OPEN ACCESS
ISSN 2280-4056

E-Journal of International and Comparative LABOUR STUDIES

Volume 15 No. 01/2026

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); S*ilvia Spattini *(ADAPT Senior Research Fellow)*. **Social Security Law:** Claudia Carchio *(Pegaso University)*; 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 Legas *(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 15 No. 01/2026

www.adapt.it
UNIVERSITY PRESS

@ 2026 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: **@2026 ADAPT University Press.**

New Pathways to Work Inclusion: Applying the Biopsychosocial Model of Disability to Chronic Illness and Transplant Recipients

Claudia Carchio, Fulvio Cucchisi [*]

Abstract. This paper examines the employment inclusion of people living with chronic illnesses and transplant recipients, highlighting the legal uncertainty produced by the fragmented Italian regulatory framework. It outlines current labour-law protections and shows how, also due to the "forced" reliance on disability categories in EU case law, many safeguards have developed through interpretative extensions rather than coherent legislation. Building on the supranational affirmation of the biopsychosocial model of disability, the essay analyses the innovations introduced by Legislative Decree No. 62/2024 and reflects on the conditions for sustainable employment through risk-minimisation and workplace adaptation.

Keywords: *Labour inclusion, Chronic illness, Transplant recipients, Regulatory framework gaps, Biopsychosocial model of disability.*

[*] Claudia Carchio is Associate Professor at Pegaso University (Italy) and Fulvio Cucchisi is Research Fellow at the University of Udine (Italy). Email address: claudia.carchio@uniud.it; fulvio.cucchisi@uniud.it. The research is attributable to the PRIN 2022 PNRR project, Prot. No. P20229FEWC, entitled "SUNRISE – Sustainable solutions for social and work inclusion in cases of chronic illness and transplantation", CUP G53D23007840001, P.I. Prof. Valeria Filì, Public Call No. 1409 of 14/09/2022 – PRIN 2022 PNRR M4C2 Inv. 1.1 – funded by the European Union – Next Generation EU. Part I is attributable to Claudia Carchio, part II to Fulvio Cucchisi, and paragraph 1 is co-authored. This contribution also constitutes a revised version of the paper presented at the International Conference "Work and Non-Work, Today: Reframing the Issue through an Interdisciplinary Perspective", organised by ADAPT and held in Bergamo (Italy) on 26–28 November 2025, and benefited from the debate that took place on that occasion.

@ 2026 ADAPT University Press - ISSN 2280-4056

1. Introduction

The present contribution examines the inclusion in employment of individuals affected by chronic illnesses and of workers who have undergone organ transplantation – an issue which, in the Italian legal system, has yet to receive a comprehensive definition or an organic regulatory framework, despite its growing relevance.
The analysis adopts the biopsychosocial model of disability as its interpretative lens. Owing to its interdisciplinary matrix, this model allows conditions of health that affect work performance to be reinterpreted within labour law not as mere individual limitations, but as the outcome of the interaction between personal characteristics, work organisation, and available support measures.
The essay is structured into two parts. Part I reconstructs the existing regulatory framework and highlights its practical and systemic implications: it clarifies which forms of protection are currently recognised for workers with chronic illnesses or transplant recipients and, conversely, which areas remain insufficiently safeguarded. Part II takes a further step: it explores whether, and to what extent, the legal notion of disability – interpreted through the lens of the biopsychosocial model – may serve as a viable and coherent avenue of protection for these workers. Drawing on the shortcomings identified in Part I, it examines the potential of legal framework relating to disability to function as a systematic framework for regulating the employment relationship of workers whose health conditions have long-term effects on work performance.
The participation of chronically ill and transplanted workers in the labour market represents a significant testing ground not only for welfare systems and employment policies, but also – indeed, in a particularly meaningful way – for the legal regulation of the employment relationship. It is no longer sufficient to focus solely on incentives for labour market access or on measures, predominantly economic in nature, designed to address periods of impossibility or unfitness for work. Attention must instead shift towards the conditions that make it possible, in a medium- to long-term perspective, for workers living with health conditions that stably affect performance to remain in employment and progress professionally.

In this perspective, returning to work after a chronic illness or a transplant does not exhaust its significance at the individual level, although it profoundly affects the personal sphere of the workers concerned. It also generates important collective implications, at the level of organisational structures and welfare sustainability. This requires examining how employers and institutions can adapt work organisation, performance arrangements, evaluation systems and career pathways in order to ensure effective, fair and dignified participation in employment, in line with the principles of non-discrimination and the protection of health in the workplace – principles whose operational expression includes the obligation to provide reasonable accommodation.
The inclusion of workers with chronic illnesses or transplant outcomes cannot be reduced to an individual protective measure: it constitutes a structural factor of social sustainability. Ensuring, within the limits of compatibility with the worker's health condition, their active presence in the labour market strengthens social inclusion and, at the same time, supports the overall stability of the economic and employment system, encouraging enterprises to become actors of organisational innovation and inclusion.
In this sense, the object of the analysis aligns with the broader rethinking of the relationship between work and non-work, prompted by the ageing of the active population, the increasing prevalence of chronic diseases, and the growing heterogeneity of workers' health conditions.
The adoption of the biopsychosocial model makes it possible to move beyond the traditional dichotomy between fitness and unfitness for work, emphasising the relational and contextual dimensions of disability and opening the way to a comprehensive reconsideration of employers' obligations, workplace adaptation techniques, and tools for managing the timing and modalities of work performance.

PART I

1. The Promotion of Employment for Persons with Chronic Illnesses and Transplant Recipients: A Matter of Systemic Relevance

Ensuring the effective retention in employment of individuals living with chronic illnesses or who have undergone organ transplantation has become a matter of growing significance, in light of the steadily increasing number of people who live long-term with such conditions[1].

A closer look at the quantitative dimension of the phenomenon, as well as at the structural dynamics driving its expansion, reveals that the increase in the number of individuals affected by these conditions is not an episodic occurrence. Rather, it represents the outcome of profound and long-term transformations: the extension of life expectancy, demographic ageing, advances in diagnostic and therapeutic techniques, and, not least, the progressive chronicisation of diseases once considered acute, coupled with improved survival rates following severe illnesses or complex medical procedures such as organ transplants.

An analysis of the prevalence of chronic diseases and post-transplant conditions further shows that, although their incidence rises markedly with age[2], these conditions are by no means confined to older cohorts[3]. On the contrary, they increasingly affect individuals who are fully of working age.

The growing presence of workers with compromised health must also be interpreted against the backdrop of a labour market characterised by the progressive ageing of the workforce. This trend is driven, on the one hand, by the rising participation rates of older workers[4] – facilitated by

---

[1] According to the World Health Organization (WHO), chronic diseases - including, among others, cardiovascular diseases (heart disease and stroke), cancer, diabetes, chronic respiratory diseases, musculoskeletal disorders, depression and other mental health conditions - represent the leading cause of death worldwide. They are responsible for approximately 41 million deaths each year, 17 million of which occur in individuals under the age of 70, accounting for 74% of all global deaths. See World Health Organization, *Noncommunicable diseases. Key facts*, 16 September 2023, https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases; see also World Health Organization, *World health statistics 2023: monitoring health for the SDGs, Sustainable Development Goals*, 2023, Licence: CC BY-NC-SA 3.0 IGO; World Health Organization, *Invisible numbers: the true extent of noncommunicable diseases and what to do about them*, 2022, https://www.who.int/publications/i/item/9789240057661.

[2] Eurofound, *How to respond to chronic health problems in the workplace?*, Publications Office of the European Union, Luxembourg, 2019, which reports that individuals over the age of 50 are more than twice as likely to develop a chronic disease as those under 35, and that even among younger workers (aged 16 to 29) the share of those reporting chronic conditions is both high and increasing, rising from 11% in 2010 to 18% in 2017.

[3] Ibid., reports that chronic diseases affect one quarter of the EU's working-age population, with a growing share that increased by 8 percentage points between 2010 and 2017.

[4] See European Commission, *2024 Ageing Report. Underlying Assumptions & Projection Methodologies*, Institutional Paper 257, Luxembourg: Publications Office of the European Union, 2023, pp. 32 ff., which also projects that the participation of older workers (aged

increased life expectancy and the consequent tightening of pension eligibility requirements[5] – and, on the other, by the contraction of the youth labour supply, with ever smaller cohorts entering employment[6].
The combined effect of these factors heightens the likelihood of encountering health-related limitations even in the core working-age population and is significantly reshaping the composition of the active labour force. As a result, an ever-larger share of workers is living with such conditions, with implications for labour-market participation, employment continuity, and, more broadly, the overall quality of the working experience.
It follows that workers' health acquires a structural relevance within productive systems: it extends far beyond the individual dimension and

55–64) will increase in all EU Member States, rising on average by 10 percentage points by 2070, from 65.4% in 2022 to 75.5% in 2070, with higher increases for women (+13 percentage points) than for older male workers (+6 percentage points). As regards the participation of people aged 65–74, a similar upward trend is observed, with the average participation rate increasing from 9.8% in 2022 to 18.4% in 2070.

[5] For an overview of pension reforms contributing to this trend at the global level, see the annual OECD surveys, the most recent of which is OECD, *Pensions at a Glance 2023: OECD and G20 Indicators*, OECD Publishing, Paris, 2023, https://doi.org/10.1787/678055dd-en. In Italy, the increase in the statutory retirement age was introduced by Art. 24 of Decree-Law No. 201/2011, converted into Law No. 214/2011 and subsequent amendments.

[6] On the topic of older workers, see M. Dagnino, *Ageing, Chronic Diseases, and Employment: Comparative Insights from Two Distinct Regulatory Models*, in E-Journal of International and Comparative Labour Studies, 2025, 2, vol. 14, pp. 1-35; Eurofound, *Keeping older workers engaged: Policies, practices and mechanisms*, edited by F.F. Eiffe, J. Muller, T. Weber, 2023; AGE Platform Europe, *Barometer 2023 – Empowering older people in the labour market for sustainable and quality working lives*, AGE Platform Europe, 2023; F. Eiffe, *Eurofound's Reference Framework: Sustainable work over the life course in the EU*, in *European Journal of Workplace Innovation*, 2021, Vol. 6, No. 1, pp. 67–83; EU-OSHA, Cedefop, Eurofound and EIGE, *Joint report on Towards age-friendly work in Europe: a life-course perspective on work and ageing from EU Agencies*, Publications Office of the European Union, Luxembourg, 2017. For the Italian scholarly debate, see G. Ludovico, *Dalla società dell'invecchiamento alla società della longevità*, in *LDE*, 2025, 1, pp. 22 ff.; P. Pascucci, *Longevity economy e invecchiamento nel contesto lavorativo*, in *LDE*, 1, 2025; M. Marazza, *Lavoro, longevità e nuove dimensioni della prevenzione nell'approccio "total worker health"*, in *DSL*, 2024, pp. 127 ff.; Battisti, *Fattore demografico e misure per il lavoro*, Giappichelli, 2024, 1 ff.; Gambacciani, *Invecchiamento demografico e diritto del lavoro*, in *MGL*, 2020, 929; P. Bozzao, *Longevità lavorativa e politiche di welfare: nuove sfide e prospettive*, in *Riv. trim. scienza amm.*, 2022, 1, pp. 1 ff.; V. Filì, *Anziano/a*, in M. Brollo, F. Bilotta, A. Zilli (eds.), *Lessico della dignità*, Forum, 2021, pp. 25 ff.; V. Filì (ed.), *Quale sostenibilità per la longevità? Ragionando degli effetti dell'invecchiamento della popolazione sulla società, sul mercato del lavoro e sul welfare*, ADAPT University Press, No. 95, 2022.

becomes a decisive factor for the organisational sustainability of enterprises and for the broader equilibrium of welfare systems[7].

In this context, enterprises are increasingly required to address new and often complex needs, as workers living with chronic illnesses or who have undergone organ transplantation present specific requirements linked to the nature of their health conditions. Such conditions may necessitate continuous therapeutic treatments, prolonged rehabilitation pathways, fluctuations in work capacity, and the need to reconcile time devoted to care with time devoted to work. Although these situations do not always fall neatly within the legally codified categories – such as disability, invalidity, or incapacity[8]– they share common features, including the long-term duration of the health condition, the fluctuating course of the illness (with alternating phases of exacerbation and remission), and, consequently, a significant impact on daily life and on the ability to perform certain tasks, or to perform them in the same manner as before the onset of the illness.

The presence of a chronic condition or the consequences of transplantation may affect, on the one hand, attendance at work and, on the other, the worker's functional capacity, reducing or temporarily suspending it; in some cases, these conditions may even lead to a permanent reduction in work capacity, culminating – in the most severe situations – in a complete inability to perform any work activity and, therefore, in a condition of incapacity. In this latter scenario, the social protection system intervenes through the provision of welfare and/or social-security benefits designed to compensate for the impossibility of participating in the labour market. When, instead, a residual work capacity remains, it becomes necessary to design pathways that ensure reintegration and employment continuity, through arrangements that are compatible with the worker's health condition and, at the same time, sustainable for the enterprise.

This requires targeted interventions to adapt job tasks, reorganise working time and workloads, and establish continuous dialogue among the worker,

[7] For an in-depth and historically informed analysis of the evolving relationship between health protection and the management of the employment relationship, see M. Tiraboschi, *Salute e lavoro: un binomio da ripensare. Questioni giuridiche e profili di relazioni industriali*, in *DRI*, 2023, No. 2, pp. 229 ff., and the references therein. See also, with further reflections, 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 DSL, 2024, 2, pp. 162 ff.

[8] See, among many others, M. Martone and M. Persiani, *Diritto della sicurezza sociale*, Giappichelli, Turin, 2024, pp. 158 ff.

the employer, and the competent institutions, with the aim of identifying solutions that both enhance the remaining work capacity and safeguard the worker's health and the organisational balance of the firm[9].
However, data on inactivity rates among individuals with chronic illnesses and, more broadly, among persons with disabilities paint a markedly different picture, highlighting how far we still are from achieving full inclusion in the labour market.
According to OECD estimates, the employment rate of persons with disabilities is slightly above half that of the overall working-age population, while their unemployment rate is approximately twice as high[10].
In 2022, the OECD further reported that persons with disabilities were 42 per cent less likely to be employed than those without disabilities, with an unemployment rate of around 15 per cent[11].
Comparable findings emerge from other European sources[12]. Eurofound, drawing on data from the Survey of Health, Ageing and Retirement in Europe (SHARE), shows that even in the 50-59 age group the presence of one or more chronic conditions significantly affects labour-market participation: while 74 per cent of individuals without health problems are employed, the share falls to 70 per cent among those with a single chronic condition and drops to 52 per cent in the presence of two chronic conditions[13].
Added to this are the analyses conducted by EU-OSHA, which emphasise that, despite regulatory and organisational efforts, the labour-market

[9] In particular, on the relationship between the protection of workers with chronic illnesses and organisational and managerial models, see P. Stolfa, *La tutela della salute e sicurezza dei lavoratori affetti da malattie croniche nell'organizzazione aziendale*, in *Professionalità studi*, 2025, 2/VIII, pp. 100 ff.
[10] OECD, *Sickness, Disability and Work: Breaking the Barriers: A Synthesis of Findings across OECD Countries*, OECD Publishing, Paris, 2010.
[11] See OECD, *Disability, Work and Inclusion: Mainstreaming in All Policies and Practices*, OECD Publishing, Paris, 2022.
[12] For data concerning the Italian context, see, among others, M. Giovannone, *L'inclusione lavorativa delle persone con disabilità in Italia*, Rome, International Labour Organization, 2022.
[13] Eurofound, *How to respond to chronic health problems in the workplace?*, Publications Office of the European Union, Luxembourg, 2019, p. 1. Similarly, according to the European Parliament, *Employment and disability in Europe. Briefing document*, May 2020, available at https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651932/EPRS_BRI(2020)651932_EN.pdf, the employment rate of persons with disabilities (aged 20–64) stood at 50.6% in 2017, compared with 74.8% for persons without disabilities, while in most EU Member States only a small proportion of working-age individuals with severe disabilities is employed.

@ 2026 ADAPT University Press

participation of individuals with compromised health conditions remains significantly below the European average, signalling the persistence of structural obstacles in pathways of job retention and return to work[14].
Taken together, these data confirm the existence of deep and systemic barriers that continue to hinder access to employment, job retention, and reintegration into the labour market, thereby making it necessary to rethink labour-market inclusion policies and the support instruments available to workers with compromised health conditions.
The picture is further aggravated by the fact that workers with chronic illnesses experience employment trajectories marked by pronounced fragmentation. Transitions from employment to unemployment tend to occur relatively quickly, whereas the reverse transitions – returning to work after periods of inactivity – are slow and particularly difficult[15]. This asymmetry highlights the vulnerability of these workers during phases of occupational discontinuity and the need for instruments that facilitate re-entry, preventing short periods of absence from resulting in long-term exclusion from the labour market.
The difficulties faced by individuals with chronic conditions upon attempting to return to work are manifold and arise on both sides of the employment relationship. From the employer's perspective, concerns often relate to potential costs: the risk of future absences, possible reductions in productivity, legal obligations associated with the return to work – such as restrictions on dismissals or the need to provide reasonable accommodations – as well as organisational burdens stemming from workplace adjustments or the reorganisation of production rhythms. From the workers' perspective, returning to work is frequently accompanied by uncertainty and reluctance: the perception of reduced capacity, fear of being unable to cope with workload demands, difficulties

[14] EU-OSHA, *Rehabilitation and return-to-work policies and systems in European countries*, 2016, updated in 2022, available at `https://oshwiki.osha.europa.eu/en/themes/rehabilitation-and-return-work-polices-and-systems-european-countries.

[15] Eurofound, *Employment Opportunities for People with Chronic Diseases, carried out within the framework of the European Observatory of Working Life – Eur-WORK*, 2014, available at https://www.eurofound.europa.eu/en/publications/2014/employment-opportunities-people-chronic-diseases, pp. 19–20; an interesting study by S. Leka, A. Jain, *A Mental Health in the Workplace in the European Union: Consensus Paper*, Brussels, Belgium, European Commission, Directorate General for Health, 2017, reports that 55% of people with mental health problems attempt unsuccessfully to return to work and, among those who do return, 68% have fewer responsibilities, work fewer hours, and are paid less than before.

in reconciling care responsibilities with work obligations, and the risk of stigmatisation or discrimination by colleagues and supervisors[16].

A further element of considerable relevance emerges from numerous studies that have identified a significant association between labour-market exclusion and health status. Individuals outside the labour market report the highest levels of long-term limitations in their usual activities due to health problems; similarly, among the unemployed there is a higher prevalence of persons with chronic conditions and multiple chronic illnesses[17]. Job loss may therefore constitute a factor of vulnerability that contributes to the onset of chronic health problems or the worsening of pre-existing ones. At the same time, individuals living with a chronic illness are more exposed to interruptions in their employment relationship or to difficulties in maintaining stable employment. What emerges is a reciprocal interdependence between health status and labour-market participation[18].

A similar picture emerges when examining the relationship between health conditions and precarious forms of employment. Job instability – much like prolonged absence from employment – tends to have a negative impact on psychosocial well-being, contributing to a deterioration of health in the medium and long term. Available evidence shows a significant presence of chronic illnesses among workers employed on fixed-term contracts or reduced working hours[19], whereas the proportion

[16] On this point, see Eurofound, *Employment opportunities for people with chronic diseases*, cit., passim; L.C. Koch, P.D. Rumrill, L. Conyers, S. Wohlford, *A Narrative Literature Review Regarding Job Retention Strategies for People with Chronic Illnesses*, in *Work*, 2013, 133 ff.; S.H. Allaire, J. Niu, M.P. Lavalley, *Employment and Satisfaction Outcomes from a Job Retention Intervention Delivered to Persons with Chronic Diseases*, in *Rehabilitation Counseling Bulletin*, 2005, p. 101, which note that among the factors facilitating job retention for individuals with chronic illnesses are the removal of barriers to performing work, personal satisfaction, and the awareness of possessing the skills needed to continue carrying out one's tasks effectively.

[17] Eurofound, *Employment opportunities for people with chronic diseases*, cit., passim; R. Leahy, *Unemployment is bad for your health*, in www.huffpost.com, 7 April 2013; for the Italian context, see also Osservatorio Nazionale sulla Salute nelle Regioni Italiane, *Patologie croniche in costante aumento in Italia con incremento della spesa sanitaria. La cronicità non colpisce tutti allo stesso modo: si confermano le diseguaglianze di genere, territoriali, culturali e socio economiche*, 2019.

[18] Cf. on this point the literature cited by M. Tiraboschi, *Sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, in M. Tiraboschi (ed.), *Occupabilità, lavoro e tutele delle persone con malattie croniche*, ADAPT University Press, 2015, p. 11, and S. Varva, *Malattie croniche e lavoro tra normativa e prassi*, in RIDL, 2018, no. 1, pp. 118 ff.

[19] Eurofound, *Employment opportunities for people with chronic diseases*, cit., pp. 30–31, where it is also noted that workers with chronic illnesses report difficulties in requesting and

of individuals reporting such conditions is lower among permanent employees and even lower among self-employed workers without employees[20]. One possible explanation lies in the more limited ability to adjust working time and modalities typical of subordinate employment, which makes it more difficult to manage care needs and ongoing therapeutic treatments.

Taken together, these elements suggest that the limitations – whether real or perceived – associated with a chronic illness may reduce labour-market participation; at the same time, weak or intermittent participation may negatively affect overall health, levels of social integration, and ultimately the economic stability of the individuals concerned. From this perspective, job retention and return to work for those who still possess residual work capacity acquire strategic importance.

At the individual level, continuity of employment supports a more complete recovery after illness, contributing to improved mental health, a strengthened sense of purpose, and economic and professional stability, often undermined by the costs of care and employment interruptions[21]. At the organisational level, the reintegration of workers with long-term health conditions – supported by appropriate workplace adjustments – helps reduce turnover, retain skills already present within the enterprise, and contain costs associated with absenteeism, reduced productivity, or presenteeism[22], as well as those linked to contract terminations, new hires, and the training of replacement staff.

---

obtaining a different distribution of working time or workload, thereby hindering access to so-called reasonable accommodations, with repercussions on their ability to perform work as well as on their prospects for professional development and career progression.

[20] Eurofound, *European Working Conditions Survey (EWCS)*, cit.; I.-H. Kim, Y.-H. Khang, C. Muntaner, H. Chun, S.-I. Cho, *Gender, precarious work, and chronic diseases in South Korea*, in *American Journal of Industrial Medicine*, 2008, vol. 51, no. 10, 748–757; P. Virtanen, V. Liukkonen, J. Vahtera, M. Kivimaki, M. Koskenvuo, *Health inequalities in the workforce: The labour market core-periphery structure*, in *International Journal of Epidemiology*, 2003, vol. 32, no. 6, pp. 1015–1021; cf. Osservatorio Nazionale sulla Salute nelle Regioni Italiane, *Patologie croniche in costante aumento in Italia con incremento della spesa sanitaria. La cronicità non colpisce tutti allo stesso modo: si confermano le diseguaglianze di genere, territoriali, culturali e socio economiche*, cit.

[21] On this point, see EU-OSHA, *Rehabilitation and return to work after cancer – instruments and practices. European Risk Observatory*, Luxembourg: Publications Office of the European Union, 2018, pp. 18 ff.; EU-OSHA, *Rehabilitation and return to work after cancer – Literature review*, Publications Office of the European Union, Luxembourg, 2017.

[22] See in this regard, among others, A. McGregor, P. Caputi, *Presenteeism Behaviour. Current Research, Theory and Future Directions*, Palgrave Macmillan, 2022; K. Skagen, A. Collins, *The consequences of sickness presenteeism on health and wellbeing over time: A systematic review*, in *Social Science and Medicine*, 2016, pp. 169 ff.; K. Vänni, S. Neupane, C.-H. Nygard, *An effort to*

At the collective level, the growing number of individuals with reduced work capacity has significant implications for the sustainability of pension systems and disability benefits, making it necessary to rethink welfare policies in a more dynamic direction, oriented towards continued labour-market participation.
The evidence presented thus far shows that the management of chronic illnesses in the workplace cannot be understood solely in terms of individual protection; rather, it must be addressed as a structural issue that affects the quality of human capital, the competitiveness of enterprises, and the overall resilience of welfare systems. The exclusion from employment of an increasing share of the working-age population produces effects that extend far beyond the personal dimension of illness, fuelling dynamics of social marginalisation, reducing the employment base, and increasing the demand for public support.
For these reasons, labour-market policies must be oriented towards models capable of sustaining continuous employment pathways even in the presence of complex health conditions, promoting flexible organisational solutions, effective support instruments, and a more strategic use of assistance measures. Within such a framework, chronic illness and organ transplantation can be removed from the logic of exclusion and situated within a paradigm of sustainable integration, in which participation in work becomes an essential component of the recovery process and, at the same time, a lever for economic development and social cohesion.

2. The State of the Art in the Protection of Workers with Long-Term Illnesses in the Italian Legal System

The analysis conducted thus far highlights the need to rethink labour market policies in a direction capable of supporting, even in the presence of complex and long-term health conditions, the continuity of professional trajectories and the return to work after periods of absence, by valuing the residual work capacity of individuals with chronic illnesses or transplant recipients.
However, when examining the Italian regulatory framework, it becomes evident that labour legislation has historically focused on illness as a condition of incapacity for work, treated almost exclusively as a state

assess the relation between productivity loss costs and presenteeism at work, in *International Journal of Occupational Safety and Ergonomics*, 2016, 23(1), pp. 1 ff.

intrinsically incompatible with the performance of work activity[23]. This approach has produced a predominantly negative and residual conception of illness, orienting protective measures towards social security instruments – disability allowances, incapacity pensions, as well as sickness benefits, leaves of absence and time-off entitlements – designed to compensate for the inability to work, rather than towards active policies aimed at supporting job retention or reintegration[24].

From this perspective, particularly when the chosen vantage point is the protection of workers with long-term illnesses, a structural limitation of the current system clearly emerges. Legislation has concentrated primarily on the social and economic costs generated by the onset of such conditions[25], neglecting the development of tools capable of supporting continued participation in work. The traditional approach, grounded in the dichotomy between capacity and incapacity for work, has ultimately reduced the protection of vulnerable individuals to a welfare-based, medicalised approach, without recognising the possibility – and often the necessity – of maintaining the person in employment through appropriate adjustments[26].

[23] It is sufficient to recall that the notion of illness relevant for the suspension of the employment contract under Article 2110 of the Civil Code has been defined by case law in a manner entirely autonomous from the medical definition. It does not coincide with the clinical diagnosis as such, but encompasses only those conditions that prevent the performance of the assigned duties and result in a concrete impossibility – whether total or partial – to carry out the activities inherent in the worker's position. In this way, protection is confined to situations of actual functional incapacity, assessed in relation to the concrete content of the work performance. On this point, see F. Cucchisi, *La malattia del lavoratore e lo svolgimento di altre attività durante il periodo di comporto*, in LG, 2025, no. 5, pp. 520 ff.

[24] Cf. M. Tiraboschi, *Sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, cit., p. 15, who emphasises how an issue of protection in the labour market and within the employment relationship – namely, ensuring adequate safeguards for a vulnerable person whose work capacity is reduced or limited, whether permanently or only temporarily – tends to be transformed into a medical or welfare-based question, that is, determining whether the individual meets the standard requirements for the recognition of unfitness for work and the corresponding disability allowance or pension. Cf. idem, pp. 17 ff. and the references therein.

[25] Cfr. *idem*, 17 ss. e i riferimenti ivi contenuti.

[26] With specific regard to the relationship between illness and work, also in light of the reshaping of the concepts of working time and workplace, cf. D. Garofalo, *La risoluzione del rapporto di lavoro per malattia*, in DRI, 2023, no. 2, pp. 359–360, who notes that "the widespread de-structuring of working time and place, and its impact on the rights and obligations of both parties to the employment relationship, may also affect the suspensive events of the relationship itself, which are currently regulated and shaped by

This approach has produced a system that tends to place the ill worker at the margins, or even outside, the labour market: it provides economic support when the person is unable to work, but does not establish structural interventions capable of facilitating job retention or return to work after illness. In the case of individuals with chronic conditions, however, this model reveals all its inadequacy, as it ignores the variability of individual trajectories and the possibility of reconciling, at least in part, work activity and therapeutic pathways. Chronic illnesses, in fact, not only do not offer a prospect of definitive recovery, but also do not follow a linear course: rather, they present a long, irregular and unpredictable pattern, marked by alternating phases of stability and exacerbation. As a result, the work incapacity of those affected – and thus their absences from work – is not always absolute nor concentrated in a single continuous period, but may be partial and manifest itself in multiple (shorter or longer), recurrent and difficult-to-predict episodes. It is precisely this structural discontinuity that exposes the distance between a regulatory framework anchored in the model of acute illness – designed for unitary and temporally defined absences – and the nature of chronic conditions, with the consequence of leaving without adequate protection situations that would instead require flexible and continuous measures to support job retention.

In this regard, a clear asymmetry emerges between different levels of protection: while the social-security apparatus that intervenes in cases of temporary or permanent incapacity is articulated and equipped with diversified instruments, there is no equally structured regulation of the employment relationship capable of specifically addressing the needs of individuals with chronic illnesses, whose course is oscillatory. Although the system provides income-replacement or income-supplementing benefits for those with work incapacity, reserved quotas in access to employment for persons recognised as having disabilities[27], and

law and collective bargaining with reference to the typical model of on-site work performed according to a full-time, fixed and continuous schedule". More recently, see V. Filì, *Breve riflessione (polemica) sulla possibile evoluzione della nozione di 'malattia comune' nel lavoro digitale a distanza: una proposta interpretativa*, in F. Visintin, A. Zilli (eds.), *Out of Office. La remotizzazione del lavoro nel settore ICT. Organizzazione, rapporto di lavoro e fiscalità*, Editoriale Scientifica, Naples, 2025.

[27] See, in particular within the Italian legal system, Law No. 68/1999; among the most recent contributions, cf. D. Tardivo*, L'inclusione lavorativa della persona con disabilità: tecniche e limiti*, Giappichelli, Turin, 2024; M.D. Ferrara, *L'avviamento al lavoro dei disabili: verso il collocamento mirato 'personalizzato' e la soluzione ragionevole 'a responsabilità condivisa'?*, in VTDL, 2020, no. 4, pp. 877 ff.; D. Garofalo, *La tutela del lavoratore disabile nel prisma degli*

mechanisms for suspension or job retention during acute phases of illness[28], there has been no parallel development of measures specifically aimed at intervening on the working conditions – both subjective and organisational – affecting chronically ill workers and the enterprises employing them[29].

Ensuring effective reintegration into the labour market, both after and during chronic illness, requires far more than the mere preservation of the job or a simple return to work after illness, as occurs in cases of suspension of the employment relationship and receipt of sickness benefits. Rather, it is necessary to support employment continuity throughout the various phases of the condition, whenever compatible with the worker's health, by establishing tools that allow the modulation of the timing, modalities and intensity of work performance in line with the evolution of the illness and therapeutic treatments.

In this sense, the challenge facing contemporary labour law in relation to the protection of workers with long-term illnesses lies in constructing a system that is not only inclusive but genuinely adaptive – one that does not confine its intervention to the labour-market dimension, promoting the entry of those deemed fit or facilitating the exit of those declared unfit for specific tasks, but extends protection to the regulation of the employment relationship, thereby enabling the continuation of work activity even in the presence of supervening partial unfitness through appropriate adjustments to work performance.

---

accomodamenti ragionevoli, in ADL, 2019, no. 6, pp. 1211 ff.; F. Malzani, *Dal collocamento mirato al diversity management. Il lavoro dei disabili tra obbligo e inclusione nella prospettiva di genere*, in RDSS, 2019, no. 3, pp. 720 ff.; A. Riccardi, *Disabili e lavoro*, Cacucci, Bari, 2018; C. Spinelli, *La sfida degli "accomodamenti ragionevoli" per i lavoratori disabili dopo il Jobs Act*, in DLM, 2017, I, pp. 39 ff.

[28] For an overview of the case law and scholarship on illness, see G. Della Rocca, *La malattia del lavoratore subordinato tra vecchie e nuove tutele*, Giappichelli, Turin, 2024; R. Del Punta, *La sospensione del rapporto di lavoro. Malattia, infortunio, maternità, servizio militare. Artt. 2110–2111*, Giuffrè, Milan, 1992.

[29] See G. Impellizzieri, *Luci e ombre del contributo della giurisprudenza all'evoluzione del rapporto tra malattia (cronica) e lavoro*, in *DSL*, 2025, no. 1, pp. 49 ff.; E. Dagnino, *La tutela del lavoratore malato cronico tra diritto vivente e (mancate) risposte del sistema*, in *DRI*, 2023, no. 2, pp. 336 ff., especially pp. 336–339; M. Tiraboschi, *Le nuove frontiere dei sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, in S. Fernández Martínez, M. Tiraboschi (eds.), *Lavoro e malattie croniche*, ADAPT University Press, 2017, pp. 25–26; E. Eichenhofer, *The European social model and reforms of incapacity benefits*, in S. Devetzi, S. Stendahl (eds.), *Too Sick to Work? Social Security Reforms in Europe for Persons with Reduced Earnings Capacity*, Milan, 2011, p. 19.

It is above all in this domain that an update of both statutory and collectively bargained rules becomes necessary, so that work organisation may effectively accompany workers with chronic illnesses or transplant outcomes, supporting their continued participation in employment and limiting, as far as possible, the risks of exclusion arising from their health conditions.

3. The right to absence from work on grounds of illness, in light of Law no. 106/2025

As previously noted, the protection traditionally afforded to workers affected by chronic illness during the employment relationship rests on the possibility of temporarily suspending work performance when the pathology – or the therapies required to manage it – results in a condition of total incapacity to carry out assigned duties. Under the framework established by Article 2110 of the Civil Code, absence due to illness suspends the worker's obligation to perform without interrupting the continuity of the employment relationship, which remains safeguarded for the entire job-retention period for sickness absence, the duration of which is determined by collective bargaining[30].
As is well known (in line with the guidance consolidated in case law), collective bargaining distinguishes between two methods for calculating the period of job retention. The first is the so-called "single-spell job-retention period", referring to a single, continuous spell of absence; the second is the "cumulative job-retention period", which allows for the aggregation of non-contiguous and fragmented absences within a defined temporal window. It is precisely this latter model that proves particularly suited to capturing the cyclical and discontinuous nature of chronic illnesses, preventing the mere frequency of illness episodes from being

[30] On the subject of the suspension of the employment relationship, the literature is extensive; among the many contributions, reference may be made to the more recent works of R. Vianello, *La sospensione della prestazione di lavoro*, in M. Martone (ed.), *Contratto di lavoro e organizzazione. Tomo I. Contratto e rapporto di lavoro*, in M. Persiani, F. Carinci (dirs.), *Trattato di diritto del lavoro*, vol. IV, Cedam, Padova, 2012, p. 726 ff.; R. Del Punta, *La sospensione della prestazione di lavoro*, cit.; P. Ichino, *Il contratto di lavoro*, in A. Cicu, F. Messineo (dirs.), *Trattato di diritto civile e commerciale*, vol. III, Giuffrè, Milano, 2003; M. Tatarelli, *La malattia nel rapporto di lavoro privato e pubblico*, Cedam, Padova, 2002.

construed as a justified objective reason for dismissal where such absences generate organisational difficulties[31].
Alongside this general protection – which guarantees all workers the preservation of their position for the entire duration of the job-retention period for sickness absence – an additional layer of protection has progressively developed, first through judicial interpretation and subsequently through its incorporation into collective bargaining. This supplementary protection is directed at workers considered particularly vulnerable, most notably workers with disabilities, including where the disability stems from a chronic condition. As will be examined in greater detail in the second part of this contribution, numerous chronic illnesses fall within the broad notion of disability elaborated under the bio-psycho-social model. By their very nature, such conditions tend to generate a physiologically higher number of absences than ordinarily observed, whether in the form of continuous periods or recurrent episodes distributed over time.

[31] With regard to the inclusion of so-called *eccessiva morbilità* within the scope of the job-retention period for sickness absence, see the approach – later consolidated – that originated with Cass., Joint Sections, 29 March 1980, No. 2072, in GCM, 1980, no. 3, which held that «the 'case of illness' of the worker, for which Article 2110(2) of the Civil Code provides that the employer may terminate the employment relationship only after the impossibility of performance has continued for the period established by law, collective agreements, custom or equity (the so-called job-retention period for sickness absence), must be understood – also in light of the constitutional principles on the right to health – not as limited to a single or continuous illness, but as including the succession of intermittent or recurrent illnesses, even if frequent and discontinuous, associated with a fragile state of health (the so-called *eccessiva morbilità*). It follows, given the prevalence of this special provision over the general rules on termination of employment, that even in the case of repeated absences due to illness, the employer may not dismiss the worker for justified reason under Article 3 of Law No. 604 of 15 July 1966, but may exercise termination only after the period established for that purpose by collective bargaining or, failing that, determined according to equity. Moreover, where the collective agreement provides for the job-retention period for sickness absence but does not expressly regulate its duration in the case of multiple illness episodes within a given timeframe, the question of whether the job-retention period for sickness absence may be used once only – possibly by aggregating the absences relating to the individual episodes – or whether it restarts *ex novo* for each episode must be resolved through a primary analysis and interpretation of the collective provisions, in accordance with the notion of illness derived from Article 2110 of the Civil Code». This principle was reaffirmed more recently by Cass., Joint Sections, 22 May 2018, No. 12568, which held that dismissal imposed before the exhaustion of the *comporto* period is null for violation of Article 2110(2) of the Civil Code; see also Cass., 27 April 2023, No. 11174; Cass., 12 December 2022, No. 36188; Cass., 7 December 2018, No. 31763.

It is precisely in light of this specific condition that the case law – drawing on the Ruiz Conejero judgment (CJEU, 18 January 2018, C-270/16)[32] – has begun to reinterpret the job-retention period for sickness absence through the lens of disability. From this perspective, both the Court of Justice of the European Union and, subsequently, the Italian Court of Cassation[33] have affirmed that a worker with a disability is inherently exposed, in comparison with a non-disabled worker, to a greater risk of accumulating absences attributable to illness episodes linked to their condition. It follows that the application of the ordinary job-retention period for sickness absence to workers with disabilities constitutes indirect discrimination, insofar as the apparently neutral criterion governing the calculation of the job-retention period fails to take account of the heightened morbidity risk affecting disabled workers. Consequently, dismissal imposed solely on the basis of that single threshold must likewise be regarded as discriminatory.

More recently still, the Court of Justice (CJEU, 11 September 2025, Case C-5/24)[34] clarified that the establishment of a maximum limit on absences is not, in itself, discriminatory, as it may pursue a legitimate employment-policy objective aimed at countering absenteeism. Such an

[32] See also Court of Justice, 18 January 2018, Case C-270/16, *Carlos Enrique Ruiz Conejero v. Ferroser Servicios Auxiliares SA and Ministerio Fiscal*, in *RGL*, 2018, 3, pp. 271 ff., with a note by L. Guaglianone, *Licenziamento per assenteismo e indiretta discriminatorietà per motivi di disabilità. A proposito della sentenza Conejero (C-270/16).*

[33] On this point, see Cass. 21 December 2023, no. 35747, in DeJure; Cass. 31 March 2023, no. 9095, in GI, 2023, no. 10, pp. 2145 ff., with a note by V. Filì, *Superamento del comporto di malattia e rischio di discriminazione indiretta per disabilità*. For scholarly commentary, see, among many others, A. Maresca, *Disabilità e licenziamento per superamento del periodo di comporto*, in LDE, 2024, no. 2, pp. 1 ff.; M.G. Greco, *Il licenziamento per superamento del periodo di comporto del lavoratore disabile*, in VTDL, 2024, special issue, pp. 69 ff.; I. Zampieri, *La tutela antidiscriminatoria: dal lavoratore come contraente debole al lavoratore come persona umana*, ibid., pp. 45 ff.; D. Garofalo, *La risoluzione del rapporto di lavoro per malattia*, in DRI, 2023, no. 2, pp. 41 ff.; E. Dagnino, *Comporto, disabilità, disclosure: note a margine di una querelle giurisprudenziale*, in ADL, 2023, no. 1, pp. 241 ff.; M. Salvagni, *Il "prisma" delle soluzioni giurisprudenziali in tema di licenziamento del disabile per superamento del comporto: discriminazione indiretta, clausole contrattuali nulle, onere della prova e accomodamenti ragionevoli*, in LPO, no. 3–4, 2023, pp. 215 ff.; G. Franza, *Quando l'effettività genera paradossi. Sull'esclusione dal periodo di comporto della malattia imputabile a disabilità*, in LG, 2022, no. 1, pp. 62 ff.

[34] See also Court of Justice, 11 September 2025, Case C-5/24, *Pauni*; for early commentary, M. Salvagni, *Il comporto unico e l'aspettativa non retribuita al banco di prova delle tutele antidiscriminatorie: prime riflessioni su CGUE 11 settembre 2025 – C-5/24 in tema di licenziamento del disabile*, in LPO News, 15 September 2025; G. Della Rocca, *I distinguo della Corte di Giustizia su comporto e accomodamenti ragionevoli*, in *Labor*, 27 October 2025.

objective, however, must be pursued through proportionate means: disregarding the greater morbidity risk to which disabled workers are exposed transforms an ostensibly neutral criterion – namely, the uniform calculation of the job-retention period for sickness absence – into a discriminatory practice vis-à-vis a particularly vulnerable group. It follows that collective bargaining, when determining the duration of the job-retention period for sickness absence, must take this need for differentiation into account.

In this respect, the solutions adopted by the social partners tend to follow two principal lines of intervention[35]: on the one hand, the introduction of mechanisms for extending the job-retention period for sickness absence period by excluding from its calculation certain absences linked to specific pathologies; on the other, the provision of periods of unpaid leave for workers with fragile health conditions, thereby preventing the automatic loss of employment upon exceeding contractual limits[36].

Within this general – albeit evolving – framework of protections, shaped in large part by judicial interpretation, the legislature has recently intervened with Law No. 106 of 18 July 2025, introducing a set of measures specifically directed at workers affected by oncological, disabling, and chronic illnesses.

The new legislation, entitled "Provisions concerning job retention and paid leave for medical examinations and treatments for workers affected by oncological, disabling and chronic illnesses," establishes a structured set of measures which, however, once again operate primarily by allowing the suspension of the employment relationship during periods of

---

[35] For an overview of the role played by collective bargaining in this specific area in Italy prior to the CJEU judgment of 11 September 2025, see F. Alifano, *Discriminazione per disabilità, comporto e contrattazione collettiva. Primi appunti ad un anno dalla pronuncia della cassazione*, "Working Paper", No. 7/2024, ADAPT University Press; see also the "Collective Bargaining" Database available on the institutional website of the PRIN 2022 PNRR research project *SUNRISE – Sustainable solutions for social and work inclusion in case of chronic illness and transplantation*, https://prinsunrise.uniud.it/.

[36] The institution of unpaid leave for health reasons supplements the *comporto* period established by statute as an additional and residual safeguard for workers with disabilities or affected by serious (including chronic) illnesses. As an instrument of exclusively contractual origin, its regulation is entirely entrusted to collective-bargaining clauses, which determine not only its duration, its possible cumulation with other forms of leave, and its relationship with the job-retention period for sickness absence, but also the nature of the eligibility requirements for workers. On this topic, see G. Impellizzieri, *Luci e ombre del contributo della giurisprudenza all'evoluzione del rapporto tra malattia (cronica) e lavoro*, cit., p. 67 ff., and the references therein.

temporary incapacity and in anticipation of a return to work only after full recovery. These interventions therefore do not constitute genuine instruments of workplace reintegration, as they do not affect the management of the employment relationship in a way that facilitates its continuation; rather, they merely extend the temporal scope of legitimate absence. Nonetheless, these measures represent a significant step forward: they constitute the first legislative attempt expressly calibrated to address the employment-related needs associated with chronic illness – an area that, until now, had received only indirect attention and had been protected chiefly through interpretative developments.
The principal provisions introduced by Law No. 106/2025 consist in the creation of new forms of unpaid leave and paid time off for medical examinations and treatments for public and private-sector workers affected by oncological diseases or by disabling or chronic conditions, including rare diseases, provided that these entail a degree of disability equal to or greater than 74 per cent[37].
Taken together, these provisions construct a protective framework organised around two main pillars. The first concerns job retention through a period of unpaid leave, with a maximum duration of two years, available to employees suffering from serious illnesses that result in a disability rating of at least 74 per cent. This leave functions as a residual instrument, which may be activated only once all ordinary forms of justified absence – whether paid or unpaid – have been exhausted, and it suspends the employment relationship without generating any entitlement to remuneration or social-security contributions[38]. Access to the leave is conditional upon certification of the medical condition by the worker's general practitioner or by a specialist operating within a public or accredited healthcare facility, with the possibility of verification through national health-information systems[39]. At the end of the leave period, the worker is also granted priority access to remote working arrangements, where compatible with the duties performed, thereby introducing a form of organisational adjustment aimed at facilitating a gradual return to work[40].
The second pillar concerns the introduction of paid leave for medical examinations, consultations and treatments, available to workers affected

37 Article 1 of Law No. 106/2025..
38 Article 1, par. 1, of Law No. 106/2025.
39 Article 1, par. 2, of Law No. 106/2025.
40 Article 1, par. 4, of Law No. 106/2025.

by the same categories of illness and, symmetrically, to parents of minor children in the same conditions[41]. This entitlement constitutes an additional quota of hours beyond those already provided under existing legislation, to be used for recurrent healthcare needs and accompanied by figurative social-security coverage. The new regime coordinates with existing instruments – most notably the therapeutic leave provided for under Legislative Decree No. 119/2011[42] and the leave entitlements recognised to persons with disabilities under Law No. 104/1992[43] – without replacing them, but rather expanding the range of tools available to manage ongoing therapeutic requirements.

The law also extends a form of protection to self-employed workers falling within Article 14(1) of Law No. 81/2017, namely those who perform services on a continuous basis for a single client, granting them the possibility of suspending performance for up to 300 days per calendar year. The decision to limit the protection to "continuous" relationships, however, raises significant interpretative questions, given the absence of a statutory definition of continuity and the resulting uncertainty regarding the scope of eligible beneficiaries[44].

---

[41] Article 2 of Law No. 106/2025.

[42] Article 7 of Legislative Decree No. 119/2011 introduced a form of paid therapeutic leave, borne by the employer, for civilian invalids and workers with disabilities who have been recognised as having a reduction in working capacity exceeding 50 per cent. This leave may be taken each year, including on a fractional basis, for a maximum of 30 days per year (in addition to ordinary sick leave). It may be used exclusively to undergo necessary and non-deferrable treatments that are directly related to the recognised disability and have been prescribed by the worker's general practitioner or by a physician affiliated with the National Health Service.

[43] Article 33(6) of Law No. 104/1992 grants persons with disabilities requiring high or very high levels of support the possibility of using, alternatively, the leave entitlements provided for in paragraphs 2 and 3 of the same article. Paragraph 2 provides for two hours of paid daily leave (reduced to one hour where the daily working time is less than six hours), while paragraph 3 grants three days of paid monthly leave, covered by figurative social-security contributions.

[44] This guarantee is supplemented by the protection introduced by Article 8(10) of Law No. 81/2017 for self-employed workers falling within the scope of that statute. This latter provision concerns social-security protection, as it stipulates that, for periods of illness certified as resulting from therapeutic treatments for oncological diseases or serious chronic-degenerative conditions of a progressive nature—or, in any event, resulting in temporary total incapacity for work (100 per cent)—the same economic and regulatory treatment applicable to hospitalisation shall apply. On this provision, see, among others, D. Lanzalonga, *La tutela della genitorialità e della malattia per i lavoratori iscritti alla Gestione separata Inps*, in D. Garofalo (ed.), *La nuova frontiera del lavoro: autonomo – agile – occasionale*, ADAPT University Press, Labour Studies, 2018, pp. 239 ff

In addition to these measures, the legislature has established a dedicated fund to support training and scientific initiatives in the field of oncological diseases[45].
Despite the undeniable progress achieved, the 2025 reform presents a significant structural limitation: access to the protections is conditioned upon a disability rating of at least 74 per cent, a threshold so high that it risks excluding a substantial proportion of workers affected by chronic illnesses that are not immediately disabling but nonetheless exert a sustained and significant impact on work capacity.
Further critical issues arise on two fronts. First, the leave period is entirely devoid of remuneration and social-security contributions: it thus preserves the employment relationship but offers no compensation for the income loss resulting from the absence. The scheme provides no form of welfare support and effectively shifts the economic burden of illness entirely onto the worker and, indirectly, onto the employer, who remains obliged to retain the position.
Second, the absolute prohibition on engaging in any work activity during the leave is difficult to reconcile, on the one hand, with certain judicial decisions that, in specific circumstances, have recognised the possibility for workers to perform marginal activities compatible with their health condition or possessing a therapeutic or rehabilitative function; and, on the other hand, with the absence of any form of public economic support, which deprives the worker – already ill and unable to engage in alternative employment – of the supplementary income that such marginal activities might otherwise provide.
Taken as a whole, the 2025 reform therefore marks a non-negligible step forward, yet at the same time underscores the need for a more organic and systematic intervention capable of fully recognising the specificity of chronic illness and translating it into a framework of protections that is genuinely adequate and inclusive.

3.1 …and the Right to Work Flexibly

Finally, it is worth considering whether the Italian legislature has made available additional legal instruments capable of ensuring specific protection for workers with long-term illnesses within the employment relationship – during its ordinary performance, and not solely in situations of suspension (as is the case with leave and unpaid expectations).

[45] Article 3 of Law No. 106/2025.

As already noted, the Italian legal system lacks a genuine «statutory framework for workers with chronic illness»[46] both in definitional terms and with regard to the set of protections that might constitute a minimum core of specific rights, with the sole exception of the leave and paid time-off provisions introduced by Law No. 106/2025. Chronic illness continues, in fact, to operate as a juridical category only implicitly recognised, whose emergence has resulted more from judicial stratification and the influence of supranational sources than from any coherent legislative design[47].

Among the few and fragmented provisions that expressly identify (some) workers with chronic illnesses as their intended beneficiaries, a first reference must be made to Article 8(3) of Legislative Decree No. 81/2015. This provision grants workers affected by oncological diseases or by serious chronic-degenerative conditions of a progressive nature – whose work capacity remains reduced, including as a consequence of the disabling effects of life-saving therapies – the right to convert their employment relationship from full-time to part-time. It thus establishes a genuine right to a flexible mode of performing work, accompanied by the possibility, upon the worker's request, to return to full-time employment[48]. Although this represents a significant step forward, its scope remains limited: the right is not extended to all workers with long-term health conditions, nor to all those affected by chronic illnesses, but only to individuals whose pathology exhibits a progressive and worsening course, on the basis of an inherently prognostic assessment[49].

A further targeted provision is contained in Article 6(7) of the same Legislative Decree No. 81/2015, which allows workers affected by oncological diseases or by serious chronic-degenerative conditions of a progressive nature to withdraw their consent to the "elastic clauses" applicable in part-time employment. The possibility of avoiding unilateral

[46] See E. Dagnino, *La tutela del lavoratore malato cronico tra diritto vivente e (mancate) risposte di sistema*, cit., p. 342.

[47] G. Impellizzieri, *Luci e ombre del contributo della giurisprudenza all'evoluzione del rapporto tra malattia (cronica) e lavoro*, cit., p. 54.

[48] On this point, see, among others, 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*, Giuffrè, Milano, 2016, pp. 613 ff.

[49] Scholarly opinion has rightly criticised the introduction of the requirement of *ingravescenza*, which unjustifiably narrows the scope of the provision, ultimately excluding individuals affected by chronic conditions with a permanent or fluctuating course; see S. Varva, *Malattie croniche e lavoro tra normativa e prassi*, cit., p. 132; E. Dagnino, *La tutela del lavoratore malato cronico*, cit., pp. 340–341.

increases in working hours or changes in their temporal allocation constitutes an important safeguard in phases in which the illness or its treatments require greater organisational stability. This provision, too, confirms the selective nature of the legislative intervention: the protection is constructed around a model of chronicity that is progressive and irreversible, thereby excluding a wide range of chronic conditions characterised by a permanent, fluctuating, or non-progressive course – conditions that generate equally significant needs for adaptation but lack corresponding statutory recognition.
Alongside the legislative framework, collective bargaining has also played a non-negligible role in recent years, moving along two principal trajectories[50]. A first model merely incorporates the statutory provision, extending its application to workers falling within the scope of Article 8(3) of Legislative Decree No. 81/2015. A second, more advanced model is represented by collective agreements that intervene in an expansive manner relative to the statutory discipline, extending protection to a broader group of workers with health-related difficulties—for example, by committing employers to grant requests for conversion of the employment relationship motivated by serious and documented health problems, or by assigning priority, in the assessment of such requests, to needs connected with certified health conditions.
Ultimately, the resulting picture is that of a regulatory framework that remains fragmented and constructed through successive additions, in which the protection of workers with long-term illnesses continues to depend on sector-specific interventions, on negotiated solutions, or on evolving judicial interpretations, rather than on a unified legislative design. The absence of an organic statute dedicated to chronic illness leaves unresolved many of the adaptation needs inherent in such conditions, subjecting workers to a protective pathway that is often uncertain, uneven, and contingent upon the willingness of individual employers or the sensitivity of collective bargaining.

[50] On this point, see below note no. 35.

PART II

1. The "Forced" Path to Disability in the Evolution of EU Case Law

This brief overview reveals the absence of a protective legal framework that directly and systematically involves workers affected by chronic illnesses or transplant recipients, thereby requiring a broader scope of inquiry to assess whether these individuals may benefit from other forms of protection through the application of regulations that, although not specifically designed for them, may nonetheless encompass their situation. It therefore becomes almost inevitable to follow the path outlined by the definition of disability, which has undergone a profound reform at the regulatory level.

A valuable aid in this regard has been provided by the Court of Justice of the European Union (CJEU), followed by Italian jurisprudence, which extended the protections established by Directive 2000/78/EC – setting out a general framework for combating discrimination based on […] disability – to workers affected by chronic illnesses.

The failure of the Directive 2000/78/CE to define the scope of the notion of disability has given rise to a long exegetical evolution by the Court of Justice concerning the proper meaning of the term[51]. In fact the original biomedical model, in which the cause of the "limitation" hindering the person's participation in professional life was identified in the "impairment" afflicting them[52], has been progressively replaced by the so-called biopsychosocial model, developed within the framework of the UN Convention on the Rights of Persons with Disabilities of 2006, to

[51] W. Chiaromonte, *L'inclusione sociale dei lavoratori disabili fra diritto dell'Unione europea e orientamenti della Corte di giustizia*, in VTDL, 2020, n. 4, p. 897 ff.

[52] The medical model found its fullest expression in the International Classification of Impairments, Disabilities and Handicaps (ICIDH), published in 1980 by the WHO. It identified three distinct concepts, causally linked: impairment (understood as any loss or abnormality of a physiological, anatomical, or psychological structure or function), which causes disability (understood as a limitation or loss, resulting from the impairment, of the ability to perform basic activities of normal daily life), which in turn causes handicap (understood as a social, cultural, economic, or environmental disadvantage). For further discussion, see M. Pastore, *Disabilità e lavoro: prospettive recenti della Corte di giustizia dell'Unione europea*, in RDSS, 2016, no. 1, p. 203. The reference is to the well-known judgment CJEU, 11 July 2006, Case C-13/05, Sonia Chacón Navas v. Eurest Colectividades SA, paragraph 43, which adopts the so-called biomedical model of disability.

which the EU itself has adhered[53]. Under this model, the concept of disability encompasses any limitation of capacity, resulting from long-term 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[54].

Thus conceived, this condition emphasizes the interaction between the limitation and the surrounding environment, marking a clear shift in perspective compared to traditional approaches. Disability is seen as the outcome of a process that occurs when people with impairments encounter barriers to full participation in social life, recognition, and the enjoyment of human rights and fundamental freedoms in their civil, political, economic, social, cultural, or any other field of human activity[55] thereby framing it not merely as a medical issue but as a matter of social justice[56].

In other words, the biopsychosocial model of disability, while necessarily linked to a pathological condition, integrates a "relational construct"[57] whereby marginalization and disadvantage arise from the interaction between impairment (both biological and psychological) and the socio-relational environment. This becomes the structural element, so that even in the presence of a pathology or impairment, there is no disability if the

[53] The Convention was adopted in New York on 13 December 2006 and was approved by the European Union through the Council Decision of 26 November 2009 (2010/48/EC) and ratified by Italy with Law No. 18/2009. In legal scholarship, see D. Garofalo, *La tutela del lavoratore disabile nel prisma degli accomodamenti ragionevoli*, in ADL, 2019, n. 6, p. 1225 ff., according to whom the notion of disability thus adopted has shifted the concept of equality from a formal to a substantive level.

[54] See Article 1, paragraph 2, of the 2006 UN Convention, as well as the Court of Justice of the European Union (CJEU), 11 April 2013, Cases C-335/11 and C-337/11, HK Danmark; CJEU, 18 January 2018, Case C-270/16*,* Carlos Enrique Ruiz Conejero v. Ferroser Servicios Auxiliares SA e Ministerio Fiscal.

[55] In these terms C. Garofalo, *Illegittimità del licenziamento del lavoratore disabile. I diversi regimi sanzionatori*, in VTDL, 2022, n. 2, p. 251, who also refers to letter e) of the Preamble of the 2006 United Nations Convention. F. Sanchini, *I diritti delle persone con disabilità tra dimensione costituzionale, tutela multilivello e prospettive di riforma*, in Federalismi.it, 2021, n. 24, p. 170, who speaks of the "inability of the social context to ensure full inclusion and participation in collective life."

[56] See D. Garofalo, *La risoluzione del rapporto di lavoro per malattia*, in DRI, 2023, n. 2, p. 1224.

[57] F. Malzani, *Dal collocamento mirato al diversity management. Il lavoro dei disabili tra obbligo e inclusione di genere*, in RDSS, 2019, n. 4, p. 720.

conditions in the surrounding environment enable the individual to carry out normal activities and participate adequately in life contexts[58].
Moreover, starting with the landmark *HK Danmark* judgement, the evolving and dynamic nature of the concept of disability allowed the CJEU to acknowledge that the origin of the limitation may also be a long-term illness, whether curable or incurable, thereby granting access to anti-discrimination protection to numerous chronic diseases[59] which, if capable of limiting the full development, both individually and socially, of the affected person, can potentially fall within the scope of disability[60].
Applying this important legal principle the CJEU, in the *FOA* judgment, classified long-term obesity as a disability under Directive 2000/78/EC, provided it hinders full and effective participation in professional life on an equal footing with other workers. Furthermore, in its subsequent *DW* judgment of 2019, the CJEU also included within the concept of disability a condition of particular sensitivity to occupational risks "which prevents a worker from carrying out certain jobs on the ground that such jobs would entail a risk to his or her own health or to other persons" provided that this condition results, according to the national court adjudicating the case, in a limitation of capacities consistent with the criteria established in *HK Danmark*.
Finally, the Court of Justice has addressed the meaning to be attributed to the "durability" of the limitation of the person concerned. In the *Daouidi*

[58] In these terms W. Chiaromonte, *cit.*, p. 910. In case law, CJEU, 18 March 2014, Case C-363/12, *Z. v. A Government Department and The Board of Management of a Community School*, which excluded from the notion of disability those conditions that do not impact the performance of work, such as infertility and the consequent recourse to surrogacy.
[59] Case law at first instance and appellate levels has recognized the condition of disability for workers affected by chronic diseases such as: lymphoproliferative neoplasm (Florence Court of Appeal, 26 October 2021, in *DeJure*); phlebolymphedema of the right lower limb (Milan Tribunal, 2 May 2022, in www.wikilabour.it); diabetes (Santa Maria Capua Vetere Tribunal, 11 August 2019, in *DeJure*); craniopharyngioma (Mantua Tribunal, 16 July 2018, no. 1060, in www.studiodirittielavoro.it); arterial hypertension (Genoa Court of Appeal, 21 July 2020, in *DeJure*); prostate adenoma (Turin Court of Appeal, 3 November 2021, no. 604, in www.adlabor.it); and coxarthrosis (Milan Court of Appeal, 7 December 2022, in *Boll. ADAPT*, 2023, no. 21).
[60] F. Nardelli, *Il difficile bilanciamento tra tutela della disabilità e della privacy*, in VTDL, 2023, n. 4, p. 1054. The landmark ruling that paved the way for this approach is the Court of Justice's judgment of 11 April 2013, in the joined cases C-335/11 and C-337/11, *HK Danmark*. See also the Court of Justice's judgment of 11 September 2019, in case C-397/18, *DW v. Nobel Plastiques Ibérica SA*, paragraph 42, which recalls that Directive 2000/78/EC is not limited to covering only disabilities that are congenital or caused by accidents, but also those resulting from an illness.

ruling[61], the CJEU clarified that, to be considered durable, the impairment need not have a well-defined prospect of overcoming in the short term nor must it necessarily extend significantly before recovery, thereby broadening the scope of the anti-discrimination framework to include impairments of short duration or uncertain duration which may also have limiting effects in the long term[62].
The outcome of this jurisprudential evolution has therefore led to the establishment of a broad concept of disability, independent of the specific definitions applied by individual Member States and irrespective of the attainment of a particular threshold of work-related disability and/or an official or institutional recognition of disability or severe disability[63].
With reference to the Italian regulatory framework prior to the enactment of Legislative Decree No. 62/2024, the impact of the evolutionary interpretation promoted by the CJEU proved to be disruptive, as it allowed the extension of the scope of anti-discrimination law – and more generally of EU-derived legislation – to a plurality of situations not otherwise encompassed by the notion of disability protected under national law, which reflected a more restrictive biomedical model[64].
However, this jurisprudential evolution gave rise to several uncertainties in application.
Firstly, the jurisprudential development did not elevate chronic illness to an autonomous ground of protection, nor did it result in an automatic equivalence between chronic illness and disability, as it only became relevant "indirectly" and following a case-by-case assessment.
Secondly, the scope of application of the biopsychosocial model of disability was confined to the ambit of EU law, whereas the medical model of disability embodied in national legislation continued to apply in all other areas.
Finally, even where the EU framework was applicable, the absence of a binding assessment procedure for determining disability according to the biopsychosocial model entrusted the integration of such a condition to the subjective evaluation of individual interpreters, thereby lending itself to a

[61] CJEU, 1 December 2016, C-395/15.
[62] W. Chiaromonte, *cit.*, p. 912.
[63] See, among many, Cassation Court judgment of 27 September 2018, n. 23338, which recognizes "the absolute autonomy of the concept of handicap, as a factor of discrimination, independent from the assessment of the condition of severe handicap pursuant to Law 104/1992."
[64] On the labour law front, reference is made to Law No. 68/1999 on targeted employment and to Law No. 104/1992 concerning assistance and social integration of persons with disabilities.

remedial use and generating significant uncertainties – particularly regarding the proper fulfilment of the obligation to adopt reasonable accommodations[65].

4. Innovations introduced by Legislative Decree No. 62/2024: Embracing the biopsychosocial model of disability

It is within this state of profound ambiguity that the Italian legislator adopted Legislative Decree No. 62 of May 3, 2024, formally incorporating the biopsychosocial model of disability into Law No. 104/1992 and introducing a new assessment procedure for this condition (the so-called "basic evaluation"), which is structured according to medico-legal evaluation criteria that, in addition to identifying the residual capacities of persons with disabilities, assess the interaction between their health condition and the environment in which they operate[66].

The outcomes of the aforementioned jurisprudential evolution – which has enabled numerous chronic diseases to be recognized within the scope of disability understood in its social dimension – together with the absence of systematic protections, require interpreters to analyse the innovations introduced by Legislative Decree No. 62/2024 and evaluate whether they may also be applicable to workers with chronic conditions and transplant recipients.

Firstly, Article 3 of Legislative Decree No. 62/2024, implementing the enabling law, amends Article 3 of Law No. 104/1992 by incorporating the definition of "person with a disability" contained in the 2006 UN Convention and adopted by the CJEU's jurisprudence.

The break with the past is evident. Whereas disability was previously defined as "a physical, mental, or sensory impairment, stabilized or

---

[65] E. Dagnino, *La tutela del lavoratore malato cronico tra diritto vivente e (mancate) risposte di sistema*, in DRI, 2023, n. 2, p. 349. See also A. Delogu, "Adeguare il lavoro all'uomo": l'adattamento dell'ambiente di lavoro alle esigenze della persona disabile attraverso l'adozione di ragionevoli accomodamenti, in www.ambientediritto.it, 29 February 2024, p. 8.

[66] For a commentary on the provisions introduced by Legislative Decree No. 62/2024 see M.G. Elmo, *Condizione di disabilità e stato di salute del lavoratore alla luce del d.lgs. n. 62 del 2024*, in DSL, 2025, 1, I, p. 58 ff.; M.P. Monaco, *Il decreto legislativo 3 maggio 2024, n. 62: una lettura giuslavoristica*, in *Professionalità Studi*, 2024, 3, p. 3 ff.; M. Leonardi, *Reasonable Accommodation for Workers with Disabilities: Analysis of the New Italian Definitions within the Multi-level Legal System*, in DLM International, 2024, 1, p. 93 ff.; and A. M. Battisti, *Il legislatore accoglie (con qualche riserva) la nozione euro-unitaria di disabilità*, in AmbienteDiritto.it, 2024, 3, p. 1475 ff.

progressive, that causes difficulties in learning, relationships, or work integration and leads to a process of social disadvantage or marginalization" pursuant to Article 3 of Law No. 104/1992 (as amended by Article 3 of Legislative Decree No. 62/2024), it now constitutes the result of the negative interaction between the health condition – defined as "a long-term physical, mental, intellectual, neurodevelopmental, or sensory impairment" – and the environmental and personal factors that characterize the social and work life of the person and hinder "full and effective participation in various life contexts on an equal basis with others".

The innovations introduced by Legislative Decree No. 62/2024 thus allow for a definitive overcoming of the biomedical model of disability and extend the scope of the bio-psycho-social model beyond the regulatory framework of strictly EU-related legislation. This results in a significant expansion of the pool of potential beneficiaries of protection measures connected to the legal recognition of disability, in line with the principles outlined by the United Nations Convention on the Rights of Persons with Disabilities.

Pursuant to the new Article 3, paragraph 1, of Law No. 104/1992, the condition of disability according to the bio-psycho-social model constitutes the outcome of the so-called basic evaluation[67] – which is also conceived within the scope of Legislative Decree No. 62/2024 – and includes any assessment of civil invalidity provided for by current legislation followed – where requested by the interested party – by a subsequent multidimensional evaluation expressly based on a bio-psycho-social approach.

The basic evaluation begins with a specific application by the person concerned through the electronic submission to INPS[68] – which from January 1, 2027[69] will be exclusively responsible for managing the basic evaluation procedure – of a medical certificate in which, in addition to the person's personal data and any medical documentation, the diagnosis coded according to the ICD system and the course and prognosis of any

[67] Artt. 5 ff Legislative Decree. n. 62/2024.

[68] The recognition of the condition of disability is carried out by INPS through the Basic Assessment Units, whose composition is defined by Article 4 of Law 104/1992, as amended by Article 9, paragraph 3, of Legislative Decree No. 62/2024.

[69] This deadline was extended by Article 19-quater of Decree-Law No. 202 of 27 December 2024, converted with amendments by Law No. 15 of 21 February 2025. Originally, Article 9 of Legislative Decree No. 62/2024 set this deadline on 1 January 2026.

identified pathologies are indicated. Specifically, the basic evaluation is tasked with identifying the "functional and structural deficits" that hinder the individual in performing their activities and subsequently assessing their impact on the qualifier of the person's capacities in relation to the "Activities and Participation" component of the ICF classification – including domains related to work and higher education – assuming a uniform and standard environment as a reference.
Furthermore, pursuant to Article 6, paragraph 2, of Legislative Decree No. 62/2024, during the basic evaluation visit, the applicant is required to complete the WHODAS questionnaire, which assesses their "level of functioning" across six domains: cognitive activities, mobility, self-care, interpersonal relationships, activities of daily living, and participation. Although the use of WHODAS allows for a more detailed description of a person's ability to perform daily activities (including work-related ones) and the level of difficulty they experience in interacting with their specific physical, social, and personal environment, its effective use presupposes actual assistance by the basic evaluation unit to the applicant, to prevent the risks associated with leaving the questionnaire's completion solely to their own discretion and perception.
Once the status of a person with a disability is certified, Article 23, paragraph 1, of Legislative Decree No. 62/2024 grants the option to initiate the subsequent (and optional) multidimensional evaluation. This evaluation is expressly based on a bio-psycho-social approach and is aimed at preparing the so-called life project, intended to achieve the "goals of the person with a disability to improve their personal and health conditions in various areas of life". Indeed, this procedure considers both the capacity qualifier and the performance qualifier of the ICF, through which it is possible to describe an individual's abilities within their specific environment[70]. The use of the bio-psycho-social model – explicitly referenced in Article 25, paragraph 1, of Legislative Decree No. 62/2024, in relation only to the multidimensional evaluation – is justified by the

[70] See Article 25, Legislative Decree No. 62/2024, paragraph 2, which establishes that "the procedure is divided into four phases: a) respecting the outcome of the basic assessment, it identifies the person's goals according to their desires and expectations and defines the functioning profile, including in terms of ICF capacities and performance, across the different life domains freely chosen; b) it identifies the barriers and facilitators in the areas referred to in letter a) and the adaptive skills; c) it formulates evaluations concerning the profile of physical, mental, intellectual, and sensory health, the person's needs, and the domains of quality of life, in relation to the priorities of the person with a disability; d) it defines the objectives to be achieved through the life project, starting from the inventory of any specific support plans already in place and their objectives".

objective of this procedure, which is to identify the goals and tools that make up the life project aimed at preventing or removing barriers and activating the necessary supports for the inclusion and participation of the person in various areas of life, including educational, higher training, housing, work, and social domains as well as overcoming conditions of poverty, marginalization, and social exclusion[71].

In other words, while the basic evaluation constitutes an essential step to ascertain the condition of disability and thereby access the related protections, the multidimensional evaluation operates in a complementary relationship with the former, contextualizing its results according to the specific needs and objectives that the person with a disability expresses in the various life contexts in which they operate, crystallizing the outcomes in the so-called life project.

In this context, pending the definition of the experimental procedure already initiated (expected by the end of 2025)[72], the impact of the reform could be disruptive, as it would allow access to the protections recognized by the legal system for persons with disabilities also to numerous workers affected by chronic diseases or those who have undergone transplants, provided they are expressly recognized as disabled.

5. Towards Sustainable Employment for Workers with Chronic Illnesses and Transplant Recipients: Minimising Health Risks and Adapting Workplaces

As previously outlined, the adoption of the biopsychosocial model of disability by the CJEU plays a decisive role, as it allows the extension to workers with chronic illnesses of the protections and guarantees that EU law expressly provides for disabled workers with the aim of facilitating their reintegration into the workforce and the retention of employment. These protections include occupational health and safety regulations, which seek to mitigate potential risks to workers' health, and anti-discrimination legislation, which aims to ensure equal treatment through the provision of reasonable accommodations.

[71] Art. 18, paragraph 2, Legislative Decree. No. 62/2024.

[72] For the initial clarifications provided by INPS, see: INPS Message of 28 November 2024, No. 4014; INPS Message of 19 December 2024, No. 4364; INPS Message of 31 December 2024, No. 4512; INPS Message of 3 March 2025, No. 766; INPS Message of 23 June 2025, No. 1980; INPS Message of 10 July 2025, No. 2216; INPS Circular of 17 February 2025, No. 4.

These are two fields of regulation that play a decisive role in the broader context of the reintegration of workers with chronic illnesses and reflect the concept of sustainable employment[73], intended as an approach ensuring that individuals with physical or psychological impairments can continue working through adaptations that align with their need and abilities. Sustainable employment for chronically ill workers can be structured around two main pillars: 1) ensuring work does not harm health, by integrating universal workplace protections with targeted safeguards for individuals at higher health risk, in line with occupational health and safety regulations; 2) implementing additional measures, beyond risk prevention, to provide specialized protections for vulnerable groups, through workplace, role, and organizational adaptations tailored to individual needs.
Starting from the first pillar, it can be identified in the implementation of health and safety measures designed to safeguard the well-being and work capacity of these individuals. In this context, a specific legal obligation is placed on employers, who must guarantee both workplace safety and worker's health in all aspect related to work[74]. This duty is established in Italian law through the transposition of Directive No. 89/391/EEC into Legislative Decree No. 81/2008 which also implements the preventive obligation under Article 2087 of the Civil Code[75]. In the specific case of employees with chronic illnesses or transplant recipients, achieving this objective requires careful consideration of the characteristics of these individuals, the physical and/or psychological changes associated with their condition, as well as the effectiveness and invasiveness of the treatments they undergo and the progression of the disease. It should not be overlooked that, unlike acute illnesses, chronic diseases are irreversible,

---

[73] This concept was initially introduced in reference to work sustainability throughout life, particularly in response to demographic shifts and the need to extend working life, as analysed in EUROFOUND, Sustainable Work and the Ageing Workforce, 2012, pp. 7-8.
[74] Art. 5 of the Directive 89/391/CEE.
[75] On the obligation laid down by Article 2087 of the Italian Civil Code and its implementation under Legislative Decree No. 81/2008, the literature is vast. Accordingly, reference is limited here to a selection of key contributions, including: A. Delogu, *La funzione dell'obbligo generale di sicurezza sul lavoro. Prima, durante e dopo la pandemia: principi e limiti*, Aras Edizioni, 2022; G. Natullo, *Ambiente di lavoro e tutela della salute*, Giappichelli, 2021; S. Buoso, *Principio di prevenzione e sicurezza sul lavoro*, Giappichelli, 2020; PASCUCCI, La tutela della salute e della sicurezza sul lavoro: il Titolo I del d.lgs. n. 81/2008, Aras, 2014; M. Persiani – M. Lepore (edited by.), *Il nuovo diritto della sicurezza sul lavoro*, Utet Giuridica, 2012P. Albi, *Adempimento dell'obbligo di sicurezza e tutela della persona. Art. 2087*, *Il Codice Civile. Commentario*, Giuffrè, 2008.

have a long and unpredictable course, and tend to worsen over time while alternating between critical phases and periods of improvement.
These specific characteristics must be taken into account by the employer, first and foremost when fulfilling one of the most important duties prescribed by the Italian Consolidated Law on Occupational Health and Safety (TUSL) from a preventive perspective: the risk assessment[76].
Article 28 explicitly requires that, as part of this assessment, all risks to worker's safety and health – including those affecting groups of workers exposed to specific risks – be identified and that appropriate preventive measures be implemented in the workplace, including with regard to the selection of work equipment and the organization of the work environment.
Groups of workers exposed to specific risks certainly include individuals with reduced work capacity, such as persons with disabilities and employees with chronic illnesses. Regarding these "specific" workers, the employer must evaluate, during the preparation of the Risk Assessment Document (hereinafter DVR), the characteristics that place them in a different, and often more disadvantaged, position compared to other workers and consequently determine the adoption of specific additional or tailored safety measures. Such assessments, however, must not overlook the fact that workers with chronic illnesses – as well as persons with disabilities – constitute a highly heterogeneous group, due to the diverse impairments they may have, which in turn result in vulnerabilities of varying severity and visibility and expose them to greater, additional, or aggravated risks compared to "healthy" workers[77].
In addition to the severity of the impairment, the types and levels of risk to which these workers are exposed also depend – as previously noted – on the conditions and the work environment in which the tasks are performed. A proper risk assessment should therefore be conducted on the basis of a personalized approach that takes into account differences among workers and the contexts in which they operate, tailoring its content to specific characteristics and individual needs in order to protect members of groups particularly exposed to certain types of hazards. This

[76] Article 17, Paragraph 1, Letter a) of Legislative Decree No. 81/2008 explicitly states that the evaluation of all workplace risks, leading to the drafting of the risk assessment document under Article 28, is among the non-delegable responsibilities of employers.
[77] On the specific features of risk assessment with particular regard to workers with disabilities or illnesses, see among many: A. Bordin, *Sicurezza sul lavoro e invecchiamento*, in I&S Lav, 2024, 1, p. 44 ff.; P. Pascucci, *L'emersione della fragilità nei meandri della normativa pandemica: nuove sfide per il sistema di prevenzione?*, in RDSS, 2023, 4, esp. p. 713 ff.

activity should also be guided by principles of reasonableness, as it is not necessarily required to produce differentiated individual risk assessments solely because they involve a sick or disabled person, since doing so could itself constitute a form of discrimination.
The approach involves adopting a dynamic method, calibrated to the specificities of each individual and each work environment, moving away from standardized *"one-size-fits-all"* models and adapting both to the individual and the specific risks associated with them, as well as to the workplace and the modalities of task execution. In other words, as defined by the European Agency for Safety and Health at Work (EU-OSHA), what is required is a *"disability-sensitive risk assessment"*[78].
Risk assessment thus constitutes a complex and ongoing process, requiring continuous adjustments and updates. For this reason, the legislator has provided that, both in the drafting of the Risk Assessment Document (DVR) and more generally in the organization of the work environment, "personalized" solutions to ensure health and safety should be identified with the support of other key figures, such as the competent physician, the Head of the Prevention and Protection Service (RSPP), and the workers' safety representative (RLS), in accordance with a participatory occupational safety model that involves and holds accountable all those who have the power to intervene in the work environment. Consultation with workers can also be particularly important at this stage, especially when they are affected by a medical condition, as their involvement ensures a more precise identification and, consequently, prevention of the specific risks related to their health.
Among these professionals, the occupational physician[79] plays a pivotal role in safeguarding the health of disabled and chronically ill workers. This

[78] EU-OSHA, Workforce Diversity and Risk Assessment: Ensuring Everyone is Covered, 2009.
[79] The role of the occupational physician is described in Article 2, Paragraph 1, Letter h) of Legislative Decree No. 81/2008, as amended, as the "physician possessing one of the qualifications and professional training requirements set forth in Article 38, who collaborates, pursuant to Article 29, Paragraph 1, with the employer for risk assessment and is appointed by the latter to conduct health surveillance and fulfil all other duties prescribed by this decree"; on this figure in the Italian legal order see, among many, P. Pascucci, Dopo il d.lgs. 81/2008: salute e sicurezza in un decennio di riforme del diritto del lavoro, in ID. (edited by), Salute e sicurezza sul lavoro, cit., p. 20 ff.; C. Lazzari, I «consulenti» del datore di lavoro, in P. Pascucci (edited by), Salute e sicurezza sul lavoro, cit., p. 124 ff.; E. Gragnoli, *La sopravvenuta inidoneità del lavoratore subordinato allo svolgimento delle sue mansioni*, in F. Carinci, E. Gragnoli (edited by), *Codice commentato della sicurezza sul lavoro*, Giappichelli, 2010, p. 380 ff.; P. Monda, *La sorveglianza sanitaria*, in L. Zoppoli, P.

figure is entrusted not only with identifying workplace risks but also with preventing and managing them through health surveillance programs[80]. This activity consists of a set of medical actions aimed at ensuring worker's health and safety in relation to their working environment, occupational risk factors and methods of task execution[81]. Implementation occurs through specific health protocols, which may include medical examinations, specialist consultations and instrumental or laboratory tests, whenever the risk assessment process highlights the need to mitigate occupational risks through health surveillance measures[82].
Turning to the second pillar of the "sustainable employment" concept, it consists of implementing reasonable accommodations, that is structural or organizational adjustments that are necessary and appropriate in relation to actual needs and are intended to ensure access to and retention in employment for disabled workers, including those affected by chronic illnesses or transplant recipients, once their disability status has been verified[83]. These measures seek to eliminate barriers in the work

Pascucci, G. Natullo (edited by), *Le nuove regole per la salute e la sicurezza dei lavoratori*, Ipsoa, Milan, 2010, p. 339 ff.

[80] Article 25, Letter b of Legislative Decree No. 81/2008.

[81] According to Article 2, Paragraph 1, Letter m of Legislative Decree No. 81/2008, as amended, while Article 41 of the same decree establishes the different types of medical examinations included in the health surveillance activities assigned to the occupational physician, detailing their objectives and timelines

[82] A relevant development was introduced by Article 14 of Decree-Law No. 48/2023, converted into Law No. 85/2023, which amended Article 18 of Legislative Decree No. 81/2008, adding that among the employer's and managerial duties is the appointment of an occupational physician not only in cases explicitly mandated by the Legislative Decree No. 81/2008, but also when required by the risk assessment under Article 28. This extends health surveillance to all instances where the risk evaluation suggests its necessity, rather than only in cases where the law expressly mandates it. On this point, see P. Pascucci, *Le novità del d.l. n. 48/2023 in tema di salute e sicurezza sul lavoro*, in DLRI, 2023, n. 3, p. 413 ff.; P. Rausei, *I ritocchi al Testo Unico: tra medico competente, formazione, attrezzature di lavoro e nuovi obblighi per lavoratori autonomi e imprese familiari (art. 14, d.l. n. 48/2023, conv. in l. n. 85/2023)*, in E. Dagnino, C. Garofalo, G. Picco, P. Rausei (edited by), *Commentario al d.l. 4 maggio 2023, n. 48 c.d. "decreto lavoro", convertito con modificazioni in l. 3 luglio 2023, n. 85*, ADAPT University Press, no. 100, pp. 125 ff.

[83] On this topic, legal scholarship is vast. See D. Tardivo *L'inclusione lavorativa della persona con disabilità: tecniche e limiti, Giappichelli, 2024;* P. Lambertucci, Nuove frontier della disabilità: soggetti protetti e accomodamenti ragionevoli, in DLM 2024, 2, 237 ff.; S. D'Ascola*, Il ragionevole adattamento nell'ordinamento comunitario e in quello nazionale. Il dovere di predisporre adeguate misure organizzative quale limite al potere di recesso datoriale,* in VTDL, 2022, n. 2, p. 179 ss.; D. Garofalo, *La tutela del lavoratore disabile*, cit., p. 1225 ff.; C. Spinelli, *La sfida degli "accomodamenti ragionevoli" per i lavoratori dopo il Jobs Act,* in DLM, 2017, n. 1, p. 39 ff.

environment which, when combined with the individual impairments, hinder their full and equal participation in professional life.
The obligation to adopt reasonable accommodations is structured within a multi-level regulatory framework originating from the anti-discrimination system, which constitutes the "foundational paradigm" for removing obstacles to the full participation of persons with disabilities in social life[84]. Legislative Decree No. 62/2024 has intervened on this framework, not only introducing a national definition but also establishing a special procedure for their identification and implementation[85]. As for the scope of the obligation, it is defined by international law – explicitly referred to both in Article 3(3-bis) of Legislative Decree No. 216/2003[86] and in the new Article 5-bis of Law No. 104/1992 – under which "reasonable accommodation" means necessary and appropriate modifications and adjustments that do not impose a disproportionate or undue burden, adopted, where needed in particular cases, to ensure persons with disabilities the enjoyment and exercise, on an equal basis with others, of all human rights and fundamental freedoms[87].
National case law – although referring only to paragraph 3-bis of Article 3 of Legislative Decree No. 216/2003, but with considerations that may also be deemed applicable to the new Article 5-bis of Law No. 104/1992 – has emphasized that, in transposing into domestic law the formula adopted by international sources, the Italian legislator relied on a concept with variable content, whose structural feature lies precisely in its indeterminacy[88].

---

[84] D. Garofalo, cit. See also M. Barbera, *Le discriminazioni basate sulla disabilità,* in M. Barbera (edited by), *Il nuovo diritto antidiscriminatorio. Il quadro comunitario e nazionale, Giuffrè, 2007,* p. 82 ff.
[85] On the participatory model see F. Cucchisi, *Accomodamenti ragionevoli e onere di interlocuzione: verso un modello partecipato di inclusione del lavoratore disabili*, 2025, n. 8-9, p. 811 ff.
[86] Paragraph 3-bis was introduced by Article 9, paragraph 4-ter, of Decree-Law No. 76/2013, converted, with amendments, by Law No. 99/2013, following the conviction of Italy by the Court of Justice for insufficient transposition of the directive. See Court of Justice, 4 July 2013, Case C-312/11, European Commission v. Italian Republic, in RIDL, 2013, No. 4, II, p. 935 et seq.
[87] Article 2 of the UN Convention of 2006. By contrast, under Article 5 of Directive 2000/78/EC, reasonable accommodation" refers to "appropriate measures, according to the needs of specific situations, to enable persons with disabilities to access employment, perform their work, or obtain a promotion, or to ensure that they can receive training.
[88] Cass., 9 March 2021, No. 6497, in *RIDL*, 2021, No. 4, II, with a note by C. Alessi, *Disabilità, accomodamenti ragionevoli e oneri probatori*, in ADL, 2021, n. 4, II.

Confirmations in this regard can also be found in the case law of the Court of Justice, which has excluded the exhaustive nature of any lists of reasonable accommodations, thereby requiring that the list contained in Recital 20 of Directive 2000/78/EC be read as purely illustrative. This recital refers to "effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources"[89]. Consequently, reasonable accommodation must be understood as a measure shaped by the specific needs of the disabled worker and the production context in which they operate, translating into material modifications of the workplace (as a physical space) or organizational changes (such as task reassignment, flexible working hours, or shift arrangements) that affect all stages of the employment relationship – from its inception, through its functional phase, up to termination. Moreover, the teleological orientation of accommodation, together with its flexible and dynamic nature, implies that the reasonable solution adopted by the employer is not immutable but, on the contrary, subject to evolution throughout the employment relationship, in an osmotic relationship with the worker's disability[90], in order to remove barriers arising from the interaction between the person and the environment, thus constituting an *ex nunc* duty[91].

The impact of the obligation to adopt reasonable accommodations on the exercise of the employer's traditional organizational power raises questions about the crucial issue concerning the scope of the conduct required by the legislator, on which the recent amendment introduced by Legislative Decree No. 62/2024 is based[92].

[89] See *HK Danmark* judgment, cited, paragraphs 49 and 56; Court of Justice, Case C-312/11, cited.

[90] See A. Delogu, *Adeguare il lavoro all'uomo*, cit., 13.

[91] COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES, General comment No. 6 (2018) on equality and non-discrimination, 2018, CRPD/C/GC/6, § 24.

[92] See R. Voza, *Eguaglianza e discriminazioni nel diritto del lavoro. Un profilo teorico*, paper presented at the XXI AIDLaSS Congress, Diritto antidiscriminatorio e trasformazioni del lavoro, Messina, 22-25 May 2024, typescript, p. 52. The Author observes that today, the obligation to provide reasonable accommodations is assuming a systematic significance in assessing the legitimacy of the exercise of managerial powers, in their broader organizational dimension rather than solely in the context of an individual employment relationship. This tends to neutralize the effects of Article 30 of Law No. 183/2010, which traditionally shields the employer's "tech nical, organizational, and production-related decisions" from scrutiny. The resulting restriction of entrepreneurial prerogatives, brought about by the duty to provide reasonable accommodations, can be read in light of Article 41(2) of the Constitution—particularly following its

A first limitation to the adoption of reasonable accommodations lies in the economic sustainability of the measure, which is established as a condition both by the 2006 UN Convention, which clarifies that accommodations must not impose "a disproportionate or undue burden" and by Article 5 of the Directive, which makes the obligation to take appropriate measures conditional unless such measures would impose a disproportionate burden on the employer. In other words, this involves an assessment of the feasibility of the measure based on the specific organization in which the worker is employed and thus a verification of proportionality in relation to the specific organizational context (for example, the number of employees) and the financial situation of the employer (for example, the presence of a crisis, profits/revenue)[93]. The economic sustainability of the measure is further influenced by the provision, under national policies, of specific compensatory measures for expenses incurred by the enterprise, such as public funds or other types of subsidies, capable of providing tangible financial support for the employment of persons with disabilities[94], in a form of shared responsibility between the State and enterprises in the implementation of reasonable accommodations[95]. In this legal framework, which establishes a shared responsibility between the employer and the State in implementing reasonable accommodations, public incentives contribute to defining the criterion of economic sustainability for workplace adaptations. At the same time, they mark the boundary between what is not legally enforceable and what is considered a mandatory obligation.

Beyond proportionality, the existence and scope of the obligation to adapt workplace structures to the needs of disabled workers are also governed by the criterion of reasonableness. This principle shapes and qualifies the

---

reformulation, which added "health and the environment" to the foundational values of "safety, freedom, and human dignity".

[93] See D. Garofalo, *La tutela del lavoratore disabile*, cit., p. 1230.

[94] As highlighted in Recital 21 of Directive No. 2000/78/EC, determining whether specific measures impose a disproportionate financial burden requires evaluating financial and other costs, the size and financial resources of the organization or company, and the possibility of accessing public funds or other subsidies. In the Italian context, Article 14, Paragraph 4, Letter b) of Law No. 68/1999, introduced by Article 11, Paragraph 1, Letter b) of Legislative Decree No. 151/2015, establishes the Regional Fund for the Employment of Disabled Persons, which provides financial contributions for the partial reimbursement of expenses related to the adoption of reasonable accommodations for workers with a reduction in work capacity exceeding 50%. Covered expenses include telework technologies, removal of architectural barriers that hinder workplace integration, and the establishment of a workplace inclusion officer.

[95] D. Garofalo, *La tutela del lavoratore disabile*, cit., p. 1230.

measures employers must implement, ensuring they are practical, effective and tailored to both individual circumstances and organizational contexts. According to the interpretation offered by the Court of Cassation, reasonableness constitutes an additional limit to the obligation to adopt reasonable accommodation, as it is endowed with autonomous literal significance[96]. The Court argues that, while it is certainly true that a disproportionate economic cost renders a measure unreasonable *a fortiori*, the reverse is not necessarily true: an adjustment may lack reasonableness having regard, for example, to the interests of other workers who may be affected. Understood in this sense, the reasonableness assessment becomes an expression of the principle of fairness and good faith that underpins all contractual relationships. In other words, in the Court's view, the reasonableness test translates into the search for broadly organizational and practicable solutions that reconcile the disabled worker's interest in maintaining employment suited to their physical and psychological condition with the employer's interest in deriving utility from the work activity, as well as with the interests of any third parties. Thus, for an accommodation to be deemed "reasonable", it must entail a sacrifice that does not exceed the limits of tolerability considered acceptable according to 'common social evaluation.
Additionally, Legislative Decree No. 62/2024 has introduced two significant innovations about reasonable accommodations. The first is the introduction of a specific procedure aimed at identifying the reasonable accommodation, in which the worker must participate. In particular, for employees with chronic illnesses, emphasizing the participatory nature of the accommodation is especially important, since the worker's specific needs may not be immediately apparent or known to the employer. Indeed, the Court of Cassation has recently clarified that the dialogue and discussion between the parties, which are logically required as a prerequisite for adopting reasonable accommodations, therefore constitute an indispensable phase of the procedure for identifying the accommodation, characterized by its proactive nature, aimed at identifying reasonable organizational measures suitable to allow the disabled person to perform their work activities[97].
This brings into focus the second innovation: reasonable accommodations, which appear to assume new centrality following Legislative Decree No. 62/2024, which introduces the so-called "life

[96] Cass., 9 March 2021, No. 6497, cit.
[97] See Cass., 22 May 2024, n. 14316.

project", of which reasonable accommodations constitute an important segment and are the result of a holistic and shared assessment, undoubtedly conducted with the disabled person. Article 18 of Legislative Decree No. 62/2024 establishes that the life project is an instrument aimed at achieving the objectives of the person with a disability, contributing to the improvement of (1) personal conditions, which evidently include working conditions, and (2) health conditions.
Since these measures result from a holistic assessment specifically tailored to the needs of the person with disabilities in relation to the various contexts in which they operate, the components of the life project tend to influence one another, with the aim of coordinating the needs and objectives identified during the multidimensional evaluation. This approach gives a new dimension to the concept of reasonable accommodation. The formalization of the reasonable solution within the life project therefore represents the outcome of a harmonization process with other interventions included in the project – such as measures dedicated to care and assistance – which, although not directly connected to the employment dimension, may nonetheless affect the identification of reasonable accommodation in the specific case. This is further confirmed by the requirement to schedule periodic updates of the life project, which entails the possibility of adjusting measures according to the progression of chronic illness or the health condition following transplantation and thus to the evolving needs of the person with disabilities.

5. Final Considerations

In conclusion, it is essential to underline that the absence of specific legislation protecting workers with chronic illnesses or transplant recipients has generated significant uncertainty that appears to be addressed only by Legislative Decree No. 62/2024. The number of individuals in these categories continues to grow, with far-reaching implications for the management of employment relationships and, above all, for ensuring their long-term stability and continuity, understood as the preservation of secure and lasting work arrangements despite evolving health conditions.
During the prolonged legislative gap, a regulatory source was found in the legislation designed for disabled workers, to which long-term patients could initially be linked only interpretatively, thanks to the adoption of the biopsychosocial notion of disability developed at the supranational level beginning with the 2006 UN Convention. The acceptance of this

definition allowed the scope of EU-derived protections to be extended to those who, although lacking formal certification of disability under domestic law, suffer from a long-lasting condition that hinders full and effective participation in professional life over an extended period.

With the exception, therefore, of occupational anti-discrimination law and the right to health and safety at work – where the biopsychosocial notion of disability was used as a reference point – other aspects of employment relationship management relied on different regulations, the application of which was conditional on recognition of the disability status as defined therein.

The protection of workers with chronic illnesses or transplant recipients was therefore dependent either on the ascertainment of disability, the degree of incapacity, or the severity of the handicap according to biomedical criteria or on the more inclusive biopsychosocial assessment, which, however, was applicable only in specific regulatory areas. This situation complicated the identification of the regulatory framework, whose exact scope of operation in favor of workers with chronic illnesses was determined on a case-by-case basis rather than being clearly delineated by general and, above all, certain rules.

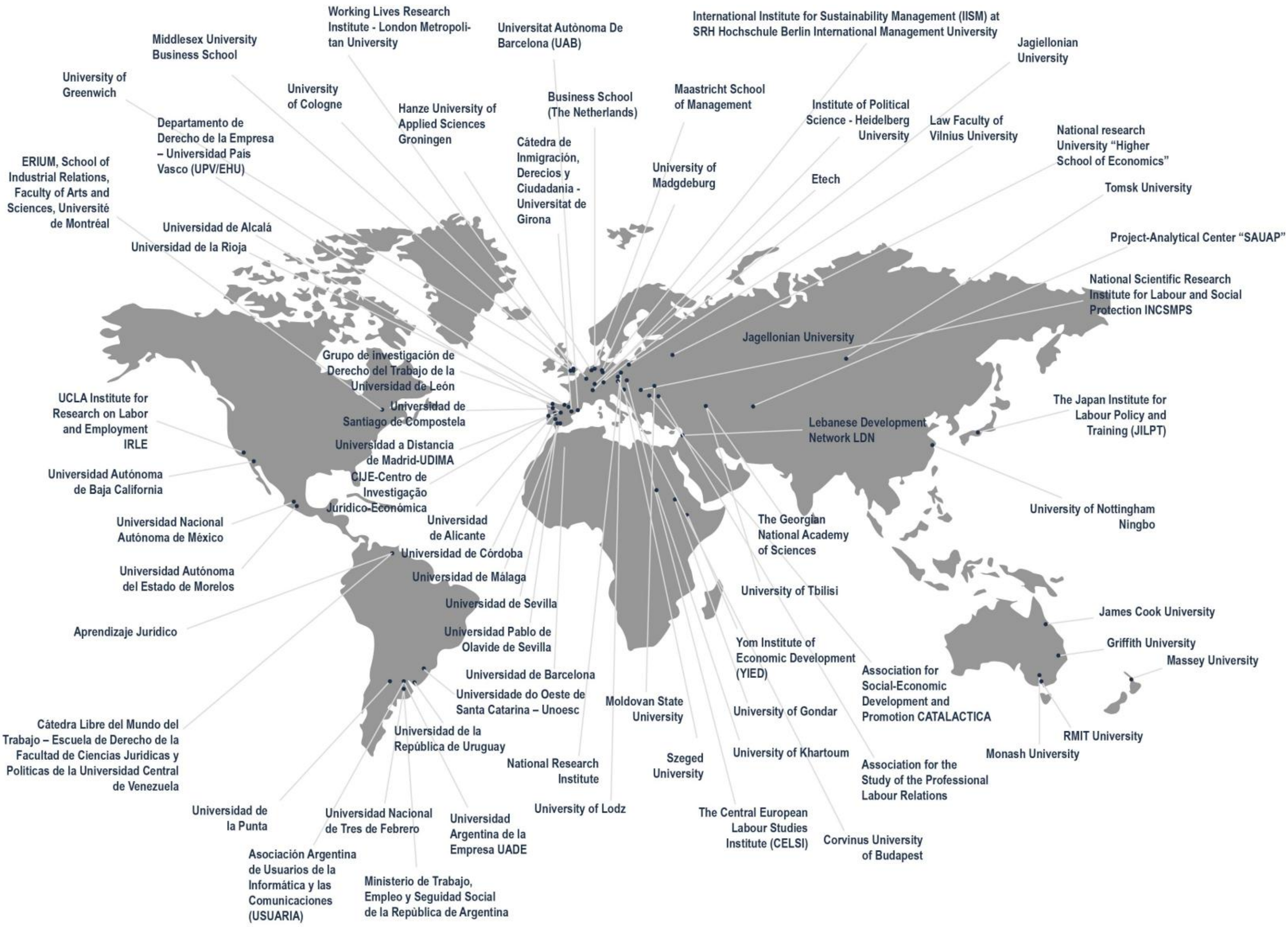
The consequences were felt not only by employers but also by the most vulnerable workers because – as is self-evident – the uncertainty of the rules of the game calls into question the outcome of any engagement and, in this specific case, has generated a high risk of litigation with unpredictable outcomes and costs.

The legislative intervention introduced by Legislative Decree No. 62/2024, which provides for a single disability assessment procedure based on a social and dynamic model of disability, should therefore be welcomed.

This innovation produces a series of positive effects. First, the unified notion of disability adopted by the legislator is very broad and permeates all areas of protection provided for disabled persons, becoming the exclusive reference for the various regulations directed at these individuals. Second, access by workers with chronic illnesses to the various forms of protection becomes easier, since the necessary verification to include them within the category of disabled persons is no longer focused on the degree or permanence of impairments but rather on the extent to which these impairments affect their relational life, limiting and hindering participation, on an equal basis, in social and work contexts. Finally, the application of existing regulations becomes more certain because Legislative Decree No. 62/2024 removes from the interpreter the often very difficult task of determining, case by case and independently of prior certification, whether a person qualifies as disabled and, consequently, is entitled to the specific protections provided for disabled persons. Once the new regulation is fully operational, it seems unlikely that the scope of protections for disabled workers could be extended to individuals not qualified as such under the specific procedure, unless the formal certification of disability recently introduced were to be disregarded entirely.

In this sense, one of the merits of the legislative intervention lies in defining the subjective scope of the protection system recognized for disabled workers, also limiting the interpretative role that jurisprudence has carried out in recent years. While the courts have commendably extended the scope of existing provisions, this has sometimes imposed excessively heavy burdens on employers, who were tasked not only with adapting their organization to the needs of disabled workers but also with determining in advance and without certain parameters whether a worker qualifies as disabled. By establishing clear criteria, the new legislation could potentially ensure that employment protections are appropriately applied, balancing the rights of chronically ill workers and transplant recipients with the responsibilities of employers and contributing to a more stable and inclusive labour market.

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