibits discrimination due to – among other criteria – disability. Moreover it is our understanding and experience that lots of companies and organizations in Germany have been trying to establish an inclusive corporate culture of diversity which is not limited to disability matters.

Greece

There isn't a uniform general determination of the definition of disability in Greek law. Recent Law ratified the Convention on the rights of persons with disabilities (30.3.2007, New York) and the Optional Convention of the said Convention (27.9.2010). [...]

On the other hand social security law determines disability in three categories, depending on the degree of disability.

A) A person is considered severely disabled if due to a disease or damage or impairment or physical or intellectual weakening he cannot win from work relevant to his strengths, abilities and education, more than one fifth (1/5) of the amount usually earned by a person who is physically and intellectually healthy, of the same level of education.

B) The insured person is considered disabled if due to a disease or injury, or damage or impairment or physical or intellectual weakening he cannot win from work relevant to his strengths, abilities, education and usual professional education, more than one third (1/3) of the amount usually earned by a person of the same professional category, physically and intellectually healthy of the same education.

C) The insured person is considered disabled if due to a disease or injury, or damage or impairment or physical or intellectual weakening he cannot win from work relevant to his strengths, abilities, education and usual professional education, more than one half (1/2) of the amount usually earned by a person of the same professional category, physically and intellectually healthy and of the same education.

India

One of the fundamental rights enshrined in the Constitution of India is in relation to equality of opportunity in matters of public employment. The Constitution also directs the State to make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. The Employees' Compensation Act, 1923 of India ("ECA") defines the concept of 'total disablement' and 'partial disablement' and provides *inter alia* the compensation payable by the employer to an employee in case of any personal injury caused by accident arising out of and in the course of his employment. *Schedule I* of the ECA provides the list of injuries that are deemed to result in permanent total disablement and permanent partial disablement, while *Schedule III* provides for a list of occupational diseases.

In addition, the Employees' State Insurance Act, 1948 ("ESIA") provides for disablement benefit in the form of periodical payment at such rates and for such period as prescribed, in case of temporary disablement or permanent disablement suffered by an employee covered by the ESIA. The medical board constituted under the ESIA has the right to determine *inter alia* whether the accident has resulted in permanent disablement.

Except for the enactment of the PWD Act that was enacted in 1995, there have not been any significant developments or changes in India over the last 20 years in respect of disability protection. Please note that the monetary limits, coverage, facilities, etc. under the ECA and ESIA are regularly revised / updated.

Ireland

The definition of disability under Irish law is quite wide-ranging and has been held to cover a range of temporary and permanent physical and mental conditions.

The Disability Act 2005 defines disability as:

“A substantial restriction in the capacity of the person to carry on a profession, business or occupation in the Irish State or to participate in social or cultural life in the Irish State by reason of an enduring physical, sensory, mental health or intellectual impairment.”

In respect of disability in the workplace, the Employment Equality Acts 1998-2011 apply (“the EEAs”).

Section 2 of the EEAs contains a comprehensive definition of disability as meaning:

- (a) The total or partial absence of a person’s bodily or mental functions, including the absence of a part of a person’s body;
- (b) The presence in the body of organisms causing, or likely to cause, chronic disease or illness;
- (c) The malfunction, malformation or disfigurement of a part of a person’s body;
- (d) A condition or malfunction which results in a person learning differently from a person without the condition or malfunction; or
- (e) A condition, illness or disease which affects a person’s thought processes, perception of reality, emotions or judgment or which results in disturbed behavior.

The definition describes the broad nature of conditions or impairments which constitute a disability under the EEAs - it does not require a threshold of severity to meet the definition, although some recent decisions of the Equality Tribunal have reflected a willingness to apply a “de minimus” threshold. Other European jurisdictions require that a condition be sufficiently substantial, or long term in nature, but Irish law makes no reference to longevity and conditions which are minor and short term in nature have been found to come within the protected ground.

The following non exhaustive list of conditions have been found to come within the definition of disability; visual impairment, depression, low BMI, dyslexia, epilepsy, alcoholism, heart conditions and osteoarthritis, There is conflicting case law as to whether

stress constitutes a disability, recent cases suggest that it will not receive the ascribed protection unless the stress related conditions reach a minimum level of symptoms or significance. The Equality Tribunal has on occasion shown its willingness to temper its broad approach, by referencing ECJ decisions like *Chácon Navas* to import a threshold of requiring the condition to last a long time and to distinguish “disability” from “sickness”. For instance, in *Colgan v Boots* (DEC-E2010-008), a minor ankle injury which constituted a minor malfunction of the body for a short period of time was considered insufficient to meet the definition of disability. This approach is questionable in light of the broad Irish definition. Generally, however, the Tribunal gives the definition its wide discretionary meaning.

Discrimination on the grounds of disability is prohibited since 1999 when the Employment Equality Act 1998 was commenced. In fact, one of the provisions relating to the disability ground under the Bill was declared unconstitutional by the Supreme Court, as the requirement to provide reasonable accommodation “unless this caused undue hardship” to the employer was deemed overly onerous and disproportionate. The definition of disability has grown over the course of the last number of years and there has been a significant improvement in the understanding and perception of disability in Irish society generally. Unfortunately however, many employers still perceive individuals with disabilities as less capable of participating in the labour market and statistics from the Equality Tribunal reflect that discrimination claims on the disability ground are always one of the highest ratios of claims. The most recently available annual report of the Equality Tribunal is from 2013 and the disability ground had the highest number of claims brought during 2013, an increase of 31% from 2012.

Israel

The Equal Rights of Persons With Disabilities Law, 5758 – 1998 (the "Law") sets out a broad yet vague definition of "Disability", as any permanent or temporary physical, mental or intellectual (including a cognitive) impairment, due to which the person's functions are substantially restricted in one or more main areas of life.

According to Labour Court rulings (dealing mainly with matters in which persons were discriminated against due to their disabilities) the expression "disabled person" was interpreted widely.

In the recent matter of Machmali (2014), the High Court of Justice held that the "main areas of life" in the definition of "disability" include, among others, the ability to care for one's self, to walk, see, hear, speak, breath, learn, work, carry, think, concentrate and interact with others.

Although the provision of the Law from 1998 has not, in itself, been changed, case law has developed evolving and broadening content into the definition (see for example the Machmali case described in our response to Question 1 above).

In addition, the protection (and its effectiveness) has been significantly broadened by the Extension Order described in our response to Question 1 above.

Italy

The rights of a disabled person are extensively ruled at national and international level, both having a significant impact on the definition of disability itself and on the relevant rights granted.

At a National level, Italy has implemented an extensive regulation with the aim to assist and integrate people with disabilities.

The picture resulting from the implementation of both national and international Acts leads to a multiple definition of disability itself and, as a direct consequence, to a multiple regulation on this subject.

As a matter of fact, the wording used to define a disabled individual can vary from "disabled", "invalid", "handicapped", and so on, all identifying a specific group of people and granting them with a tailored protection (by way of example, Law 104/1992 for handicapped people; Law 382/1970 for blind people; Law 381/1970 for deaf-mute people; Presidential Decree 915/1978 for disabled ex-serviceman; etc.).

To the contrary, when approaching the issue of the integration of disabled people in the place of work, the Law 68/99 is generally applicable to a broader category of individuals with disability (although, as it has also been ruled by the Court of Justice in the case C-312/11, still it does not provide an uniform protection for all the people with disabilities).

As provided for by Art. 1 of the Law 68/99, the “Act for the right to work for disabled people” is applicable to:

- (i) persons who have physical, mental, intellectual or sensory impairments or mental handicap that reduce the capacity of work of the individuals for over 45%;
- (ii) labour-invalids with a percentage of disability exceeding the 33%;
- (iii) blind and deaf-mute people in general;
- (iv) war invalids (the exact percentage of disability allowing individuals to benefit of those specific provisions can be found in the Annexes to Presidential Decree n. 915/1978)

In the last 20 years the protection of persons with disabilities has been increased by the Law n. 68/99, that entirely overruled the previous Law n. 482/1968.

In the view of the Legislator, the preceding Law n. 482/1968 was ineffective under many aspects and did not grant to persons with disabilities a concrete protection.

By comparing the two regulations it is possible to briefly point out the following:

- as already commented above, the most important innovation provided for by Law n. 68/99 is the implementation of the s.c. “focused placement”, thorough which the individual with disabilities is granted with the right to be hired and the right to be assigned to tasks that are consistent with his disabilities;
- at the same time, according to the new regulation , the Employer can benefit of specific incentives (also economic) and is entitled to enter into specific agreements with the Centres for the Employment in order to customize the workforce to be posted.

Please also see answer under paragraph 5;

- the duty to hire persons with disabilities lays on Employers hiring more than 15 employees, while the previous set the first thresholds at the higher rate of 35 employees;
- the groups of people who can benefit of the protection granted by the Law n. 68 /99 is larger than before; as a matter of fact, the new regulation is applicable also to the persons with mental insanity, that were excluded from the Law n. 482/1968.

To this respect, it is also to consider that by the Judgment n. ..., the Constitutional Court had already considered unconstitutional the exclusion of those individuals from the protection of that special regulation.

The main Italian legal provision concerning discrimination in the workplace by reason of disability is the Legislative Decree n. 216/2003, implementing the EC Directive 2000/78.

As provided for by Article 1 of mentioned Directive, all forms of discrimination (also based on the disability status of the individual) are forbidden, being them both direct or indirect.

In compliance with Art. 9 of the mentioned Directive, the Art. 28 of the Legislative Decree 150/2011 has been issued.

As provided for by this Article a person being subject to discrimination can apply for an interim injunction aimed to stop the discrimination and sanction the conduct; as it is evident, such a legal action appears to be particularly effective allowing the issue of a final decision in an easier and quicker way than the “ordinary” proceedings (that usually can last over three years).

In details, the individual who claims to be subject to discrimination can put forward an application identifying the factual elements grounding the claimed.

The burden of proof concerning the non-discriminatory aim of the conduct contested lays on the counterpart.

The Court, when deeming existent a discrimination, by injunction will condemn the counterparty to stop immediately the discriminatory conduct, to effectively remove the effects of such a conduct and to reimburse the damages suffered by the individual.

Luxembourg

There is no official definition of “disability” in Luxembourg legislation. Nevertheless, the Luxembourgish State approved on 28 July 2011 the Convention of the United Nations on the Right of Persons with Disabilities according to which: “disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others” (Article e of the preamble).

Moreover, the Labour Code defines a “disabled employee” status.

According to Article L. 561-1 of the Labour Code (introduced by Law of 12 September 2003 as regards persons with disabilities), a disabled employee is “any person who has a reduction of his/her working capacity of 30% at less, due to:

- an accident at work in a company legally established in Luxembourg, or
- war events or measures of the occupier, or
- a physical infirmity, mental disability, sensory or psychiatric disability or because of psychosocial difficulties aggravating the disability,

and who is recognized as being able to be employed on the mainstream labour market or in a sheltered environment”.

According to Articles L. 561-2 and L. 561-3 of the Labour Code, the status of “disabled employee” must be requested to a medical commission (in french “Commission médicale”) which will render its decision within a 2-months deadline.

The existence of a reduction of working individual potential relating to the previous professional activity is taking into account to determine the status of “disabled employee”. The importance of the residual working capacity relating to the possibilities to get back to work in a short period of time or the capacity to be rehabilitated is also taking into account (Grand Ducal Regulation of 7 October 2004).

There has been no significant change as regards the definition of “disabled employee” over the last 20 years. From 1945 to 1958, “disabled employees” were only the victims of an accident at work and war invalids and the required work incapacity had to reach 50%. Since 1959, the elements of definition of a disabled employee have been the same (same referred persons, same percentage of disability), but the general writing of the definition has been improved and more clearly precised.

Relating to “disability protection”, the Law of 12 September 2003 introduced a special income in favour of persons with a significant disability, (i.e. having a reduction of capacity of work of 30% at least) because of a physical infirmity, mental disability, sensory or psychiatric disability or because of psychosocial difficulties aggravating the disability (the infirmity has to be acquired before s/he was 65), and having a health status for which any working effort is not recommended or having professional skills so reduced that it is impossible to adapt a workstation in the mainstream or in a sheltered environment to his/her needs.

Moreover, according to this Law the normal wage of a disabled employee working in a mainstream employment cannot be lower than the wage provided for laws, regulations and agreements. Disabled employees working in a sheltered environment are entitled to the minimum social wage for unqualified workers.

According to the Labour Code, disabled employees are also entitled to 6 additional leave days.

The Law of 28 November 2006 on the principle of equal treatment has also introduced the principle of non-discrimination based on disability (Article L.251-1 (1) of the Labour Code). This prohibition has been implemented in a new title in the Labour Code: Title V- Equal treatment regarding employment and work.

Further, this Law introduced a specific article in the Labour Code (Article L. 252-3) according to which the principle of equal treatment must not prevent the maintaining or the adoption of specific measures to prevent or to compensate disadvantages linked to disability. Indeed, this article states that: “As regards disabled persons and employees with

a reduced capacity of work, provisions regarding health and safety protection on the workplace and measures to create or to maintain some provisions or facilities to save or to support their integration into the working life do not constitute a direct or indirect discrimination”.

Moreover, according to the Law of 28 November 2006, the employer is entitled to take measures to allow a disabled employee to access to a job, to take a job or to progress, or to receive a training, except if these measures cause disproportionate charges (Article 20 of the Law of 28 November 2006).

Malaysia

Section 2 of the Persons With Disabilities Act 2008 (“PDA”) defines “*persons with disabilities*” to include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society. Before 2008, there had been no comprehensive laws which protected the rights of the disabled. There were, however, welfare provisions in Employees Social Security Act 1969 which allows an employee who becomes incapable of engaging in gainful activity to claim benefits under the Invalidity Pension Scheme but with certain qualifications.

In 2008, Malaysia signed the Convention on the Rights of Persons with Disabilities (“CRDP”) and in 2010, it was ratified. The fundamental principles of this Convention are respect for dignity, freedom to make choices, independence, non-discrimination, inclusion and participation in society, respect and acceptance of disabled persons as part of human diversity and humanity, equality of opportunity and between genders, accessibility and respect for disabled children’s evolving capacities and their right to preserve their identities. In the same year that the Convention was signed, the PDA 2008 came into force and thereafter the Guidelines for Registration of Persons with Disabilities was issued in 2010 by the Ministry of Women, Family and Community Development. The purpose of registration is to ascertain the categories and distribution of disabled persons in the country for the purposes of planning the needed facilities for them. It would also allow disabled persons to obtain services suited to their needs based on their abilities or lack of it.

The National Council for Persons with Disabilities formed under the PDA 2008 has been charged with formulating disabled-friendly policies and measures to promote the employment of disabled persons besides providing training and opportunities for them.

The Netherlands

Disability is a broad definition which indicates, under the various laws and regulations in the Netherlands, the environmental effect of a (physical and/or mental) impairment, causing a disadvantage for an individual in their personal and professional daily life. Disability under Dutch (anti-discrimination) legislation includes different kinds of impairment; physical or mental impairment including the hearing- or visually impaired,

mental impairment, psychological or psychiatric disorder. Anti-discrimination laws in the Netherlands generally prohibit discrimination on the basis of a disability or chronic disease. Disability in either form may either be congenital, developed during later life or caused by an accident.

There have not been significant changes to the definition of disability as such. Also the protection against discrimination as such under existing anti-discrimination laws has not changed over the past years. Discrimination on grounds of disability or chronic illness is prohibited on the basis of the Constitution (1815) and the Equal Treatment Act (1994). The Equal Treatment of Disabled and Chronically Ill People Act entered into force in 2003 and provides in more detail for protection of disabled and chronically ill people in terms of employment, education, housing and public transport. This Act does not provide for a wider scope of discrimination protection as such, however does provide for a more detailed description in which situations a disabled person is discriminated against and can invoke anti-discriminatory regulations.

The scope of disability protection has been widened in terms of facilitating and stimulating legislation, to enhance participation of disabled people in society. This by way of i.a. the Participation Act and the Social Support Act.

New Zealand

The Human Rights Act 1993 (HRA) provides that a disability means a physical disability or impairment, a physical illness, a psychiatric illness, an intellectual or psychological disability or impairment, any other loss or abnormality of psychological, physiological or anatomical structure or function, the reliance on a guide dog, wheelchair, or other remedial means or the presence in the body of organisms capable of causing illness. There is no legal definition of when a person is considered disabled; however it is generally accepted that a person will be considered disabled if they have any of the above attributes.

The definition of disability as indicated above was introduced by the HRA in 1993 and has not changed since then. Whilst there have been minimal developments in respect of the definition, there has been significant growth in the scope of disability protection. The government developed the New Zealand Disability Strategy in 2000 and adopted it into legislation in 2001. The Disability Strategy involves shifting the focus of disability support and protection from exclusion and care outside mainstream society, to inclusion and mainstreaming the full involvement of people with impairments in society and using dedicated services where this is not possible. Further to this, in 2002 the Office for Disability Issues was set up to provide a focus on disability across government and to lead the implementation and monitoring of this strategy.

New Zealand has also taken a leading role at the United Nations in the development of a convention making explicit the rights of disabled people. In addition a review of long-term disability support services began in 2004 led by the Office for Disability Issues. Working across government agencies, this review aims to improve the fragmentation and incoherence of services as experienced by disabled people. New Zealand also ratified the

United Nations Convention on the Rights of Persons with Disabilities in 2008 and continues to implement the articles into NZ law and society.

Nigeria

The concept of disability in Nigeria is where a person is physically incapacitated or mentally challenged, that he/she is unable to live a normal life without aid or assistance.

Section 3 of the proposed Nigerians with Disability Decree of 1993 defines disability as;

“Disabled person” means a person who has received preliminary or permanent certificate of disability to have condition which is expected to continue permanently or for a considerable length of time which can reasonably be expected to limit the person's functional ability substantially, but not limited to seeing, hearing, thinking, ambulating, climbing, descending, lifting, grasping, rising, any related function or any limitation due to weakness or significantly decreased endurance so that he cannot perform his everyday routine, living and working without significantly increased hardship and vulnerability to everyday obstacles and hazards.”

The UN Convention on the Rights of Persons with Disabilities in its definition of disabled persons, expanded it to include persons ‘who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others’. Nigeria signed the Convention on the 30th March, 2007 and ratified it on the 24th September, 2010.

The Lagos State Special Peoples Law, 2010 further extended the definition of disabled persons to mean ‘a state of substantial impairment of the physical, visual, vocal, auditory, sensory or mental capabilities of a person at birth or by injury, sickness or its effect or congenital deficiency’. The Law also further extended the scope of disability protection in the state as discussed above.

In March 2014, the Nigerian Senate passed the ‘Discrimination Against Persons with Disabilities (Prohibition) Bill, 2014’ which provided protection for all disabled persons in the country as follows;

- a. the prohibition of discrimination against disabled persons on the basis of their disability by any person or institution, in any manner or circumstance whatsoever;
- b. The right of disabled persons to bring a civil action against any person or institution who discriminates against them;

All public institutions and buildings to make provision for accessibility for disabled persons, and for all future building plans to be approved only if they include accessibility and facilities for disabled persons.

- c. Various sanctions against persons and corporations who contravene the provisions of the Bill.

The Bill is yet to receive the President's assent and has not been passed into law.

Norway

Equality legislation in Norway has been subject to several legislative amendment processes during the last decades. These processes are a result of implementing EU directives, and are also driven by a will to strengthen the protection of the disabled. Through the European Economic Area (EEA) agreement, Norway is bound by EU rules regarding discrimination. Directive 200/78/EC prohibits discrimination related to disability and applies to employment. Although the Directive is not a part of the EEA agreement, Norway has made a political commitment to ensure that Norwegian legislation provides equally good protection as the Directive. The EU Courts interpretation and application of the Directive will thus be of relevance when interpreting the Norwegian discrimination legislation.

There are no clear definitions of disability in Norwegian law, formulating terms to categorize or consider an individual as disabled.

The Norwegian Antidiscrimination and Accessibility Act (AAA) adopted 1 January 2014 regulates discrimination on grounds of disability or function reduction. The Legislative Authority ("Stortinget") did not find a definition of disability embodied in the law necessary, as they considered that the legislative preparatory work of the law and case law would clarify how the term should be interpreted. The Act's legislative preparatory work defines disability as "loss of or damage to a body part or in one of the body's functions. This may for example involve movement, sight or hearing impairments, cognitive impairments, or various function reductions due to allergy, heart or lung disease. The term also includes mental disorders such as depression or bipolar disorder". This definition gives the concept of disability a wide scope, as it does not set requirements to severity, duration or cause of the disability.

The definition specified above is in accordance with the definition of disability set out in the legislative preparatory work of the former AAA, adopted in 2009. Further, they express a relational understanding of the concept, clarifying that the assessment of when a person is considered disabled will depend on the specific function impairment and the function requirements of the individual situation, in this context the employment. Disability will occur in the gap between the individual's abilities and the requirements of the surroundings. This view gained acceptance, and was maintained and kept in the adoption of the AAA of 2014.

The determination of whether an individual is considered disabled is consequently subject to an overall assessment of the individual function level up against the requirements of the working situation. Several factors will be of importance in this assessment, such as the duration of the disability and its severity. Naturally, a functional reduction of transitory character will be considered differently than chronic or other functional reductions of long

lasting character. Correspondingly, the same will apply for the severity of the function reduction. These two factors are interrelated, and will affect each other in the consideration of whether an individual is considered disabled.

The cause of the disability is not relevant in a legal context. Self-inflicted functional reductions can therefore be categorized as disability, such as drug addiction. HIV- infected is also covered by the concept of disability. [...] This might cause several questions whether for example conditions such as appearance and overweight is categorized as disability. Such questions have no clear answers, but are subject to an assessment adapted to the specific case. If such conditions are manifestations or consequences of or might cause function reductions, and there exists a causal link between those two factors, the condition could be covered by the concept of disability. [...]

A focus shift in the definition of "disability" has taken place during the last decades, which was confirmed in the adoption of the AAA of 2009. Gradually, the focus has shifted from a medical and biological understanding, to a relational and social use and definition of the term, emphasizing the importance of focusing on the function reduction of the individual rather than a diagnosis or a medical explanation. [...] A relational understanding gives room for a dynamic evaluation of the term, adapted to the specific individual and further the requirements in the work situation. The AAA of 2014 continues the state of this focus shift. [...]

Russia

Under Russian law a person is considered disabled when he/she has health problems and stable decay of body functions owing to an illness, injury or any defects that lead to restrictions of living and working activities and necessity in social protection. A person may be recognized as disabled only based on the results of medical and social examination. Depending on the degree of restrictions of living activities, a disabled person may have the 1st, 2nd or 3rd group of incapacity. The disability of a person is confirmed by the relevant certificate of the medical and social examination and an individual program for rehabilitation.

The current definition for disability has been introduced about 20 years ago and has not been changed since that time. However, the procedure and medical criteria for recognizing a person as disabled has been modified within the recent 3-5 years. As for the disability protection, it has been developed over the whole 20 year period.

Singapore

Whilst the concept of disability is not described or defined in legislation in Singapore, the (then) Ministry of Community Development, Youth and Sports ("MCYS") defines persons with disabilities as "those whose prospects of securing, retaining places and advancing in education and training institutions, employment and recreation as equal members of the community are substantially reduced as a result of physical, sensory, intellectual and developmental impairments".

The MCYS considers this definition of disability to comprise two components:

First, a core definition of what constitutes disability, using a medical model as guidance, whereby physical disabilities include impairments such as amputations and the effects of polio; sensory disabilities are defined as hearing impairment with the loss of hearing for sounds below 12 decibels, and visual impairment with eye-test scores of less than 3/60 (blindness) or less than 6/18 (low vision); intellectual disabilities are defined as those with an IQ of 70 & below; and other developmental disorders include examples such as autism spectrum disorder and attention deficit hyperactive disorder.

Secondly, an assessment of the level of functionality of the person, not only by medical standards, but more holistically with regard to a person's overall social functionality.

In 2004, Singapore expanded its definition of disability to include developmental disabilities, which now forms part of its definition of disability. This is in line with international trends to recognise developmental disabilities worldwide. [...]

South Korea

Article 2 of the "Act on Welfare of Persons with Disabilities" defines the concept of a person with a disability quite broadly as a person who is affected by substantial long-term impairment in daily life or social activity due to physical or mental disability. The Act further defines "physical disability" as a disability of principal external bodily functions or internal organs, etc., and "mental disability" as a disability caused by psychological development disorder or mental disease. The foregoing definition is also largely adopted in other related laws, including the "Act on Employment Promotion and Vocational Rehabilitation for Disabled Persons," the "Act on the Prohibition of Discrimination against Disabled Persons, Remedy Against Infringement of Their Rights, Etc." and the "National Human Rights Act."

In the past, "persons with disabilities" referred only to those that had any of the following five specific disabilities: physical disabilities, visual impairment, hearing impairment, speech impediment or mental disabilities. However, as of February 8, 1999 the "Act on Welfare of Persons with Disabilities" was wholly amended to adopt a more comprehensive definition regarding persons with disabilities.

Spain

A disability is a physical, mental, intellectual or sensitive permanent impairment that could hinder a full and effective participation in society on an equal basis with others. In Spain, an individual with a recognized disability degree as of 33% is considered a disabled person. Such disability degree is set out by a medical report issued by a doctor who is in charge of deciding which disability degree has to be applied, if any. [...] The concept "disability" hasn't changed since the Law 13/1982 on Social Integration of People with Disabilities (LISMI, for its acronym in Spanish) which was the main and most important law concerning disability as it was the first law concerning disabled people protection. However, more than

two hundred laws have been issued by the Government since then in order to set out a more accurate legal framework for disabled people. In these new regulations the scope of disability has been increased, that is, currently there are more people who are considered disabled individual, as more situations have been included within the definition of disability as said above. Thus, more people have benefited from disability legislation.

Sweden

The definition of disability, according to the Swedish Public Health Authority is “a reduction of physical, mental or intellectual function.” Disability can be caused by diseases or other conditions, or due to congenital or else obtained injuries. The disease, condition or injury could be either permanent or temporary.

The legal definition of disability, according to the Discrimination Act (2008:567) is: “A permanent physical, mental or intellectual limitation of a person’s functional capacity that as a consequence of injury or illness existed at birth; has arisen since then or can be expected to arise.” Thus, according to the Discrimination Act, which regulates discrimination of employees and job applicants accordingly, a person is considered disabled when the disability is of permanent kind.

Switzerland

There are different concepts of disability in Switzerland. According to the *Federal Law on the General Part of Social Insurance Law*, disability is defined as “a full or partial earning incapacity that is likely to be permanent or persist in the longer-term”. This is understood to mean “continuing full or partial loss of ability to take up employment in the relevant job market due to impaired health in spite of reasonable treatment and rehabilitation”. Earning incapacity also refers to the inability to carry out day-to-day activities (*e.g.* housework, child rearing, education). There are three disability criteria: impairment to health (regardless of whether it is congenital, illness-related or accident-related) leading to earning incapacity (medical criterion), a permanent or longer-term earning incapacity (economic criterion), and a causal link between them.

The Federal Act on the Elimination of Discrimination against People with Disabilities defines a disabled person as “person for whom it is difficult or impossible to manage everyday tasks, to maintain social contacts, to get around, to participate in education or training, or to engage in gainful employment due to a physical, mental or psychological impairment that is likely to be permanent.”

The Federal Constitution of the Swiss Confederation of 18 April 1999 expressly states the principle of non-discrimination for persons with a disability. The Federal Act on the Elimination of Discrimination against People with Disabilities of 13 December 2002 extended the rights of persons with disabilities, particularly in the areas of access to public buildings, public transport, services offered to the public and employment by the Federal State. On 15 April 2014 Switzerland ratified the UN Convention on the Rights of Persons with Disabilities.

Taiwan

In Taiwan, the concept of disability is mainly governed by the Act on the Rights of Persons with Disabilities (“ARPD”). In 2007, ARPD adopted the definition stipulated under the International Classification of Functioning, Disability and Health (hereinafter “ICF”) which promulgated by World Health Organization (hereinafter “WHO”). ARPD separates the disability into 8 categories, including: 1. mental functions; 2. sensory functions and pain; 3. voice and speech Functions; 4. functions of the cardiovascular, haematological, immunological and respiratory Systems; 5. functions of the digestive, metabolic and endocrine Systems; 6. genitourinary and reproductive functions; 7. neuromusculoskeletal and movement-related functions; 8. functions of the skin and related structures.

Except for ARPD, Mental Health Act (hereinafter “MHA”) further offers the definition of mental illness as: “illness with abnormal presentations in mental status such as thoughts, emotions, perception, cognition and behaviors, which cause impairment in the function to adapt to living and need medical treatment and care.” Further according to MHA, alcoholic is among the mental illness.

As to the method of qualifying a disable person, ARPD provides that an individual with the defined disability may apply for a certificate of disability to the local government, and after passing the appraisal performed by a designated hospital, the local government will issue the certificate hereof to the individual. Since then the said individual will be considered disabled legally. Such certificate is only valid for the period of 5 years so the individual would need to go through the same application and appraisal process to show that he/she is still qualified for disability.

ARPD was promulgated in 1980 and there had been 7 amendments related to the definition of disability after its enactment, among which the amendment in 2007 was the most significant one. Before the amendment in 2007, ARPD provided for 16 different categories in defining disability, however, these categories were not drowned out from a comprehensive theory but from fragmented legislations over the years. As a result, such legislation had been criticized for its incompleteness and self-contradiction. For correcting such issue and bridging the academic conversation between Taiwan and the world, the legislators adopted the comprehensive definition sourced from ICG/WHO in 2007.

Aside from the the disability definitions, the 2007 Amendment contained certain improvements which include, *inter alia*, (1) setting up a “Single Window” (which required the local governments to integrate its multiple authorities and complicated administrative procedures into one single office) to handle disability related matters in order to facilitate the efficiency and simplify the redundant procedures of the local governments; and (2) enhancing the protection for the employment of the disabled by reducing the size of the entities applicable to the mandatory employment requirement from the size of 100 employees to 67 employees.

Turkey

According to the Law on Persons with Disabilities, an individual is considered to be disabled if they are affected from behaviors and/or environmental conditions limiting their full and effectual participation in society on equal conditions with others due to loss in their physical, mental, psychological and sensory ability at different levels.

There have been significant developments in Turkey in the rights of disabled individuals over the last 20 years. Disabled Persons' Rights were firstly regulated as a constitutional right under the Constitution dated 1982. The Law on Persons with Disabilities entered into force in 2005 as the cornerstone legislation including all the rights of disabled persons. Before 2005, disabled persons' rights were regulated under different pieces of legislation [...]. In addition, in 2009 Turkey became a party to the Convention on the Rights of Persons with Disabilities ("Convention"). [...] In accordance with Article 90 of the Constitution, upon proper ratification, the regulations of an international convention to which Turkey is a party are elevated to the level of domestic law. Therefore, upon ratification, regulations of the Convention have become binding in Turkey. Due to fact that regulations of the Convention are binding, all pieces of legislation related to disabled persons have been revised in order to be in compliance with the Convention.

Ukraine

In Ukraine, the concept of disability is rather strict and is understood as impairment, with accommodation and a sphere of employment having no influence on the existence or the degree of disability. A disabled person is defined by law as an individual with a persistent disorder of bodily functions that in the course of interaction with the outside environment results in the limitation of normal life activity. Whether a person is considered to be disabled or not and the degree of disability are determined by means of an expert examination performed by medical and social expert examination bodies of the Ministry of Health of Ukraine. As a result of the examination, a disability certificate and an individual rehabilitation program are issued. From a formal standpoint, an individual is considered disabled when he/she holds a valid disability certificate.

Since 1991 and until Ukraine joined the UN Convention on the Rights of Persons with Disabilities (the "Convention"), the definition of disability and the scope of disability protection envisaged by the Ukrainian legislation did not experience any significant development. After the Convention was ratified in 2009 and became effective in 2010, the definition was amended to reflect the one provided in Article 1 of the Convention and the concepts of "reasonable accommodation" and "universal design" were implemented into the national legislation broadening the scope of protection granted to disabled persons.

United Arab Emirates

In our responses, we consider laws in the UAE from the following sources: Federal law, which applies across the UAE, save for the Dubai International Financial Centre free zone (DIFC); Laws of the Emirate of Dubai, which apply within the Emirate (with the exception

of the DIFC); and Laws of the DIFC, which apply within the free zone only. The DIFC is a free zone in the Emirate of Dubai which has its own commercial laws that apply within it, to the exclusion of such laws of the UAE and the Emirate of Dubai.

The main federal law relating to disability discrimination in the UAE is Federal Law No. 29 of 2006 (the Federal Disability Law), which is applicable not only in an employment context, but is also concerned with access to a wide range of services, including education, health and cultural services (amongst others). The definition of a disability in the Federal Disability Law includes deficiencies or disorders, whether permanent or temporary, whether physical, mental, developmental or sensory, which would prove a hindrance to a person in meeting their normal requirements, when compared to those without any such conditions. A consideration of the main services available to people with disabilities in the UAE affords some insight how disability is conceptualised under the federal law. The most prominent services focus on:

- Facilitating transport for those physically disabled, particularly those in wheelchairs;
- Special educational centres targeted at those with developmental needs.

On the other hand, sensory disabilities and mental or psychological disorders are types of disabilities which have yet to attain widespread recognition and focus in the UAE.

In the DIFC, the DIFC Law No. 4 of 2005 (the DIFC Employment Law) is concerned with disability in an employment context and defines disability as a physical or mental impairment that has a 'substantial and long-term adverse effect on an employee's ability to carry out his duties in accordance with the contract of employment'.

The introduction of the Federal Disability Law in 2006 and the DIFC Employment Law in 2005 perhaps mark the most significant development in disability protection in the UAE in a legislative sense, though due to the absence of positive mandates (such as a quota), change is slow to be seen in practice.

The DIFC Employment Law underwent significant changes in 2012. One amendment reworded the definition of 'disability', from "an inability to perform all or part of one's employment duties because of an accident or illness" to "a physical or mental impairment that has a substantial and long-term adverse effect on an employee's ability to carry out his duties in accordance with the contract of employment." An impairment is deemed to have a long-term effect if it has lasted or is likely to last for at least twelve months.

Also as part of these changes, a prohibition on employers refusing to employ a person due to that person's disability was removed from the DIFC Employment Law, thus limiting its application to those already employed within the DIFC, rather than prospective employees (although arguably, the previous provision was unenforceable by a prospective employee in any event, as the DIFC Employment Law provides that it only applies to employees working in companies in the DIFC).

A quota on employment of people with special needs in private companies in the UAE was proposed in 2005 for inclusion in the draft Federal Disability Law. Ultimately, the Ministry of Labour and Social Affairs decided to remove the reference to a quota from the final draft of the law, on the basis that it would be difficult to amend the quota in response to changes in the labour market. However the Federal Disability Law retains a reference to the Cabinet being empowered to determine job quotas upon the submission of a proposal to this effect by the Minister of Social Affairs.

United Kingdom

The Equality Act 2010 (the collective legislation covering all types of discrimination) states that an individual is considered disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. An impairment has a long-term effect if it has lasted at least 12 months; the period for which it lasts is likely to be 12 months; or it is likely to last for the rest of the life of the individual affected. Some conditions are automatically deemed to be disabilities such as blindness, severe disfigurements, cancer, HIV and multiple sclerosis. Some conditions are stated not be impairments, such as addiction to alcohol, nicotine or any other substance; tattoos and body piercings; and hay fever.

For an individual to assert that they are disabled the cause of their impairment is irrelevant. The focus is on the effect the impairment has and not its cause. However, where an individual is treating their impairment with medication the focus should be on what the effects of the condition would be without it.

Before the Equality Act 2010 came into force, the rules on disability discrimination were contained in the Disability Discrimination Act 1995, which have since been consolidated, with other discrimination laws, in the Equality Act 2010. Apart from some tidying up, the definition of disability has remained broadly the same.

Whether or not this legal test is met however, and whether there has been discrimination in respect of someone who is classified as disabled, has been the subject of extensive case law. The Disability Discrimination Act 1995 set out three types of disability discrimination that could occur in the employment context: (1) direct discrimination on the grounds of a person's disability; (2) discrimination for a reason related to a person's disability; and (3) a failure to make reasonable adjustments in relation to a disabled person.

A housing decision (*London Borough of Lewisham v Malcolm*) in 2008 potentially limited the number of people likely to be able to rely on grounds (2) by saying that the court need not look at the underlying reason for an action/treatment when assessing the appropriate comparator but would look at a non-disabled person in the same circumstances to determine whether the treatment was discriminatory (in this case, that would be a non-disabled person who had illegally sublet their flat). To address this potential narrow interpretation of a comparator, the Equality Act 2010 introduced discrimination arising from disability.

The Equality Act 2010 replaced and harmonised the previous discrimination legislation which was spread across numerous pieces of legislation. The Act brought disability discrimination in line with other protected characteristics by introducing indirect discrimination and the new concept of 'discrimination arising from a disability' explained above. It also made it more difficult for disabled people to be screened out on medical grounds, when applying for jobs, by restricting the circumstances in which employers can ask job applicants questions about disability or health.

USA

The term "disability" is defined by the federal government in various ways, depending on the context. Under the Americans with Disabilities Act (ADA) and its 2008 amendments, an individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities; or
- Has a record of such an impairment; or
- Is regarded as having such impairment.

Major life activities include, but are not limited to, such things as: standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, working, and the operation of a major bodily function. Disabled individuals include those persons with an impairment that is episodic or in remission if the impairment would substantially limit a major life activity when active.

The definition of 'disability' is to be construed broadly. However, the standard for a disability is not uniform under state and federal law. For example, the New York State Human Rights Law (SHRL) provides protections broader than the ADA. Also, the disability provisions in the New York City Human Rights (NYCHRL) differ significantly from the ADA in the definition of disability. Under the NYCHRL, disability is defined to mean "any physical, medical, mental, or psychological impairment, or a history or record of such impairment". Under the NYCHRL, a condition that impairs any system of an individual's body qualifies as a disability, so that to be covered by that law, an individual's impairment need not "substantially limit a major life activity". Hence, the scope of protection under the laws of many states and municipalities is often broader than federal law, and it is continually evolving.

Several years ago, the ADA underwent significant review and was amended by the ADAAA (ADA Amendments Act of 2008). This new legislation directly overturned several seminal decisions of the United States Supreme Court, in which the Court held that consideration must be given to mitigating measures that help individuals control impairments when determining whether persons are disabled under the ADA. The ADAAA clearly has sent the message that the concept of disability is to be broadly construed. Specifically, the measures increased coverage and strengthened employee protections under the ADA by:

- Rejecting the strict interpretation of the ADA that defines disability as an impairment that prevents or severely restricts an individual from doing activities that are of central importance to one’s daily life;
- Prohibiting the consideration of almost all measures that reduce or mitigate the impact of an impairment in the determination of whether an individual is disabled; and
- Allowing persons who are discriminated against on the basis of a perceived disability to pursue a claim under the ADA regardless of whether the perceived impairment limits or is perceived to limit a major life activity.

The primary consequence for employers is that far more people fall within the definition of having a disability under the ADA. Besides the developments under federal law, the laws of New York State and other states are expanding the definition of disability as well.

A condition that has received increased attention under the ADA is obesity. The American Medical Association (“AMA”) has stated that they recognize obesity as a medical disease. The Equal Employment Opportunity Commission, which enforces the U.S. antidiscrimination laws and prosecutes violations, regards those who are “morbidly obese” as physically impaired and generally disabled under the ADA. (Although the statement is not legally binding, its position puts pressure on policy makers to place obesity under the definition of disability of the ADA.)

Another recent development affecting the expanded definition of disability under the ADA is the release of the fifth edition of the AMA’s guidebook for identifying and classifying mental disorders, as there are new mental disorders added to the manual. For instance, the “social (pragmatic) communication disorder” has been added to this manual, which applies to people who have significant problems communicating verbally and nonverbally in social situations.

U.S. President Barack Obama signed the *Achieving a Better Life Experience Act of 2014* (ABLE Act) on December 19, 2014. The ABLE Act allows people with disabilities and their families to set up a special savings account for disability-related expenses.

II. Current employment situation / legal protection of disabled persons (discrimination)

Belgium

Apart from the quota for the employment of people with disabilities that exist in the public sector (which range between 2,5% and 3% depending on the governmental level), legislative initiatives in Belgium are intended to stimulate, rather than to impose. This approach is well exemplified by the facultative code of conduct which was agreed upon by the National Representative Employers’ and Employees’ Organizations in 2008 and which

seeks to promote certain good practices (e.g. a code of conduct on company level, company diversity plans and measures of affirmative action).

On the Regional level, a vast array of subvention schemes have been developed to stimulate the insertion of disabled people into the labour market. Hence, the system of wage subsidies given to employers who hire 'job coaches' to assist disabled people on the company work floor. Also, insertion subventions are given to employers who are willing to make employability-enhancing investments or that would compensate for possible productivity differences in comparison with other employees. Thus, by dividing the total wage cost of the disabled worker between the employer and the government, it becomes more cost-competitive and therefore more interesting for future employers to hire disabled workers.

Furthermore, a specific form of protection against dismissal is given to handicapped people. Employers risk having to pay indemnities when they are not able to prove that no reasonable accommodations could have been made to prolong the employment of the fired person with a disability. These adaptations should not be limited to material adjustments (e.g. ergonomics, modification of machinery), but also extend to job content, working time and work organization. The assessment of what is reasonable has to be made by taking into account amongst others the cost of the adaptations and the size of the company.

Disabled people are not only protected from direct discrimination, but also from discrimination based on association (e.g. the refusal to modify the working time schedule of an employee whose child has a handicap) or discrimination based on perception.

Finally, for those who are not able to work in the "regular labour market", there are also possibilities to be employed in social enterprises or in sheltered employment.

Brazil

In the past years, several laws regarding disability have been enacted in Brazil. In addition, there are many other legislative bills being analyzed/voted in the Brazilian Congress, which evidence that disability is an important matter. Please find attached hereto 2 (two) charts we have prepared for your reference. The first one shows the main laws on the matter which are already in force (please note that we have listed the most important ones and also the other laws that have been enacted from 2009 on). The second one lists the most relevant legislative bills on the matter from 2010 on (please note that we have only listed the legislative bills which have already been approved by commission in both the House of Representatives and the Brazilian Senate, but are still pending final reporting, voting and sanction by the President.

Also, it is important to point out that the Brazilian Federal Constitution ("CRFB/88") has several and important provision regarding the protection of disabled people (art. 5th, XXXI; art. 37th, VIII; art. 203, IV and V; art. 227, 1st paragraph, II).

Finally, according to article 4th of the Decree 3298/1999 the following people may benefit from disability legislation: (i) people with physical disability (partial or total); (ii) people with hearing disability (partial or total); (iii) people visually impaired (partially or totally); (iv) people with mental disability which has started to be developed before 18 years of age and is associated, at least, with two of the following inabilities: communication, self-care, social ability, use of community's resources, health and safety; academic ability; leisure, work and multiple disability.

There are many different laws in Brazil dealing with discrimination in the workplace by reason of disability. The most effective one is Law # 7853/1989. As provided under its article 8th, the following practices are considered crime:

“Art. 8th.

II - prevent, without cause, someone's access to a public office role, for reasons due to his/her disability; III – deny employment or work to someone, without cause, due to his/her disability.”

Also, as set forth under article 373-A of the Brazilian Labor Code (Law Decree # 5452/1943), it is forbidden to have discriminatory job's advertisements by reason of sex, religion, disability, skin color, among others.

In addition, according to the Ministry of Labor and Employment, discriminatory motivation for refusing employment or promotion, terminating an employment agreement, or using discriminatory variable indexes for compensation purposes are forbidden, the company being subject to administrative fines/penalties. Furthermore, Law # 9029/1995 provides that companies may also be prevented from obtaining loans and/or financing from official financial institutions in case of discrimination towards disabled employees. Finally, it is important to point out that whenever a company refuses to hire a disabled employee it is then required to provide technical reasons rather than subjective ones.

Canada

Legal protection for disabled individuals is provided by human rights statutes as well as employment standards and occupational health and safety legislation. Differences between Canadian jurisdictions in this regard are relatively minor. Protection against discrimination on the basis of Disability includes:

- (i) Pre-hiring protection: employers may not base hiring decisions on discriminatory grounds (such as Disability) or collect information relating to such grounds.
- (ii) Non-Discrimination and the Duty to Accommodate: when a Disability exists, the employer has a duty to accommodate an employee, or to prove that accommodation would cause undue hardship. Although the employer remains

responsible for the accommodation process, the employee must also collaborate and provide required information.

- (iii) Protection from Reprisals: where an employee exercises statutory rights in relation to Disability (for example, taking unpaid sick leave), the employee is protected from reprisals by the employer and any sanctions subsequent to the exercise of statutory rights are presumed reprisals thereto.
- (iv) Employment equity: federally regulated employers must devise employment equity plans and survey their workforce in this regard, as further explained below.
- (v) Harassment: employers have obligations to prevent and address harassment of employees by other employees (including on the basis of disability).

Chile

There are several legal mechanisms currently in force to provide legal protection to a person who is disabled, specifically in case of discrimination or violation of their fundamental rights.

Law No. 20,422 (that establishes equal opportunities and social inclusion for disabled people) states that any person, who, due to an act or omission, suffers an arbitrary or illegal threat, disruption or is deprived of the rights enshrined in the law, may request the Local Police Court to adopt the necessary measures to secure and restore the affected right.

Notwithstanding the above, there are other legal protections of a broader or general application to which disabled people may resort to, including prohibition of unlawful discrimination. The Protection Action stated in the Chilean Constitution aims to protect constitutional rights, including nondiscrimination, freedom of work, right to honor, freedom to develop a licit economic activity, right to choose the health system, among others. The Protection Action must be filed before the relevant Court of Appeals. Furthermore, Law No. 20,609 (2012) on Measures Against Discrimination, provides that all distinction, exclusion or restriction without reasonable justification, made by public or private entities or persons, that causes deprives, disturbs or threatens the legitimate exercise of fundamental rights established by the Chilean Constitution or by international agreements about fundamental rights will be considered as arbitrary discrimination, stipulating an action that should be filed before Civil Courts to restore the rule of law. Within the scope of employment, we can also indicate an anti-discrimination provision in the Labor Code, Article 2 and a judicial mechanism (Labor Protection Procedure /Procedimiento de Tutela Laboral) stipulated in Article 485 and subsequent of the Labor Code, as will be explained later on. We can also mention Article 161 bis of the Labor Code which states that an employment contract cannot be terminated due to a total or partial disability of the employee.

China

There is a comprehensive legal system in China for the protection of disabled person. The Law of the PRC on the Protection of the Disabled provides general guidelines and protections for disabled at a national level in the aspects of rehabilitation, education, employment, cultural life, social security and barrier-free environment. In 2008, the Employment Promotion Law of the PRC also specified that no employer shall discriminate against handicapped persons. In addition, local implemental regulations have been enacted by the government of each province to specify detailed protection measures and corresponding responsibilities, as well as relevant tax/financial favors for such protection. For enjoying the above protection, one must fulfill the standard as stipulated in the laws and regulations, and obtain the Certificate of Disabled as an approval by the government.

Disability discrimination is prohibited under Article 29 of the *Employment Promotion Law* (effective on January 1, 2008) and Article 4 of the *Rules on the Employment of Disabled People*, before which the discrimination issue has never appeared in the legislation of PRC. When hiring, except for the job position classified as unsuitable by the state, the employer is not allowed to use disability as a ground to refuse employment or increase hiring standard.

According to these laws and rules, the employer is also required to provide suitable working conditions and labor protection measures to workers with disabilities. Disabled workers shall not be discriminated against in terms of remuneration, promotion and welfare.

Colombia

Colombian legislation guarantees and ensures the effective exercise of the rights of individuals experiencing disabilities through measures of inclusion, affirmative actions, reasonable accommodation, constitutional actions and other measures aiming to eliminate all forms of discrimination based on disability.

Colombian law guarantees that all people have the same opportunities, to access, participate, interact and enjoy the proper service or environment along with other citizens, without any limitation or restriction based on their disabilities, throughout the enforcement of concrete actions that help to improve the life of people with disabilities. Therefore, every individual who has any type of disability may benefit from this legislation, and should be protected by law. Any individual who considers that his or her fundamental right to be treated in equal conditions is infringed, may claim through a constitutional action the instant protection of his or her right. The constitutional Action or Injunction is a remedy created by the Constitution issued in 1991. Is an expedient and immediate mechanism that may be brought before any judge in any jurisdiction, when constitutional rights are being threatened. Thus, everyone can use it to claim the protection of their rights when they result violated or threatened by the action or omission, in any time and place. Moreover, from an employment perspective, employees experiencing disabilities cannot be dismissed unless there is a cause for termination and only with the proper authorization from the Ministry of Labor. Failure to comply with this voids the termination.

Denmark

In December 2004, the Danish Act on Prohibition Against Discrimination in Respect of Employment, Consolidation Act no 1349 of 16 December 2008 as amended, was amended to the effect that also discrimination on grounds of disability was made illegal. In connection with appointment, promotion as well as dismissal, direct and indirect discrimination on grounds of disability was deemed contrary to the Act. A special obligation to take appropriate measures in order to give a person with a disability access to employment, to be employed, or to have progress in employment or to give a person with a disability access to education and training on the part of employers was also introduced. Employees who are subject to Danish law, either due to the Rome Convention (Convention on the Law Applicable to Contractual Obligations 1980), or due to a short-term assignment covered by the Danish Acts on Expats, Consolidation Act no 175 of 24 February 2015 as amended Convention on the Law Applicable to Contractual Obligations 1980 may benefit from the legislation.

England

The Equality Act 2010 prohibits discrimination against anyone who has a disability, is perceived to have a disability, or is associated with someone who has a disability.

The whole employment cycle is covered. Job applicants, those in employment and former workers and employees are protected from discrimination from their employer, colleagues, and agents (i.e. consultants and contractors), whether at work, or work related events. Not only employees but other categories such as workers, partners and apprentices benefit from this protection.

The Equality Act 2010 outlaws direct discrimination, indirect discrimination, discrimination arising from disability, harassment and victimisation. Once an employer knows, or ought reasonably to know that a person is disabled and that they may suffer a substantial disadvantage when compared to those without a disability, they have a positive duty to make reasonable adjustments to the physical working environment, working practices or policies to alleviate it. This could be providing an electronic version of a print document, or more substantive changes to working hours or provision of a special piece of equipment.

It is not direct discrimination to treat a disabled person more favourably than someone who is not disabled.

Finland

Disabled persons are afforded legal protection especially against discrimination and by providing access to certain services, equipment or other support designated to facilitate their coping with daily life. Protection against discrimination is provided by the Constitution of Finland and the Non-Discrimination Act. Discrimination based on disability is prohibited both in private and public operations. The Non-Discrimination Act yet allows

positive discrimination in order to improve equality or prevent harm caused by discrimination. Moreover, the said Act sets so-called obligation to reasonable accommodation to the employer to improve for example employment and education preconditions of the persons with disabilities as explained in more detail below. [...]

In addition, there are several special laws entitling disabled persons to various services or aids (*e.g.* travelling arrangements, interpretation services, equipment). The purpose of these enactments is to enable disabled persons to live as normal life as possible, for example, to study, work and start a family. Municipalities are required to organise certain specified special services for disabled persons who need them. These services may include financial assistance, rehabilitation counselling, adaptation training, transport services, aids, interpretation and communication services, service accommodation etc. [...]

The new Non-Discrimination Act came into force in the beginning of 2015 following a long drafting phase. In general, the protection against discrimination and requirement to enhance equality in public and private operations (including employers) was expanded. As mentioned above, for example the monetary cap in the compensation for illegal discrimination was removed. With respect to especially disabled persons, the amended Non-Discrimination Act affords greater protection also by prescribing that neglect to provide reasonable accommodation without acceptable reason by an employer may be considered as illegal discrimination leading to sanctions (*e.g.* monetary compensation as explained above). The said obligation requires the employer to undertake reasonable measures to ensure that the employee with disability may get the job, manage with the work tasks and advance in his/her career. The reasonable accommodation may be related to the work environment, work tools or working arrangements, and they are always based on the individual's needs. [...] As indicated above, employers may be entitled to receive some financial support for making the required adjustments.

France

Disability legislation provides three distinct types of ameliorative measures: a regulation including quotas aimed at assuring disabled people access to employment opportunities, positive measures regarding working conditions (such as work-time arrangements, workplace accommodation and accessibility), and vocational training. These measures, which allow disabled persons to enjoy equal treatment, are designed not to confer privilege, but to remove disadvantages associated with disability. The vocational integration of disabled persons is supported by the allocation of financial assistance, by accompanying provisions in the area of vocational training, and by the accommodation of the workplace to the special needs of disabled individuals.

For instance, regarding the working conditions:

- Employers have to ensure that the environment and workplace are accessible and have to make efforts to reasonably accommodate the individual workplace requirements of the disabled person.

- Workers with disabilities are entitled to adjustments and arrangements in their working hours and shifts.
- French legislation provides an obligation to negotiate each year with employer's and worker's organizations on the employment of disabled individuals (concerning rehabilitation, vocational training, hiring plan).

Concerning protection against dismissal:

- it is forbidden to dismiss an employee because of his disability unless the person becomes medically unable to work and if his professional redeployment in the company is impossible.
- In the event of dismissal, the period of notice must be double.

Specific institutions have been created as regards disabled persons suffering from a serious loss of their working capacity:

- adapted companies intended for disabled persons;
- distribution homeworking centers;
- work help centers.

[...]

The law of 11 February 2005 (n°2005-102) enshrines principle of equality of opportunity and has triggered a renewed interest in the fight against discrimination towards disabled persons. Since 2005, equality of treatment and palliation of the disability constitute the stated objectives, and this law strengthens the protection measures under the principle of non-discrimination.

Germany

Benefits vary according to the degree of disability. Seriously disabled people are entitled to allowances and special employment conditions:

- Tax reductions
- Special protection against dismissal: The termination of employment of a disabled employee by the employer is legally invalid unless consent is obtained from the relevant public authority, i.e. the integration office. The notice period is at least four weeks.
- Five extra days of vacation in each calendar year

- Disabled parking badge

Several relatively new legislative Acts (Equal Treatment Act; Law for the Equalization of disabled persons) show that the government tries to implement equal rights for disabled people in both public and private areas. Also, the international human rights treaty of the United Nations, the Convention on the Rights of Persons with Disabilities, has been ratified by the EU. Since 2011 the German government is in the process of implemented this treaty within Germany by a “national action plan”.

Greece

Law 3304/2005 having incorporated the relevant provisions of EU Directive 2000/78 establishing a general framework for equal treatment in employment and occupation, provides for legal protection and sanctions in case of disability discrimination. A) When the impaired person invokes the noncompliance with the principle of equal treatment /disability discrimination and proves before the court or authority the material facts from which direct or indirect discrimination can be inferred, the other party (or the authority) bears the burden of proof that material facts did not take place constituting violation of the relevant principle. B) (Victimization) Relevant protection is provided against the dismissal and in general adverse treatment of a person, as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment. C) Relevant criminal sanctions are applied against the person committing disability discrimination. D) Administrative sanctions are applied against the employer committing inter alia disability discrimination.

In addition to the above specific provisions of the above law, general legal means of protection constitute and provide a) invalidity of a dismissal taken in violation of the principle of equal treatment against persons with disabilities b) legal grounds for the initiation of claims of compensation (damages and moral harm).

Law 3996/2011 provided for the first time explicitly that the Labor Inspectorate monitors the implementation of the principle of equal treatment irrespective of racial or ethnic origin, religion or belief, disability, age or sexual orientation, taking into account the multiple cases of discrimination in accordance with what is specifically provided for in Article 19 of Law 3304/2005. In application of Article 10 of said Law, the Inspectorate also monitors compliance with the principle of equal treatment for the disabled, including HIV-positive, advises employers and advises employees on conditions of equal treatment and ensures that employers proceed with all reasonable adjustments with the adoption of all necessary, as appropriate, measures to ensure in particular access and retention /stay of people with disabilities in work, and their participation in vocational training.

India

As per the ECA, the employer is required to make certain payments to an employee (or his heirs) for any injuries or diseases that arise out of and in the course of the employee's employment. Similarly, the Employees' State Insurance Corporation ("ESIC"), set up under the ESIA, would extend medical help and/or make payments to an employee covered by the ESIA. Please note that the employer and each covered employee are required to make insurance premium contributions to the ESIC.

India is a signatory to the UN Convention on the Rights of Persons with Disabilities. As a result of such commitment, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("PWD Act") provides for equal opportunities in education, employment, social security and an unbiased atmosphere for the disabled. This law applies only to government establishments. In addition, the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1992 are some of the other laws that provide protection of individuals with special disabilities.

Ireland

Irish equality legislation affords considerable legal protection to a person who is disabled. The EEAs outlaw discrimination at work including in relation to recruitment and promotion; equal pay; working conditions; training or experience; dismissal and harassment. The Equal Status Acts 2000-2012 outlaw discrimination outside the workplace, in particular in the provision of goods and services, selling renting or leasing property and certain aspects of education.

The EEAs cover job applicants, employees and former employees, but it also covers apprentices and any other contract where an individual agrees to personally execute a work or service either as a contractor or an agency worker. They cover anyone who has a disability, is believed to have a disability, or is associated with another person with a disability.

The EEAs justify the dismissal of an employee where as a result of a disability, they were incapable of undertaking the duties of employment – this can provide a full defence against a claim of discriminatory dismissal. However, this is subject to a mandatory obligation to provide reasonable accommodation and the EEAs provide that "a person who has a disability is fully capable of undertaking any duties if the person would be so fully competent and capable on reasonable accommodation being provided by the person's employer". Reasonable accommodation would obviously include adapting premises and equipment, but it may also require varying working hours and/or duties. In determining whether the accommodation would impose a disproportionate burden, relevant factors include the financial and other costs, the employer's financial resources and the possibility of public funding or other assistance.

The Equality Act 2004 extended the scope of protection afforded under the Employment Equality Act 1998 to persons employed in a self-employed capacity and to persons under the age of 18 (but over the minimum school leaving age) and to those over 65. It also provided that the requirement on employers to provide reasonable accommodation for persons with disabilities should be subject to it not imposing a disproportionate burden (as

opposed to it not giving rise to more than a nominal cost – a considerably lesser burden and duty) . The Disability Act 2005 for the first time placed an obligation on public bodies to be pro-active in employing people with disabilities. The Civil Law (Miscellaneous Provisions) Act 2011 amended the maximum amount that could be awarded by the Equality Tribunal in employment equality cases to 2 years remuneration or €40,000, whichever is greater.

Israel

The Law prescribes the following protections:

Discrimination in the workplace on the basis of disability is prohibited. According to the provisions of the law, discrimination in this context includes, inter alia, failure of the employer to make the necessary accommodations due to the special requirements of the disabled person, which would enable the disabled person to perform the employment. The law specifies that the employer is under no duty to make such accommodations if this were to impose an excessively heavy burden. An excessively heavy burden is defined as a burden that is unreasonable under the circumstances of the case, which also takes into account the cost and nature of the adjustment, size and structure of the business, extent of activity, number of employees, composition of the manpower, and the availability of outside or governmental financial resources for making such accommodations.

In general, the Law applies, among others, to the recruitment, promotion and termination of the employment of disabled people as well as their terms and conditions of employment.

Workplaces that employ 25 or more employees are required to ensure that they have a fair representation of individuals with disabilities among the employees.

On June 25, 2014, the Presidium of Israeli Business Organizations and the Histadrut (an employees' organization) enter into a Collective Agreement regarding the fair representation of people with disabilities in the workplace. The Collective Agreement is intended to practically implement some of the general provisions of the Law, however, it was only scheduled to enter into force upon the issuance of an Extension Order.

On September 21, 2014, the Minister of Economy issued the anticipated Extension Order, which caused the provisions of the Collective Agreement to enter into force and apply to the entire Israeli market (subject to certain limitations).

The Collective Agreement and Extension Order determine that workplaces employing 100 or more employees are required to give "fair representation", in accordance with the basic requirement as mentioned above, to disabled persons. Fair representation in this context was defined as having disabled employees constitute at least 2% of the employees in the company by the end of the first year of the regulation's application, and as having disabled employees constitute at least 3% of the employees in the company by the end of the second

year of the regulation's application. In addition, employers were required to appoint a person on their behalf to be responsible for the employment of disabled persons.

Italy

As commented above under 1., Law n. 68/99 provides a uniform regulation aimed to guarantee the right to work for a broad category of people with disabilities, allowing – through a s.c. “focused placement” – the matching between the Companies’ needs of manpower and the specific abilities of the disabled persons.

In order to implement the s.c. “focused placement”, Law n. 68/99 firstly requires that the person with disabilities:

- (i) has undergone specific medical examinations carried out by the competent ASL (the Public Local Health Authority); and
- (ii) based on the assessment issued by the ASL, he is enrolled in the relevant Register held by the competent “Centres for the Employment” (Governmental Offices allowing the intersection between the supply and demand of work);
- (iii) once enrolled in the Register, the competent Centre drafts a short résumé of the specific skills and abilities of the disabled person, also valuing his ambitions, this way also proposing the possible tasks he can be assigned with.

Also the process to hire a disabled individual is highly regulated.

As provided for by Law n. 68/99, every year, before 31 January, Employers (both private and public) shall draft a Report where to include (i) the overall number of employees currently hired (ii) the number and personal details of the disabled workers (possibly) already hired and (iii) the number of free posts (and relevant tasks) that can be assigned to individuals with disabilities (such Report is not to not be submitted when it does not contain any change with respect to the one submitted the previous year).

Based on such Report, the Employer is compelled to hire:

- 1 individual with disabilities, when his overall number of employees is between 15 and 35 units;
- 2 individuals with disabilities, when his overall number of employees is between 35 and 50 units;
- 7% of his entire workforce, when his overall number of employees is larger than 50 units.

However, it is to note that the quotas described above are to be calculated on a reduced number of regular employees: among others, managers, trainees, individuals with

disabilities already hired pursuant to the Law n. 68/99, temporary employees hired for less than 6 months and Workers who perform their duties from home shall be excluded.

Within the term of 60 days following the reaching of the thresholds above, the Employer is compelled to hire the relevant number of disabled individuals.

The Employer can accomplish with his duty through a s.c. “nominative call” of the exact individuals chosen in the list kept by the Centres for the Employment, or through a “numerical call” , therefore simply submitting a generic request to the Centres, that will choose following the order of enrolment in the Register.

In addition to the two way if hiring above, the Law allows the Employer to enter into specific agreements with the Centres for the Employment: according to such agreements, the Company or Public Entity usually commits to offer specific trainings to the individuals, and, at the same time, can customize the workforce posted on its specific needs and, as provided for by the Law 68/99, can benefit of specific incentives (*ad hoc* derogations to legal limits; specific economic supports, etc.).

Once the employment relationship is commenced, the disabled person shall be appointed to tasks which are compliant with his disabilities: this also implies that in the event of internal reorganization of the tasks assigned to the workforce as well as in the event of worsening of the disability, the disabled employee can require a medical examination with the aim to assess whether the duties assigned are still compatible with his infirmities; the same request can be put forward by the Employer at any time during the working relationship.

It is finally to consider that, a specific regulation concerning the performance of the employment relationship is also meant to assist the family of the disabled person.

In particular, Art. 33 of the Law. n. 104/1992 (*Law for the assistance of persons with handicap*) - although subject to certain conditions – grants:

- (i) the right of the relatives of the person with “serious disabilities” to benefit of a three-days-per-month paid permission;
- (ii) the possibility for those relatives to opt for the office closest to the place where the person with “serious disabilities” lives; and
- (iii) the prohibition, missing their specific consent, to transfer such relatives.

Art. 42 of the Legislative Decree n. 151/2001, additionally allows the same relatives to opt for non-working period (not longer then two years) in order to assist the disabled individual.

Luxembourg

Article L. 251-1 (1) of the Labour Code (Law of 28 November 2006 implementing the EU Directives n°2000/43/CE and n°2000/78/CE) prohibits all type of discrimination, direct or indirect, based on religion or belief, disability, age, sexual orientation, actual or assumed membership or non-membership of an ethnic group or race.

This prohibition applies to all persons, public or private, physical or moral as regards:

- ☐ conditions of access to employment, non-wage-earning activities or work, including the selection criteria and the recruiting conditions, whatever the business sector is, and to all levels of professional hierarchy, including in terms of advancement;
- ☐ access to all types and levels of professional orientation, professional training, improvement and training to change of profession, including the acquiring of practical experience;
- ☐ conditions of employment and work, including conditions of dismissal and remuneration; and
- ☐ affiliation and commitment to a professional organisation (employee's professional organisation or employer's professional organisation) or to an organisation whose members practice a particular profession, including the benefits given by such types of organisation.

In addition, Article 454 of the Penal Code (introduced by Law of 19 July 1997) prohibits all discrimination on the grounds of origin, colour, sex, sexual orientation, family status, age, state of health, disability, moral, political or philosophical opinions, trade unions activities, actual or supposed belonging to an ethnic group, a race or a particular religion and belonging or not belonging to a group or a community. This article applies to natural persons as well as to members of a legal person. The latter may not be discriminated against because of the characteristics of its members.

Malaysia

Under the PDA 2008, persons with disabilities are to be given access to public facilities, amenities and services and buildings just like how able-bodied people are but this is subject to whether there arises a situation that could endanger the safety of the disable person. The providers of these facilities, amenities etc. are to give consideration and take measures to ensure that disabled persons' use of them are facilitated. The same goes for access to public transport that is disabled persons are to have the same rights to access and use public transportation as much as able-bodied persons. Similarly, providers of public transportation are to consider and take necessary measures to facilitate the use public transport. Disabled persons are not to be denied from having access to education, including vocational and learning. The Government and the education providers are to provide disabled persons with reasonable accommodation according to their needs to support their

pursuit of education. Apart from those mentioned above, one crucial protection disabled persons are given is with regards to access to employment. Some aspects that are provided for are equal opportunity and remuneration, the provision of safe working conditions, protection from harassment and the redress of grievances. Other protections that have been given to disabled persons are the guarantee of access to information, communication and technology, cultural life and recreation, leisure and sport.

Employers are now legally required to ensure that employees with disabilities are accorded just and favourable work conditions and equal remuneration to those without disabilities. However, it is not expressly clear whether the PDA will cover both employees as well as job applicants. At present, the protections under the PDA only extend to current employees. More detailed guidelines and standards will presumably be promulgated by the National Council for Persons with Disabilities and / or the Minister of Human Resources in accordance with the PDA.

With the PDA 2008, disabled persons now have their right of equal opportunities to employment enshrined. Employers now must duly consider the rights of the disabled and are to provide the disabled persons with, *inter alia*, safe working conditions for them and to remunerate them fairly and equally. Although Malaysia is a signatory to the CRDP which contains the principle of non-discrimination, it ought to be noted that there are no provisions within the PDA 2008 itself which deals with discrimination of the disabled at the workplace.

The Netherlands

Discrimination, whether direct or indirect, on the grounds of disability and chronic illness is prohibited by law. Direct discrimination means a distinction on the basis of the disability as such. For instance the situation in which an individual is not hired for a job, *because of* his or her impairment. Indirect discrimination concerns an unintended distinction, such as a prohibition of dogs in public or private spaces, thereby excluding people who in daily life need the help of an assistance dog.

The protective regulations aiming to prevent discrimination on the basis of i.a. disability and chronic illness, are based on international treaties. By ratifying international human rights treaties, the Netherlands has accepted international supervision of her human rights policy through UN bodies. Besides the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, there is the United Nations Convention on the Rights of People with Disabilities. These treaties have been ratified and laid down in national law and further regulations have been based on these basic principles. The regulations primarily aim to enhance the public participation of people who are disabled and to protect and strengthen their legal position.

The first ground rule can be found in the Dutch constitution, article 1: *All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of*

religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted.

The Equal Treatment of Disabled and Chronically Ill People Act came into force in 2003. The Act aims to prevent direct and indirect discrimination on the basis of disability and chronic illness, in the workplace, education, housing and public transport. On the basis of this Act it is prohibited to discriminate an individual on the basis of disability or chronic illness, inter alia, whilst filling a vacancy, entering into and terminating employment, or setting employment conditions. A dismissal violating this prohibition to discriminate is subject to annulment, provided the employee invokes the nullity within two months after the termination.

On the basis of the Equal Treatment Act, discrimination on the grounds of religion, personal beliefs, political preference, race, nationality, sexual orientation and civil status is punishable. Not all grounds for discrimination can be found in this Act, all other grounds can be found in the Constitution.

The Social Support Act came into force as per 1 January 2015, and replaces the Social Support Act effective as of 2007. The Act aims to enhance participation of people with an impairment or with psychological problems of any kind in society. Municipalities have a principle responsibility to facilitate social support for the physical and mentally impaired, who experience difficulties in participating in society. The Act stimulates tailor-made work, meaning that social support should consist of a combination of the individual's own means and strengths, support from the individual's circle of family and acquaintances (informal care), as well as the municipality by way of financial and physical support.

As of 1 August 2014, the Appropriate Education Act came into force, aiming to provide for better adjusted education for disabled children in elementary and secondary schools. Under the Act, schools have a duty of care towards all children, specifically children with disabilities, to facilitate a suitable place for education within their own organization. Insofar a specific school cannot provide for accurate guidance of children in need of special attention, they will need to look for guidance of these specific children elsewhere at a school for special education.

The Participation Act entered into force as per 1 January 2015, and aims to support disabled people and people receiving social assistance benefits, currently without a job, in finding regular employment. Regular employment means a paid position, outside sheltered employment. All people who are able to (partially) work and in need of support in finding suitable employment, fall within the scope of the Participation Act.

From an employment law point of view, employers are obliged to make all reasonable efforts to employ disabled or chronically ill persons and make any necessary adjustments of the workplace. Furthermore, an employee who feels he or she has been treated in an unfair way might base a claim on the statutory obligation for the employer to act as a 'good (reasonable) employer'.

New Zealand

The New Zealand Bill of Rights Act 1990 affirms the fundamental right to be free from discrimination including discrimination based on a disability.

Under the HRA, a disability is a prohibited ground of discrimination. The HRA affords protection from discrimination to people with disabilities in a number of areas of life. These include:

- government or state sector activities;
- public education and health services;
- employment matters;
- partnerships;
- industrial and professional associations, qualifying bodies and vocational training bodies;
- access to places, vehicles and facilities;
- provision of goods and services;
- provision of land, housing, and other accommodation; and
- access to educational establishments.

Beyond the specific anti-discrimination legislation, there are also several provisions in general legislation that afford protections to people with disabilities by better enabling them to participate fully in all areas of life. These include:

- The Building Act 2004 requires that all buildings to which the public are admitted (whether for free or by charge) are to have reasonable and adequate facilities to enable disabled people to visit, work, and carry out normal activities there.
- [...]
- The New Zealand Sign Language Act 2006 established New Zealand Sign Language as an official language of NZ.

In 2008 when New Zealand ratified the United Nations Convention on the Rights of Persons with Disabilities, small changes were made to some of the employment-related areas of the HRA to ensure that the reasonable accommodation criteria in the Act were consistent with

the standards in the CRPD. Other than these there have been very few legislative changes to New Zealand laws concerning discrimination in the workplace by reason of disability since the enactment of the ERA in 2000.

Nigeria

The Constitution of the Federal Republic of Nigeria affords protection to all citizens (including disabled persons) against discrimination of any kind. Section 17(3) of the Constitution mandates the government to direct its policy to ensure that all citizens, without discrimination of any group whatsoever, have the same opportunity for securing adequate means of livelihood as well as the adequate opportunity to secure suitable employment.

There is currently no federal legislation specifically providing protection for disabled persons, as the Discrimination Against Persons with Disabilities (Prohibition) Bill, 2014 is yet to be passed into law. However, some states have passed laws that afford some legal protection to disabled persons in those states.

The Lagos State government in 2011 enacted the Lagos State Special People's Law ("The Law"), which provides for the prohibition from discrimination and harmful treatment of disabled persons in the state, and prohibition from cruelty and inhuman treatment. Sections 18, 19, 20 and 24 of the Law makes further provisions for free and available public transportation facilities for the disabled, assignment of special seats in vehicles, vessels and aircraft, reservations at parking lots for the disabled, and access facilities at public buildings. Sections 27 to 33 provides for free and unfettered access to healthcare and education, right to freedom of communication, right to work and employment on equal basis without discrimination, and other protective rights. Lastly, the Law establishes the Office for Disability Affairs to implement and monitor the implementation of the Law.

Other states' domestic laws enacted for the protection of disabled persons are Plateau State's Disability Rights Commission Law of 2005, and Bauchi State's Agency for Persons with Disability Law, 2010. The Plateau State Disability Rights Commission Law establishes the Plateau State Indigenes with Disabilities Rights Commission which is charged with undertaking and facilitating social welfare activities for disabled persons in the state, including provision of quality education, vocational centres and facilities to aid disabled integrate properly in the society.

The Discrimination Against Persons with Disabilities (Prohibition) Bill proposes a fine of N1,000,000 (One thousand naira) against corporate bodies, and a fine of N100,000 (One hundred thousand naira) or 6 months imprisonment against individuals who discriminate against disabled persons in any way whatsoever. The Bill further provides that disabled persons have a right to work on an equal basis with others, and any breach of this provision by a person will incur a nominal damages of N250,000 (two hundred and fifty thousand naira) to be paid to the affected disabled person.

A corporate body in breach of the provision of equality at the workplace will be liable to pay nominal damages of N500,000 (five hundred thousand naira) while a principle officer in the company involved in the violation will be personally liable to pay damages of N50,000 (Fifty thousand naira) to the affected disabled person. However, this Bill is yet to be passed into law.

Section 29(1) and (2) of the Lagos State Special People's Law prohibits any and all forms of discrimination against a disabled person in the workplace by an employer or his agent solely on the grounds of his disability. The section emphasizes that the disabled person should not be discriminated against on areas such as terms and conditions of employment, access to opportunity for promotion, advancement, transfer, trainings, or to be subjected to any other detriment.

Norway

The AAA concerns discrimination on grounds of disability and applies to all sectors of the society. Its main rule is enshrined in its Chapter 2 Section 5, and states that "discrimination on grounds of disability is prohibited" whether this is "actual, perceived, past or future disability". Additionally, it also applies to "discrimination on grounds of disability of a person who the actual person being discriminated is associated with". An example could be that an employer treats an employee with at disabled child less favourable than other employees.

The prohibition entails direct discrimination and indirect discrimination, defining direct discrimination as an "act or omission which has the purpose or effect that a person is treated less favorably than others in a similar situation, and that this is due to disabilities". Indirect discrimination is defined as "any apparently neutral provision, condition, practice, act or omission setting people in a worse position than others, and that this is due to disabilities". Harassment on grounds of disability, as well as instructing someone to discriminate and complicity to discrimination is prohibited. Complicity is incorporated with the intent to include violations of the discrimination prohibitions when it is unclear who performed the discriminatory treatment. In the workplace, some special circumstances should be taken into account concerning complicity, especially considering the employees subordination and general obedience duty to the employer. These circumstances may imply that accomplice liability not always could be imposed on the employee. The employees act or omission must be assessed, determining whether he/she had a genuine opportunity to refrain from the act or omission.

The effect of the discrimination is that the disabled is treated less favorably than others because of disability. This requires a comparative assessment, either with an actual or hypothetical person in a similar situation. What is or could be a similar situation must be determined specifically in each case.

Neither direct nor indirect discrimination requires discriminatory intent. The unequal treatment in itself is of importance, and further that the negative effect caused from the

unequal treatment can be connected to disability, requiring a causal connection between those two factors.

Discriminatory treatment is not prohibited if it has a "legitimate objective", is "necessary to achieve this objective" and it exists a "reasonable" proportionate relation between the wished achievement of the action and how intrusive the difference in treatment is for the person(s) being set in a worse position. The distinction between direct and indirect discrimination and the grounds of the discrimination (disability) is determining in the evaluation of how far the access for legal discriminatory treatment is according to the law. The greater the scope for legal discriminatory treatment is, the more it limits the scope of what is covered by the anti-discrimination protection.

[...]

The Norwegian Working Environment Act (WEA) chapter 13 regulates discrimination in working relations, and stipulates that regarding discrimination on grounds of disability, the AAA shall apply. The AAA section 21 clarifies that the discrimination prohibitions in the law applies to "all aspects of employment", including all conditions that could be attributed to employment, hereby announcement of positions, the employment in itself, relocation and promotion, training and skills development, wages and working conditions, and termination of employment.

The employer's facilitation duty

Section 26 in the AAA entails an individual facilitation duty, stating that employees and applicants for a position with disabilities are entitled for "suitable individual facilitation of the workplace and tasks to ensure that they can obtain or retain employment, have access to training and other skills development as well as perform and have the opportunity to progress in the same way as others". It is the employer's responsibility to ensure that these rights are complied with and carried out.

The WEA Section 4-6 regulates specifically facilitation for employees with reduced work capacity. It imposes an obligation for the employer to implement measures so that those workers "can keep their job or get other suitable work". The facilitation rules in these two laws will therefore partly overlap. The facilitation obligation regulated in the WEA has a wide area of application covering all employees who have temporary reduced work capacity. The purpose of the rule is motivated by the need to discourage sickness absence and incapacity. The facilitation rules in the AAA is of a more comprehensive nature, as it entails the employer's duty to implement measures so that workers with disabilities as far as possible gets the same conditions and possibilities as others. However, the WEA Section 4-6 may nevertheless have significance for what can be considered to be a reasonable accommodation after the AAA.

The enforcement of the anti-discrimination protection

An applicant, who believes himself treated in contravention of the law, may require the employer to provide information about the appointee's qualifications. This ensures that the applicant is in a better position to assess whether there has been unlawful discrimination and whether there exists grounds to complain.

Section 30 regulates the burden of proof when considering whether discrimination on grounds of disability has occurred. It requires "circumstances that give reason to assume that discrimination has taken place". Implications of unlawful discrimination will be sufficient. If such circumstances should exist, the employer must, to get free from responsibility, render probable that the reason for the difference in treatment still not is the applicant's or the employee's disability.¹⁸ The employer has a particular responsibility to contribute to the elucidation of the case, providing protection towards the person(s) who claims to have been discriminated in violation of the law.

The main purpose of the disability discrimination legislation is to ensure equality, hereby equal opportunities and rights, availability and facilitation in the society. The law shall prevent any discriminatory treatment of people with reduced functional ability. Mainly, it is the disabled or accused disabled persons the law is intended to protect and consequently the group of people who may benefit from the disability discrimination legislation.

As clarified earlier, the AAA was adopted in 2014, replacing the law with the same name from 2009. The Act continues the previous state of the law regarding discrimination in the workplace on grounds of disability and entails no significant substantive differences. Before 2009, protection against discrimination on grounds of disability in the workplace was inserted in the WEA of 2006. The legislative amendment did not constitute any changes regarding the scope or content of the protection in the workplace of significance either. The discrimination rules of the WEA of 2006 was a continuation of the corresponding rules included in the WEA of 1977 in 2004 by a legislative amendment. Before that time, discrimination on grounds of disability was not incorporated in law.

As explained earlier, the new law draft regarding legislative amendments in the WEA, allowing a wider access for temporary employment, may contribute to extend the protection against discrimination in working relations by reason of disability.

The scope of disability protection has been submitted to radical changes during the last 20 years, where many of the changes can be attributed to the implementation of EU Directives through the EEA membership.

The AAA of 2014 does not imply any particular material changes of importance regarding the scope of disability protection in Norway, compared with the AAA from 2009. The Act, however, entails relatively comprehensive legislatively and linguistic changes with a purpose to promote equality through strengthening protection against discrimination, and contribute to break down disabling barriers created by the society and prevent new ones from spreading.

Until 2009, discrimination on grounds of disability was limited to employment as the conditions were regulated in the WEA. The AAA of 2009 applied to every aspect of the society, extending the reach of the anti-discrimination protection. The Act gave protection against discrimination a stronger impact, firstly because of the changes in the definition of "disability", secondly that the law was given a general scope of application. The WEA of 2006 regulated discrimination on grounds of disability, providing substantially the same content and protection as the AAA of 2009. The discrimination rules of the WEA in 2006 was again a continuation of the corresponding rules included the WEA of 1977 in 2004 by a legislative amendment. Before that time, disability protection in regards of discrimination was not incorporated in law.

A development in the context of employment in the scope of disability protection during the last 20 years of significance has however apparently been omitted considering that these conditions already were regulated in the WEA, and further with essentially the same content as the protection which was stipulated in the Act of 2009. The main focus of strengthening protection against discrimination in the labour market during this time has been attributed to discriminatory treatment based on gender or sexuality. Whether the protection against discrimination of persons with impaired physical or mental disability, are strengthened in practice is therefore uncertain.

Russia

In Russia disabled persons have the following employment-related rights:

- (i) shortened working hours (not more than 35 hours per week) for the same payment;
- (ii) a longer annual paid vacation of not less than 30 calendar days;
- (iii) restrictions with respect to engaging disabled persons for overtime work or work on days-off and official public holidays; and
- (iv) transfer to another job position existing at the employer and suitable for the employee as to his/her health conditions.

The employers also have the following duties and obligations with respect to employment of disabled persons:

- (i) create special working places fitting for disabled persons within a statutory quota (2 - 4 % for the employers employing more than 100 employees; and not more than 3 % for the employers employing 35 – 100 employees);
- (ii) establish special working conditions as per their individual programs for rehabilitation; and
- (iii) provide the relevant Russian state authorities with the information required for them to find or establish new places of employment for disabled persons.

Singapore

In Singapore, the legal protection afforded to a person with disabilities generally mirrors that afforded to most persons. There are generally laws in Singapore which apply to protect its citizens, deter crime and protect employees' rights, and these also apply equally to cover any persons with disabilities. Policies and laws are reviewed from time to time to ensure that they remain relevant and adequate in meeting the needs of persons with disabilities.

Where necessary, specific laws have been introduced to support persons with disabilities. For example, the Mental Capacity Act enacted in 2010 safeguards the interest of those who lose their mental capacity, including persons with intellectual disability. The Code on Accessibility in the Built Environment 2013 ("Code") published by the Building and Construction Authority requires buildings to incorporate requirements to cater to people with different impairments. The Code does not have the force of law but is generally applied in practice.

There are no specific laws regulating the employment of persons with disabilities. There is, however, the Tripartite Guidelines on Fair Employment Practices ("Guidelines") produced by the Tripartite Alliance on Fair and Inclusive Employment Practices (which is set up by the Ministry of Manpower, the National Trades Union Congress and the Singapore National Employers Federation) that sets out principles of fair employment that employers are encouraged to abide by. One of these principles relate to the recruitment and selection of employees on the basis of merit and regardless of disability.

Whilst the Guidelines do not have the force of law in Singapore, the Ministry of Manpower and the Tripartite Alliance for Fair and Progressive Employment Practices will make reference to the Guidelines when addressing complaints of alleged unfair employment practices and in promoting fair and responsible employment practices in Singapore.

To guide the government in improving the lives of persons with disabilities in Singapore, two reports have been published by Steering Committees appointed for this purpose. The "Enabling Masterplan 2007-2011" and the "Enabling Masterplan 2012-2016" chart the development of programmes and services in the disability sector and set out comprehensive recommendations to address the needs of persons with disabilities in Singapore. These reports have shaped the development of the disability sector in Singapore. Their aim is to make Singapore an inclusive society where persons with disabilities are empowered and recognised, and given full opportunity to become integral and contributing members of society. One of many schemes launched under their auspices is the Enabling Employers Network ("EEN"), an alliance of employers that are committed to championing and advancing the employment opportunities for persons with disabilities. The EEN has also established two Centres for Training and Integration in the hospitality and call centre industry to prepare persons with disabilities for open employment.

More recently in 2013, the United Nations Convention on the Rights of Persons with Disabilities ("UNCRPD") was ratified in Singapore. Whilst the UNCRPD does not have the

force of law in Singapore, this ratification was seen as a significant milestone in establishing Singapore's commitment towards the equal treatment of persons with disabilities, made possible by the efforts made under the Enabling Masterplans.

South Korea

The "Act on Welfare of Persons with Disabilities" strictly prohibits discrimination against persons with disabilities in respect of their right to participate in political, economic, social, cultural and all other aspects of life. The Act also authorizes the central and local governments to provide a disability allowance to make up for the lack of income of persons with disabilities. The amount of disability allowance may vary based on the degree of disability and economic level of the recipient. Also, any person who has been discriminated against based on a disability or any person who is aware of such discrimination may file a complaint with the National Human Rights Commission.

In addition, the "Act on the Prohibition of Discrimination against Disabled Persons, Remedy Against Infringement of Their Rights, Etc." prohibits an employer from unreasonably discriminating against disabled persons in terms of hiring, wages and benefits, job training, placement, promotion or transfer, retirement, resignation or layoff. Employers are also required to provide reasonable accommodations to disabled persons such as adequate facilities or equipment so that their work conditions are equivalent to those of persons without disabilities. Any intentional discrimination is subject to criminal sanctions, and disabled persons who have been discriminated against may request the court to take measures to immediately stop the discriminatory action, and thereafter seek other remedies.

The "Act on the Prohibition of Discrimination against Disabled Persons, Remedy Against Infringement of Their Rights, Etc." prohibits an employer from unreasonably discriminating against disabled person in terms of personnel matters, including hiring, wage and benefits, job training, promotion or transfer, retirement, resignation or layoff. Once a claim is made, the above Act puts the burden on the employer to prove that there was no discriminatory treatment, rather than requiring the employee to prove discrimination. Prior to the enactment of the above Act in 2007, there were no laws to penalize discrimination against persons with disabilities. However, after the enactment of said law, any person committing malicious discrimination that is willful and repetitive is now subject to criminal sanctions.

In addition, the "National Human Rights Act" allows persons who were wrongfully discriminated against to file a complaint against their employer with the National Human Rights Commission. Upon its review, the Commission may issue a corrective order. While the corrective order itself is not binding on the employer, failure to comply with the corrective order may result in the Commission filing a criminal complaint against the employer and/or making a public announcement regarding the employer's discriminatory treatment of the employee.

Furthermore, since the Korean government enacted the “Act on Employment Promotion for Disabled Persons” in 1991, which required employers in the public and private sectors to hire persons with disabilities, mandatory hiring has expanded over the past 20 years to apply to more workplaces and the mandatory hiring rate for workplaces has been increased to 2.7% for the private sector and 3.0% for the public sector. In addition, various laws have been enacted or amended so that persons with disabilities are given greater protection against discrimination. As mentioned earlier, employers are now required to provide reasonable accommodations to employees with disabilities, so there has been significant progress in protecting persons with disabilities against discrimination.

Spain

Disabled persons have the same rights as non-disabled people. In this sense, Royal Legislative Decree 1/2013 grants the same rights to said persons and entitle them to the same opportunities than any others by protecting them against discrimination due to disability. Said Law sets out the rule of “equal treatment” for ordinary and disabled people. Moreover, there is the possibility to adopt whatever measures in order to promote the employability of disabled people, such as by granting public subsidies, contracting loans, bonuses to Social Security quotas, the possibility to become self-employed, etc.

In addition, companies both public and private which have 50 employees or more have to employ disabled people in a number equal to 2% of such employees. This is what we call “reserved employee quota” for disabled people.

As said in Question 3, the main and most important law concerning such matter was the Law 13/1982 on Social Integration of People with Disabilities (LISMI, for its acronym in Spanish) the main goal of which was to set out the first legal framework regarding the insertion in the labor market of disabled people. Since then, there have been many new laws concerning disabled people. Particularly, the Law 51/2003 on Equal opportunities, non-discrimination and universal accessibility for people with disabilities which provided a new legal framework for offences and penalties regarding disabled people. Such framework was created by the Law 49/2007. Other notable laws are: the Law 27/2007 which made official the sign language and the Royal Legislative Decree 1/2013 which consolidates all previous laws in a single text.

In general speaking, the legal protection for disabled people has significantly increased. Thus, disabled people are not only much more protected now than some years before but also with much more incentives to be hired by employers.

Sweden

There are different regulations concerning disability in Sweden. As a framework, the constitution states that the public authorities shall promote participation and equality and counteract discrimination. The main protection for disabled employees or job applicants is provided by the Discrimination Act and the Work Environment Act.

According to the Discrimination Act, an employer is prohibited to discriminate disabled individuals during a recruitment process and during the employment. There is also a general prohibition against discrimination when it comes to *inter alia* education/professional training, suppliers of goods/services/housing to the general public, as well as health care.

According to the Work Environment Act, the employer is required to adjust the working environment in order to eliminate impediments for disabled individuals. The result of the existing regulation is that the work environment is usually adjusted when someone with a disability is employed.

Recently, in January 2015, the Discrimination Act was sharpened through an amendment with another discrimination situation. In addition to the discrimination types “direct discrimination” and “indirect discrimination”; the situation of “lack of accessibility” was introduced as a type of discrimination. This implies that a disabled person is deemed to have been discriminated by an employer who does not take those measures which are deemed required in order to make sure that the disabled person is placed in a “comparable situation” as those without a disability.

Prior to 2009, the prohibition against discrimination was regulated through seven different Acts. In 2009 all these seven Acts were merged into one, the Discrimination Act, which now covers all discrimination motives and different situations. As per 1 January 2009, Sweden created a new Authority called the Discrimination Ombudsman, which shall supervise compliance with the Discrimination Act.

Switzerland

According to Article 8(2) of the Federal Constitution of the Swiss Confederation persons must not be discriminated on grounds of a physical, mental or psychological disability. A person may benefit from disability discrimination legislation if a physical, mental or psychological impairment seriously and permanently compromises the ability to carry out a major life activity. Hence, Swiss law offers a relatively broad definition of disability.

This federal provision was implemented through The Federal Act on the Elimination of Discrimination against People with Disabilities. This Federal Act however, is only applicable on the relationship between a disabled person and the public sector. Thus, the federal provision is not directly applicable on the relationship between a disabled person and private companies.

According to Article 13 of the Federal Act on the Elimination of Discrimination against People with Disabilities the Federal State as employer makes every effort to offer persons with disability the same chances as non-disabled persons. For private employers, no similar provision exists. However, under Swiss law the employer must not tolerate excluding, harmful or defamatory behaviour that violates the personality of the employee. Furthermore, the termination of an employment contract due to a disability may be qualified abusive by a court.

Taiwan

ARPD provides legal protection to the disabled persons in five dimensions including: (1) the right for education, (2) the right for employment, (3) supporting service, (4) economic security and (5) the protection Service. As for the right for education, the disabled may apply for the special education school. As for the right for employment, ARPD requires that the local governments must expedite the establishment of “Sheltered Workshop” for providing employment to the disabled. In terms of supporting service, the disabled shall be given a 50 percent discount when taking public transportation and the disabled shall be given a 100 percent discount when entering into any public cultural or educational facilities. Except for the discounts provided to the disabled, ARPD further provides for assistance to the companion or the family members of the disabled. For instance, when taking public transportation, the companion of the disabled may enjoy the same discount as that afforded to the disabled. Besides, the family members of the disabled may apply for the Household Caring Service offered by the local government for easing their burden for caring the disabled.

The economic security aspect is considered the most important and traditional legal protection afforded to the disabled by ARPD since the welfare of the disabled is expressly guaranteed under the Constitution. As such, the disabled may, based on the result of their assessment, apply for a variety of subsidies including daycare subsidy, medical subsidy, subsidy for rent and any other necessary subsidies. As for protection service, ARPD expressly forbids any media from using any discrimination language for the description of the disabled.

Before 2007, ARPD provided that employers shall not pay fewer wages to the disabled employees, except in the case of production under-utilization, the wage to the disabled may be subject to a pay cut up to 30%. This exception was abolished in 2007 Amendment.

Turkey

Legal protection afforded to disabled persons is regulated under different pieces of legislation, such as the Constitution, the Penal Code, the Code of Obligations, the Code of Civil Procedure, the Real Estate Tax Code, etc. Furthermore, in order to meet the needs of disabled individuals, the Constitution has set forth the possibility of positive discrimination towards disabled persons. An example of such positive discrimination is favorable tax rates. For instance, disabled people are exempted from real property taxes in the event that they own a single residence not exceeding 200 square meters.

The Regulation on Domestic Employment Services provides that any workplace with more than 50 employees must make up at least 3 percent of its workforce from disabled persons, and this rate goes up to 4 percent if the workplace in question is a public institution, a public enterprise, etc. The Regulation also states that the Turkish Employment Agency will provide the necessary assistance, rehabilitation and training for disabled persons to enable

them to find jobs suitable for their disabilities. Employers must organize the workplace and working environment suitable for their disabled employees.

The Regulation regarding Nursing Homes for Disabled Persons⁹ stresses that the nursing expenses of disabled persons who reside in such facilities (nursing homes or day care facilities for the care of disabled persons, established by private persons or by legal entities holding the status of social service institutions) are paid by the Ministry of Family and Social Policies pursuant to the Law on Social Insurance. The same Ministry also pays for the daily clothing and stipend expenses of such disabled persons.

According to the Law of Social Insurance, a person who loses a minimum 10 percent of their earning potential due to a work accident or occupational illness is entitled to compensation for the permanent loss of ability to work. Compensation for the complete loss of ability to work is set at 70 percent of the person's lost monthly income, and partial loss of ability to work is compensated at the same rate.

The Regulation regarding the Database of Disabled Persons and Identity Cards for the Disabled Persons states that disabled persons will be given identity cards to use, which will entitle them to privileges and services provided by the government for the exclusive benefit of disabled persons. If the disabled person does not have an identity card, they may benefit from these privileges and services by submitting their medical report regarding their disability.

The Income Tax Law categorizes disability in three major groups, as 80 percent, 60 percent and 40 percent disability. The Income Tax Law reduces the tax rates applied to disabled individuals in line with the severity of their disability.

Discrimination by reason of disability is prohibited under the Law on Persons with Disabilities in the workplace and in every area of daily life. Before the amendment to the Law on Persons with Disabilities in 2014, discrimination against disabled people was only regulated in the workplace.

Ukraine

Discrimination on the grounds of disability is prohibited by law. Products and services (transport, buildings, and medicines) must be accessible/usable. Disability may not be used as a ground for hiring or dismissal decisions, unless the state of health (confirmed by medical and social expert examination) prevents performance of job duties or poses a threat to the safety of others. Employment of disabled persons is incentivized by mandatory employment quotas, as well as social contribution and personal income tax discounts. Disabled persons have a number of preferences and privileges, including

discounts for medicines, free medicines, medical equipment, transport, phone services discounts, etc.

The Employment Law, as restated since 2013, established the following:

- the Subsidised Quota that includes disabled persons;
- the prohibition to include discriminatory provisions, such as the absence of disability, in job postings;
- positive action in job postings is allowed.

United Arab Emirates

The UAE Constitution provides for equality and equal opportunities for all citizens of the UAE. However, 'citizens' refers to nationals, rather than including non-national residents of the UAE. The Federal Disability Law expressly provides that the rights contained therein are extended to UAE nationals. It is worth noting that this excludes the large expatriate population of the UAE from the application of the law.

The Federal Disability Law stipulates that various forms of support must be extended to UAE nationals who are disabled, including:

- Access to health, rehabilitation and support services provided at the expense of the state;
- Equal education opportunities at all educational institutions, whether public or private; and
- The right to work and occupy jobs available to the public, without discrimination on the basis of their disability.

The Federal Disability Law does, however, provide that no provision or practice based on 'valid grounds' shall be considered discrimination.

Dubai Law No. 2 of 2014 (the Dubai Disability Law) further builds on the principles of the Federal Disability Law. It enshrines the rights of disabled persons to health, education, access to religious places, transportation and public services, and employment opportunities, and applies within the Emirate of Dubai.

The DIFC Employment Law prohibits employers from discriminating against an employee in relation to their employment on the grounds of the employee's mental or physical disability. The DIFC Employment Law (and its discrimination provisions) applies to all employees within the DIFC, whether they are UAE nationals or expatriates.

The DIFC Employment Law, like the Federal Disability Law, allows for the application of a bona fide occupational requirement. However, failing to make reasonable adjustments to the workplace or working conditions in order to meet a bona fide occupational requirement is explicitly described as discrimination on the basis of disability. Employers are, however, allowed to positively discriminate in favour of disadvantaged individuals, including those disadvantaged because of mental or physical disability.

No substantive amendments have been made to the Federal Disability Law since it was passed in 2006. Part of the amendments of the DIFC Employment Law in 2012 included clarification of the meaning of discrimination, to mean:

- Treating an employee less favourably than others in the same circumstances (i.e. direct discrimination);
- Putting an employee at a disadvantage compared to others (i.e. indirect discrimination); and
- Subjecting the employee to unwanted treatment leading to an intimidating, hostile, degrading, humiliating or offensive workplace on the grounds of disability (i.e. harassment).

United Kingdom

The Equality Act 2010 prohibits discrimination against anyone who has a disability, is perceived to have a disability, or is associated with someone who has a disability.

The whole employment cycle is covered. Job applicants, those in employment and former workers and employees are protected from discrimination from their employer, colleagues, and agents (i.e. consultants and contractors), whether at work, or work related events. Not only employees but other categories such as workers, partners and apprentices benefit from this protection.

The Equality Act 2010 outlaws direct discrimination, indirect discrimination, discrimination arising from disability, harassment and victimisation. Once an employer knows, or ought reasonably to know that a person is disabled and that they may suffer a substantial disadvantage when compared to those without a disability, they have a positive duty to make reasonable adjustments to the physical working environment, working practices or policies to alleviate it. This could be providing an electronic version of a print document, or more substantive changes to working hours or provision of a special piece of equipment.

It is not direct discrimination to treat a disabled person more favourably than someone who is not disabled.

USA

The Americans with Disabilities Act (ADA) prohibits discrimination against disabled

individuals, and many state laws often provide a greater level of protection. The ADA also requires covered employers¹ to provide reasonable accommodations to qualified disabled individuals, as long as such accommodation does not result in undue hardship to the employer's operations. Reasonable accommodations may include, but are not limited to, the provision of an accessible work site, acquisition or modification of equipment, support services for persons with impaired hearing or vision, and job restructuring or modified work schedules.

It is usually quite difficult for an employer to meet the legal burden of establishing "undue hardship".

Again, state and local laws often provide even greater protection. Thus, for example, in *Romanello v. Intesa Sanpaolo S.p.A.*, 22 N.Y.3d 881, 998 N.E.2d 1050, 976 (N.Y. 2013), the New York Court of Appeals held that the New York State and New York City laws regarding an employer's duty to accommodate an employee's disability are different with respect to indefinite leaves of absence, and are broader than the obligations imposed by federal law. The court held that while the state Human Rights Law does not require an employer to provide an indefinite leave of absence as a reasonable accommodation, the New York City Human Rights Law might require indefinite leave.

Further, the ADA and state and local law prohibits an employer from retaliation against an employee for invoking his or her rights under the ADA.

III. Existing forms of prejudices

Brazil

According to Mrs. Luciane M. da Silva, who has a MD on the subject, in Brazil disabled people are usually subject to prejudice due to this gap between their physical and/or intellectual abilities when compared to the community's physical and intellectual pattern. [...] Therefore, according to her, Vash (1988) describes three main reasons to explain the depreciation of people with disabilities in our society: (i) the consideration of prejudice as something biologically determined, (ii) psychosocial questioning, according to which - in the community - people that are seen as different are less tolerated; and (iii) the political and economic motivation according to which disabled people increase the costs for the social system (both for the family of the disabled and for the government). Finally, Mrs. Silva says that the focus usually given by the media in Brazil to news involving people with disabilities puts them in a victim position, with emphasis on their powerlessness and dependence, reinvigorating discrimination.

¹ The employment provisions apply to all employers engaged in an industry affecting commerce that have 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

In a nutshell, what we have noted after going through the disabled world in Brazil is that the biggest prejudice against them is the lack of action by the government throughout the years in order to truly include them in the community by giving them the opportunity to learn and get qualified for the labor market, providing them with appropriate transportation system, among others. It is not enough to require companies to hire disabled employees if they are not well qualified.

Canada

It is a fact that disabled persons are underrepresented in the Canadian workforce. A 2006 study by Statistics Canada demonstrates that the employment rate for people with disabilities is below that of the average population (approximately 51% and 75%, respectively). More recent studies also support conclusions that employees with disabilities are also less likely to advance professionally and have lesser market mobility. However, Canadian law today offers broad workplace protections to people with Disabilities. As explained further below, the area where prejudice still seems pervasive is in recognition of mental health Disabilities.

Chile

There are several prejudices regarding people with disabilities which have had as a consequence the difficulty in their integration into society. One prejudice is the idea of not being able to perform employment roles accurately. The latter may explain the low employability of people with disabilities. Indeed, according to National Disability Service, only 29% of people with disabilities are currently employed and receiving a salary, a situation that directly affects their family's economic situation.

China

It is difficult to say whether there are historical or social prejudices concerning people with disabilities. The protection for the disabilities has been strengthened for the last 20 years. However, due to the demands for economic growth and purposes to make profits, most companies prefer to pay an employment security fund for disabled employees than hiring any disabled employees in practice. In other words, the prejudice for recruitment still exists nowadays in some areas. From our view, we do not think there are any legal prejudices concerning disabled people.

Colombia

The prejudices that may arise from the people with disability are that they cannot perform duties within the company and that they are not self-sufficient individuals.

Denmark

Historical there have been several prejudices in Denmark concerning people with disabilities. However, the acceptance and understanding has grown enormously in recent

years and the equal treatment of people with disabilities in respect of employment has moved up the legal agenda recently.

England

The UK has made real progress in breaking down prejudices about people with disabilities. This largely followed the introduction of the Disability Discrimination Act 1995 (DDA) which provided for a wide range of protections for people. The DDA helped raise awareness of the issues facing people with disabilities in the workplace, as service users and in relation to premises.

The relatively low legal threshold for demonstrating a disability helped, and the duty to make reasonable adjustments in the workplace to accommodate people with disabilities, has had the effect of promoting role models and a more open mind-set in many employers. Of course there is still some disability discrimination and the main area where prejudice still remains, both in the workplace and society generally, is around mental health conditions where there is less understanding of what they are, how they might impact and how to adjust for that.

Finland

The understanding of the concept of disability has generally been changing over the last century and hence also bias against persons with disabilities has been decreasing. However, persons with disabilities may still face discrimination, pity or exaggerated politeness due to prejudices regarding *e.g.* their intelligence, ability to work or ability to take care of themselves or their children. Earlier, disabled persons were often perceived as individuals in the margins and not as equal individuals, who just may need some assistance to act in a way as everyone else. Further, the aid provided to persons with disabilities may have often been considered as 'charity' rather than a basic human right, whereas later these rights were secured by law. Hence, persons with disabilities and their needs have become more of a 'human rights issue'. Nowadays persons with disabilities are considered to be part of the society and that they should have equal rights to participate in *e.g.* working life.

France

Disability presents the continuing risk of social exclusion independent of the existence of an actual functional disorder since historically, the term of disability is as a rule used to indicate a reduction or deviation from the norm, a shortcoming of an individual that society has to reckon with. A common view is that having a disability makes an individual less capable of performing a variety of activities. Very often, managements make a direct link between the impairment and the resulting loss of performance without taking into account the multiple possibilities to compensate for the loss of function and thus render it insignificant. Such attitudes include the fear that the cost of accommodating persons with disability in the workplace will be too high, that persons with disability are not productive.

Indeed, obstacles to full participation in the workplace are thus often due to attitudinal and discriminatory barriers, rather than to causes relating to one's disability.

Consequently, about 26 % of companies which must hire 6 % of disabled workers do not directly employ any disabled persons and their action is limited to pay a contribution [...]. Disabled individuals unemployment is on average double to overall unemployment rate.

Germany

The common prejudices concerning people with disabilities can also be found in Germany. Among them is the misconception that persons with a disability are not able to work as a fast, hard and efficient as non-disabled persons. However, it appears that these prejudices are becoming to decrease more and more.

Greece

The prejudices have been social and have been frequently expressed as the refusal of the employers to accept the employment of persons with disabilities (even under the mandatory placement). Such prejudice is increased by the lack to a significant extent of sufficient programs of educating these people who lack the relevant abilities to be integrated in the labour force, and is further increased the last 5 years by the problems of the Greek Economy and the austerity measures.

Ireland

Historically, there has been considerable prejudice against people with disabilities. For example, there was historically a perception that individuals with intellectual disabilities in workplaces and schools would create more accidents and discipline problems, resulting in lower productivity and negatively affecting the learning of other students. However, it does appear that these prejudices are diminishing.

The National Disability Authority conducted a survey in 2011 and 2006 on Irish people's attitudes to people with disabilities. Whilst physical disability was the most frequently identified in 2011, awareness of mental health issues has risen. Unfortunately, people are still less comfortable having a work colleague with mental health difficulties compared with other disabilities.

Israel

As a general rule the answer is no. However, the general academic consensus is that the issue was previously treated as a personal, individual and tragic problem; accordingly, the solutions were tailor made as such; namely, activities and solutions were put in place as a result of merciful feelings and compassion towards the disabled population. The new understanding, or at least the new trend, views disability as a social issue and therefore the current agenda is to promote recruitment of disabled employees based on such persons' merits, potential contribution and other known benefits of diversity.

In this context we note that Israeli law does include specific deep rooted legislation regarding disability, in addition to the Law, such as a law which requires the employment of disabled veterans of war as 5% of the workplace. To the best of our understanding, this requirement seldom enforced.

India

Given the board nature of this question and the size of India's population, it may be practically difficult to research and list the historical, social or legal prejudices in relation to people with disabilities.

Italy

Especially in the past, the disability (as well as the differences in sex, religious, race, sexual orientation) were a general cause of marginalization.

Things started to change in the late 60ies, when a stronger integration of the social minorities was promoted by a renovated Welfare State and this impacted also the lives of people with disabilities.

It is to say that the Law, especially in the past 30-40 years, has provided multiple instruments meant to ease the everyday life of individuals with disabilities (in their workplace, in their family lives, in the sports, in their educational carrier, and so on).

However, not always legal provisions are sufficient to educate/sensitize a community.

It seems honest to say that, also today, people with disabilities are somehow "left behind" by the civil society and might experience a non-equal treatment by the man-in-the-street that consider them still "different"; this appears more evident when considering their right to a "normal life" (by way of example, only in July 2014, and for the first time, a couple of people, both afflicted by the down syndrome, got married).

Also with respect to issues discussed in this Report, it is to note that a high percentage of Companies often prefer to pay the sanctions described under previous paragraph 4, instead of hiring people with disabilities; moreover, only 25% of the Companies shows to care about the concrete integration in the workplace of the disabled person, while approximately 75% of the Employers are only interested to comply with the law provisions concerning the hiring *quotas* (Working Papers of the IV National Conference on Policies concerning the Disabilities, presented by the Ministry of Labour and Welfare to the Parliament on January 23, 2014).

To this respect, it is also to mention that the European Court of Justice recently condemned the Italian Republic for the non-complete implementation of Art. 5 of the EC Directive

2000/78, establishing a general framework for equal treatment in employment and occupation.

Such Directive has been enforced in Italy by the Legislative Decree n. 216/2003; mentioned Art. 5 provided the “Reasonable accommodation for disabled persons” also compelling Employers to take “appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training”.

Although Italy defended its implementation of the Directive, in the end the Parliament introduced an additional Article 3, paragraph *3bis* to the Legislative Decree n. 216/2003 where the wording of Art. 5 has been precisely rephrased.

It is to admit that, while this provision remains a pure legal principle, not assisted by any sanction, however it will likely enhance the legal reasoning on the concrete implementation of the equal-treatment of disabled persons, hopefully leading to a better and stronger integration.

Luxembourg

To the best of our knowledge, there are no historical, social or legal prejudices concerning disabled people.

Nevertheless, statistics realised in 2014 by the Center for Equal Treatment showed that “disability” is the most common ground of discrimination (Rapport d’activité du Centre pour l’Egalité de traitement 2014).

Malaysia

Prejudices against the disabled are usually in the form of ‘social exclusion’. Social exclusion is a process by which the disabled are discriminated by depriving them of rights. What follows is the disabled find it difficult to assimilate into society. A disabled person can be socially excluded either systematically or a complete denial of the right to participate on equal terms in a social setting.

The Netherlands

Historically, people with disabilities are generally considered a vulnerable group, who need protection and support from society in order for them to be able to fully participate in social and professional life. A general prejudice is that a disabled person is in need of help and not fully capable (physically and/or mentally) to participate in daily life, even though this may not always be the case.

New Zealand

There are certainly historical, social and legal prejudices concerning people with disabilities in New Zealand. These are largely in the form of social and legal barriers preventing people with disabilities from being able to fully participate in society. Disabled people are historically preconceived as being a marginalised group who need to be accommodated for and protected. Our society is disabling in that there is a general lack of awareness and responsiveness about disability issues.

There are also considerable social barriers still in place for people with disabilities that lie in the attitudes and perception of the wider society. In 2008 a nationwide survey of perceived discrimination showed that 57% of respondents identified disabled people as being subject to at least some discrimination. Other surveys have shown a continued pattern that a higher percentage of people with disabilities are unemployed, have no educational qualifications and fall within lower income brackets than the general population. Other issues that have been identified as societal issues currently facing disabled people in NZ are; social participation and acceptance, access to education, employment and equal life opportunities, and access to healthcare treatment, disability related services and support.

In terms of legal prejudices there is lawful discrimination underlying the concept of "reasonable accommodation." If a person requires special services or facilities by reason of a disability and it is not reasonable to provide these then the provider or employer does not have to provide these and are entitled to treat that person differently. Similarly if there is risk of harm, by reason of disability, to a person or others which is not reasonable to take, and measures cannot be taken to reduce the risk to a normal level without unreasonable disruption, then the provider or employer need not take that risk. Essentially disabled people must be accommodated for only to a level that is considered "reasonable," and if this is not possible the law allows them to be treated differently.

Nigeria

There exist some social prejudices concerning people with disabilities. There is a social perception that people with disabilities are incapable of fending for themselves and have to depend on begging and solicitation for alms to survive, which makes society to be prejudiced against them thereby hindering their suitability for gainful employment. In some societies, people take a superstitious view that certain disabilities such as mental disabilities are caused by mystical or occultist powers, which could be transferred to those who associate with such disabled persons.

Norway

As the variation in what might be categorized as disability is of such a wide scope, it is difficult to formulate any generalized social or legal prejudices concerning people with disabilities. However, in some layers of the society, it is emphasized that people with mental or physical disabilities are not practically capable to perform the same tasks or with

the same efficiency as others. Such prejudices will vary, depending on what functioning abilities is in question and further which business sectors and positions it concerns. Historically, such prejudices might have been of a greater extent and also not based on factual or objectively justified grounds.

Russia

The Russian legislation related to social protection of disabled people has been developing for over 20 years. However, up to now there is no effective mechanism that would ensure compliance of all companies with the statutory quota for hiring of disabled employees. The company's expenses for creating special working places for such employees are significantly exceeding their potential profit from the work of disabled persons or the current liability for not complying with the statutory rules. Therefore, most employers still prefer to undertake the risk of administrative liability rather than to implement the relevant measures.

Singapore

We are not aware of any overt legal prejudices concerning people with disabilities. However, one of the principles set out in the Guidelines is that recruitment should be based on merit and ability, regardless of disability.

South Korea

The National Human Rights Commission of Korea published a report in December 2012 that monitored television programs and other forms of media to identify social prejudices concerning people with mental disabilities. According to the report, the Korean media tends to portray people with mental disabilities as being violent / dangerous (connecting mental issues with a crime even though a suspect had other compelling motives), unpredictable (often depicting mentally ill persons as a "time bomb"), identifiable (one can easily distinguish a mentally ill person from others), a subject of pity (always wearing a hospital gown, looking helpless), incapacity (not capable of making meaningful contributions to society), socially awkward, not trustworthy, a liability to society, and someone who should be locked up and segregated from society.

The fact that companies in Korea are allowed to pay persons with disabilities less than the statutory minimum wage requirement implies that there has been a perception by in Korea that persons with disabilities are unable to contribute as much to employers as persons without disabilities. However, as stated above, the Korean government is planning to amend the relevant law to eliminate this legal prejudice.

Spain

There have been historical, social and legal prejudices concerning disabled people. Nevertheless, these prejudices are progressively disappearing given that people are becoming more aware and getting more used to the situation of working with disabled

people. Nevertheless, most employers still prefer hiring ordinary people rather than disabled people because there is a generalized conviction that disabled people not only are less capable due to their disability but that also take negative advantage of it and work at a slower pace than what they could.

As for the legal prejudices, the law applies the same treatment for all kind of disabilities; it doesn't set out specific rules for different types of disabilities. This is a key point since there are many sorts of disabilities, ranging from physical to mental. We believe that the legal treatment and protection of disabled people should depend on the sort of disability that individuals suffer.

Switzerland

The common prejudices concerning people with disabilities can also be found in Switzerland. Among them is the misconception that persons with a disability usually do not work and fully depend on disability pensions.

Taiwan

There were legal and social prejudices regarding the disabled in the past. ARPD was first promulgated under the name of "Act on the Welfare of Handicapped" which implied that the individual subject to the Act had the inferior social status and was a burden to the society. Those prejudices may consist of physical and mental prejudices. As for physical prejudices, public or private entities failed to provide the facilities (including restroom or passageway) for the disabled. As to mental prejudice, certain discrimination in terms of employment and education could be found in the past. The government promulgated various regulations to require government-owned and privately owned commercial facilities (including transportation, schools, parks, etc.) to establish specific passageway and restroom facilities for the disabled. ARPD and Employment Service Act also expressly prohibit any discrimination against the disabled in workplace. In the 1997 amendment of ARPD, the word "handicapped" is replaced by "disabled".

Turkey

There is no historical or legal prejudice, but there indeed may exist certain social prejudices. Employers do have negative prejudices concerning people with disabilities, such as hesitation about the working abilities of disabled persons, their effectiveness in business life, etc. For instance, some employers prefer paying administrative fines instead of employing the required number of disabled persons. There are certain social responsibility projects underway with a view towards breaking down these prejudices, such as the exhibition "Dialogue in the Dark," which enables visitors to appreciate the experience of blind people, which opened in Istanbul on 20 December 2013 and is still ongoing.

Ukraine

In the USSR, participation of disabled persons in public life was very limited and was not promoted by governmental authorities. Due to this, Ukrainian cities lacked a sufficient infrastructure needed for disabled persons to move, work and use public services. In recent years, there has been a renewed focus on accommodation of disabled persons in Ukraine, including in public transport, new construction projects, etc. Therefore, there is a lack of the culture of accommodation in both public and private sectors, but the Ukrainian authorities are working to change that perception.

United Arab Emirates

News articles about the difficulties faced by people with disabilities in finding employment mention various challenges. One challenge mentioned is the widely held belief that people with disabilities may not be able to effectively perform job roles. However authorities and interested groups are seeking to overcome the effect of such beliefs through education and awareness.

The historical evolution of attitudes to those with disabilities can perhaps be most easily traced in the patterns of infrastructure development. Wheelchair accessible entrances are available in much of the newer parts of Dubai. However many parts of 'old' Dubai, such as Deira and Satwa, lack such facilities, perhaps pointing to the lack of importance given to such issues before the new millennium. In contrast, the Dubai Metro, inaugurated in 2009, has been constructed to be fully wheelchair accessible. The Roads and Transport Authority of Dubai (RTA) continues to expend various efforts to make the city of Dubai easier for people with disabilities to navigate.

In terms of legal discrimination, certain laws mention a requirement to ascertain the physical fitness of individuals for certain occupations, including manual labourers, physicians and the armed forces. Under the UAE Civil Code, persons with mental disabilities are deemed to have defective capacity, and their actions may be restricted by court order. These provisions do not necessarily contradict with the laws on disability, which have carve-out provisions allowing discriminatory provisions or practices on valid grounds, though the wording of these laws do not include definitions or examples of valid grounds.

United Kingdom

The UK has made real progress in breaking down prejudices about people with disabilities. This largely followed the introduction of the Disability Discrimination Act 1995 (DDA) which provided for a wide range of protections for people. The DDA helped raise awareness of the issues facing people with disabilities in the workplace, as service users and in relation to premises.

The relatively low legal threshold for demonstrating a disability helped, and the duty to make reasonable adjustments in the workplace to accommodate people with disabilities,

has had the effect of promoting role models and a more open mind-set in many employers. Of course there is still some disability discrimination and the main area where prejudice still remains, both in the workplace and society generally, is around mental health conditions where there is less understanding of what they are, how they might impact and how to adjust for that.

USA

In the 1800s, people with disabilities were often unable to contribute to society; many were forced to enter institutions and asylums. After decades of campaigning and lobbying, the ADA was passed in 1990, and ensured the equal treatment and equal access of people with disabilities to employment opportunities and to public accommodations. The ADA is intended to prohibit discrimination on the basis of disability in employment, services rendered by state and local governments, places of public accommodation, transportation, and telecommunications services.

IV. Penalties / incentives for companies to employ persons with disabilities

Brazil

Labor Auditors from the Brazilian Ministry of Labor and employment are required to carry on inspections in order to verify whether the companies are in compliance with the laws regarding the hiring of disabled individuals. In case the Auditors verify the non-compliance with such laws, notices of infraction may be issued and also administrative fines/penalties may be applied. In addition, such notices of infractions issued by the Ministry of Labor and Employment may be sent to the Brazilian Labor's Public Attorney's Office. The Labor's Public Attorney's Office may then file Class Actions claiming for the compliance with such obligation as well as claiming for payment of an indemnification for moral damages.

According to one of the most important newspapers in Brazil, only in the state of São Paulo, 102.998 disabled people were hired between 2000 and 2009 due to the inspections carried out by the Ministry of Labor and Employment.

In Brazil, companies that hire disabled employees are not entitled to any private and/or public incentive: as mentioned above, this is a legal obligation that they have. However, there is a Legislative Bill from the Brazilian Senate that aims at reducing the income tax rate in 2% for companies that hire, at least, 10% of disabled employees of its total staff.

Also, the government of São Paulo is conducting studies to propose some kind of tax exemption for companies that buy technological products and devices that would help the inclusion of people with disabilities in the labor market.

Finally, the Brazilian Development Bank (BNDES) offers resources to finance private programs that help disabled people to be included in the labor market. The list of private programs that can be financed are the following: civil works and physical adaptation of facilities, special equipment, aids techniques - prosthetics, equipment, special elements to facilitate communication, information and signaling, equipment and teaching materials,

special machinery and utensils, special job-training of staff to work together with people with disabilities, empowerment of PPD to take jobs and technical consulting to project implementation and activities.

Canada

No Canadian jurisdiction imposes employment quotas of disabled people.

However, federally regulated employers are subject to employment equity statutes. These impose obligations of surveying the workforce, analyzing representations of certain groups (including disabled people), reporting requirements, and establishing employment equity plans. Audits are undertaken by watchdog organisms and failure to abide by employment equity requirements can lead to imposition of fines as well as necessary corrective measures.

In addition, companies receiving contracts from the government above a threshold limit are subject to accrued employment equity obligations, which include committing to specific numerical employment equity objectives.

Companies implementing accommodation measures for Disabled employees are provided with certain incentives, generally of two types:

- (i) Funding incentives: some governmental funds support the capital cost of construction and renovations related to improving physical accessibility and safety for people with Disabilities in workplaces.
- (ii) Fiscal incentives: certain expenses and benefits provided to employees with Disabilities may be tax deductible by employers.

Most recent developments have come from case law, not statutes.

However, certain Canadian jurisdictions adopted Disability-centered statutes in addition to existing human rights protection. Such statutes impose positive obligations on employers (and companies generally) to provide Disabled individuals with information regarding their rights, and to adopt communication methods with such individuals which take into account their Disabilities.

In addition, Human Rights organisms have adopted policies which better clarify accommodation measures required of employers, in particular in relation to perceived Disability as well as mental health Disabilities.

Finally, harassment-specific provisions have been adopted which provide better protection to employees by rendering employers liable in certain instances for discrimination against Disabled employees by their colleagues, even where the employer is not directly culpable.

Chile

There are no sanctions by law in Chile for companies that do not employ sufficient disabled people. In fact, despite of the social model of disability currently in force, in our view, Chile has not implemented positive actions as measures to accelerate or achieve de facto equality of persons with disabilities.

In Chile there are currently no monetary or tax incentives for companies to employ more people with disabilities. However, there are flexibility mechanisms to facilitate and promote disabled people's recruitment. For example, disabled people are able to execute apprenticeship employment contracts ruled in sections 78 and subsequent of the Labor Code, not being subject to the age limitation set forth therein (21 years old). Another flexibility measure is the possibility that companies whose business purpose is to provide transitional services to third parties can enter into provision of disabled employees for a period of 6 months renewable (in the case people without disabilities cannot under any circumstances exceed 180 days nonrenewable). We can also mention training programs promoted by National Training and Employment Service (SENCE) to facilitate the employment of unemployed persons and several incentive programs for entrepreneurship of small and medium enterprises that allow a disabled person to start or develop their own business.

Along with Laws No. 20,422, No. 20,609 and the Protection Action, Article 485 and subsequent of the Labor Code stipulate a judicial mechanism named Labor Protection Procedure (Procedimiento de Tutela Laboral). According to this procedure, disabled employees have the possibility to file claims against their employer under two circumstances: (i) for the violation of fundamental rights (such as life, physical and psychic integrity, honor, among others), and (ii) due to discrimination acts stated in Article 2 of the Labor Code. In this regard, even though Article 2 of the Labor Code does not explicitly state disability as a discrimination factor, case law has understood that it is possible to include disability as an infringement of the general principle of equality. The Labor Protection Procedure allows the employee to report to the Labor Courts the referred illegal acts that have had the effect of nullifying or impairing equality of opportunity or treatment in their employment or occupation.

China

The Rules on the Employment of Disabled People (effective on May 1, 2007) stipulates that any employer that fails to employ the required quotas (at least 1.5% of total employees) of disabled employees shall be liable to pay an employment security fund for disabled employees. The quotas mentioned above is diversified from different provinces around China, for instance, the proportion is 1.7% in Beijing and 1.6% in Shanghai.

Generally, the amount for the security fund for disabled employees is based on the last year's annual average salary of employee in that region/city/province. However, in Shanghai, the calculation is based on the annual average salary of employee in that specific enterprise.

Incentives are mainly in the form of financial supports and tax favors to be provided by local government. If an employer employs more disabled persons than the quotas, it will receive a financial reward from the specialized fund of the government; such employer will also enjoy a deduction for the value-added tax and land-use tax. Enterprise (with more than 40 employees in total) who employs more than 25% of disabled person shall be deemed as Welfare Company, and will enjoy much more financial and tax benefits/support from the government.

Colombia

The local companies do not have the obligation to hire a percentage of individuals with disabilities. Nevertheless, employer cannot dismiss employees under disability without a prior authorization from the Labor Authority, and without the existence of a cause of termination.

The local companies have some benefits if they hire employees with limitations up to 25% of proven disability:

Tax: An employer who hires employees with limitation, is entitled to deduct up to 200% of income of the value of wages and benefits paid during the taxable year to the employees with disabilities while the employment relationship subsists.

Apprentices: The mandatory apprentices quota may be reduce by 50% if the employer hires people with disability.

Business Benefits in Public Tender: The person or company that hires employees with limitations will be preferred in contracting processes for public tender, if the payroll list has at least 10% of employees with limitations.

Loans with Governmental entities: Engaging persons with disability grants the company priority in loans with Governmental entities, as long as they are developing plans and programs that involve the active participation of persons with limitations.

Denmark

There are no sanctions by law if companies do not employ sufficient disable people. However, an employer may not attach any importance to disability when it is decided which person should be employed *e.g.* If done so the employee may claim compensation on the grounds of discrimination.

If an employee is below 65, the local authority determines that the employees working ability has been permanently reduced and all opportunities for redeployment and retraining is investigated, both private and public employers can create special reduced-hours job for the employee. Also, salary subsidy is available to employers who employ people with disabilities if the employee is below 65 and on disability retirement.

England

Organisations do not have to hire a certain quota of disabled people by law. However, as disabled job seekers and employees are protected against discrimination under the Equality Act 2010, they are entitled not to be discriminated against in recruitment, promotion and pay.

If a disabled employee or job applicant feels that they have been discriminated against, they can bring a claim in the Employment Tribunal, whose decisions are available for public scrutiny and can generate adverse publicity in the press. Claims can be both expensive and embarrassing for the organisation concerned, particularly given the rise and visibility of corporate social responsibility initiatives globally. Also in organisations working with the public sector, which has additional obligations in relation to promoting equality, a successful claim could bar the organisation from winning public tenders.

Under the Access to Work scheme, the Government provides funding for extra costs or adjustments which would help an employee do their job but which go beyond what would be termed 'reasonable adjustments' from the employer's perspective. These can range from help with travel costs to and from work, providing someone with a support worker or paying for relevant equipment/external IT training. From time-to-time the Government launches new funding schemes, guidance and tool kits to help employers better understand and cope with disability at work, and to fund research, therapy or job prospects for both the mentally and physically disabled.

The Equality Act 2010 replaced and harmonised the previous discrimination legislation which was spread across numerous pieces of legislation. The Act brought disability discrimination in line with other protected characteristics by introducing indirect discrimination and the new concept of 'discrimination arising from a disability' explained above. It also made it more difficult for disabled people to be screened out on medical grounds, when applying for jobs, by restricting the circumstances in which employers can ask job applicants questions about disability or health.

Finland

The Finnish law does not obligate companies to employ certain number of disabled persons. However, if an employer acts in a discriminatory manner (*e.g.* does not hire a disabled employee merely due to his/her disability even though he/she is most suitable for the work and could manage the work), the sanctions set forth in the Non-Discrimination Act or the Criminal Code may apply. Assumption of discrimination may actualise in recruitment, during the employment or when considering terminating the employment contract. In addition, denial to reasonable accommodation as explained in more detail below may in future be considered as illegal discrimination entitling the person to monetary compensation.

The applicable sanctions for discrimination under the Non-Discrimination Act comprise monetary compensation the amount of which may vary case by case depending, among

other things, on the gravity of the breach and the employer's financial standing and actions to mitigate the consequences of the breach. As from 1 January 2015, the Act does not contain any monetary limitations to the maximum amount of the compensation.

In addition, discrimination based on disability may fulfill the criteria of employment discrimination offence. The employer or its representative may be sentenced to either a fine or imprisonment for at most six months for such offense.

Companies employing people with disabilities may be entitled to certain incentives *e.g.* for covering payroll costs or costs required for accommodating the work environment for the disabled person (*e.g.* for acquiring supportive equipment). For example, employers may be entitled to a pay subsidy, if they hire an unemployed jobseeker having difficulties to get a job, for example due to disability or illness. A pay subsidy is always discretionary and based on the needs of the unemployed person. The Employment and Economic Development Office will assess in which extent the work on a pay subsidy would improve the person's professional skills and how he/she would find work in the open labour market. The amount of the subsidy and the payment period will be determined on a case-by-case basis. If the pay subsidy has been granted on the grounds that a disability or an illness of a jobseeker significantly and permanently affects his/her work performance in the job offered, the subsidy may cover up to 50 % of the payroll costs. The subsidy period may not exceed 24 months at a time.

Employers may also apply from the Employment and Economic Development Office for financial support for accommodating the work place for a disabled person (*e.g.* costs for acquisition of new working tools, adjustments of work or assistance by another employee).

In addition, the Ministry of Employment and the Economy maintains a register of so called social enterprises, which are significant employers for persons with disabilities. These enterprises may be granted employment subsidies under different terms than other companies. In order to qualify as social enterprise, at least 30 % of the personnel of the enterprise must be either persons with disabilities or a combination of persons with disabilities and long-term unemployed persons.

Moreover, there are various foundations and associations that provide pay subsidies or other support to companies that hire persons with disabilities or illnesses. Typically, these organisations are supporting persons with only a specific type of disability or illness.

France

Private companies and public industrial and commercial establishments (EPIC) with a work force of more than 20 employees must hire 6 % of disabled workers.

Employers are provided with 5 options to meet this target:

- hiring disabled workers as employees;

- hiring disabled workers as interns (who should not represent more than 2% of the work force, article L.5212-7);
- subcontracting workers from the sheltered sector (Article L.5212-6);
- paying a annual contribution fee to AGEFIPH (“Association de gestion du fonds pour l’insertion professionnelle des personnes handicapées”, or Fund for the professional inclusion of disabled people), an organisation dedicated to furthering professional inclusion in the private sector (L.5212-9);
- enforcing a collective registered agreement which institutes a beneficial program for disabled persons (Article L.5212-8).

There are significant legal penalties for non-compliance with this regulation of quotas. Employers who have not fulfilled their obligation to hire 6% of disabled workers (through direct or indirect employment as exposed supra) are ordered to pay a legal penalty calculated as follows: number of missing recipients x 1.500 x minimum hourly wage x 125%.

The motivations that companies have to employ or to promote disabled persons are essentially economic, by reason of legal penalties described above. Besides, employers may receive financial support from AGEFIPH in order to facilitate employment, job retention or return to work by a disabled employee. For instance, employers who are prepared to employed disabled persons through minimum one year employment contract, or apprenticeship or vocational training contract, can expect subsidies. As regards employers who employ disabled persons suffering from a serious loss of their working capacity, this financial support may also offset the additional expenses generated by the adjustments or accommodation to the special needs of disables individuals.

Germany

Every employer with a workforce of at least 20 is required to fill 5 % of their jobs with severely disabled employees. If an employer does not comply with the quota, he has to pay a monthly compensation penalty for each unfilled compulsory place. The penalty is scaled as follows:

- 105 EUR for a quota of less than 5% but more than 3 %;
- 180 EUR for a quota of less than 3% and more than 2 %; and
- 260 EUR for a quota of up to 2 %.

In fact, most employers do not comply with the workforce quota and have to pay the compensation fee instead.

All employers are obliged to review their vacant jobs to determine whether they are suitable for severely disabled people. Furthermore the competent local public authority is entitled to grant the employer some supplementary financial benefits if he employs a person who is difficult to place.

Greece

Sanctions of law are provided against employers who violate the specific provisions of law 2643/1998 providing for the compulsory placement and occupation of specific categories of persons. In particular inter alia categories of persons with disability of at least 50% with restricted ability of employment because of long-term physical, mental or intellectual impairments if registered in the registers of unemployed persons with disabilities of OAED (Manpower Employment Organization) are included in the scope of the relevant law, as well as those who have a child, sibling or spouse with rate disability over 67% due to heavy mental and physical diseases, recorded by the competent health committees law of the respective law. In exceptional circumstances of persons suffering from mental retardation or autism, the relevant protection requires minimum percentage of disability fifty percent. The relevant obligation concerns besides public companies, private law companies employing at least 50 employees in Greece who are obliged to accept the placement of *8% of their workforce out of categories of the protected persons falling in the scope of law, 3% of which are disabled and protected persons (2% disabled and 1% relatives). The relevant placement is obligatory and is implemented through a special Committee (article 9).

Incentives: a) companies that fall in the scope of the law are subsidized for part of the salaries they pay (usually social security benefits) subject to the issue of relevant ministerial decisions, b) companies that fall in the scope of the law are subsidized for part of the cost of the ergonomic layout of the place of work of the persons with disabilities, subject to the issue of relevant ministerial decisions, c) financing part of the professional training of person with disabilities, subject to the issue of relevant ministerial decisions. [...]

Ireland

There is no legal requirement on a private sector employer to employ a minimum quota of disabled workers. However, the Disability Act 2005 places obligations on public service providers to support access to services and facilities for people with disabilities, which includes an obligation on public service bodies to ensure that no less than 3 per cent of the persons employed by it are persons with disabilities. However, there is no sanction for failure to comply.

A number of grants are available to employers as an incentive to employ more people with disabilities. These include for example the Workplace Equipment/Adaption Grant, Wage Subsidy Scheme, Personal Reader Grant, Job Interviewer Interpreter Grant, Employee Retention Grant Scheme and the Disability Awareness Training Support Scheme. The Wage Subsidy scheme provides financial incentives to private sector employers to hire

employees with disabilities who work more than 20 hours per week while the other schemes assist in the integration of employees with a disability into the workplace.

Israel

There is no concrete sanction at the moment, other than potential personal claims, for companies' failure to employ a sufficient number of disabled people. However, the specific "fair representation" requirement in the Extension Order will enter into force at the end of 2015, and therefore, we expect developments both by employee unions and the Commission for Equal Rights for Persons with Disabilities at the Justice Department.

Yes. The Headquarters for integrating disabled persons in the workforce at the Ministry of Economy offers a guidance service to employers, and financial assistance in making the necessary accommodations due to the special requirements of the disabled persons, according to certain criteria.

India

No particular legal requirement has been imposed upon private employers to employ sufficient disabled persons.

The PWD Act requires the government to provide incentives to employers both in public and private sectors to ensure that at least 5% of their work force is composed of persons with disabilities. Based on this, certain schemes have been approved by the government which provides incentives to private employers for employing persons with disabilities. In terms of some of the incentives provided, employers are exempted from payment of social security contributions (provident fund, pension and insurance premium) for the disabled employees for a period of 3 years.

Italy

Art. 15 of the Law 68/99 provides specific sanctions (fines) in the event the provisions of the Law are breached.

In particular, the amount of the sanctions is determined every 5 years by Decree of the Ministry of Labour and Welfare: the last one has been issued on December 15th, 2010.

In details:

- the missed submit of the Report described under paragraph 2 to the competent Centres for the Employment is sanctioned with a fine of 635,11 euros, plus an

additional sanction of 30,76 euros per each day of delay in the communication of that document;

- the missed hiring of a disabled person within the term of 60 days from the matching of the thresholds described under paragraph 2 is sanctioned with a fine of 62,77 euros per each day of delay, for each employee who is not hired.

As anticipated above, when hiring an individual with disabilities within the framework of specific agreements with the Authorities, the Employer can benefit of the incentives provided for by the Law.

As provided for by Art. 13 of the Law n. 68/1999, the incentive is represented by an economic support, granted by Regional Authorities, and its amount is determined:

- (i) in relation to the annual salary paid to the individuals with disabilities, and
- (ii) in proportion to the relinquish work capacity of the specific individual hired.

An additional reimbursement of expenses is also due to the Employer when:

- (i) a specific disbursement have been borne to transform the place of work and make it adequate to the reduced capacities of the individual hired (when subject to a disability higher that 50%);
- (ii) to structure specific technologies to allow the work from home of the disabled individual;
- (iii) to restructure the premises in order to allow barrier-free access.

Such incentives are also paid to those Employers that are not subject to the legal duty to hire individuals with disabilities (employing less than 15 employees), but, nonetheless, hires disabled persons.

The economic support is only granted when the Employer hires through a contract for undetermined period of time.

Luxembourg

When an employer hires more disabled employees than the legal required number, the employer's social contributions of the disabled employee's wage is supported by the Luxembourg State (Article L. 562-3 of the Labour Code).

Article L. 562-3 (2) of the Labour Code requires the employment of at least one disabled person in companies of at least 25 employees.

In companies of at least 50 employees, they shall represent at least 2 per cent of the employees and 4 per cent in companies employing at least 300 workers.

If the employer refuses to hire the required number of disabled persons, it has to pay each month a compensation tax equal to 50% of the minimum social wage to the Public Treasury.

This amount is due as long as the employer's refusal lasts and for each disabled person not hired (Article L. 562-5 of the Labour Code).

The Law of 28 November 2006 on the principle of equal treatment prohibits any discrimination especially based on disability. This prohibition has been implemented in the Labour Code in a new title relating to equal treatment regarding employment and work (Please see question n°2 above).

Finally, by the Law of 19 July 1997, discriminations based on disability are subject to criminal prosecution (Please see question n°2 above).

Malaysia

The government has specified a 1% employment quota for people with disabilities in government and private sectors under the Service Circular Letter No. 3/2008 (for government sector) and Code of Practice of Employment for People with Disabilities in Private Sector 2001 (for private sector). However, this obligation is not backed up with any effective sanctions.

Incentives exist in the form of the following tax benefits:

- A double deduction of remuneration paid to disabled workers [Income Tax (Deductions For The Employment of Disabled Persons) Rules 1982]
- A double deduction for expenses spent for training of non-employee disabled persons [Income Tax (Deductions For Approved Training) Rules 1992]
- Expenditure expended for any equipment to assist disabled workers (including any alteration or renovation of workplace) [Paragraph 34(6)(e) Income Tax Act 1967]

The Netherlands

On the basis of the Occupational Disability (Employment Targets and Quotas) Act.

In 2013 binding agreements have been made between the trade unions and employers, on the providing of jobs for disabled and chronically ill people, on a structural basis. On the basis of this 'Social Agreement', the Occupational Disability (Employment Targets and Quotas) Act came into force as per 1 January 2015. Its aim is to increase the employment rate of people with an occupational disability. These are people with a disability

acknowledged by the government (municipality), falling under the scope of the Participation Act and people now working in sheltered employment. It has been agreed that employers will provide jobs on an annual basis for people who, due to disability, are not capable of finding work for themselves which pays the statutory minimum wage.

The target number is 100,000 jobs in 2025 in the private sector and 25,000 jobs in the public sector. In order to reach this target in 2025, a graduated scale was agreed determining a number of extra jobs per year. Temporary agency workers are included in these targets. If the agreed results are not achieved then a quota system will take effect. This will be reviewed for the first time in 2016. If it appears that an insufficient number of extra jobs for people with an occupational disability have been created, a quota levy of €5,000 per unfilled job will follow as per 1 January 2017. An exception applies to employers with less than 25 employees.

There are several incentives in place for companies to hire candidates with disabilities.

Employers hiring people with an occupational disability possibly face higher risks, for instance in terms of potential productivity and safety in the workplace. In such case the employer may apply for wage cost subsidy at the applicable municipality. All employees are entitled to minimum wage. The wage cost subsidy compensates the employer for the difference in employment productivity between the disabled individual and a 'regular' employee. The wage cost subsidy amounts to a maximum of 70% of the minimum wage.

Employers may be eligible for a workplace adjustment benefit in case of hiring a disabled candidate. The allowance may be granted for permanent measures in securing and/or adjusting the workplace, such as a stairlift or automatic doors. The benefit may also be allocated to mobile facilities such as a special keyboard or an adjusted chair.

Employers who hire an occupationally disabled person may be eligible for a no-risk policy, to be granted by the municipality. Under a no-risk policy an employer is not liable for continued payment of wages during illness.

The entering into force of the Equal Treatment of Disabled and Chronically Ill People Act in 2003 Furthermore, the Participation Act and the Occupational Disability (Employment Targets and Quotas) Act aim to facilitate and enhance the employment participation of people with disabilities.

New Zealand

There are no sanctions for companies not employing sufficient disabled people however under section 22 of the HRA and section 104 of the ERA it is unlawful to discriminate against a person with a disability by refusing or omitting to offer them employment by reason directly and indirectly of their disability. It is also unlawful to subject a disabled employee to any detriment, dismiss them or require or cause them to retire by reason of their disability. This also applies to anyone acting on behalf of an employer or anyone concerned with procuring employment for other persons. Under the ERA a person may

raise a personal grievance against their employer if they believe that they have been discriminated against on the basis of a disability.

An employer is entitled to treat people with disabilities differently if the position is such that the person could not perform the duties of a position without the aid of special services or facilities and it is not reasonable to expect the employer to provide these; or if the environment in which the duties are to be performed are such that the person could only perform those duties with a risk of harm to that person or others, including the risk of infecting others with an illness. This does not apply if the employer could, without unreasonable disruption take reasonable measures to reduce this risk to a normal level.

There are no direct legal or monetary incentives for companies to employ more people with disabilities. However, under the Minimum Wage Act 1983, the Ministry of Business, Innovation & Employment may issue minimum wage exemption permits to workers who are limited by a disability in carrying out the requirements of their work. Statistics show that around 800-1000 workers with disabilities hold minimum wage exemption permits at any time. These exemption permits are only granted if it can be shown that the disabled worker's competence or productivity is less than that of a non-disabled worker doing the same job however and thus may not be considered an incentive. The Disabled Persons Employment Promotion Act 1960 was also repealed in 2007 removing exemptions from minimum wage and holiday legislation for sheltered workshops (organisations that employ people with disabilities separately from others).

Under the State Sector Act 1988, the State Services Commissioner has a responsibility to "promote, develop, and monitor equal employment opportunities for the Public Service."

Nigeria

The Nigerian Labour Act, and other federal legislations do not make any specific provisions for the imposition of sanctions on companies which do not employ sufficient disabled persons.

However, Section 29(5) of the Lagos State Special Peoples' Law provides that all employers of labour employing up to 100 people shall reserve at least 1% of such workforce for qualified persons living with disability. Section 9(4) of the Law further empowers the Lagos State Office for Disability Affairs to investigate, prosecute and sanction in appropriate cases the violations of any provisions of the Law.

At the moment, there is no legislation or government regulation that provides incentives for companies to employ more people with disabilities.

Norway

It is enshrined in the AAA section 31 that anyone who has been subject to unlawful discrimination on grounds of disability "may require redress and compensation". The protection after the law applies to all aspects of employment, hereby recruitment.

Consequently, redress and compensation could be imposed on a company if a sufficient and qualified individual is subject to unlawful discrimination on grounds of disability in the hiring process.

The employer are imposed the responsibility for the sanctions the Section includes. The right to redress and compensation applies regardless of whether the employer can be blamed for the discriminatory treatment. The compensation shall cover the economic losses caused by discrimination. Redress for non-pecuniary damage is determined to what is reasonable from the damage extent and nature of the parties' relationship and circumstances.

As mentioned earlier, the employer is subject to a general duty to active, targeted and systematic work to promote the Act within its business. However, there are no law or other judicial sources specifically regulating such circumstances.

The government has, nevertheless, implemented measures to increase employment of people with disabilities, including the formation of so-called "protected positions". These are positions created and designated to persons with comprehensive physical or mental impairments of quite a comprehensive character which might lead to potential reduced work capacity, and further the fact that they most likely would not be selected otherwise after a qualification assessment. The governments offer through national insurance schemes to pay wholly or partially for "protected positions", which makes it less onerous for an employer to hire persons with such impairments. This arrangement is an efficient incentive provided from the State, giving the employer an opportunity in relation to hiring people with disabilities, and further people with disabilities a great opportunity to contribute in the labor market.

Further, there is a current law draft subject to assessment at the government, which generally allows more temporary employment than the current WEA. After current law, the general rule is that the employer has to offer permanently employment when recruiting, offering the employee full protection against dismissal more or less from the time of the employment. One can argue that the strong protection against dismissal to some extent limits the ability of persons with disabilities to get a chance at employment, as the liability that protection entails for the employer constitutes an obstacle to employ those people. The law draft implies a general right for 12 months' of temporary employment, providing the employee a real opportunity at employment, and the employer reasonable time to monitor the persons development without being fully bound by the termination rules. If the law draft were to be adopted, it may have the effect as an incentive to employ more people with disabilities.

Russia

As a general rule, for not creating of special working places for disabled persons as per the established quota, as well as for unreasonable refuse to hire a disabled person, the responsible officer of the employer may be subject to an administrative fine of 75 – 155

Euro. If the company fails to file the relevant information on creation of special working places or employment of disabled persons, the administrative fine would be 5 – 8 Euro for the responsible officers of the employer and 45 – 75 Euro for the company itself.

However, the legislative acts in the regions may establish a higher administrative liability for employers not complying with the quota for hiring of disabled persons. For instance, the employers operating in Moscow, as well as their responsible officers may be subject to an administrative fine of 460 – 770 Euro and 45 – 75 Euro accordingly.

The employers hiring more people with disabilities than it is required under the statutory quota may apply for the special governmental aid. In particular, they may have right to reimbursement of their expenses for creating of special working places for disabled persons, as well as partial recovery of their expenses for remuneration of disabled employees, as well as costs for manufacturing and realization of products produced with the help of disabled employees.

The concept of discrimination in the sphere of employment is not significantly developed in Russia. This may be explained, first of all, by the fact that employees in Russia in most cases would prefer not to apply to court for protection of their statutory rights.

As for discrimination in the workplace by reason of disability, to the best of our knowledge, there are only few court cases, and, unfortunately, most of them are not in favor of employees.

Singapore

There is no prescribed quota that companies have to meet in employing persons with disabilities. No sanctions imposed under Singapore law if companies do not employ sufficient persons with disabilities. The main incentive in place is the Special Employment Credit (“SEC”) scheme, which provides employers with financial support in employing persons with disabilities. Employers of persons with disabilities will receive a SEC of up to 23 per cent of the monthly income of such persons, depending on the person’s age and monthly salary.

There is also the Open Door Programme, which, whilst not an incentive *per se*, is an initiative to facilitate the employment of persons with disabilities. The Open Door Programme offers grants to companies to alleviate the costs involved in accommodating or modifying workplaces for persons with disabilities and in training and integrating persons with disabilities. The government has set aside S\$30 million for this programme.

South Korea

If an employer who has at least 100 full-time employees fails to comply with the mandatory hiring rate regarding persons with disabilities, the employer must pay a hiring penalty to the Korean government in an amount that ranges from KRW 670,000 (USD 600) to KRW 1,080,000 (USD 980) for every person the employer failed to hire to meet the applicable

hiring rate (the exact amount will depend on the number of disabled persons the employer must additionally hire and the ratio between disabled persons hired and the total number of disabled persons the employer is required to hire).

An employer whose hiring of persons with disabilities exceeds the applicable mandatory hiring rate is eligible for hiring incentives in an amount that ranges from KRW 150,000 (USD 136) to KRW 500,000 (USD 453), depending on the degree of disability of the employees and the consecutive years of service provided by said employees.

Although not a positive incentive, companies employing persons with disabilities currently are allowed to pay them less than the statutory minimum wage. Recently, however, the Korean government is planning to apply the statutory minimum wage to employees with disabilities as well.

Spain

The infringement of such obligation is sanctioned by a fine which could reach up to 6.250 Euros in total. To be precise the sanction will be from 3.126 Euros to 6.250 Euros. However, the maximum amount will be required if the employer is a recidivist.

The Government has granted a number of benefits to those companies which employ disabled people. These benefits are offered to employers when hiring these employees in all contract forms, namely, permanent contract, temporary contract and practice contract.

The benefits established may be subsidies (7.814 Euros for each full-time permanent contract or subsidies not higher than 902 Euros for each employee if the employer removes architectural impediments/boundaries for the disabled), bonuses such as a 100% bonus of the fee that has to be paid to the Social Security, etc. All these measures are focused on reducing costs for companies when they hire disabled people.

Moreover, there is a special temporary contract for disabled people. This contract has its own conditions such as a maximum (three years) and minimum (twelve months) term, twelve days per year of work as severance payment and incentives to turn this temporary contract into a permanent one.

Sweden

An employer who discriminates in a recruitment process is liable pay a so called discrimination compensation (equal to damages) to the affected person. An employer may receive certain wage subsidiaries from the Governmental Employment Agency. The subsidiary applies to certain forms of employments and for a limited period of time. Economical support can also be granted in order to provide supportive facilities at the work place.

Switzerland

As of to date, no quotas exist for the employment of disabled people under Swiss law. The introduction of quotas was discussed during the last disability insurance reform but such plans were ultimately rejected. Consequently, there are no legal sanctions if companies do not employ disabled people.

In case of an existing employee, the disability insurance can assist the employer with payments for adjustment of the working space, retraining and coaching. For new employees, there is the possibility of a work trial where an employer can test an employee with a disability for up to 6 months and the salary is paid by the disability insurance. If an employer decides to employ a person with a disability the salary of the employee the disability insurance may subsidise up to 80% of disabled person's salary for the first 6 months.

Taiwan

Pursuant to ARPD, private schools and non-government owned organizations or entities ("Private Entities") who hire 67 employees or more must hire 1 employee with disability and the percentage of the disabled employees shall not be below 1% of total employees; while public schools, governments and government-owned organizations or entities ("Public Entities") who hire 34 employees or more must hire the disabled employees and the percentage thereof shall not be below 3% of total staffs. Should a Public Entity or Private Entity fail to meet such requirement, it will be required to pay an amount calculated on the basis of the shortfall (between the mandatory hiring amount and the actual hiring amount) times the minimum wage to a Disability Employment Fund set up by the local government. The Private Entity that fails to meet such requirement without proper justification may be subject to a fine in the amount of NTD20,000-NT\$100,000.

According to ARPD, the government authorities must offer awards and assistance to the entities (and their investors) that hire employees with disability and the hired disabled employees represent not less than 20 percent of its total employee. In addition, the competent authorities must enact related regulations for the implement of such awards and assistance. Consequently, various government authorities (including the Ministry of Economic Affairs, the Ministry of Culture, the Ministry of Transportation and Communication and Financial Supervisory Commission) have enacted related regulations which authorize such government authorities to award money, certificates of merit or medals, or given priority status when applying certain government grant or assistance programs.

Turkey

Under the Labor Law, employers with 50 or more employees are obliged to employ a minimum 3percent of their workforce from among disabled persons; this quote goes up to 4percent for public institutions . Employers or representatives of employers are punished by administrative fines in an amount of TL 1700 per month in the event of failure to employ a sufficient number of disabled employees. Public institutions are also bound by this requirement.

As per the Labor Law, companies employing more people with disabilities than is required under the law are exempted from paying insurance premium for employees hired in excess of the legal minimum. This regulation can be considered as a financial incentive for companies to hire more disabled people than required under the Law. According to the Corporate Tax Law and the Income Tax Law, sheltered workplaces established under the Law on Persons with Disabilities can benefit from a 100 percent discount on the wages of employees with mental or psychological disabilities. This discount is applicable at most for 5 years and is capped at 150 percent of the minimum wage. The scope of this incentive is to encourage employers to employ mentally and psychologically disabled employees.

Ukraine

There are two mandatory employment quotas in Ukraine: for disabled employees (the “Quota for Disabled”) (for companies with 8-25 employees – one position, for companies with more than 25 employees – 4% of the workforce) and for ‘*subsidised categories of employees*’ (the “Subsidised Quota”) (5% of the workforce for companies with 20 or more employees). The Subsidised Quota includes: disabled persons, employees that are close to the retirement age, recent graduates, the unemployed, and single parents.

Failure to comply with the Quota for Disabled incurs a fine in the amount of: (i) a full average annual salary at the company per each job position that should have been occupied by disabled employees for companies with more than 25 employees; or (ii) half an average salary for companies with 8-25 employees. The fine for failure to meet the Subsidised Quota is approx. USD 22-74 for the responsible corporate officers and approx. USD 106 for the company for each groundless refusal to hire an employee that is a member of the Subsidised Quota.

There are also financial incentives for employment of disabled persons. In particular, the rate of the employer-paid Unified Social Contribution payable on disabled persons’ salaries is 8.41% as opposed to the general rate that varies from 36.76% to 49.7%, and the employee-paid Unified Social Contribution rate is 2.85% as opposed to the usual rate of 3.6%.

United Arab Emirates

Despite the introduction of the Federal Disability Law and the Dubai Disability Law, it has been pointed out that in practice, people with disabilities struggle to find employment in the UAE. The enforcement of the Federal Disability Law is currently not regulated by a central entity. Though the Community Development Authority (a subdivision of the Dubai Government focused on community and social services) does spearhead various initiatives related to disability, it does not have authority to deal with specific complaints.

In the absence of a formal complaints procedure, the avenues available for enforcement are civil litigation or public prosecution by way of police complaints. High-profile instances of such action being taken have not been reported to date.

Therefore, though in theory all those who fall under the definition of disabled under the Federal and Dubai Disability Laws are entitled to equal employment opportunities, the provision of opportunities to the disabled largely lies within the discretion of individual employers.

There are no specific sanctions for breaches of the DIFC Employment Law, save for a claim by an employee for damages.

The *El Kayt* employment programme, an initiative by the Community Development Authority, focuses on the employment of UAE nationals with disabilities and was set up following the publication of the Federal Disability Law in 2006. The El Kayt programme focuses on providing support for and empowering those with disabilities and on raising awareness among potential employers. However it is not currently backed up by any significant monetary or other incentives.

United Kingdom

Under the Access to Work scheme, the Government provides funding for extra costs or adjustments which would help an employee do their job but which go beyond what would be termed 'reasonable adjustments' from the employer's perspective. These can range from help with travel costs to and from work, providing someone with a support worker or paying for relevant equipment/external IT training. From time-to-time the Government launches new funding schemes, guidance and tool kits to help employers better understand and cope with disability at work, and to fund research, therapy or job prospects for both the mentally and physically disabled.

Organisations do not have to hire a certain quota of disabled people by law. However, as disabled job seekers and employees are protected against discrimination under the Equality Act 2010, they are entitled not to be discriminated against in recruitment, promotion and pay.

If a disabled employee or job applicant feels that they have been discriminated against, they can bring a claim in the Employment Tribunal, whose decisions are available for public scrutiny and can generate adverse publicity in the press. Claims can be both expensive and embarrassing for the organisation concerned, particularly given the rise and visibility of corporate social responsibility initiatives globally. Also in organisations working with the public sector, which has additional obligations in relation to promoting equality, a successful claim could bar the organisation from winning public tenders.

USA

Yes, there are certain tax incentives for companies that employ people with disabilities. The Disabled Access Credit provides a non-refundable credit for small businesses that incur expenditures for the purpose of providing access to persons with disabilities.

Second, the Architectural Barrier Removal Tax Deduction encourages businesses of any size to remove architectural and transportation barriers to the mobility of persons with disabilities and the elderly. Businesses may claim a deduction of up to \$15,000 a year for qualified expenses for items that normally must be capitalized.

Further, the Work Opportunity Credit provides eligible employers with a tax credit up to 40 percent of the first \$6,000 of first-year wages of a new employee if the employee is part of a “targeted group.” An employee with a disability is one of the targeted groups for the Work Opportunity Credit, provided the appropriate government agencies have certified the employee as disabled.

V. Advantages and disadvantages of a diverse workforce

⇒ Questions relating this topic were sent to multinational companies only and have therefore to be answered by them

VI. Accommodations / disability-related activities / CSR policies

⇒ Questions relating this topic were sent to multinational companies only and have therefore to be answered by them

VII. Disability-related case law / plans for reform by government concerning discrimination law

Brazil

What we have seen and work closely in the past years refers to the (lack of) hiring of disabled employees by the companies in Brazil, as the Brazilian Labor Public Attorney’s Office is very effective when it comes to verifying whether the Brazilian companies are in compliance with this hiring obligation. Therefore, it is very common to see class actions filed by the Brazilian Labor Public Attorney’s Office on the matter. However, in Brazil it is quite difficult for companies (especially the ones with more than 1000 employees) to comply with such obligation, due to the fact that there are not enough disabled employees available, recovered and qualified to enter in the labor market.

We have worked in 2 (two) different cases in which both companies were fined for not complying with law # 8.213/1991. However in both cases we were able to prove that the companies had tried to hire disabled employees, but were not successful in their efforts. In fact both companies had taken all the necessary steps, such as: (i) execution of a services agreement with the institutions which qualify disabled individuals; (ii) enforcement of actions to promote improvements in accessibility in the work environment, (iii) offering of jobs to disabled employees in the most important national newspapers; (iv) letters to the Social Security Institute asking for recovered employees, among others. In both cases the fines applied were cancelled.

It is our understanding that the plans by the government are to extend rights for people with disabilities.

Canada

- (i) **Mental Health:** Recent developments have focused in large part on mental health issues. For example, case law has started more amply recognizing, under workers' compensation statutes, mental health conditions as a workplace injury.
- (ii) **The Duty to Accommodate:** much case law has discussed the scope and limits of the duty to accommodate, what constitutes undue hardship, and what the employee's obligations are with respect to disclosing information and participating in the accommodation process.
- (iii) **Indirect protection:** some Canadian jurisdictions prohibit discrimination on the grounds of family status. Recent case law has clarified that "family status" encompasses the obligation to care for ailing or Disabled members of one's family.

There are no pending legislative reforms or projects of which we are aware.

Chile

There is a recent case law (2014) based on Law 20,609, by the 1st Civil Court of Chillán, regarding a lawsuit based on discrimination on grounds of disability. In this case, a lawyer with visual disabilities, who served as deputy director of Human Resources in Ñuble Health Service, required technical and human resources to perform her duties; therefore, she asked the institution to employ an office assistant, even offering to afford the cost. The request was denied by the institution, and against this denial, the lawyer filed a claim based on disability discrimination, which was granted by the Court, ruling that the act of the institution did not have a legitimate cause. The Court ordered the institution to have the physical and technical tools necessary for the lawyer to perform her duties. It was also determined that whenever the institution employed a person with a disability, it should previously make the necessary adjustments to ensure that a person with disability may enjoy, on an equal basis, his/her human rights and fundamental freedoms. The Court also applied a fine to the institution.

China

It is worth noting that in 2003, Beijing Xicheng District Court held hearings regarding disabled people's social welfare, which was the first case in this field.

In recent years, there are no significant disability-related cases in China in the aspects of fair employment or welfare. Cases regarding disability issues mainly exist in labor disputes

for work-related injuries which resulted in disability. And such cases always end up with the termination of employment relationship and a relatively large amount of compensation.

Colombia

In later years, the Constitutional Court has made very important case law regarding reinforced stability. This protection means that employees under disability cannot be dismissed without a special authorization, to guarantee that fundamental rights have not been violated, in the event of dismissal with cause for gross misconduct.

If any of these employees are dismissed without prior authorization, the termination will be considered null and these employees should be reinstated in their positions.

Denmark

The Danish understanding of concept is constantly evolving and recently there have been a series of judgments from the Danish Courts and the Board of Equal Treatment. Below, some of these court cases will be assessed.

In August 2011, the Maritime and Commercial Court ruled that *ADHD* was a disability, due to the fact that it was an inborn condition of stationary nature which leads to a decreasing function of varying nature ranging from no particular needs for extensive needs of help in the workplace.

In March 2010, the Board on Equal Treatment ruled that an employee's *certain degree of epilepsy* was not a disability, due to the fact that the employee was not expected to have any seizures after a half year time period and therefore the conditions was temporary. On the contrary, the Danish Eastern High Court in May 2011 ruled, that an employee's *certain degree of epilepsy* was a disability due to the fact that epilepsy was a chronic brain disease and the employee had the disease to such an extent, that his decreasing function needed compensation as to reduced hours as well as the workplace should take special considerations to him.

In March 2011, the Board on Equal Treatment ruled that an employees *impaired vision* as to an inflammation of the optic nerve and retina was a disability, due to the fact that the eye-disease involved a decreased functionality which caused that the employee was no longer able to perform some of the functions that previously had been a natural part of her work.

In June 2011, the Danish Eastern High Court ruled that *impaired hearing* was a disability, due to the fact that it was a chronic condition which leads to a decreased functionality and therefore a need for compensation before the employee could operate on equal terms as the other employees.

In June 2014, the Danish Eastern High Court ruled that *alcoholism* was not a disability. The Court took the view, that the employee had had an alcohol abuse in several years and due to that the court found that the employees many years of drinking had not involved a more

permanent decreasing function. Already in such circumstances, the Court found that alcoholism could not be considered a handicap.

In June 2013, the District Court of Kolding submitted a preliminary question to the European Court of Justice asking whether *obesity* could be considered a disability. The Court ruled in December 2014 that obesity did not in itself constitute a “disability” due to the fact that obesity does not necessarily cause a long duration “limitation” of a person’s full and effective participation in the working life on equal terms with other employees. However, obesity can cause such limitations, if *e.g.* the limited movement or diseases, prevents the employee from “performing his duties” or involves inconvenience “in the exercise of the employees professional activity”. Further, the court ruled that obesity in some circumstances actually can be a disability and reiterates that the cause of the disability is irrelevant to the definition, i.e. the term “disability does not depend on the extent to which the person has contributed to the emergence of the disability.

England

There is a significant body of case law since the DDA came into force. The number of disability discrimination claims brought in the UK has fallen dramatically since the introduction of Tribunal fees in 2013, but in recent years remains consistently the second most common type of discrimination claim, after sex.

By way of example, two key cases are as follows. In the case of *Coleman v Attridge Law & Steve Law* [2008], the court found that disability discrimination could extend to a person who is associated with a disabled person. Ms Coleman's son was born with a rare condition affecting his breathing and also had a hearing impairment. Ms Coleman claimed she was forced to resign from her job as a legal secretary after being refused flexible working which other employees, without disabled children, were granted. In July 2008, the ECJ ruled that direct disability discrimination and harassment of a non-disabled person on the grounds of their association with a disabled person were unlawful.

In the case of *Aderemi v London and South Easter Railway Ltd* [2013] the definition of disability under section 6 of the Equality Act 2010 was examined. In deciding whether or not the Claimant’s impairment had a substantial adverse effect on his ability to carry out normal day-to-day activities, the tribunal had incorrectly focused upon what the claimant could do despite his impairment, rather than assessing what he could not do as a result of his impairment.

There are no current plans with regards to employer duties towards people with a disability. The biggest change to more general disability rights in the future will come through the Care Act 2014 which aims for local councils and the National Health Service working together to provide more streamlined services for people with disabilities. The Act will create national eligibility criteria for establishing when someone should be entitled to help, will give carers a right to assessment and support and will give disabled people who care for themselves a right to go to councils for advice and information.

There is a general election approaching in May, and another coalition looks likely. Mental health care reform will continue to be a priority for the Liberal Democrats, and if they remain in government, they will commit significant funding to reduce mental health waiting times and to assist carers of the disabled.

Finland

There are several disability-related cases in Finland, but majority of them concern the grounds and amount of the benefits or other support granted for persons with disabilities. Typically, the key question of these cases is, whether a certain type of injury or illness causes such a disability that it entitles the person to receive certain type of services.

Considering the reference of this questionnaire to working life, we are not aware of any significant cases that should be specifically mentioned here.

There are some plans to improve and in this regard extend the rights of persons with disabilities. For example, Finland has signed the UN Convention on the Rights of Persons with Disabilities (CRPD), but national ratification of the Convention is still unfinished. The Finnish Parliament has recently accepted the Government Proposal on the ratification of the Convention. The aim is now to make sure that the Finnish legislation fulfills the requirements of the Convention and this way ensures that the rights of the persons with disabilities are sufficiently secured.

In addition, the regulations regarding persons with disabilities are under a reform as a part of a comprehensive reform of social welfare legislation. The purpose of the reform is, among other things, to develop the services provided to persons with disabilities and to guarantee the same quality of services to all persons with disabilities regardless of their place of residence. Also, the reform aims to improve employment and home care of persons with disabilities.

The Finnish Government has earlier prepared a national Disability Policy Programme 2010 – 2015 that emphasizes the protection of disabled persons and aims to provide these individuals the same rights, freedoms and equal opportunities as others. The objective is to mainstream disability policy into different functions in society.

France

Disability is a field governed primarily by statute law. However, we could mention a decision of 2006 in which the French Supreme Court judged that an employee cannot be deprived of his rights of disabled workers regarding dismissal on the ground that he did not reveal his disabled worker statute before the notice of dismissal (Supreme Court, 7th November 2006).

The bill for the growth, activity and equal economic opportunities established under the supervision of Emmanuel Macron provides that the employer may fulfill part of the employment obligation by hosting disabled persons for periods of discovering mission in

the workplace. In this context, the 6% quota could include disabled persons who are self-employers.

Germany

With the Equal Treatment Act of 2006 there has been a rise of lawsuits which involved questions of discrimination. Furthermore it has been widely discussed whether an employer shall be allowed to ask (and at what point of time) if a potential employee has a severe disability.

It is our understanding that the government is trying to further extend the rights for people with disabilities in order to offer equal opportunities for all members of society.

Greece

Relevant decision was issued in 2009 from the Supreme Court which revoked the relevant court of Appeal Decision which had been issued in favor of an HIV positive employee. The Supreme Court upheld as valid and reasonable the dismissal of this person. The reasoning was that the dismissal of the HIV positive person was not abusive on the grounds that it was justified by the employer's interests in restoring the company's smooth functioning and operation of the business being distorted due to the fear and insecurity of the other employers because of the disease of their colleague. This decision has caused a lot of criticism inter alia because it was based solely upon whether the dismissal was abusive or not and did not examine the violation of the relevant discrimination prohibition provisions.

In *I.B. v. Greece* the European Court of Human Rights (ECHR) issued on 3 October 2013 in the above case that the dismissal of the HIV-positive employee in response to pressure from other company employees calling for his removal constituted a violation of the European Convention on Human Rights. The ECHR held that the dismissal was discriminatory, being due to the employee's HIV status. It found that the employee had been a victim of discrimination on the basis of his health status in violation of Article 8 (respect for privacy and family life) and 14 (prohibition against discrimination) of the Convention'.

There are no reform plans at the moment due to the financial crisis in Greece.

Ireland

There have been a number of high profile disability discrimination claims before the Tribunals and Courts. In the case of *Vincent Kavanagh v Aviance* (DEC-2007-039) the tribunal made one of its biggest awards at that time of €125,000, which amounted to four years remuneration, the maximum payable under the EEAs for claims of discrimination (failure to provide reasonable accommodation) and discriminatory dismissal.

In terms of dismissing an employee on the grounds of disability, a number of cases (like *A Health and Fitness Club v A Worker* (Determination No. EED037) and *Humphries v Westwood Fitness Club* ([2004] ELR 296) have outlined a clear process which must be

followed, failing which any dismissal is likely to be held to be discriminatory. This process includes obtaining and reviewing medical evidence, consulting fully with the employee in question and evaluating alternatives before any decision regarding any potential termination of employment can be taken.

Ireland signed the UN Convention on the Rights of People with Disabilities (the "Convention") on March 30 2007. However, Ireland has not yet ratified it, as the Irish Government contends that it must pass new capacity legislation first. The current legislation is clearly outdated, the Lunacy Regulation (Ireland) Act 1871 provides for the Ward of Court system, for those whose mental capacity is such that all decisions about their lives and care should be made by the Court.

The Assisted Decision-Making (Capacity) Bill 2013 introduces many important reforms, however, it has still not progressed through the Government two years after publication. It will provide people with disabilities with supported decision-making rather than the current Wards of Court system and give greater autonomy to those who need support in making fundamental decisions concerning their lives.

Israel

There have been various Regional Labour Court rulings on the matter which point to the general trend of increasing the protection of disabled people. The main recent ruling on the matter is that of the High Court of Justice in Machmali (2014), which is briefly described in our response to Question 1, above.

Machmali was an employee of the Israel Prison Service, who claimed that his employer failed to promote him due to the medical disability which he incurred during and due to his position, and despite the positive evaluations he was given. His requests for the promotion were denied since his scope of employment decreased to a partial scope due to his disability, and the position he wanted required a full time scope of employment. The High Court of Justice found that the employee's disability, which affected the scope of his employment, was one of the considerations, and maybe even the main consideration, considered by the employer when deciding not to promote the employee, and therefore the court ruled (partially) in his favor.

The topic of disabled persons' rights and employment of people with disabilities both in governmental and private workplaces, has recently become one of the hottest trends in Israel and is on the public agenda.

We anticipate a further expansion of the protections, based on the Collective Agreement on which the Extension Order was based, in addition to developments in the public sector, which include a government decision to employ disabled people in the public sector, and a circular issued by the Government Companies Authority regarding the Equal Rights of

Persons with Disabilities Law, which requires governmental companies to apply many requirements regarding the employment of persons with disabilities.

India

To our knowledge there are no cases (in the employment law context). Please also note that the Right of Persons with Disabilities Bill, 2014 has been proposed which would replace the PWD Act. Instead of seven disabilities specified in the Act, the Bill covers 19 conditions. As per the Bill, persons with at least 40% of a disability are entitled to certain benefits such as reservations in education and employment, preference in government schemes, etc.

There have been some talks over the last few years in relation to introducing affirmative action for the private sector, although at this moment it is largely voluntary in nature and unlikely to become a statutory requirement.

Italy

Jurisprudence has widely discussed the rights of disabled persons.

The main fields of Courts ruling relates to:

- the right to be assigned to tasks which are compatible with his disability;
- the right to check, during the performance of the working relationship, whether the tasks assigned are (still) compatible with his disability (this especially in case of internal reorganization or worsening of the disability itself);
- the right to maintain the office also in case of absence due to sickness, determined by the assignment to tasks which are not compatible with the disability;
- the right of the disabled person to be transferred to a more convenient office and the corresponding right not-to-be-transferred;
- the right of the relatives to leaves and to keep their position (the right not-to-be-transferred) when proving they are assisting a person with disabilities.

One recent case (Supreme Court, n. 17720/2011) has summarized most of the topics listed above.

The case law relates to the termination of the employment relationship as a consequence of the prolonged absence from work, due to sickness.

As provided for by Art. 2110 of the Italian Civil Code, when the employee is absent from work due to sickness, the Employer shall keep his post for a determined period of time;

when this “granted period” elapses, then the Employer can terminate the employment relationship “due to the overcome of the granted period”.

In principle this rule applies also to people with disabilities; however, some exceptions have to be mentioned.

The dispute here discussed was the consequence of the termination of the employment relationship with an employee suffering a disability of the 80%.

In the performance of the employment relationship, the employee was often absent from work because the tasks she was assigned to were not consistent with her disabilities.

Neither the employee nor the Employer had never requested specific medical examinations in order to check the compatibility of the tasks assigned to the employee.

Hence, once the employee overpassed the “granted period”, the Employer issued the termination of the employment relationship.

The employee contested the dismissal claiming that the absences were caused by the fault of the Employer who had assigned the employee to tasks which were not compatible with her disability.

Despite both the Tribunal and the Court of Appeal rejected the complaint, the Supreme Court stated that the days of absence for sickness – which are due to the incompatibility of the tasks assigned to the disabled employee – cannot be counted within the granted period and therefore, in that case, the Employer could not dismiss the employee.

However, it is the right of the Employer (and his duty, as far as the Employer wants to protect his business) to submit the employee to periodical medical examination in order check whether the disability is worsening and whether the tasks assigned are still compatible with the infirmity of the individual.

As far as the right not-to-be-transferred is concerned, recent Jurisprudence have clarified that:

- the employee is entitled to ask to be transferred to a more convenient office, but this is subject to special conditions and namely has to be balanced with the degree of disability suffered by the individual and the actual possibility for the Employer to change the office of the disabled person (Supreme Court n. 10338/2013);
- it is the duty of the Employer to give evidence of his impossibility to transfer the disabled person to another office (Supreme Court n. 15873/2012);
- the right not-to-be-transferred of disabled person shall be balanced with the Constitutional rights of the Employer to freely organize his business; as a

consequence, the principle of the Economic Freedom can represent a limit to the enforcement of the right of the disabled person (Supreme Court n. 24775/2013).

The issue of the rights granted to disabled persons is constantly monitored by the Government and subject to several proposals of amendments, often with the aim to increase their rights.

Recently, in the “Working Papers of the IV National Conference on Policies concerning the Disabilities, presented by the Ministry of Labour and Welfare to the Parliament on January 23, 2014”, the Government proposed the following changes in the Law:

- Sanctions: as commented above, it appears that many employers prefer being subject to sanctions rather than hiring a person with disabilities.

It is the purpose of the Government to discourage this conduct and therefore to increase sanctions and make the inspections more stringent;

- Agreements with the Centres for the Employment: it is common practice to enter into specific Agreements with the Centres for the Employment lasting over 7 years.

This implies that, during the performance of those Agreements, the arrangements do not reflect the *current* status of the Company, this way impacting also the rights of the disabled persons.

It is the purpose of the Government to reduce the duration of those agreements;

- Complete integration: as it has also been discussed above, often Employers simply undertake to hire people with disabilities, but do not really care about their integration in the workplace; as also commented, this general conduct also led to the ECJ case C-312/11, which brought to the amendment in the Law 216/2003.

However, it is the purpose of the Government to sensitize Employers in order to enhance the full integration of people with disabilities in the workplace;

- Part – time and Work from Home: it is foreseen by the Government that a more flexible approach to the performance of the activity carried on by disabled persons will likely ease their access to work and, eventually, their full integration in the civil society.

It is therefore the purpose of the Government to enhance the use of Part-time and Work-from-Home contracts when entered into with disabled persons;

- Temporary suspension of the duty to hire disabled persons: the Law allows the Employer to refrain from hiring people with disabilities when facing a period of economic crisis (*e.g.* mass dismissals procedures, State Welfare Support for Crisis, etc.).

However, since – especially in recent years – Companies faced a period of general economic crisis, disabled individuals have been often left without work.

It is therefore the purpose of the Government to guarantee the right to be hired for a disabled person, also in case of economic crisis.

Luxembourg

Disability-related cases law are very rare in Luxembourg.

There has been an interesting disability-related case in 1996. Indeed, according to the Employment Tribunal, the specific legislation on disabled employees must not affect the application of the general law on the employment contract in the judge's appreciation of the grounds of a dismissal. Thus, by hiring a disabled employee, "the employer should in principle expect some lacks as regards the quality of services rendered by the employee, but must not accept verbal and physical attacks from the employee towards the staff or towards third parties" (Court of Appeal, 15 February 1996, n°17794 and n°17848).

By approving the Convention of the Rights of Persons with disabilities, the Luxembourg State decided to implement an action plan with several measures (in 2010-2011). The objectives were:

1. awareness and information;
2. freedom of speech and opinion and access to information;
3. work and employment;
 - Measure 1: improvement of the education and vocational training possibilities, better teaching during the training, access to vocational training abroad, recognition of diplomas (foreign diplomas), access to lifelong learning, adaptation of the requirements for persons who have learning difficulties
 - Measure 2: adjustment and more appropriate redefinition of the term "disabled employee", incentives to hire disabled people in the mainstream labour market, adoption of specific measures to maintain existing employment contracts
 - Measure 3: news models for the employment of disabled employees
 - Measure 4: creation of a central contact point for disabled job seekers, personalized assistance in administrative formalities
4. school and education;
5. non-discrimination and equality;

6. transport and mobility;
7. accessibility;
8. equal recognition before the law and legal capacity;
9. autonomy and inclusion;
10. health;
11. statistics.

Malaysia

In the case of *Karunairajah a/l Rasiah v Punithambigai a/p Poniah* [2004] 2 MLJ 401, the court was faced with the issue as to whether financial dependence falls within the meaning of the phrase physical or mental disability. Abdul Hamid Mohamad FCJ came to the conclusion that;

“Even without looking at a dictionary the word ‘disability’ is always used in relation to ‘physical’ or ‘mental’.”

His Lordship quoted the definition of disability from the Concise Oxford Dictionary which reads *“disability”* as referring to a physical or mental condition that limits a person's movements, senses, or activities, disadvantage or handicap especially one imposed or recognized by the law. His Lordship then defined the terms *“physical”* and *“mental”* and comes to the conclusion that these two words are used to describe the two opposing or complimentary elements of a human being; the physical and the mental elements. *“Physical”* is defined as relating to the body as opposed to the mind, and *“mental”* is a disorder or illness of the mind.

More technical and vocational schools and polytechnics are open to special needs learners. Several government agencies and NGOs are involved in the training and placing of youth and workers with disabilities in the employment sector, and the Manpower and Welfare Departments have implemented training and placement programs for individuals with disabilities. Other than that, the Ministry of Women, Family and Community Development has taken a proactive stance by coming out with Borang Maklumat Pencarian Kerja OKU or Job Seeking Information Form for people with disabilities. The form is used to collect information about a person with disabilities to help him / her with placement in government agencies.

SPOku or Sistem Penempatan Orang Kurang Upaya (People with Disabilities' Placement System) is another effort by the government agencies to help people with placements. It is an online system that both employers and employees can access for the purpose of placement. Employers who have vacancies to be advertised can register and log on to post vacancies online by completing the online form. Job seekers who have registered in this

system can search and apply for jobs from various industries based on their interests and qualifications. Registered employers then can select the appropriate candidates from a varied resource pool to fit their requirements and needs.

Campaigns on awareness of the rights of people with disabilities are also implemented. The United Nations Development Programme (UNDP) in Malaysia, for instance, worked together with the Ministry of Women, Family and Community Development, SEGI University College, as well as other state agencies to launch a national advocacy and awareness campaign with “Real Lives, Real Abilities” theme. The campaign was supported by the Economic Planning Unit (EPU) to fight attitudinal prejudices and to galvanize public support for the need to ensure full equality of the rights of disabled persons and to support their full participation in all aspects of society.

Job placement at sheltered workshops which provide training for people with disabilities to acquire vocational, technical and educational skills in order to obtain employment are also provided by the government. The workshops also function as avenues through which employment could be arranged for people with disabilities. There is even an online registration for people with disabilities for job applications.

The Netherlands

In September 2011 a Dutch Subdistrict Court was requested to dissolve the employment agreement with an employee suffering from morbid obesity. The question the Court had to answer was whether morbid obesity is to be qualified a chronic disease, and consequently whether the employee could invoke article 4 of the Equal Treatment of Disabled and Chronically Ill People Act (annulment of the dismissal on the basis of discrimination). The Court ruled that morbid obesity is to be considered a chronic disease and that this case fell under the scope of the Equal Treatment of Disabled and Chronically Ill People Act. In such case there is a special employment protection, which can only be circumvented in case the dismissal is not related to the chronic illness (in this case dismissal was related to the employee’s condition), or in case continued employment is unreasonably burdensome for the employer. The Court sided with the employer and the dismissal was granted, on the basis of justifiable grounds brought forward by the employer. Continued employment was argued to be unreasonably burdensome, in view of extreme difficulties for the employer in achieving a sufficient staffing level whilst employing an employee with extremely limited availability.

This judgment is in line with European case law on this subject, as well as decisions rendered by the Dutch Equal Treatment Committee, that morbid obesity is qualified a chronic disease. Noteworthy in this particular case is that the Court found that difficulties with achieving a certain staffing level can legitimize discrimination on the basis of a chronic disease.

Besides recent legislation described under 2. and 4., no upcoming changes are expected in terms of extending or limiting rights for people with disabilities.

New Zealand

In *Imperial Enterprises Ltd v Attwood* (2002), the Employment Court held that a question in a pre-employment application form “Do you have any medical problems of any kind?” was discriminatory on the grounds of disability and was in breach of the HRA. The employer was entitled to ask for information relevant to its health and safety obligations or that would affect the employees ability to do the job but not for general medical information not specifically relevant to the proposed job. The question could reasonably be understood as indicating an intention to breach the HRA.

In *NZ Amalgamated Engineering Printing & Manufacturing Union Incorporated & Ors v Air New Zealand Ltd & Anor* (2004), it was held by the Employment Court that an illness will be a disability only if it is of a permanent and long-term nature.

In *Trevethick v Ministry of Health* (2007), the High Court described the definition of disability as exhaustive and held that it must be interpreted in a broad and purposive way and considered in the context of the legislation as a whole. It was found that the definition did not include the ‘cause of a disability’ so that it was lawful to discriminate between people who had a disability as a result of an accident and people who had a disability as a result of an illness for the purpose of New Zealand’s no fault accident compensation regime.

In *Atley v Southland District Health Board* (2010), concerning an employee with the medical condition bipolar disorder who experienced difficulties working night shifts as an emergency department nurse, it was recommended by her psychiatrist that a mixture of morning and afternoon shifts would allow her to continue working in the emergency department. Her employer instead removed her from the emergency department into a number of other inferior positions. The Employment Relations Authority held that accommodating her disability by having other employees cover the night shifts so that she could work morning and afternoon shifts would not have been an unreasonable disruption. Therefore, the employer had breached the HRA by failing to meet its duty to reasonably accommodate the needs of employees with disabilities.

[...]

The Disability Strategy is a long-term strategy that places an obligation on all government agencies to consider disabled people in their decision-making processes and provides a framework that will enable the government to slowly remove the barriers that prevent disabled people from participating fully in society. The Minister for Disability Issues is required to report to parliament by the end of each calendar year on progress in implementing the Strategy.

There are 15 key objectives to the strategy that the government and government agencies are continually working towards. These are to:

1. Encourage and educate for a non-disabling society.

2. Ensure rights for disabled people.
3. Provide the best education for disabled people.
4. Provide opportunities in employment and economic development for disabled people.
5. Foster leadership by disabled people.
6. Foster an aware and responsive public service.
7. Create long-term support systems centred on the individual.
8. Support quality living in the community for disabled people.
9. Support lifestyle choices, recreation and culture for disabled people.
10. Collect and use relevant information about disabled people and disability issues.
11. Promote participation of disabled Maori.
12. Promote participation of disabled Pacific peoples.
13. Enable disabled children and youth to lead full and active lives.
14. Promote participation of disabled women in order to improve their quality of life.
15. Value families, whanau and people providing ongoing support.

Nigeria

To the best of our knowledge, there is no significant disability-related case law in recent years, as there is not much legislation to give a cause of action to disabled persons who have been discriminated against, except for the Lagos State Special People's Law.

There are no plans by the government to limit rights for people with disabilities, as such plans will be unconstitutional. Section 42 of the Constitution of the Federal Republic of Nigeria explicitly provides that no citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall be subjected either expressly or by the practical application of the any law, or any executive or administrative action of the government to disabilities or restrictions which other Nigerians are not made subject, and no citizen of Nigeria shall be subjected to disability or deprivation merely by reason of the circumstances of his birth.

On the other hand, the Discrimination Against Persons with Disabilities (Prohibition) Bill, 2014 proposes to extend the rights of disabled persons by giving them priority in all areas of public life and social welfare.

Norway

There are a few disability-related cases in recent years. We would like to mention two of them, both of them from the Court of Appeal. Whether the applicants had a disability was not problematic in any of the cases as they concern whether unlawful discrimination had occurred.

The first was published in 2014. A job applicant stated that he was subject to discrimination on grounds of disability in a hiring process for a public position. The applicant was considered disabled due to whiplash injury caused in a traffic accident. The case was considered after the AAA of 2009. The Court found that it was the applicant's personal suitability and not his function reduction which was decisive in the defendants' decision in not offering him the position. Firstly, it was not necessary with facilitation of the work situation towards the disabled, as adjustable tables and chairs was standard equipment in the work place. Secondly, the employer in the same recruitment process employed two people who at the time of the application was on sick leave, as well as the work place initially had several employees with disabilities hired at the same time, some with considerably greater disabilities than the applicant. Unlawful discrimination on grounds of disability had not occurred.²⁶

The other is from 2006. A woman had applied several times for a position as a music teacher at a school. She was not hired, and claimed that she had been subject to discrimination as she was blind. According to the employer, the actual reason that she was not hired was primarily that the school considered her as personally unfit for the position. The reason for this assessment was particularly conflicts that had occurred in the last year she formally worked there as a temporary worker, as well as some "student complaints" related to her teaching. After an extensive presentation of evidence, the Court found that it was the school's assessment of the impact such an employment would get for the working environment at the school which was primarily why the school chose not to hire her. The presentation did not bring forward indications suggesting that the school in reality had rated her visual impairment as a negative factor. During her time as a temporary worker, the school had gained experience with the arrangements that was required towards the disabled regarding technical equipment and other facilitation. Further, it would not create any significant problems for the teaching that she was blind. Her allegation of unlawful discrimination was not approved.

Nothing indicates any plans by government to specifically extend or limit rights for people with disabilities at this date. The AAA is of relatively young age, and basically covers any unlawful discrimination on the grounds of actual or perceived disability.

It is however not inconceivable those future legislative amendments, indirectly, might limit or extend rights for people with disabilities, especially regarding the possible future new legislation in the WEA regarding temporary employment.

Russia

To the best of our knowledge, there has been no significant disability-related case law in Russia in recent years.

The Russian government is now introducing a number of changes to the legislation due to ratification by Russia of the Convention on the rights of disabled persons (dated December 13, 2006). However, no significant changes with respect to employment-related rights of people with disabilities are expected.

Singapore

We are not aware of any significant disability-related Singapore case law that has arisen in recent years. We are also not aware of any plans by the government to amend the existing legal rights accorded to persons with disabilities in Singapore.

South Korea

In a case where a school denied the plaintiff, a person with a severe (level-1) disability due to a car accident, a promotion after assuming that the plaintiff was unable to properly perform his duty due to his disability, the court held in a 2014 decision that the school unlawfully discriminated against the employee based on his disability, and that the school was liable for the employee's emotional distress and should include the employee in the list of employees eligible for promotion. This was the first case in which a Korean court found discriminatory treatment to be unlawful under the "Act on the Prohibition of Discrimination against Disabled Persons, Remedy Against Infringement of Their Rights, Etc."

The Korean government has established various initiatives to expand and strengthen basic human rights of persons with disabilities by (i) expanding social infrastructure to improve welfare and health services for persons with disabilities, (ii) providing greater support for life-long education, (iii) providing greater opportunities to become economically independent, and (iv) providing a better platform for social integration and promotion of their rights and interests. We understand that such initiatives will be implemented gradually after receiving public opinion, including suggestions from various NGOs and interest groups.

Spain

The most significant judgment was the European Court of Justice ruling of December 18th, 2014 (C-354/13). The ECJ ruled that obesity may be deemed as a disability if such situation constitutes a limitation that could hinder a full and effective participation at work. Another significant judgment was the National Audience ruling of November 2nd, 2009. The National Audience ruled that, in some cases and according to the Convention on the Rights of Persons with Disabilities, it is fair to apply reasonable adjustments in order to avoid disabled people to fulfill those requirements for specific situations such as, for example, public scholarships.

Disability legislation has been developed recently in order to set out a legal framework and disabled people are well protected. However, there are some initiatives going on in Spain.

On the 5th and 6th of March, 2015, the First National Conference on Employment of People with Disabilities took place in Granada, Spain. The goal of this meeting was to evaluate the current situation of disabled people at work and the benefits that new legislation has provided.

Sweden

The case from the Labour Court in 2010 (AD 2010:13) gives certain guidelines as to which measures an employer needs to take. In this case, a severely visually impaired person applied for a job as an administrator of sickness benefits at the Social Insurance Agency. She was declined the job with reference to her sight disability. The legal issue at hand was whether the employer had discriminated against her by not taking the adequate measures to ensure accessibility for disabled people to the workplace, and thus not place her in a “comparable situation” to people without disability. In this case, the measures required were deemed to be too comprehensive; given the need for changing the current software system which according to the employer would imply approximately 20,000 hours of additional IT-work. Thus, the court concluded that denying her the position was not discriminatory.

In another case from the Labour Court in 2011 (AD 2011:25), a job applicant had applied for an internship at a nursing home; but was denied the position due to his severe sight impairment. The court stated that the first thing to be assessed is whether the disabled person can perform the most essential work tasks. Being a position as an intern at a nursing home, the work consisted partly in tasks that required a rapid physical response capacity, which could not be handled appropriately by a person with such a severe sight impairment. In order to place the job applicant in “a comparable situation” there would be a need to place another employee beside him as a support person. This was considered to be a too large cost in order to be deemed reasonable. Thus, the court concluded also in this case that denying the candidate the position was not discriminatory.

Switzerland

There have been several significant decisions by the Swiss Federal Supreme Court regarding disability recently. According to the Swiss Federal Supreme Court, it is discriminatory to exclude a person with an intellectual disability from naturalisation for lack of will to naturalise (BGE 139 I 169). However, it is not discriminatory to offer accessible toilets only in the dining car of a train and not in other cars (BGE 139 II 289). The denial of naturalisation because of added financial burden for the municipality due to a disability is discriminatory (BGE 135 I 49). On the other hand, to deny a disabled child access to primary school is not discriminatory if a qualified justification can be given as to why only a special school is in the best interest of the child (BGE 130 I 352).

For the next disability insurance reform, the government plans to step up support for young persons with disabilities and persons with a psychological disability.

Taiwan

There is a constitutional interpretation case related to the protection given to visual disabled in 2008. Under old Art. 46 of the ARPD, only visually disabled persons are allowed to provide message service, and violator may be subject to monetary penalty. An employee of a barber shop who was not a visually disabled person was fined for offering the massage service of to her customer, and she appealed such penalty to the Judicial Yuan claiming that such protection to the visual disabled was unconstitutional because it discriminated against the non-disabled.

The Judicial Yuan decided that Article 46 of ARPD was unconstitutional and shall become void from October 31, 2011 on the ground that such Article imposed undue restrictions on non-disabled persons and persons with other disability.

A proposed amendment to the ARPD was under the discussion of the legislators. Such proposed amendment is to give the competent authority more power to investigate when reviewing the applications filed by the disabled.

Turkey

According to the decision of the 9th Civil Chamber of the High Court numbered 2008/34233 E., 2009/14264 K. and dated 25 May 2009, if a disabled person is employed, their performance must be determined by taking their disability into account. The employment of a disabled person can only be terminated on account of poor performance if their performance falls short of expectations set by taking into account their disability.

Recent case law also interprets article 17/4(s) of the Value Added Tax Law (“VAT”) numbered 3065 to exempt disabled persons from the Value Added Tax. The article just mentioned holds that disabled persons are exempted from VAT for every kind of equipment and software specifically produced for their educational, professional and daily lives. A recent decision of the Adana Regional Administrative Court states that the meaning of this clause must be interpreted broadly.

In the case handed down by the Adana Regional Administrative Court, a disabled person applied to the tax office demanding return of the VAT payment on his vehicle. The tax office rejected the application due to the fact that automobiles cannot be accepted as equipment for disabled individuals. Adana 1st Tax Court upheld the decision of the tax office in decision numbered 2009/861 E., 2009/1374 K. and dated 18.12.2009. The claimant appealed, and the Adana Regional Administrative Court overturned the Tax Court, holding that the article must be read in such a way to include “all kinds of equipment,” which meant that all kinds of equipment produced for disabled persons, including automobiles, must be exempted from VAT.

A legislative proposal dated 19 March 2012 to amend the Enforcement and Bankruptcy Law would classify medical devices, tools and materials facilitating disabled people's lives as non-seizeable goods in case of seizure of disabled debtor's goods.

The Ministry of Family and Social Policies has also been continuously carrying out work to further develop the disabled people's rights.

Ukraine

The disability-related case law is very limited in Ukraine, and there have been no significant case law in recent years.

The Government's intention to extend rights for people with disabilities is declared in the State Social Program on Overcoming and Prevention of Poverty and specified in the National Action Plan on Implementation of the Convention on the Rights of Persons with Disabilities. Most provisions of these programs prescribe accommodation of the social infrastructure for its usage by people with disabilities, improvement of the system of rehabilitation of people with disabilities, an increase in state pensions for children with disabilities, and deeper implementation of provisions of the Convention in the national legislation.

United Arab Emirates

Civil court judgments, including those of the Court of First Instance and the Court of Appeal, are rarely published unless they reach the highest level of appeal, at the Court of Cassation or the Supreme Court. Furthermore, judgments of the Court of Cassation and Supreme Court are not easily searchable. While the DIFC publishes its judgments on its website, it is still a relatively new regime and therefore is still developing a comprehensive body of case law.

Widely reported judgments of the Court of Cassation and Supreme Court relating to disability have primarily tended to revolve around compensation for injuries resulting in disability, under general legal principles as well as under the employment laws. It is possible that case law specifically relating to disability discrimination may not develop significantly until a clear compensation scheme or penalties for disability discrimination are introduced into UAE laws.

In 2014, the UAE submitted a paper to the United Nations during the seventh session of the Conference of States Parties to the Convention on the Rights of Persons with Disabilities, declaring its commitment to support a disability-inclusive development agenda towards 2015 and beyond. It is therefore likely that the legislative trend in future will be in the direction of extending rather than to limiting rights for people with disabilities.

A consultation paper outlining the proposed employment regulations for the Abu Dhabi Global Market, a financial centre in Abu Dhabi intended to mirror the DIFC in Dubai, also

envisions the inclusion of anti-discriminatory provisions along the same lines as in the DIFC, extending to cover direct and indirect discrimination and harassment (including for disability).

United Kingdom

Yes, there is a significant body of case law since the DDA came into force. The number of disability discrimination claims brought in the UK has fallen dramatically since the introduction of Tribunal fees in 2013, but in recent years remains consistently the second most common type of discrimination claim, after sex.

By way of example, two key cases are as follows. In the case of *Coleman v Attridge Law & Steve Law* [2008], the court found that disability discrimination could extend to a person who is associated with a disabled person. Ms Coleman's son was born with a rare condition affecting his breathing and also had a hearing impairment. Ms Coleman claimed she was forced to resign from her job as a legal secretary after being refused flexible working which other employees, without disabled children, were granted. In July 2008, the ECJ ruled that direct disability discrimination and harassment of a non-disabled person on the grounds of their association with a disabled person were unlawful.

In the case of *Aderemi v London and South Easter Railway Ltd* [2013] the definition of disability under section 6 of the Equality Act 2010 was examined. In deciding whether or not the Claimant's impairment had a substantial adverse effect on his ability to carry out normal day-to-day activities, the tribunal had incorrectly focused upon what the claimant could do despite his impairment, rather than assessing what he could not do as a result of his impairment.

There are no current plans with regards to employer duties towards people with a disability. The biggest change to more general disability rights in the future will come through the Care Act 2014 which aims for local councils and the National Health Service working together to provide more streamlined services for people with disabilities. The Act will create national eligibility criteria for establishing when someone should be entitled to help, will give careers a right to assessment and support and will give disabled people who care for themselves a right to go to councils for advice and information.

There is a general election approaching in May, and another coalition looks likely. Mental health care reform will continue to be a priority for the Liberal Democrats, and if they remain in government, they will commit significant funding to reduce mental health waiting times and to assist careers of the disabled.

USA

In January 2014, the Fourth Circuit Court of Appeals, in *Summers v. Altarun Institute Corp.*, 740 F.3d 325 (4th Cir. 2014), held that "a sufficiently severe temporary impairment may constitute a disability".

In *Feist v. Louisiana*, 730 F.3d 450 (5th Cir. 2013), the Fifth Circuit Court of Appeals addressed an important ADA question that had not been previously answered: whether an employer is obligated to provide only an accommodation designed to help the employee perform the essential functions of the job or must an employer do more and provide an accommodation that allows an employee to enjoy all privileges and benefits of employment as enjoyed by similarly-situated employees without a disability? While the court expressly declined to rule on whether the requested accommodation was reasonable, the holding clearly requires employers to consider seriously accommodation requests that are not tied directly to performance of essential job functions.

The Equal Employment Opportunity Commission recently issued a proposed rule that would amend the ADA's regulations and interpretive guidance as they relate to employer wellness programs. Specifically, the proposed rule amends the ADA regulations to provide guidance on the extent to which employers may use incentives to encourage employees to participate in wellness programs that include disability-related inquiries and/or medical examinations.

Furthermore, the United States Department of Labor is proposing, through rulemaking, to implement new regulations to reform job training. This proposed rule provides guidance for State and local workforce development systems that increase the skill and credential attainment, employment, retention, and earnings of participants, especially those with significant barriers to employment, thereby improving the quality of the workforce, reducing welfare dependency, and enhancing the productivity and competitiveness of the nation.

VIII. Possible future modifications of the concept of disability

Brazil

We believe it is possible if we think that before 2000 several types of diseases/injuries were not even considered disability in Brazil. The 2000 Census has included a greater variety of types of disability, such as: (i) difficulty in hearing; (ii) difficulty in walking; (iii) difficulty in seeing, among others. According to IBGE (Brazilian institute for geographic and statistics) the 2010 Census has also brought some changes in the investigation methods used (such as the use of new devices in the interviews and also to take into account how the disabled people feel – i.e., does he/she feel he/she has some disability?), which can reflect the increased number of disabled people from 2000 to 2010. In 2000 14.5% of the Brazilian population had been classified with some disability. In 2010 this number has increased to 23.9%.

In addition to that and, as previously mentioned, it is our understanding that disabled people are seen differently from 20 years ago. They are no longer seen as “invalid”, but rather as people who can work and - at some point - have a normal life. Also, with the technological improvements and the release of incredible devices it is not hard to believe that most people who nowadays are considered disabled in Brazil (such as people with

partial hearing problems, walking problems, among others) will no longer be classified or – at least- seen as such.

Finally, we would like to mention that the Brazilian Government has raised the concept of “*companies’ social responsibility*”. According to the Ethos Institute, the concept of social responsibility in the corporate management refers to an ethical commitment in the raising of value before all different people the company relates with: customers, employees, suppliers, community, shareholders, government and environment. *The Social AccountAbility 8000 (SA8000)* is the first international certification for social responsibility and was implemented based on (i) the International Labour Organization standards, (ii) the Universal Declaration of Human Rights and (iii) Human and the UN Universal Declaration of Children 's Rights .

The Social Accountability 8000 (SA8000) is an answer for the customers who care about how the products are made. Therefore, the certificate is only granted to companies that comply with the requirements, one of them being not to discriminate disabled employees.

What is the relationship between the social responsibility and the inclusion of people with disabilities in the company? According to the Ministry of Labor and Employment, for a social responsible company, hiring people with disabilities is not seen only as a legal obligation but, rather, as a commitment to its social policy. Therefore these companies develop a comprehensive program, structured, which helps employees to improve, with training, recruitment, selection, hiring and development of people with disabilities. Many companies already understood that the inclusion of people with disabilities is a great asset and helps to diversify the environmental work place.

In addition, companies are aware that there is a large market segment of people with disabilities and that it is necessary to provide an adequate language and accessibility to them.

Canada

In our view, the law has crystallized to a certain extent with respect to physical Disabilities, but will continue to grow in relation to perceived Disabilities as well as mental health conditions. The law must both better recognize mental health conditions as Disabilities, but also develop reasonable and workable criteria for determining when alleged mental health conditions do not legitimately entail an obligation of accommodation. In this regard, Courts must grapple with criticisms of the more activist diagnosis of mental health conditions in medical literature, in particular the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-V). Simple and direct reliance on medical literature does not seem to be possible in relation to accommodation of mental health disabilities and the law will be called upon to show better comprehension and critical analysis of scientific doctrine in this regard. Finally, Canadian law is still using traditional employment law paradigms to address harassment and discrimination on the basis of Disability in social media and online, but will also need in the process to rethink and adapt these paradigms.

Chile

Currently, there are several bills related to people with disabilities, among which we may highlight a bill that encourages the inclusion of disabled people into employment, proposing that every company should employ at least a 2% of people with disabilities, sanctioning the breach with a fine of 50 UTM (CLP \$2,162,000) for each employee that the company, pursuant to this rule, should have recruited and did not. The referred bill is currently pending its review in the Senate.

We believe that more than changing the concept of disability, what should happen in the coming years is the awareness by society of the current concept of disability and its consequences. Indeed, in the following years, the society should understand disability not only from the physical or mental limitations perspective, but also from the perspective of the restrictions imposed by the society to the people with disabilities. We hopefully expect that the current bill above mentioned will contribute to a greater social inclusion.

China

From our view, we do not think there will be a change for the concept of disability in the coming years. In current schedule/ plan issued by national and local government of PRC, it seems that the authorities would put more emphasis on the measures and implementations for the protection/assistance to those disabled based on current laws and regulations, rather than extending the scope or the definition of disabled persons.

Colombia

Recently the culture of inclusion is changing into a more tolerant society toward people with disabilities.

Denmark

Due to the fact that the scope of disability protection recently has moved up the legal agenda, we expect that the understanding of the concept will give rise to an increasing number of court cases in the near future. It is our view that the concept will be expanded through these cases, which will ultimately lead to a legal definition of the concept, that contains more diseases than it does today.

England

Whilst the legal framework is unlikely to change, people's perception of the concept is likely to continue to change. Conditions such as stress are amongst the main causes of sickness absence in the UK. Campaigns educating people and encouraging tolerance are increasing the nation's understanding, but mental health conditions are still less well managed than physical disabilities, leading to complex disputes in the workplace. There is a national movement towards better understanding mental health disabilities, and we expect that this will over time change the concept of disability in the minds of workers and employers.

It looks more likely that obesity will become a freestanding disability, because morbid obesity is a medical condition, likely to have a long term and substantial impact on someone's ability to do day to day activities. Some people take issue with this because of the perception that it is a self-inflicted condition and this may impact on how it is dealt with.

Lastly, as the population ages, disability may become more about the impact of a combination of minor impairments. On their own each may not satisfy the statutory definition but the cumulative impact means they do.

Finland

We consider it likely that in the future the concept of disability will be expanded, *e.g.* through interpretation in legal praxis. The reasons for changing (or evolving) the concept may derive, for example, from the aging society (age-related disabilities). In addition, development of aids available to disabled persons and work opportunities available to persons with partial working ability may affect the concept. The development of various aids and supportive devices is likely to enhance the equality of disabled persons. However, we do not anticipate that the definition of disability contained in the legislation would as such be significantly changing.

France

In my opinion, the concept of disability under French law is so wide that it will not be required to change over the next few years. Besides, the description of disability as the environmentally effect of an impairment is in line with an inclusive corporate culture which is likely to develop.

Germany

Although the general definition of disability currently encompasses a wide variety of situations and therefore might stay the same German society will have to focus especially on mental-health related problems which appear to increase in the working environment of the 21st century. In this context it can be argued that the concept of disability is constantly evolving.

Moreover more and more companies in Germany see the recruiting of disabled persons as a measure of maintaining a diverse workforce. Many of these companies are trying to establish a diverse and inclusive corporate culture as a part of their global HR strategy. However it is likely that this will be a gradual and long-term process.

Greece

Due to the financial crisis one cannot make any prediction for the moment. Most probably relevant benefits, pensions and other financial incentives, will not be increased and remain at the same level since 2011 and relevant provisions and conditions for their granting will

be applied in a manner to limit the scope of the protected categories of persons. In any case the recent years since the establishment of the Center of Disability Certification, the procedure and rules that have been applied for the certification of disability have made more difficult the entitlement to the relevant Amea/disability rights in relation to the past.

India

Some (progressive) employers have been encouraging diversity at the workplace to also include hiring people with disabilities. However and except for any voluntary action (as mentioned above), it appears highly unlikely of any substantial change to the concept of disability in the next few years.

Ireland

The concept of disability continues to evolve. The Equality Tribunal and Labour Court have developed the jurisprudence on what constitutes reasonable accommodation and what is required and expected of an employer. One would expect this jurisprudence to continue to grow. The broad approach to the definition of disability has been tempered by a few decisions where a threshold for impairment has been adopted, but it is not envisaged that this will become a trend or that this will dilute what is one of the broadest definition of disability in all European legislation. We expect the question of whether stress constitutes a disability to be clarified (through case law as opposed to legislative intervention) and we expect that as mental illness awareness continues to grow, so too will claims for disabilities relating to mental conditions. Finally, the EEAs are out of date with recent jurisprudence from the Court of Justice of the EU in relation to age discrimination, as the EEAs allow for a blanket mandatory retirement age, whereas EU law requires that an employer must be able to objectively justify any retirement age. We expect the EEAs to be amended soon to address this.

Italy

As also commented above, the integration of people with disability is significantly increasing in the recent years and, also thanks to Court rulings, civil society is becoming more and more aware of the issue.

It is likely that, most of the Governmental proposals described above under paragraph 9 will be implemented and this will further enhance the concrete integration of disabled persons in our Country.

Luxembourg

In our point of view, the legal concept of disability would not change in the next years.

However, in its action plan, the Luxembourg Government highlights that the term “disabled employee” could be considered as discriminatory. So a new term less stigmatizing should be found.

In practice, Luxembourg has also a National Diversity Charter: “Charte de la Diversité Lëtzebuerg”. It is a short commitment text (6 Articles - see page 8) which any Luxembourg company or organisation can sign in order to express its commitment to promoting diversity by concrete actions that go beyond legal and regulatory obligations of non-discrimination (<http://www.chartediversite.lu/>).

The Charter has been signed by 157 entities representing 15% of the national workforce. This figures show the willing of the Luxembourg’s organisations to promote the diversity and to fight against discrimination.

Malaysia

It is highly unlikely that there will be changes.

The Netherlands

Whilst the legal framework is unlikely to change, people's perception of the concept is likely to continue to change. This is especially due to the widening scope of chronic illness. For instance, Dutch case law and a recent judgment of the European Court of Justice on morbid obesity shows that it can be expected that certain physical conditions may fall under the scope of chronic illness and consequently the protection of anti-discrimination laws.

New Zealand

The concept of disability may change in the next years through the success of the Disability Strategy. This is however likely to be a gradual and long-term process. Over time there will likely be a growing awareness that whilst people have impairments it is our society that is disabling. This awareness will continue to slowly increase the inclusion and involvement of people with disabilities in all areas of New Zealand society.

Nigeria

In our view, the concept of disability will change in the next few years. This will be mostly due to the incessant advocacy by rights group and international organisations such as the International Labour Organisation (ILO). There has been a change in attitude on the part of the government which has resulted in some states enacting laws for the protection and advancement of disabled persons, and other states promising to also do the same. The

Nigerian Senate has already passed the Discrimination Against Persons with Disabilities (Prohibition) Bill, which proposed the establishment of the National Commission for Persons with Disabilities that will give more effect to the provisions of the legislation and provide comprehensive legal and social protection to disabled persons.

These actions will create more awareness in society and eventually, the perception that disabled persons are a helpless societal burden will change. Employers will also try to identify barriers that prevent the employment of disabled persons so that they can be included in the workforce.

Norway

The concept of disability in itself will most likely not change significantly in the next years. As we consider it, the definition of the term and its content will mainly stay unchanged. It can however be assumed that different new groups of functional capabilities might be included in the definition of what may constitute disabilities in a legal sense.

An example could be results and effects of environmental issues that today lack sufficient research or evidence to indicate a causal link between these environmental inhibitions and a specific health effect. As an example, research does not acknowledge that radiation from cellular towers or other similar radiation sources can cause adverse health effects today. However, should later evidence show something else, such conditions could conceivably be covered by the concept of disability.

In this context it is important to be aware that developments in this area in Norway do not happen independently from the rest of Europe, as trends there gets picked up and further applied in the Norwegian labor market. Such influence is precisely what contributes and entails the legislative amendment processes, especially the commitments that follow through the EEA membership.

Potential changes will not happen without outside influence.

Russia

Taking into account the course of development of disability concept in Russia within the recent 20 years, we do not expect any significant changes in the coming years.

Singapore

The concept of disability has evolved in Singapore over the years in a way that is cognisant of the international understanding of disability. This definition will likely continue to change as society develops a better understanding of what constitutes a disability. This process of review and assessment of disability is important so that we may better address the needs and improve the standing of persons with disabilities.

South Korea

We believe the concept of disability in Korea will gradually broaden over the years to include anyone with a physical, mental, intellectual or sensual impairment that prevents him/her from wholly participating in social life in a manner equal to other persons. For example, insomnia or emotional disorders do not currently fall within the scope of disabilities recognized under the “Act on Welfare of Persons with Disabilities” but it has been suggested that they be recognized as legitimate disabilities.

Spain

The concept of disability is broad enough as to encompass a wide variety of situations. We don't believe that such concept will be further extended in the next few years.

Switzerland

We assume that the spectrum of who will be considered disabled might be narrowed down in the future, especially regarding people suffering from mental impairments. At the same time the separating barriers between disabled and non-disabled persons may become more blurred if, due to legal and technical measures, people with disabilities can be increasingly included in the work force and engage in other everyday activities.

Taiwan

We are not aware of any proposal from the government to change the definition of disability or to undertake any material change to the protections to the persons with disability in the near future.

Turkey

We anticipate that the concept of disability will continue to change in a positive manner within the scope of legislation in order to be in compliance with the Convention on the Rights of Persons with Disabilities. One of the purposes of the Convention is to promote respect for disabled people's inherent dignity. Current legislation drafted in accordance with the scope of the Convention, such as legislation incentivizing building special schools for disabled persons and imposing mandatory quotas for the employment of disabled persons will definitely have a positive effect on the concept of disability in Turkey.

Ukraine

Ukraine has signed and ratified the Ukraine–European Union Association Agreement and is moving towards harmonization with EU standards. We expect that Ukraine and the EU will expand cooperation in the area of disability policy and Ukraine's disability standards will evolve accordingly.

United Arab Emirates

The UAE is a country that prides itself on its track record towards progress. 2014 saw several developments in efforts to support the disabled. It was announced that Dubai became the first Arab city to provide swimming wheelchairs, free of charge to elderly and disabled users in the Al Mamzar and Jumeirah beaches. The Dubai Municipality announced its intention to have disabled-friendly parks throughout the city by the end of 2016. 2014 also saw a campaign to promote an Emirati sign language and publicising an Emirati sign language dictionary.

It is likely that in light of the continuing efforts of the UAE to emulate more developed jurisdictions such as the UK and the USA, the concept and treatment of disability will become part of the agenda in the near future.

United Kingdom

Whilst the legal framework is unlikely to change, people's perception of the concept is likely to continue to change. Conditions such as stress are amongst the main causes of sickness absence in the UK. Campaigns educating people and encouraging tolerance are increasing the nation's understanding, but mental health conditions are still less well managed than physical disabilities, leading to complex disputes in the workplace. There is a national movement towards better understanding mental health disabilities, and we expect that this will over time change the concept of disability in the minds of workers and employers.

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Lastly, as the population ages, disability may become more about the impact of a combination of minor impairments. On their own, each may not satisfy the statutory definition but the cumulative impact means they do.

USA

We think the courts and legislatures will continue to broaden the definition of disability and impose new and more significant accommodation requirements on employers, particularly as these relate to employees who suffer from anxiety and similar medical conditions. Thus, the disability concept will no longer be associated only with obvious physical limitations, but will protect broader categories of individuals with emotional impairments.