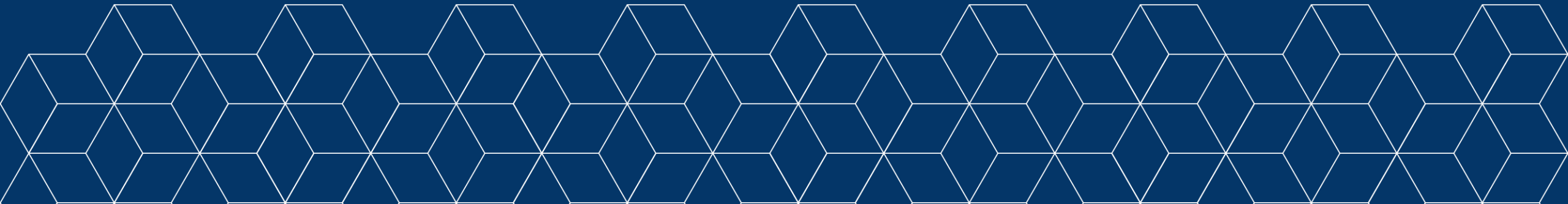


ANTI-DISCRIMINATION MEASURES FOR WORKERS WITH DISABILITIES FROM THE PERSPECTIVE OF INTERSECTIONAL PROTECTION

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1. INVESTIGATION PLAN AND RESEARCH OPPORTUNITIES

The research is “**experimental**” in INAPP and involves two research areas: Social Inclusion and Labour Markets

Research opportunities: *What are the anti-discrimination measures for workers with disabilities who are victims of gender pay gap in Italy, considering the EU Legislation?*

This presentation proposes a reading of the **legislation** enacted to date **in Italy** on anti-discrimination measures for workers with disabilities with regard to **the gender pay gap in view of the implementation of the recent Directive 2023/1970/ EU;**

Intersectional discriminations express a social reality where disadvantaged groups are victims of different discriminations, which interact with each other to the point of no longer being distinguishable and separable, and various belongings cross subjective identities (Crenshaw, 1989; Xenidis, 2019; Bello, 2019).

The issue is approached at the **labour level from a legal perspective**, though intersectional anti-discrimination law should be considered a **Global issue of human rights** and the **right to Health in primis, Social, Interdisciplinary, Multilevel** (art. 117 Const.), as well as long-studied (on discrimination by sex and race, see CRENSHAW, 1989).



2. TOWARD A UNIFIED READING OF DISABILITY PROTECTIONS (First of all: to whom do anti-discrimination measures on disability and employment apply “TODAY”?)

The concept of “**PERSON WITH DISABILITY**” is an evolving concept, inevitably, because it encompasses the issue of **HEALTH AND WORK as a whole** (see TIRABOSCHI 2023, as well as for the concepts of “**frailty/fragility**” (VERZULLI 2024, MAZZANTI 2022), “**chronic diseases**” (CARCHIO 2024, DAGNINO 2023, VARVA 2023, FERNANDEZ MARTINEZ 2017, TIRABOSCHI 2015).

The **new Legislation on Disability** is focused on the **Principle of the centrality of the person and his abilities/skills** (see definition of Disability according to A. SEN's **Capability Approach**).

Legislative Decree 62/24 (Law 227/21 made with the support of the Work of the Observatory on the Condition of Persons with Disabilities), provides a definition, namely, “**A person with a disability is one who has lasting physical, mental, intellectual or sensory impairments that, in interaction with barriers of differing natures, may hinder full and effective participation in the various contexts of life on an equal basis with others, ascertained at the outcome of the basic assessment**” (l. 104/92, as amended by Legislative Decree 62/2024)



3. REASONABLE ACCOMMODATIONS FOR WORKERS WITH DISABILITIES in the prism of the “new” concept of Disability

Reasonable accommodations at work are measures of Antidiscrimination Law

(Art. 3 Const., Directive 2000/78/EC spec. cons. 20 and 21 and Art. 5; CRPD 2006, Art. 27; Art. 3(3-bis) of Legislative Decree 216/2003, introduced in 2013).

Reasonable accommodation is the tool, like others, in our legal system to counter such «barriers» and ensure equal treatment at work

(Arts. 2, 3, 4 Const., Directive 2000/78; Art. 27, CRPD 2006) (RICCARDI, 2018).

Reasonable accommodation **follows two principles**, fundamentally:

-Criterion of reasonableness: see most recently the **Italian Supreme Court**, which requires a **fair balancing of all interests at stake**.

(Cass. No. 6497/2021)

-Criterion of proportionality: reasonable accommodation “identifies measures and adjustments that are necessary, relevant, appropriate and adequate, which do not **impose a disproportionate or excessive burden on the obligated party** (see Legislative Decree 62/24 and Cons. 20 and 21, Directive 2000/78).



4. WAYS OF IMPLEMENTING REASONABLE ACCOMMODATIONS at work, towards a “unified procedure”

Open questions the Research will try to answer: *Who* can apply for reasonable accommodation at work? *When* (ex ante and/or ex post the startup/hiring of the worker with disabilities)? **How** (*suxidiarity* procedure)? To which “**employer entities**” should the application be addressed? **Differences** between **Private** and **Public Employment** (e.g. presence or absence of the **Disability Manager** in the company/presence of the **Person in charge of the insertion and integration processes in Public Administrations**)? What reasonable accommodations for **employment and self-employment** (DE FALCO, 2021)? Given that the concept of reasonable accommodation (at work), **where is/should the «case history/codification»** of reasonable accommodations be collected ?Which are the **Financial manoeuvres** (public and private funding)(e.g.Common Investment Funds for Employment Inclusion) **to remedy the** “imbalance” of proportionality?



4. 1 WAYS OF IMPLEMENTING REASONABLE ACCOMMODATIONS at work, towards a “unified procedure”

For reasons of time it is not possible to answer all these questions here, however, it must be said that several areas of Labour Law are inevitably involved, such as: the Active Labour Policies; Industrial Relations and the role of Collective Bargaining (CANEVE, 2023); Preventionist legislation on occupational Health and Safety (see A. DELOGU 2024, D. TARDIVO 2024); Diversity Management policies, figure of the Disability Manager in private employment and the Manager for the processes of insertion and integration of people with disabilities in Public Employment (F. MALZANI 2019); Corporate welfare (D. GAROFALO 2019, STEFANOVICHJ 2019).

*Then, there is the decisive Law No. 68/99 on targeted employment (RICCARDI 2018). It will be the **task of the Interpreter to keep making connections between these Legislation and the new “unique”/”unified” Disability Laws (Law 227/21 and attuative decrees, as well MLPS Ministerial Decrees on the Database and Guide Lines on targ. Empl.)***



5. A NEW DISCRIMINATION TYPE

Intersectional discriminations express a social reality where disadvantaged groups are victims of different discriminations, which interact with each other to the point of no longer being distinguishable and separable, and various belongings cross subjective identities.

*Although intersectional discrimination may constitute a **widespread issue** (BELLO 2020), it has **not** been considered at a **jurisprudential** level due to critical application issues and the absence of a clear regulatory reference framework.*

*Regarding the first aspect, **procedural difficulties**, such as the current rules on the burden of proof, tend to favour a one-dimensional representation of discrimination (BARBERA, BORELLI 2022).*

A poignant example of this is the Parris case (CJEU 24 November 2016, C-443/15).

In this case, the European Court of Justice did not accept the suggestion of Attorney General Kokott to adopt the perspective of intersectional discrimination, an element which contributed to determining the rejection of the application.



5.1 A NEW DISCRIMINATION TYPE

*In **European Union**, Intersectional discrimination is regulated for the first time by **Directive 970/2023** to strengthen the application of the **principle of equal pay for equal work or work of equal value** between men and women through pay **transparency** and **enforcement mechanisms**.*

In literature, it is argued that:

«This innovation is to be seen in the light of the recent sensitivity of the European Union (e.g. the Gender Equality Strategy 2020-2025), which has long been limited to soft law» (BELLO, MANCINI, 2023).

***Article 3** plays a pivotal role in our understanding of discrimination.*

*It defines <<**Intersectional discrimination**, which is **discrimination based on combination of sex and any other ground or grounds of discrimination protected under Directive 2000/43/EC or 2000/78/EC**>> (Art. 3, comma 2, lett. e).*



5.2 A NEW DISCRIMINATION TYPE

*Regarding the same conceptual aspects, there is also what is indicated in **recital 25**, which, although not of a preceptive nature, is nevertheless **significant for interpretative purposes**.*

*This regulatory introduction, although referring to the specific area of the pay gap, can nevertheless open perspectives given that intersectional discrimination has, up to now, generally not been considered at a **Jurisprudential level** (despite its potential diffusion), also due to the **absence** of a **clear regulatory** reference framework.*



6. CONCLUSIONS

*This **new legal framework** can significantly impact pro-active anti-discrimination instruments such as **reasonable accommodation**, which may offer **new perspectives** in the **context of gender anti-discrimination law**.*

In our research, we analyse the effects of this and refer to the written text for details.

For any answer, don't hesitate to contact us.....



Thanks!



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