OPEN ACCESS
ISSN 2280-4056

E-Journal of International and Comparative LABOUR STUDIES

Volume 14 No. 02/2025

ADAPT
www.adapt.it
UNIVERSITY PRESS

E-Journal of International and Comparative **LABOUR STUDIES**

ADAPT *International School of Higher Education in Labour and Industrial Relations*

Managing Editor

Valeria Filì *(University of Udine).*

Board of Directors

Alexis Bugada *(Aix-Marseille University)*, Valeria Filì *(University of Udine)*, Anthony Forsyth *(RMIT University)*, József Hajdu *(University of Szeged)*, Shinya Ouchi *(Kobe University)*, Daiva Petrylaite *(Vilnius University)*, Valeria Pulignano (*KU Leuven University)*, Michele Tiraboschi *(Founding Editor - University of Modena and Reggio Emilia)*, Anja Zbyszewska *(Carleton University).*

Editorial Board Coordinator

Emanuele Dagnino *(University of Milan).*

Editorial Board

Labour Law: Emanuele Dagnino *(University of Milan)*; Tammy Katsabian *(College of Management Academic Studies)*; Attila Kun *(Károli Gáspár University)*; Adrian Todolì *(University of Valencia)*; Caroline Vanuls *(Aix-Marseille University).* **Industrial Relations:** Valentina Franca *(University of Ljubljana)*; Giovanni Piglialarmi (*eCampus University*); Joanna Unterschutz *(University of Business Administration in Gdynia)*. **Labour Market Law:** Giorgio Impellizzieri (*University of Modena and Reggio Emilia);* Silvia Spattini *(ADAPT Senior Research Fellow)*. **Social Security Law:** Claudia Carchio *(University of Udine)*; Carmela Garofalo *(University of Bari)*; Ana Teresa Ribeiro *(Catholic University of Portugal – Porto)*; Alma Elena Rueda Rodriguez *(Mexico)*. **Anti-discrimination Law and Human Rights:** Caterina Mazzanti *(University of Udine);* Helga Hejny (Anglia Ruskin University); Erica Howard *(Middlesex University)*. **Labour Issues:** Josua Grabener *(University of Lille)*; Habtamu Adane *(Addis Ababa University)*; Francesco Seghezzi (*ADAPT Senior Research Fellow*).

Language Editor

Pietro Manzella *(University of Udine).*

Book Review Editors

Peter Norlander *(Loyola University Chicago).*

Scientific Committee of Reviewers

Maurizio Del Conte (Bocconi University); Lilli Casano (*University of Insubria*); Juan Raso Delgue *(University of the Republic)*; Richard Hyman (*LSE*); Maarten Keune *(University of Amsterdam)*; Felicity Lamm *(Auckland University of Technology)*; Nicole Maggi-Germain *(Pantheon-Sorbonne University)*; Merle Erikson *(University of Tartu)*; John Opute (*London South Bank University*); Michael Quinlan *(University of New South Wales)*; Jean Michel Servais *(Honorary President of ISLLSS and Former Director of International Labour Office)*; Paolo Tomassetti (*University of Milan*); Anil Verma *(University of Toronto),* Anna Zilli *(University of Udine).*

E-Journal of International and Comparative

LABOUR STUDIES

Volume 14 No. 02/2025

ADAPT
www.adapt.it
UNIVERSITY PRESS

@ 2025 ADAPT University Press

Online Publication of the ADAPT Series
Registration No. 1609, 11 November 2001, Court of Modena
www.adaptbulletin.eu

The articles and the documents published in the *E-Journal of International and Comparative LABOUR STUDIES* are not copyrighted. The only requirement to make use of them is to cite their source, which should contain the following wording: **@2025 ADAPT University Press.**

Ageing, Chronic Diseases, and Employment: Comparative Insights from Two Distinct Regulatory Models

Emanuele Dagnino [*]

Abstract. The paper aims to analyse the strategies and regulatory measures adopted in two different legal systems, the Italian and the French, to respond to the challenge of keeping a workforce increasingly affected by long-term or chronic pathological conditions at work. By analysing how different legal systems address the same social and economic problems, the comparative method, applied in its traditional functionalistic approach, allow to identify the different elements of the regulation, their connections and their functions in the context of the national legal systems, contributing to the overall understanding of the legal solutions adopted in each country. The comparison between a legal system that has adopted a systematic approach to the phenomenon and a legal system, such as the Italian one, which has put in place a few specific but disconnected measures, made it possible to better identify shortcomings and possible policy action to improve the regulation in the Italian context.

Keywords: ageing workforce; sustainable work; chronic diseases; return to work; inclusion.

---

[*] Tenure-track Researcher at the University of Milan (Italy). Email address: emanuele.dagnino@unimi.it. This paper was written while the author was affiliated with the University of Modena and Reggio Emilia. It forms part of the activities undertaken by the local research unit of the University of Modena and Reggio Emilia (CUP E93C21000350001) within the framework of the PRIN 2020 project *LIVEABLE – Labour as a Driver of Sustainable Development*. A draft of the study has been presented at the conference Vieillissement de la population active: enjeux de santé au travail, de retour ou de maintien au travail, et de politique de la retraite organised by the International Research Chair in Comparative Studies on Occupational Health, Comptrasec, University of Bordeaux, 19 and 20 September 2024.

@ 2025 ADAPT University Press - ISSN 2280-4056

1. Introduction: Ageing and Chronic Diseases in the World of Work

Ageing of the workforce, return to work, sustainable work, and chronic diseases: these are concepts that have long entered the policy debate at both national and supranational levels[1]. The challenges posed to national systems, and specifically to the world of work, by an ageing population increasingly affected by health conditions are of particular importance. These challenges concern, on the one hand, the resilience and sustainability of social security and welfare systems, and on the other, labour market dynamics and economic productivity.

While chronic diseases do not affect only older persons, their incidence in the overall population increases with advancing age cohorts. Within an ageing population and in the context of longer working lives, the proportion of persons with chronic diseases in the labour force is set to increase further, thereby exacerbating pressure on social security systems in terms of healthcare expenditure, sickness benefits, and pensions. At the same time, the imperative to retain older workers in employment not only transforms the dynamics of labour market inclusion but may also impact labour productivity at both micro and macro levels, depending on the capacity of companies and the broader economic system to manage individual workers' needs.

In this respect, as noted by early scholarly reflections on the subject[2], beyond – or rather in addition to – adequate social security benefits, labour regulation and industrial relations should play a pivotal role in ensuring the sustainability of work throughout the various stages of workers' health.

Although the demographic transformation briefly summarised is affecting many advanced economies[3] - with particularly pronounced peaks in certain countries (e.g. Italy and Japan)[4] – national legal systems are

[1] See, for example, EUROFOUND, *Sustainable Work and the Ageing Workforce*, Publications Office of the European Union, Luxembourg, 2012; OECD, *Sickness, disability and work: Breaking del barriers. A synthesis of findings across OECD Countries*, OECD Publishing, 2010, and, recently, EUROFOUND, *Keeping older workers in the labour force*, Publications Office of the European Union, Luxembourg, 2025.

[2] M. TIRABOSCHI, *The New Frontiers of Welfare Systems: The Employability, Employment and Protection of People with Chronic Diseases*, in E-Journal of International and Comparative Labour Studies, 2015, Vol. 4, No. 2, pp. 135-173.

[3] M. AKGÜÇ (eds.), *Continuing at work Long-term illness, return to work schemes and the role of industrial relations*, European Trade Union Institute (ETUI), 2021.

[4] See A. M. BATTISTI, *Italia e Giappone sul podio mondiale dell'invecchiamento*, in *Massimario di giurisprudenza del lavoro*, 2024, 1, pp. 2-17.

endeavouring to address the evolving needs of workers and labour markets by adopting different regulatory models. The legal solutions proposed vary considerably, both in terms of the intensity of protections afforded and in the capacity to adopt a systematic approach towards maintaining employment and promoting the return to work of individuals with long-term illnesses or chronic diseases.

In this context, as will be explained further below, the Italian legal system, while recognising the need for legislative intervention, is considered to devote only episodic attention to the issue; consequently, the system as a whole is unable to guarantee rights and measures that ensure sustainable employment for workers with chronic diseases[5].

Against this backdrop, this article aims to identify the shortcomings of the Italian legal framework through a comparative methodology. Avoiding any pretensions of importing ('transplanting') regulatory solutions from other legal systems[6], the comparative method is employed as a cognitive tool to deepen understanding of the features of the Italian legal system. By analysing how different legal systems address similar social and economic challenges, the comparative method – applied in its traditional functionalist approach[7] – allows for the identification of the distinct regulatory elements, their interconnections, and their functions within the national legal context, thereby contributing to a comprehensive understanding of the solutions adopted in each country.

To this end, the selection of the legal system to be compared with the Italian one is of paramount importance. Given the need to reconsider, from a comparative perspective, the shortcomings relating to the systematic approach to maintaining employment and facilitating return to work for ill workers identified in the national academic debate[8], the choice fell on a legal system that in recent years has sought to consolidate a systematic response to the issue.

[5] M. TIRABOSCHI, *Health and Work: The Italian Perspective on a Relationship in Need of a Review*, in E-Journal of International and Comparative Labour Studies, 2023, 2, pp. 27-46.

[6] O. KAHN-FREUND, *On uses and misuses of comparative law*, in *Modern Law Review*, 1974, 1, pp. 1-27.

[7] T. TREU, *Comparazione e circolazione dei modelli nel diritto del lavoro italiano*, in R. SACCO (eds.), *L'apporto della comparazione alla scienza giuridica*, Giuffré, 1980, pp. 130-131

[8] Recent analyses are provided by C. CARCHIO, *Rischi e tutele nel reinserimento lavorativo delle persone con malattie croniche e trapiantate: prime riflessioni alla luce del d.lgs. n. 62/2024*, in *Diritto della sicurezza sul lavoro*, 2024, 2, pp. 162-201; E. DAGNINO, *La tutela del lavoratore malato cronico tra diritto vivente e (mancate) risposte di sistema*, in *Diritto delle relazioni industriali*, 2023, 2, pp. 336-356; A. LEVI, *Sostenibilità del lavoro e tutela della salute in senso dinamico: la prospettiva privilegiata delle malattie croniche*, in *Diritto delle relazioni industriali*, 2023, 2, pp. 277-297;

Among the various countries that have undertaken reforms in labour law to improve the employment prospects of an ageing workforce and, more specifically, of workers with health conditions, France stands out for the progressive affirmation of policy initiatives and the involvement of multiple stakeholders.
The article is organised as follows. Beginning with the traditional understanding of the relationship between sickness and employment in labour law – which forms a common foundation in both countries – the next section will explain how the increase in workers with health conditions has led to a new understanding of sickness in labour law, and consequently, to new concepts and notions aimed at identifying situations warranting regulatory intervention to safeguard both workers' interests and those of society as a whole (§2).
The subsequent section will describe and analyse the legislative measures undertaken by the two countries, outlining the features of the regulatory models adopted in terms of concepts, rights, measures, and actors involved (§3).
Finally, the concluding section will focus on the insights provided by the comparison of the two legal systems, assessing the limitations of the Italian approach and speculating on possible *de jure condendo* proposals (§4).

2. A New Understanding of Sickness in the Employment Relationship

Recent scholarly research highlights that the relationship between health and work has been pivotal in the development of labour law since the inception of early social legislation. Within this context, labour regulation concerning this relationship has historically been founded upon two main pillars of protection[9].
The first pillar concerns protection against the hazards and risks inherent in work activities, aiming to prevent work-related accidents and occupational diseases. This body of regulation falls under occupational health and safety (OHS) legislation and has developed progressively over the decades to keep pace with transformations in the world of work and the emergence of new occupational risks – such as the more recent risks associated with hyperconnectivity and the 'always-on' culture – also benefiting from legislation at the European Union level[10].

---

[9] M. TIRABOSCHI, *Health and Work*, supra note 5, pp. 30-32.
[10] Especially since 1989 (Directive 89/391/EEC of 12 June 1989, the "Framework Directive"; for a general overview see M. BIAGI, *From Conflict to Participation in Safety:*

The second pillar relates to workers' health conditions that preclude the performance of work. When an illness causes permanent incapacity to work, the employment relationship typically terminates, and the worker is transferred to the social security system, unless the incapacity is partial and allows for an adjustment (or, in some cases, a change) in job position or work duties.

More commonly, illness results in temporary incapacity to work, with the worker able to resume duties after a period of care and rest (sick leave). This scenario constitutes the principal factual circumstance concerning workers' health that labour law has traditionally recognised as warranting specific safeguards. The law is therefore tasked with balancing the worker's interest in preserving their job and income during absence due to illness with the employer's interest in organisational efficiency. Apart from regulations – mainly within social security – and case law on occupational diseases concerning compensation and damages, the preservation of the employment relationship and income support for a limited period has constituted not only the core but arguably the sole protection in cases of sickness for a long time[11].

This framework applies to both Italy and France, albeit with partly differentiated legal measures and solutions. In Italy, the legal provision ensuring a suspension of the obligation to provide work, alongside preservation of employment and income, dates back to 1942[12]. Conversely, the French legal system developed a similar solution through a more complex trajectory. French case law played a pivotal role in the emergence and consolidation of the right to suspension of work with job preservation over a prolonged period (1934–2001)[13].

Industrial Relations and the Working Environment in Europe 1992, in *International Journal of Comparative Labour Law and Industrial Relations*, 1990, 2, 67-79 and the other contributions in the same issue of the journal) the EU has made significant efforts to ensure healthy and safe working conditions across Member States through a number of measures (directives, regular strategic frameworks, guidelines and standards).

[11] A first study adopting a comparative perspective already identified this common pattern in different European countries in the 1970s. See G. AMORTH, *La malattia nel rapporto di lavoro*, CEDAM, 1974.

[12] Art. 2110 of the Italian Civil Code. The legal measure was not completely new to the Italian legal system, since it was already adopted for clerk workers in 1924 (Royal Law Decree 13 novembre 1924, No. 1825). See G. DELLA ROCCA, *La malattia del lavoratore subordinato tra vecchie e nuove tutele*, Giappichelli, 2024, p. 47.

[13] See J. PELLISSIER, A. LYON-CAEN, A. JEAMMAUD, E. DOCKÉS, *Les grands arrets du droit du travail*, IVedition, Dalloz, 2008, p. 353 ff., which collects the four main decisions in this respect: Cass. Civ. 3 decembre 1934, *Hotel Terminus c. Dame Spagnoli*; Cass. Soc. 21 avril 1988, *Mosnier c. Institut de formation d'éducateurs spécialisés de Grenoble*; Cass. Soc. 22 mars

Additionally, in both countries, industrial relations have been instrumental in providing complementary income alongside social security allowances (*caisse d'assurance maladie*; *Istituto Nazionale della Previdenza Sociale*)[14]. In France, cross-industry agreements (*accords nationaux interprofessionnels*) introduced[15] and subsequently revised[16] the complementary allowance; moreover, collective agreements at sectoral or company level can enhance this complementary income[17]. In Italy, collective agreements commonly provide complementary income for workers covered by social security allowances and regulate remuneration paid directly by employers to exempt workers.

Without delving into detailed differences – such as the determination of the maximum period of suspension before dismissal becomes legitimate[18] – it is pertinent to note that until recent years, the notion of illness relevant to the legal systems was largely defined in terms of this kind of protection. This implies that illnesses and diseases were traditionally pertinent to labour law only insofar as they caused temporary incapacity to work.

Although the notion was not interpreted rigidly – encompassing also absences justified by the need to prevent further health deterioration and to recover through rest and medication – this understanding of the relationship between sickness and work fundamentally shaped the legal

---

1989, *Sté Provens Télècommunications c. Delriu*; Cass. Soc. 13 mars 2001, *Mme Herbaut c. société Addressonord*.

[14] For France, see art. L. 321-1 and L. 323-1 ff, French Social Security Code. See M. BORGETTO, R. LAFORE, *Droit de la sécurité sociale*, Dalloz, 2023, pp. 588 ff. Italy has a more fragmented legislative framework: while the majority of workers are covered by the sickness allowance provided by the National Social Security Institute (INPS), pursuant to Article 74 of Law No. 833/1978, certain categories of workers continue to receive coverage directly from their employers. (see G. DELLA ROCCA, *La malattia del lavoratore subordinato*, supra note 12, pp. 88-95).

[15] *Accord national interprofessionnel du 10 décembre 1977*, *Loi n°78-49 du 19 janvier 1978 relative a la mensualisation et a la procedure conventionnelle*. See J. FROSSARD, *Les indemnités complémentaires, en cas de maladie, à la charge de l'employeur*, in *Droit social*, 1991, 7/8, pp. 568-569.

[16] See art. L. 1226-1, French Labour Code, which was introduced according to the *Accord national interprofessionnel du 11 janvier 2008 sur la modernisation du marché du travail*. See P.-Y. VERKINDT, *Maladie et inaptitude médicale*, in *Repertoire de droit du travail*, Dalloz, §§ 47-48.

[17] M. BORGETTO, R. LAFORE, *Droit de la sécurité sociale*, supra note 14, p. 591.

[18] In brief, in Italy, the matter is generally regulated by collective agreements pursuant to Article 2110 of the Italian Civil Code, whereas in France, it has been shaped primarily through case law, which has established that dismissal due to prolonged or recurrent illness is permissible only where the employee's absence causes a disruption to the normal functioning of the undertaking that cannot be remedied by a temporary replacement (see P.-Y. VERKINDT, *Repertoire de droit du travail*, Dalloz, 2018, § 102 ff.)

response to workers' diseases[19]. Essentially, the prevailing equation was: sickness = legitimate and protected absence from work.
Within this framework, the nature of the illness – whether acute or chronic – made no difference to the type of protection afforded by the legal systems; the illness was relevant insofar as it satisfied the condition of temporary incapacity to justify sick leave. However, the nature of the disease did influence the intensity of protection. Since 1945, the French legal system has recognised the concept of *affection de longue durée* (ALD) – with its scope gradually expanded – to govern social security benefits provided by the *assurance maladie* and, regarding employment protection, to extend and provide more favourable calculation of periods covered by daily allowances[20]. In Italy, extended suspension rights based on the nature of the disease have been ensured by law with respect to specific long-term illnesses (e.g. tuberculosis) since the 1950s[21] and have traditionally been reinforced through collective agreements[22]. A similar approach has recently been reintroduced in new legislation, which provides for a significant extension of the suspension period for certain workers with oncological and chronic illnesses, once they have exhausted their paid and unpaid sick leave as stipulated by collective agreements[23].
While these more favourable provisions have progressively broadened their scope to include a wider range of health conditions in both Italy[24] and France[25], until recently, specific attention to chronic and long-term illnesses remained closely linked to sick leave. Consequently, the impact of chronic disease was considered solely in terms of its incapacitating effects (temporary inability to work) and, therefore, when incompatible with

[19] M. TIRABOSCHI, *Health and Work*, supra note 5.
[20] L. 323-1 e L. 324-1, French Social Security Code. While the allowance is normally limited to 12 months within a three-year period, in cases of ALD, the entitlement is extended to cover up to three consecutive years of absence.
[21] Art. 10, Law No. 86/1953. Subsequent developments in relevant legislation are carefully analysed by R. DEL PUNTA, *La sospensione del rapporto di lavoro. Malattia, infortunio, maternità, servizio militare,* Giuffré, 1992, pp. 353-357
[22] According to A. PANDOLFO, *La malattia nel rapporto di lavoro*, Franco Angeli, 1991, p. 266, one of the earliest collective agreements to provide for an extended period of job retention was signed in 1948.
[23] Art. 1, Law No. 106/2025.
[24] S. CANEVE, *Lavoratori con patologie croniche e conservazione del posto di lavoro: le soluzioni presenti nella contrattazione collettiva*, in *Diritto delle relazioni industriali*, 2023, 2, pp. 515-522; F. ALIFANO, *Discriminazione per disabilità, comporto e contrattazione collettiva. Primi appunti ad un anno dalla pronuncia della Cassazione*, Working Paper ADAPT n. 7/2024.
[25] See P. DUGOS ET AL., *Revue de dépenses relative aux affections de longue durée - Pour un dispositif plus efficient et équitable*, Rapport IGF- Igas, June 2024, Annexe I, pp. 16 ff.

work performance.
As pointed out by medical science and as also acknowledged by labour law reflection [26], chronic diseases are characterised by fluctuating health states, with periods of exacerbation and remission affecting the actual capacity to work: at times, workers require sick leave, while at others they can perform their duties. As medical research continues to improve workers' wellness through the different stages of illness, labour law is increasingly compelled to confront a new understanding of sickness in the workplace – that is, *working while ill*. Traditionally, employment protections were indifferent to the presence of a pathological condition where it did not result in absence from work; however, the necessity to reconcile illness and work has demanded a rethinking of protections to accommodate their coexistence in the workplace.

2.1. Reconciling Work and Chronic Disease beyond Disability

The inclusion of persons with health conditions in the labour market and workplaces is not, of course, a wholly new area of intervention for labour law in either country. As in many other legal systems, Italy and France have progressively developed, also thanks to international and supranational policy initiatives[27], a composite body of legislation aimed at promoting the inclusion of, and protecting against discrimination persons with disabilities.
The prohibition of direct and indirect discrimination, the duty to provide reasonable accommodation – i.e., "necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure that persons with disabilities enjoy or exercise, on an equal basis with others, all human rights and fundamental freedoms"[28] – and specific policies (e.g., quotas

[26] S. VARVA, *Malattie croniche e lavoro tra normativa e prassi*, in *Rivista Italiana di Diritto del Lavoro*, 2018, 1, pp. 131-132.
[27] Among the most relevant instruments, it is worth mentioning the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), adopted in 2006, and the Employment Equality Directive 2000/78/EC. See D. FERRI, A. BRODERICK (eds.), *Research Handbook on EU Disability Law*, Edward Elgar, 2020 and F. HENDRICKX, *Disability and reintegration in work: interplay between EU non-discrimination law and labour law*, in F. HENDRICKX (ed.) *Reasonable Accommodation in the Modern Workplace. Potential and Limits of the Integrative Logics of Labour Law*, Bulletin of Comparative Labour Relations, 2016, pp. 61-72.
[28] Art. 2 of the UNCRPD. See, also, art. 5, Directive 2000/78/EEC and connected recitals.

and other affirmative actions) designed to improve the employment prospects of persons with disabilities, play a pivotal role in addressing the low labour market participation rates and disparities in working conditions experienced by these workers[29].

Workers with chronic diseases face similar challenges: they risk losing their employment due to their health conditions, encounter substantial difficulties in accessing the labour market, and, while employed, are more likely to experience discrimination[30].

Although the evolution of the concept of disability within the case law of the European Court of Justice[31] and national legal systems[32] permits, under certain conditions, the application of disability legislation to workers with chronic diseases, the needs of these workers, the national labour markets, and welfare systems cannot be fully and adequately met by this legal framework alone. Indeed, specific provisions and regulations addressing workers with health conditions beyond disability legislation – such as those established in the French and Italian legal systems – were initially motivated by the narrower and more rigid definitions of disability prevailing at the time but continue to be relevant in addressing persistent protection gaps.

Firstly, even within the broadened interpretation provided by EU-level case law, disability and sickness remain distinct concepts. A chronic disease may fall under the definition of disability if it "entails a limitation which results in particular from physical, mental or psychological impairments which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers, and the limitation is long-term" [33]. Otherwise, the illness "is not covered by the concept of 'discrimination'

[29] S. ANANIAN, G. DELLAFERRERA, *A study on the employment and wage outcomes of people with disabilities*, ILO Working Paper 124, 2024.

[30] See the report issued by Defenseur de droit in 2023, *Concilier maladies chroniques et travail: un enjeu d'égalité*. 16e baromètre sur les discriminations dans l'emploi: concilier maladies chroniques et travail: un enjeu d'égalité, décembre 2023.

[31] See S. FAVALLI, D. FERRI, *Defining Disability in the EU Non-Discrimination Legislation: Judicial Activism and Legislative Restraints*, in *European Public Law*, 2016, 3, pp. 541-568, EAD, *Tracing the Boundaries between Disability and Sickness in the European Union: Squaring the Circle?*, in *European Journal of Health Law*, pp. 5-35 and D. FERRI, *Daouidi v Bootes Plus SL and the Concept of 'Disability' in EU Anti-Discrimination Law*, in *European Labour Law Journal*, pp. 69-84.

[32] After many years of debate, the Italian legal system has finally adopted the biopsychosocial model of disability, beyond the scope of Directive 2000/78/EC, through Legislative Decree No. 62/2024.

[33] § 41, ECJ, HK Denmark, Joined Cases C 335/11 and C 337/11, 11 April 2013.

within the meaning of Directive 2000/78," as "[i]llness as such cannot be regarded as a ground in addition to those in relation to which Directive 2000/78 prohibits discrimination"[34]. Although this distinction is blurred – and even questioned by some authors[35] – only certain health conditions qualify for disability protections, while other situations fall outside this legislative framework.

Moreover, while chronic diseases may, in a significant number of cases, lead over time to progressive deterioration that qualifies as disability, even then the protection afforded is limited and, to some extent, belated. Earlier stages of the disease typically fall outside the scope of protection, meaning that rights and measures under disability legislation only come into effect when workers' needs have become more severe and more difficult to address in the workplace and labour market.

Finally, beyond the stigma still associated with disability status (and the consequent reluctance of workers to disclose impairments)[36], anti-discrimination legislation tends to adopt a remedial approach focused on addressing individual grievances[37], and is less effective in fostering preventive and systematic responses – despite significant progress in establishing employers' obligations to provide reasonable accommodations[38].

The effective management of the modern nexus between health and work, therefore, requires continuous attention to the evolution of workers' health conditions and the sustainability of their work activities. This ongoing monitoring enables early identification of support needs or the necessity to modify employment trajectories, facilitating proactive interventions aimed at adapting work conditions. Such interventions may take place within the same workplace or involve transitional pathways to

[34] § 42, *ibidem.*

[35] See D. FERRI, *Daouidi v Bootes Plus SL and the Concept of 'Disability'*, supra note 31, and F. HENDRICKX, *Disability and reintegration in work*, supra note 27.

[36] See J. OLSEN, *Employers: influencing disabled people's employment through responses to reasonable adjustments*, in *Disability & Society*,

[37] It is primarily from this perspective that, in Italy, persons with chronic diseases have pursued legal action against dismissal due to absence from work, seeking recognition as persons with disabilities and, consequently, as indirectly discriminated against by the application of the same suspension period as other workers, despite their increased likelihood of requiring sick leave. See E. DAGNINO, *Malattie croniche e disciplina antidiscriminatoria: gli orientamenti della magistratura sulla durata del periodo di comporto*, in *Diritto delle relazioni industriali*, 2023, 2, pp. 448-452

[38] See J. DORMIDO ABRIL ET AL., *Reasonable Accommodation and Disability: a Comparative Analysis*, in *Diritto della sicurezza sul lavoro*, 2024, 1, 18-52.

alternative occupations within the company or across other firms and sectors.

3. A Common Socio-Economic Issue, two Different Regulatory Models

Having outlined the rationale and concrete reasons for analysing the regulatory measures concerning job retention, return to work, and employment prospects of workers with chronic diseases beyond those provided for under disability legislation, it is now necessary to examine the features of the two regulatory models. To this end, the national regulations will be examined within a common analytical framework to better identify the distinctive characteristics of the two legal systems. Specifically, in order to understand how these legal systems have responded to the evolving understanding of sickness in employment – that is, not merely the dichotomy between work and absence, but the concept of working according to an individual's current health status – particular emphasis will be placed on: (1) the legal notions defining the scope of the legislation; (2) the specific measures and rights introduced; and (3) the actors involved in implementing the rights and measures supporting return to work and employment continuity for workers.

3.1. The Italian Legal System: A Lone-standing Provision

The first attempt by the Italian legislature to promote the reconciliation of sickness and work, in the terms outlined above, dates back to 2003. As with other legal interventions in this field – such as the aforementioned extension of the protected suspension period for workers affected by tuberculosis, and specific legislation for workers with HIV[39] and drug addiction[40] – the promotion of sustainable employment for persons with long-term illnesses requiring medical treatment and care initially focused on particular illnesses that had gained social recognition at that time.

[39] Law No. 135/1990, which is mainly aimed at establishing specific antidiscrimination rights for workers with HIV while ensuring the health and safety of the other workers. See B. CARUSO, *Le nuove frontiere del diritto del lavoro: AIDS e rapporto di lavoro*, in *Rivista Italiana di Diritto del Lavoro*, 1998, 1, pp. 105-146.

[40] Decree of the President of the Republic No. 309/1990, Articles 124 and 125 of which were respectively aimed at extending the suspension of work performance to facilitate rehabilitation, and at ensuring periodic examinations for drug abuse among workers engaged in hazardous activities. See A. TOPO, *La tutela del lavoratore tossicodipendente*, in *Rivista Italiana di Diritto del Lavoro*, 1993, 1, pp. 247-281.

Specifically, Legislative Decree No. 276/2003 introduced the right to part-time work for employees affected by oncological diseases, aiming to facilitate the reconciliation of continued employment with the need to undergo major rounds of care and treatment[41]. More than ten years later, the scope of this provision was broadened to include workers with chronic diseases[42], thereby acknowledging the necessity to extend this new approach to sickness to other long-term health conditions affecting workers' prospects of employment continuity.
The legislative intent was certainly commendable and indicated a growing awareness within both the legislative and collective bargaining arenas of the needs of these workers. However, approximately ten years on (and twenty years for workers with oncological diseases), these expectations have largely remained unfulfilled.
On one hand, the right to part-time work has been exercised to a very limited extent by workers with chronic diseases.
This failure can be attributed to several concurrent causes closely linked to the legislative design of the measure. Firstly, a very restrictive definition of chronic disease governs the recognition of the right, requiring evidence of progressive deterioration in the worker's health – an approach that is poorly aligned with illnesses characterised by fluctuating periods of improvement and decline, as previously noted[43].
Additionally, the procedural framework is somewhat bureaucratic: entitlement to the right depends on the evaluation of the worker's condition by a medical commission established within the local health authority. No dialogue or consultation between employer and employee is encouraged in this process; the employee submits the request and, if approved, the employer is obliged to convert the contract to part-time. Furthermore, since the health evaluation is entirely the remit of an external authority, the company's occupational physician – who plays a crucial role in OHS prevention – is excluded, as are workers' representatives, who are typically key interlocutors for the employer in matters relating to work organisation.

---

[41] Art. 46, § 1, let. t), Legislative Decree No. 276/2003. See M. TIRABOSCHI, P. TIRABOSCHI, *Per un diritto del lavoro al servizio della persona: le tutele per i lavoratori affetti da patologie oncologiche e tumore al seno*, in *Diritto delle relazioni industriali*, 2006, 2, pp. 524-531.
[42] See Art. 8, § 3, Legislative Decree No. 81/2015. See S. BRUZZONE, F. ROMANO, *Patologie oncologiche, patologie cronico-degenerative e diritto al part-time*, in M. TIRABOSCHI (ed.), *Le nuove regole del lavoro dopo il Jobs Act. Commento sistematico dei decreti legislativi nn. 22, 23, 80, 81,148, 149, 150 e 151 del 2015 e delle norme di rilievo lavoristico della legge 28 dicembre 2015, n. 208 (Legge di stabilità per il 2016)*, Giuffré, 2016, pp. 617-619.
[43] S. VARVA, *Malattie croniche e lavoro*, supra note 26, pp. 131-132.

Most significantly, the absence of any economic support to offset the reduction in income resulting from the transition from full-time to part-time work severely limits uptake of this measure. This is especially problematic given that care and medication costs for such illnesses are often substantial[44].
With regard to hopes for a gradual enhancement of protection levels, it must be noted that no further legislative interventions have occurred in this area, apart from temporary provisions related to the management of the COVID-19 crisis, aimed at protecting “fragile workers” from contagion risks[45] and the recent law mentioned above (*supra* § 2) that is mainly aimed at tackling the risk of job loss due to the expiration of the maximum limit of suspension[46].
Conversely, some recent measures introduced in support of caregivers, pursuant to the implementation of Directive 2019/1158/EU[47], have resulted in the paradoxical situation whereby carers of persons with chronic diseases receive broader and more flexible working rights than the workers themselves. While workers with chronic diseases only had the right to part-time work, carers are entitled to a lighter, but wider, right to prioritised access to flexible working arrangements[48]. Even the newly introduced Law No. 106/2025, while recognising a similar right to be given priority in accessing so-called 'agile working' (a specific form of remote work), stipulates that this right applies only once the worker has exhausted all periods of paid and unpaid sick leave. As a result, it is intended to operate in very limited circumstances, serving as a last resort before lawful dismissal by the employer[49].

---

[44] M. TIRABOSCHI, *Health and Work*, supra note 5, p. 38.
[45] See A. CARACCIOLO, *Patologie croniche e lavoratori fragili*, in M. BROLLO, M. DEL CONTE, M. MARTONE, C. SPINELLI, M. TIRABOSCHI (eds.) *Lavoro agile e smart working nella società post-pandemica. Profili giuslavoristici e di relazioni industriali*, ADAPT University Press, 2022, pp. 127-145
[46] In addition to the unpaid period of suspension discussed above, article 2 of the Law No. 106/2025 provides for 10 extra-hours of paid leave for workers who need to undergo specific medical examinations or treatment.
[47] Art. 9, Directive (EU) 2019/1158 providing for the right to request flexible working. See L. WADDINGTON, M. BELL, *The right to request flexible working arrangements under the Work-life Balance Directive – A comparative perspective*, in *European Labour Law Journal*, 2021, 4, pp. 508-528.
[48] Art. 18, § 3-bis, Law no. 81/2017; art. 33, § 6-bis, Law No. 104/1992. See E. DAGNINO, *Sull’attuazione della Direttiva UE 2019/1158: il nodo del "lavoro flessibile",* in *Il Lavoro nella giurisprudenza*, 2023, 2, 140-150.
[49] Art. 1, § 4, Law No. 106/2025.

Within the sphere of collective bargaining, although there has been increased attention to the conditions of workers with chronic diseases, interventions remain fragmented and often limited to specific illnesses. Most measures introduced by social partners have extended the traditional protection of (paid or unpaid) work suspension with job preservation, with only a few cases addressing specific rights related to flexible working arrangements such as remote work and flexible hours[50].
In this respect, the issue of coexistence between work and pathological conditions has remained substantially marginal.
Aside from the specific provision guaranteeing the right to part-time work and, lately, the one related to the priority to access "agile working" for workers with serious chronic conditions, few other provisions in the Italian legal system can be invoked to manage the impact of chronic diseases in the workplace – and then only under certain conditions and with significant limitations.
The most notable of these provisions lie within OHS regulations. While more visible in scholarly debate than in practice or case law, progressive interpretations of principles and provisions have proposed that persons with chronic diseases deserve specific consideration in risk assessment processes, for the identification as recipients of periodic individual health surveillance[51], and for task allocation "according to their capacity and their conditions with reference to their health and safety"[52]. Although these interpretative proposals are noteworthy, they partly conflict with other established legal provisions and interpretations – particularly regarding individual health surveillance[53] – and generally focus on exposure to specific workplace risks rather than promoting return to work or supporting employment prospects.
In this regard, the principal protection within this legislative framework is found in Article 42 of Legislative Decree No. 81/2008, which, in cases of a supervening inability to perform the assigned task, obliges employers to assign alternative tasks consistent with the worker's health conditions. When the inability is only partial, the occupational physician establishes

---

[50] F. ALIFANO, *Orario di lavoro e trasformazioni demografiche nella contrattazione di secondo livello*, (forthcoming).
[51] See C. CARCHIO, *Rischi e tutele nel reinserimento lavorativo*, supra note 8, pp. 185-188.
[52] Art. 18, § 1, let. c), Legislative Decree No. 81/2008.
[53] For instance, it should be noted that both the courts and the Ministry of Labour take the view that individual health surveillance by the occupational physician applies only when explicitly required by law in relation to exposure to specific risks, even in cases of prolonged absence (e.g. 60 days) due to illness.

limits and measures to ensure that the worker is not exposed to the risk of deterioration of the health conditions, provided that the performance, as adapted, can be considered useful to the employers' business. However, this protection is contingent upon the severity of the health condition, which often aligns with the concept of disability[54], thereby triggering the duty of reasonable accommodation[55], and, in case of partial inability, is mainly devoted to ensuring the worker against risks and possible damages and not to promote long-term employment prospects.
Finally, beyond OHS, another provision available to workers as a last resort is Article 2103 of the Italian Civil Code (reformed in 2015), which allows workers and employers to agree on modifications to job positions and remuneration on a derogatory basis to address specific worker interests[56]. Among these interests are improvements in quality of life, job preservation, and reskilling. However, this provision imposes no obligation on either party to accept the other's proposals.

3.2. The French Legal System: Protecting Workers according to their Health Conditions within the Framework of *Désinsertion Professionnelle*

Although the notion of chronic disease has only been introduced into French legislation in recent years, and the concept of long-term illnesses has traditionally been addressed within the realm of social security (see *supra*), the French legal system has developed a comprehensive framework of protections aimed at reconciling work and illness under the broader concept of workers' health.
Indeed, the notion of chronic disease has been adopted to identify one category of workers warranting specific attention in the context of information and consultation with workers' representatives *(Comité Social et Économique*) concerning measures to encourage employment retention and return to work[57]. However, the broader concept of workers' health has proved more apt to address the various stages of workers' health conditions and sickness, including chronic illnesses.

---

[54] See C. CARCHIO, *Rischi e tutele nel reinserimento lavorativo*, note 8, p. 189 and, in even broader terms, M. PERUZZI, *La protezione dei lavoratori disabili nel contratto di lavoro*, in *Variazioni su temi di diritto del lavoro*, 2020, 4, p. 948.
[55] Art. 3, § 3-bis, Legislative Decree No. 216/2003.
[56] Art. 2103, § 6, Italian Civil Code.
[57] L. 2312-8, French Labour Code.

It was under this concept that France introduced its first regulation offering protection to workers with specific illnesses beyond mere job preservation. Even prior to relevant EU legislation[58], and continuing to this day[59], French anti-discrimination law has included "health" as a distinct ground of discrimination, extending beyond the categories listed in Directive 2000/78/EC. Consequently, workers discriminated against due to their health conditions do not need to be recognised as persons with disabilities to benefit from anti-discrimination protections. Nonetheless, the notion of disability remains significant in relation to the right to receive, and the employer's duty to provide, reasonable accommodations.

Concomitantly, following initial legal interventions in the 1970s and 1980s concerning redeployment for persons with disabilities and certified incapacity, the French legal system has increasingly emphasised the social and economic imperatives of *maintien dans l'emploi* (job retention) and *maintien en emploi* (continued employment in an alternative role) for elderly workers and those suffering from illness[60].

These policies were further consolidated in the new millennium, linked to reforms aimed at *sécurisation des parcours professionnels* (securing career paths)[61], and culminated in the legal articulation of *désinsertion professionnelle* (labour market exclusion)[62]. If the objective of the law is to guarantee workers in the employment transitions that will characterise their career paths, illnesses, especially long-term illnesses and chronic diseases, represent a major risk factor for occupational continuity, which must be adequately addressed and prevented[63]. While this concept pertains to various events affecting employment relations and career trajectories,

[58] This was introduced in art. L. 122-45 of the French Labour Code by the *Loi n° 90-602 du 12 juillet 1990 relative à la protection des personnes contre les discriminations en raison de leur état de santé ou de leur handicap*. See J.-P. LABORDE, *Quelques observations à propos de la loi du 12 juillet 1990 relative à la protection des personnes contre les discriminations en raison de leur état de santé ou de leur hándicap,* in *Droit Social*, 1991, 7-8, pp. 615-618.

[59] L. 1132-1, French Labour Code. On the evolution of antidiscrimination legislation in France, see M. SWEENEY, *Les critères discriminatoires. Vision du travalliste*, in *Droit Social*, 2020, 4, pp. 293-297.

[60] P. ABALLEA, M.-A. DU MESNIL DU BUISSON, *La prevention de la desinsertion professinnelle des salaries malades ou handicapes*. Rapport Tome I, pp. 19-23 and Annex 1.

[61] See the articles collected in *Semaine sociale Lamy*, *Supplément*, 7 avril 2008, No. 1348, numéro spécial sur *La sécurisation des parcours professionnels*.

[62] G. LECOMTE- MÉNAHÈS, *La prevention de la désinsertion professionnelle: l'articulation de la prévention des risques professionnels et de la protection sociale*, in *Droit Social*, 2019, 11, p. 914.

[63] G. LECOMTE- MÉNAHÈS, *ibidem*, pp. 915-917.

French legislation has chosen to frame it specifically in relation to workers' health conditions, situating it within the context of OHS law[64].
The legal intervention introducing this notion was enacted in 2011 as part of the reform of the occupational medicine system[65]. Specifically, the duties of the occupational health and prevention service (*service de santé et prévention au travail*)[66] were expanded to include the prevention and reduction of employment loss due to health conditions, as well as supporting workers to remain in employment[67]. Although the original wording connected this duty primarily to health conditions arising from workplace hazards, current legislation explicitly defines the service's role as not only preventing workplace-related health damage but also contributing to the realisation of "public health" by maintaining workers' health throughout their working lives at a level compatible with continued employment[68].
This provision was further strengthened in the 2021 reform, which consolidated the goal of *prévention de la désinsertion professionnelle*[69], based on a new cross-industry agreement (Accord National Interprofessionnel, ANI) concerning health, safety, and working conditions[70]. The reform detailed how the occupational health and prevention service must discharge its duties, and systematised various provisions promoting occupational continuity for workers with health conditions[71].
Regarding the role of the occupational health and prevention service, the 2021 reform established the creation within the service of a multidisciplinary unit (*cellule pluridisciplinaire de prévention de la désinsertion*

[64] F. HÉAS, *La désinsertion professionnelle*, in *Droit Social*, 2021, 11, p. 909
[65] *LOI n° 2011-867 du 20 juillet 2011 relative à l'organisation de la médecine du travail*.
[66] Companies employing fewer than 500 workers are required to join an intercompany occupational health and prevention service, while those employing more than 500 workers may alternatively establish their own in-house health and prevention service (see Article D. 4622-9 of the French Labour Code)..
[67] L. 4622-2, French Labour Code as modified by *LOI n° 2011-867 du 20 juillet 2011*. See S. FANTONI-QUINTON, *Le maintien en employ au couer des missions des services de santé au travail*, in *Revue de droit du travail*, 2016, 7-8, pp. 472-476.
[68] L. 4622-2, French Labour Code.
[69] *LOI n° 2021-1018 du 2 août 2021 pour renforcer la prévention en santé au travail*. Translation mine. For an overall analysis of the reform, see the contributions collected in *Droit Social*, 2021, 11.
[70] *Accord national interprofessionnel du 9 décembre 2020 relatif à la prévention renforcée et à une offre renouvelée en matière de santé au travail et conditions de travail*.
[71] M. HERMON, *Les dispositifs pour lutter contre la désinsertion professionnelle*, in *Travail et sécurité*, juin 2023, pp. 44-46.

professionnelle) specifically charged with this task[72]. According to Article L. 4622-8-1 of the Labour Code, this team[73], collaborating with various stakeholders involved in implementing related measures, is responsible for raising awareness; identifying individual cases; proposing integrated measures provided by the Labour Code and Social Security Code to address workers' needs; and sharing information with other relevant social security bodies.

French legislation promotes both the retention of the existing job position and the transition to more suitable employment. Job retention protections include adaptations of the job, workplace, and working time arrangements, which may be recommended by the company occupational physician – part of the occupational health and prevention service – and are implemented following consultation with the worker and employer[74]. Although employers are not strictly obliged to adopt these recommendations, they must justify any refusal in writing, as an unmotivated failure to implement them constitutes a breach of their OHS obligations[75].

Furthermore, the Social Security Code allows workers to maintain daily sickness allowances for periods and extents determined by decree when reduced working time is beneficial to their health or necessary for professional retraining (known as *temps partiel* or *mi-temps thérapeutiques*)[76].

Supporting professional transitions aligned with workers' health conditions, the Social Security Code[77] also permits workers on sick leave to request specific training to facilitate reskilling. Approval requires the treating physician's positive opinion and authorisation by the social security occupational physician, who assesses the compatibility between the training and the anticipated sick leave duration.

---

[72] L. 4622-8-1, French Labour Code. See L. LEROUGE, *La malattia progressiva cronica sul lavoro nel diritto sociale francese*, in *Diritto delle relazioni industriali,* 2023, 2, pp. 302-304.

[73] According to Article L. 4622-8, the occupational health and prevention service is composed of occupational physicians, medical assistants, interns specialising in occupational medicine, occupational risk prevention specialists, and nurses. It may be supplemented by medical auxiliaries with occupational health expertise, occupational health and prevention service assistants, and other professionals recruited upon the recommendation of occupational physicians.

[74] L. 4624-3, French Labour Code.

[75] L. 4624-6, French Labour Code.

[76] L. 323-3, French Social Security Code. This measure has a long-standing tradition in French legislation, having been established as early as 1947. See M. RIVOLIER, *La clarification du régime du temps partiel thérapeutique*, in *Revue de droit du travail*, 2024, 9, p. 516; F. FAVENNEC-HERY, *Le travail à temps partiel*, Litec, 1997, pp. 130-131.

[77] L. 323-3-1, French Social Security Code.

Two notable measures, funded by social security bodies (*caisses*), are targeted at workers at risk of job loss due to health: *essai encadré* and *convention de rééducation professionnelle en entreprise*[78]. The former is a brief, supervised trial period (up to 14 days, renewable to 28) to assess job compatibility within the current employer's company or elsewhere, requiring positive evaluations from all involved professionals, including the company occupational physician[79]. The latter is a longer-term in-company retraining agreement (up to 18 months) among worker, employer, and social security body, which may take place at the employer's or another company's premises[80]. Initially reserved for disabled workers, it has since been extended to those declared unable or at risk of being unable to perform their previous role[81].
Since 2022, derogatory rules have facilitated access for sick workers to the *projet de transition professionnelle*, allowing temporary suspension of work to undertake reskilling programmes[82]. The usual two-year minimum employment requirement has been waived for workers who have been absent due to sickness for over six months within a 24-month period[83], paralleling provisions for disabled workers or those dismissed for incapacity.
Beyond these specific adaptations and retraining measures, the French legal system has developed a comprehensive system of individual health surveillance (*suivi individuel*) aimed at early identification of risks to employment continuity due to health issues[84]. This includes standard medical examinations for all workers and additional visits in the event of prolonged absence.
Mandatory periodic medical examinations for all workers are scheduled according to working conditions, age, and health status[85]. Notably,

[78] Ibidem.
[79] *Décret n° 2022-373 du 16 mars 2022 relatif à l'essai encadré, au rendez-vous de liaison et au projet de transition professionnelle*. See D. 323-6 to D. 323-6-7, French Social Security Code.
[80] *Décret n° 2022-372 du 16 mars 2022 relatif à la surveillance post-exposition, aux visites de préreprise et de reprise des travailleurs ainsi qu'à la convention de rééducation professionnelle en entreprise*. See L. 1226-1-4, L.5213-3-1, R. 5213-15 and R.5213-17, French Labour Code.
[81] M. HERMON, *Les dispositifs pour lutter contre la désinsertion professionnelle* supra note 69, p. 45.
[82] L. 6323-17-1 and ff., French Labour Code.
[83] L. 6323-17-2, French Labour Code. See M. HERMON, *Les dispositifs pour lutter contre la désinsertion professionnelle* supra note 69.
[84] See L. LEROUGE, *La malattia progressive cronica* supra note 70, pp. 306-309.
[85] L. 4624-1, French Labour Code.

@ 2025 ADAPT University Press

legislation establishes a compulsory mid-career examination[86], typically conducted at age 45 (or earlier if determined by sector-level collective agreements), which explicitly evaluates "the risks of professional exclusion, taking into account the worker's evolving capacities resulting from their career, age, and health"[87].
Medical check-ups linked to workers' absence include the mandatory pre-return visit (*visite de reprise*)[88] for absences exceeding 60 days due to non-work-related illnesses, and the optional pre-return visit (*visite de préreprise*)[89] for absences over 30 days, which may be requested by the treating physician, social security body, company occupational physician, or the worker. These visits aim to anticipate necessary job adaptations, working time adjustments, or reskilling. While attendance at the *visite de préreprise* is voluntary, employers must inform workers of the option, and workers may choose to withhold communication of the company occupational physician's recommendations to their employer.
Additional medical check-ups and meetings serve the same anticipatory function. Workers may request extra visits if they foresee work incapacity risks, and employers and occupational physicians[90] may also propose them. When absences exceed 30 days, employers and workers can organise a *rendez-vous de liaison* meeting with the occupational health and prevention service[91]; if initiated by the employer, attendance is voluntary. The purpose of this meeting is to inform workers of legislative measures addressing the risk of *désinsertion professionnelle*.
Finally, the French legal system has progressively extended protection against *désinsertion professionnelle* to independent contractors (*travailleurs indépendants*), encompassing both social security and labour law dimensions. In social security, Assurance Maladie has introduced a specific measure – *prévention de la désinsertion professionnelle des travailleurs indépendants* (PDP TI) – to support job adaptation or transition for self-employed and independent workers[92]. In labour law, the 2021 reform allows independent contractors to affiliate with an occupational health

---

[86] L. 4624-2-2-, French Labour Code.
[87] Ibidem, § I, No. 2. Own translation. It is also required to assess the suitability of the job position in relation to the worker's current state of health (point 1).
[88] L. 4624-2-3, French Labour Code
[89] L. 4624-2-4, R. 4624-29 and R. 4624-30, French Labour Code.
[90] R. 4624-34, French Labour Code.
[91] L. 1226-1-3 and R. 4624-33-1, French Labour Code.
[92] This was initially established by the social security entity in December 2020 for a limited period and has since been extended and confirmed in subsequent years.

and prevention service and entitles them to specific measures, including health surveillance and *désinsertion professionnelle* prevention[93].

4. Conclusions: Possible Ways Forward to Reform the Protection of Persons with (Chronic) Diseases in Italy

Compared to the Italian legal system, French legislation aimed at promoting job retention and improving the labour market prospects of workers with long-term health conditions is not only more comprehensive in terms of the measures, actors involved, and beneficiaries, but also reflects a more advanced understanding of policy intervention in this field. By legally framing the loss of employment by a worker with a chronic illness as a risk that the legal system must actively address, French legislation has progressively emphasised the preventive nature of actions in this domain. As previously noted, the provisions currently available in the Italian legal framework apply only when the worker's health condition has already affected their capacity to work and further deterioration is anticipated. Consequently, its primary aim is to mitigate the already significant risk of job loss among workers with chronic illnesses. In contrast, while still addressing such circumstances, French policy initiatives – promoted by both legislators and social partners – are increasingly geared towards anticipating the system's response. The overarching principle of *early recognition–early activation* underpins the actions of stakeholders and the legal measures enacted.
Identifying, at an early stage, health conditions likely to affect a worker's employment prospects is critical to enhancing both the effectiveness and the scope of the adopted measures. To this end, early recognition is facilitated by an integrated system of occupational health surveillance. This individual health monitoring not only aims to detect emerging risks of *désinsertion professionnelle*, but is also supported by the key role of the occupational physician and the occupational health and prevention service, complemented by potential initiatives taken by the worker or employer. Early activation, on the other hand, follows from the prompt identification of risk, and is further encouraged through early implementation (e.g., retraining programmes and *essai encadré*) or advance planning (e.g., job adaptation during the *visite de pré-reprise*) prior to the conclusion of sick leave.

[93] L. 4621-3, French Labour Code.

@ 2025 ADAPT University Press

Both early recognition and early activation represent important areas for potential reform within the Italian legal system – extending beyond the specific provision that grants the right to convert full-time contracts into part-time ones. In Italy, health surveillance is predominantly linked to exposure to specific occupational hazards and is interpreted restrictively, even in the context of prolonged illness (e.g., absences exceeding 60 days). Under such conditions, identifying in advance the risk of job loss or labour market exclusion due to chronic illness is highly unlikely.

Furthermore, the early activation of protective measures is hindered not only by the absence of an adequate surveillance mechanism but also by the design of the few existing provisions potentially applicable to workers with chronic diseases. These typically require the worker to be classified as disabled, or at minimum (as outlined in §3.1), to be partially or entirely incapable of performing their assigned tasks.

Shifting from the timing of interventions to the scope of the available measures, another critical issue emerges. Aside from a few illness-specific anti-discrimination provisions and tentative initiatives directed at cancer patients and survivors[94], Italian legal protections are predominantly structured around imposing specific obligations on employers.

By activating protective measures at an earlier stage – when risk is still prospective – French legislation is able to diversify policy responses and thereby combine employment protection with active transitions. This includes support for workers to move to roles more suitable for their health needs in other companies, through training or reskilling programmes. Such an approach significantly enhances the chances of reshaping individual career paths to prevent labour market exclusion – especially in cases where adaptation within the original company is limited by size or operational constraints.

The feasibility and success of both employment transitions and adaptations within existing roles (e.g., conversion to part-time, job reallocation, or modifications in work performance) depend on two key factors: (1) the capacity to identify the most appropriate measure for the worker's health condition, and (2) the economic sustainability of that measure for both employer and employee.

In both respects, French legislation offers valuable insights for addressing Italian shortcomings. Regarding the former, although the company occupational physician plays a central role (supported by other qualified

[94] Art. 4, § 2, Law No. 193/2023.

professionals)[95], French law ensures consultation with additional actors when relevant – such as the occupational physician of the social security institution – and places significant emphasis on the perspectives of both the employee and the employer in determining the appropriate course of action. In contrast, the Italian system lacks coordination between the committee responsible for evaluating part-time work requests and the occupational physician[96], and the employer's role is typically limited to fulfilling obligations rather than engaging in dialogue with the worker.
As for economic sustainability, it is worth noting the close integration between labour law and social security provisions in the French context. For example, certain job retention and transition measures (e.g., *essai encadré*, *mi-temps thérapeutique*) are designed to be compatible with the receipt of daily sickness benefits (*indemnité journalière*). Revising the social protection framework to enhance the employment prospects of individuals at risk of exclusion thus emerges as a key policy priority.
Finally, although some scholars have critiqued the French system for its strong focus on the individual, it also facilitates collective involvement through the role of workers' representatives. By requiring employers to consult the *Comité économique et social* (CES) on measures promoting job retention for vulnerable workers, the law grants employee representatives a formal voice – at least at the company level. While policy actions are rightly not confined to individual firms and are also pursued at cross-industry and sectoral levels, the implementation of inclusive practices and structural adaptations inevitably occurs at the level of the individual workplace or plant. Therefore, this is where constructive dialogue is most effective.
This is yet another area where Italian legislation could improve: empowering workers' representatives to participate in decisions concerning employer-led initiatives could not only better address the needs of the workforce but also reinforce collective bargaining efforts and foster more mature industrial relations in this domain.
Additionally, the extension of protective measures to independent contractors and self-employed workers in France offers a valuable model for Italy. Chronic health conditions can significantly affect these workers'

[95] According to Article L. 4622-8 of the French Labour Code, the occupational physician may delegate certain tasks to other members of the multidisciplinary team.
[96] Unlike part-time entitlement, the degree of incapacity required for the measures introduced by Law No. 106/2025 is assessed by a general practitioner or specialist doctor. Although in another form, the complete irrelevance of the occupational physician is also confirmed here.

@ 2025 ADAPT University Press

career paths, and many may lack the resources to navigate the necessary adjustments. Given Italy's longstanding tradition of extending certain labour and social protections to *parasubordinati* (quasi-subordinate workers), including in cases of illness[97], the system should be well-positioned to respond to the evolving needs of this segment of the workforce in terms of adaptation of the job and transition in the labour market.

In conclusion: early recognition and early intervention; comprehensive individual health surveillance; protection within existing roles and promotion of transitions; closer integration between labour and social security law; coordinated action involving multiple stakeholders; individual and collective strategies; inclusion of self-employed and quasi-subordinate workers; and multi-level industrial relations. These are the key principles that have emerged from the comparative analysis, each of which should be central to any Italian reform programme aimed at addressing the pressing challenges outlined at the outset of this article.

[97] Lately, art. 1, § 2, Law No. 106/2025 also intervened to extend the period of (possible) suspension of the contractual relationship for self-employed persons who have long-term continous relationship with a company, if they suffer from serious health conditions (including chronic diseases).

ADAPT International Network

ADAPT is a non-profit organisation founded in 2000 by Prof. Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with the Centre for International and Comparative Studies on Law, Economics, Environment and Work, (DEAL) the Marco Biagi Department of Economics, University of Modena and Reggio Emilia, ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and postgraduate programmes in the area of industrial and labour relations. Further information at *www.adapt.it*.

For more information about the E-journal and to submit a paper, please send a mail to *LS@adapt.it*.

DEAL Centre for International and Comparative Studies
Law Economics Environment Work
THE MARCO BIAGI DEPARTMENT OF ECONOMICS
UNIVERSITY OF MODENA AND REGGIO EMILIA

ADAPT|International.it
Building the Future of Work