

Workers with disabilities: comparing current legislation in EU and non-EU countries.

Innangard member firm in Italy, Daverio & Florio, compared and analysed the current legislative situation regarding workers with disabilities in some European countries (Italy, France, Germany, Spain, Turkey, the Netherlands, the United Kingdom and Ireland) and non-European countries (China, Argentina, Australia and Mexico).

The labour market in Italy recorded a positive trend in 2023, in addition to which there was an increase in the hiring of workers with disabilities, which increased in the first half of 2023 by +12.4% over the same period in 2022 and reached a total of almost 265,000 employees¹. According to the recruitment company HAYS Italia, considering its own activity, in 2023 the demand for workers with disabilities grew by +54% in 2022². Yet, on this last front there is still a lot to be done, since in our country only 51.6% of people of working age with disabilities have a paid job, a figure however in line with the European average³. What does Italian law provide to favour the hiring of people with disabilities? Are there rules that companies must respect? And in the main European and non-European countries?

Daverio & Florio's analysis found that in many countries such as Italy, France, Germany, Spain, Turkey and China, companies are obliged to hire workers with disabilities, although with different modalities, and the relevant governments have also adopted incentivised policies for companies (tax relief, bonuses, subsidies, etc.). Argentina has defined the obligation only for civil servants (but without incentives), while the Netherlands will only impose hiring if targets set by the government are not met. The United Kingdom, Ireland, Australia and Mexico, on the other hand, have left the choice to entrepreneurs.

In **Italy**, the law establishes the number of workers with disabilities that the company is required to hire based on company size: one disabled worker for companies with 15 employees; two for companies with more than 35 employees; and seven per cent of workers employed for companies with more than 50 employees. In case of non-compliance, the administrative penalty is €153.20 for each working day of delay in hiring. Companies that hire protected categories benefit from tax concessions and incentives. The facilities are granted to companies that apply for them and vary according to the degree of disability recognised in the employee.

¹ Source: Il Sole 24 Ore Monday article 'Labour and the disabled, hiring on the rise' of 18 December 2023 by Valentina Melis, based on analyses provided by the Ministry of Labour and Social Policies on the consolidated data of compulsory communications for the first and second quarters of the year and on the information prospectuses transmitted by PAs and companies in 2023, referring to 2022

² Source: The figure was analysed and processed by HAYS Italy considering only its own business

³ 7° Rapporto dell'European Disability Forum sui Diritti Umani, intitolato "Il diritto al lavoro: La situazione occupazionale delle persone con disabilità in Europa".

In **France**, all employers with at least 20 employees are required to employ disabled people for at least six per cent of their total workforce. In the event of non-compliance with the law, there are various sanctions: associations defending the interests of disabled workers can bring a civil action based on non-compliance with the provisions of French law; employers are excluded from public procurement procedures; there is an annual contribution to Agefiph (the association that manages the fund for the professional integration of disabled people). which depends on the number of beneficiaries the company should have employed and its size.

Also in **Germany**, all employers with at least 20 employees are obliged to fill at least five per cent of these posts with severely disabled persons or persons of equal status. The employer must pay a compensatory levy for each compulsory job not filled. The amount of this levy is graduated according to the non-fulfilment of the compulsory quota; as of 1st January 2024, the amount to be paid will be between €140 and €360 per month, and even €720 if no severely disabled persons are employed. The German Federal Employment Agency ('Bundesagentur für Arbeit') supports employers in hiring disabled and severely disabled people through temporary wage subsidies.

The company size increases in **Spain**, where companies are only obliged to ensure that at least two per cent of workers are disabled persons from 50 employees upwards. Companies can be exempted from this obligation, partially or completely, through agreements in sectoral collective bargaining at national level or, failing that, by applying alternative measures determined by legislation. In the event of non-compliance, sanctions range from €751 to a maximum of €7,500 depending on the level (high, medium or low) defined by the concurrence of certain criteria such as, for example, negligence and wilfulness of the offending party, the number of employees and turnover, as well as a series of sanctions such as the loss of aid, subsidies, etc. In the country, the law also provides for tax bonuses for companies, such as an annual amount depending on age, gender, type of disability (severe or not severe) and contractual modality.

The same limit exists in **Turkey**: employers in the private sector employing 50 or more workers are required to employ disabled people in a proportion of three per cent of the total workforce, while in the public sector this proportion is four per cent. In the event of failure to hire, the employer receives an administrative penalty, and the proceeds are used for certain initiatives in favour of disabled people, such as starting their own business, providing them with support technology to facilitate their employment, assisting them with their job placement and ensuring their adaptation to the workplace. Tax relief is also provided in Turkey for companies that hire workers with disabilities.

The obligation to employ resources belonging to protected categories does not exist everywhere.

In the **Netherlands**, people with occupational disabilities are measured according to their ability to work. Currently, there is no obligation for companies to employ people with disabilities, but the government has demanded that companies provide at least 100,000 jobs by 2026. Instead, the government will have to create at least 25,000 jobs by 2026. If entrepreneurs do not comply, they may be obliged to hire a percentage of people with occupational disabilities (to be defined), and if

they refuse, they may be sanctioned. Also in the Netherlands, there are various incentives for companies that hire people with vocational disabilities.

Another example is the **United Kingdom**, where the Equality Act 2010 does not contain any recruitment obligations but provides protection against discrimination in the workplace at all stages of employment, including recruitment, and there are no incentives for companies.

The Equality Act includes the Positive Action measure: these are proportionate targets aimed at providing additional help to groups of people who share a protected characteristic in order to level the playing field. The three objectives are to reduce disadvantages, meet different needs and increase participation. It is not compulsory, and employers can choose whether to implement Positive Action.

Employers in **Ireland** also have no obligation, and there are no tax incentives or bonuses for companies.

What is the situation outside Europe?

In **China**, the percentage of employment for the disabled must not be less than 1.5 per cent of the total number of employees in the unit. The specific percentage is to be determined by the local government based on the actual situation. If the number of disabled persons employed by the employer does not reach the minimum percentage, the employer is obliged to pay into a fund for the protection of the employment of disabled persons. There are deductions and exemptions for companies that hire disabled persons.

In **Argentina** we find a singular situation, where the obligation is only addressed to the public sector. The national government - understood as the three powers that constitute it, its decentralised or autarchic bodies, non-state public bodies, state-owned companies and private companies that provide public services - is obliged to employ disabled people in a proportion of no less than 4 per cent of its staff and to create reserves of jobs to be filled exclusively with them. However, there is no obligation for private companies to employ disabled people.

In **Australia**, on the other hand, there is no obligation to employ people with disabilities because the law seeks to safeguard people's rights, rather than requiring the employment of those in protected categories. An employer does not have to take action against an employee or applicant because they belong to a protected category. It is not allowed to refuse to hire a person because of his or her protected category status. This ensures that people are not treated in a discriminatory manner.

In **Mexico**, the Federal Labour Law (FLL) does not require employers to hire workers who fall into protected categories. However, Congress recently introduced two bills to introduce the obligation, requiring that companies with more than 20 employees hire workers with disabilities for at least 4% of the workforce and adults over 60 for 5%. Neither of these bills has been enacted, so they are not yet mandatory.