



NEWS REPORT

Date:	22 July 2011
Expert:	Rikki Holtmaat
Title:	Discrimination by association with disablement
Country:	The Netherlands
Context	
Issue at stake:	No prolongation of temporary contract because of disablement of spouse
Ground of discrimination:	Disablement
Source:	Equal Treatment Commission Opinion 2011-90
Field:	Employment
Legislative provisions:	Article 1 and 4 b Disability Discrimination Act (DDA)

Content

Case Law: A man working on a 6 month-term temporary contract got a first extension of 6 months and a positive job evaluation two weeks before the second term expired. In the same period, he reported ill several times because he could no longer cope with stress at home, where he had to take over all household and care activities of his wife, who had become partly paralyzed because of an unsuccessful hernia operation. After he received a letter stating that his contract would not be prolonged, the man had a meeting with a company director, who told him that indeed the situation at home played a role in this decision. This conversation was recorded with a mobile phone, without the director's consent. The company stated that this was illegal, and besides that the director had also explained that economic reasons had played a determining role in the decision, since the annual profit of the company had declined with one third as compared to the previous year.

ETC stated that the recorded conversation could be used as a proof of discrimination since in general it is very difficult for victims to assemble proof. In this case, the complainant brought sufficient elements to suspect a discrimination case for the burden of proof to shift on the defendant. Although economic reasons may also have played a role, the defendant did not contest that the complainants 'situation at home' was indeed mentioned as a reason not to prolong the contract.

Disablement does not need to be the sole reason for a dismissal or non-prolongation of a contract. With reference to the CJEU *Coleman* case¹, the ECT found that there was indeed a case of unlawful discrimination by association on the ground of disablement.

Internet link source and additional information:

Reference number: Equal Treatment Commission 15 June 2011, Opinion 2011-90

Address of the webpage: <http://www.cgb.nl/oordelen/oordeel/222056/volledig>

¹ ECJ 17 July 2008, C-303/06.