

RETHINKING OCCUPATIONAL HEALTH TO SUPPORT WORKERS IN SITUATION OF HEALTH VULNERABILITY



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Abstract:

The evolution of medicine currently allows the maintenance in the employment of workers with chronic diseases for longer durations. The harmonization of the legal treatment of health vulnerability at work, between chronic disease and disability, makes it possible to privilege the continued employment of workers with health vulnerability, through better management of occupational health. However, this more or less intermittent retention in work, requires adequate support involving all stakeholders in the company, including the employer, employees, and trade unions. Collective action is therefore required to maintain and support the employment of workers with chronic illnesses or disabilities. This action is necessary both for the well-being of workers and the smooth running of the company.

Key Words: chronic illness, collective bargaining, company, Labour law, work, disability, Specific needs, support.

إعادة النظر في الصحة المهنية لدعم العمال في حالات القصور الصحي

ملخص: إن تطور الطب حالياً يسمح بالاستمرار في توظيف العاملين المصابين بالأمراض المزمنة لفترات أطول. إن مواءمة معالجة القصور الصحي في العمل على المستوى القانوني، من خلال دمج الأمراض المزمنة مع الإعاقة، يجعل من الممكن منح الأفضلية للحفاظ على عمل العمال الذين يعانون من ضعف صحي. لكن مسألة إبقاء هؤلاء العمال في وضعية نشاط، لفترات متقطعة إلى حد ما، تتطلب دعماً كافياً يشرك جميع أصحاب المصلحة في الشركة. وعليه يتطلب إبقاء الأشخاص المصابين بأمراض مزمنة أو إعاقات في العمل خطة جماعية تشمل صاحب العمل وجماعة الموظفين والنقابات العمالية. تهدف إلى التوفيق بين الرفاهية في العمل وحسن أداء الشركة.



الكلمات المفتاحية: المرض المزمن، العامل، قانون العمل، التفاوض الجماعي، الاحتياجات الخاصة.

Repenser la santé au travail pour soutenir les travailleurs en situation de vulnérabilité sanitaire

Résumé:

L'évolution de la médecine permet aujourd'hui le maintien dans l'emploi des travailleurs atteints de maladies chroniques sur des durées plus longues. L'harmonisation du traitement de la vulnérabilité sanitaire au travail au niveau juridique, entre maladie chronique et handicap, permet de privilégier le maintien dans l'emploi des travailleurs en situation de vulnérabilité sanitaire grâce à une meilleure gestion de la santé au travail. Mais ce maintien, plus ou moins intermittent, nécessite un accompagnement adéquat impliquant toutes les parties prenantes de l'entreprise, dont l'employeur, les salariés et les syndicats. Il s'agit donc de mener une action collective pour le maintien et l'accompagnement dans l'emploi des travailleurs atteints de maladie chronique ou de handicap. Cette action est nécessaire tant au bien-être des travailleurs qu'au bon fonctionnement de l'entreprise.

Mots Clés: Maladie chronique ; handicap ; droit du travail ; entreprise; négociation collective (05 mots)



Introduction:

Occupational health is a two-way issue that involves both human health and human work, as fundamental human rights, recognized, enshrined and protected by international and national law. The relationship between work and health is such that one cannot be treated independently of the other, and this correlation brings us to the essential purpose of ergonomics which tends to seek the best equilibrium between well-being at work and performance of systems.

But in this widespread reflection on occupational health, we are interested in a particular problem, made increasingly relevant by the evolution of medicine and the tendency to rise the retirement age due to the extension of life expectancy. This issue concerns the way to reconcile chronic illness and the right to work. Indeed, if chronic illness was formerly accompanied by repeated sick leave or departure for incapacity, the progress of medicine and the quality of care allow to maintain the employment of the worker suffering from chronic illness, or at least increase the chances of his reintegration into the professional environment.

In addition, the Covid-19 pandemic has accentuated the urgency of thinking about caring for people with chronic diseases at work. Indeed, it has been shown that Covid-19 disease often evolves into a long-lasting Covid with permanent health effects, ranging from chronic fatigue to neurological damage¹. Furthermore, the pandemic seems to have played a negative role in preventive medicine, hindering the advanced detection of chronic diseases, and therefore their management. The pandemic has consequently led to a dramatic increase in the incidence of chronic diseases worldwide².

Moreover, the notion of chronic disease also smashes with that of disability. Although the two situations are not treated in the same way, they agree on the principle that the state of infirmity cannot constitute an obstacle to the recognition of the right to work, when it does not constitute an obstacle to the normal exercise of adequate work. But in order to ensure the implementation of this right for the category of persons in situations of health vulnerability, it belongs to the working

¹ For more details: YACOUB Zina, "Perspectives d'un cadre juridique plus approprié de la santé et la sécurité au travail, ", *Revue des Etudes sur l'Effectivité de la Norme Juridique*, University of Bejaia, FDSP, V. 05, No. 2, 2021, p. 129. URL: <https://asjp.cerist.dz/en/article/205573>

² Mehtap Akgüç With contributions by: Ziv Amir and Paula Franklin, « Introduction Returning to work after chronic illness: elevating the role of the social partners », September 2021. In book : *Continuing at work Long-term illness, return to work schemes and the role of industrial relations* Publisher: ETUI aisbl, Brussels, Belgium.

https://www.researchgate.net/publication/356494163_Introduction_Returning_to_work_after_chronic_illness_elevating_the_role_of_the_social_partners (Consulted on January, 13, 2022).



community (employer, trade unions, occupational medicine..) to maintain a working environment that allows the inclusion of sick or disabled people.

In these terms, the question that arises is how to rethink the occupational health vulnerability in order to support workers in a situation of chronic disease or disability within the company?

The issue in its apparent simplicity, does not lack in complexity, due to all the intertwined interests involved in the deal: the company in search of performance and efficiency, the worker in search of well-being at work, and the collective of workers in search of stability and justice at work.

To resolve this question, our approach consists of first identifying the problem of chronic disease at work in relation to that of disability at work (**first topic**) to then discuss the various issues it raises, and which justify the collective action of different actors of the work environment (**second topic**).

The approach adopted is analytical and empirical, which highlights the challenges of chronic illness at work, from illustrations that demonstrate the importance of collective action in this field.

The originality of this approach lies in the link made between chronic disease and disability, to unify the issue of health vulnerability at work, the rationality of the analysis of the challenges associated with maintaining workers with chronic illness in employment, and the compelling argument for a collective action on this issue.

This paper aims to inscribe the issue of chronic diseases at work in a broader dimension by including it in that of disability at work, to highlight the interest of collective action based on field examples and to discuss the perspectives of collective action.



THE FIRST TOPIC

Chronic Illness and Disability in the legal framework for occupational health : A Discriminatory Approach

By the legal framework of occupational health, we mean all provisions that deal with the worker's health. In the absence of a specific and comprehensive occupational health framework, it is necessary to resort to health law, health provisions in labour law, and disabled person law. The term occupational health finds its fundament in these provisions which specifically protect the health of the worker as a particular person requiring more attention. So, law No. 18-11 mentions occupational health as an important area of health law¹.

The definition of health vulnerability is not easier. The term vulnerability refers to the quality or state of being that is exposed to the possibility of being attacked or harmed². The applications of this concept in health care are multiple and diverse, but they are grouped around a single purpose which is the need for specific protection³. At work, the two situations that most often lead to the need for additional protection are illness and disability. Consequently, without taking into account other aspects of vulnerability, the term occupational health vulnerability refers in this research only to chronic diseases and disability.

The condition of "handicap" or "disability" has been variously connoted by international and European sources, based on three main models: the so-called biomedical model, the social model and the so-called "bio-psychosocial model"⁴. According to these models, the distinction between disability and chronic disease is no longer necessary in access to the labour market, and both concepts must be combined in a single management approach.

However, if the tendency today is to equate chronic diseases with disability, comparative law does not seem to treat them in the same way, and it is, therefore, essential to define the concepts before any reflection on the legal organization of the reintegration or retention of the worker with disability or suffering from chronic disease in the company (**First requirement**), with a view to harmonizing the regime applicable to all forms of occupational health vulnerability (**Second requirement**).

¹ Law N. 18-11 July 2, 2018 relating to health, OJAR N. 46 of July 29, 2018.

² Vulnerability [definition]. English Oxford Living Dictionaries; 2018. Cited by: B.A Drew, MM Clark; "Exploring the concept of vulnerability in health care", Commentary Vulnerable Populations, CMAJ 2018 March 19;190:E3089. URL: <https://www.cmaj.ca/content/cmaj/190/11/E308.full.pdf>

³ B.A Drew, MM Clark; "Exploring the concept of vulnerability in health care", op.cit.

⁴ DE MOSI B., « Il licenziamento del lavoratore disabile », In : Salute e benessere dei lavoratori : Profili giuslavoristici e di relazioni industriali, A cura di : Riccardo Del Punta, Donata Gottardi, Roberta Nunin, Michele Tiraboschi, ADAPT University Press, Milano, 2020, p. 3.



First requirement: Chronic illness and disability, distinction or assimilation

The Algerian health law does not enumerate or define chronic diseases, while the law on people with special needs defines situations of disability. The law on occupational diseases¹, for its part, referred to the regulation establishing the list of occupational diseases and work accidents. Thus, the list of pathologies recognized as occupational diseases, established and updated since 1996² includes pathologies that seem at the same time to be chronic diseases and disabilities. This is particularly the case for neurological, visual or hearing disorders.

While disability can be defined as a physical or mental condition that limits a person's movements, senses or activities, chronic illness is a lasting health problem that reduces person's abilities. These two situations of vulnerability don't really seem different if we know that chronic diseases, as disabilities, are prolonged, do not resolve spontaneously, and are rarely completely healed³.

The distinction between disability and chronic disease, which constitute two aspects of the same question when speaking about the vulnerability of health at work, is not always clear and can take certain forms of discrimination (First section). In addition, this dissimilarity is appropriate neither for the evolution of occupational health (Second section) nor for the notion of occupational disease (Third section).

First section: Discriminatory distinction between chronic disease and disability

The comparative legislation agrees to impose on the company the obligation to reserve workplaces for disabled people. The percentage of mandatory requirement in this category differs from one country to another. In Algerian law, the recruitment rate of disabled persons taxable to companies and public administrations does not exceed one percent (1%), according to Law No. 25-01 of February 20, 2025 relating to the protection and promotion of people with specific needs⁴. In other words, only companies with 100 or more employees are required to recruit people with disabilities. Companies with fewer than 100 employees are not required to recruit disabled people and can therefore discriminate job seekers in recruitment based on their physical condition.

¹ Law No. 83-13 of July 2, 1983, relating to work accidents and occupational diseases, OJAR N. 28 of July 5, 1983, Amended and supplemented.

² Interministerial decree (AIM) of May 5, 1996, establishing the list of diseases presumed to be of occupational origin, OJAR No. 16 of March 23, 1997.

³ DOWRICK Chris, DIXON-WOODS Mary, WEINMAN John, HALSTED Holman ; " What is chronic illness?", *Chronique Illness*, n° 1, April 2005, p. 1. URL: https://www.researchgate.net/publication/6661759_What_is_chronic_illness

⁴ Art. 29, Law no. 25-01 of 23 February 2025 relating to the protection and promotion of persons with specific needs, OJAR no. 12 of 23-02-2025.



According to French law, the taxable hiring rate for disabled people is 6%, for the companies that employ at least 20 employees¹. This rule allows a positive influence on the employability rate of people with disabilities by companies, it can hardly be valid for Algeria where the taxable hiring rate of disabled people, in reality corresponds to the minimum that the company could do even in the absence of this rule.

In the reflection on harmonizing the provisions applicable to people with disabilities and people with chronic illnesses, the legal provisions that organize the employability of disabled people are carriers of discrimination to which the recent reform of the legal regime for people with specific needs should have paid attention. Indeed, the law does not set a minimum employability rate for people who are chronically ill, given that the disease most often occurs during their career. This is likely to create a situation in which disabled people are deprived of access to employment due to their disability, whereas people with chronic illnesses, which are nonetheless just as disabling, are not deprived of employment when the disabling illness occurs after recruitment, but may lose the job due to the absence of specific work arrangement provisions such as those provided for disabled persons. We finally find ourselves in discriminatory situations in both directions, at recruitment for people with disabilities, and during the career for people with chronic illnesses. There is, therefore, an interest in breaking with any provision likely to generate discrimination of any kind whatsoever.

In reality, the employability rate of people with disabilities applicable to the company would only be of interest if it is possible to demonstrate that without this condition, the company would recruit fewer disabled employees. The Algerian labor law 90-11, in its article 16, had already imposed on companies to reserve places for disabled people, without fixing any percentage, and had left it to the regulatory voice to determine the terms and conditions².

The rate of one percent (1%) which has been fixed is not part of the terms and conditions, but brings a new substantive rule, it is a legal provision established by a legislative text. Law no 25-01 on persons with special needs, therefore amended and supplemented Law no. 90-11 with regard to the work of the disabled persons. And it is not certain that this intrusive modification is actually beneficial. Indeed, if we were to compare the law relating to labor relations and the law relating to the handicap, we realized that article 16 of law 90-11 imposes the recruitment of disabled persons on all companies, while that Law No. 25-01 limits this obligation to companies employing 100 or more employees.

¹ See for more details: Art. L5212-1 ; art. L5212-2, French Labor Code. Consulted on : https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006072050/LEGISCTA000006178139/2021-10-22/ Assessed on December, 2, 2022.

² Art. 16, Law no. 90-11 of April 21, 1990, relating to labor relations, OJAR n° 17 of April 25, 1990, modified and completed.



The opposite effect of this legal provision is to make companies to comply with this low recruitment rate when they could well recruit more in the absence of such a provision. This rate would have made sense if it had been higher, but unfortunately, it is the minimum rate that has been imposed, and it is legitimate to ask whether the legislator would not have done better to leave the obligation of recruitment to people with disabilities, as had been legislated by labor law, instead of setting a minimum rate which is, in any case, the least that companies can provide in this area.

Thus, harmonizing the regime applicable to sickness or disability at work, within the general framework of the promotion of health at work, would also be an opportunity to break with legal contradictions, by applying the same recruitment regime, or of maintaining in employment, based on the principle of the right of access to employment for all.

In addition, and always in the same context, companies that employ disabled people and make the necessary adjustments, benefit from incentive measures and receive state aid. This is what provides for the Algerian law no. 25-01 in articles 27 and 28. In this wisdom, and because companies that employ or maintain in employment people with chronic illnesses, make, or should, make as much effort to support them, the harmonization of the regimes applicable to sick persons and disables persons, should make it possible to grant State aid in both situations.

Moreover, as to further limit the access of people with disabilities to the labor market, Algerian law allows the employer to be relieved of the obligation to reserve positions for disabled people by paying an annual financial contribution whose value is equal to the product of the number of positions to be reserved, determined by the annual amount of the SNMG, which corresponds at the National Guaranteed Minimum Wage¹.

These contributions are paid into the Special National Solidarity Fund, and do not, therefore, go specifically to the disabled persons. There is, in fact, no legal stipulation that imposes this outcome on the contributions. This further confirms that this requirement, like so many others, is contrary to the interests of disabled people and hinders their access to employment.

Second section: Inappropriate distinction for the occupational health evolution

The contemporary view of “occupational health” has evolved over time. Born in the 2000s in European regulations, it reformulated the old notions of “occupational diseases” and of “physical hardness”. Nowadays, the wording “suffering at work” covers in an informal language and in public debate, among other things, stress situations, psychosocial risks, burnout, bullying, mobbing, violence, anxiety, relational strain, dissatisfaction, moral harassment and mental suffering, uneasiness, depression that can lead to suicide. The 'suffering at work' has seen an unprecedented

¹ Art. 29, Law no. 25-01, op. cit.



increase since the Covid-19 crisis, where chronic and debilitating sequelae have been combined with mental disorders¹.

These categorizations differ depending on the actors. Managers focus their attention on harassment, suicides and quality of life at work, as well as, workers highlight burnout, a physical and mental exhaustion syndrome that affects people in situation of “chronic stress” during which they are confronted with lasting constraints at work². In this awareness, it may be difficult to distinguish between chronic illness, and disabilities or handicap linked to mental health, and the boundary between chronic diseases and disability becomes invisible, even useless.

Third section: Unsuitable distinction for the notion of work illness

The distinction between chronic illness and disability, in addition to being unnecessary, seems inappropriate to the factual definition of chronic disease. It is indeed interesting to refer to the position taken by the Economic, Social and Environmental Council (CESE) and the High Council for Public Health according to which one can speak of chronic illness in the presence of three elements: the first is a pathological state of a physical, psychological or cognitive nature envisioned to persist over time; the second is the existence of this condition for at least three months, and the last is an impact on daily life likely to lead to at least one of the following conditions: a functional limitation of activities or participation in social life; - an addiction to a drug, a medical instrument, a device or the need for personal assistance; - the need for medical or paramedical care, psychological help, special adaptations, monitoring or prevention, such as enrolling in a medico-social care pathway³.

The elements mentioned in this definition are also present in situations of disability, hence the uselessness of distinguishing chronic illness from disability. That is why it would be suitable to unify the regime applicable to these two situations of occupational health vulnerability.

Second requirement: Interest of harmonizing the regime of occupational health vulnerability

The solution advocated here is indubitably to end discrimination related to employment in a situation of disability or chronic illness, and to harmonize the system of health vulnerability at work. The interest of this harmonization is such that it allows a positive interaction between the different situations of occupational health

¹ YACOUB Zina, “Perspectives d’un cadre juridique plus approprié de la santé et la sécurité au travail, “, Op.cit., p. 134.

² CASSILDE Stephanie, GISLON Adeline, Psychosocial Health, Work and Language, International Perspectives Towards Their Categorizations at Work, Springer International Publishing AG, Switzerland, 2017, pp. xiv-xv.

³ Haut Conseil de la Santé Publique, La prise en charge de la protection sociale des personnes atteintes de la maladie chronique, 2009, p. 11, recommandation n. 1.



vulnerability (First section), a favorable impact on workers (Second section) and a better ground for social dialogue (Third section).

First section: A positive interaction between situations of occupational health vulnerability

The unification and harmonization of the regime applicable to health vulnerability at work allows a positive interaction between the different situations of occupational health vulnerability, including disability and chronic disease. Indeed, a strengthened policy of welcoming disabled people within the company, accompanied by the necessary adaptations to their activities, is likely to simplify at the same time the process of reintegrating or retaining in employment workers suffering from a chronic illness. At the same time, the retention of workers with chronic diseases in employment is an additional asset to promote the recruitment of disabled workers.

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Second section: A favorable impact on workers

Amalgamating the regime applicable to workers with disabilities and workers with chronic illnesses should be based on two aspects, on the one hand, ensure that chronically ill people benefit from the advantages granted to disabled people in terms of adjusting working hours and conditions, and on the other hand, allow workers with disabilities to have better access to employment.

The question is all the more relevant in a country like Algeria, which does not have sufficient legal protection for employment. Indeed, in the Algerian law, although the principle of recourse to the open-ended employment contract is enshrined by law¹, the flaws therein, corroborated by unfavorable case law, have rendered said principle inapplicable, making renewable fixed-term contracts the common currency of companies. It is thus easier for the company not to renew the fixed-term employment contract of a chronic patient than to take the risk of keeping him/her in employment. If this patient becomes in situation of disability, he will only have to join the circle of job candidates with disabilities, whose recruitment doesn't exceed one percent (1%) for each company which employs at least one hundred (100) employees.

Therefore, a harmonized system of regulating health vulnerability must increase employment opportunities for people with disabilities, and improve their working

¹ Art. 11 and 12, Law n° 90-11 relating to labor relations, Op.cit. .



conditions, while ensuring sustainable employment for workers with chronic diseases.

Third section: A better ground for social dialogue

The most important effect of unifying the system applicable to workers suffering from chronic illnesses and workers in a disability situation precisely, is to allow easier access for these categories to the social dialogue and greater representativeness in collective bargaining. By unifying their voices and defending the same interests, these categories of workers or job seekers could finally aspire to fair and secure access to the labour market.

If the interest of workers in joining a trade union for occupational health reasons depends on the place that unions give to this preoccupation, placing the worker in a situation of health vulnerability in the center of the work organization allows for a broad understanding of occupational health and to create a link with these workers, in order to ask them about their perspectives on work and working conditions¹.

THE SECOND TOPIC

Collective action for rethinking job retention of workers with chronic diseases

The recognition of health vulnerability at work, as a common problem for all stakeholders in the work environment, invites us to reflect on the retention in employment of workers with chronic diseases, alongside the professional integration of workers with disabilities. This challenge is in accordance with the Algerian health law which reserves a section for occupational health and preconizes, among the purposes, to maintain workers in workplace adapted to their physical and mental health². The challenges of this objective justify a collective action involving all actors in the world of work (**First requirement**), based on different perspectives enabling a better working environment for all (**Second requirement**).

First requirement: Challengers related to health vulnerability at work justifying collective action

What legitimizes collective action to solve the problem of reintegrating and/or keeping a worker with chronic diseases in employment, is this community of interests which includes all the stakeholders in the economic and social life of the company, namely, the worker in his individual status (First section), the employer concerned about the performance of his company (Second section) and the collective of workers in a logic of solidarity and prevention (Third section).

¹ TIRABOSCHI Michele, MANZELLA Pietro, The Prevention System and Insurance Coverage, Op.cit., p. 351.

² Art. 98 of Law N. 18-11 relating to health, op.cit.



First section: Recognize and implement the right to work for sick or disabled people

If it is true that, legally speaking, work identifies all human activity likely to be economically evaluated, it is equally true that any person, regardless of his/her state of health, can carry out an activity capable of creating value for the company¹. It is from this idea that the recognition of the right to employment for people should not be depend on their state of health, but rather be implemented under conditions adapted to their state of health.

Moreover, the deprivation of an individual's access to employment, or promotion in his/her employment, due to his/her health, not only poses a problem of discrimination, but also leads to a feeling of loss of dignity, which can serve neither the individual nor the company. Since work is at the heart of a person's dignity, no individual should be deprived of their right to work, because of their health, as this would be perceived as an attack on their dignity².

In this regard, the question of finding the instrument that best meets the needs of companies and workers to make effective the «right to work of the person with a disability» (M. DA FALCO, Labour Studies, 2021)³ must also concern the ability to work of the person with chronic illness.

Nevertheless, the employment inclusion of disabled persons is still far from being achieved. Prejudices, and discriminations, even today, surround the world of disability. In reality, the analysis of employment conditions for people with disabilities, gives a clear picture of the disadvantage they suffer in the labour market. And this despite the recognition of the right to employment for disabled or infirm people in comparative law. This is clearly seen in some statistics, for example, in Italy, only 35,8% of people with functional limitations, who can work, are employed (against 57,8% of people without limitations). Among these, only 20,7% are seeking employment, while the remaining 43.5% are inactive (among the people without limitations, this percentage is 27.5%)⁴.

There is, therefore, a considerable gap, already at the international level, between the regulatory procedures for access to employment for people with

¹ Massimiliano De Falco, « The Agreements for Access to Employment of Persons with a Disability: a Genuine Tool to Promote People and Work », E-Journal of International and Comparative LABOUR STUDIES, Joint Issue (Vol 10 No. 03/2021 - Vol. 11 No. 01/2022), ADAPT, p. 148.

² Le travail au Coeur de la dignité de la personne, Presse et Communication digitale, 18 july, 2018. Consulted on : <https://www.lesedc.org/news/le-travail-est-au-coeur-de-la-dignite-de-la-personne-480>

³ Massimiliano De Falco, « The Agreements for Access to Employment of Persons with a Disability: a Genuine Tool to Promote People and Work », Op. cit., p. 152.

⁴ S. L. OVERTON, S. L. MEDINA, The Stigma of Mental Illness, Journal of Counseling and Development, 2008, 86, 143-151.



disabilities or illness, and the reality on the ground which still requires adaptation and monitoring efforts.

Second section: Chronic diseases: A dilemma for workers

The first to be affected by chronic illness within the company is the worker himself. The disease radically changes, and often negatively, the idea that the person has of his future. The worker is faced with the risk of financial and social instability, and his fear of losing his job puts him in a dilemma between making his illness known or hiding it discreetly¹.

However, this dilemma depends on the trust he has in his company and its management system. The solidity or fragility of his link with the company would encourage or withhold him from disclosing his disease at the time of its discovery. Consequently, there is an interest in consolidating the links between the worker and the company to create a confident climate.

Furthermore, the worker's retention in the company, after becoming aware of his illness, by introducing the necessary adjustments, or, if applicable, his reintegration after a sick leave, with adequate support, allows the worker to maintain confidence in himself, to better cope with his/her illness, and hence to be as efficient as possible for the company.

In Algerian law, no special arrangement is imposed directly on the employer to allow the continued employment of a worker suffering from a chronic illness. But in the case where a chronic illness is assimilated to a disability, the law obliges the employer to take all necessary measures to ensure the safety as well as the physical and mental health of disabled workers in order to facilitate their professional integration².

Besides, if the definition of a disabled person, within the meaning of the repealed Law No. 02-09, categorically did not include a person suffering from a chronic illness³, the new law of 2025 is broader in the definition of a person with special needs. Article 02 of Law No. 25-01 considers, in effect, as a person with special needs any natural person, regardless of age or gender, who suffers from a disability or a lasting impairments of a genetic, congenital or acquired nature, which limit his/her ability to carry out one or more essential activities in his/her personal and social daily life, due to an alteration of his/her mental, intellectual, motor, organic

¹ COURTIAL Patricia, « La maladie chronique à l'épreuve de l'entreprise : Une réalité et un enjeu pour demain », REGARDS, 2017/1, N. 51, pp. 181-189.

URL : <https://www.cairn.info/revue-regards-2017-1-page-181.htm> Assessed on march, 3, 2021.

² Art. 12, Executive Decree No. 14-214, of July 30, 2014, Establishing the modalities inherent to the reservation of workstations, the determination of the financial contribution and the granting of subsidies for the arrangement and equipment of workstations for disabled people, OJAR No. 47 of August 03, 2014.

³ See Art. 01, Law n° 02-09 of May 8, 2002, relating to the protection and promotion of disabled people, OJAR No. 34, May, 2002. (repealed)



or sensory functions, and which, because of various barriers, may prevent hi/her from participating fully in society, on an equal footing with other people¹.

By considering lasting deficiency, whether genetic or acquired, as a condition suggesting specific needs, this new text broadens, more than its predecessor, the possibilities of including a certain number of chronic illnesses in the protective regime reserved for people with specific needs, since these illnesses induce a limitation of the capacities to carry out essential activities of personal or social life. But beyond the fact that not all chronic illnesses always generate such visible effects on daily life, the general context of the new law is mainly oriented towards disability, and even if this term was avoided in the title of the law, it constantly comes up in the drafting of its provisions. It is therefore difficult to say that the new law makes it possible to take care of chronic illness on the professional level in the same way as disability.

Thus, in Algerian law, the dilemma of workers with chronic illness is to be considered for their health vulnerability, and benefit to adequate treatment that allows them a longer professional career, and better opportunities for development and creativity.

Third section: The challenge for the work collectivity

If the worker is the first one to be affected by the chronic illness or disability at work, the consequences of this situation are not negligible on the work collectivity. It is therefore necessary to measure the extent of health vulnerability at work, to give the question a broader dimension that goes beyond the individual relationship between worker and employer and engages the collective sphere of the company.

The most visible consequence at the collective level of the employment relationship is related to absenteeism. Repeated absences, for more or less long periods, disrupt work, despite their justification by work stoppages, they are often perceived as unjustified by the work collectivity, because they impose an unequal distribution of work, by forcing the workers presents to ensure an overload of work².

Thus, there is undeniably a great interest in favoring job retention by reorganizing working hours to avoid vacant positions, for which it is not always easy to resort for replacements. But again, it is important to negotiate work schedule arrangements with the entire team. Therapeutic half-time, a priori conducive to returning to or maintaining employment, can be counterproductive if the assignment of tasks has not been negotiated with the team gathered.

In an experience relayed by, Laure, a 38 years-old Canadian archivist, a 38-year, cancer patient who, upon her return to work, obtained therapeutic part-time from a restricted negotiation with her boss without joining neither occupational medicine nor

¹ Art. 02, Law no. 25-01, Op.cit.

² COURTIAL Patricia, « La maladie chronique à l'épreuve de l'entreprise : Une réalité et un enjeu pour demain », Op.cit., p. 183.



the workers' collective. She leaves her position at noon and delegates all the task to her colleague. Very quickly, the accumulated delay led her to come help her coworker to the detriment of the schedules she had obtained. A few months later, she snapped and was arrested by her occupational medicine for several months¹.

The negotiation of working hours with the collective of workers is, therefore, crucial and allows for better integration and/or retention in employment of people with chronic illnesses or disabilities. It would be even better if the negotiations and renegotiations are open and permanent with colleagues, management and occupational medicine.

Second requirement: Prospects of collective action for the workers in a situation of health vulnerability

As demonstrated, the worker in situation of health vulnerability is not the only one affected by his illness or disability. It is as much in the interest of the company, of the collectivity of workers, and, in a broader dimension, of the entire society as well as of the State which takes charge of the care provided to the patient, set up an adequate support strategy for the worker in health vulnerability situation and promote his retention in employment while observing common interests. It is therefore essential to think of a collective action to maintain employment that involves both the employer and the collectivity of workers, even the unions. To achieve this goal, it would be necessary to think the workers solidarity in the company (First section), to harmonize the strategy for maintaining employment (Second section) and to end all discrimination against the workers in situation of health vulnerability (Third section).

First section: Thinking about workers solidarity

The social security system has been well thought out. Based on the concept of national solidarity, it allows all affiliates to contribute as a community to the prevention and management of individual risks. This idea should inspire the collective of workers in the company based on the principle that chronic illness and/or disability can affect any worker in their community. It's then appropriate to think a system of collective management of health vulnerability at work, by promoting the employment and/or the maintenance in employment of workers suffering from chronic illnesses or disabilities.

In France, a rather interesting experiment illustrates the rhetoric of this strategy while highlighting its benefits. In a public establishment of the hospital service with

¹LHUILIER Dominique, WASER Anne-Marie, "Maladies chroniques et travail", *Perspectives interdisciplinaires sur le travail et la santé* [Online], 16-1 | 2014, Online since 01 May 2013, connection on 14 October 2024. URL: <http://journals.openedition.org/pistes/2885> ; DOI: <https://doi.org/10.4000/pistes.2885>.



around 1,000 staff, one staff member was placed on long-term leave for more than six months, following the period of health crisis. Destitute during his arrest, the person turned to the union branch of his establishment in search of adequate support.

The importance of this support was emphasized by the agent in question who complained of being depressed, upholding that this support allowed him to maintain a connection with the institution. His takeover was thus anticipated by the staff representatives as well as by management. The difficulty encountered was to find a suitable position that corresponded to the employee's skills in dealing with the disease. At the same time, the structure seized this situation to make it an opportunity. Indeed, the recruitment system being specific in the public service, sometimes, the workforce needs are not always met equally in the institutions. Thus, the group in which the staff member worked was overloaded with administrative tasks, to the detriment of time he could devote to providing care.

Consequently, following an analysis of the needs of the services and the wishes of the agent, the organization of the collective had been remodeled in order to meet all the needs. Thus, the colleagues were relieved of certain tasks, which the agent could now carry out. At the same time, the tasks he could no longer perform were distributed to the entire collective¹.

At the end of this successful individual job retention experience, a collective management system was implemented. This mechanism is based on social dialogue and brings together, in committee, all the stakeholders of the structure (employer, staff representatives, occupational medicine...). The commission examines job retention situations submitted to it and proposes adapted positions, or reclassifications if possible. The worker retained in employment first tests the tasks assigned to him within the framework of these new missions, and gives feedback on what he is capable of doing or not. His position is then adjusted accordingly and the committee regularly monitors his situation².

It would be interesting to draw inspiration from this kind of experience to set up an effective participatory system for collective management of health vulnerability at work. This system should implement a unified and harmonized strategy to support people in vulnerable health situations.

Second section: The unionization of the job retention strategy

In accordance with the findings drawn from the experience described above, the role of trade unions in setting up a support and reintegration or maintenance strategy

¹ DODIN Agathe, LIAROUTZOS Olivier ; « Travailler avec une maladie chronique évolutive, Quel(s) rôle(s) des partenaires sociaux ? » Synthèse d'Etude, CFDT, Economie et Société, juin 2017, p.03. URL : [file:///C:/Users/CBS%20Computer/Downloads/synthese_travailler_avec_une_maladie_chronique%20\(1\).pdf](file:///C:/Users/CBS%20Computer/Downloads/synthese_travailler_avec_une_maladie_chronique%20(1).pdf) Accessed on March 3, 2021.

² DODIN Agathe, LIAROUTZOS Olivier ; « Travailler avec une maladie chronique évolutive, Quel(s) rôle(s) des partenaires sociaux ? », Op.cit, p.04.



for workers in situation of health vulnerability, is crucial and needs be strongly consolidated by adequate legislation.

Considering all the measures put in place to ensure full social inclusion of workers with disabilities, at international level, collective bargaining can play a decisive role. The Committee of the European Economic and Social Council has explicitly called on trade unions and employers to include specific disability clauses in collective agreements in order to promote an inclusive labour market. It is also worth mentioning the Biennial Action Plan of the National Observatory of October 2017, where it was repeatedly emphasized that it is necessary "to define accompanying measures and a system of incentives within the framework of collective bargaining, promoting flexibility, work-life balance for people with disabilities and those suffering from serious or chronic illnesses, as well as for workers who take care of severely disabled people¹.

Indeed, since the trade union is empowered to take any action to represent both the individual and collective interests of workers, this includes the interests of workers in precarious health situations, whether it be a chronic illness or a disability. Thus, the retention in employment or professional reintegration of a worker suffering from chronic illness is a claim that can very well be made by the union. At the same time, unions must have as their mission the support and guidance of workers with disabilities, whereas any worker is in a situation of complaint when there is a conflict between his desire to be employed or maintained in the company and any hostile practice by the employer aimed at excluding him or suspending him due to his state of health.

Moreover, trade union action must also pay attention to the protection of workers against dismissal for reasons related to their health. Indeed, the possible inability to work, whether it results from disability or chronic illness, is undoubtedly one of the most important causes of the breakdown of employment relationships. That is related not to a choice or an economic necessity of the company, but on a personal condition of the worker². Collective agreements and arrangements must therefore guarantee sufficient protection against this type of dismissal.

In any case, it should be borne in mind that the recognition of the right to work for workers with disabilities or those suffering from chronic illnesses requires the labour community, including employers and trade unions, that they jointly take appropriate measures to guarantee access to employment for such workers, the

¹ Mariapaola Aimo and Daniela Izzi, "Disability and Employee Well-being in Collective Agreements: Practices and Potential", In: E-Journal of International and Comparative LABOUR STUDIES, Volume 7, No. 3, September - October 2018, pp. 97-98.

² PASQUALETTO Elena, « Indoneità al servizio, malattia e licenziamento nel pubblica impiego privatizzato, anche alla luce della disciplina dei nuovi contratti collettivi di comparto », In : Salute e benessere dei lavoratori : Profili giuslavoristici e di relazioni industriali, A cura di : Riccardo Del Punta, Donata Gottardi, Roberta Nunin, Michele Tiraboschi, ADAPT University Press, Milano, 2020, p. 45.



possibility of promotion, the means to preserve it¹, and all the conditions necessary for their well-being at work, without any discrimination due to their state of health.

Third section: End discrimination against workers in situation of health vulnerability

One of the effective ways to reconcile health vulnerability and work is to end discrimination against workers with chronic illnesses or disabilities. Preventing professional disengagement is also a way to anticipate the recrudescence of health vulnerability at work, knowing that this is sometimes linked to the professional environment.

For example, the chronic illness rate in France is estimated at 37.5% in 2025, a significant increase compared to 2019, when it was 19%². Given such worrying data from this representative example, chronic illness, like disability, should not be a factor of discrimination, as this would reduce the labour market to a constant search for physical performance at the expense of intellectual abilities.

In pursuit of the objective of ensuring a general framework for combating discrimination in employment and working conditions, Directive No 2000/78/EC identified a series of prohibited factors, such as religion, personal convictions, disability, sexual orientation, in which chronic diseases were not included. This deficiency has given rise to numerous controversies, both in the doctrine and in the case law of the Court of Justice, which has been called upon to broaden the content of the concept of disability to expand the scope of application of the anti-discrimination directive³.

Thus, the harmonization of the legal regime governing chronic diseases and disabilities is also a guarantee for the eradication of discrimination against workers with chronic diseases or with specific needs, this discrimination which goes against an effective participatory management of health vulnerability at work.

¹ DE MOSI B., « Il licenziamento del lavoratore disabile », p. 6.

² CUCCHI F., « Malattia cronica e discriminazione sul lavoro », Rivista Diritto delle Relazioni Industriali, ADAPT University Press, 2024, n° 01, p. 280.

³ Ibid., p. 280.



Conclusion:

Work allows the worker in situation of health vulnerability, not only to get out of his private space and his negative thoughts about his illness, but also to bring him back, or even maintain him, in a social fabric. As one author rightly puts it, “activity allows you to get out of the disease, to learn to live with it and not for it”¹.

If this is the individual impact of maintaining the worker in employment, the impact on the company is all the more important as it engages, in a logic of solidarity and foresight, the collective of workers to sustain the necessary balance between well-being at work and the interests of the company.

Collective action aimed at considering the maintenance in employment of the worker in a situation of health vulnerability, or his professional reintegration, involves all stakeholders in the life of the company, aware of the long-term interest of adequate care, both professionally and health-wise, for patients with chronic illnesses or disabilities.

The issue examined with the examples provided, highlights the more general interest of a collective management of individual situations. The social partners are called upon to intervene more directly, through collective bargaining, in organizational changes to improve the quality of life at work for all workers and in particular, those affected by chronic illness or disability.

It is also required to harmonize the regime applicable to people with disabilities and those suffering from chronic illnesses in order to amalgamate the care of these two categories and to break with the inequalities generated by the distinction between them, despite the similarity of labor issues for one or the other.

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