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Critical perspectives on return-to-work policies: which drivers? What about social inequalities?

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I. Short overview of the new Belgian legislation

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I. Short overview of the new Belgian legislation

- 2017 in Belgium > 370.000 long-term sick employees. Almost 1/20 employees between 20 and 64 years.
- Increase: x 2 during the last five years and x 3 during the last ten years
- Fysical as well as mental illnesses.

- New legislation to make sure that sick employees will resume their work
- What's new?
 - > Procedure of reintegration
 - > New regulation on the dismissal for medicale majeure

II. Not a good example

- In 2017: at the end of the reintegration procedure 68 % permanently unfit to restart their work or modified work (almost $\frac{3}{4}$)
- Striking figure concerning women: 61% are women that are considered permanently unfit to performing their work.
- Another striking figure: 69,2% are employees that suffer a mental sickness are considered permanently unfit to performing their work.

- While a great number of employees ask to start the reintegration procedure themselves
- Very severe consequences: termination of the employment contract, without any term of notice or severance pay = dismissal for medicale majeure
- Discrimination on the bases of health status?!

Antidiscrimination-law 2007:

- Prohibition of direct or indirect discrimination on the basis of:
 - > the current or future health situation
 - > a physical disability

And there is more:

- Several studies show that its often the working conditions themselves (with high demands of flexibility, precarious statutes and longing working lives) that make people ill.
- Increasing competition and individualization put great pressure on employees
- Instead of dealing with the real causes of the illnesses the new legislation is especially a deterioration of the rights of workers

- Eg. Ariel at Arcelor Mittal: a lot of sick employees within the cleaning staff. Instead of dealing with the causes the company rewards employees with 7 or less days of illness with a bonus of € 75 net

- Instead of making sure people can restart work after long periods of sickness after starting the reintegration process a great majority ends up being dismissed for medicale majeure = easy and cheap way for employers to get rid of sick employees
- At the same time: Legislation is soft on employers: low penalties and no obligation to reintegrate

Proposition for better legislation

- Adjusted support for long-term sick employees, not with the goal to dismiss but to really integrate
- A greater role for the doctor of the employee who knows their situation best
- Obligation for the employer to provide a percentage of adjusted work, especially for bigger companies
- Real sanctions for employers
- No more possibility to dismiss for medicale majeure
- Instead of a mandatory procedure change into a voluntary procedure

III. Jurisprudence

- Court of labor Brussels 12.06.2015

Dismissal after breast cancer = abuse of law = penalty of € 5.000 (no discrimination)

- Tribunal of labor Ghent 25.10.2016

Dismissal after breast cancer = discrimination
= penalty of € 22.000

- Court of labor Brussels 20.02.2018

Consequences of cancer can be a disability
= discrimination (no reasonable adjustments) = penalty of
six months salary

IV. Final thought

Never in history as many conditions for healthy working conditions as now (technological process,..)

<-> At the same time an increasing number of long-term sick employees

Profit and competition rule: burn-out, depression and chronic diseases (chronic back pain,..).

Solutions: change model of society, collective reduction of working hours, adjust work to the people and not vice versa, real reintegration of ill employees,..

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