

**The factual and legal definition  
of the status of a person with  
disability within the employment  
system and employment support  
for persons with disabilities  
in selected European countries**

Marie Kořánová  
Lenka Krinesová  
Vítězslava Magerská  
Mirjam Suchomelová  
Katarína Švehlová

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## **Abstract**

The monograph aims to map the topic of the factual and legal definition of that category of persons with disabilities and methods employed to increase the level of protection of such persons in the labour market within the employment systems of selected European countries (Austria, Belgium, Denmark, Finland, France, Germany, the Netherlands, Norway, Poland, Slovakia, Sweden, the United Kingdom and the Czech Republic). The descriptions of systems in individual countries are always divided into three thematic sections. The first section focuses on defining the terms 'disability' and 'person with disability' with regard to employment area. The second section deals with questions concerning how disability is determined for the purposes of employment policy in each of the countries, who is responsible for assessment and which criteria they employ, and which body finally decides on the granting of the status of a person with disability. The third section includes an overview of the key measures and instruments used in supporting the employment of persons with disabilities and their protection in the labour market.

**Key words:** disabled persons; employment support; protection of disabled persons in the labour market; definition of disability; assessment of disability in the field of employment



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## Introduction

This monograph aims to map the topic of the factual and legal definition of that category of persons with disabilities and methods employed to increase the level of protection of such persons in the labour market within the employment systems of selected European countries.

The countries selected consist of Austria, Belgium, Denmark, Finland, France, Germany, the Netherlands, Norway, Poland, Slovakia, Sweden and the United Kingdom. For reasons of comparison, a description of the system in the Czech Republic has also been included.

The study deals with methods of addressing the above-mentioned topic in these countries. For the purposes of employment policy, the study seeks to answer questions such as who is considered a person with a disability, how this status is determined and ways in which these persons are protected and supported in the labour market.

A major part of the information used as source material for this study was acquired by means of the background research of the web pages of institutions and organisations that deal with this issue as well as via the study of available publications. Information sources thus consisted particularly of documents and materials from the various stakeholders under whose competence or sphere of interest this area falls and legal regulations and international comparisons dealing with selected aspects of the topic. The authors also based their work on information received by the Ministry of Labour and Social Affairs of the Czech Republic through a questionnaire completed by organisations in certain EUMASS member countries. The direct contacting of competent authorities for detailed information or clarification did not, save for a small number of exceptions, meet with success.

With respect to the aims of the study, the descriptions of systems in individual countries are always divided into three thematic sections.

The first section focuses on defining the terms 'disability' and 'person with disability' with regard to employment. Within this section, attention is also devoted to the question of whether, in this field, the concept of a person with disability is independent or whether it is linked to the social security system.

Within the context of defining the status of a person with disability in the field of employment, the topic of whether the systems in the countries under review include the analogical category of a person with "lighter disability",<sup>1</sup> which forms part of the Czech system, was also explored.

The second section deals with questions concerning how disability is determined for the purposes of employment policy in each of the countries, who is responsible for assessment and which criteria they employ, and which body finally decides on the granting of the status of a person with disability.

The third section includes an overview of the key measures and instruments used in supporting the employment of persons with disabilities and their protection in the labour market.

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<sup>1</sup> Persons with "lighter disability" do not fulfil the conditions required for claiming disability benefit. The definition of such persons is: Those who have the ability to find gainful employment but whose ability to perform their current occupation or to make use of existing or future qualifications has been significantly reduced due to a long-term health condition (more details are provided in the chapter on the Czech Republic).

It should be noted that since the systems of the countries under review often reflect different approaches to this topic, it was found to be relatively difficult to characterize particular aspects in a general way.

For the purposes of work integration, disability is considered the limitation of opportunities or capacity to perform work or gainful activity, to participate in working and social life or to cope with the essentials of everyday life due to a health condition.

In certain countries, employment-related definitions of disability or person with disability issue come from specific legislation concerning persons with disabilities that primarily focuses on promoting the equal participation of such people in society or their integration into the world of work, while in other countries they are included in general employment or anti-discrimination legislation. In some cases, disability (status) is linked to a recognition of invalidity. Disability is not formally defined in Denmark and the Netherlands.

Analogies of the category of a person with "lighter disability", as far as the research team managed to determine, does not exist in the countries under review in this study.

An examination of the processes involved in the assessment and evaluation of disability for the purposes of employment policy revealed a range of differences between individual countries.

In general, there has been a shift away from the diagnostic approach in favour of the assessment of the impacts of disability on both the ability to perform gainful employment and the employment integration of the disabled person or, indeed, on the broader aspects of everyday life.

Various approaches were identified with regard to assessment; certain countries take only medical aspects into account, whereas in others broader impacts such as education, type of work performed, rehabilitation potential and opportunities to find and retain employment, etc. are considered. In a number of countries the opinions, plans and wishes of disabled persons are also taken into account.

In some systems, assessment and evaluation are conducted solely by physicians, in others authority in this respect is accorded to multidisciplinary teams consisting of physicians, vocational advisers, psychologists and other experts as the case may be.

Moreover, in a number of countries, evaluation includes the determination of future professional orientation and the potential development of the disabled person in terms of work integration or, where deemed necessary, recommendations concerning disability compensatory measures.

With a view to supporting the employment of persons with disabilities, the countries under review have introduced a range of measures and instruments that aim firstly at enabling or facilitating disabled people to forge a professional career and assisting them in obtaining and keeping a job, and secondly at motivating employers to employ this group. The measures include various forms of support and services for disabled employees and their employers as well as certain conditions to be followed by employers.

All the countries covered have imposed a strict ban on discrimination against disabled persons, i.e. equal treatment is considered the basic principle.

In most cases particular emphasis is placed on vocational rehabilitation and in some countries the principle is applied that vocational rehabilitation takes priority over

the disability pension or, more precisely, it is a condition for granting a disability pension.

In some systems, huge effort is made to ensure that, thanks to early intervention, employees return to work as quickly as possible; as early as when they receive sickness benefits, their work potential is evaluated and various rehabilitation and activation measures are suggested aimed at promoting reintegration.

In a number of countries, measures promoting the employment of persons with disabilities include a duty on the part of the employer to employ a specific number of persons with disabilities (quota system). In case of non-compliance, employers are usually obliged to pay into special funds that are subsequently used for the funding of measures which support the work integration of disabled persons. In some of the countries the employment of disabled people is compulsory in both the public and private sectors, whereas in others only in the public sector or this regulation does not apply at all.

Should employers employ disabled persons, they are often entitled to a relatively broad range of support including e.g. counselling services, wage subsidies, the funding of adjustments to the workplace, work assistance within the company, compensation for the lower performance of such employees as the result of the disability, in-house vocational training, etc.

Persons with disabilities are usually provided with various forms of support, including financial support e.g. for vocational training, vocational rehabilitation, the establishment and operation of self-employed businesses, compensation for disability, etc. At work, disabled employees are often provided with favourable working conditions and work time arrangements, physical adjustments to the workplace, protection against dismissal, additional days of holiday, etc.

The work integration of disabled persons is also supported via specific forms of employment such as supported employment, employment in social enterprises and other specific programmes. Sheltered employment facilities are provided for the employment of persons with severe disabilities who are unable to secure employment in the open labour market.

Key players in terms of the support of work integration and the reintegration of persons with disabilities consist principally of the labour offices of respective countries and specialised institutions which focus on assistance for disabled people. In a number of countries a considerable amount of responsibility in this respect is assumed by local municipalities, with certain responsibilities assumed by employers.

## Austria

### 1. Definition of disability

For purposes of the labour market, only those with at least 50% disability for at least six months are considered disabled.

The term 'disabled' comprises the full range of associated economic, social and legal aspects. From the legal point of view, the key definition in Austria is that contained in the Act on the employment of persons with disabilities (*Behinderteneinstellungsgesetz - BEinstG*):

'The effect of a non-temporary physical, mental or psychological or sensory limitation which makes participation in working life difficult.' Non-temporary means a period of longer than six months.

In order to evaluate the impact of functional limitation, overall living conditions are taken into consideration. It is not strictly necessary that the functional limitation is also evident in the person's working life.

#### Disadvantaged persons

In Austria, the term 'disadvantaged person' (Menschen mit Benachteiligung) refers to persons with a disability (at least 30% disability when the employer provides personal assistance in the workplace).

No analogy to the Czech category of a person with "lighter disability" according to the Czech meaning exists in Austria.

### 2. Assessment of disability in the field of employment

The assessment of the degree of disability is intended for the determination of whether, based on the level of severity of the disability, the person concerned can be included in the so-called advantaged disabled persons category (see below).

The degree of disability and the specification of the assessment of the degree of disability are provided in the 'Assessment Decree' issued by the Federal Ministry of Labour, Social Affairs and Consumer Protection.

The basis for the assessment of the degree of disability consists of an assessment of the physical, mental, sensory or psychological dysfunction or sensory limitation that makes employment difficult. If necessary, with a view to determining the degree of disability, additional examinations are conducted involving for example roentgenological or laboratory tests; if deemed necessary experts are consulted from other fields, e.g. psychologists.

In addition to personal data, the expert opinion must contain an anamnesis (estimate of the future course of the illness), examination results, diagnoses, an estimate of the degree of disability and justification for the stated degree of disability.

The percentage determination of disability is based on functional limitation accompanied by an estimate of performance requirements in the general open labour

market. One important fact within this process is that whether and to what extent the respective types of disability interact negatively is accorded more importance than the mere sum of disadvantageous factors.

Proposals for the determination/assessment of the degree of disability are submitted to the Federal Office for Social Affairs and the proposing party is invited to attend a face-to-face interview. Once the expert opinion has been submitted a 'Decision on the Assessment' is issued.

The Decision is valid for the affected person's entire working life and, moreover, he/she is not permitted to waive his/her status of advantaged disabled person (except following a radical improvement in his/her state of health).

### **3. Employment support for persons with disabilities**

#### **Duty to employ**

In accordance with the Act on the employment of persons with disabilities, every company that has more than 25 employees is obliged to employ at least one person with a disability (with a degree of disability of at least 50%). Such employees are termed 'advantaged disabled persons'. Categorisation as being advantaged disabled means that such persons are not entitled to receive long-term financial benefits such as annuities and pensions.

The following applies to an advantaged disabled person:

- Increased protection against dismissal (amended on 1 January 2011),
- Protection of earnings – disability must not result in a wage reduction,
- Tax advantages for the disabled person and his/her employer,
- Support for the disabled person and his/her employer,
- Extra holiday entitlement provided it is in compliance with the respective collective agreement.

Defaulting on the duty to employ a person with disability is punished in the form of a 'compensatory tax' the amount of which is set annually by the Federal Authority for Social Affairs; this charge is paid into the 'Compensatory Tax Fund'.

Resources from this fund are intended primarily for the payment of benefits to disabled persons (Euro 244 monthly), for the financing of measures aimed at integrating persons with disabilities into the labour market and for the financial support of employers of disabled persons. The amount of the subsidy provided depends on the individual circumstances of each case and is limited to Euro 25,000.

The compensatory tax per each unemployed person with a disability in 2012 stood at: Euro 232 for employers with no more than 99 employees, Euro 325 for employers with 100 or more employees and Euro 345 for employers with 400 and more employees.

## **Employment support**

In Austria the employment of disabled persons is promoted in the following ways:

**Bonus:** Bonuses amounting to the full amount of compensatory tax for the respective year are granted for the employment of an advantaged disabled person who is studying as an apprentice (within the 'Ausbildung').

**Exemption from payroll deductions:** The wages of disabled persons are exempt from the payment of contributions to the compensatory family fund as well as from the employer's contribution and are not subject to community tax.

**Integration support:** Employers who employ a person with a disability are entitled to receive an allowance for wage costs. The maximum level of support is Euro 1,000 per month and it can be paid for a maximum of three years.

**Job security support:** This allowance is paid at a value of up to 50% of the gross wage with an upper limit of Euro 1,000 per month.

**Wage subsidy:** Remuneration for the conclusion or extension of the employment of an employee who has become disabled thus reducing his/her capacity to work. Compensation for reduced capacity to work can be paid up to 50% of gross wage with an upper limit of Euro 650.

**Support for new job creation:** If a new job position needs to be created for the employment of a disabled person (or a disabled person who already works in the company), the employer is liable to pay only 50% of the wage costs. The full costs incurred in making adjustments to the workplace in order to accommodate a disabled person are reimbursable.

**Technical facilities, training courses, external sign language interpreters:** up to 100% of costs are reimbursable

## **State labour market policy programme for persons with disabilities (BABE programme)**

A programme, known as 'Billion for Disabled People', has been introduced by the federal government with the intention of integrating people with disabilities into the labour market.

The BABE programme has the following objectives:

- to find jobs,
- to secure jobs,
- to create equal opportunities in the broadest sense.

The main objective of the BABE programme for 2014-2017 is the continuous integration of disabled persons into the labour market.

In addition, the federal government has introduced the so-called National Disability Action Plan for 2012-2020 which covers employment, disability policy, protection against discrimination, barrier-free access, education, life independence, health, rehabilitation, self-confidence building and the provision of information.

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## **Rehabilitation and retraining**

By means of accompanying budgetary legislation of 2011, a provision has been established within both the Work and Health Act and the General Act on Social Insurance that obligatorily introduces the principle of 'rehabilitation rather than pension'. The aim is to keep people in employment longer and to reduce the numbers of disability pensions granted. Since 1 January 2011, should an insured person apply for a disability pension on the grounds of his/her health condition, the application is automatically considered for potential inclusion in the vocational rehabilitation programme.

The principle of 'rehabilitation rather than pension' applies to persons born after 1 January 1964 and states that eligibility for a pension will be considered only if the insured person is permanently disabled and is unable to participate in the rehabilitation programme due to either medical or occupational reasons. This amendment, inter alia, cancelled the granting of fixed-term pensions for those persons born after 1 January 1964 and introduced the requirement to be included in the vocational rehabilitation programme. Fixed-term pensions were replaced by the rehabilitation allowance paid via the sickness insurance scheme.

Those employees who are unable to perform work in their acquired profession and who, over the last 15 years, have been unable to exercise their profession for at least 90 months, are entitled to receive professional retraining and thus the opportunity to receive the retraining allowance through the Labour Market Service. The decision on eligibility for this allowance is the responsibility of the Pension Insurance Authority.

## **Fit2work project**

The Work and Health Act came into force in January 2011 and was initiated by efforts to maintain the capacity to work and thus to remain in gainful employment as long as is possible. The competent authority in this respect is the Federal Office for Social Affairs as the appointed centre of competence in the field of employment and disability. The key activities of this office include the prevention of early retirement and enabling the maximum period of gainful employment through the application of the appropriate measures. In order to achieve this goal the so-called 'Health at Work' strategy is being promoted via the provision of information and counselling; in this context the 'Fit2work' project has been introduced. The project coordinator is the Federal Office and partner organisations consist of: the Labour Office, the Labour Inspectorate, the General Injury Insurance Institute and the Sickness Insurance Company. Fit2work offers free counselling services for those with health problems who are threatened with losing their jobs, those with difficulties finding a job, and those facing the risk of disability. Both individual and accompanied counselling are provided as the case requires.

Fit2work counselling centres have been opened in all nine federal regions and the initiative, which is intended for both employees and employers, has proven particularly successful. Over the first three years (2011-2013) of operation counselling services were used by 35,000 persons and 500 companies in order to obtain basic information aimed at the continuous improvement of health in the workplace.

Since the beginning of 2014, 21,500 persons have made use of Fit2work counselling services and 10,380 pieces of information have been provided (data from September 2014).

## **Belgium (Walloon region)**

### **1. Definition of disability**

In Belgium the topic of the integration of persons with disabilities, including work integration, is addressed on a regional rather than a national basis by the following authorities: the Flemish Community, the Walloon Region, the German-speaking Community and the French Community Commission of the Brussels-Capital-Region. For the purposes of this study, Belgium is represented by the Walloon region.

The public institution authorised to implement the Walloon policy for the integration of persons with disabilities is the Walloon Agency for the Integration of Disabled Persons (Agence wallonne pour l'intégration des personnes handicapées - AWIPH).

The AWIPH plays a key role in the field of the support of employment of persons with disabilities in the Walloon region - together with the Walloon Office for Vocational Education and Employment - Le Forem (Office wallon de la formation professionnelle et de l'emploi - Le Forem).

In order to promote the work integration of disabled persons, the AWIPH provides various forms of support for the disabled and, predominantly, for employers who employ disabled workers.

The definition of disability applied by the AWIPH consists of that established by a Decree of 6 April 1995 on the integration of persons with disabilities according to which 'a person with disability is considered to be all minor or major persons burdened with a substantial limitation in terms of the potential for social or work integration as a consequence of the impairment of mental, sensory or physical ability that requires societal intervention.

Belgium does not define the status of a person with disability solely for employment purposes; therefore, no analogy to the Czech category of a person with "lighter disability" exists in Belgium.

### **2. Assessment of disability in the field of employment**

#### **2.1 AWIPH**

The basic criterion for AWIPH intervention in support of work integration is a mental handicap of at least 20% or a physical handicap of at least 30%.

The disabled person must be younger than 65 years on first application for intervention.

The degree of disability is assessed by a multidisciplinary team from the regional AWIPH office, the choice of which is based on the disabled person's place of residence. The team consists principally of a physician, a psychologist, a social integration worker and an expert concerned with work integration. The evaluation process includes the investigation of the requirements of the disabled person, the evaluation of the appropriateness of particular measures, proposals for potential re-

orientation and the evaluation of the measures taken during the course of implementation.

The criteria applied by AWIPH in terms of disability differ depending on the type of support required. The assessment of disability for work integration purposes is based on the Belgian official classification of disablement, BOBI (Barème officiel belge des invalidités)<sup>2</sup>, and on the Diagnostic and Statistical Manual of Mental Disorders DSM IV.

Disability is evaluated on the basis of medical reports prepared by the attending physician or specialist. The multidisciplinary team devotes particular attention at the assessment to the impacts of the disability on work integration.

The AWIPH does not determine the disability and neither does it provide assistance based on the list of diagnoses, rather, for each individual case it assesses the impacts of the physical and/or mental difficulties of the disabled person on his/her work and wider social integration.

Neither disability categories nor degrees of disability are defined.

Since individual cases differ, the extent of intervention by the AWIPH in support of work integration is decided by a physician and work integration staff following an analysis of medical examinations, a workplace review and interviews both with the employer and the employee.

The recognition of disability by the AWIPH does not establish entitlement to special status.

## **2.2 Le Forem, the Walloon Office for Vocational Education and Employment**

Le Forem, the Walloon Office for Vocational Education and Employment which provides public employment services plays an important role in the work integration of persons with disabilities in the Walloon region. Its scope of activities includes employment intermediation for all job seekers, including disabled persons, the implementation of programmes for the support of work reintegration and the organisation and management of vocational education.

Physicians approved by Le Forem define work capacity categories that correspond to normal capacity (physical or mental incapacity of 0% to less than 10%), reduced or partial capacity (physical incapacity of 10% to less than 30% or mental incapacity of 10% to less than 20%) and highly-reduced capacity (physical incapacity of 30% to less than 66% or mental incapacity of 20% to less than 66%).

## **3. Employment support for persons with disabilities**

In Belgium, no quotas for the employment of persons with disabilities have been established for private employers. A 3% quota is applicable to employers in the public sector at the federal level. In the Walloon region, a 2.5% quota has been

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<sup>2</sup> Various technical, communication and information aids that help predominantly at work integration are, however, provided by the AWIPH according to the criteria of the International Classification of Functioning, Disability and Health (ICF). This applies also to vehicle modification and provision of wheelchairs.

established for certain public regional and local institutions and is applicable to public administration offices and institutions of public interest the personnel of which are subject to Walloon legislation, to provincial and municipal offices, local government associations and public social assistance centres that employ at least 20 employees. However, no sanctions are applied in case of failure to meet this quota.

### **3.1 Support provided by the AWIPH**

In order to support the employment and education of persons with disabilities, the AWIPH provides various benefits and services intended for both disabled persons and their employers. The Agency also provides approval and subsidies for facilities that employ, train and accompany persons with disabilities and provides consulting services for such facilities.

Financial support is provided by the AWIPH principally to those employers who employ persons with disabilities; support consists for example of an integration allowance in the form of the payment of 25% of the wage costs of the employment of a disabled person who had previously not worked for at least six months, the payment of workplace accommodation, a compensation allowance for alterations related to work arrangements, the co-funding of remuneration paid to trainees working under professional adaptation contracts and an allowance for work assistance within the company.

In addition to financial support, employers are encouraged to contact AWIPH advisers who provide information and consulting services with regard to technical assistance, workplace accommodation, prevention, etc.

AWIPH assistance for persons with disabilities includes e.g. occupational guidance, pilot work placement, i.e. a one-week workplace training course aimed at familiarising the disabled person with a certain occupation, support for the payment of costs for commuting to and from work, personal assistance at work and training concerning activities outside the scope of the occupational activity itself.

Under certain conditions, the Agency may provide self-employed people with a subsidy for starting, restarting or maintaining a business and financial support for arrangements concerning the workplace environment.

The AWIPH finances a number of vocational education centres that focus on persons incapable of completing their education at standard educational facilities and that provide also vocational rehabilitation measures.<sup>3</sup> In addition, it coordinates and finances the development of 'In-Work Support' projects based on the supported employment method applied. It also subsidises adapted work enterprises ('ETAs') that employ persons whose disabilities prevent them from working in normal conditions.

### **3.2 Support by Le Forem, Walloon Office for Vocational Education and Employment**

Le Forem accords particular attention to disabled job applicants.

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<sup>3</sup> Vocational rehabilitation can be provided as a benefit from INAMI, the National Institute of Sickness and Disability Insurance that administers compulsory health and disability insurance at the federal level. In such cases disability is assessed by this institution. INAMI finances vocational rehabilitation through the financial support of AWIPH education centres.

In terms of the work integration of persons with disabilities, Le Forem cooperates closely with the AWIPH. The two organisations have concluded a general agreement the aims of which are to develop synergies between their respective policies in terms of socio-professional integration and to strengthen their various activities in the field of the employment and education of persons with disabilities.

Le Forem, along with its various partners including the AWIPH and other institutions which focus on vocational education and work integration, have established a service known as 'Carrefour Emploi Formation Orientation' (CEFO) the aim of which is to provide general information and consulting services regarding employment, vocational education, the labour market, occupational guidance, the establishment of small businesses, etc.

CEFO counsellors consist of work integration experts who are acquainted with disability issues. Their role is to assist disabled job seekers in terms of finding employment and educational opportunities and to inform them of assistance available from the AWIPH or other partners as the case may be. Moreover, they offer advice on issues such as whether it is necessary to mention their disability, what information to provide, etc.

The CEFO team also includes AWIPH counsellors who provide advice on job searching and vocational training. In particular, they are required to ensure that people with disabilities receive the full range of services available in the field of work integration, education and training opportunities. In addition, they work towards encouraging colleagues to work in harmony with persons with disabilities.

In cooperation with a range of other stakeholders (including the AWIPH), Le Forem implements the DIISP (Integrated Programme for Socio-Professional Integration) which is focused on those groups of persons considered extremely disadvantaged in the labour market, and is also involved in providing support for job seekers with disabilities.

## Denmark

### 1. Definition of disability

Denmark does not have one single general and decisive definition of disability establishing entitlement to special rights and claims.

Consequently, no analogy of a person with "lighter disability" exists in the Danish context.

Danish disability policy is based on the UN Convention of 13 December 2006 on the rights of persons with disabilities which was ratified by Denmark in 2009. It focuses not only on the provision of compensation for disabled individuals, but also on removing barriers, physical and non-physical, in society as a whole.

The Danish disability policy is based on four principles: equal opportunities, solidarity, sector accountability and compensation.

The Anti-discrimination Act prohibits both direct and indirect discrimination in the labour market. Prohibition against discrimination applies upon the commencement of employment, during the employment relationship and upon dismissal.

One of the underlying principles of Danish disability policy is that assistance is based on the individual needs of the respective disabled person.

Local authorities (municipalities) are responsible for providing and implementing assistance which is based on the specific and individual assessment of the needs of disabled persons. Regardless of the type of help provided, it must be planned with respect to the self-determination, requirements and resources of the individual.

### 2. Assessment of disability in the field of employment

Since Denmark has no formal definition of disability, claims for assistance and support related to disability are assessed on an individual basis by relevant local authority experts.

As far as assessment is concerned there has been a move away from the 'elementary' diagnostic approach towards an approach which addresses the assessment of vocational ability.

Vocational ability is defined as the 'ability to perform various, specified tasks as required by the labour market'. However, no standardised list of such tasks has been defined; therefore, assessment is based on experience gained during a period of vocational rehabilitation.

In addition to 'vocational ability', the term 'functional limitations' is used to describe the medical (health) aspects of reduced vocational ability, i.e. the term 'functional limitations' is employed in terms of the description of the practical implications of a given diagnosis.

**Arbejdsevnetoden (Work ability assessment method)**

The assessment of work disability underwent profound changes in Denmark in January 2003 at which time a new method known as Arbejdsevnetoden was introduced, the aims of which were to clarify, in cooperation with the client, individual abilities in connection with the labour market and to investigate both additional requirements and the potential for improving an individual's capacity to work. The decision to award disability benefits depends on the functional ability of the claimant in relation to the labour market rather than on the medical diagnosis. The process includes the qualified and systematic documentation of the procedures employed with the aim of making a fair decision on the respective citizen's right to rehabilitation, inclusion in the FlexJob programme or the granting of a disability pension.

The transfer of the responsibility for assessment to municipalities means that, as far as the decision-making process is concerned, a number of differences exist between individual authorities; they decide for example how often a medical certificate is required and municipal case workers decide on which expert medical reports are needed (financed by the municipality) when deciding on a benefit claim. Medical reports are reviewed by a municipal physician despite him/her not having personally examined the claimant (so-called 'paper doctors'). Disputes concerning the interpretation of professional medical documents form one of a number of reasons for appeal.

A consultant subsequently uses the Arbejdsevnetoden to outline an applicant's resources via the preparation of a 'Resource Profile'.

The application of the Arbejdsevnetoden has been mandatory since 1st January 2003 in cases concerning vocational rehabilitation, inclusion in the Flexjob programme, the granting of disability pensions and the endangering of a citizen's capacity to work, e.g. due to illness.

Arbejdsevnetoden represents a method for defining, developing and assessing employability. The overall aims are to help unemployed or sick people to find a foothold in the labour market and to clarify and develop an individual's ability to work. It outlines in what way a consultant can describe an individual's resources and barriers, develop an activity plan and follow up on the development of individual's resources. The method is oriented towards preventing the granting of disability pensions whilst at the same time promoting vocational rehabilitation or adjustments to the workplace and housing.

If vocational rehabilitation is considered necessary, the municipality is obliged to design a vocational rehabilitation plan in cooperation with the client. Following rehabilitation, a final report is compiled which outlines whether the rehabilitation measures succeeded or failed. In the case of unsuccessful vocational rehabilitation, this report makes up the principal document in terms of whether the client is placed in the Flexjob programme or is granted a disability pension should he/she not be able to fulfil flex-job requirements.

The emphasis on individual resources and the activation of passive resources is of particular importance. The process runs in conjunction with the job position the client already has or with a potential new job which is deemed relevant to the job market. This method has had a huge influence on work ability assessment and it is hoped that it will both motivate and empower disabled individuals.

***Main principles of assessment after 1 January 2003:***

- Ability to meet labour market requirements for the performance of various specific tasks in order to gain income which allows for self-sufficiency
- Wider comprehensive concept than simply 'physical/mental disability' – a persons' professional abilities and skills are evaluated in relation to labour market requirements
- Holistic evaluation of factors that affect the ability to work
- Focused on resources rather than on barriers
- Dynamic concept which varies in accordance with labour market requirements

***Resource profile***

The Resource Profile, which focuses on an individual's resources and the development thereof, forms the basic instrument employed by consultants throughout Denmark as part of Arbejdsevnetmetoden. Within the Resource Profile, the consultant uses 12 factors for describing the client which are compiled by means of a combination of dialogue with the client and expert observation:

1. *Former education:* Education is defined as a citizen's formal skills acquired through the fulfilment and completion of formal education and training and other courses. The purpose of this factor is to describe the work functions that the client is able to perform on the basis of his/her educational career. A further reason is to determine whether further educational and training is required.
2. *Work experience:* The aim of this factor is to compile a picture of the skills the client has acquired through his/her previous employment and to identify those skills that might help him/her to return to the labour market. Clarification of the acquired skills base is especially important in terms of those who received no formal education.
3. *Interests:* The aim here is to describe the client's interests that might be relevant in respect of future job opportunities. They include a person's general interests, skills employed outside the workplace and other talents.
4. *Social competence:* Social competence is understood as a person's ability to succeed at work, including the ability to cope with potential conflicts and problems involving cooperation and the ability to engage and communicate well with other people. Social competence is particularly important since it is required by the vast majority of job positions.
5. *Adaptability:* This factor describes to what extent the client tends to adapt to and work in new conditions. Adaptability also concerns how the person accepts a degree of uncertainty since this factor is always associated with adaptation. This factor also describes the potential development of the adaptability of the client in relation to the labour market.
6. *Ability to learn:* This factor describes the extent to which the client is able to learn and acquire new knowledge and skills. It also identifies areas in which learning is easy or difficult for the client.
7. *Future employment wishes:* This factor serves for describing the client's own wishes regarding future employment in order that he/she can undertake the relevant training or begin the search for employment. The factor allows the social

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worker to draw upon the client's own ideas and preferences related to the labour market.

8. *Own expectations of future performance:* This factor concerns the identification of the client's positive or negative expectations regarding his/her own performance in the labour market. It assesses whether the client's underestimation of his/her performance in the labour market is likely to have a negative effect on future development. The building of self-confidence with regard to his/her ability to work in the labour market is considered a decisive factor in terms of employment success.
9. *Work identity:* This factor concerns to what extent the client identifies with work. Education, networking and work experience are considered in order to come to a decision as to whether the client sees him/herself as being independent and competent in relation to the labour market.
10. *Housing and economic conditions:* This factor describes the client's housing and economic conditions; having no permanent accommodation may in itself form an obstacle to succeeding in the labour market.
11. *Social networks:* This factor outlines the client's social network and considers whether there are any circumstances that might affect the current and future employment of the client, i.e. whether he/she has family members, friends or acquaintances who will support him/her in terms of returning to the labour market. Having a healthy social network suggests the availability of moral support which can be crucial in this respect.
12. *Health:* This factor contains a physical and mental health problems (diagnosis) of the client and a description of how the individual perceives his/her health condition. It also examines the possible abuse of addictive substances. The purpose is to determine whether the health status of the client prevents him/her from using and developing his/her resources and to suggest treatment and support in this respect. With regard to mental disorders, it is necessary to clarify the behaviour pattern exhibited by the client when dealing with other people, and to determine temporary and/or permanent protection requirements.

### ***Socio-vocational assessment in relation to vocational ability***

All the above-mentioned factors are regarded as important in terms both of the life of the individual and the demands of the labour market. The socio-vocational assessment provides an evaluation of the information and evidence collected in order to clarify the resources of a person in relation to the labour market and is conducted by a social worker.

The socio-vocational assessment covers the 12 factors which comprise the Resource Profile grouped in a total of five items:

- a) The person's own vocational expectations: hopes concerning future employment (factor 7); his/her own expectations of future performance (factor 8); work identity (factor 9)
- b) Professional and practical skills related to employment: previous education (factor 1); work experience (factor 2); interests (factor 3)
- c) Personal skills for the establishment of social and professional relationships: social competence (factor 4); adaptability (factor 5); ability to learn (factor 6)

- d) Material reality and networks relevant to work: housing and economic conditions (factor 10); social networks (factor 11)
- e) Health condition in relation to employment: health (factor 12)

The assessment is based on data provided by the client and relevant partners subsequently analysed and compared with data collected by the social worker, social and scientific knowledge and practical experience.

#### *Systematics of case work*

The process consists of 1) a description, 2) analysis and evaluation (of resources, development opportunities and barriers), 3) action plans, tests, decisions on the ability to work.

The entire process is documented in detail.

The socio-vocational assessment is based solely on facts; it does not contain new information, it is based on data analysis and is compared with social and scientific knowledge and the demands of work; it is developed in context and in the first person singular form.

The person concerned must be fully involved in the assessment process and the final assessment must be presented to the client and discussed with him/her.

Assessment is conducted via interviews with the individual and during periods of treatment or periods in which intervention measures apply. The continuous evaluation process is organised and adapted to the individual's needs and social requirements. It is based on the client's professional, social, physical, health and personal circumstances, the systematic engagement of the client in the process, a global view of the status of the client (resources and barriers), the identification of his/her development potential, the setting of a labour framework in which the client is able to employ his/her resources, and the dynamic continuous monitoring of the case.

### **3. Employment support for persons with disabilities**

Competences with concern to the employment policy system are distributed between the state, four central employment regions and municipalities and job centres.

*Job centres* provide points of access for all unemployed persons and job seekers; they are not responsible for the payment of benefits or the decision-making process concerning benefit claims - this agenda is administered by a different local government body. Measures implemented by job centres must be based on an individual's resources and needs and not on public benefits.

Each job centre employs one key person who specializes in employment and disability. The purpose of this position is to ensure that case workers and other experts in a given job centre are appraised with the latest relevant information in this area and are able to provide adequate employment services to people with disabilities.

### **Active employment measures**

Employment measures are relatively extensive and apply to all unemployed persons irrespective of whether they are receiving unemployment benefits, social assistance benefits, sickness benefits, etc.

Active employment measures are based on two basic elements: the contact process and employability enhancement programmes.

*The contact process* includes CV interviews, job interviews and availability interviews.

*Employability enhancement programmes:* The aim of these programmes is to ensure that unemployed clients remain in contact with the world of work by maintaining and/or improving/upgrading their professional skills.

Job centres are authorised to provide three specific employability enhancement programmes for unemployed people: counselling and skills upgrading; employment with wage subsidies; on-the-job-training provided by both public and private sector employers.

Employability enhancement programmes are designed for a given person via an individual job plan.

*Jobnet.dk* is a national self-service system which allows employers and jobseekers to establish contact with each other. Unemployed people are obliged to register their CVs in this system.

### **Disability and work**

Disabled people are entitled to certain extra entitlements over and above ordinary employment enhancement measures as defined by the *Act on compensation for disabled persons in employment, etc.* the aim of which is to support and stimulate employment opportunities for persons with disabilities, to keep them within the labour market and to provide them with equal opportunities so as to enable them to perform their profession in the same way as people without disabilities.

The explicit prohibition of discrimination against persons with disabilities in the labour market has been adopted that also incurs a duty on employers to make reasonable adjustments for persons with disabilities in relation to employment and vocational training or education. The duty to provide such adjustments does not apply if it places a disproportionately large burden on employers.

#### ***Compensation for persons with disabilities at work***

- Personal assistance for persons with disabilities at work
- Wage subsidies for the employment of disabled people who have completed their education
- Preferential approach
- Subsidies for special work aids and workplace adjustment and arrangements

### ***Flexjob Programme***

Jobs under the Flexjob programme are targeted at individuals with permanently and substantially reduced working ability who are currently able to work only to a limited extent and whose ability to work is predicted to further develop within a reasonable time period. Flexjob wages are subsidised for the duration of employment of an eligible worker and are associated with non-standard working conditions (e.g. reduced working hours, adjusted working conditions and reduced work requirements). Flexjob positions may be established in both the private and public sectors.

Flexjobs are granted temporarily, initially for a period of five years.

The wages of flexjob workers paid by the employer are based on actual working hours and the worker receives a subsidy from the local municipality for those hours not worked.

The Flexjob programme focuses on those persons with the lowest level of work ability.

In order to be entitled to a flexjob, an individual must suffer from a significant and permanent reduction in working capacity and must not be the recipient of a disability pension; moreover, all other means available concerning securing unsupported employment (vocational rehabilitation) must have been explored.

### ***Rehabilitation model***

According to the new scheme, the disability pension has been discontinued for persons under the age of 40 unless it is evident that they will never be able to take up employment. The primary tool is a new rehabilitation model. From 1 January 2013, the awarding of a disability pension requires prior participation in at least one rehabilitation programme and young people are entitled to participate in successive rehabilitation programmes. In place of the disability pension, persons with substantially reduced work capacity are offered individually tailored rehabilitation and support measures for up to 5 years. The rehabilitation model involves close cooperation between the health sector and the relevant labour market institutions, as well as social services and the education sector.

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# Finland

## 1. Definition of disability

Finland has no general definition of disability, rather it is defined in various laws that relate to disability benefits and services for disabled persons. The criteria for eligibility for benefits and services depend on the origin of the disability, the person's situation in the labour market and on the degree of disability. A medical diagnosis does not make up the deciding factor in terms of defining invalidity.

### Definition of a person with disability

A person with a disability (hereinafter referred to as a PWD) is considered disabled.

According to Finnish law, a person is considered a PWD when, as a consequence of medical impairment or illness, he/she has long-term problems in terms of coping with everyday life.

Further, Finnish legislation states that a PWD may not be discriminated against and has the right to live a normal life, for example, to study, work or start a family.

Each local authority provides social services as part of which a social worker is responsible for the provision of related services including consultation services for PWDs. On the basis of a medical certificate, the authority prepares a 'service plan' detailing the various services required including the promotion of employment and rehabilitation aimed at the retention of vocational skills.

The financial support of PWDs in their working lifetimes is provided by means of disability benefits paid by the Social Insurance Institution of Finland - KELA.

No analogy to the category of a person with "lighter disability" exists in Finland.

## 2. Assessment of disability in the field of employment

Legislation related to the pension system based on previous income employs the concept of reduced capacity to work (or work potential) wherein an assessment is made of the retained ability of a given person to ensure income from employment opportunities available that can be performed by that person when taking into account his/her educational career, previous work experience, age, living conditions and other relevant circumstances.

Following the end of the maximum time period over which sickness benefits can be paid (300 working days including Saturdays), it is recommended that an application be filed for a disability pension.

General practitioners, in cooperation with occupational health services, play a pivotal role in the transfer process from sickness to disability. However, the medical diagnosis is not the deciding factor in terms of defining invalidity. When assessing the degree of reduced work potential, attention is devoted not only to the medical opinion, but also to the chances the person has at his/her disposal to provide for him/herself through normal work (i.e. an assessment of earning capacity), the age of the client,

education, work history, place of residence, family and housing situation. More moderate assessment criteria apply to persons over 60 years of age.

The socio-economic factors that may be taken into account when assessing eligibility for a disability pension are specified in relevant legislation. The National Pensions Act, Article 22(1), defines a person who is not capable of performing gainful employment as a person who, due to illness, disability or injury, is unable to perform his/her usual occupation or comparable occupation which is considered adequate in order to ensure sufficient income for that person; age, professional skills and other relevant facts are also taken into consideration.

The Finnish Institute of Occupational Health (FIOH) has developed a new method for assessing work ability. The instrument used for work ability assessment purposes, known as the Work Ability Index (WAI), is refined on a continuous basis and its applicability has been tested in a number of countries. This epistemological method uses a self-cognitive questionnaire which explores the various factors affecting the work ability of a person. Unfortunately, it was not possible to determine the effectiveness to date of this method in practice in Finland.

### **Assessment process on application for disability benefits**

The application contains a medical opinion which must include, in addition to information on the illness, the selected treatment and rehabilitation process and an assessment of the applicant's ability to work. As a rule the application also contains information on completed education, current employment, working conditions, previous work experience and a plan outlining the potential for rehabilitation. An application for the rehabilitation allowance must contain a detailed plan concerning both medical and vocational rehabilitation. KELA is responsible for vocational rehabilitation, whereas medical rehabilitation falls under the competence of the health care sector.

All applications for allowances and benefits are administered by KELA office staff. The decision-making process with regard to such applications has been centralised in order to remove any regional differences. Applications are further assessed by experts from a number of relevant medical branches under the auspices of KELA. An expert doctor subsequently evaluates the person's ability to work based on medical documentation, including the medical and rehabilitation plan. In certain more complicated or disputed cases, however, the applicant may be required to undergo a further medical assessment known as a Personal Capacity Assessment (PCA) which is concerned with determining functional and work abilities, or is required to undergo extended multidisciplinary assessment.

KELA submits applications for a disability pension or the rehabilitation benefit under the earnings-related system to pension payment providers. In addition to the above-mentioned medical certificates and the rehabilitation plan, such applications often include certification issued by the occupational health service which is particularly highly-developed in Finland. Moreover, applications are usually supplemented with the employer's opinion regarding the applicant's ability to work, potential for the modification of working conditions or, as the case may be, the possibility of reassignment within the same place of work. In such cases, pension and benefit providers cooperate closely with employers with whom they remain in regular contact throughout the process. Relevant information can also be obtained from the Finnish Centre for Pensions.

The applicant is entitled to ask the benefit/pension provider to review their decision or to file an appeal against such a decision to the appeals committee of the authority or to the relevant court.

### **3. Employment support for persons with disabilities**

#### **Rehabilitation system**

In Finland, particular emphasis is placed on the early identification of health risks and the need for comprehensive rehabilitation which might be vocational, social or medical.

Absence from work due to illness is monitored systematically. A case categorisation system has been introduced for the purpose of improving the identification of the risk factors which lead either to long-term incapacity to work or to the granting of a disability pension and which aims at 'tailor-made' rehabilitation.

Finland has a sophisticated, comprehensive system of rehabilitation measures with a high rate of PWD return to the labour market as compared to other OECD countries. The country expends substantial amounts of money on rehabilitation (64%) in comparison with support provided for the standard employment of PWDs (22%).

Rehabilitation requirements and potential are determined for an employee capable of work as early as when he/she receives sickness benefits as part of an extended medical examination. The social insurance institution is legally obliged to determine rehabilitation requirements no later than 60 days after first receiving sickness benefits. Depending on the seriousness of the illness, the necessity for rehabilitation is discussed at the local social insurance authority level. After 150 days of receiving sickness benefits, the client is informed, for the second time, of the various rehabilitation options and the potential granting of a disability pension.

In addition, prior to the granting of a disability pension, disability pension providers must be assured that the appropriate rehabilitation measures have been fully exploited.

Participation in the rehabilitation process is voluntary and is not a precondition for sickness benefits. However, according to legislation rehabilitation makes up one of the eligibility conditions for the granting of a disability pension.

The Finnish rehabilitation system involves social, healthcare, vocational and educational institutions and their cooperation and coordinated activities are governed by Act No. 497-510/2003. Rehabilitation is supervised by the Social Insurance Institution of Finland - KELA which coordinates rehabilitation in cooperation with private rehabilitation service providers of which there are roughly 60 throughout the country.

Using funds earmarked annually from the budget by Parliament, KELA also provides specialised, individualised rehabilitation services that are primarily intended for persons capable of work but whose capacity for work has worsened as a result of illness or injury. One such type of rehabilitation services is known as ASLAK which consists of an early, work-oriented therapeutic form of rehabilitation which is suitable for those workplaces at which employees are exposed to a higher risk of physical or mental disturbance to their health which might lead to a deterioration in capacity to work.

Vocational rehabilitation services were established for PWDs in accordance with the Public Employment Service Act (2003). Employment offices provide vocational rehabilitation for those job seekers with disabilities.

Rehabilitation for persons who work or are eligible for a disability pension from the earnings-related pension system is provided by the provider of such pension entitlements.

Vocational rehabilitation services aim to strengthen the employability of PWDs and to facilitate their reintegration into the open labour market.

The services provided include vocational guidance, career planning, the assessment of the health and capacity to work of PWDs, expert consultation and training try-outs. Additional services include: help and advice, assistance and counselling (work coaching) upon the placement of a PWD in the open labour market or during their involvement in training and educational activities.

In 2003 Finland introduced special legislation governing the provision of job coaching services - the Decree on benefits provided by the Public Employment Service (1346/2002) allows employment offices to offer their clients the purchase of job coaching services from professional companies. The maximum duration of this service is 60 days, but it can be extended depending on the length of the vocational training period.

Persons under 63 years of age whose illness could result in disablement in the course of the next five years are entitled to vocational rehabilitation via the earnings-related pension system.

Persons who undergo therapeutic or vocational rehabilitation are entitled to rehabilitation allowances in accordance with the Rehabilitation Allowance Act No. 611/1991. Such benefits are usually of the same amount as general sickness benefits.

A motivational instrument has been introduced in Finland to motivate participation in rehabilitation. Persons who already receive a disability pension and agree to take part in rehabilitation are paid a rehabilitation supplement amounting to 33% of the disability pension during the rehabilitation period.

Vocational rehabilitation is open to all Finnish citizens and participation in rehabilitation is voluntary.

The requirement for and specific measures concerning vocational rehabilitation are discussed with the staff of the occupational health care service and the rehabilitation service provider. The assessment and review of the purpose of rehabilitation are conducted at rehabilitation centre level by a special team consisting of a physician, a social worker, a psychologist and an expert in career-related topics or other relevant expert.

### **Duties of and support for employers**

No preferential employment quota scheme exists in Finland.

In relation to PWDs, Finnish employers are legally obliged to pay part of the costs of disability benefits under the existing experience-rating system which is aimed at employers making greater efforts to encourage their employees to return to work following a period of sickness leave rather than ending up claiming a disability pension. In this respect they encourage employees with disabilities to participate in rehabilitation schemes, introduce a temporary workload reduction or adapt working

conditions to suit the employee; in addition, greater attention is focused on occupational health and safety.

The second pillar with regard to the legal obligations of employers in Finland consists of the arrangement and financing of company preventive care services - Occupational Health Care Act (1383/2001).

### ***Wage subsidies***

In 2006, the reform of the wage subsidy system extended the period over which such subsidies are provided: up to two years for people with a disability hired by a mainstream company and up to three years for those hired by a social enterprise.

Such wage subsidies are financed by the Public Employment Service and granted by individual employment offices.

### ***Allowances for adjusting working conditions***

The maximum amount of the allowance for adjusting working conditions in relation to the job placement or retention of a PWD is Euro 2,500 per person with a disability. If a person's disability is judged to be particularly severe, the amount can be increased by an additional Euro 1,000.

### ***Assistance via a co-worker***

An allowance can also be provided for assistance provided by another worker to help persons with disabilities more easily cope with their work. The maximum amount of this allowance is Euro 250 per month for a period not exceeding 12 months. In the case of a person with a severe disability, this contribution can be increased by Euro 100 per month for a maximum of 24 months.

### **Social enterprises**

An important turning point in terms of the employment support of people with disabilities in the open labour market consisted of the Finnish concept of the social enterprise which has been enshrined in legislation since 2003 and which is widely seen as having provided positive results as a result of the more favourable state support conditions.

The status of social enterprise (*sosiaalinen yritys*) is legally defined in the Social Enterprise Act (1351/2003).

### **Key priority and measures**

The declared priority of Finnish employment policy is to create jobs for PWDs in the open labour market; permanent employment in special job centres is seen only as a second alternative. The concept of sheltered employment has not been recognised in Finnish legislation since 2002. Such employment has been gradually transferred to the social services sector or, more precisely, it is now considered the obligation of local government authorities to organise working activities for persons with disabilities.

## France

### 1. Definition of disability

French legislation contains the following definitions of disability and workers with a disability:

Disability means any restriction of activity or restriction of participation in social life to which the person is exposed in his/her milieu as a result of significant, long-term or permanent malfunction of one or more physical, sensory, mental, cognitive or psychological functions, multiple disability or damage to health resulting in disablement.

A worker with a disability is considered to be any person whose opportunities to obtain or retain employment are practically limited as a consequence of the malfunction of one or more physical, sensory, mental or psychological functions.

The definition of disability was established by Act No. 2005-102 of 11 February 2005 on equal rights and the chances, participation and citizenship of persons with disabilities. The Act radically modernised policy related to disability issues and created a new framework for the support of persons with disabilities. The new legislation aimed to guarantee equal rights and opportunities for disabled people and to ensure that every disabled person could decide on his/her life plan. The Act introduced, among other measures, the principle of the entitlement to compensation for the consequences of the disability of such people regardless of the cause and type of their disability, age and way of life. It also reinforced vocational integration measures aimed at providing motivation to employ disabled persons. Act No. 2005-102 also modified the definition of a worker with a disability, which is included in the Labour Code.

No category similar to that of a person with "lighter disability" exists in France.

### 2. Assessment of disability in the field of employment

#### Granting of the status of worker with a disability

Any person whose chances of obtaining or retaining a job are limited due to his/her health condition may apply for the status of worker with a disability (*reconnaissance de la qualité de travailleur handicapé*). Attaining such status is of crucial importance in terms of vocational integration since it enables disabled workers and their employers to access and make use of a range of measures and instruments in the field of employment and vocational education.

The status of worker with a disability is granted by Committees for the Rights and Autonomy of Persons with Disabilities established as part of the Departmental Houses for Persons with Disabilities network.

*The Departmental Houses for Persons with Disabilities (MDPH)* network consists of centres located in each department of France which provide disabled persons with information and counselling concerning education, vocational rehabilitation, life plans, etc. Departmental Houses are responsible for the establishment and

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organisation of Committees for the Rights and Autonomy of Persons with Disabilities and multidisciplinary groups which assess disability.

*Committees for the Rights and Autonomy of Persons with Disabilities (CDAPH)* are made up of department officials, representatives of the competent state bodies and institutions, social protection authorities (Primary Health Insurance Fund CPAM, Family Benefits Fund CAF etc.), trade unions, pupils' parents associations, persons with disabilities and their parents (at least one third of total membership) and a member of the Departmental Advisory Council for Persons with Disabilities. These committees decide on the entitlements of persons with disabilities. Their scope of authority principally includes the assessment and recognition of disability, the granting of the status of worker with a disability and the provision of various forms of support aimed at disability compensation. They present their opinion on the appropriate measures to be adopted in order to ensure school, vocational and social integration. They use assessments compiled by multidisciplinary teams of experts and the proposed disability compensation plan as the basis for their decisions.

*Multidisciplinary teams* consist of experts in the fields of medicine, paramedical science, psychology, social work, education, vocational training and employment. The participation of such experts allows the reliable evaluation of the need for disability compensation concerning all types of application and disability; moreover, the team composition can be altered depending on the individual circumstances of the disabled person.

The status of worker with a disability is granted following an application for such by the disabled person. Applications for recognition of such status can be filed by persons aged 16 years and over or by his/her statutory representative. Being accorded such status means obtaining official recognition of capacity to work according to abilities which are directly dependant on the disability.

Applicants are entitled to express their expectations and requirements with regard to their situation, i.e. their 'life plan' in the application. The application must be include a medical certificate which is less than 3 months old.

The recognition procedure concerning the status of worker with a disability is always linked to the evaluation of applications for an allowance for adult persons with disabilities (AAH) - i.e. for the guaranteed minimum income set for disabled persons.

Recognition of the status of worker with a disability does not depend on the degree of disability.

A multidisciplinary team evaluates the application for recognition of such status along with the occupational specialisation and subsequently recommends an individual compensation plan.

Based on the opinion of the multidisciplinary team and the proposed individual compensation plan, the CDAPH committee assesses the requirements for recognition of the status of worker with a disability. The evaluation takes into account not only health-related aspects, but also the employment potential of disabled persons if they are seeking employment and the type of employment if such persons are already employed or are self-employed. Whether or not the impacts of a functional disorder cause the real limitation of chances of obtaining or retaining a job is verified.

In case of those seeking employment, the decision on the recognition of the status of worker with a disability is not linked to a certain, precisely defined job position; rather, the evaluation is based on the generally perceived employment opportunities of a given applicant.

With regard to disabled employees or self-employed disabled persons, the impacts of the functional disorder of the person concerned on his/her job and, in the case of employees, also on other jobs available within the company are taken into consideration.

The recognition of such status is also accompanied with guidance for the worker with regard to entering the labour market or attending vocational rehabilitation centres or sheltered environments - 'ESAT, facilities and services for providing help through work' that are designed for persons who are unable to find employment in the open labour market.

The status of worker with a disability is granted for one to five years following which time the disabled person is required to re-apply. The statutory deadline for a decision by the CDAPH committee is four months from the filing date.

The same advantages in the field of vocational integration that are enjoyed by persons with the recognised status of worker with a disability are also available for beneficiaries of a disability pension or a pension granted on the grounds of an industrial injury and beneficiaries of an allowance for adult persons with disabilities without the necessity of applying for recognition of such status.

### **Recognition of a disability burden**

The categorisation of workers with disabilities into categories A, B and C depending on the seriousness of the disability has been abolished and, in its place, a measure has been introduced which aims to compensate the impact of disability on the work capacity of disabled persons in a certain place of work which has been previously optimally adapted. This measure is known as 'recognition of disability burden' (reconnaissance de la lourdeur du handicap) and is designed for the employers of disabled persons and for self-employed disabled persons. Recognition of a disability burden can be granted if the financial impacts of the reduced performance of a disabled person in a given job are very significant even after the optimal adaptation of the workplace. Recognition of a disability burden is granted for three years; however, reapplication for a further time period is possible (except in certain cases). Depending on total costs, the burden is evaluated according to the normal or advanced rate. Following recognition of a disability burden, employers of disabled persons and self-employed disabled persons are awarded 'employment assistance' (aide à l'emploi) at a rate of 450 or 900 times the minimum hourly wage (SMIC) per year. Alternatively, employers can opt for a reduction in the contribution that they would otherwise have to pay for not meeting the obligation to employ persons with disabilities.

## **3. Employment support for persons with disabilities**

In relation to disabled persons, employers are bound by a range of obligations. Primarily, it is an obligation to employ persons with disabilities. All employers who employ at least 20 employees are obliged to employ persons with disabilities in the extent of 6%. Employers may meet this obligation, inter alia, by paying an annual contribution for each person they should employ to Agefiph, the Association for the Administration of the Fund for the Vocational Integration of Persons with Disabilities (for the private sector), or to the FIPHFP, the Fund for the Integration of Persons with Disabilities in the Public Service (for the public sector). These funds are then utilised to support the employment of disabled persons.

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Further employer obligations include e.g. that to reassign workers to another job position in case of incapacity to work and that to negotiate with employee representatives on employment policy for the benefit of persons with disabilities.

Recognition of the status of worker with a disability enables access to a range of measures, designed for the benefit of both disabled workers and their employers, which support the employment or retention of such persons.

The recognition of the status is accompanied with guidance regarding access to the labour market, vocational rehabilitation centres or sheltered environment facilities ESAT.

The advantages arising from such status consist primarily of:

- Categorisation in that group of persons who are subject to the employer obligation to employ persons with disabilities,
- Access to specific measures in the field of vocational education,
- Access to vocational rehabilitation in the form of vocational rehabilitation internships or based on a contract regarding vocational rehabilitation,
- Access to state-supported employment contracts designed for unemployed persons who, during the job seeking process, encounter extraordinary vocational and social difficulties,
- Support from Cap Emploi, a specialised network of employment agencies, which focuses on the vocational integration of persons with disabilities,
- Various forms of support and services provided by Agefiph, or its partner service Sameth which focus on assistance for the vocational integration and training of disabled persons in the private sector,
- Specific opportunities for joining the civil service,
- Various forms of support provided by FIPHFP promoting the employment of disabled persons in the public sector,
- Employment opportunities in so-called 'adapted companies' and 'home work distribution centres',
- Employment opportunities in sheltered workplaces in 'ESAT, facilities and services for providing help through work'.

## Germany

### 1. Definition of disability

The legal basis for defining the category of persons with disabilities for the purposes of employment policy and vocational integration of such persons in Germany consists of Book IX of the Social Code - the Rehabilitation and Participation of Persons with Disabilities.

The primary aim of Book IX of the Social Code, adopted in 2001, is to enable persons with disabilities and persons at risk of disability to live a self-determined life, promote their equal participation in social life, mainly in working life, compensate and eliminate disadvantages and strengthen such persons' responsibility for shaping their own preferred living conditions. In order to meet these aims, measures are set out and benefits paid in accordance with this Book and the legislation concerning benefits of individual rehabilitation providers.

Book IX of the Social Code combines and further develops legislation in the field of rehabilitation and the integration of people with disabilities, which was originally contained in several separate pieces of legislation. It also includes legislation concerning persons with severe disabilities.

Book IX consists of two parts, the first of which regulates the participation of disabled persons and those at risk of disability. It includes provisions related to rehabilitation and rehabilitation benefits (known as 'benefits for participation') that are common to all rehabilitation providers and regulates their mutual cooperation and the coordination of benefits. The second part of Book IX contains special provisions concerning the participation of persons with severe disabilities.

Book IX of the Social Code sets out the following definition of disability:

- Persons are considered disabled if their physical functions, mental capabilities or mental health deviate, with a high level of probability for more than six months, from the typical condition for a given age resulting in the limitation of participation in social life. Persons are considered to be at risk of disability if this limitation can be reasonably expected.
- Persons are considered severely disabled if the degree of their disability is at least degree 50 (see below) and they reside, usually reside or are legally employed in Germany.
- A position equal to that of severely disabled persons pertains to those with a disability level lower than degree 50 but at least degree 30 who, due to their disability cannot, without the equalisation of their position (i.e. being accorded with the similar rights as severely disabled persons), obtain or keep a suitable job position (so-called equalised disabled persons - gleichgestellte behinderte Menschen).

A person is considered at risk of disability when certain limitations can be reasonably expected concerning which objective facts (e.g. previous health development), medical evaluation and prognosis are used as the assessment basis.

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## **2. Assessment of disability in the field of employment**

### **2.1 Status of a person with disability**

Book IX of the Social Code applies to all disabled persons whose disability has been defined as a result of having met all the respective legal requirements, i.e. independently of a formal assessment of disability.

If a disability is not obvious, in order to take advantage of the special rights and entitlements designed for persons with disabilities, the disability must be assessed and declared. Subsequently, the disabled person is able to prove his/her disability by means of a decision on the assessment of disability and/or by means of severely disabled person's card.

If the disability is obvious, the relevant rights and entitlements can be claimed without a formal document; nevertheless, even in such situations it is advantageous to be in possession of an official document proving disability.

### **2.2 Assessment of disability/degree of disability**

#### **Disability**

Disability assessment is conducted at the disabled person's request by the authorities responsible for the implementation of federal legislation on provision for war victims, i.e. social security authority Versorgungsamt or other competent authorities in certain federal states.

The extent of disability is expressed in degrees of disability. Disability is considered to be a functional limitation commencing at degree 20; a disability is considered severe starting at degree 50.

Disabled persons with the degree of disability below 50 but at least 30 who are unable, due to their disability, to obtain or keep a suitable job, may be considered equal to persons with severe disability and thus acquire comparable rights. The decision as to whether to accord such status is made by an employment agency upon request.

In addition, during periods of vocational training in companies and other organisations, disabled juvenile and young adult persons whose degree of disability is below 30 or is as yet undetermined are also accorded equal status to severely disabled persons. Disability is proven by means of an opinion issued by the relevant employment agency or via a certificate concerning benefits for participation in working life.

#### **Degree of disability**

The degree of disability is determined by the impacts of disability on participation in social life. It reflects the impacts of functional limitation in all areas of life, not just with regard to working life. Degree of disability is defined as the extent of the physical, mental, psychological and social impacts of a functional limitation brought about by a particular health disorder.

The assessment of the degree of disability is governed by an annex to a regulation concerning medicine in the field of social security (Versorgungsmedizin-Verordnung) entitled 'Medical Principles in the Field of Social Security' (Versorgungsmedizinische Grundsätze).

The degree of disability is expressed in intervals of ten ranging from 0 to 100. This figure does not represent a percentage value.

In cases of multiple functional limitation, the respective degrees of disability are not aggregated, rather the overall degree of disability is determined by the total impact of the various limitations and with regard to the interaction thereof.

Should the consideration of further health characteristics be necessary in terms of asserting a claim for compensation for a disadvantage, they are assessed simultaneously.

The degree of disability relates to health disorders irrespective of their cause; in addition, it is assessed independently of the occupation performed or the occupation the person would like to perform.

The assessment of a degree of disability is based on a medical evaluation conducted by physicians - experts in the field of social security; the medical report is crucial in terms of decision-making by the competent authorities. The disability assessment is carried out by internal or external experts within a specialised medical service established by the social security authority Versorgungsamt or other competent authority.

When assessing the degree of disability, experts employ medical reports and opinions as the primary source of information. If the medical documentation does not provide an adequate picture of the physical and mental condition of the applicant, medical examinations are conducted in individual cases in order to assess disability; external experts may also be consulted in this respect.

### **Decision on the assessment of disability**

Following the completion of the medical assessment and the review of other relevant conditions, the competent authority provides the applicant with a so-called "Decision on the assessment of disability, degree of disability and health characteristics for the purposes of making a claim for disadvantage compensation" (or "the decision on the assessment" - Feststellungsbescheid).

If several limitations have been determined, the decision of the authority contains the overall degree of disability. Furthermore, the assessment may include the health characteristics necessary for the application of disadvantage compensating measures.

If the degree of disability is assessed at below degree 20, the authority will issue a disapproval decision.

The degree of disability is granted for an unlimited period of time. However, a time limitation may be imposed, if concrete indications suggest a possible improvement in health or recovery. Even if a time limit has not been determined, the authority may, on its own initiative, reassess at any time whether disability conditions still persist.

### 3. Employment support for persons with disabilities

#### Vocational rehabilitation

A sophisticated rehabilitation system focuses on persons with disabilities in general and persons at risk of disability. In Germany rehabilitation is seen as being of major importance; indeed the principle of 'rehabilitation rather than pension' is set out in legislation. Book IX of the Social Code contains provisions common to all rehabilitation providers, outlines common objectives, defines commonly used terms, establishes cooperation between the rehabilitation providers and sets out the coordination of benefits and administrative transparency from the viewpoint of all those concerned.

Individual competences, conditions governing the provision of benefits (including the definition of target groups) and the rehabilitation implementation process itself are, however, governed by special legal regulations relating to individual providers who also determine the necessity of rehabilitation.

The rehabilitation system provides so-called "benefits for participation" that include "benefits for participation in working life", i.e. vocational rehabilitation.

Vocational rehabilitation is provided by the Federal Employment Agency, by providers of statutory pension insurance, of statutory accident insurance, of compensation and assistance for war victims as well as by providers of social assistance and public youth welfare.

In order to improve overall cooperation and coordination, the rehabilitation providers are obliged to adopt common recommendations on a range of legally prescribed themes in connection with which they operate so-called Common Service Centres (Gemeinsame Servicestellen für Rehabilitation) which offer consultation services relating to benefits and entitlements on behalf of all the various providers and accept applications for rehabilitation.

As part of vocational rehabilitation process, a relatively wide range of benefits for participation in working life has been designed for persons with disabilities and those at risk of disability. The set of measures include assistance in retaining or obtaining employment, vocational preparation including the necessary basic education, vocational training, subsidies for the establishment of self-employed businesses, medical, psychological and pedagogical assistance, the payment of the costs of accommodation and meals and other costs related to the implementation of a certain rehabilitation measure, support for employers in the form of subsidies for in-company vocational training, integration and work aids and the reimbursement of the costs of time-limited trial employment. The assistance in retaining or obtaining employment includes e.g. a mobility allowance, an allowance for a motor vehicle, the reimbursement of the costs of vocational assistance and aids necessary for job performance and the reimbursement of reasonable costs incurred in the acquisition, furnishing and maintenance of a flat. So-called workshops for persons with disabilities make up a specific form of vocational rehabilitation facility used for integrating those persons who, due to the nature or severity of their disability cannot find employment in the open labour market, into working life.

In addition, other tools exist for the promotion of the employment of persons with disabilities including e.g. supported employment, an integration allowance paid by the Federal Employment Agency to employers as part of a programme for the

integration of difficult-to-employ persons, certain tax advantages concerning defined groups of disabled persons, etc.

### **Employment support for persons with severe disabilities**

Moreover, a special set of measures and benefits has been designed for persons with severe disabilities and, subject to certain exceptions, for persons placed in the equalised position.

Such measures and benefits consist of e.g. a set of duties on the side of the employer towards this group of people including, primarily, the obligation to employ persons with severe disabilities. Employers from both the private and public sectors who have at least 20 job positions are obliged to hire persons with severe disabilities to a level of at least 5% of the workforce. Should employers fail to meet this duty, they are required to pay a so-called 'compensatory levy' for each job position not filled by such persons according to the quota. Funds collected via the compensatory levy are used to support the participation of persons with severe disabilities in working life.

Persons with severe disabilities enjoy official representation in the workplace with whom (and with company councils) employers are obliged to conclude so-called 'integration agreements' in order to ensure equal opportunities at work. Special protection against dismissal is provided to persons with severe disabilities; in addition, they are entitled to additional paid holiday, special working time arrangements, release from overtime work if they request it and workplace adjustment.

Integration authorities, which are responsible for the collection and use of the compensatory levy, provide, as part of the 'accompanying assistance in working life' approach, various services and financial support for severely disabled workers and their employers, subsidies for professional integration services and integration projects and assistance in establishing and maintaining self-employment. By means of direct funding or loans, they support the creation of new jobs and training positions for severely disabled persons.

The Federal Employment Agency supports the participation of persons with severe disabilities in working life, ensures individual career choice counselling, intermediates with concern to vocational training and job placement and provides counselling services for employers.

Furthermore, a number of specific conditions regarding home working are applicable to persons with severe disabilities.

# The Netherlands

## 1. Definition of disability

No single definition of disability or disabled person exists in the Netherlands.

In the Netherlands, the assessment of disability is based on earnings loss (the loss of earning capacity) due to illness/disability.

No analogy to a person with "lighter disability" exists in the Dutch case.

The Dutch government believes that a comprehensive definition is neither necessary nor desirable since health limitations are caused by circumstances and not by specific human characteristics.

The Act on the Equal Treatment of Disabled and Chronically Ill People imposes a duty on employers to provide efficient measures aimed at creating, wherever possible, equal conditions if it does not impose on them an unreasonable burden.

### 1.1 Current situation in the area of disability

The most important institution is the *UWV (Employee Insurance Agency)*. The UWV is an autonomous administrative authority which was commissioned by the Ministry of Social Affairs and Employment (SZW) to implement employee insurance and provide labour market and data services.

The UWV assesses claims for and ensures the payment of benefits. The agency concludes agreements on reintegration activities with private providers of reintegration services on behalf of their disabled and unemployed clients.

Employee insurance is provided for via the following legislation: the WW [Unemployment Insurance Act]; the WIA [Work and Income (Capacity for Work) Act], which contains the IVA [Full Invalidity Benefit Regulations] and the WGA [Return to Work (Partially Disabled Persons) Regulations]; the Wajong [Disablement Assistance Act for Handicapped Young Persons]; the WAO [Invalidity Insurance Act]; the WAZ [Self-employed Persons Disablement Benefits Act]; the Wazo [Work and Care Act] and the ZW [Sickness Benefits Act].

## 2. Assessment of disability in the field of employment

### 2.1 Sickness benefits

Work aimed at assisting ill and disabled persons, including that aimed at returning such persons to work as soon as possible, commences during the period of sickness. The most striking change in terms of sickness benefits in recent years has been a shift in responsibility from the state to the employer. The sickness benefits of employed workers are paid by the employer for up to two years; if it is considered that the employer is not making the required efforts to enable an employee's return to work, the payment period may be extended to three years.

The duties of a sick employee, his/her employer and the company doctor, as set out in the Gatekeeper Act, mandate a structured approach to early intervention in cases of sickness. During a two-year period of sickness, the employer and the employee are obliged to make every reasonable effort to improve the employee's chances for his/her return to work and must exploit all the opportunities available for the integration of the employee into the work process. As early as by the eighth week of sickness, the employer and the employee are required to draft a vocational rehabilitation plan.

## 2.2 Work and Income (Capacity for Work) Act (WIA)

If a person is deemed partially or fully incapacitated for work following two years of sickness (the waiting period), he/she may be entitled to benefits under the WIA.

The new WIA programme employs a work-oriented approach through an emphasis on the use of residual capacity rather than the compensation of incapacity. It is designed in such a way that it is always financially worthwhile to continue working (full- or part-time).

The WIA offers two types of benefits:

**Fully Disabled Persons Income Scheme - IVA:** Governs income protection for individuals registered as wholly and permanently incapacitated if their capacity loss is 80% or more, and there is no foreseeable potential for any degree of recovery.

**Return to Work (Partially Disabled Persons) Scheme – WGA:** Capacity loss is deemed as being between 35% and 80%, or 80% or more but with prospects for recovery; the claimant is entitled to the so-called WGA (partial or temporary full disability) benefit.

### 2.2.1 Assessment

In the Netherlands, the assessment of disability is based on the earnings loss due to disability.

In order to be eligible to the WIA benefit, a worker's earning capacity due to illness or handicap must be less than 35 % of the earnings of a comparable healthy person in a regular job<sup>4</sup>. According to this definition it is the loss of earning capacity that forms the decisive factor rather than the health problem itself.

Residual earning capacity determines which of the two above-mentioned programmes (IVA, WGA) an applicant is eligible to.

Disability assessment is conducted by specialist social insurance physicians (SIPs) and vocational/labour experts employed by the UWV.

The output of the SIP assessment consists of the *report on functional capacity (FML)* which contains 56 items in a total of six categories. The SIP selects the relevant categories and ticks the relevant items according to the classifications capable,

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<sup>4</sup> A job is considered regular if it pays at least the statutory minimum wage.

partially capable, or incapable. On the basis of this report the labour expert identifies, through the use of special computer software (a program in which some 7500 jobs nationwide are listed along with their physical and mental requirements and earnings), those job positions that the claimant might theoretically suit<sup>5</sup>. The average earnings of the selected jobs are then calculated and compared to the claimant's previous earnings thus revealing the percentage loss of earning capacity that subsequently forms the basis for claiming the WIA benefit, if loss is over 35 %.

The outcome of this two-step process consists of the degree of disability, which is dependant both on functional limitations caused by the health condition and earnings.

A further important aspect in this respect is that of the permanency of the disability.

### ***WIA distinguishes between four specific situations***

- *Loss of wage of less than 35% - persons who are not eligible for WIA benefits:* In the case of a wage loss of less than 35%, the client is not disabled according to WIA criteria and, in principle, remains employed by his/her employer.
- *Loss of wage of between 35% and 80% (partial or temporary incapacity):* The client receives benefits under the Return to Work Scheme - WGA. This benefit will be increased by the amount of any income earned by the client. The WGA (partial or temporary disability) benefit is divided into two, chronologically linked, parts in the first of which the client receives a wage-related benefit and in the next phase a wage supplement or follow-up benefit.
- *Loss of wage of at least 80% with reasonable prospects for recovery:* If the client's capacity loss is 80% or more but with prospects for recovery, the client is considered fully, but not long-term incapacitated. He/she receives a benefit under the WGA programme (Return to work) as part of the WIA system and is reassessed at a later date.
- *Loss of wage of at least 80% with very little or no chance of recovery:* In the case of full and long-term incapacity, the client is entitled to the occupational disability benefit as part of the IVA system. He/she is considered fully and permanently occupationally incapacitated if he/she is unable to earn more than 20% of his/her previous salary and has no chance of recovery. Such cases relate to a loss of earnings in the amount of 80% or more. The benefit paid under the IVA scheme amounts to 75% of his/her most recent salary.

## **2.3 Invalidity Insurance (Young Disabled Persons) Act - Wajong**

The Wajong scheme addresses those who have been severely handicapped from youth (an analogy to Czech disability from youth).

Income support under Wajong is provided as a supplement to the salary that the young handicapped person earns and the calculation is based on the amount of salary earned; total income, including the supplement, amounts to at least 75% of the minimum wage (social minimum level).

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<sup>5</sup> Whether any vacancies exist in these job positions is irrelevant.

### 3. Employment support for persons with disabilities

Such support distinguishes between the sickness period (two years) and the period of disability if there is no recovery during the two-year sickness period. Reintegration measures have been put in place with regard to both employees and employers.

#### 3.1 Reintegration during the sickness period

Both the employee and the employer are responsible for reintegration during the two-year sickness period which is governed principally by the Gatekeeper Act and includes an obligation for the drawing up of a vocational rehabilitation plan.

#### 3.2 Reintegration during disability

In case of partial disability, recipients of long-term disability benefits have a legal obligation to cooperate with concern to reintegration activities the administration of which is the responsibility of the UWV.

There are roughly two types of reintegration instruments: reintegration trajectories and reintegration facilities.

Reintegration trajectories are intended to help people receiving disability benefits to return to work and include for example (re)training and education.

Reintegration facilities are provided for (partly) disabled people who are either employed or are within the reintegration process aimed at returning them to the labour market. These may include transportation to work, special facilities for the blind, job coaches, wage dispensation, etc. In addition, specific rehabilitation and educational institutions are provided for disabled people.

##### *Trajectories*

The aim is to tailor reintegration activities to the needs and requirements of individual disabled persons and to allow such persons to design their own Individual Reintegration Plans.

##### *Reintegration facilities for employees and self-employed persons:*

- Job provisions can be provided to those who find work either as an employee or on a self-employed basis, those who commence a course of study or those who are working on a trial basis. The facility must be both essential and make it possible for the client to work or study.
- Wage supplement: A person on disability benefit who is reintegrated as an employee or as a self-employed person and receives a wage lower than his remaining work capacity (defined by UWV) is entitled to receive a supplement to his/her wage (or income).
- 'Starters-credit' is available for those on WGA, WAO, WAZ, Wajong or sickness benefits who commence work on a self-employed basis.

***Reintegration facilities for employers:***

- No risk policy
- Rebate of contributions for disability and unemployment
- Wage dispensation for young disabled people who, due to their sickness or disability, are incapable of performing labour which justifies the payment of the minimum wage
- Eligibility for subsidies in case of non-transportable facilities

### **3.3 Sheltered employment**

The aim of the Sheltered Employment Act (Wet sociale werkvoorziening - WSW) is to create suitable work opportunities for people with a severe physical, intellectual and/or mental disability who want to work but who are incapable of working under normal conditions without the provision of a subsidy.

## Norway

### 1. Definition of disability

For the purposes of employment, a disabled person is considered a person with a disability (hereinafter PWD).

Disability is usually defined as having reduced capacity to earn a living due to illness, injury or impairment, and this definition is used within disability benefit systems (disability pension and work assessment allowance) that are legally enshrined in the National Insurance Act of 1997, Chapters 11 and 12. Legislation defines a state of health (illness, injury or impairment) which is characterised as displaying a permanent reduction in the functioning of the organism of such a type and degree that it forms the primary cause for a loss of earning capacity. Incapacity for work is then compared with the earning capacity of a given person in general rather than in relation to a specific occupation.

Disability is defined generally in the same way within the sickness benefit system as it is in the National Insurance Act, Chapter 8. The difference is, however, that the degree of capacity for work is related to one's particular job or profession rather than to any job available in the labour market.

No analogy to the category of a person with "lighter disability" exists in Norway.

### 2. Assessment of disability in the field of employment

#### Assessment of capacity to work during a period of receiving sickness benefits

When assessing short-term work incapacity, percentage reductions in work potential of from 20% to 70% are distinguished, according to which, in turn, sickness benefits are graded.

Since the adoption of the new Social Security Act (2004), it has been necessary for a general practitioner to assess functional capacity should a worker be on sickness leave for more than eight weeks, following which a range of individual so-called activation measures are proposed aimed at improving the employee's state of health for his/her gradual return to work. In this context, graded sickness benefits (commencing at 20% of the full amount) play an important role, i.e. they aim at ensuring that remaining work potential is exploited to the greatest extent possible. The cooperation of all the stakeholders is essential in this process. The employer is obliged to agree with the employee on a potential change to his/her occupational duties and send a draft proposal in this respect to the insurance provider.

The functional capacity assessment aims to find a joint solution which satisfies both the employer and the employee following a decrease in capacity to work due to health in cases where an alteration to working conditions is required or other solution possible.

The Norwegian scheme for the assessment of functional abilities (the Assessment of Function) employs basic World Health Organisation ICF (International classification of functioning, disability and health) methodology in order to ensure the subjective assessment of work potential. The major categories set out by the

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methodology consist of: Walk/stand, hold/pick up, lift/carry, sit, master, cooperation and communication, perception and general work ability.

### **Assessment of long-term incapacity to work**

The long-term incapacity to work assessment process usually commences following the end of the sickness benefit period (one year) and continues for one to two years during the medical or vocational rehabilitation period. The general practitioner prepares a 'Medical report on incapacity to work' and the final decision is issued by the social insurance provider.

In 2010, a new benefit, the Work Assessment Allowance (*Arbeidsavklaringspenger*), was introduced. It consists of a time-limited disability benefit the aim of which is to involve the PWD in the work process. This benefit forms an alternative to the disability pension for persons for whom an improvement in their working capacity is expected. Under this benefit, those persons whose working capacity is reduced by at least 50%, while retaining their residual working potential or ability to carry out their existing job, are offered a range of medical and vocational rehabilitation measures. The benefit is paid at a minimum rate of twice the basic amount or at a rate of 66% of income from work, up to six times the basic amount of the previous year. Nevertheless, the benefit calculation may be based on average income over the past three years should the result be more favourable. Supplementary allowances are provided to cover costs related to vocational rehabilitation.

The Work Assessment Allowance (WAA) is designed to compensate an insured person's loss of income during re-adaptation once he/she is no longer eligible to sickness benefits. The allowance is provided in the event that the insured person actively participates in treatment or work reintegration or has tried such measures, if he/she is still considered capable of returning to work or if he/she is under the supervision of the NAV (Norwegian Labour and Welfare Administration). This allowance is also granted, for example, in the period while waiting for the commencement of the respective treatment/rehabilitation measures or following the implementation of treatment/rehabilitation measures up to the time that suitable employment is found.

If the respective authority decides on the necessity for retraining for a new occupation, the worker is obliged to accept the decision. However, this decision must be based on a thorough analysis of a person's individual potential in this respect, including completed education, age and work experience.

Beneficiaries of the WAA must work 37.5 hours a week, commence the necessary treatment, participate in an individual action plan and follow the rehabilitation and medical treatment plan. The rehabilitation plan is based on a person's requirements in accordance with the medical certificate issued by a general practitioner, an interview with the client and, in most cases, an assessment of work potential. Recent discussions have focused on whether the assessment of work potential should replace the medical certificate. In the end, it was considered that both alternatives, providing two key sources of information, should be considered. Should the client not participate in the rehabilitation plan, the WAA may be withdrawn.

The WAA is paid for up to four years (or longer if deemed necessary). If work potential does not improve as a result of the implementation of medical rehabilitation measures, i.e. capacity to work remains lower than 50% and the condition appears to be permanent, a disability pension may be granted.

Applications for a disability pension or Work Assessment Allowance must be filed at the local office of the NAV which first categorises individual cases and subsequently submits them to the relevant experts for evaluation.

The document on work ability assessment forms the basis for an interview with an NAV official. In addition to an expert analysis of a range of work-related aspects, this document also contains a personal evaluation of the applicant - this is a new instrument (Egenvurdering - an analogy of the Danish Resorceprofilen) which was introduced as part of a raft of structural reforms introduced in 2008-2009. The personal evaluation process is in line with a strong general emphasis on the necessity to involve the client in the decision-making process. Prior to the granting of a disability pension, it is required that the full potential for medical treatment and rehabilitation be exploited while taking into consideration age, state of health, completed education, work experience and future employment opportunities. The final decision on the granting of a disability pension or on the necessity to participate in rehabilitation is made by the responsible national insurance bodies.

Beneficiaries of the disability pension or WAA are assigned an NAV employee who monitors the way in which the relevant rehabilitation measures are implemented and proposes potential changes should they be required following agreement with the client. Persons receiving the WAA are obliged to contact the NAV employee on a regular basis (every two weeks).

### **3. Employment support for persons with disabilities**

#### **Vocational rehabilitation system**

In Norway the degree of involvement of PWDs in the rehabilitation system, especially vocational rehabilitation, is high.

The term vocationally disabled person is applied to a job seeker whose employment opportunities are worsened as a result of a physical, mental or social handicap.

The overriding priority in terms of this group of persons is their integration into the open labour market via occupational training/placement in companies in both the public and private sectors. If the employment office considers vocational rehabilitation to be suitable and necessary, an 'individual action plan' is drawn up which specifies job opportunities and related requirements and the specific form of assistance to be provided by the office; job seekers are encouraged to play an active role in this process. Those participating in the rehabilitation process are entitled to take advantage of a range of services offered by the employment office including information and consulting services, job placement programmes, programmes related to more easily handling everyday situations, access to education and entry to sheltered workplaces. Such programmes are usually time limited, lasting a maximum of three years. The total time spent in the vocational rehabilitation process might, however, be longer once the 'programme chain' is factored in.

The most important programmes provided for registered job seekers with disabilities are as follows:

- *Determination or assessment of capacity to work.* The programme is usually held at sheltered workplaces (8-12 weeks).

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- *Work experience.* The programme offers individually focused training courses in an adapted working environment and is aimed at facilitating the finding of employment or integration into the educational process. It is hosted by ordinary companies or sheltered facilities.
  - *Vocational training.* The purpose of the programme is to increase a PWD's chances when competing for a job position and to prevent him/her leaving the vocational environment. The programme offers a range of schemes from courses concerned with joining the labour market to specialised training courses and participation in secondary and tertiary level education.
  - *Supported employment* (arbeid med bistand - AMB) works within the open labour market. The programme usually lasts for three years but may be extended by an additional six months if the participant is transferred from an educational or institutional facility. The programme includes assistance provided by a job coach, career counselling, specialised placement within companies, educational and training courses and job search assistance. Employers receive wage subsidies in order to pay for job coaching services as well as help for the financing of other operational costs. A number of evaluations of the programme have been conducted and the results revealed that around 50% of participants eventually returned to the benefits system. A recent international comparison revealed that Norway spends more money on the support of this programme than other European countries do on similar programmes.

### **Duties of and support for employers**

Norway has not introduced the obligation on the part of employers to employ persons with disabilities. A tripartite agreement on the obligation of employers to employ people with disabilities exists at the national level; compliance is voluntary. Its introduction was accompanied by a wide-ranging disability awareness campaign and funding provided by the state.

The Norwegian system does not feature permanent wage subsidy programmes; rather they are introduced periodically. Wage contributions are provided for up to 18 months and the amount paid out may exceed 60%.

Employers are eligible to receive subsidies for the funding of technical assistance or workplace accommodation for persons with disabilities; they are required to file an application for such support.

### **Allowances for persons with disabilities**

#### *Allowance for the improvement of functioning at work*

The allowance is granted to persons with permanently reduced working capacity who have limited potential to either secure a suitable occupation or to retain an existing job position.

#### *Supplementary allowances*

Such allowances are intended to cover increased costs related to rehabilitation and are aimed primarily at persons in receipt of the Work Assessment Allowance.

## Poland

### 1. Definition of disability

According to the Act on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities (*Ustawa o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych*), disability is defined as a permanent or temporary incapacity to fulfil various social roles as the consequence of a permanent or long-term health disturbance resulting particularly in incapacity to work.

A person with disability, according to the above-mentioned legislation, is considered someone whose physical or intellectual condition temporarily limits, worsens or precludes his/her fulfilment of various social roles, especially capacity to work. A multi-degree system concerning the status of persons with disability has been introduced in Poland (based on the Act on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities) which recognises three degrees of disability - severe, moderate and mild. Disabled persons are required to obtain a decision from the relevant authority on the degree of disability, total or partial incapacity to work or disability prior to reaching the age of 16.

No analogy to the category of a person with "lighter disability" exists in Poland.

### 2. Assessment of disability in the field of employment

Poland has two disability assessment systems which differ in terms of the purpose for which assessment is conducted. The first consists of a system for the assessment of disability and the second for the assessment of incapacity to work. The first system concerns the employment of disabled persons and was introduced, inter alia, for the purposes of the employment of disabled persons (Act of 27 August 1997 on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities; Resolution of the Minister of Labour and Social Affairs of 15 July 2003 in the matter of assessing disability and degrees of disability).

The second system is employed for determining eligibility for social security benefits or other benefits that are paid out by the Social Insurance Institution (*Zakład Ubezpieczeń Społecznych - ZUS*).

The legal framework concerning assessment for the purposes of the employment of persons with disabilities is set out in the Act on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities and the Resolution of the Minister of Labour and Social Affairs in the matter of assessing disability and degrees of disability.

Polish disability assessment authorities consist of district assessment committees (authorities of the first instance) and voivodeship assessment committees (authorities of the second instance).

Both of the above-mentioned committees comprise a chairman, a secretary, a physician, a psychologist, a pedagogue, an employment advisor and a social worker. The chairman of the assessment committee is a physician, i.e. a specialist in the medical condition of the person being assessed.

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Persons over the age of 16 years are issued with disability certificates which indicate the degree of disability which is assessed and defined either for a defined period of time or on a permanent basis. The decisive factor in this respect is the assessment of the chances of an improvement in the assessed person's state of health.

In addition to the assessment of the degree of disability, the certificate issued by the district committee contains data regarding principally:

- Suitable employment taking into account the mental and physical condition of the assessed person,
- Specialised training,
- Potential employment in a 'Professional Activity Institute' (a facility the purpose of which is the employment of persons with a severe degree of disability and persons with a moderate degree of disability concerning whom autism, mental retardation or mental disease have been diagnosed),
- Participation in occupational therapy,
- Special equipment required, e.g. orthopaedic aids, auxiliary aids and technical devices which ease the everyday life of the assessed person,
- Potential use of the independent existence support system, i.e. the use of social services and professional care and therapeutic and rehabilitation services provided by social assistance institutions, non-governmental organisations and other institutions,
- The necessity for permanent or long-term care or assistance provided by another person related to the person's considerably limited ability to enjoy an independent existence.

The voivodship advisory committee conducts specialised examinations of the assessed person's physical and mental condition based on recommendations suggested by physicians and/or psychologists who are members of the said committee.

### **3. Employment support for persons with disabilities**

The Act on Vocational and Social Rehabilitation places a duty on employers in both the public and private sectors to satisfy a mandatory quota, i.e. employers with at least 25 full-time equivalent employees (working under employment contracts) are obliged to employ a certain number of disabled persons. Generally, the mandatory quota is 6%; in some cases a lower quota is defined.

All issues related to the employment of persons with disabilities are the responsibility of the State Fund for the Rehabilitation of Disabled Persons (PFRON) the resources of which are invested in the occupational and social rehabilitation as well as employment of persons with disabilities.

Any employer who employs persons with disabilities is entitled to receive a monthly subsidy from this fund for the payment of the wages of disabled employees provided the disabled employee is included in the register of employed persons with disabilities administered by the PFRON.

From January to December 2014 the maximum monthly wage subsidy available was as follows:

- 180% of the minimum wage – in case of severe degree of disability,
- 100% of the minimum wage – in case of moderate degree of disability,
- 40% of the minimum wage – in case of mild degree of disability.

These rates are increased by 40% of the minimum wage in the case of disabled persons diagnosed with a mental disorder, mental retardation, a pervasive development disorder, epilepsy or in case of blindness.

Further employer support measures include:

- Reimbursement of costs related to special workplace accommodation for disabled persons,
- Reimbursement of the costs of workplace equipment and tools for assisting disabled persons in their work,
- Reimbursement of costs associated with the training of a disabled employee,
- Reimbursement of the costs of the employment of an employee who assists a disabled employee,
- Exemption from or a reduction in contributions to the PFRON (employers whose employment proportion of disabled persons exceeds 6% of the total workforce are exempt from contributions to the PFRON).

Vocational rehabilitation measures have been put in place for persons with disabilities aimed at enabling them to attain and retain employment and professional development through career counselling, vocational training and employment intermediation.

Employed persons with disabilities enjoy a number of advantages as far as working conditions are concerned. The working time of persons with severe or moderate disabilities must not exceed 7 hours per day, i.e. 35 hours per week. This also applies to persons classified as fully incapable of working or incapable of living an independent existence. Persons with a mild degree of disability must not work in excess of eight hours per day, i.e. 40 hours per week. It is forbidden for persons with disabilities to work night shifts or overtime. Employees with severe or moderate degrees of disability are entitled to an extra 10 days of holiday per calendar year and are also entitled to 21 days of paid leave per year for holiday aimed at improving their state of health or for specialised examinations, medical intervention or therapeutic training should it not be possible to attend them outside working hours.

Subsidies may also be granted to disabled persons for e.g. vocational rehabilitation, further training, retraining, vocational training and sign language interpretation services. They are also entitled to receive various types of financial support through the vocational education and training system.

In addition, disabled persons are also entitled to receive various forms of financial assistance for starting or continuing their own business.

Under certain conditions, legal regulations guarantee that preference be accorded to persons with disabilities with regard to recruitment to the civil service if

such candidates are placed in top position. Regarding options available for the employment of persons with disabilities, home working (teleworking) has been supported in Poland for a number of years. Persons who are unable to find a job themselves in the open labour market and retain it without special support at work are offered supported employment.

Persons with disabilities may also be employed in social enterprises and social cooperatives. Moreover, persons with disabilities are included in that group of persons falling under the Social Employment Act which means the potential for employment in social integration centres and clubs as well as supported social employment.

Two main types of sheltered workplace are available in Poland: sheltered enterprises and occupational activity enterprises.

In recent years several important changes have been made to legislation regarding the situation of persons with disabilities in the labour market. An amendment to the Labour Code and to legislation promoting employment have strengthened the level of protection of this group against discrimination both in the workplace and in terms of access to vocational education and counselling, and enables disabled persons registered as job seekers to take advantage of certain labour market instruments and programmes that were previously accessible only to those persons with disabilities registered as unemployed. These changes were seen as important since the previous regulation restricted access to labour market programmes and instruments for those persons with disabilities who were entitled to a pension on the grounds of incapacity for work or to a social pension and who, consequently, were not allowed to register as unemployed.

## Slovakia

### 1. Definition of disability

In the Slovak legal code, the definition of the term '*person with disability*' for employment purposes, eligibility criteria for this status and subsequent measures in favour of such persons in the labour market are dealt with in two separate acts – Act No. 4/2004 on employment, as amended, and Act No. 461/2003 on social insurance, as amended.

A person with disability is defined as a person who has been recognised as being disabled according to the Social Insurance Act. This definition is also used in the Employment Act.

A person is considered disabled if, due to a long-term adverse health condition, his/her capacity to work is reduced by more than 40% in comparison with a fully healthy person. This condition must be expected to last in excess of one year (based on medical science predictions).

The status of a person with disability has one level only.

### 2. Assessment of disability in the field of employment

The disability assessment determines a person's reduction in earning capacity by means of comparing his/her physical, mental and sensory abilities as affected by the long-term adverse health condition with the abilities of a fully healthy person.

The degree of reduction in capacity to work is determined in percentage terms based on tables included in the Annex to the Social Insurance Act. The tables assign a percentage rate of reduction in capacity to work to each type of disability. Depending on the type of disability, they define the major cause of the long-term adverse health condition with regard to the seriousness of other disabilities (should they exist). Individual percentage rates of reduction in capacity to work are not aggregated.

*Disability is assessed by the assessment doctor of the respective branch of the Social Insurance Company* which depends on the applicant's permanent address and the medical assessment can be carried out only on the condition that the physician is qualified as an assessment doctor specialising in disability assessment medicine or has completed a specialised study programme in this field.

For the purposes of employment, the disability medical assessment also includes an assessment of a job applicant's capacity to work in cases where he/she refuses to accept an employment position since it does not allow for his/her state of health and, in addition, refuses to participate in the labour market active measures programme or other employment-enhancing activities.

### **3. Employment support for persons with disabilities**

#### **Duty of employers to employ persons with disabilities**

Every employer who employs more than 20 people is obliged to employ persons with disabilities at a rate of 3.2% of the total number of employees. If an employer employs a disabled person who has reduced earning capacity defined as in excess of 70% due to a long-term adverse health condition, this employee is calculated for such purposes as a total of three disabled persons.

Employers are entitled to resolve the obligation to employ persons with disabilities (so-called alternative fulfilment) by placing orders for goods or services produced via the employment of a person with disability or by a self-employed person with disability. Such orders might be for goods produced in sheltered workshops or workplaces or for services provided by such facilities.

To replace one person with disability, the value of the order placed for goods or services must be 0.8 times the calculated average wage for a defined period of time.

If an employer does not meet the obligation to employ the required number of persons with disabilities, he/she is obliged to credit the account of the Central Office of Labour, Social Affairs and the Family, for each person with disability who should be employed according to the quota system, with an amount equal to 0.9 times the total cost of his/her labour calculated on the basis of the average wage of an employee in the Slovak national economy for a defined period of time.

Employers who employ a person with disability or a self-employed person with disability are entitled to a reduction in the payment of levies to insurance funds; the basic rate of health insurance is reduced by 50% in all the above cases.

#### **Counselling and Information Centres**

One of the most efficient measures promoting the employment of persons with disabilities consists of Counselling and Information Centres, a section of the Office of Labour, Social Affairs and the Family, which provide professional counselling support for persons with disabilities who are looking for work and need information on job opportunities and requirements regarding their residual potential based on detailed analysis. The Centres provide clients with recommendations on suitable types of employment which they are able to undertake without causing deterioration in their state of health.

Employers are provided with Counselling and Information Centre services upon the creation of job positions for or hiring of persons with disabilities.

At present there are six such Counselling and Information Centres for persons with disabilities in Slovakia.

#### **Centre for Social and Vocational Rehabilitation**

The Centre for Social and Vocational Rehabilitation, which commenced operation in 2003, makes up a separate unit of the Institute for Vocational Rehabilitation for persons with reduced capacity to work in Bratislava and offers persons with disabilities opportunities for vocational and social rehabilitation. The Institute was established by the Slovak Ministry of Labour, Social Affairs and the Family.

The aim of the Centre is to provide professional assistance to disabled persons of working age via comprehensive vocational and social rehabilitation which aims to reintegrate them into work and thus into the labour market as soon as possible.

The Centre's clients consist of working-age disabled persons who wish to and are able to work and are looking for a job and employers who wish to and are able to employ persons with disabilities in an appropriately adapted place of work in order to achieve a level of performance corresponding to the worker's particular abilities. Clients use the Centres services voluntarily and generally consist of persons with disabilities who are registered at Offices of Labour, Social Affairs and the Family.

The Centre's services and work procedures are primarily based on the needs of its clients, i.e. persons with disabilities, and focus predominantly on the following professional activities:

- Comprehensive team vocational and social rehabilitation, team assessment of the client in terms of capacity to work,
- Information and counselling services for persons with disabilities, labour market guidance, including compensation for reduced work performance and the mapping of the work potential and employability of clients with regard to physical, social and mental capacity,
- Work performance guidance,
- Counselling services for employers who employ or plan to employ persons with disabilities and for facilities concerned with the employment of persons with disabilities including guidance on workplace accommodation and the mapping of various types of work aids intended to compensate for disability,
- Advice on effective workplace adaptation and other technical support (e.g. the selection of compensatory aids),
- Professional counselling and vocational guidance for clients with regard to promoting job seeking and employment,
- Socio-psychological and medical support,
- Assessment and testing of personal abilities, skills and intellect,
- Training and assessment of vocational and social skills, abilities, workload and motor skills regarding the performance of practical tasks, intermediation by means of specialised support services for skills development,
- Utilisation and balance of residual work potential, support and counselling during initial training, trial placement,
- Assistance should employment be endangered,
- Cooperation with relevant organisations and institutions, particularly with Counselling and Information Centres (part of the employment office system) and Supported Employment Agencies.

### **Rehabilitation Centre for the Visually Impaired**

A further facility tasked with providing disabled persons with labour market education and vocational training aimed at their eventual employment in the labour market consists of the *Rehabilitation Centre for the Visually Impaired* based in Levoča which was established and is fully financed by the Ministry of Labour, Social Affairs

and the Family. In addition to basic social rehabilitation, the Centre offers persons with visual handicaps career counselling and labour market educational and training courses as well as individual training courses.

### **Measures implemented by the state for the employment of persons with disabilities**

Measures implemented by the state aimed at the employment of persons with disabilities involving the financial support of certain types of activities consist of the following benefits and allowances:

- Benefits provided during periods of labour market education and training and vocational training aimed at the employment of persons with disabilities,
- Allowance for the furnishing of and equipment required by sheltered workshops or sheltered workplaces,
- Allowance for persons with a disability who wish to be self-employed,
- Allowance for job coaching,
- Allowance for the payment of the operational costs of sheltered workshops or sheltered workplaces and for the payment of employee travel costs.

### **Integrated System of Typal Positions**

A further important tool aimed at facilitating job seeking consists of the Integrated System of Typal Positions (ISTP), an open-access, free internet application that provides information on the current situation in the labour market. The system assists job seekers in gathering information on the labour market situation and in finding employment, including for those with health limitations.

The guarantor of the ISTP is the Slovak Ministry of Labour, Social Affairs and the Family, the coordinator consists of the Central Office of Labour, Social Affairs and the Family, and Trexima Bratislava is responsible for project solving.

The basic instrument employed by the ISTP consists of the Typal Position File (TPF) – an extensive database of job positions in Slovakia that also provides detailed information on each position. A further element of the system consists of the so-called Individual Potential Analysis (IPA) that enables the detailed diagnostics of job candidates and job seekers the output of which is a candidate profile that features three separate components - qualifications, personality and health status.

### **Supported Employment Agencies**

Supported Employment Agencies constitute non-governmental institutions that, in compliance with the Employment Act, offer services to persons with disabilities, long-term unemployed persons and employers. Their services are aimed at facilitating the obtaining and retention of an employment position and identifying suitable potential employees from the disabled persons and long-term unemployed persons categories.

## Sweden

### 1. Definition of disability

The Act on the prohibition of discrimination in the working life of people with disability (1999:132) defines disability as the permanent physical, mental or intellectual limitation of a person's functional capacity as a consequence of injury or illness which existed at birth or which developed during a person's lifetime.

For employment purposes, a disabled or, more precisely, an ill person is considered a person with disability (hereinafter PWD).

No analogy to the category of a person with "lighter disability" exists in Sweden.

### 2. Assessment of disability in the field of employment

#### Assessment of capacity to work during a period of receiving sickness benefits

The capacity to work assessment process commences at the time at which sickness benefits are being paid. In 2008 Sweden introduced a model for assessing reduced capacity to work termed the 'Rehabilitation Chain' as a means of preventing the long-term receiving of benefits. In the first 90 days of illness insured employees are entitled to benefits if they are incapable of performing their work. Following a lapse of 90 days they are eligible to benefits only if they are incapable of performing any work for their employer. If they are not fit to return to their current job, they are required to look for new employment. After 180 days of receiving benefits, insured persons must demonstrate that they are incapable of working in any job within their qualification range or requiring a lower qualification level in the labour market. This is not applicable if the Swedish Social Insurance Agency is of the opinion that the insured person will be able to return to work before the 366th day of receiving sickness benefits. Employers, who are in contact with the Swedish Social Insurance Agency and consult with the Agency on the potential modification of working conditions to suit an ill employee, play an indispensable role within this model.

This model encourages employees with reduced capacity to work to return to their existing employment position or to find another suitable job.

For a diagram of the model please go to:

<http://www.government.se/content/1/c6/18/34/88/3993c30f.pdf>

#### Assessment of long-term incapacity to work

In 2003 Sweden reformed the assessment procedure regarding long-term reduced capacity to work with the introduction of new benefits that compensate for reduced working capability and take into account a claimant's age. Disability benefits for young adults and sickness compensation replaced disability pensions and form part of the sickness insurance system.

Four degrees have been defined to describe reduction in capacity to work/ earnings capacity: 25%, 50%, 75% and 100%.

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For persons aged 19–29 years whose capacity to work is reduced for at least 1 year, benefits are temporary - consisting of so-called 'activity compensation' (aktivitetsersättning). Persons aged 30–64 years whose capacity to work is reduced permanently receive benefits termed 'sickness compensation' (sjukersättning). This benefit can be granted for an indefinite period of time and after the age of 65 years is transferred to the old-age pension.

The purpose of introducing the special benefit for young people was to provide this age group with special support via a range of rehabilitation activities which aim to improve their functioning ability and to facilitate access to the labour market. The temporary character of the benefit is designed to prevent young people becoming trapped within the social security system. The benefit is granted for a maximum of three years following which the Swedish Social Insurance Agency conducts a new assessment of working capacity based on which the PWD is entitled to the granting of the same benefit for a further time period. The benefit is paid fully or partially depending on how many hours the disabled person is able to work. Rehabilitation measures are voluntary and affect neither eligibility criteria nor the amount of the benefit.

Both types of compensatory disability benefit are granted to persons whose working capability is reduced by at least 25% with a predicted duration of at least one year. The reduction in working capability must be the result of disease or other impairment of physical or mental performance capacity. The reduction in capacity to work is assessed in relation to the full range of employment positions in the labour market including work that is specially adapted for people with disabilities, e.g. employment positions involving the payment of wage subsidies.

### **New methods**

As part of the working capability assessment process, new instruments known as SASSAM and AM have been introduced.

SASSAM consists of structured methodology based on knowledge from the fields of medicine, behavioural sciences, psychology and sociology and aimed at supporting dialogue with the affected individual. The purpose for which it has been designed is to both professionalise and improve the quality of rehabilitation work. The principal goal is to determine the resources required and opportunities for overcoming the various barriers encountered by means of well-planned rehabilitation. It is intended that this method will reinforce the affected person's awareness of the medical facts and provide a description of the illness and its implications with regard to potential employment based on a pre-structured 'SASSAM-map' which contains a range of study areas that are discussed on a stage-by-stage basis with the client. In addition to subjective information, the map takes into account relevant milieu factors and motivational qualifications. It is intended that this process will highlight certain aspects to be taken into consideration in the decision-making process concerning the future management of the case.

A further newly-introduced intervention method employed in the assessment of working capability consists of a legally-mandated client-centred interview known as AM which involves a formal meeting between an official, the insured person and the employer aimed at a return to employment whilst, at the same time, considering alternative work options and rehabilitation.

### **3. Employment support for persons with disabilities**

#### **System of rehabilitation measures**

The Swedish Social Insurance Agency is responsible for the implementation of coordinated rehabilitation measures. Other stakeholders in the field of rehabilitation consist of public employment services, employers, healthcare facilities and local government. Employers are entitled to establish an occupational health care service; however, this is not required by law. The conducting of rehabilitation at work has been obligatory since 2005 as specified by the Work Environment Act.

The Swedish Social Insurance Agency arranges and coordinates rehabilitation activities between the various stakeholders. Any person receiving the disability benefit is assigned a contact person from the Authority whose task is to draw up a 'Plan for a Return to Work' if such a plan is relevant for a given case. This plan includes selected activities aimed at improving vocational and functional skills. It is the responsibility of the Authority to coordinate the rehabilitation of persons receiving disability benefits and to cooperate with the various stakeholders involved such as employers, the employment office, healthcare facilities and local government.

The Swedish Social Insurance Agency is responsible for the assessment of the rehabilitation requirements of a given person and it must ensure that rehabilitation measures are implemented as soon as possible unless this is prevented for medical reasons. If, without any serious reason, the PWD decides not to participate in vocational rehabilitation, the disability benefit may be withdrawn for a fixed time or permanently.

#### **Principal measures aimed at promoting PWDs in the labour market**

##### ***Quota system***

There is no obligation on the part of employers to employ PWDs in Sweden.

##### ***Responsibilities of the Public Employment Service***

For persons whose work capacity is reduced by 75% the Swedish Public Employment Service is responsible for ensuring that their residual working potential is utilised and that they are able to join the labour market. Such persons should be placed in the open labour market within a period of six months with the help of wage subsidies where necessary. If this is not possible, employment should be offered via Samhall AB - an agency owned by the state and which operates in more than 250 localities.

##### ***SIUS***

Employment offices offer a special programme under the Swedish system of supported employment known as SIUS which provides individual services for PWDs in terms of job seeking, counselling, etc; assistance is provided by specially trained job coaches.

***Wage subsidy programmes***

Employers are entitled to receive wage subsidies if they employ a person with reduced working capacity who has been assigned to them by the Public Employment Service. In some cases, such support is possible even for PWDs who are already employed.

Wage subsidies can be provided for not more than four years (Employment Protection Act). The system is flexible and the amount of the subsidy is graded depending on the amount of the wage and the employee's capacity to work. The wage subsidy programme is open to employers in both the private and public sectors.

In the case of the so-called „New Start Jobs“ (nystartsjobb), employers receive subsidies when employing a disable person who has been unemployed for more than one year.

***Supplementary allowances other than wage subsidies***

Such allowances are available for employers under the 'Development Employment' and 'Safe Employment' programmes according to which employers provide trial employment for PWDs in order to develop and strengthen their capacity to work. The 'Development Employment' type usually lasts 12 months with the possibility of further extension. No time limit is defined under the 'Safe Employment' programme which is intended for persons whose requirements cannot be met in any other way.

***Working aids***

A PWD or his/her employer may apply to the Swedish Social Insurance Agency for an allowance for the purchase or rent of work aids to enable the PWD to return to or continue work despite his/her disability. Adaptation of the workplace or the repair of work aids may also be financed by the Swedish Social Insurance Agency.

***Assistance via a co-worker***

An employer who employs a PWD is entitled to an allowance for the purpose of the appointment of an existing worker as a job coach responsible for helping the disabled worker to cope with his/her work tasks.

## United Kingdom

### 1. Definition of disability

Disability is defined in the Equality Act of 2010.

A person is disabled according to the Equality Act of 2010 if he/she has a physical or mental impairment which has a 'substantial' and 'long-term' adverse affect on his/her ability to carry out normal day-to-day activities.

This general definition applies to all fields, i.e. including the field of employment.

No analogy of a person with "lighter disability" exists in the case of the UK.

### 2. Assessment of disability in the field of employment

In general, the assessment of disabled persons or, more precisely, of their capacity to work is conducted individually with respect to the client's particular situation and needs and with the significant involvement of the client him/herself in the assessment process. The primary aim is to assess the effects of a health condition or disability on the client's everyday life.

In terms of employment, work ability (Work Capability Assessment - WCA) is assessed as part of a claim for the *Employment and Support Allowance, ESA*. The ESA has been available since 2008 and is gradually replacing disability benefits (Incapacity Benefit, Severe Disablement Allowance).

The ESA assists those with an illness or disability to move into employment. It offers financial support and personalised assistance from a specially-trained adviser who helps the client to utilise a range of other services aimed at attaining a suitable job position.

A disabled person can apply for the ESA if he/she is employed, self-employed or unemployed.

Claimants must be under state pension age.

The submission of a claim for the ESA is followed by the assessment phase (13 weeks) and, in the case of entitlement, by the main phase.

As a result of the assessment the client is placed in either:

- a Work-Related Activity Group: the client will be expected to take part in regular work-focused interviews with his/her personal ESA adviser and, eventually, in work-related activities; he/she has access to many types of support that are aimed at helping him/her to prepare for and find a suitable job position; as a rule the ESA is paid for up to one year, or
- a Support Group: the claimant's health condition is so severe that it significantly limits his/her involvement in work; he/she is not expected to search for employment or to participate in the work-focused interviews (although they can volunteer to do so); the allowance is paid as long as he/she is in the Support Group.

## 2.1 Work Capability Assessment - WCA

The assessment phase of the WCA determines how the applicant's health condition or disability affects his/her capacity to work and plays an important role in the decision-making process regarding eligibility for the benefit and on the support required.

The Work Capacity Assessment (WCA) has two parts:

- a) *Limited Capability for Work*: As a rule, this part determines whether an applicant is eligible for the ESA and can be placed in a Work-Related Activity Group.
- b) *Limited Capability for Work-Related Activity*: This part determines whether an applicant should be placed in a Support Group because the impact of his/her condition is so severe it is unreasonable to expect him/her to take part in a work-related activity.

### Application of the assessment process

The assessment is usually completed within 13 weeks of the date on which a claim form is submitted for the Employment and Support Allowance.

During that time capacity to work is usually assessed (the assessment phase); this assists the decision maker in determining whether the claimant should remain entitled to the Employment and Support Allowance and, if so, the 'main phase' follows during which the rate to be received from the 14th week is determined, i.e. whether the claimant has limited capability to work and can be placed in a Work-Related Activity Group or he/she has limited capability for work-related activity and should be placed in a Support Group.

An independent Work Capability Assessment (WCA) - part of the ESA claim process - is conducted by an approved Health Care Professional (HCP) on behalf of the Department for Work and Pensions (DWP). The HCP prepares an assessment report that is submitted to the DWP decision-maker. On the basis of this report and other submitted information, the DWP decision-maker decides on an individual's entitlement to benefits.

Activities that are relevant either to the physical assessment or the mental, cognitive and intellectual function assessment are considered as part of the WCA. Each of these activities has a list of descriptors that cover a wide range of ability levels within the activity. Each descriptor has a corresponding points weighting called a 'score'.

If a claimant's score is 15 points or more then the criterion for limited capability for work is met for benefit entitlement purposes. At this stage the decision-maker will also consider whether a claimant should be placed in a Support Group. A further sixteen work-related activities with relevant descriptors are considered in the determination of whether a claimant who has limited capability for work also has limited capability for work-related activity. The approved healthcare professional provides advice on whether any of the descriptors are satisfied; if at least one is satisfied, the claimant is placed in a Support Group.

If the score is below 15 points the claimant is deemed as not having limited capability for work and is therefore not entitled to the Employment and Support

Allowance. He/she then receives advice concerning registering for employment and the claiming of other benefits.

Most of those who have been granted the ESA are expected to take steps to prepare themselves for work or for their return to work. The Work Capability Assessment is repeated at regular intervals during the lifetime of an award in order to ensure that conditions for entitlement are maintained.

### **3. Employment support for persons with disabilities**

Employers have no legal obligation to employ persons with disabilities. The most important obligation with regard to employers is the duty to consider making reasonable adjustments in the workplace in order to remove any disadvantages that disabled workers might encounter compared to their non-disabled colleagues (Equality Act 2010).

Employers are seen as playing a crucial role in improving the rate of employment of persons with disabilities.

Disability Employment Advisers (DEAs) at local Jobcentre Plus offices offer help and advice for both disabled clients and employers on the full range of specialist support available.

The DEA can offer an employment assessment aimed at identifying what type of work best suits the client. Subsequently, the DEA, together with the client, creates an action plan to help him/her find job/work. The action plan may include training or participation in one of employment programmes.

The employment assessment does not affect a disabled person's right to benefits.

#### **3.1 Programmes and types of support**

##### **Access to Work (AtW)**

AtW consists of a specialist disability service provided by Jobcentre Plus that provides practical advice and support for disabled people whether they are working, are self-employed or are looking for employment.

Access to Work is provided in cases in which support or workplace adaptation is required beyond those reasonable adjustments which an employer is legally obliged to provide under the Equality Act. AtW provides funds for special equipment, adaptation to equipment, costs of transport to work, communication support at interviews, a range of support workers (e.g. job coaches), support services if a client has a mental health condition and due to which he/she is absent from work or finds it difficult to work (Mental Health Support Service), disability awareness training for the colleagues of a disabled person and the costs of moving his/her equipment if the job location is changed.

No amount is set for an Access to Work grant; the level of the grant depends on whether a person is employed or self-employed, how long they have held their job position and the type of help required. In some cases an employer is required to share costs with AtW according to specified criteria.

### **Work Choice**

Work Choice is a specialised employment programme for disabled persons who need extra assistance in obtaining or retaining a job; it is a supported employment programme that is controlled and funded by the Department for Work and Pensions (DWP) and is delivered by contractual organisations (providers) from the public, private and tertiary sectors. The client's main point of contact for the programme is the Disability Employment Adviser (DEA) at Jobcentre Plus.

The type of help provided is individually tailored to a client's needs. The programme helps individuals to attain their full potential with the aim of affording a greater level of independence.

The programme offers three levels of assistance:

- 1) *Work Entry Support*: Individually tailored advice/counselling on work and personal skills aimed at helping the client find a job; this module lasts for up to 6 months.
- 2) *In-Work Support*: Flexible help for starting work and retaining a job that is relevant to the client's particular situation. The services provided are based on coaching, training, creating relationships in the workplace and the regular involvement of the employer. Providers are free to create packages of support depending on the client's needs; the period of supported employment lasts up to 2 years.
- 3) *Longer-Term In-Work Support*: Help for clients who need support for a longer period of time in order to continue in work and to move to unsupported employment.

### **Residential Training**

Residential Training is a programme aimed at unemployed disabled adults and is provided if there are no suitable training courses available locally. It helps clients obtain employment and provides them with experience in maintaining employment or becoming self-employed often in combination with intensive multidisciplinary support for attaining an independent life.

### **The government Health, Work and Wellbeing initiative**

Health, Work and Wellbeing is a government initiative that aims to improve the general health and wellbeing of the working-age population and to support those with health conditions in terms of remaining in, or entering, employment.

The government works with employers, trades unions and healthcare professionals in order to create healthier workplaces, improve occupational health services and rehabilitation support and to increase employment opportunities for people who are out of work due to ill health or disability.

## **3.2 Rights of disabled persons in the field of employment**

The rights of disabled persons result principally from the Equality Act 2010.

It is against the law for employers to discriminate against a worker because of disability, i.e. in cases where an employer treats a worker less favourably than someone else due to his/her disability. Discrimination does not have to be direct to be unlawful; discrimination is sometimes deemed to be indirect through the provision of unsuitable working conditions or rules that disadvantage disabled persons.

The Equality Act 2010 protects persons with disabilities and covers practically all phases of employment (application forms; interview arrangements; aptitude or proficiency tests; job offers; terms of employment, including pay; transfer and training opportunities; dismissal or redundancy; discipline and grievances).

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# Czech Republic

## 1. Definition of disability

Persons with disabilities who are provided with increased protection in the labour market are defined in provisions of Article 67 of Employment Act No. 435/2004, as subsequently amended.

Persons with disabilities are defined as natural persons who are recognised by the social security authority as being:

- a) disabled in the third degree (persons with severe disabilities), or
- b) disabled in the first or second degree, or
- c) lighter disabled.

Disability is not assessed directly for the purposes of the Employment Act and the employment of persons with disabilities; however, it forms the basis for the decision-making process concerning the disability pension in accordance with Pension Insurance Act No. 155/1995.

The status of a person with "lighter disability" is granted via a separate procedure based on a health assessment and criteria set out in Employment Act No. 435/2004.

A person is considered disabled if his/her work capacity is reduced by at least 35 % due to a long-term unfavourable health condition.

If an insured person's capacity to work has decreased:

- a) by at least 35 % but no more than 49 % he/she is accorded the status of disability of the first degree,
- b) by at least 50 % but no more than 69 % he/she is accorded the status of disability of the second degree,
- c) by at least 70 % disability of the third degree status is accorded.

A person with a lighter disability is considered a natural person who has retained capacity to carry out continuous employment or other gainful employment, but his/her capacity to be or remain integrated at work, carry out his/her current occupation or use an existing qualification or acquire extra qualifications are substantially limited due to his/her long-term unfavourable health condition.

The status of person with "lighter disability", abolished in the past, was reinstated on 1<sup>st</sup> January 2015. Reinstatement in the provisions of Article 67 of Employment Act No. 435/2004, as amended by Amendment No. 136/2014, was aimed at making the employment of this group of persons and their position in the labour market more attractive. The state supports their employment through subsidies for employers financed by the Employment Office of the Czech Republic (Úřad práce ČR).

The definition of a person with disability must be proven by a natural person by means of an expert opinion or certificate from the relevant social security authority in the case of disability and by a certificate or decision from this authority in the case of the recognition of the status of person with "lighter disability".

## **2. Assessment of disability in the field of employment**

### **2.1 Disability assessment**

Disability or a change in the degree of disability is assessed by assessment doctors engaged by the district social security administration authority. Reduction in work capacity means a decrease in the ability to perform gainful activity due to the limitation of physical, sensory and mental abilities in comparison with the condition of the insured person before the emergence of a long-term adverse health condition. It may be evident e.g. in the appearance of certain limitations at work, reduced capacity or incapacity to perform an existing job, incapacity to work to such an extent and intensity as before the emergence of the long-term adverse health condition or incapacity to use, as a result of that condition, acquired education, experience, knowledge and qualifications, including experience and knowledge gained from previous employment.

The rate of decrease in working capacity is determined as a percentage which is then used as the basis for determining degree of disability:

- A decrease of at least 35 % but no more than 49 % is considered disability of the first degree,
- A decrease of at least 50 % but no more than 69 % is considered disability of the second degree,
- A decrease of 70 % and more is considered disability of the third degree.

Capacity to work means the capacity of the insured person to perform gainful employment corresponding to his/her physical, sensory and mental abilities whilst taking into account completed education, experience and knowledge and previous gainful employment activities. A decrease in capacity to work is meant as a decrease in the capacity to perform gainful employment as a consequence of a limitation of physical, sensory and mental abilities in comparison with the condition of the insured person before the onset of the long-term unfavourable health condition.

The existence of a long-term unfavourable health condition forms the basic and essential premise for the assessment of the rate of decrease in work capacity and disablement.

The assessment of a decrease in the capacity to work is based on the health condition of the insured person proven by means of functional examinations whilst also taking into consideration:

- a) whether the disability has a permanent impact on the capacity to work,
- b) whether the health condition has stabilised,

- c) whether and how the insured person has adapted to his/her disability,
- d) whether the insured person is capable of undergoing retraining in order to be able to perform another type of gainful activity than that he/she performed previously,
- e) whether remaining work capacity can be utilised if the decrease in the capacity to work is at least 35 % but not more than 69 %,
- f) and whether in the case of a decrease in capacity to work of at least 70 % the insured person is able to work under entirely extraordinary conditions.

## **2.2 Assessment of persons with “lighter disability”**

The decision on recognition as a person with lighter disability is made by the district social security authority based on the opinion of an assessment doctor appointed by the said authority. The procedure can be launched upon the request of a natural person (granting of status) or by means of an official order (revocation of status). The status of person with a lighter disability cannot be granted to those who are in the disability pension approval process or who have already been recognised as disabled with a degree of disability.

The granting of the status of a person with a lighter disability is dependent on the long-term unfavourable health condition identified according to criteria specified in the Employment Act.

A long-term unfavourable health condition means such a condition that, based on the findings of medical science, persists longer than one year and substantially limits mental, physical or sensory abilities and, consequently, also the capacity to work. In addition to the specification of a long-term character, the unfavourable state of health is considered. Since there must be a substantial limitation of the above-mentioned abilities, minor functional disorders that do not substantially limit the functions specified are eliminated. Any functional disorder that substantially limits mental, physical or sensory abilities must also have a negative impact on employment. This means that although some abilities may be substantially limited due to the unfavourable health condition, if it does not have a negative impact on a particular person's capacity to work or utilisation or acquisition of qualifications, it does not constitute a long-term unfavourable health condition for the purposes of the granting of the status of a person with a lighter disability.

Upon the request of the district social security authority, an applicant for the status of a person with a lighter disability is obliged to undergo a medical examination to determine his/her health condition or other specialist examination or to provide information on completed education, experience and knowledge and previous gainful employment. If the applicant fails to meet this duty, the procedure can be suspended or terminated. The obligation to undergo a medical examination or other specialist examination also applies to those granted the status of a person with a lighter disability. If the applicant fails to meet this duty, the revocation of status procedure may be activated.

The status of a person with a lighter disability applies from the day on which the respective decision comes into force if the applicant waives his/her right to appeal. Status is valid from the day stated in the final opinion or decision. The period of validity is usually set at 3-5 years; however, it may be set for an indefinite period of time. This status is not renewed automatically; upon expiry, the disabled person must re-apply for such status.

### **3. Employment support for persons with disabilities**

#### **Duty of employers to employ persons with disabilities**

Act No. 435/2004 states that employers who employ more than 25 employees must employ 4% of persons with disabilities. Legislation also states that employers who employ fewer than 25 employees should hire one employee who has been granted the status of a person with a lighter disability or a person with a disability.

Employers may fulfil this obligation in other ways (so-called alternative fulfilment), namely by purchasing products or services from concerns which have a workforce containing more than 50% of disabled employees, by assigning work to such concerns, by purchasing products or services from sheltered workshops operated by a citizen's association, the state, a state-registered church or religious society or charitable trust, by assigning work to such entities or by purchasing products or services from persons with disabilities who are self-employed and have no employees.

If an employer who is obliged to employ a person with a disability fails to meet this obligation in the ways outlined above, he/she must pay 2.5 times the average wage in the national economy in the 1<sup>st</sup>-3<sup>rd</sup> quarters of the respective calendar year into the state budget.

#### **Cooperation between labour offices and employers**

Employers are entitled to request the following from regional branches of the Labour Office of the Czech Republic:

- information and counselling in matters related to the employment of persons with disabilities;
- cooperation in terms of the reservation of jobs particularly suitable for persons with disabilities;
- cooperation in creating suitable jobs for persons with disabilities;
- cooperation in adjusting workplaces and working conditions for persons with disabilities.
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#### **Measures promoting the employment of persons with disabilities**

Employers who employ or are planning to employ persons with disabilities may claim the following subsidies for:

- the creation of a sheltered job position for a person with a disability;
- the co-funding of the operating costs of a sheltered job position/sheltered job position for a self-employed person;
- the promotion of the employment of persons with disabilities (75% of the costs of the wage of a PWD);
- conducting vocational training for persons with disabilities; the Labour Office may reimburse the costs of the vocational training of such persons.

A person with a disability who does not receive sickness benefits, an old-age pension or salary compensation is entitled, based on a decision from a regional branch of the Employment Office, to the retraining benefit when undergoing vocational training

courses. Such persons are eligible for this benefit even if they are not registered as job seekers.

From 1st January 2015 the state has supported the employment of persons with lighter disability by providing subsidies to employers. Applications for such subsidies must be submitted to the relevant branch of the Employment Office. Those granted the status of a person with a lighter disability do not, following the granting of such a subsidy, automatically receive entitlement to financial allowances or benefits.

### **Vocational rehabilitation**

Vocational rehabilitation is a continuous process which is focused on finding and retaining suitable employment for persons with a disability.

This service is provided by regional branches of the Labour Office in cooperation with vocational rehabilitation centres based on a request by a person with a disability. The application for vocational rehabilitation must include documentation certifying that the applicant has the status of a person with a disability. Moreover, the Labour Office is entitled to delegate another legal or natural person (e.g. a supported employment agency) to provide vocational rehabilitation.

Vocational rehabilitation primarily includes counselling on the choice of occupation, employment or other gainful activities, theoretical and practical preparation for employment, intermediation, retention of or change to employment and the creation of convenient conditions for the performance of employment or other gainful activity. Regional branches of the Labour Office, in cooperation with persons with disability draw up individual vocational rehabilitation plans with respect to the person's state of health and ability to be employed or perform other gainful activity continuously with regard to the situation in the labour market.

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Information from correspondence with medical examiners: Piotr Winciunas and Ewa Nurzynska [piotr.winciunas@zus.pl](mailto:piotr.winciunas@zus.pl) [ewa.nurzynska@zus.pl](mailto:ewa.nurzynska@zus.pl)

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