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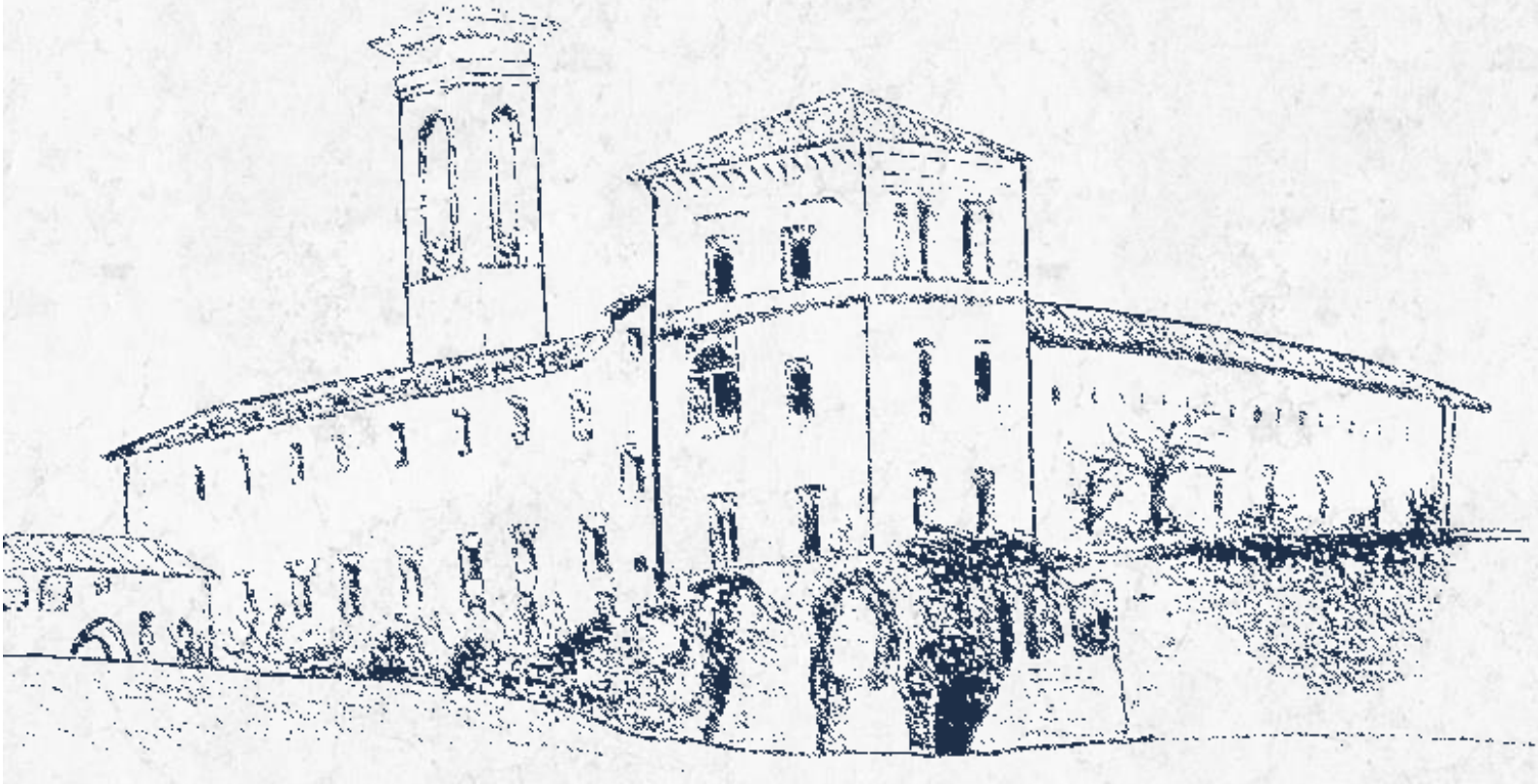

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Disability and Employee Well-being in Collective Agreements: Practices and Potential

Mariapaola Aimo and Daniela Izzi [1]

Abstract

Purpose. The article analyses the most interesting developments in Italian collective agreements for promoting the well-being of workers with disabilities. The aim is to raise awareness about and disseminate existing best practices and to identify persisting problems that need to be addressed.

Design/methodology/approach. After a preliminary illustration of the key concepts concerning disability at work in the framework of international and EU law, the article seeks to investigate the solutions provided by the Italian social partners to promote the full inclusion of disabled people and to enforce national law.

Findings. The interest towards disabilities and serious diseases is growing in Italian collective bargaining at both national and company level. The framework provided at the national level of course plays a crucial role, but company-level bargaining is the most effective one to address issues related to actual inclusive measures for workers with disabilities.

Research limitations/implications. The results achieved thus far at the company level are still few and far between, heterogeneous, and involve a small number of large-sized companies.

Originality/value. A number of collective agreements concluded at the national level are investigated, together with some pilot projects devised on the part of large-sized companies.

Paper type. Research paper.

Keywords: *Disability, Collective Agreements, Reasonable Accommodation, Disability Managers and Bilateral Observatories.*

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1. Persons with Disabilities, Collective Bargaining and the Promotion of Well-being at Work

The United Nations Convention on the Rights of Persons with Disabilities – adopted in December 2006 "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities" (Art. 1.1) – gave fresh momentum to the protection systems for people with disabilities in States Parties[2].

Recently, these protection schemes have been put in place to seek a new objective. Originally intended to provide mere assistance, they now need to ensure the social inclusion and active citizenship of people with disabilities.

In this respect, the Convention has stepped up the anti-discrimination provisions already in place for persons with disabilities, in line with EU rules (Article 19 TFEU, Articles 21 and 26 CFREU and, with special reference to employment, Directive no. 2000/78), and broadened the concept of disability (as will be explained in par. 2), thus widening the already large base of people covered by such protection.

The European Union, which ratified the UN Convention through Decision no. 2010/48 after actively contributing to the definition of its content[3], lays much store by the Convention in the context of its commitment towards people with disabilities.

Examples of this is the attempt on behalf of the European Commission to make the effective implementation of this Convention one of the cornerstones of the European Disability Strategy 2010-2020[4] and, more importantly, the decisive role assigned by the Court of Justice to the Convention at the time of interpreting EU sources, especially as a parameter for harmonising the meaning of European secondary legislation[5].

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[2] For an in-depth analysis of the whole Convention, see V. Della Fina, R. Cera, G. Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities. A Commentary*, Springer International Publishing, Cham, 2017, and C. O'Mahony, G. Quinn (eds.), *Disability Law and Policy: An Analysis of the UN Convention*, Clarus Press, Dublin, 2017.

[3] In particular, and with regard to anti-discrimination rules, see G. Quinn, *Disability discrimination law in the European Union*, in H. Meenan (ed.), *Equality Law in an enlarged European Union*, Cambridge University Press, Cambridge, 2007, 232.

[4] COM (2010) 636 final, 15 November 2010.

[5] Confirming this aspect, and for a more detailed analysis, see CJEU 11 April 2013, C-335/11 and C-337/11, *HK Danmark*, par. 28-32, and the report by D. Ferri, A. Lawson, *Reasonable accommodation for disabled people in employment contexts*, European Commission, Brussels, 2016, 44-45.

Italy ratified the Convention through Law no. 18/2009, which led to the establishment of the National Observatory on the Condition of People with Disabilities. The latter then introduced two biennial action plans featuring a general scope, in line with the UN requirements.

In spite of the far-reaching nature of the action plans and the UN Convention, it is in the field of employment – whose scope is limited yet decisive to achieve the social integration of people with disabilities – that the most significant changes are taking place. In this sense, the transposition of Directive no. 2000/78 into Italian law through Legislative Decree no. 216/2003 has strengthened existing legislation, particularly following the necessary amendments made to this piece of legislation (i.e. par. 3 *bis*, Article 3, as will be outlined in par. 3) as regards the obligation placed on both public and private employers "to adopt reasonable accommodation, as defined by the United Nations Convention on the Rights of Persons with Disabilities".

Indeed, the obligation established by Article 5 of Directive no. 2000/78 on the part of employers to provide reasonable accommodation for persons with disabilities constitutes a key aspect of the EU regulations, which introduced this additional safeguard exclusively for people with disabilities.[6] This holds true if one considers the set of tools put in place to protect individuals regarded "at risk", that is the prohibition of direct and indirect discrimination (as laid down in Article 2.2. of Directive no. 2000/78) and the legitimacy of affirmative actions (as specified in Article 7 of the same Directive). As we will see below (in par. 3), a unique feature of reasonable accommodation is its adjustable and non-standardized nature. This means that flexible sources such as collective agreements – that potentially could have broad application in regulatory terms (see par. 4) – are particularly suitable at the time of defining it. This is true especially if one considers collective agreements concluded at the company level. Tellingly, the limited diffusion of this type of agreements in Italy has not affected the setting-up of pilot projects on the part of large-sized companies (see par. 5).

Considering the set of measures put in place to ensure the full social inclusion of workers with disabilities, collective bargaining can play a decisive role, as has been reasserted by a number of documents produced by institutions operating at both European and national level. By way of example, reference could be made to the explicit invitation made by the European Economic and Social Committee to workers' and employers' unions to include in collective agreements specific clauses concerning disabilities in order to promote an

[6] An examination of the possibilities of extending this obligation also to people without disabilities is provided in the report by E. Bribosia, I. Rorive, *Reasonable Accommodation beyond Disability?*, European Commission, Brussels, 2013.

inclusive labour market and thereby implementing the objectives of the European Disability Strategy[7]. In a similar vein, mention should be made of National Observatory's biennial Action Plan of October 2017, where it was repeatedly stressed that there is a need "to define support measures and a system of incentives in the context of collective bargaining at the national and company level promoting flexibility, "work-life-care" balance for people with disabilities and serious or chronic diseases, and for workers serving as caregivers for people with serious disabilities (Chapter 7, Action 5). This certainly constitutes a decisive move to support and further develop the innovative measures already put in place by the social partners in this field (see par. 4 and 5).

The Action Plan already referred to also highlights the need to devise experimental projects. In this sense, private companies can appoint figures such as Disability Managers, who are nominated unilaterally, and/or establish bodies such as Company-level Disability Observatories, which are set up as a result of negotiation (as will be explained in par. 5). Importantly, collective bargaining should not replace the measures put in place by firms on a voluntary basis – which might also be part of Corporate Social Responsibility programmes. Rather, it should complement them. Indeed, employers' commitment to the full inclusion of persons with disabilities in the workplace is actually justified by a number of reasons, both economic and non-economic ones, among which is the prevention of employment discrimination lawsuits.

2. Developments in the Concept of "Disability"

Ever since Directive no. 2000/78 required Member States to comply with the prohibition of employment discrimination based on disability, the legal definition of the concept of disability has become a key issue all over Europe, compelling national governments to reconsider previous rules for the protection of persons with disabilities in the light of the principle of equality.

When asked to clarify the meaning of the concept of disability employed in the Directive, the Court of Justice initially made use of the traditional approach, regarding physical, mental or psychological impairments as "a limitation […] which hinders the participation of the person concerned in professional life"[8]. In the same judgement, and also in consideration of the long-term nature of such impairments, the Court categorically ruled out the possibility of qualifying certain diseases as handicaps, therefore denying the protection of European

[7] EESC Opinion on the European Disability Strategy 2010-2020, SOC/403 of 21 September 2011.

[8] CJEU 11 July 2006, C-13/05, *Chacón Navas*, par. 43-47.

anti-discrimination law to workers suffering from health problems other than a handicap.

However, the ratification of the UN Convention by the EU and the Court of Justice's willingness to look at the notion of disability in a dynamic and social fashion rather than in a medical and individual one – a point made in the Convention itself – marked a turning point in EU case law, so now the response of surrounding environment to individual impairments also bears relevance.

Case law's new course began with the *HK Danmark* judgment where – in line with recital *e)* of the Convention mentioned above – the Court of Justice first recognized that "disability is an evolving concept" resulting "from the interaction between persons with impairments and attitudinal and environmental barriers". Subsequently, it referred to the definition of "persons with disabilities" contained in the same document (Article 1.2), explaining that this condition is apparent when a long-term "limitation, which results in particular from physical, mental or psychological impairments ..., 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"[9]. In this decision the Court moved beyond the rigid distinction between disability and disease that was in place before and that raised criticisms, recognizing that "an illness medically diagnosed as curable or incurable" may be at the origins of the aforesaid "long-term" limitation.

The new notion of disability adopted by EU judges, later on confirmed and further clarified[10], expresses an acquired awareness of the problematic effects caused by chronic diseases in the workplace which, according to comparative analysis, are still governed by distinct regulations in different national legal systems and cannot always be considered as a form of disability, despite the impact on the working ability of those suffering from them[11]. Italian lawmakers have not remained indifferent to the need to come up with a more evolved concept of disability. Indeed, defining the outlines of the legal reform for the so-called targeted recruitment of persons with disabilities, par. 1 (*c*), of Article 1, of Legislative Decree no. 151/2015 provides for the need of "biopsychosocial assessments of a disability".

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[9] CJEU 11 April 2013, C-335/11 and C-337/11, *HK Danmark*, par. 37-41 and 47.

[10] See CJEU 18 March 2014, C-363/12, *Z.*, par. 76-81; CJEU 18 December 2014, C-354/13, *Fag og Arbejde*, par. 58-60; CJEU 1 December 2016, C-395/15, *Daouidi*, for further details on the concept of long-term limitation.

[11] See S. Fernández Martínez, *L'evoluzione del concetto giuridico di disabilità: verso l'inclusione delle malattie croniche?*, in *Diritto delle Relazioni Industriali*, 2017, n. 1, 74 ff., and S. Varva, *Malattie croniche e lavoro tra normativa e prassi*, in *Rivista italiana di diritto del lavoro*, 2018, n. 1, I, 109 ff.

The Court of Justice further broadened the scope of application of the anti-discrimination protection established by Directive no. 2000/78 for people with disabilities, extending it to workers looking after people with impairments. In *Coleman*, the Court explained that the effectiveness of the Directive would be seriously limited if it were to be considered to apply "only to people who are themselves disabled" and not to cover also situations of "discrimination by association"[12].

3. Employers' Obligation to Provide Reasonable Accommodation

Article 5 of Directive no. 2000/78, with a provision specifically targeting people with disabilities (as mentioned in par. 1) and regarded as "the gravity centre of anti-discrimination protection"[13], requires employers to adopt "reasonable accommodation" for them, i.e. "appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer". It goes on to state that such a burden cannot be considered "disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned". This provision is explained in recitals 20 and 21 of the same Directive. The first one describes reasonable accommodations as "effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources". The second recital makes an attempt to clarify under which circumstances these measures "give rise to a disproportionate burden", stressing that "account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance".

Despite these clarifications, Article 5 of the Directive has left a number of uncertainties that the Court of Justice has started to remove, albeit partly, drawing on the provisions of the UN Convention on the Rights of Persons with Disabilities. In particular, in the previously cited *HK Danmark* judgment, the Court focussed on the broad concept of "reasonable accommodation" established by Article 2 of this Convention, arguing for the need of a broad interpretation of the measures laid down in Article 5. Drawing on a national

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[12] CJEU 17 July 2008, C-303/06, *Coleman*, par. 51.

[13] M. Barbera, *Le discriminazioni basate sulla disabilità*, in Ead. (ed.), *Il nuovo diritto antidiscriminatorio. Il quadro comunitario e nazionale*, Giuffrè, Milano, 2007, 81.

dispute concerning the dismissal of two women who had become unable to work full time due to illness, the Court clarified that "a reduction in working hours could be regarded as an accommodation measure, in a case in which reduced working hours make it possible for the worker to continue employment". The same judgment leads one to infer that failure to adopt reasonable accommodation, in line with the provisions of the UN Convention (Article 27, although the latter was not referred to by the Court), would constitute unlawful discrimination against persons with disabilities[14].

Yet in EU law, it still remains to be clarified whether the obligation to adopt reasonable accommodation, expressly established by Article 5 in favour of persons with disabilities, can also be extended to workers who serve as caregivers. As we shall see below (par. 4 and 5), however, collective bargaining in Italy has already taken action to deal with the working needs of caregivers.

Because of the inadequate transposition of Article 5 of Directive no. 2000/78, Italy has been condemned by the European Court of Justice, which considered national legislation subjectively as well as objectively insufficient, since the safeguards and benefits provided by the relevant laws (i.e. by Law no. 68/1999 on the targeted recruitment of persons with disabilities, the Framework Law for assistance and social integration of persons with disabilities no. 104/1992, Law no. 381/1991 on social cooperatives and Legislative Decree no. 81/2008 on safety in the workplace) did not cover all persons with disabilities, all employers and all aspects of the employment relationship[15]. The legislative gap was filled in 2013 when the already mentioned provision expressly requiring the adoption by both public and private employers of reasonable accommodation for persons with disabilities was included in par. 3 *bis,* Article 3 of Legislative Decree no. 216/2003. This simple provision has been regarded as playing an "essential function […] systematically bringing together the rules protecting workers with disabilities" in force in our country and strengthening them. In particular, in case of dismissal of workers following the onset of physical or mental unfitness, which is fairly frequent, it has been argued that the newly introduced limitation may impact the exercise of the employer's power to terminate the contract, calling into question the "case-law dogma" regarding the inviolability of the employer's organisational and managerial decision-making[16].

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[14] This is the view taken by A. Riccardi, *Disabili e lavoro*, Cacucci, Bari, 2018, 197.

[15] CJEU 4 July 2013, C-312/11, *European Commission v. Italian Republic*, par. 67. A comment to this judgement is provided in M. Cinelli, *Insufficiente per la Corte di Giustizia la tutela che l'Italia assicura ai disabili: una condanna realmente meritata?*, in *Rivista Italiana di Diritto del Lavoro*, 2013, n. 4, II, 935 ff.

[16] See S. Giubboni, *Disabilità, inidoneità sopravvenuta, licenziamento*, in *Rivista Giuridica del Lavoro*, 2016, n. 3, I, 633-635 (from which the quotations in the text above are taken) and F. Limena, *Il*

4 Which Answers does Collective Bargaining Provide at the National Level?

Serious diseases and disabilities are issues that are attracting growing interest on the part of collective bargaining at both the national and company level. Understanding the main results obtained in negotiations thus far may raise awareness, favour the dissemination of existing best practices and help to identify persisting definition and application problems that need to be addressed. The starting point could be an analysis of collective agreements concluded at the national level in which disability is dealt with in different ways[17]. It should be said at the outset that disability is referred to in many provisions contained in the collective agreements scrutinised providing for the suspension of the employment relationship in case of illness[18].

Some collective agreements require special treatment for workers suffering from particularly serious diseases (cancers, multiple sclerosis, muscular dystrophies, AIDS or similar serious illnesses), that is a better form of protection than the one provided to most workers placed on sick leave. Favourable terms include the different relevance assigned to absences resulting from serious diseases, because these are chronic and often degenerative diseases, the progression of which involves recurring and/or prolonged time off from work.

In some collective agreements, these days of absences fall outside the employment-protected period[19], while in others longer employment-protected

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restyling *della legge sul collocamento dei disabili*, in *Il Lavoro nella Giurisprudenza*, 2016, n. 5-6, 431. In a similar vein, though from a wider perspective, see P. Lambertucci, *Il lavoratore disabile tra disciplina dell'avviamento al lavoro e tutela contro i licenziamenti: brevi note a margine dei provvedimenti attuativi del c.d.* Jobs Act *alla "prova" della disciplina antidiscriminatoria*, in *Argomenti di Diritto del Lavoro*, 2016, n. 6, 1147 ff., and A. Riccardi, *Disabili e lavoro*, cit., 197-200. On the problem of dismissing workers suffering from a supervening illness, see M. A. Martínez-Gijón Machuca, *La extinción del contrato por enfermedad/discapacidad del trabajador*, Editorial Bomarzo, Albacete, 2018, who deals with, though not on an exclusive basis, Spanish Law.

[17] See the detailed analysis of collective agreements carried out by Associazione Italiana Sclerosi Multipla (AISM), *Sclerosi multipla, gravi patologie, disabilità*, https://allegati.aism.it/manager/UploadFile/2/20171215_723.pdf (accessed May 25, 2018) and S. Stefanovichj, *Disabilità e non autosufficienza nella contrattazione collettiva*, ADAPT LABOUR STUDIES e-Book series 33, 2014.

[18] Italian law - namely Article 2110 of the Civil Code - protects sick workers, allowing them to keep their job for a period established by law or by collective agreements (a 'protected period' during which only dismissal for just cause is permitted), ensuring them their right to remuneration or paid sick benefits.

[19] E.g. the collective agreement signed by Poste Italiane on 30 November 2017, or the one concluded on 27 February 2014 by Work Agency.

leave is provided (the duration of which varies greatly)[20]. In both cases, and depending on the agreement, there can be an exhaustive or illustrative list of diseases that are considered as serious ones, while the concept of "serious illness" can also be employed, which is often accompanied by a restrictive provision related to the need for life-saving and/or temporarily incapacitating therapies. An exhaustive list of certified, serious illnesses "is necessarily exclusive"[21]. However, when the improved terms are associated to the concept of "serious disease", an issue arises at the time of identifying those serious illnesses granting access to treatment featuring such improved terms (along with the problems of identifying who is in charge of the evaluation and the parameters to be used).

The Court of Justice has already examined the issue of the treatment of disabled workers related to their absences from work resulting from illness (which can be entirely or partially attributable to disability), stressing that, compared with a worker without a disability, "a worker with a disability has the additional risk of an illness connected with his disability. He thus runs a greater risk of accumulating days of absence on grounds of illness"[22]. Even following the line of reasoning contained in these statements, Italian courts have considered that applying the same parameters for calculation purposes to both people with and without disabilities amounts to indirect discrimination based on disability, and that granting this leave as separate from the employment-protected period may be regarded as a reasonable accommodation within the meaning of par. 3 *bis,* Article 3 of Legislative Decree no. 216/2003[23] (see par. 2 above).

Moreover, some collective agreements granted special monetary benefits to workers suffering from serious diseases, the amount of which is almost the same as their wage and is provided for leave resulting from illness, even in the event of prolonged, employment-protected periods.

In particular, these workers are excluded from the scope of application of collective rules tackling absenteeism, namely the provision laying down reduced wages paid by the employer in cases of short and recurring periods of illness[24]. Moreover, some collective agreements provide for special treatment in

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[20] E.g. The collective agreement signed by Credit on 31 March 2015 and the one signed by ANIA Insurance on 22 February 2017.

[21] S. Stefanovichj, *Disabilità e non autosufficienza nella contrattazione collettiva*, cit., 260.

[22] See CJEU 11 April 2013, C-335/11 and C-337/11, *HK Danmark*, par. 76, and CJEU 18 January 2018, C-270/16, *Ruiz Conejero*, par. 39.

[23] Trib. Milano, 28 October 2016, in *Rivista Giuridica del Lavoro*, 2017, n. 4, II, 475, commented upon by F. Malzani, *Soluzioni ragionevoli ed effettività della tutela antidiscriminatoria del lavoratore disabile*.

[24] E.g. the collective agreement signed by metalworkers on 26 November 2016 and the one signed by Credit on 31 March 2015.

relation to unpaid leave, ensuring the right to keep one's job for a given period of time that can be extended in case of serious diseases[25].

Secondly, disability is referred to in some provisions regulating working time laid down in collective agreements.

Drawing on measures already envisaged by collective bargaining[26], in 2015 Italy made an important step forward to protect workers suffering from serious diseases. Paragraph 3 of the new Article 8 of Legislative Decree no. 81/2015 provides for the right to move from full-time to part-time employment – which is reversible upon request – not only to workers who have been diagnosed with cancer (they were given this right in 2003), but also to those suffering from chronic, progressive, and degenerative diseases reducing their work ability[27].

Both before and after this legislative change, some collective agreements widened the base of those who could enjoy this right also to workers suffering from serious diseases certified by the local health authority[28].

Measures concerning working time reduction and/or re-modulation and flexible hours targeting workers with disabilities – especially when one's health conditions are likely to worsen – are closely linked to the issue of reasonable accommodation (see par. 3 above). These measures, coupled with other workspace and time flexibility instruments (like the development of smart and remote work), can help employers find ways to meet the obligation to adopt reasonable accommodation, and constitute tools that safeguard the health and expertise of workers, who need to remain active for social integration purposes.

Still on the organisation of working hours, disability is also referred to in some collective agreements in provisions regarding leave and time off from work as well as in those concerning colleagues who donate their days of leave to people with disabilities or caregivers.

Statutory entitlements are also supplemented by a set of other safeguards supporting the need to reconcile work and care[29]. This is a highly sensitive issue because, in addition to their obvious effectiveness in practical terms,

[25] E.g. the collective agreement concluded by Farmworkers on 22 October 2014 and the one signed by Credit on 31 March 2015.

[26] E.g. the collective agreement signed by metalworkers on 26 November 2016 and the one signed by cleaners working for cooperatives on 20 April 2016.

[27] See S. Varva, *Malattie croniche e lavoro tra normativa e prassi*, cit., 131 ff.

[28] E.g. the collective agreement signed in the printing and publishing industry on 19 February 2018 and in the textiles and footwear sector on 14 December 2017.

[29] E.g. the collective agreement signed by in the food industry on 5 February 2016.

relying on these measures is reassuring for both workers with disabilities and caregivers[30].
Lastly, disability is mentioned in a few collective agreements and included in provisions promoting the setting up of joint bodies for disability protection, in the context of equal opportunity commissions or other bilateral bodies[31]. The agreements concluded in these contexts are both interesting and innovative ones, although they mostly concern large-sized companies and are negotiated at enterprise level.

4. Good Practices in Collective Agreements concluded at the Company Level

Although the framework provided at the national level of course plays a key role, the company level is the most effective one when it comes to addressing issues related to actual inclusive measures for workers with disabilities.
The growing importance of negotiations entered into at the company level was emphasized in the 2016 Stability Law (Law no. 208/2015) promoting so-called "contractual welfare" through tax incentives for the variable items of remuneration linked to productivity (which can be entirely or partly replaced by welfare goods and services) and other welfare benefits offered to workers (which are more affordable for employers if covered by company-level collective agreements, as compared to those granted unilaterally)[32].
Examples of welfare benefits provided following the conclusion of company-level collective agreements include: income support supplied to employees suffering from serious diseases during the suspension of the employment contract[33], additional paid leave and reimbursements for assistance or the purchase of equipment to deal with the illness of workers or their family members with a disability[34], leave and time off donated by peers to colleagues with family members having with a disability[35] and, more generally, actions put in place to identify and remove physical and cultural barriers hampering the inclusion and development of workers with disabilities[36].

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[30] See AISM, *Sclerosi multipla, gravi patologie, disabilità*, cit., 5.
[31] E.g. the collective agreement signed by Credit on 31 March 2015.
[32] See art. 51 of Presidential Decree no. 917/1986 (TUIR).
[33] One of the first most important initiatives in this area is contained in collective agreement signed by Luxottica on 17 October 2011, which ensures up to 100% of remuneration after 180 days' leave.
[34] See the agreements signed by Unipol and Assimoco.
[35] See the Busitalia Agreement 18 February 2015, http://www.filtcgil.it/documenti/mobi19feb15_1.pdf (accessed May 25, 2018).
[36] See *L'impegno della Banca d'Italia per le diversità*, https://www.pianetapersona.org/wp-content/uploads/2017/01/abstract_04.pdf (accessed May 25, 2018).

Thus, company-level collective bargaining provided for and regulated bilateral bodies safeguarding people with disabilities[37]. The results achieved thus far in this area are still few and far between, heterogeneous, and involve a small number of large-sized companies. Yet they are worth examining because these bodies represent the best way to seek employee well-being, in terms of inclusion and development of workers with disabilities.

The involvement of experts can help overcome the "one-size-fits-all" approach contained in the contractual provisions towards disabilities which we have witnessed so far. While important, this line of reasoning often proves inadequate because it fails to provide instruments to assess the actual impact of specific diseases on work performance, that can vary depending on one's occupation, tasks etc.; with these assessments that are necessary to identify a reasonable accommodation[38].

Some companies (like IBM, ENEL and UNICREDIT) have already appointed a Disability Manager for some time, with overall positive results in terms of employee well-being. The Disability Manager plays a fundamental role, facilitating relationships within the company[39] and is responsible for identifying the best technical and organisational means for the inclusion of employees with disabilities. In other words, they facilitate their recruitment and retention, taking account of objective factors linked to accessibility, as well as subjective ones, e.g. worker satisfaction and relations with colleagues. Although the Disability Manager's primary aim is to strike a balance between the company's needs for efficiency and competitiveness and the right of inclusion of workers with disabilities, they are always to be considered as the employer's "trusted men", namely the result of a unilateral choice made by the company as a part of a Corporate Social Responsibility strategy. As such, they are certainly an excellent and inexpensive marketing tool[40].

As we have seen for large-sized companies, this is precisely why it is important that collective bargaining makes provisions for the introduction of a body made up of the same number of workers' and employers' representatives – along with technical staff, e.g. prevention and protection service manager and

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[37] See the cases outlined in http://www.superando.it/files/2017/06/CISL-disability-managemente-giugno-2017.pdf and in http://lablavoro.com/disabilitymanagement2016/materiali-dm-2016 (both accessed May 25, 2018).

[38] M. Tiraboschi, *Le nuove frontiere dei sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, in *Diritto delle Relazioni Industriali*, 2015, n. 3, 721.

[39] D. Del Duca, F. Silvaggi, *Il Disability Management: come gestire la disabilità nel luogo di lavoro*, @bollettinoADAPT, 29 June 2015.

[40] More generally and from a customer-based perspective, see the "Diversity Brand Index", https://www.diversitybrandsummit.it (accessed May 25, 2018).

the occupational doctor – thus playing a monitoring and guidance role as far as the tasks of the Disability Manager are concerned.
The most widespread, and already implemented, practices can be divided into two groups. The first group includes joint committees that were initially set up within the company for other purposes and have later on been granted further powers to promote the inclusion and development of workers with disabilities. Their members interact, although with different degrees of effectiveness, with Disability Managers (e.g. UNIPOL and BANCA D'ITALIA's "Equal opportunity commission", Intesa Sanpaolo's "Welfare, safety and sustainable development committee", and UNICREDIT's various bilateral boards).
The second group comprises joint bodies purposely set up in the context of company-level collective agreements to safeguard people with disabilities Examples of this include an experimental project included in an agreement concluded in March 2017 between the management of a chemical-pharmaceutical multinational, Merck Serono, and the CGIL, CISL and UIL union representatives, which made provisions for the establishment of an ad-hoc Observatory of Workplace Inclusion and the appointment of a Disability Manager[41]. In order to implement this agreement, Merck Serono signed a "local partnership agreement supporting corporate disability management policies" with trade unions and the Italian Multiple Sclerosis Society (AISM) in February 2018, with programs under way to integrate workers with multiple sclerosis into the company (pursuing so-called "competent employment inclusion"). These actions will be monitored by the National Observatory on the Status of Persons with Disabilities (see par. 1 above) in order to create a system of best practices in the area of inclusion and development of workers with disabilities, which will be useful for other companies as well.
These projects benefit from professionals' expertise (both those working at the company or with joint bodies). They play a fundamental role in identifying and implementing proper reasonable accommodation in the workplace - including changes to work organisation that would otherwise be difficult[42] - in order to ensure the equal treatment of people with disabilities within a specific production context and to tackle discriminatory practices.
The expected "Guidelines for the Targeted Recruitment of Persons with Disabilities" should provide stimulus to establish other joint bodies. These guidelines are to be adopted pursuant to par. 1, Article 1 of Legislative Decree

[41] See also the collective agreement between Lindt & Sprungli, RSU, Fai-Cisl, Flai-Cgil signed on 8 September 2011 (see S. Stefanovichj, *Disabilità e non autosufficienza nella contrattazione collettiva*, cit., 53).
[42] S. Stefanovichj, *Disabilità e non autosufficienza nella contrattazione collettiva*, cit., 252.

No. 151/2015[43], and must promote the conclusion of local agreements with the social partners to encourage the employment of persons with disabilities and the designation of a "work integration manager" tasked with devising customised projects for persons with disabilities, while dealing with problems related to working conditions.

In line with the objective of supplementing the targeted recruitment system of disabled workers with effective tools and in consideration of lawmakers' increasing interest in this issue, the recent provisions included in Legislative Decree No. 165/2001 (TUPI) through Legislative Decree No. 75/2017 introduces new operational mechanisms. Articles 39 *bis* and 39 *ter* TUPI establish, respectively, the creation of a "National Board for the Integration of Persons with disabilities at Work" (to be established pursuant to Ministerial Decree 6.2.2018) and the obligation for public administrations with more than 200 employees to appoint a "Manager in charge of Inclusion Strategies" who should ensure "the proper integration of persons with disabilities into the work environment".

Therefore, the establishment of a manager operating "in the field" in private and public employment, from the planning phase to the verification of the implementation of the integration process, can mark a major step forward towards the inclusion and development of workers with disabilities[44]. The hope is that these provisions are fully implemented through the cooperation and supervision of the parties involved (institutions, trade unions and managers), so that workers' disability can be managed on a case-by-case basis through reasonable accommodation, ensuring well-being at work in compliance with the principle of equal treatment.

[43] See D. Garofalo, *Jobs Act e disabili*, in *Rivista di diritto della sicurezza sociale*, 2016, n. 1, 94 ff. and C. Spinelli, *La sfida degli "accomodamenti ragionevoli" per i disabili dopo il Jobs Act*, in *Diritti, lavori, mercati*, 2017, n. 1, 44 ff. Unfortunately, three years later the guidelines have not yet been issued.

[44] C. Galizia, *Misure per l'inserimento dei lavoratori con disabilità*, M. Esposito, V. Luciano, A. Zoppoli, L. Zoppoli (eds.), *La riforma dei rapporti di lavoro nelle pubbliche amministrazioni*, Giappichelli, Torino, 2017, 121.

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