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An Employee's Illness, Its Effects On Earning Capacity and the Role of the Employer in the Policy of Employee's Inclusion. Comments against the Background of the Polish Legal Regulation

Anna Napiórkowska *

Abstract. The article refers to sick pay provided by the employer and to social insurance benefits payable in the event of a specific impact of an illness on earning capacity. It also refers to the Polish solutions adopted under the Rehabilitation Act, among other things, to the issue of reasonable accommodation. Attention has been also paid to the important issue of termination of an employment contract. The article points out that the unclear boundary between an illness and disability, as well as a broad interpretation of disability, may cause certain doubts in the field of labour law. It seems that currently too much risk is being shifted onto the employer. There is also no consistent approach to the issue of an illness and disability. On the one hand, efforts are being made to keep people with disabilities in the workplace and to activate them, while on the other hand, as a rule, working while receiving sickness insurance benefits is banned. This may involve the same person (with a disability) – anti-discrimination policy regulations will point to the need for reasonable accommodation to keep this person in employment. In this area, the employer is 'punished' for failing to provide reasonable accommodation

* Assistant Professor, Department of Labour Law, Faculty of Law and Administration, Nicolaus Copernicus University, Poland. Email address: napiork@umk.pl.

and dismissing the employee. However, the situation is different from the point of view of sickness insurance benefits: the same person will often be forced into a passive attitude, under penalty of losing their entitlement to benefits, and will be described as a person 'unable to work'.

Keywords: *Illness; Disability; Reasonable accommodation; Discrimination; Sick pay; Sickness benefit; Disability benefit; Partial sick leave; Activation.*

Introduction

Firstly, it should be noted that an employee's illness is, in a sense, a natural cycle of the body. People get sick – more or less frequently, sooner or later. There is an element of risk here. The natural area in which protection against an illness/its effects is sought is social insurance law or social security law. An employee's illness – both short-term and long-term – also has a strong impact on labour law, causing difficulties or obstacles in the performance of the employee's reciprocal obligation. Employers are involved in the policy of dealing with an employee's illness for certain purposes or reasons. This is justified, among other things, by the fact that the employer benefits from the employee's work and should, therefore, also share in certain burdens; moreover, the illness itself and its specific effects may also be related to work. This also fits into the complex relationship between labour law and social security law. The issue of persons with disabilities also arises in this area. The relationship between an illness and disability, with a broad interpretation of both, requires a certain balance, and the boundaries may sometimes not be clear enough, which can lead to a number of doubts.

In the Polish system, the solvency of social insurance benefits is guaranteed by the state¹. The state must, therefore, be interested in maintaining a situation that ensures such solvency and bears the associated risk. Naturally, a certain doubt arises in the area under analysis. To what extent should employers be involved in policies for dealing with an employee's illness, so as not to lose sight of the essence of social insurance, not to block small and medium-sized employers, and not to discourage the employment of sickly people or during periods of social sensitivity when longer absences can be expected? This is also important from the perspective of protecting people with disabilities. In this area, it

¹ Article 2(3) of the Act of 13 October 1998 on the social insurance system, Journal of Laws 2026.199, consolidated text, as amended.

should be noted at the outset that there are sometimes comments indicating that the definitions in social insurance law are not appropriate to the issue of disability, as they refer to a different area, namely benefits, where a slightly narrower definition is needed. In my opinion, these comments do not necessarily lead to a consistent view of a sick person or a person with a disability, and also seem to deepen the rift between anti-discrimination law and 'strict' social insurance law. Meanwhile, just as approach towards disability is changing, similarly, a number of social insurance regulations should be reconsidered, and the issue of an illness and disability should be viewed holistically. It should be noted that, on the one hand, efforts are being made to keep people with disabilities in the workplace and to activate them, while on the other hand, as a rule, working while receiving sickness insurance benefits is banned. This may involve the same person (with a disability) – anti-discrimination policy regulations will point to the need for reasonable accommodation to keep this person in employment. In this area, the employer is 'punished' for failing to provide reasonable accommodation and dismissing the employee. However, the situation is different from the point of view of sickness insurance benefits: the same person will often be forced into a passive attitude, under penalty of losing their entitlement to benefits, and will be described as a person 'unable to work'. This shows a certain inconsistency in the approach to an illness and disability, but also a problem with the traditional use of the term 'incapacity for work'.

Even a preliminary analysis of the legal structures being adopted reveals a measure that is not entirely clear – 'narrow' definitions are being introduced within social insurance law (where the community of insured persons, and ultimately the state, plays an important role), while 'broad' definitions are introduced in the context of anti-discrimination regulations, where a high level of responsibility is placed on the employer, i.e. the individual. The latter is protected, for example, by the fact that the employer should not be subject to a disproportionate burden, indicating that the burden is not disproportionate if it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned - but this is in fact an assessment. This does not change the fundamental issue - a lot is expected from the employer and they are very much involved in something that is essentially the responsibility of the state.

Nevertheless, it should be noted that the challenges associated with an ageing population, but also with increasingly common chronic and major

illnesses accompanying people with longer life expectancy², show how important early and complex measures aimed at integrating people with disabilities or with limited working capacity into the work environment are. The aim here would be, among other things, to prevent the risk of labour market exit³ or the dangerous phenomenon of dependence on social security benefits. In this area, it is necessary to ensure consistent interaction between social security law, labour law and anti-discrimination legislation.

1. An employee's illness, sick pay, and cash benefits from social insurance

In the Polish social insurance system, protection covers not so much the illness as its specific effects on earning capacity⁴. Healthcare benefits, on the other hand, are provided under health insurance, which is covered by different legal regulations under social security law. According to Article 67(1) of the Constitution of the Republic of Poland⁵, every citizen has the right to social security in the event of incapacity for work due to an illness or disability and after reaching the retirement age. As regards the scope and forms of social security, the Constitution of the Republic of Poland refers in this respect to ordinary laws, which specify the subjective scope of the right to benefits, the objective scope, the conditions for acquiring the right to benefits, their amount, etc.

Social insurance law only covers certain effects of an illness, those that are conventionally considered to require protection. As regards the effects of an illness covered by social insurance law in Poland, protection covers temporary incapacity for work, reduced work capacity and the permanent/specified time incapacity for work. In the event of the above-mentioned effects of an illness on earning capacity, the Polish legislator provides specific benefits.

Starting with temporary incapacity for work, it should be noted that, as in many other European countries, employers in Poland also provide sick

² <https://news.liverpool.ac.uk/2023/07/25/2-5-million-more-people-in-england-projected-to-be-living-with-major-illness-by-2040/> (access: 12.11.2025).

³ S. Markussen, A. Mykletun, K. Røed, *The case for presenteeism – Evidence from Norway's sickness insurance program*, in *Journal of Public Economics*, 2012, vol. 96, 961.

⁴ I. Jędrasik-Jankowska, *Pojęcia i konstrukcje prawne ubezpieczenia społecznego*, Wolters Kluwer Polska SA, Warszawa, 2018, 128.

⁵ The Constitution of the Republic of Poland of 2 April 1997, *Journal of Laws* 1997.78.483, as amended, hereinafter referred to as the Constitution of the Republic of Poland.

pay (Article 92 of the Labour Code⁶). Importantly, although this benefit is very similar to a sickness benefit, it is a typical benefit arising from an employment relationship. It is paid in full by the employer, there are no settlements, e.g. in contributions, so it is not just a technical payment. It is paid for the period of the employee's incapacity for work lasting up to 33 days in a calendar year, and in the case of an employee over 50 years of age, up to 14 days in a calendar year. This applies to incapacity for work due to an illness or isolation due to a contagious disease, an accident on the way to or from work, or an illness during pregnancy, undergoing the necessary medical examinations for candidates for donors of cells, tissues and organs, or a procedure of cell, tissue or organ collection. However, this does not apply to accidents at work, as in such situations, depending on the injury, specific benefits are immediately payable from accident insurance.

After exhausting their entitlement to sick pay, employees are entitled to sickness benefit. This benefit is payable for no longer than 182 days, and if the incapacity for work is caused by tuberculosis or occurs during pregnancy, for no longer than 270 days⁷. However, this period may begin more than once. There are specific rules for calculating the benefit period, which take into account any breaks in the incapacity for work. Pursuant to Article 9(2) of the Benefit Act, periods of the previous incapacity for work are included in the benefit period if the interval between the end of the previous incapacity and the onset of the new incapacity does not exceed 60 days⁸. Therefore, if the break exceeds 60 days, the benefit period starts again.

If the insured person exhausts their entitlement to sickness benefit (the benefit period of 182 or 270 days proves to be too short for them) and is still unable to work, but further treatment or medical rehabilitation is likely to restore their ability to work, they will be entitled to a rehabilitation benefit. This benefit can be received for a maximum of 12 months (the first 3 months of receiving the rehabilitation benefit are combined with protection of the permanence of the employment

⁶ Act of 26 June 1974 Labour Code, Journal of Laws 2025.277, consolidated text, as amended, hereinafter referred to as the Labour Code.

⁷ Article 8(1) of the Act of 25 June 1999 on cash benefits from social insurance in the event of sickness and maternity, Journal of Laws 2026.854, consolidated text, as amended, hereinafter referred to as the Benefit Act.

⁸ This does not apply to situations where, after a break, incapacity for work occurs during pregnancy.

relationship under labour law⁹). The above-mentioned benefits – sick pay, sickness benefit and rehabilitation benefit – are payable in the event of the temporary incapacity for work.

As regards the right to compensatory allowance, this benefit is payable in the event of reduced work capacity. Compensatory allowance is payable only to employees who perform work in a company or inter-company vocational rehabilitation centre or at the employer's premises in a separate workstation adapted to the needs of adaptation or training for a specific job, if the monthly remuneration earned during rehabilitation is lower than the average monthly remuneration determined in accordance with the rules for determining the basis for calculating the employee's benefit. The compensatory allowance is the difference between the average monthly remuneration specified in accordance with these rules and the monthly remuneration earned for work in vocational rehabilitation conditions. The idea behind this benefit is, therefore, very good, as it encourages the insured to become active (combining performing work with insurance benefits and 'equalising' the remuneration earned for work in vocational rehabilitation conditions), but this benefit is not often used in practice.

In the event of the permanent/specified time incapacity for work, Polish law provides a disability pension (permanent/specified time, respectively¹⁰). The conditions for acquiring the right to a disability pension are autonomous – it is not necessary to have previously used sickness benefit and rehabilitation benefit (although this will often be the case in practice). A disability pension is generally granted to an insured person who meets all of the following conditions: is incapable of work; has completed the required contributory and non-contributory period; the incapacity for work arises during the periods referred to in the Act on old-age and disability pensions from the Social Insurance Fund or no later than within 18 months of the end of those periods; they do not have the established right to an old-age pension from the Social Insurance Fund or do not meet the conditions for obtaining it (Article 57(1) of the Act on old-age and disability pensions from the Social Insurance Fund¹¹). It is also worth noting that a person who has lost the ability to perform any

⁹ Article 53 § 1(1)(b) of the Labour Code.

¹⁰ The permanent/specified time disability pension may be granted in connection with total or partial incapacity for work.

¹¹ Act of 17 December 1998 on old-age and disability pensions from the Social Insurance Fund, Journal of Laws 2025.1749, consolidated text, as amended, hereinafter referred to as the Act on Old-Age and Disability Pensions.

work (importantly, this refers to work in typical conditions¹²) is considered completely unable to work, while a person who has significantly lost the ability to perform work in line with their qualifications is considered partially unable to work. Pursuant to Article 13(4) of the Act on Old-Age and Disability Pensions, maintaining the ability to work under the conditions specified in the provisions on vocational and social rehabilitation and employment of persons with disabilities¹³ does not constitute an obstacle to a statement of total incapacity for work (it may, therefore, be the case that a person is totally incapable of work in the area of disability insurance, i.e. totally incapable of work in typical conditions, but at the same time that same person works in conditions adapted to their disability). It is worth noting that, pursuant to Article 4(5-6) of the Rehabilitation Act, classification as having a severe or moderate degree of disability does not preclude the possibility of employing that person by an employer who does not provide sheltered working conditions in cases where the employer adapts the workplace to the needs of the person with a disability (which is subject to inspection by the State Labour Inspection) or where the person works remotely.

It is also important to bear in mind the one-way mechanism resulting from Article 5 of the Rehabilitation Act: a statement by a Zakład Ubezpieczeń Społecznych¹⁴ certifying doctor on total incapacity for work and inability to exist independently is treated as an equivalent to a statement on a severe degree of disability; a statement on inability to exist independently is treated as an equivalent to a statement on a severe degree of disability; a statement on total incapacity for work is treated as an equivalent to a statement on a moderate degree of disability; a statement on partial incapacity for work and the advisability of retraining is treated as an equivalent to a statement on a mild degree of disability. As can be seen, a statement issued for disability pension purposes translates into the appropriate degree of disability under the Rehabilitation Act, so any person who is entitled to a disability pension is, therefore, a person with a disability. In the opposite direction – due to the fact that case law on

¹² See, for example, M. Bartnicki, B. Suchacki, in *Komentarz do ustawy o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych*, in K. Antonów (ed.), *Emerytury i renty z FUS. Emerytury pomostowe. Okresowe emerytury kapitałowe. Komentarz do trzech ustaw emerytalnych*, LEX/el. 2019, Art. 12; Supreme Court judgment of 8 December 2000, II UKN 134/00, LEX No. 46842.

¹³ See the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities, Journal of Laws 2026.884, consolidated text, hereinafter referred to as the Rehabilitation Act.

¹⁴ Social Insurance Institution in Poland, hereinafter referred to as ZUS.

disability has always been more liberal than case law on incapacity for work for disability pension purposes – this mechanism does not work. Therefore, if a person has, for example, a moderate degree of disability, this does not translate into incapacity for work in disability pension insurance. However, in the case law of the Supreme Court, it is pointed out that when assessing incapacity for work, the degree of disability of the insured person determined on the basis of the Rehabilitation Act cannot be ignored¹⁵.

The benefit intended to promote professional activation and ultimately, relieve the disability pension fund is the training pension¹⁶. It is not a separate benefit from the disability pension¹⁷. A training pension is granted to a person who meets the conditions for acquiring the right to a disability pension, in relation to whom the advisability of vocational retraining due to inability to work in the current profession has been determined. The advisability of vocational retraining is determined if the person has permanently lost the ability to work in their current profession and may regain the ability to work after retraining¹⁸. If vocational retraining is deemed appropriate, the pension authority issues a decision granting a training pension for a period of 6 months and refers the person to the district employment office for vocational retraining¹⁹. Like the compensatory allowance, the training pension is not a benefit that has lived up to expectations. Both of these benefits play a minor role in disability pension prevention²⁰. Among the various problems, it can be

¹⁵ See the Supreme Court judgment of 11 February 2005, I UK 177/04, LEX No. 155201. See also the Supreme Court judgment of 28 January 2004, II UK 222/03, LEX No. 122196; Supreme Court judgment of 16 February 2005, I UK 179/04, LEX No. 375620; Supreme Court ruling of 16 December 2005, II UK 77/05, LEX No. 211773; Supreme Court judgment of 17 February 2009, I UK 233/08, LEX No. 736713; Supreme Court judgment of 14 June 2012, I UK 17/12, LEX No. 1229807. See A. Napiórkowska, *Niezdolność do pracy w ubezpieczeniu społecznym a niepełnosprawność*, in A. Giedrewicz-Niewińska, M. Szablowska-Juckiewicz (ed.), *Zatrudnianie osób niepełnosprawnych. Regulacje prawne*, Difin SA, Warszawa, 2014, 63.

¹⁶ M. Bartnicki, B. Suchacki, *op. cit.*, Art. 60.

¹⁷ Ibidem. See also the judgment of the Court of Appeal in Katowice of 23 October 2012, III AUa 1922/11, LEX No. 1236493; judgment of the Court of Appeal in Katowice of 23 March 2007, III AUa 83/06, LEX No. 446749.

¹⁸ See regulation of the Minister of Social Policy of 14 December 2004 on determining incapacity for work, Journal of Laws 2004.273.2711, as amended, §6(3).

¹⁹ Article 119(2) of the Act on Old-Age and Disability Pensions.

²⁰ Por. M. Zieleniecki, *Rola zasiłku wyrównawczego i renty szkoleniowej w rehabilitacji zawodowej, in Ryzyko niezdolności do pracy w zabezpieczeniu społecznym*, Zakład Ubezpieczeń Społecznych, Polskie Stowarzyszenie Ubezpieczenia Społecznego, Gdańsk, 2006, 49.

pointed out that issues related to retraining may be the result of too many entities being involved in that process, including those whose activities are not strictly related to the issue of certification. When adjudicating, a ZUS certifying doctor is bound to follow the district administrator's findings regarding the impossibility of professional retraining²¹. Much also depends on the possibilities offered by the labour market²².

If temporary incapacity for work is caused by an accident at work, a so-called accident equivalent to an accident at work or an occupational disease, sickness benefit and then, if applicable, rehabilitation benefit (after exhausting the right to sickness benefit) are paid from accident insurance. Accident insurance is also applicable to the payment of compensatory allowance to an employee whose remuneration has been reduced as a result of permanent or long-term damage to health caused by an accident at work, a so-called accident equivalent to an accident at work, or an occupational disease. If the incapacity for work is caused by the above-mentioned events, a disability pension is payable from accident insurance. This insurance may also provide, for example, a lump-sum compensation if the insured person has suffered permanent or long-term damage to their health as a result of an accident at work or an occupational disease.

2. An illness versus disability – doubts in the light of the case law of the Court of Justice

‘A person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down for combating discrimination on grounds of disability by Council Directive 2000/78/EC²³ (...)’. As it has been indicated, the concepts of ‘disability’ and ‘illness’ cannot be treated as synonymous²⁴.

²¹ See regulation of the Minister of Social Policy of 14 December 2004 on determining incapacity for work, §5 pt 2.

²² See M. Zieleniecki, *op. cit.*, 47.

²³ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Dz.U.UE.L.2000.303.16, hereinafter referred to as Directive 2000/78.

²⁴ See judgment of 11 July 2006, Case C-13/05, *Sonia Chacón Navas v Eurest Colectividades SA*, ECLI:EU:C:2006:456, paragraphs 44, 47, 52.

However, in response to this position, it should be noted that the characteristic of long-term nature²⁵ (emphasised in the case of disability) may sometimes be an insufficiently clear factor. Many diseases are long-term in nature²⁶, and the period of protection in the event of temporary incapacity for work due to an illness is not that short (in Poland, 182/270 days of sickness benefit and 12 months of rehabilitation benefit). An illness is often associated with specific and complex limitations that can affect a person's functioning in various ways, including in the professional sphere. This is, therefore, an area where the boundaries can become blurred²⁷.

It is worth noting here the judgment in Joined Cases C-335/11 and C-337/11²⁸. In summary, Case C-335/11 concerned Ms Ring, who suffered from, among other things, constant lumbar pain that could not be treated. It was also impossible to predict whether she would be able to return to work full-time. As the Advocate General pointed out in her Opinion, no measures were taken to alleviate Ms Ring's discomfort at work (e.g. purchasing an adjustable-height desk or offering her part-time work), even

²⁵ See Sonia Chacón Navas v Eurest Colectividades SA, paragraph 45. See opinion of Advocate General L.A. Geelhoed, Case C-13/05, Sonia Chacón Navas v Eurest Colectividades SA, ECLI:EU:C:2006:184, pt 79, 85(1).

²⁶ See Opinion of Advocate General L.A. Geelhoed, Case C-13/05, Sonia Chacón Navas v Eurest Colectividades SA, pt 63. See also L. Waddington, A. Lawson, *Disability and non-discrimination law in the European Union. An analysis of disability discrimination law within and beyond the employment field*, European Network of Legal Experts in the non-discrimination field, Luxembourg, 2009, 17.

²⁷ See Opinion of Advocate General L.A. Geelhoed, Case C-13/05, Sonia Chacón Navas v Eurest Colectividades SA, pt 80 and 85(1), who points out: 'A dismissal because of sickness can thus constitute discrimination on the grounds of disability, which is prohibited by Directive 2000/78, only if the person concerned is able to make a reasonable case that it is not the sickness itself but the resulting long-term or permanent limitations which are the real reason for the dismissal'. See also Opinion of Advocate General J. Kokott, Cases C-335/11 and C-337/11, HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), ECLI:EU:C:2012:775, pt 37, who points out: 'Precisely in the case of chronic illnesses, the transition from a (treatable) illness to what is likely to be a permanent limitation, which only then has the character of a disability, may actually be an evolving process. Not until there is a prognosis of permanent limitation can there be any question of a disability'.

²⁸ See judgment of 11 April 2013, Cases C-335/11 and C-337/11, HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), ECLI:EU:C:2013:222.

though part-time positions were generally available. Immediately after Ms Ring's dismissal, a part-time job advertisement with a similar scope of duties was posted²⁹. Ms Werge (Case C-337/11), on the other hand, was the victim of a road accident and suffered whiplash injuries. The doctor was unable to determine the duration of her continued incapacity. The procedure for determining disability and loss of working capacity to a certain degree took place after the termination of the employment. In Joined Cases C-335/11 and C-337/11, the Court ruled that 'if a curable or incurable illness entails a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers, and the limitation is a long-term one, such an illness can be covered by the concept of "disability" within the meaning of Directive 2000/78'³⁰. It was also indicated, that 'directive 2000/78 must be interpreted as precluding national legislation under which an employer can terminate the employment contract with a reduced period of notice if the disabled worker concerned has been absent because of illness, (...), where those absences are the consequence of the employer's failure to take the appropriate measures in accordance with the obligation to provide reasonable accommodation laid down in Article 5 of that directive'³¹. Importantly, it was also noted that, compared to an employee who is not disabled, a disabled employee bears an additional risk of developing an illness related to their disability. They are, therefore, exposed to an increased risk of accumulating days of absence due to an illness. As a result, certain provisions relating to absenteeism (for example, reaching

²⁹ See Opinion of Advocate General J. Kokott, Cases C-335/11 and C-337/11, HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), pt 13, 14.

³⁰ See HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), paragraph 41.

³¹ See *ibidem*. See also Opinion of Advocate General J. Kokott, Cases C-335/11 and C-337/11, HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), pt 78, who points out: 'If the employer fails to take these appropriate measures which he can be expected to take, in other words, if he fails to comply with his obligation under Article 5 of the directive, he must not gain any legal advantage thereby. The obligation under Article 5 would become meaningless if the failure to take proportionate measures could justify placing a disabled worker at a disadvantage'.

certain absenteeism limits that allow the employer to terminate the employment relationship; concerning the selection criterion relating to the high rate of absenteeism) are 'liable to place disabled workers at a disadvantage and so to bring about a difference of treatment indirectly based on disability within the meaning of Article 2(2)(b) of Directive 2000/78'³². 'Directive 2000/78 must be interpreted as precluding national legislation under which an employer can terminate the employment contract with a reduced period of notice if the disabled worker concerned has been absent because of illness, (...), where those absences are the consequence of his disability, unless that legislation, as well as pursuing a legitimate aim, does not go beyond what is necessary to achieve that aim, that being for the referring court to assess'³³. Similarly, when it comes to the the selection criteria for effecting a dismissal, such as having productivity below a given rate or a low level of multi-skilling in the undertaking's posts, due to the fact that a disabled employee generally has less chance of achieving a good result than an employee without a disability, such criteria, therefore, also may give rise to a difference of treatment resulting indirectly from a disability, within the meaning of Article 2(2)(b) of Directive 2000/78³⁴.

The issue of distinguishing between an illness and disability was also highlighted in Case C-395/15³⁵. This case concerned M. Daouidi, who slipped on the kitchen floor of the restaurant where he worked and dislocated his left elbow, which was then put in plaster. During the period of temporary incapacity for work, the employer terminated the employment relationship. Approximately six months after the accident at

³² See HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), paragraph 76 and Opinion of Advocate General J. Kokott, Cases C-335/11 and C-337/11, HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11), pt 67. Similarly, in the judgment of 18 January 2018, Case C-270/16, Carlos Enrique Ruiz Conejero v Ferroservicios Auxiliares SA and Ministerio Fiscal, ECLI:EU:C:2018:17, paragraph 39 and, in the judgment of 11 September 2019, Case C-397/18, DW v Nobel Plastiques Ibérica SA, ECLI:EU:C:2019:703, paragraph 59.

³³ See HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11).

³⁴ See DW v Nobel Plastiques Ibérica SA, paragraph 60.

³⁵ See judgment of 1 December 2016, Case C-395/15, Mohamed Daouidi v Bootes Plus SL, Fondo de Garantía Salarial, Ministerio Fiscal, ECLI:EU:C:2016:917.

work, Mr Daouidi's elbow was still in plaster. It was pointed out that the fact that a person is covered by the legal regime of temporary incapacity for work does not preclude the classification of the limitation of capacity as long-term within the meaning of Directive 2000/78, considered in the light of the UN Convention. It was also pointed out that it is for the referring court to determine whether or not the limitation of the person's capacity is long-term. 'The evidence which makes it possible to find that such a limitation is "long-term" includes the fact that, at the time of the allegedly discriminatory act, the incapacity of the person concerned does not display a clearly defined prognosis as regards short-term progress or the fact that that incapacity is likely to be significantly prolonged before that person has recovered'³⁶.

The issue of termination of employment relationship was also raised in Case C-270/16³⁷. C.E. Ruiz Conejero was employed as a cleaning agent in a hospital. The degree of his incapacity was set at 37%, of which 32% was attributed to physical disability, characterised by disease of the endocrine-metabolic system (obesity) and functional limitation of the spine, with the remaining 5% resulting from additional social factors. He was on sick leave due to acute pain requiring hospitalisation, dizziness/nausea and lumbago. According to the diagnosis of the public health authority, these problems were caused by degenerative joint disease and polyarthrosis, aggravated by obesity. Importantly, the referring court stated that C.E. Ruiz Conejero refused the periodic medical examinations carried out by the insurance fund to which his employer belonged, and, therefore, the employer did not know that C.E. Ruiz Conejero was disabled at the time he was dismissed. In Case C-270/16, the Court recalled that 'the Member States have broad discretion not only in choosing to pursue a particular aim in the field of social and employment policy but also in defining measures to implement it', as regards combating absenteeism at work, this may be considered as a legitimate aim within the meaning of Article 2(2)(b)(i) of Directive 2000/78, since it concerns an employment policy measure³⁸. It was, therefore, pointed out that Article 2(2)(b)(i) of Directive

³⁶ See *ibidem*, paragraphs 52, 55, 56, 57, 59. See also Opinion of Advocate General Y. Bot, Case C-395/15, *Mohamed Daouidi v Bootes Plus SL, Fondo de Garantía Salarial, Ministerio Fiscal*, ECLI:EU:C:2016:371, pt 47.

³⁷ *Carlos Enrique Ruiz Conejero v Ferroservicios Auxiliares SA and Ministerio Fiscal*.

³⁸ See *ibidem*, paragraphs 43 and 44. Similarly, *HK Danmark*, acting on behalf of *Jette Ring v Dansk almennyttigt Boligselskab* (C-335/11) and *HK Danmark*, acting on behalf of *Lone Skouboe Werge v Dansk Arbejdsgiverforening*, acting on behalf of *Pro Display A/S* (C-337/11), paragraphs 81 and 82.

2000/78 'must be interpreted as precluding national legislation under which an employer may dismiss a worker on the grounds of his intermittent absences from work, even if justified, in a situation where those absences are the consequence of sickness attributable to a disability suffered by that worker, unless that legislation, while pursuing the legitimate aim of combating absenteeism, does not go beyond what is necessary in order to achieve that aim, which is a matter for the referring court to assess'³⁹.

In the context of Article 2(2)(b)(ii) of Directive 2000/78, it should be noted that it 'must be interpreted as meaning that dismissal for "objective reasons" of a disabled worker on the ground that he or she meets the selection criteria taken into account by the employer to determine the persons to be dismissed, namely having productivity below a given rate, a low level of multi-skilling in the undertaking's posts and a high rate of absenteeism, constitutes indirect discrimination on grounds of disability within the meaning of that provision, unless the employer has beforehand provided that worker with reasonable accommodation, within the meaning of Article 5 of that directive, in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, which it is for the national court to determine'⁴⁰.

It is also worth noting Case C-485/20, where it was argued that Article 5 of Directive 2000/78 'must be interpreted as meaning that the concept of "reasonable accommodation" for disabled persons, within the meaning of that article requires that a worker, including someone undertaking a traineeship following his or her recruitment, who, owing to his or her disability, has been declared incapable of performing the essential functions of the post that he or she occupies, be assigned to another position for which he or she has the necessary competence, capability and availability, unless that measure imposes a disproportionate burden on the employer'⁴¹. In this case, following the Opinion of the Advocate General⁴², it was also clarified that the possibility of assigning a disabled person to another job arises only if there is at least one vacant position

³⁹ Carlos Enrique Ruiz Conejero v Ferroserv Servicios Auxiliares SA and Ministerio Fiscal.

⁴⁰ DW v Nobel Plásticos Ibérica SA.

⁴¹ Judgment of 10 February 2022, Case C-485/20, XXXX v HR Rail SA, ECLI:EU:C:2022:85.

⁴² Opinion of Advocate General A. Rantos, Case C-485/20, XXXX v HR Rail SA, ECLI:EU:C:2021:916, pt 77.

that the employee in question is capable of filling⁴³. Similarly, in Case C-795/19, it was held that Article 2(2)(a), Article 4(1) and Article 5 of Directive 2000/78 ‘must be interpreted as precluding national legislation which imposes an absolute bar to the continued employment of a prison officer whose auditory acuity does not meet the minimum standards of sound perception prescribed by that legislation, without allowing it to be ascertained whether that officer is capable of fulfilling those duties, where appropriate after the adoption of reasonable accommodation measures for the purposes of Article 5 of that directive’⁴⁴.

Moving on to the doubts that arise in this matter, it should be pointed out that the boundary between an illness and disability does not seem clear enough. An illness can be associated with disability, an illness and disability can overlap, disability can lead to more frequent illnesses, but an illness can also be the cause of disability. From the point of view of labour law, however, a certain clarity of the adopted legal solutions is necessary. So where do the employer's obligations begin, e.g., in relation to reasonable accommodation in the event of disability?

As a general rule, when it comes to the employer's obligation to provide reasonable accommodation, the view that ‘where the employer knows, or ought reasonably to be aware, that a person whom he proposes to recruit or who is already his employee suffers or may have a disability, that obligation represents the first step in the process leading to the avoidance of discriminatory treatment. A failure to recruit or, as the case may be, a dismissal resulting from a failure to respect such an obligation will amount to unlawful discrimination for the purposes of Directive 2000/78’⁴⁵, should be considered convincing. As one may think, in most situations this approach would be appropriate. However, if this view is accepted in its entirety, situations in which an employee does not wish to be perceived as a person with a disability and does not want any accommodation could pose a problem. This is because an employee has the right to both accommodation and the absence of accommodation⁴⁶. One may imagine

⁴³ XXXX v HR Rail SA, paragraph 48. Similarly, in the judgment of 18 January 2024, Case C-631/22, J.M.A.R v Ca Na Negreta SA., ECLI:EU:C:2024:53, paragraph 45 and, in the judgment of 11 September 2025, Case C-38/24, G.L. v AB SpA, ECLI:EU:C:2025:690, paragraph 78.

⁴⁴ Judgment of 15 July 2021, Case C-795/19, XX v Tartu Vangla, ECLI:EU:C:2021:606.

⁴⁵ See Opinion of Advocate General E. Sharpston, Case C-270/16, Carlos Enrique Ruiz Conejero v Ferroservicios Auxiliares SA and Ministerio Fiscal, ECLI:EU:C:2017:788, pt 41. See also pt 45.

⁴⁶ As regards Poland, in its judgment of 15 September 2015, III KRS 49/15, LEX No. 2288956, the Supreme Court stated that the employer's obligation to provide reasonable

certain situations where the matter would be so delicate (e.g. a suspected mental illness manifested in strange or only somewhat specific behaviour on the part of the employee) that providing accommodation could be perceived in the opposite, or even hostile, way. Many people, e.g. those with various mental health issues, want to be perceived as no different from others, and they also have the right not to talk about their difficulties. In my opinion, this would argue in favour of the option that, ultimately - for the purposes of labour law – any expression of intent that someone wishes to avail themselves of the protection, presentation of circumstances justifying protection (i.e. a preliminary signal from an employee who considers themselves to be disabled and wants to derive certain rights from this, at this stage this does not have to be proof of disability in the sense of having a certificate) is the most clear-cut situation if a person wants to exercise certain rights; in this case, the greater or lesser 'obviousness'⁴⁷ of the situation can sometimes be problematic.

Without denying the understandable need to seek protection for people with disabilities (who may indeed be more susceptible to illnesses related to their disability), it seems that unclear assessment criteria may cause uncertainty as to existing rights or obligations. It is not clear, for example, whether what appears to be only an illness may already be a disability, may turn out to be a disability after termination of an employment relationship, or may not be a disability at all and is only an illness. From an employer's perspective, it is also difficult to say whether all this is mitigated by the fact that it must be examined whether such a difference in treatment is objectively justified by a legitimate aim, and whether the means of achieving that aim are appropriate and do not go beyond what is necessary to achieve that aim (Article 2(2)(b)(i) of Directive 2000/78). This happens *post factum*, at the stage of proceedings. So there is an element of risk here.

From the perspective of an employer who is entitled to the agreed work, it does not seem convincing that there is no need to disclose a disability in any way, even by informing the employer, when someone wants to

accommodation, which is linked to the prohibition of discrimination against persons with disabilities gives the employee the right to shape their working conditions in such a way as to enable them to continue performing their duties and prevent their exclusion from the labour market. However, this right is not accompanied by an obligation on the part of the employee to perform their duties in conditions specially created for them, i.e. a provision established in the interest of a person with a disability cannot become a source of obligations for them.

⁴⁷ See, however, the Opinion of Advocate General E. Sharpston, Case C-270/16, *Carlos Enrique Ruiz Conejero v Ferroservicios Auxiliares SA and Ministerio Fiscal*, pt 38.

exercise their related rights. It is pointed out that: ‘the duty to provide reasonable accommodation is not limited to situations in which the person with a disability has asked for an accommodation or in which it could be proved that the alleged duty bearer was actually aware that the person in question had a disability. It should also apply in situations where a potential duty bearer should have realized that the person in question had a disability that might require accommodations to address barriers to exercising rights’⁴⁸. In my opinion, this may in fact impose a disproportionate burden on the employer, thus, I believe that the content of the recital 21 of Directive 2000/78 may set the direction for the employer's defense (phrases: ‘account should be taken in particular’ and ‘other costs entailed’).

It should be noted that a broad interpretation of disability (justified on many different levels related to removing barriers and ensuring effective equality) requires a fresh look at the relationship between labour law and social security law. As has been rightly pointed out, ‘the provision strives to place disabled members of the workforce on an equal footing with able-bodied colleagues, not to afford them greater rights’⁴⁹. However, it is not only about the requiring protection rights of sick/disabled employees, but also about the right of employers to obtain work, the right to select staff, or to conduct effective business. Employers must maintain their businesses in difficult conditions of mutual competition. All this requires careful consideration of each actual situation and the mutual interests of the parties of the employment relationship. In this context, it is worth noting that small employers dominate in Poland, and their situation (if, for example, they employ only one or two people) may sometimes not differ much from that of an employee, and they themselves may also be affected by a specific disability.

It also seems important not to build protection for persons with disabilities by shifting the risk from inefficient states to employers. The latter provides jobs. The role of the employer is not to relieve the burden on an inefficient state. One could also look at it from the perspective that at various earlier stages, e.g. school education, proper medical care, access to specialist examinations, there was not enough ‘care’ and reasonable accommodation from the state, and now, at the stage of employment, the

⁴⁸ Committee on the Rights of Persons with Disabilities, General comment No. 6 (2018) on equality and non-discrimination, CRPD/C/GC/6, pt 24b.

⁴⁹ See Opinion of Advocate General E. Sharpston, Case C-270/16, Carlos Enrique Ruiz Conejero v Ferroservicios Auxiliares SA and Ministerio Fiscal, pt 42.

needs are greater. Why should the employer secure them in a situation where the increased needs are the result of the state's failure to provide earlier reasonable accommodation? Such an increased burden on employers (with a broad interpretation of disability and an unclear boundary between an illness and disability) could cause them to want to shift the burden by paying a contribution (against the risk of disability in labour law).

On the other hand, the process of activating persons with disabilities and an open and broad scope of reasonable accommodation also raises questions about the extent to which certain accepted regulations in social insurance law are sustainable and whether they are not more a reflection of certain rigid patterns adopted earlier, which do not necessarily correspond to current challenges. This applies, for example, to combining insurance benefits with work already at the pre-disability pension stage.

In Poland, pursuant to Article 17(1) of the Benefit Act (in the version effective until April 12, 2026; as of April 13, 2026, this is Article 17(1)(1) of the Benefit Act), an insured person who performs gainful employment during a period of certified incapacity for work loses the right to sickness benefit for the entire period of sick leave. Article 17 of the Benefit Act shall apply accordingly to the rehabilitation benefit (Article 22 of the Benefit Act). In situations where an employee is not entitled to sickness benefit, they are also not entitled to sick pay from their employer (Article 92 § 3(2) of the Labour Code). For a long time in Poland, the legislator, under penalty of losing the right to benefits, has prohibited combining work with receiving sick pay, sickness benefit, and rehabilitation benefit. The aforementioned regulation has been 0:1 in nature, i.e. the insured person has been treated as completely unable to work, and the legislator has not taken into account any intermediate states⁵⁰. The content of Article 17(1) of the Benefit Act has raised numerous doubts⁵¹. This has been because an illness usually only reduces the ability to work⁵². In many situations, a person would be able to perform certain activities while on sick leave. Unfortunately, Article 17(1) of the Benefit Act has hindered activation. The various doubts surrounding Article 17(1) of the Benefit

⁵⁰ A. Napiórkowska, *Koncepcja częściowych zwolnień lekarskich i aktywizowania ubezpieczonych na przykładzie wybranych krajów europejskich a polski system ubezpieczenia chorobowego*, in *Praca i Zabezpieczenie Społeczne*, 2023, n. 9, 57.

⁵¹ I. Jedrasik-Jankowska, *op. cit.*, 315; A. Napiórkowska, *Wykonywanie pracy zarobkowej w okresie czasowej niezdolności do pracy z powodu choroby – nowe możliwe rozwiązania w związku z COVID-19?*, in *Studia z Zakresu Prawa Pracy i Polityki Społecznej*, 2021, vol. 28, 209-211.

⁵² S. Markussen, A. Mykletun, K. Røed, *op. cit.*, 960.

Act have also resulted in a specific line of Supreme Court case law, according to which a distinction has been made between ‘performing gainful employment’ and other formal legal activities undertaken sporadically, forced by circumstances, and of an incidental nature⁵³. Starting April 13, 2026, there are some changes in this area. Taking into account existing case law, paragraph 1a, added to Article 17 of the Benefit Act, states that: ‘The gainful employment referred to in paragraph 1(1) means any activity of a gainful nature, regardless of the legal relationship underlying its performance, with the exception of incidental activities that must be undertaken during a period of leave from work due to relevant circumstances. An order from the employer shall not constitute a relevant circumstance’. Pursuant to the newly added paragraph 1c of Article 17 of the Benefit Act: ‘If an individual is subject to social insurance under at least two different social insurance titles, incapacity for work due to an illness applies to each of those titles, for which a separate sick leave certificate is issued’. These rules apply appropriately to a person entitled to sickness benefit for the period following the termination of sickness insurance title. However, more significant changes are coming on January 1, 2027. Pursuant to paragraphs 1d and 1e of Article 17 of the Benefit Act, which are added as of that date - ‘However, if paid work under a specific title can be performed due to the type of work, a leave of absence for that title may not be granted at the insured person’s request’ (paragraph 1d) - and - ‘In the case referred to in paragraph 1d, the insured person is required to inform the contribution payer referred to in Article 61(1)(1) of the period for which a sick leave certificate has been issued to him or her under a different title’ (paragraph 1e). Starting from January 1, 2027, the legislator, therefore, permits paid work during sick leave, but - importantly: 1) only if the work can be performed due to the type of work (which should be understood as work of a different type) and under a different insurance title, 2) at the insured person’s request. This represents a certain openness to some changes, but these are not the changes that, in my view, would have been expected. It is still not possible to combine work with sickness benefit under the same social insurance title (rather than a different one). Therefore, under the same social insurance title, it is

⁵³ See the Supreme Court judgment of 7 October 2003, II UK 76/03, LEX No. 109913; Supreme Court judgment of 4 April 2012, II UK 186/11, LEX No. 1216851; Supreme Court judgment of 9 October 2006, II UK 44/06, LEX No. 309449; Supreme Court judgment of 6 May 2009, II UK 359/08, LEX No. 687081. See A. Napiórkowska, *Koncepcja częściowych zwolnień lekarskich i aktywizowania ubezpieczonych na przykładzie wybranych krajów europejskich a polski system ubezpieczenia chorobowego*, *op. cit.*, 57.

not possible to be partially unable to work (e.g., 60%) and partially able to work (40%), thereby combining in the appropriate proportions, sickness benefit with remuneration or other income.

All of these considerations lead to certain questions: if the aim in the case of disability is to ensure that persons with disabilities have access to employment and can work, why, in the case of an illness and the associated temporary incapacity for work, is the insured person generally discouraged from working? Why is the concept of partial sick leave/graded sick leave/part time sick leave⁵⁴ something exceptional rather than the rule? From the point of view of regulations relating to disability, the person in question will be activated, various reasonable accommodation will be sought, and the employer may be 'punished' for failing to provide reasonable accommodation and dismissing the employee. However, from the point of view of sickness insurance benefits, the same person will often be forced into a passive attitude, under penalty of losing their entitlement to benefits, and will be labeled 'unfit for work'. This shows a certain inconsistency in the approach to the illness-disability spectrum, but also a problem with the traditionally used term 'incapacity for work'. For various reasons, the term 'reduced/limited ability to work' would, therefore, seem to be a much better choice. One of the added values of using this term would be an attempt to reconcile these complex aspects, but also greater openness to policies of inclusion and activation.

3. Comments on Polish legal regulations – the Rehabilitation Act

Pursuant to Article 23a(1)-(3) of the Rehabilitation Act, an employer is obliged to provide necessary reasonable accommodation⁵⁵ for a person

⁵⁴ More broadly: S. Markussen, A. Mykletun, K. Røed, *op.cit.*, 959-972; T. Leoni, *Sick but at work: Graded sick leave in a comparative perspective*, in *Social Policy & Administration*, 2021, vol. 55, 65-81; T. Leoni, *Graded Work, the Activation of Sick-Listed Workers and Employer Participation in Continental Europe*, in *Social Policy and Society*, 2022, vol. 21 (3), 385-404; J. Kausto, H. Miranda, K.-P. Martimo, E. Viikari-Juntura, *Partial sick leave-review of its use, effects and feasibility in the Nordic countries*, in *Scandinavian Journal of Work, Environment & Health*, 2008, vol. 34 (4), 239-249; L. Kools, P. Koning, *Graded return-to-work as a stepping stone to full work resumption*, in *Journal of Health Economics*, 2019, vol. 65, 189-209.

⁵⁵ Polish legislation uses the term 'necessary reasonable improvements' rather than 'reasonable accommodation', which is the term used in Article 5 of Directive 2000/78, however, the meaning would be the same. For consistency, the term 'reasonable accommodation' is used throughout this study.

with a disability⁵⁶ who is employed by them, participating in the recruitment process, or undergoing training, an internship, vocational preparation, or professional or graduate internships. Reasonable accommodation consists of making the necessary changes or adjustments in a specific situation to meet the particular needs of a person with a disability that have been reported to the employer, provided that such changes or adjustments do not impose a disproportionate burden on the employer. These burdens are not disproportionate if they are sufficiently compensated for by public funds. Failure to provide reasonable accommodation is considered a violation of the principle of equal treatment in employment within the meaning of Article 18^{3a} § 2-5 of the Labour Code. Article 23a was added on January 1, 2011. The obligation arising from this provision was, therefore, introduced not into the Labour Code, but into the Rehabilitation Act.

In the context of the comments made in the previous subsection, it is worth noting that in Poland, the obligation to provide reasonable accommodation for persons with disabilities refers to ‘needs resulting from a person's disability reported to the employer’, which is not mentioned in Directive 2000/78 nor in the Convention on the Rights of Persons with Disabilities⁵⁷. Article 1 of the Rehabilitation Act stipulates that this Act applies to persons whose disability has been confirmed by a statement: 1) classifying them as having one of the three degrees of disability specified in Article 3 of this Act, or 2) declaring them totally or partially incapable of work on the basis of separate regulations, or 3) of disability, issued before the age of 16. The requirement for formal confirmation of disability – when compared with the established standards – deviates from the adopted model of protection⁵⁸. It is, therefore, pointed out that Polish regulations should be interpreted more broadly. This would mean, among other things, that the obligation to provide reasonable accommodation for a person with a disability, as specified in Article 23a of the Rehabilitation Act, would have to apply not

⁵⁶ Although Polish regulations use the term ‘a disabled person’, this article uses the term ‘a person with a disability’.

⁵⁷ See M. Paluszkiwicz, *Pojęcie niezbędnych racjonalnych usprawnień*, in T. Bińczycka-Majewska, M. Włodarczyk (ed.), *Współczesne problemy prawa emerytalnego*, Warszawa, 2015, LEX.

⁵⁸ The literature on the subject, therefore, indicates that in Polish practice, it should be ensured that protection against discrimination does not depend on having a certificate of incapacity for work or a disability certificate. In this way, A. Bodnar, A. Śledzińska-Simon, *O potrzebie ratyfikacji Konwencji ONZ o Prawach Osób z Niepełnosprawnością*, in *Europejski Przegląd Sądowy*, 2012, n. 5, LEX.

only to the person referred to in Article 1 of the Rehabilitation Act, but also to persons with disabilities within the meaning of Directive 2000/78 (in the terms of the Convention) whose disability has not been formally confirmed⁵⁹. Unfortunately, employers in Poland may have little awareness in this area, and it seems that they are not sufficiently sensitized to these situations. The situation becomes even more complicated when one considers that the requirement for formal confirmation of disability in Poland is linked to the possibility of financial support for the employer⁶⁰.

As regards the requirement to notify the employer of the needs arising from the person's disability⁶¹, it can be assumed that it serves to balance the interests of the employer and the employee, as well as to ensure legal certainty. Of course, when examining a given legal system, it would not be irrelevant whether the procedure for confirming disability is simple or complicated in that system. However, from the point of view of balancing employee protection and employer interests, I believe that the optimal model is one in which the employee initially indicates the circumstances justifying disability protection, presents specific needs in any manner, thereby expressing their willingness to take advantage of such protection. Ultimately, however, a procedure for confirming disability should also be initiated within a reasonable time.

Returning to the main considerations, it should be noted that, pursuant to Article 14(1) of the Rehabilitation Act, an employer is obliged to allocate or organize an appropriate work station with basic social facilities for an employee who, as a result of an accident at work or occupational disease, has lost the ability to work in their current position, no later than within three months from the date of notification by that person of their readiness to commence work. The notification of readiness to commence work should take place within one month from the date of recognition as

⁵⁹ See M. Paluszkiewicz, in E. Bielak-Jomaa, E. Staszewska, M. Włodarczyk, T. Wrocławska, M. Paluszkiewicz, *Rehabilitacja zawodowa i społeczna oraz zatrudnianie osób z niepełnosprawnościami. Komentarz*, Warszawa, 2023, LEX, Art. 1.

⁶⁰ <https://www.pfron.org.pl/pracodawcy/dofinansowanie-wynagrodzen/warunki-ubiegania-sie-o-dofinansowanie-do-wynagrodzen-pracownikow-niepelnosprawnych/> (access: 31.10.2025).

⁶¹ The literature on the subject indicates that the employer is obliged to fulfill their obligation towards a person with a disability even in a situation where they themselves become aware of the need to introduce changes or adjustments. See M. Wujczyk, *Obowiązek pracodawcy zapewnienia niezbędnych racjonalnych usprawnień dla pracownika niepełnosprawnego*, in M. Borski (ed.), *Bariery w otoczeniu osób z niepełnosprawnościami. Zagadnienia wybrane*, Oficyna Wydawnicza „Humanitas”, Sosnowiec, 2017, 22.

a person with a disability⁶². Literally, the provision refers only to the loss of ability to work in the previous position as a result of an accident at work or occupational disease. Therefore, it would not apply, for example, to an illness that would not be classified as an occupational disease. If the employer fails to allocate or organize such a work station within the prescribed period, they are obliged to make a payment to the State Fund for Rehabilitation of Disabled People on the date of termination of employment with that person, in the amount of fifteen times the average remuneration for an employee (Article 23 of the Rehabilitation Act). This, therefore, constitutes an element of punishment for the employer. It is worth noting that the analyzed Article 14(1) of the Rehabilitation Act does not contain any reservation regarding possible disproportionate burden on the employer⁶³. Due to the very strong connection with the work process (loss of ability to work in the current position as a result of an accident at work or occupational disease), this provision fully implements the idea of keeping a person with a disability in employment, which does not mean that no problems arise in this area. The latter would concern, for example, the relationship between Article 14(1) of the Rehabilitation Act and Article 231 of the Labour Code⁶⁴.

The Rehabilitation Act also includes specific incentives for employers. For example, pursuant to Article 26(1)-(3) of the Rehabilitation Act, an employer who employs persons with disabilities for a period of at least 36 months (i.e., unemployed or seeking employment and not currently employed or employed by the employer applying for this reimbursement, except in cases where the cause of the disability during the period of employment with that employer was due to a culpable violation of regulations, including labour law, by the employer or employee) may,

⁶² The above provision shall not apply if the sole cause of the accident at work was a violation of occupational health and safety regulations by the employee through his own fault or his state of alcohol intoxication, as proven by the employer (Article 14(2) of the Rehabilitation Act).

⁶³ M. Latos-Milkowska, *Ochrona trwałości stosunku pracy pracowników niepełnosprawnych i opiekunów osób niepełnosprawnych*, in A. Giedrewicz-Niewińska, M. Szablowska-Juckiewicz (ed.), *Zatrudnianie osób niepełnosprawnych. Regulacje prawne*, Difin SA, Warszawa, 2014, 261.

⁶⁴ Pursuant to Article 231 of the Labour Code, on the basis of a medical certificate, an employer shall transfer to appropriate work an employee who has become unable to perform their current work as a result of an accident at work or occupational disease and has not been declared incapable of work within the meaning of the provisions of the Act on Old-Age and Disability Pensions. If such a transfer results in a reduction in remuneration, the employee is entitled to a compensatory pay for a period not exceeding 6 months.

upon request, receive reimbursement from the State Fund for Rehabilitation of Disabled People for the costs of, among other things, adapting the workplace premises to the needs of persons with disabilities, in particular those incurred in connection with the adaptation of existing or newly created work stations for these persons, in accordance with the needs resulting from their disability; adaptation or purchase of equipment facilitating the performance of work or functioning in the work establishment by a person with a disability. The reimbursement applies only to additional costs incurred by the employer as a result of employing persons with disabilities, and may not exceed twenty times the average salary for each adapted work station of a person with a disability⁶⁵. One of the elements aimed at encouraging the employment of persons with disabilities is, among other things, a monthly subsidy to the salary of an employee with a disability.

It is also worth noting the legal regulation concerning employees who assist employees with disabilities at work. Pursuant to Article 26d(1) and (3) of the Rehabilitation Act, an employer who employs an employee with a disability may receive reimbursement from the Fund for the monthly costs of employing employees who assist the employee with a disability at work and for the costs of training these employees - in activities that facilitate communication with their surroundings, as well as activities that are impossible or difficult for an employee with a disability to perform independently at their work station. The number of hours devoted exclusively to assisting an employee with a disability may not exceed 20% of the employee's monthly working hours. In the context of attempts to keep employees with disabilities in employment (and to reduce the risk of termination of employment relationship), this regulation – if properly designed – could play a greater role in practice. However, the limit seems small and may also objectively make it difficult to find people who would be willing to provide such assistance at all.

Assessing the activation process, it must unfortunately be noted that, according to data presented by the Supreme Audit Office, the importance of vocational development centers in the vocational rehabilitation system for people with disabilities in Poland is insignificant. Not only is their low effectiveness pointed out, but also, among other things, the fact that their activities are not adapted to the needs of the labour market. As indicated, at the end of 2021, out of almost 2 million people over the age of 16 with

⁶⁵ However, it seems that detailed regulations concerning the reimbursement may deter some employers and pose a challenge for them, especially small employers.

a certified severe or moderate degree of disability, only 0.3% worked in vocational development centers. Among the group of people with disabilities working in vocational development centers throughout Poland, only about 2% took up employment on the open labour market during the period examined by the Supreme Audit Office, while in the case of the establishments audited, about 17% of people who left their jobs there⁶⁶.

4. An illness and disability versus termination of an employment contract

In light of the above considerations, the regulation provided for in Article 40 in conjunction with Article 39 of the Labour Code is problematic. Pursuant to Article 39 of the Labour Code, an employer may not give notice of termination of a contract of employment to an employee who is no more than 4 years away from reaching retirement age, if the period of employment entitles them to a retirement pension upon reaching that age. However, pursuant to Article 40 of the Labour Code, the aforementioned Article 39 of the Labour Code does not apply if an employee becomes entitled to a disability pension due to total incapacity for work. The differentiating factor here is precisely the right to a disability pension for total incapacity for work, i.e. the right to one of the social insurance benefits associated with the status of a person with a disability. The point is that if such a person acquired the right to a disability pension for total incapacity for work, the employer could give notice of termination the employment contract even if the employee was less than 4 years away from reaching retirement age. It seems that this could result in a situation where, in comparable circumstances, persons who would be considered disabled under Directive 2000/78 would be treated less favourably than employees who do not have this characteristic. On the other hand, it should also be noted that this solution is optional. This concerns persons who are entitled to a disability pension on the grounds of total incapacity for work, i.e. those who have lost the ability to perform any work under typical conditions. It should also be mentioned that these are persons who are already entitled to a disability pension until they reach retirement age. In Poland, if a person entitled to a disability pension for a period of at least the last 5 years preceding the date of the medical examination is less

⁶⁶ <https://www.nik.gov.pl/aktualnosci/sprawy-spoleczne/rehabilitacja-zawodowa-i-spoleczna-osob-z-niepełnosprawnościami.html> (access: 23.08.2025); *Zadania z zakresu rehabilitacji zawodowej i społecznej realizowane przez samorządy województw. Informacja o wynikach kontroli*, Najwyższa Izba Kontroli, no. 148/2022/P/22/032/KPS, 9.

than 5 years away from reaching retirement age, in the event of a further finding of incapacity for work, incapacity for work is determined for a period until the date of reaching that age (Article 13(3a) of the Act on Old-Age and Disability Pensions). Subsequently, the disability pension will be converted into a retirement pension (Article 24a of the Act on Old-Age and Disability Pensions). It is, therefore, clear that these persons are not left without anything. In the literature on the subject – in the context of Articles 39 and 40 of the Labour Code – it is rightly pointed out that the employer's obligation to provide reasonable accommodation in order to keep the employee in employment is not excluded here⁶⁷. When assessing these solutions, it is also pointed out, among other things, that the purpose of this provision may be the need to ensure the proper functioning of the workplace without imposing unreasonable burden on the employer and on the public funds, as this could lead to an accumulation of public funds, relatively high disability pensions and additional costs of the employer⁶⁸.

With regard to the issue of notice of termination of an employment contract, it should be noted that, pursuant to Article 41 of the Labour Code, an employer may not give notice of termination of an employment contract during an employee's leave or during any other justified absence from work (e.g. due to an illness) if the period entitling the employer to terminate the employment contract without notice has not yet expired. This provision correlates with Article 53 of the Labour Code, which specifies the periods of protection against termination of employment.

Pursuant to Article 53 § 1(1)(a) and (b) of the Labour Code, an employer may terminate an employment contract without notice (i.e. this is optional) if the employee's incapacity for work due to an illness lasts: a) longer than 3 months - if the employee has been employed by the employer for less than 6 months, b) longer than the total period of receiving sick pay, sickness benefit and rehabilitation benefit for the first 3 months⁶⁹ - if the employee has been employed by the employer for at least 6 months or if the inability to work was caused by an accident at work or

⁶⁷ D. Dzienisiuk, *Prawo pracy a prawo ubezpieczeń społecznych*, Difin SA, Warszawa, 2016, 286-287.

⁶⁸ Ibidem, 287.

⁶⁹ The position expressed in the Supreme Court judgment of 6 April 2007, II PK 263/06, LEX No. 469990, according to which the protection of the employment relationship of an employee unable to work due to an illness covers the first three months of receiving rehabilitation benefit, even if the employee was unable to prove to the employer that they were receiving this benefit immediately after the period of receiving sickness benefit should be considered convincing.

an occupational disease⁷⁰. Given that the benefit period is generally 182 days, in the event of continuous temporary incapacity for work, the protection period before termination of employment could, therefore, be as long as 272 days⁷¹. Of course, this will not always be the case, as there are specific rules for calculating the benefit period, as mentioned earlier⁷². The indicated protection period is, therefore, not short, and the employee may still be entitled to rehabilitation benefit (as it is payable for up to 12 months). What is more, a contract of employment cannot be terminated without notice after the employee has returned to work when the reason for his absence has ceased to exist (Article 53 § 3 of the Labour Code). Therefore, if the protection period expired and the employee reported to work in connection with the cessation of the reason for absence, it would no longer be possible to terminate the employment relationship in this manner, and the employee would then have to be referred for return-to-work health examinations.

In the context of this issue, it is also worth noting that in Poland, the view has been expressed that the practice of terminating the employment relationship after the expiry of the protection period applicable during incapacity for work should be significantly reduced in favour of the professional rehabilitation of the employee and their employment in another position appropriate to their state of health and ability to work⁷³. In this spirit, it has been also pointed out that it is not permissible to terminate an employment relationship due to long-term incapacity for work if the employee regains partial capacity for work enabling them to perform other suitable work which the employer is able to provide (Article 53 § 3 of the Labour Code)⁷⁴. The views that have been expressed here strongly emphasise the desire to retain a person in a specific work environment, based on the assumption that in many cases the process of vocational rehabilitation or adaptation to other work is most successful when the employee remains in their current work environment⁷⁵.

⁷⁰ In the event of an employee's isolation due to a contagious disease, termination of the employment contract without notice may not take place during the period of receiving sick pay and sickness benefit on this account.

⁷¹ Sick pay paid by the employer (33/14 days) is included in the benefit period in accordance with the general rules set out in the Benefit Act.

⁷² See subsection 'An employee's illness, sick pay, and cash benefits from social insurance'.

⁷³ W. Piotrowski, *Obowiązek przesunięcia pracownika do innej odpowiedniej pracy jako środek rehabilitacji zawodowej*, in *Studia Prawnicze*, 1976, n. 3, 166.

⁷⁴ Ibidem, 182.

⁷⁵ Ibidem, 165.

Another important regulation from the point of view of employee activation is the solution adopted in Article 53 § 5 of the Labour Code and, accordingly, in Article 20 of the Benefit Act. The employer should, as far as possible, re-employ an employee who, within 6 months of the termination of their employment contract under this procedure, reports their return to work immediately after the cessation of these reasons or reports their return immediately after exhausting their right to rehabilitation benefit, even if this occurs after 6 months from the termination of the employment relationship. There is a clear objective here to reintegrate the former employee into the workplace. According to the Supreme Court resolution of 10 September 1976, an employer has an obligation to re-employ a former employee if they have vacant positions and the employee has the qualifications necessary to take up the vacant position⁷⁶. In the Supreme Court judgment of 12 January 1998, it has been indicated that when assessing the possibility of re-employing an employee, both the circumstances relating to the employer and the employee should be taken into account⁷⁷. Therefore, the possibility of re-employment should be assessed on the basis of all the circumstances, concerning both the employee (such as professional qualifications and health predispositions), and the employer, in particular taking into account whether the employer employs, after the employee has notified their return to work, other persons whose work could be performed by the employee notifying their return⁷⁸.

Continuing the analysis, it should be noted that the case law of the Supreme Court in Poland emphasises that Article 5 of Directive 2000/78 does not establish specific protection for persons with disabilities against termination of the employment relationship⁷⁹. It is, therefore, emphasised that it is permissible to dismiss an employee with a disability if, despite the reasonable accommodation measures provided, they are unable to

⁷⁶ See the resolution of the Supreme Court of 10 September 1976, I PZP 48/76, LEX No. 12431; similarly, the reasons for the judgment of the Supreme Court of 23 April 2014, I PK 255/13, LEX No. 1511377. In this case, the claim for the conclusion of an employment contract is relative in nature. See J. Piątkowski, *Aksjologiczne i normatywne podstawy prawa stosunku pracy*, Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora”, Toruń, 2013, 540.

⁷⁷ See Supreme Court judgment of 12 January 1998, I PKN 459/97, LEX No. 34188.

⁷⁸ See the reasons for the Supreme Court judgment of 6 August 2015, III PK 125/14, LEX No. 1770327.

⁷⁹ See the Supreme Court judgment of 12 May 2011, II PK 276/10, LEX No. 1171189. See also the reasons for the Supreme Court judgment of 7 December 2017, I PK 334/16, LEX No. 2433079.

perform the essential duties of their job⁸⁰. This would be consistent with recital 17 of Directive 2000/78, which indicates that the ‘Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities’.

It is worth mentioning here the Supreme Court judgment of 12 April 2012 concerning a prosecutor who, as a result of a traffic accident, suffered a fracture of the C4-C5 vertebrae and was confined to a wheelchair⁸¹. It was established that her condition did not allow her to perform all the duties imposed on a district prosecutor (in particular, activities carried out outside the prosecutor's office, such as inspecting crime scenes, conducting site inspections and trial experiments, participating in autopsies and working irregular hours). This was confirmed by a statement of an occupational health doctor. In this case, referring to the provisions of the Labour Code, the Supreme Court emphasised that: ‘The prohibition of discrimination in Polish legislation is not absolute, as the principles of equal treatment in employment are not violated by actions that are proportionate to the achievement of a legitimate objective of differentiating the situation of an employee, consisting in not employing an employee for one or more of the reasons specified in Article 18^{3a} § 1, if the type of work or the conditions of its performance mean that the reason or reasons specified in that provision are a genuine and decisive occupational requirement for the employee (Article 18^{3b} § 2(1) of the Labour Code)’⁸². In this case, reference was made to Article 4(1) of Directive 2000/78. It was also pointed out that it could not be argued that eliminating from the scope of duties of a district prosecutor those duties performed outside the prosecutor's office, involving physical effort, constituted reasonable accommodation enabling the person to hold the position. On the contrary, the need to remove these duties indicated that the person in question was not capable of performing all the most important duties of a prosecutor⁸³. Similarly, in the Supreme Court judgment of 7 December 2017, it was argued that reasonable accommodation consists in taking measures to enable an employee with a disability to continue to hold their current position,

⁸⁰ M. Wujczyk, *op. cit.*, 30.

⁸¹ See the Supreme Court judgment of 12 April 2012, II PK 218/11, LEX No. 1313656.

⁸² *Ibidem*.

⁸³ *Ibidem*.

rather than eliminating the basic duties of the position held by such an employee⁸⁴.

The Supreme Court also recalled this idea (importantly, using the categorical phrase 'only if') in its judgment of 4 June 2013, emphasising that 'the non-culpable loss of the ability to perform one's current job due to disability of an employee, justifies notice of termination of employment relationship only if the disabled employee objectively loses the ability to perform essential job duties in their position, required for the continuation and rational performance of the employment relationship, despite the introduction or lack of possibility to apply reasonable and proportionate accommodation in the performance of work by a disabled employee, combined with the inability to provide other suitable work to an employee who has become unable to perform their current job due to a disability caused by an accident at work or occupational disease, and that employee has not been recognised as unfit for work within the meaning of the provisions' on old-age and disability pensions (Article 231 of the Labour Code)⁸⁵.

Doubts regarding the termination of employment relationship are related to the fact that the boundary between an illness and disability is not always clear. It is pointed out that the provisions of the Labour Code include the principle of equal treatment of disabled employees and the corresponding prohibition of discrimination on grounds of disability, which, therefore, justifies notice of termination of an employment contract with that employee only 'in isolation from his or her disability', or when it cannot be compensated for by proportionate methods or adjustment measures available to the employer⁸⁶. Disability in itself cannot constitute a reason justifying notice of termination of an employment contract⁸⁷. At the same time, however, there is an established case law practice that long-term and/or frequent absences from work due to an illness may constitute a justified reason for notice of termination of an employment contract, as they usually cause disruption to the work process⁸⁸.

⁸⁴ See the Supreme Court judgment of 7 December 2017, I PK 334/16, LEX No. 2433079.

⁸⁵ See the Supreme Court judgment of 4 June 2013, I PK 26/13, LEX No. 1554965.

⁸⁶ See the reasons for the Supreme Court judgment of 4 June 2013, I PK 26/13.

⁸⁷ M. Latos-Milkowska, *op. cit.*, 257.

⁸⁸ See, for example, the Supreme Court judgment of 11 July 2006, I PK 305/05, LEX No. 395064; Supreme Court judgment of 5 October 2005, I PK 61/05, LEX No. 196489; Supreme Court judgment of 21 October 1999, I PKN 323/99, LEX No. 45510. Although, in general, long-term absences of an employee due to an illness may justify notice of termination of the employment contract, such notice of termination may be

It is also worth noting the Supreme Court judgment of 16 December 1999, which stated that a medical contraindication to the performance of even one duty belonging to the scope of activities at the occupied position justifies notice of termination of an employment contract⁸⁹. Although, in principle, one would have to agree with the position expressed here, that the safety of an employee and the protection of their health and life are goods which, in the hierarchy of legally protected goods, should be given priority over the protection of the workplace⁹⁰, it should be noted that the employer's obligation to provide reasonable accommodation for persons with disabilities must play a significant role in this matter. The essence of the system of protection for persons with disabilities is that such persons (with disabilities) should, as far as possible, remain in employment and not be dismissed, which is to be achieved, *inter alia*, by the reasonable accommodation⁹¹.

When assessing Polish regulations, it seems that the obligation of employers to provide reasonable accommodation for persons with disabilities is not sufficiently emphasised in Polish law. The inclusion of the regulation concerning reasonable accommodation in a law separate from the Labour Code (Article 23a of the Rehabilitation Act) weakens the essence of this regulation. Regulating this in the Labour Code would be of great importance not only in terms of emphasising the significance of the matter in question, but also, most importantly, in terms of increasing awareness of this regulation among employers and employees⁹². It seems that employers are not fully aware of their obligations, and employees are not fully aware of their rights.

In Poland, disability is commonly associated with the requirement for formal confirmation, which then triggers financial support for employers. Since disability is linked to formal confirmation, it may be the case that reasonable accommodation is not provided in the event of an illness and ultimately the employment relationship is terminated (employers are convinced that there is 'only' an illness, the person has no formal

considered contrary to the principles of social coexistence if it concerns a long-term employee who has performed their duties impeccably so far. See the Supreme Court judgment of 21 January 2003, I PK 96/02, LEX No. 82395.

⁸⁹ Supreme Court judgment of 16 December 1999, I PKN 469/99, LEX No. 39602.

⁹⁰ *Ibidem*.

⁹¹ See Opinion of Advocate General A. Rantos, Case C-485/20, XXXX v HR Rail SA, pt 68.

⁹² See M. Paluszkiwicz, *Rozwiązanie umowy o pracę bez wypowiedzenia na podstawie art. 53 k.p. a zakaz dyskryminacji ze względu na niepełnosprawność w świetle najnowszych standardów międzynarodowych*, in *Roczniki Administracji i Prawa*, 2024, n. 4, 338.

confirmation of disability, so they do not assume that reasonable accommodation needs to be provided). Comparing this with the established standard of protection for persons with disabilities, we can see an area where the needs of some persons may not be properly recognised, as not everyone will take legal action. In this context, therefore, it should be agreed that there may be a certain group of employees with disabilities (without formal confirmation of their disability) who may be more vulnerable to indirect discrimination on grounds of disability, e.g. in the context of Article 53 of the Labour Code⁹³, but also in the context of notice of termination of an employment contract due to long and/or frequent illnesses (which may be related to disability and may also be cumulative due to the lack of reasonable accommodation). Due to the fact that the boundary between an illness and disability is not entirely clear, it seems that in the area of temporary incapacity for work due to an illness, there is a greater risk of premature termination of employment relationship (risk of termination of employment relationship). Also, when it comes to transfer to another job, it seems that Polish regulations may give the parties the misleading impression that such a transfer would basically only result from situations specified in the Labour Code⁹⁴.

5. Conclusion

Due to the fact that certain solutions adopted in Poland do not meet the set standards, Poland faces the challenge of identifying what legal solutions should be adopted in order to achieve the set goal. From the point of view of the need to balance the situation of the employee and the employer, it is also necessary to verify to what extent the legal tools adopted are appropriate for the area of labour law. In this regard, as it has been pointed out, the unclear boundary between an illness and disability and the broad interpretation of disability seem to cause some doubts in the field of labour law. In particular, the view that the duty to provide reasonable accommodation 'should also apply in situations where a

⁹³ Ibidem, 339.

⁹⁴ Apart from the aforementioned Article 231 of the Labour Code, this would essentially concern Article 230 of the Labour Code (if any symptoms of an occupational disease are identified in an employee, the employer shall, on the basis of the relevant medical certificate, transfer that employee to another position that does not involve any exposure to the agent that caused those symptoms, by the date and for the period specified on that medical certificate. If the transfer results in a reduction in remuneration, the employee is entitled to a compensatory pay for a period not exceeding 6 months) or transfers concerning pregnant/breastfeeding female employees, or adolescent employees.

potential duty bearer should have realized that the person in question had a disability that might require accommodations to address barriers to exercising rights⁹⁵ does not seem convincing. As it has been indicated, this may impose a disproportionate burden on the employer. Therefore, it seems that recital 21 of Directive 2000/78 may set the direction for the employer's defense in this case. In my opinion, from the point of view of balancing employee protection and employer interests, the optimal model is one in which the employee initially indicates the circumstances justifying disability protection, presents specific needs in any manner, thereby expressing their willingness to take advantage of such protection. Ultimately, however, a procedure for confirming disability should also be initiated within a reasonable time.

It seems that currently too much risk is being shifted onto the employer. This may give rise to concerns about hiring employees. Admittedly, there are circumstances that mitigate this risk of the employer, but in fact they are of an evaluative nature.

In Poland, as it has been indicated, the employer provides sick pay for up to 33/14 days of incapacity for work during a calendar year. This is not merely a technical payment, but the employer's 'own' burden. This is a heavy burden for the employer, considering that small employers dominate in Poland. In the event of long-term incapacity for work due to an illness, for a certain, not at all short period of time, the employer cannot terminate the employment relationship. Only after the protection period has expired may the employer terminate the employment relationship without notice, provided that the employee does not report to work due to the cessation of the reason for their absence. Regardless of this, the employer should, as far as possible, re-employ an employee who, within 6 months of the termination of their employment contract under this procedure, reports their return to work immediately after the cessation of these reasons or reports their return immediately after exhausting their right to rehabilitation benefit, even if this occurs after 6 months from the termination of the employment relationship.

When assessing Polish regulations, it seems that the obligation of employers to provide reasonable accommodation for persons with disabilities is not sufficiently emphasised in Polish law. The inclusion of the regulation concerning reasonable accommodation in a law separate

⁹⁵ Committee on the Rights of Persons with Disabilities, General comment No. 6 (2018) on equality and non-discrimination, CRPD/C/GC/6, pt 24b.

from the Labour Code (Article 23a of the Rehabilitation Act) weakens the essence of this regulation.

Finally, there is the important issue of activation. As it has been pointed out, there is no consistent approach to the problem of an illness and disability. In the former case, as a rule, work is banned. In the latter case, on the other hand, work is sought, involving the employer and penalising them for failing to provide reasonable accommodation and for terminating the employment relationship. The main research problem should be reduced/limited work capacity, where both partial sick leave and reasonable accommodation must play an important role. Their goal is consistent – it is about utilising retained work capacity and maintaining employment wherever possible. Essentially, the role of the employer will also be strongly emphasised here. However, excessive burdens should not be placed on the employer. The employer provides work. They may assist with certain tasks, and are in fact closest to the employee, but their primary role is not to relieve the state.

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