

## Disabled Employees – accessibility to work or compensation for not to work?

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## Background

- 1) *Doctoral thesis:*
  - a study about dominant categories/administrative definitions of disability in Swedish social policy
- 2) *Definition project :*
  - a comparative analysis of social welfare benefits for persons with disabilities and their definitions (Norway compared to 16 EU countries)
- 3) *Currently: Disability as an administrative construct*
  - Post doc research project (start Jan 2005), a sub project of a bigger research project called **Disability, policy and understanding** (supervised by professors Jan Tøssebro & Bjørn Hvinden, NTNU)

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## Object/aim of postdoc project

To focus at:

- The administrative limitations that are used of "disability" in Norwegian welfare policy
- The underlying understandings of disability expressed in
  - a) *legislation*
  - b) *legal practice*
  - c) *administrative interpretations and decision-making*

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## Objectives continues...

This study is an implementation study  
try to demask or deconstruct "the content and reality" as concern administrative constructions and applied interpretations of disability

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## Or : The implementations of "good intentions" policy :

Put differently:

The study investigates the impact of policy intentions as concern ideas about normalisation, sector responsibility, universal design and anti-discriminations for persons with disability

As it comes to administrative decision-making

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## So far the study ...

- Has studied legal rights, administrative procedures and likewise regarding employment (for disabled employee)
- Norway accepted EUs Framework Equal Treatment Directive (FETD)
  - a Directive that promote for reasonable accommodation for persons with disability in employment
  - This directive "wake silent rules" in existing Working Protection Act: an act entitling disabled employees *individual* as well as *general right* (The Norwegian Working Protection Act (*Aml* 1977))

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## These legal sections are means to prevent discrimination

- This legal right give no persons right to employment (disabled or not)
- Is a general legal regulation of social rights and obligations for employer and employee in working life
- According to §13 (and 64) sick and disabled workers have better protection than other employees

## Means for disabled workers

Theoretically speaking employers are obligated:

- To investigate,
  - To make accomandations available and if necessary: redirect the disabled worker to other working tasks
- To a certain extent (=within the limits of acettable economic burden for the company)

## Theory and reality:

- I have so far studied 48 Court decisions (Regional Courts and Supreme court)
- referring to § 13 i aml between 1977- 2004.
- The result is the following:

## Court descions about accessibility

Descions pro accessibility to work - disabled employee "won"	Descions in favour of (financial) compensations – disabled employee "won",but lost the job	Descions contra Accessibility and Accommodation S – disabled employees lost job and compensation
16 % (N=6)	24 % (N=9)	61 % (N=23)

## Tentative reflections (findings)

- There are few legal court descions in this area
- The approach to disability is based on a relative understanding (in doubts: certified by doctors)
- The tendency is that employers win court descions if conflict
- Diagnosis of work conflict more common than classical disabilities
- Companies financial "excuse" is more valued than reasoning about accomodations
- The same rights are stated in the proposal for a new Working Protection Act