



NEWS REPORT

Date:	28 November 2011
Expert:	Emmanuelle Bribosia
Title:	Employees, or prospective employees, suffering from a disability, cannot be automatically excluded from a job, irrespective of any individual examination and regardless of the position concerned.
Country:	Belgium
<u>Context</u>	
Issue at stake:	By a decision of 21 November 2011, the Labour Court of Appeal of Antwerp held that the “a priori” and categorical exclusion of employees, or prospective employees, suffering from type-1 diabetes, from all functions performed at the port of Antwerp, is contrary to Anti-discrimination law.
Ground of discrimination:	Disability
Source:	Labour Court of Appeal of Antwerp.
Field:	Employment
Legislative provisions:	Federal Act of 10 May 2007 pertaining to fight certain forms of discrimination (<i>Loi tendant à lutter contre certaines formes de discrimination</i>).

Content

Case: The case concerns a woman suffering from type-1 diabetes (insulin-dependent) who was working since 2004 as a storekeeper at the port of Antwerp. In 2008, she decided to apply for a position of containers scorekeeper, but the occupational doctor considered that she was medically unfit for any function at the port of Antwerp. The doctor’s position relied on internal guidelines, which automatically exclude employees or prospective employees suffering from type-1 diabetes, irrespective of any individual examination and regardless of the position concerned.

The Centre for Equal Opportunities and Opposition to Racism stated, in a recommendation, that the “a priori” and categorical exclusion of candidates suffering from type-1 diabetes from all functions performed at the port of

Antwerp was in breach with the Federal Act of 10 May 2007 pertaining to fight certain forms of discrimination. In fact, developments in medical technology allow “stable diabetics” to perform most professional activities, without it causing an increased danger for their security, or that of their colleagues. For this reasons, the woman brought an action before the Labour Court of Antwerp, which however decided, at first instance, not to follow this reasoning. The Centre decided to appeal this judgment with the complainant.

Decision of the Court: The Labour Court of Appeal of Antwerp overruled both the individual decision of the occupational doctor regarding the complainant and the internal guidelines of the port of Antwerp, which automatically exclude employees or prospective employees suffering from type-1 diabetes from all functions performed at the port of Antwerp. It held that the fitness to work of an employee, or a prospective employee, suffering from type-1 diabetes, should be considered on a case-by-case basis in relation to the position concerned, so as to be in accordance with the Federal Act of 10 May 2007 pertaining to fight certain forms of discrimination. The victim was granted a compensation equivalent to three months of gross salary and was given the opportunity to apply again for a job at the port of Antwerp.

Internet link source and additional information: The Flash Report is based on a press release of the Centre for Equal Opportunities and Opposition to Racism. See: http://www.diversite.be/index.php?action=artikel_detail&artikel=625.

The ruling has not been published yet.