



NEWS REPORT

Date:	14 September 2011
Expert:	Mahlmann
Title:	Illness and disability
Country:	Germany
Context	
Issue at stake:	Does dismissal because of illness constitute discrimination because of disability?
Ground of discrimination:	Disability
Source:	Case law - National court decision Federal Labour Court (<i>Bundesarbeitsgericht</i>), 8 AZR 515/10 28 April 2011
Field:	Employment
Legislative provisions:	Sec. 15 Allgemeines Gleichbehandlungsgesetz (General Equal Treatment Act)

Content

Case: The plaintiff was dismissed because of repeated periods of absences from the workplace due to illness. After the dismissal, the plaintiff filed an action for unfair dismissal (*Kündigungsschutzklage*). As a reaction, the defendant took the dismissal back. The plaintiff demanded compensation for immaterial damage due to the dismissal.

Decision of the Court: The Federal Labour Court (*Bundesarbeitsgericht*), 8 AZR 515/10 28 April 2011, quashed an appeal of the plaintiff against a lower instance decision that had ruled that no discrimination on the ground of disability had taken place. A disability had been assumed in favour of the plaintiff by the lower instance court. There has been no direct discrimination because there is no evidence that the employer did or would not take similar action in case of repeated and prolonged periods of absence of people without disability. There has been no indirect discrimination as there is no indication that the periods of absence differ between employees with or without disability.

The court held that a characteristic has to be causal for the discrimination to exist. There is no need for an intention to discriminate. A causal connection must, however, come into question. The pure presence of a characteristic on the ground of which discrimination is prohibited in the person of a dismissed person is not enough to establish such circumstance. A possible violation of procedural rules obligatory for all employees does not establish a presumption of discrimination. Consequently, no discrimination had taken place.

Internet link source and additional information: www.bundesarbeitsgerichts.de