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## **Workplace Inclusion and Social Sustainability: the Case of Workers with Chronic Illness and Transplant Recipients**

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### *1. Chronic illnesses and transplants: employment challenges and occupational impact*

The transition toward social sustainability – one of the core pillars of the tripartite sustainability paradigm – presents both significant challenges and opportunities for enterprises and modern production systems. A key aspect of this transition is the full integration of workers affected by chronic illnesses or those who have undergone transplants, as their participation in the labour market is essential for fostering social inclusion and economic resilience.

The number of individuals facing such health conditions is steadily increasing and is expected to rise further due to demographic aging, which will inevitably affect the active workforce. According to the World Health Organization (WHO), chronic diseases – including cardiovascular conditions (such as heart disease and stroke), cancer, diabetes, chronic respiratory diseases, musculoskeletal disorders, depression, and other mental health issues – represent

the leading cause of mortality worldwide, accounting for 41 million deaths annually, of which 17 million occur among individuals under the age of 70<sup>1</sup>.

In a resolution adopted in December 2023, the European Parliament acknowledged chronic diseases as one of the most pressing challenges for public health in the EU, given their substantial share of healthcare expenditures across member states. These conditions also impose a significant burden on the quality of life of affected individuals, their families, and caregivers. For this reason, the Parliament urged member states to invest in innovation in disease management to reduce morbidity and mortality<sup>2</sup>.

Although these diseases are more prevalent among individuals aged 50 and over (who are more than twice as likely to develop them compared to those under 35<sup>3</sup>) they affect a substantial portion of the EU's active workforce, accounting for a quarter of the total. This share has been steadily increasing, rising by 8 percentage points between 2010 and 2017<sup>4</sup>.

This upward trend is expected to persist, driven by the progressive aging of the population and the simultaneous rise in labour market participation among older workers. The latter is influenced by increasing life expectancy, which has led to a gradual elevation of retirement age thresholds<sup>5</sup>, as well as by the decline in workforce entry rates among younger generations<sup>6</sup>.

<sup>1</sup> According to the WHO, *Noncommunicable diseases*, Key facts, 16 September 2023, <https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases>, chronic diseases account for 74% of all deaths globally. See also WHO, *World health statistics 2023: monitoring health for the SDGs*, Sustainable Development Goals, 2023, Licence: CC BY-NC-SA 3.0 IGO; WHO, *Invisible numbers: the true extent of noncommunicable diseases and what to do about them*, 2022, <https://www.who.int/publications/i/item/9789240057661>.

<sup>2</sup> Resolution of the European Parliament of 13 December 2023 on noncommunicable diseases (2023/2075(INI)).

<sup>3</sup> VARGAS LLAVE, VANDERLEYDEN, WEBER, *How to respond to chronic health problems in the workplace?*, Eurofound Policy Brief, 2019, pp. 4–5, which also reports that even among younger workers (aged 16 to 29), the percentage of those reporting chronic illnesses is high and increasing, having risen from 11% in 2010 to 18% in 2017.

<sup>4</sup> According to VARGAS LLAVE, VANDERLEYDEN, WEBER, *cit.*, the proportion of the active population affected by chronic diseases increased by 8 percentage points between 2010 and 2017.

<sup>5</sup> For a global overview of pension reforms addressing these issues, the OECD's annual studies provide valuable insights, with the latest being OECD, *Pensions at a Glance 2023: OECD and G20 Indicators*, OECD Publishing, 2023, <https://doi.org/10.1787/678055dd-en>. In Italy, the increase in the retirement age was introduced by Article 24 of Decree-Law No. 201/2011, converted into Law No. 214/2011 and subsequent amendments.

<sup>6</sup> See EUROPEAN COMMISSION, *2024 Ageing Report. Underlying Assumptions & Projection Methodologies*, Institutional Paper 257, Publications Office of the European Union, 2023, p. 32

A similar trend can be observed among transplant recipients. In Italy alone, approximately 31,000 individuals underwent transplants in 2024, including 4,700 organ transplants and 25,900 tissue transplants<sup>7</sup>. This number has been steadily increasing, with a significant proportion of recipients being of working age – more than half falling within the 41-to-60-year range<sup>8</sup>.

These demographic shifts, coupled with the naturally more fragile health conditions of an aging workforce, are reshaping the employment composition and professional skills<sup>9</sup>. They affect business organization in terms of both productivity and competitiveness while also influencing employment opportunities and job quality for affected workers<sup>10</sup>.

Consequently, worker health has become a crucial factor, not only for

ff., which projects an increase in the labour market participation of older workers (aged 55–64) across all EU member states, with an average rise of 10 percentage points by 2070—from 65.4% in 2022 to 75.5% in 2070. The increase is expected to be more pronounced for women (+13 percentage points) than for older male workers (+6 percentage points). Likewise, for individuals aged 65–74, labour market participation is forecasted to grow from 9.8% in 2022 to 18.4% by 2070.

<sup>7</sup> Data from the National Transplant Center, available on its official website: <https://www.trapianti.salute.gov.it>.

<sup>8</sup> According to the 2022 Annual Report on the National Transplant Network's Activities, <https://www.trapianti.salute.gov.it>, in 2022, kidney transplant recipients aged 41–60 accounted for 55.7%, liver transplant recipients for 48%, heart transplant recipients for 54.5%, lung transplant recipients for 45.3%, and pancreas transplant recipients for 57.9%.

<sup>9</sup> Among the many studies on older workers, active ageing, and health conditions, see EIFFE, MULLER, WEBER (eds), *Keeping older workers engaged: Policies, practices and mechanisms*, European Foundation for the Improvement of Living and Working Conditions (Eurofound), 2024; AGE PLATFORM EUROPE, *Barometer 2023 - Empowering older people in the labour market for sustainable and quality working lives*, AGE Platform Europe, 2023; EIFFE, *Eurofound's Reference Framework: Sustainable work over the life course in the EU*, in *EJWI*, 2021, 6, 1, pp. 67–83; the joint report by EU-OSHA, CEDEFOP, EUROFOUND, EIGE, *Towards age-friendly work in Europe: a life-course perspective on work and ageing from EU Agencies*, Publications Office of the European Union, 2017; EU-OSHA, *The ageing workforce: implications for occupational safety and health. A research review*, Publications Office of the European Union, 2016; DUPRÉ, KARJALAINEN, *One in six of the EU working-age population report disability*, Eurostat, 2003. In Italian legal literature, see in particular FILI (ed.), *Quale sostenibilità per la longevità? Ragionando degli effetti dell'invecchiamento della popolazione sulla società, sul mercato del lavoro e sul welfare*, ADAPT University Press, No. 95, 2022; CAPPELLARI, LUCIFORA, ROSINA (eds.), *Invecchiamento attivo, mercato del lavoro e benessere*, Il Mulino, 2018; BOZZAO, *Anzianità, lavori e diritti*, Editoriale scientifica, 2017.

<sup>10</sup> For an in-depth and evolutionary analysis of the relationship between health protection and the management of employment relationships, see TIRABOSCHI, *Salute e lavoro: un binomio da ripensare. Questioni giuridiche e profili di relazioni industriali*, in *DRI*, 2023, no. 2, p. 229 ff., and the references therein.

ensuring full social inclusion, but also for maintaining corporate sustainability in an evolving economic landscape.

Workers affected by chronic illnesses or who have undergone transplants face specific challenges in the labour market due to their fragile and unique health conditions. Although these illnesses lack a universally accepted legal definition, they can be identified through the classifications provided by the World Health Organization (WHO)<sup>11</sup> and, at the European level, by the European Health Interview Survey (EHIS)<sup>12</sup>. These frameworks emphasize the long-term nature of such diseases, which often persist throughout a person's life, result from irreversible pathological alterations, and require specialized rehabilitation as well as extended periods of treatment and monitoring<sup>13</sup>.

The absence of a definitive cure and the prolonged duration of chronic illnesses mean that their course is inherently dynamic, evolving over time through phases of improvement and, frequently, progressive deterioration, following a fluid and oscillatory trajectory.

Given the wide range of conditions classified as chronic and the variability in their progression and treatment, as well as the differing characteristics of diseases requiring transplants and their outcomes, it is clear that the health conditions of affected individuals cannot be generalized.

However, despite these case-by-case differences, chronically ill and transplant patients share the necessity of undergoing periodic, or in some cases lifelong, treatment, including life-saving therapies, while dealing with compromised health. As a result, they may experience a decline in work capacity, face disability or incapacity, and encounter significant employment and labour market integration challenges.

<sup>11</sup> The WHO defines such conditions as “health problems that require ongoing treatment for a period of years or decades”. It should also be noted that the WHO uses non-communicable disease as a synonym for chronic illness, describing it as a condition that cannot be transmitted from person to person, has a long duration, and is generally characterized by a prolonged clinical course. See WHO, *Preventing chronic diseases: a vital investment*, WHO global report, 2005, particularly Part 2: The Urgent Need for Action, Chapter One: Chronic Diseases – Causes and Health Impacts, p. 35 ff.

<sup>12</sup> See EUROSTAT, *Quality report of the third wave of the European Health Interview Survey. 2022 Edition*, Publications Office of the European Union, 2022, <https://ec.europa.eu/eurostat/en/web/products-statistical-reports/-/ks-ft-22-002>.

<sup>13</sup> It should be noted that, in international literature, a chronic disease is defined by one or more specified characteristics, while irreversibility of the condition or its progressive worsening are not necessarily required for classification as a chronic illness. On this point, see the WHO definition referenced in note 9.

## 2. *The Italian legal framework on employment for chronically ill and transplanted individuals: gaps and emerging perspectives*

The traditional approach, both scientific and regulatory, has largely framed incapacity and employment as mutually exclusive conditions, failing to adequately explore and promote measures that facilitate workplace retention for individuals with limited ability to perform specific tasks<sup>14</sup>.

Italian legislation has not systematically addressed the issue of employability and working conditions for such individuals<sup>15</sup>. Instead, protective measures have been predominantly concentrated within the social security system, providing benefits ranging from disability allowances to incapacity pensions for those who permanently lose their ability to work. Additionally, protections extend to illness-related benefits, leave entitlements, temporary suspensions, and workplace accommodations for employees who are temporarily unable to fulfil their assigned duties.

While this approach provides essential social protection by ensuring income security for workers experiencing work incapacity, it lacks a broader

<sup>14</sup> See, in this regard, the Eurofound report, prepared on behalf of the European Foundation for the Improvement of Living and Working Conditions within the framework of the European Observatory of Working Life – Eur-WORK, 2014, CORRAL, DURÁN, ISUSI, *Employment Opportunities for People with Chronic Diseases*, 2014, <https://www.eurofound.europa.eu/en/publications/2014/employment-opportunities-people-chronic-diseases>. See also OECD, *Sickness, Disability and Work: Keeping On Track in the Economic Downturn*, cit., pp. 17–18; EU-OSHA, *Rehabilitation and Return-to-Work Policies and Systems in European Countries*, cit. For similar observations in the Italian context, see TIRABOSCHI, *Sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, in TIRABOSCHI (a cura di), *Occupabilità, lavoro e tutele delle persone con malattie croniche*, cit., p. 15; VARVA, *Malattie croniche e lavoro tra normativa e prassi*, in RIDL, 2018, no. 1, p. 109 ff.

<sup>15</sup> Among the earliest studies addressing the employment of individuals with chronic illnesses, see TIRABOSCHI, *Le nuove frontiere dei sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, in DRI, 2015, 3, p. 681 ff. More recently, reference may be made to: CARCHIO, *Rischi e tutele nel reinserimento lavorativo delle persone con malattie croniche e trapiantate: prime riflessioni alla luce del d.lgs. n. 62/2024*, in DLS, 2024, 2, I, p. 162 ff.; see also VERZULLI, *Disabilità, malattia cronica, fragilità: il lavoro agile come accomodamento ragionevole*, in DLS, 2024, 1, I, p. 1 ff.; LEVI, *Sostenibilità del lavoro e tutela della salute in senso dinamico: la prospettiva privilegiata delle malattie croniche*, in DRI, 2023, 2, p. 277 ff.; MILITELLO, *La tutela del lavoratore affetto da patologia oncologica in Italia*, in DRI, 2018, 2, p. 457 ff.; CARACCILO, *Patologie croniche e lavoratori fragili*, in BROLLO et al. (eds.), *Lavoro agile e smart working nella società post-pandemica. Profili giuslavoristici e di relazioni industriali*, ADAPT University Press, 2022, p. 127 ff.; FERNÁNDEZ MARTÍNEZ, TIRABOSCHI (eds.), *Lavoro e malattie croniche*, ADAPT University Press, 2017.

perspective that includes professional retraining and labour market reintegration<sup>16</sup>. As a result, it often leads to premature workforce exits, even in cases where such departures could be avoided through a more nuanced assessment and enhancement of residual work capacities and the specific needs of these workers within their professional environments<sup>17</sup>. This dynamic not only limits employment opportunities for affected individuals but also results in a loss of valuable skills and resources for enterprises and, more broadly, for the entire welfare system.

The employment trajectory of individuals affected by chronic illnesses or those who have undergone transplants should not necessarily equate to their definitive exclusion from the labour market. Instead, it should prompt the adoption of multi-tiered interventions – at national, corporate, and individual levels – aimed at reducing inactivity among chronically ill workers, enabling them to remain in employment despite diminished work capacity while optimizing their residual abilities.

Thus, ensuring the inclusion of such individuals in the workforce, in alignment with their health conditions, is crucial. Their participation in labour markets and integration into organizational structures can serve as a driver for sustainable economic and social development, yielding positive outcomes at both collective and individual levels.

On a broader scale, this issue is particularly relevant for welfare systems facing increasing economic strain. The growing number of economically active individuals – either employed or employable – who exit the labour market or experience temporary or long-term work incapacity due to health

<sup>16</sup> See TIRABOSCHI, *Le nuove frontiere dei sistemi di welfare: occupabilità, lavoro e tutele delle persone con malattie croniche*, in FERNÁNDEZ MARTÍNEZ, TIRABOSCHI (eds.), *cit.*, p. 25–26; AMICI DI MARCO BIAGI, *La salute della persona nelle relazioni di lavoro*, ADAPT University Press 2019, p. 47 ff.; DAGNINO, *La tutela del lavoratore malato cronico tra diritto vivente e (mancate) risposte del sistema*, in *DRI*, 2023, 2, p. 336 ff, spec. pp. 336–339; EICHENHOFER, *The European social model and reforms of incapacity benefits*, in DEVETZI, STENDAHL (eds.), *Too sick to work? Social security reforms in Europe for persons with reduced earnings capacity*, Wolters Kluwer, Milano, 2011, p. 19.

<sup>17</sup> According to OECD estimates, persons with disabilities – including chronically ill workers – have an employment rate of just over half that of the total active population and a double unemployment rate. See OECD, *Sickness, Disability and Work: Breaking the Barriers - A Synthesis of Findings across OECD Countries*, OECD Publishing, 2010. These findings align with more recent research, which indicates that individuals with disabilities are 42% less likely to be employed compared to those without disabilities. Moreover, their unemployment rate stands at 15%. See OECD, *Disability, Work and Inclusion: Mainstreaming in All Policies and Practices*, OECD Publishing, 2022.

conditions challenges the financial sustainability of social security systems, intensifying pressure on welfare mechanisms that provide pension and disability benefits<sup>18</sup>.

The repercussions of this phenomenon are particularly evident at the intermediate level, where individual companies must adapt their managerial and organizational structures to create workplace environments conducive to the inclusion of affected workers. In this context, collective bargaining plays a crucial role in fostering inclusion by ensuring equitable working conditions for individuals with chronic illnesses or transplant recipients.

At the micro level, that is, the individual level, workers suffering from chronic illnesses or those who have undergone transplants often face reduced employment prospects<sup>19</sup>, diminished income levels, and limited career advancement opportunities due to employment discontinuity or the risk of job loss<sup>20</sup>.

<sup>18</sup> OECD, *Sickness, Disability and Work: Keeping on Track in the Economic Downturn*, OECD Background Paper, 2009, p. 13, states that in OECD member countries, disability benefits account for 1.2% of GDP, rising to 2% when sickness benefits are included. In the Netherlands and Norway, expenditures on disability and sickness benefits reach higher levels, approximately 5% of GDP. See also VANDENBERGHE, ALBRECHT, *The Financial Burden of Non-Communicable Diseases in the European Union: A Systematic Review*, in *Eur J Public Health*, 2020, 30, 4, p. 833 ff. Regarding healthcare expenditures, the European Commission estimated at the 2014 EU Summit on Chronic Diseases – Conference Conclusions, Brussels, 3–4 April 2014, that €700 billion was spent annually on chronic disease treatment, representing 70–80% of the total healthcare budget – a figure already projected ten years ago.

<sup>19</sup> According to Eurofound, *How to Respond to Chronic Health Problems in the Workplace?*, cit., p. 1, based on data from the Survey of Health, Aging and Retirement in Europe (SHARE), 74% of healthy individuals aged 50–59 are employed, while this percentage drops to 70% among those with a chronic illness and falls further to 52% for individuals with two chronic conditions (<https://share-eric.eu>). Similarly, according to the European Parliament, *Employment and Disability in Europe. Briefing Document*, May 2020, ([https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651932/EPRS\\_BRI\(2020\)651932\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651932/EPRS_BRI(2020)651932_EN.pdf)), the employment rate of individuals with disabilities (aged 20–64) stood at 50.6% in 2017, compared to 74.8% for individuals without disabilities. Additionally, in most EU member states, only a small percentage of working-age individuals with severe disabilities are employed. See also EU-OSHA, *Rehabilitation and Return-to-Work Policies and Systems in European Countries*, 2016, updated in 2022, <https://oshwiki.osha.europa.eu/en/themes/rehabilitation-and-return-work-policies-and-systems-european-countries>.

<sup>20</sup> Among the numerous studies highlighting the positive impact of employment on individuals with illness – also from a therapeutic perspective – see VERBEEK, *Workers with occupational pain*, in WAINWRIGHT, ECCLESTON (eds.), *Work and Pain. A Lifespan Development Approach*, Oxford University Press, 2020; KNOCHÉ, SOCHERT, HOUSTON, *Promoting Healthy Work for Workers with Chronic Illness: A Guide to Good Practice*, European Network for Workplace Health Promo-

Thus, strategies aimed at promoting the employment of individuals with long-term health conditions carry significant implications across multiple domains: they influence social security systems (as well as healthcare policies more specifically), affect the collective interests of workers, and shape the dynamics of individual employment relationships.

### 3. *Employment inclusion of chronically ill workers: the role of disability-related protections*

As previously observed, the labour reintegration of individuals affected by chronic illnesses is not only essential for ensuring the sustainability of the welfare state but also represents a win-win strategy for both workers and businesses. However, an effective reintegration approach should go beyond merely implementing measures that allow individuals to retain their jobs or return to work post-illness. Instead, it should also aim to facilitate continued employment throughout the different phases of the illness – whenever compatible with the worker's condition.

To date, national legislation has only marginally addressed the employment relationship of workers with chronic illnesses through fragmented and sector-specific provisions<sup>21</sup>. One notable example is Article 8, Paragraph 3 of Legislative Decree No. 81/2015<sup>22</sup>, which grants workers suffering from oncological diseases and severe progressive chronic-degenerative conditions the right to convert their employment contract from full-time to part-time and *vice versa*, provided that a dedicated medical commission verifies their

tion (ENWHP), 2012; STEINER, CAVENDER, MAIN, BRADLEY, *Assessing the Impact of Cancer on Work Outcomes: What Are the Research Needs?*, in *Cancer*, 2004, esp. p. 1710; and ZAMAGNI, *People Care: dalle malattie critiche alle prassi relazionali aziendali*, in *Atti del convegno della Fondazione Giancarlo Quarta*, Milan, 26 October 2011.

<sup>21</sup> By contrast, more recent collective bargaining has shown greater attention to the protection of workers affected by chronic and disabling illnesses. See, in this regard, AIMO, IZZI, *Disability and Employee Well-being in Collective Agreements: Practice and Potential*, in *Adapt Labour Studies*, 2019, Vol. 7, p. 3 ff.; MILITELLO, *cit.*, p. 457 ff.; and STEFANOVICHJ, *Disabilità e non autosufficienza nella contrattazione collettiva. Il caso italiano nella prospettiva della Strategia europea sulla disabilità 2010-2020*, *Adapt Labour Studies*, e-Book series, No. 33/2013.

<sup>22</sup> See, among others, BRUZZONE, ROMANO, *Patologie oncologiche, patologie cronico-degenerative e diritto al part-time*, in TIRABOSCHI (ed.), *Le nuove regole del lavoro dopo il Jobs Act*, Giuffrè, Milan, 2016, p. 613 ff.



reduced work capacity, including impairments caused by life-saving treatments<sup>23</sup>.

Additionally, during the COVID-19 pandemic, chronically ill workers were classified among “vulnerable workers”<sup>24</sup> and granted special protections beyond standard measures. These included leave allowances, enabling them to abstain from work with absences considered equivalent to hospitalization<sup>25</sup> or illness not counted toward absence limits<sup>26</sup>. They were also permitted remote work arrangements<sup>27</sup> and enhanced medical surveillance measures<sup>28</sup>.

However, despite chronic illnesses being incorporated into the broader legislative concept of vulnerability – both in its open-ended formulation,

<sup>23</sup> Another specific provision was introduced by Article 8, Paragraph 10 of Law No. 81/2017, aimed at self-employed workers covered by this legislation. However, this provision primarily concerns job retention and social security protection. Specifically, during periods of certified illness resulting from therapeutic treatments for oncological diseases or severe progressive chronic-degenerative conditions, or any illness causing temporary total work incapacity, the same economic and regulatory treatment applicable to hospitalization is granted. On this provision, see in particular LANZALONGA, *La tutela della genitorialità e della malattia per i lavoratori iscritti alla Gestione separata Inps*, in D. Garofalo (ed.), *La nuova frontiera del lavoro: autonomo – agile – occasionale*, ADAPT University Press, Labour Studies, 2018, p. 239 ff.

<sup>24</sup> On this topic, see among the most recent contributions: TAMBURRO, *La nozione di fragilità nel prisma del rischio alla salute*, in MGL, 2024, 1, pp. 124 ff.; PASCUCCHI, *L'emersione della fragilità nei meandri della normativa pandemica: nuove sfide per il sistema di prevenzione?*, in RDSS, 2023, 4, p. 691 ff.; BROLLO, *Fragilità del lavoro nell'era pandemica*, in BASSANELLI (ed.), *Abitare oltre la casa. Metamorfosi del domestico*, DeriveApprodi, 2022, p. 103 ff.; EAD., *Fragilità e lavoro agile*, in LDE, 2022, 1, p. 1 ff.; MAZZANTI, *Le fragilità tra poliedricità e multifattorialità*, in FILI (ed.), *Quale sostenibilità per la longevità*, cit., p. 17 ff.

<sup>25</sup> Article 26, Paragraph 2 of Decree-Law No. 18/2020.

<sup>26</sup> Article 1, Paragraph 481 of Law No. 178/2020.

<sup>27</sup> See Article 26, Paragraph 2-bis of Decree-Law No. 18/2020, as subsequently amended and integrated. For a broader discussion of this measure, see, among others, CARACCILO, *cit.*; BROLLO, *Smart o emergency work? Il lavoro agile al tempo della pandemia*, in LG, 2020, 6, p. 553 ff.; BINI, *Lo smart working al tempo del coronavirus. Brevi osservazioni in stato di emergenza*, in *Giustiziavivile.com*, 2020, no. 3; ALBI, *Il lavoro agile fra emergenza e transizione*, in WP C.S.D.L.E. “Massimo D’Antona”.IT, no. 430/2020; Maio, *Il lavoro da remoto tra diritti di connessione e disconnessione*, in MARTONE (ed.), *Il lavoro da remoto. Per una riforma dello smart working oltre l'emergenza*, Quaderni di Argomenti di Diritto del Lavoro, 2020, no. 18, p. 86 ff.; CARUSO, *Tra lasciti e rovine della pandemia: più o meno smart working?*, in RIDL, 2020, 1, p. 215 ff.; and ALESSI, VALLAURI, *Il lavoro agile alla prova del Covid-19*, in BONARDI, CARABELLI, D'ONGHIA, ZOPPOLI (eds.), *Covid-19 e diritti dei lavoratori*, Instant Book Consulta giuridica della CGIL, 2020, no. 1, p. 131 ff.

<sup>28</sup> Article 26, Paragraph 2 of Decree-Law No. 18/2020; Article 83 of Decree-Law No. 34/2020; see also the circular issued by the Ministry of Health on April 29, 2020.

which considered individual factors such as disease, comorbidities, and age<sup>29</sup>, and in the formalistic classification outlined by the Ministerial Decree of February 4, 2022<sup>30</sup> – these special protections ceased following the expiration of emergency regulations.

The limited scope of existing legislative provisions highlights the absence of a clear legal definition of chronic illnesses and, more importantly, the lack of a dedicated protective framework for workers affected by such conditions. This necessitates broadening the scope of analysis to assess the applicability of regulatory frameworks that, while not explicitly designed for these individuals, could nonetheless encompass their needs.

National case law has also followed this approach, building upon the jurisprudence of the Court of Justice of the European Union (CJEU), which, in the context of anti-discrimination law, has in certain circumstances extended disability-related employment protections to chronically ill workers<sup>31</sup>.

As is well known, the CJEU's interpretation of disability is broad, rooted in the biopsychosocial model adopted by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) of 2006<sup>32</sup>, to which

<sup>29</sup> In this regard, Article 83 of Decree-Law No. 34/2020 required public and private employers to provide exceptional health surveillance due to COVID-19, extending the measure to workers at risk due to immunosuppression, post-oncological conditions, life-saving therapies, or comorbidities. More broadly, the provisions covered workers most exposed to infection risk, particularly due to age.

<sup>30</sup> This refers to the Ministerial Decree of the Ministry of Health, issued under Article 17, Paragraph 2 of Decree-Law No. 221/2021, which specifically identified chronic illnesses with poor clinical compensation and severe health implications, classifying them under the fragility condition.

<sup>31</sup> On this point, see DAGNINO, *cit.*, p. 338; EUROFOUND, *How to respond to chronic health problems in the workplace?*, *cit.*, p. 2; VARVA, *Malattie croniche e lavoro tra normativa e prassi*, in RIDL, 2018, I, p. 122 ff. Notably, this observation had already been made some time earlier by OORTMIJN, et al. in *Health of People of Working Age - Full Report*, European Commission Directorate General for Health and Consumers, 2011.

<sup>32</sup> United Nations Convention on the Rights of Persons with Disabilities, New York, 13 December 2006, approved by the European Union through Council Decision No. 2010/48 of 26 November 2009 and subsequently ratified in Italy with Law No. 18/2009. See, in Italian legal scholarship, VALLAURI, *Disabilità e lavoro. Il multiforme contemperamento di libertà di iniziativa economica, diritto al lavoro e dignità (professionale) della persona disabile*, in BOFFO, FALCONI, ZAPPATERRA (eds.), *Per una formazione al lavoro. Le sfide della disabilità adulta*, Florence, 2012, p. 60, who emphasizes that the notion of disability as framed by the UN Convention affirms the right of every individual to achieve the highest possible degree of autonomy and independence within any relational or work environment.

the EU is a signatory<sup>33</sup>. According to the Court's jurisprudence, disability, in the context of employment protection, refers to a "limitation resulting in particular from physical, mental, or psychological impairments, which, in interaction with various barriers, may hinder full and effective participation in professional life on an equal basis with other workers"<sup>34</sup>.

The acceptance of this definition implies that, in determining disability status, an individual's impairments or personal characteristics are not, in themselves, sufficient grounds for classification. Instead, disability arises from the interaction between the individual's impairments and the specific environmental, behavioural, or physical barriers<sup>35</sup> present in their workplace, which hinder their ability to fully engage in employment and other dimensions of daily life<sup>36</sup>.

See also D. GAROFALO, *La tutela del lavoratore disabile nel prisma degli accomodamenti ragionevoli*, cit., p. 1225 ff., who argues that the concept of disability enshrined in the Convention has shifted the notion of equality from a formal to a substantive level; see also NUNIN, *Disabilità, lavoro e principi di tutela nell'ordinamento internazionale*, in *Variazioni sui Temi di Diritto del Lavoro*, 2020, 4, p. 886 ff.

<sup>33</sup> The UN Convention, although classified as a "mixed agreement" – namely, an agreement negotiated by the EU with third parties that falls within the scope of shared competence with Member States under Article 4 of the TFEU – is considered an integral part of the European Union's legal system. Consequently, EU law must be interpreted in accordance with its provisions, in compliance with Article 216(2) of the TFEU, which states that "agreements concluded by the Union shall be binding upon the institutions of the Union and upon Member States". See also CJEU 11 April 2013, Cases C-335/11 and C-337/11, *HK Danmark*, paragraph 29, where it is clarified that "the primacy of international agreements concluded by the Union over secondary law requires that the latter be interpreted, as far as possible, in conformity with those agreements".

<sup>34</sup> CJEU 11 April 2013, cit., paragraph 38; similarly, CJEU, 18 December 2014, Case C-354/13, *Kaltoft*; 18 December 2014, Case C-354/13, *Fag og Arbejde*; 1 December 2016, Case C-395/15, *Daoudi*; 18 January 2018, Case C-270/16, *Ruiz Conejero*. On this point, see among many commentators CHIAROMONTE, *L'inclusione sociale dei lavoratori disabili fra diritto dell'Unione europea e orientamenti della Corte di giustizia*, in *VTDL*, 2019, 4, p. 907 ff.; FERNANDEZ MARTINEZ, *L'evoluzione del concetto giuridico di disabilità: verso un'inclusione delle malattie croniche?*, in *DRI*, 2017, 1, p. 74 ff.; ID., *Malattie croniche e licenziamento del lavoratore: una prospettiva comparata*, in *DRI*, 2015, 3, p. 750 ff.; VASINI, *Discriminazione per disabilità: la normativa italiana è in linea con la normativa europea?*, in *LG*, 2017, p. 226 ff.; PASTORE, *Disabilità e lavoro: prospettive recenti della Corte di giustizia dell'Unione europea*, in *RDSS*, 2016, 1, p. 199 ff.; FAVALLI, FERRI, *Tracing the Boundaries between Disability and Sickness in the European Union: Squaring the Circle?*, in *EJHL*, 2016, 5, p. 9 ff.; Venchiarutti, *La disabilità secondo la Corte di Giustizia: il modello bio-psico-sociale diventa "europeo"?*, in *www.diritticomparati.it*, 15 May 2014; CARRIZOSA PREITO, *La discriminazione fondata sulla malattia del lavoratore*, in *LD*, 2013, 2, p. 283 ff.

<sup>35</sup> See also letter (e) of the UN Convention on the Rights of Persons with Disabilities.

<sup>36</sup> In Italian case law, a consolidated judicial approach has emerged, affirming that "the subjective element of disability cannot be derived from national law but exclusively from EU

The concept of disability has evolved into a relational and social construct, no longer confined to a purely biomedical assessment of physical or mental impairments. Instead, it is shaped by the reciprocal interaction between the individual and their environment, fundamentally arising from the failure of societal structures to accommodate the needs of disadvantaged persons<sup>37</sup>.

Given this expanded and dynamic interpretation of disability, jurisprudence has recognized that limitations may also result from a curable or chronic illness, provided the resulting impairments are long-term<sup>38</sup>. As a consequence, a worker may be legally classified as disabled if affected by a disease – whether curable or not – so long as it persistently affects their social and occupational integration<sup>39</sup>.

Nevertheless, this does not imply an automatic equivalence between the categories of chronically ill individuals and disabled persons. The rights and protections afforded to disabled workers are extended to chronically ill workers only upon case-by-case verification, ensuring that the individual faces structural barriers to labour market inclusion on an equal basis with other workers. In other words, what is legally relevant is not the mere presence of a chronic illness but the degree to which it obstructs full participation in professional life.

law, which must be understood in a broad sense as a limitation resulting from long-term physical, mental, or psychological impairments that, in interaction with various barriers, may hinder the full and effective participation of the affected individual in professional life on an equal basis with other workers”. See Cass. 9 March 2021 No. 6497; in similar terms, Cass. 26 October 2021 No. 30138; 13 February 2020 No. 3691; 22 October 2018 No. 26675; 19 March 2018 No. 6798; 23 April 2018 No. 9953; 5 October 2016 No. 19928.

<sup>37</sup> See in this regard SAGONE, *La tutela della disabilità secondo il modello bio-psico-sociale*, in *Federalismi.it*, 2023, no. 1, p. 251; C. GAROFALO, *Illegittimità del licenziamento del lavoratore disabile. I diversi regimi sanzionatori*, in *VTDL*, 2022, 2, p. 251; SANCHINI, *I diritti delle persone con disabilità tra dimensione costituzionale, tutela multilivello e prospettive di riforma*, in *Federalismi.it*, 2021, 24, pp. 170–179 RICCARDI, *La “ridefinizione” del concetto di persona disabile nell’ordinamento sovranazionale*, in PAGANO (ed.), *La persona tra tutela, valorizzazione e promozione. Linee tematiche per una soggettività globalizzata*, *Quaderni del Dipartimento Jonico*, Edizioni DJSGE, Taranto, 2019, p. 298.

<sup>38</sup> See also CJEU 11 April 2013, cit., paragraphs 39 and 41.

<sup>39</sup> Italian case law contains numerous rulings on the legitimacy of dismissals due to exceeding absence limits, equating chronically ill workers classified as disabled with other categories of disabled individuals. Examples include cases concerning mental illnesses (Tribunal of Milan 24 September 2018), craniopharyngioma (Tribunal of Mantua 16 July 2018, No. 1060), diabetes (Tribunal of Santa Maria Capua Vetere 11 August 2019), arterial hypertension (Court of Appeal of Genoa 21 July 2020), prostate adenoma (Court of Appeal of Turin 26 October 2021), double lymphoproliferative neoplasia (Court of Appeal of Florence 26 October 2021), and phlebolympheidema of the right lower limb (Tribunal of Milan 2 May 2022).

It is worth noting that, while the biopsychosocial model of disability – adopted by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and embraced by the Court of Justice of the European Union (CJEU) in anti-discrimination rulings – should ideally serve as a unifying reference for all EU disability-related legislation<sup>40</sup>, its binding effect within national legal systems remained limited prior to the adoption of Legislative Decree No. 62/2024 (discussed below).

Before the formal codification of the biopsychosocial concept of disability, national regulations relied exclusively on domestic legal definitions, which were far more restrictive than the UNCRPD framework. Disability status was typically tied to quantifiable degrees of incapacity, expressed as percentage-based thresholds<sup>41</sup>, and was conceptually distinct from related classifications such as handicap<sup>42</sup>, invalidity<sup>43</sup>, and incapacity<sup>44</sup> – each carrying specific legal meanings and protections tailored to different regulatory contexts.

Thus, when EU-derived provisions were applied – such as Directive 2000/78/EC on equal opportunities and anti-discrimination protections for disabled persons<sup>45</sup> or Directive 89/391/EEC on occupational health and

<sup>40</sup> See the appendix to Council Decision of 26 November 2009, No. 2010/48, which lists EU legislative acts establishing common rules affected by the provisions of the Convention.

<sup>41</sup> Article 1, Paragraph 1 of Law No. 68/1999.

<sup>42</sup> Article 3, Paragraph 1 of Law No. 104/1992.

<sup>43</sup> Article 12 of Law No. 118/1971 and Article 1 of Law No. 222/1984.

<sup>44</sup> Article 12 of Law No. 118/1971 and Article 2 of Law No. 222/1984.

<sup>45</sup> On this matter, reference can be made to the now extensive case law recognising that the ordinary sick leave period (*comporto*) may constitute indirect discrimination when applied to workers with disabilities. The apparently neutral criterion governing the calculation of job retention periods fails to account for the higher morbidity risks typically associated with disability. As a result, termination based solely on exceeding that threshold may itself be qualified as discriminatory. See in particular Cass. 21 December 2023 No. 35747 in *DeJure*; 31 March 2023 No. 9095, in *GI*, 2023, no. 10, p. 2145 ff., with a note by FILI, *Superamento del comporto di malattia e rischio di discriminazione indiretta per disabilità*. At the appellate and first-instance level, in addition to the rulings cited in note 53, see Court of Appeal of Naples 17 January 2023 in *RIDL*, 2023, no. 2, p. 254 ff., with commentary by DONINI; Tribunal of Rovereto 30 November 2023 in *Boll. Adapt*; Tribunal of Parma, 9 January 2023, in *Labor*, 2023, no. 3, p. 312 ff., with note by RAVELLI; Tribunal of Milan 18 May 2022; Tribunal of Milan 18 and 2 May 2022; Tribunal of Mantua 22 September 2021; Tribunal of Pavia 16 March 2021 all in *DRI*, 2023, 2, p. 445 ff.; Tribunal of Milan 12 June 2019, in *www.italianequalitynetwork.it*; Tribunal of Milan 28 October 2016 in *RIDL*, 2017, 3, p. 475. In Italian scholarship, see among others: MARESCA, *Disabilità e licenziamento per superamento del periodo di comporto*, in *LDE*, 2024, 2, p. 1 ff.; GRECO, *Il licenziamento per supera-*

safety regulations for disabled workers – the applicable reference point was the biopsychosocial disability model, which could, in some cases, encompass chronic illnesses where they led to substantial limitations in professional life. However, in domestic legal contexts, where multiple distinct definitions of disability existed – each governed by specific statutory frameworks and measurable incapacity criteria – chronic illnesses could not automatically be classified as disabilities under national law.

Such a legal framework has resulted in significant application uncertainties, primarily due to the unequal levels of protection granted to chronically ill workers. In certain contexts – particularly those regulated by EU-based legislation – their protections align with those of disabled individuals, whereas under national law, which remains rooted in a biomedical model of disability, chronic illness did not always qualify for the same safeguards.

Additionally, even where chronically ill workers were recognized as disabled, protections often operated *ex post*, meaning they were applied remedially or stationarily, rather than *ex ante*, in the management phase of the employment relationship<sup>46</sup>. This is because the scope of disability protections depends on the existence of a professional limitation, arising from the interaction between an individual's impairments and environmental barriers. However, such an assessment was not easily conducted in advance, as it relied on discretionary interpretations rather than a standardized and binding disability certification process<sup>47</sup>.

*mento del periodo di comporto del lavoratore disabile*, in VTDL, 2024, special issue, p. 69 ff.; ZAMPIERI, *La tutela antidiscriminatoria: dal lavoratore come contraente debole al lavoratore come persona umana*, in VTDL, 2024, special issue, p. 45 ff.; D. GAROFALO, *La risoluzione del rapporto di lavoro per malattia*, in DRI, 2023, no. 2, p. 41 ff.; Dagnino, *Comporto, disabilità, disclosure: note a margine di una querelle giurisprudenziale*, in AGL, 2023, 1, p. 241 ff.; SALVAGNI, *Il "prisma" delle soluzioni giurisprudenziali in tema di licenziamento del disabile per superamento del comporto*, in LPO, 2023, nos. 3-4, p. 215 ff.; BONO, *Disabilità e licenziamento discriminatorio per superamento del periodo di comporto*, in LG, 2023, no. 1, p. 25 ff.; FRANZA, *Quando l'effettività genera paradossi*, in LG, 2022, no. 1, p. 62 ff.; CRISTOFOLINI, *Licenziamento per superamento del periodo di comporto e divieto di discriminazione per disabilità*, 2022, no. 12, p. 1125 ff.; AVANZI, *Il recesso per superamento del "comporto" alla prova del diritto antidiscriminatorio*, in *Conversazioni sul lavoro dedicate a Giuseppe Pera dai suoi allievi*, 10 June 2022; IZZI, *Il licenziamento discriminatorio secondo la più virtuosa giurisprudenza*, in LG, 2019, nos. 8-9, p. 748 ff.

<sup>46</sup> See Dagnino, *La tutela del lavoratore malato cronico tra diritto vivente e (mancate) risposte del sistema*, cit., pp. 348-349.

<sup>47</sup> Cf. DeLogu, *"Adeguare il lavoro all'uomo": l'adattamento dell'ambiente di lavoro alle esigenze della persona disabile attraverso l'adozione di ragionevoli accomodamenti*, in RGL, 2024, no. 1, pp. 8-9.

For example, reasonable accommodation decisions – such as adjusting work duties or extending employment absence limits before termination<sup>48</sup> – were dependent on the employer’s ability to correctly assess whether an employee met disability criteria.

A key legislative development addressing these shortcomings is Legislative Decree No. 62/2024, issued in implementation of Law No. 227/2021 (the “Disability Framework Act”)<sup>49</sup>. This decree introduces a unified definition of disability, aligning with Article 1(2) of the UN Convention on the Rights of Persons with Disabilities (UNCRPD)<sup>50</sup>. It also establishes a centralized disability certification process, overseen by INPS<sup>51</sup>, followed by a multidimensional assessment aimed at developing an individualized and participatory life project, based on the biopsychosocial approach<sup>52</sup>.

Once effectively implemented, it indeed appears capable of helping define a clearer and broader framework of protection for individuals with chronic illnesses, facilitating their inclusion among persons with disabilities. This, in turn, would contribute to overcoming the most evident shortcomings of the previous regulatory framework under Italian law<sup>53</sup>.

<sup>48</sup> On this point, see the observations of FILI, *Superamento del comporta di malattia*, cit., p. 2145. According to the Author, the prevailing case law – which deems the dismissal for exceeding the sick leave period to be null and void, on the grounds of indirect discrimination, when no distinction is made between absences etiologically linked to a disability and those that are not – raises serious concerns. In particular, it risks fostering an excessive form of protection for the disabled worker, especially where the individual fails to cooperate with the employer by informing them of their condition and the connection between the illness-related absences and the disability. This, in turn, may result in a disproportionate burden and cost being placed on the employer.

<sup>49</sup> Article 2, Paragraph 2, Letter a), No. 1 of Law No. 227/2021. On this point, see also BONARDI, *Luci e ombre della nuova legge delega sulla disabilità*, 8 February 2022, *italianequalitynetwork.it*; and CINGOLANI, FEDELI, CEMBRANI, *Disabilità: quel silenzio assordante sulla legge delega che cela diversi aspetti da rivedere*, in *Quot. Sanità*, 12 January 2022.

<sup>50</sup> Article 2, Paragraph 1, Letter a of Legislative Decree No. 62/2024, which defines disability as “a lasting physical, mental, intellectual, neurodevelopmental, or sensory impairment that, in interaction with various barriers, may hinder full and effective participation in different life contexts on an equal basis with others”.

<sup>51</sup> Article 9 of Legislative Decree No. 62/2024, which assigns exclusive management of the basic evaluation process to INPS, effective from 1 January 2026.

<sup>52</sup> Articles 18–32 of Legislative Decree No. 62/2024.

<sup>53</sup> See LEVI, *Sostenibilità del lavoro e tutela della salute in senso dinamico: la prospettiva privilegiata delle malattie croniche*, in *DRI*, 2023, 2, p. 290, who, prior to the adoption of Legislative Decree No. 62/2024, observed that “chronic illness has not yet received adequate regulatory recognition within labour law, despite the now widespread awareness of the need for a dedicated system of rules”.

#### 4. Key innovations introduced by legislative decree no. 62/2024

Legislative Decree No. 62/2024 introduces a significant shift in the approach to disability, formally moving beyond the biomedical model – which was based solely on the severity of impairment – and adopting the biopsychosocial model<sup>54</sup>. This new framework recognizes disability as the result of the interaction between an individual's health condition and environmental and personal factors, extending its application across all sectors of the legal system.

This transformation is realized through the introduction of a unified assessment process, replacing all previous procedures for the determination of civil disability<sup>55</sup>. This process is based on medico-legal evaluation criteria that not only determine the residual capacities of individuals with impairments but also assess how their health condition interacts with the contextual factors of their environment<sup>56</sup>.

The difference from the past is significant. Previously, disability – defined in national law as “handicap” – was characterized as “a physical, psychological, or sensory impairment, stabilized or progressive, causing difficulties in learning, relationships, or workplace integration, leading to social disadvantage or exclusion”. The new definition views disability as “a lasting physical, mental, intellectual, neurodevelopmental, or sensory impairment that, in interaction with various barriers, may hinder full and effective participation in different life contexts on an equal basis with others”<sup>57</sup>.

<sup>54</sup> Among the earliest scholarly commentaries on Legislative Decree No. 62/2024, see ELMO, *Condizione di disabilità e stato di salute del lavoratore alla luce del d.lgs. n. 62 del 2024*, in *DSL*, 2025, 1, I, p. 58 ff.; MONACO, *Il decreto legislativo 3 maggio 2024, n. 62: una lettura giuslavoristica*, in *Professionalità Studi*, 2024, 3, p. 3 ff.; LEONARDI, *Reasonable Accommodation for Workers with Disabilities: Analysis of the New Italian Definitions within the Multi-level Legal System*, in this journal, 2024, 1, p. 93 ff.; and BATTISTI, *Il legislatore accoglie (con qualche riserva) la nozione euro-unitaria di disabilità*, in *AmbienteDiritto.it*, 2024, 3, p. 1475 ff.

<sup>55</sup> See Article 5, Paragraph 1 of Legislative Decree No. 62/2024.

<sup>56</sup> See Article 5, Paragraph 3 of Legislative Decree No. 62/2024, which clarifies that the basic medico-legal assessment procedure must be based on the ICD classification system and ICF descriptive tools, particularly regarding activity and participation in terms of capacity. As an additional assessment and participation tool, except for minors, the WHODAS questionnaire and its updates must be used, along with other scientifically validated evaluation instruments identified by the WHO to describe and analyse functionality, disability, and health.

<sup>57</sup> Article 3 of Law No. 104/1992, as amended by Article 3 of Legislative Decree No. 62/2024.



With the adoption of the biopsychosocial model in Law No. 104/1992, the previous medical model is effectively overcome. This eliminates the necessity of extending EU law protections through interpretation and results in a broader range of applicable safeguards.

The new Article 3, Paragraph 1 of Law No. 104/1992 states that disability under the biopsychosocial model is recognized “following the basic assessment”<sup>58</sup>, which includes “all civil disability determinations provided for by current legislation”<sup>59</sup>. This is followed, if requested by the individual, by a multidimensional evaluation, explicitly grounded in the biopsychosocial approach.

The basic assessment process is initiated by the individual via electronic submission to INPS, which will exclusively manage the evaluation process starting from 1 January 2027<sup>60</sup>. The submitted medical certificate must include personal details, diagnostic documentation, and the coded diagnosis according to the ICD system, along with information on the progression and prognosis of any identified conditions<sup>61</sup>.

Once an individual’s health condition is established through the introductory medical certificate, the basic evaluation identifies the functional and structural deficits that hinder their ability to perform activities. It then assesses how these limitations affect the person’s capacity qualifier<sup>62</sup> in relation to the “Activity and Participation” component of the ICF classification, in-

<sup>58</sup> See Articles 5 ff. of Legislative Decree No. 62/2024.

<sup>59</sup> Article 12 of Legislative Decree No. 62/2024 establishes that the Minister of Health, through regulations jointly adopted with the Minister of Economy and Finance, the Political Authority for Disability, and the Minister of Labor and Social Policies, in consultation with the Minister of Education and Merit, following an agreement within the Permanent Conference between the State, the Regions, and the Autonomous Provinces of Trento and Bolzano, and after consulting INPS, must “update the definitions, criteria, and procedures for the assessment of civil disability, civil blindness, civil deafness, and deaf blindness, based on the ICD and ICF classifications and in accordance with the definition of disability set forth in Article 2, Paragraph 1, Letter a. These updates will modify the standards established by the Ministerial Decree of 5 February 1992, published in the Official Gazette No. 47 of 26 February 1992”.

<sup>60</sup> The deadline was extended by Article 19-quater of Decree-Law No. 202 of 27 December 2024, converted with modifications into Law No. 15 of 21 February 2025. Originally, Article 9 of Legislative Decree No. 62/2024 had set this deadline for 1 January 2026.

<sup>61</sup> Article 8 of Legislative Decree No. 62/2024.

<sup>62</sup> In the ICF classification, the “capacity” qualifier describes “(...) an individual’s ability to perform a task or action”. See WHO, *International Classification of Functioning, Disability and Health*, World Health Organization, 2001, p. 122.

cluding domains related to employment and higher education<sup>63</sup>, using a standardized and uniform environmental reference<sup>64</sup>.

Furthermore, Article 6, Paragraph 2 of Legislative Decree No. 62/2024 stipulates that during the basic evaluation, the individual must complete the WHODAS questionnaire to assess their “level of functioning” across six domains: cognitive activities, mobility, self-care, interpersonal relationships, daily life activities, and participation. Given the complexity of WHODAS, ensuring that the individual receives proper assistance from the evaluation unit is essential to avoid the risk of completing it without adequate support<sup>65</sup>. WHODAS provides a comprehensive description of both an individual’s ability to perform daily activities, including work-related tasks, and the difficulties experienced, taking into account interactions with their physical, social, and personal environment.

Once disability status is certified, Article 23, Paragraph 1 of Legislative Decree No. 62/2024 grants the individual the option to activate a further multidimensional evaluation, leading to the development of a life project aimed at “improving personal and health conditions across various life domains”<sup>66</sup>.

The multidimensional evaluation is also based on the ICF and ICD classifications and explicitly follows the biopsychosocial approach. Beyond assessing capacity, the procedure incorporates the ICF “performance” qualifier, which enables the evaluation of an individual’s functional abilities within their specific environment<sup>67</sup>. This is a critical component, as the mul-

<sup>63</sup> Article 10 of Legislative Decree No. 62/2024. The following Article 11, Paragraph 1 of Legislative Decree No. 62/2024 establishes that the application of the ICF classification system will begin on 1 January 2025.

<sup>64</sup> See also MINISTERO DELLA SALUTE, *Linee guida per la redazione della certificazione di disabilità in età evolutiva ai fini dell’inclusione scolastica e del profilo di funzionamento tenuto conto della classificazione internazionale delle malattie (ICD) e della classificazione internazionale del funzionamento, della disabilità e della salute (ICF) dell’OMS*, 10 November 2022, [https://www.mim.gov.it/documents/7673905/8077831/LINEE+GUIDA+PF\\_C\\_17\\_pubblicazioni\\_3276\\_allegato.pdf/0750a6da-b88b-c511-09dd-2c9c637a26a2?t=1707910450547](https://www.mim.gov.it/documents/7673905/8077831/LINEE+GUIDA+PF_C_17_pubblicazioni_3276_allegato.pdf/0750a6da-b88b-c511-09dd-2c9c637a26a2?t=1707910450547).

<sup>65</sup> Cf. FRATTURA, TONEL, ZAVARONI (eds.), *Misurare la Salute e la Disabilità. Manuale dello Strumento OMS per la Valutazione della Disabilità WHODAS 2.0*, OMS, 2010, p. 4 ff.

<sup>66</sup> Article 18, Paragraph 1 of Legislative Decree No. 62/2024.

<sup>67</sup> See Article 25 of Legislative Decree No. 62/2024, whose Paragraph 2 establishes that the procedure is structured into four phases: “a) In line with the basic assessment results, it identifies the individual’s objectives based on their desires and expectations, defining their functional profile, including ICF capacity and performance across self-selected life domains;

tidimensional assessment is specifically designed to shape the individual's life project, requiring an in-depth analysis of the environmental factors influencing their daily and professional life.

The adoption of the biopsychosocial model – explicitly referenced in Article 25, Paragraph 1 of Legislative Decree No. 62/2024 in relation to the multidimensional evaluation – is justified by the objective of this procedure, which is to identify the goals and tools necessary for developing a life project. This initiative aims to remove or prevent barriers, enabling individuals to access support systems that facilitate inclusion and participation across various life domains, including education, higher learning, housing, employment, and social engagement, while also addressing poverty, marginalization, and social exclusion<sup>68</sup>.

Thus, while the basic evaluation determines disability *status* and assesses support needs, assigning different levels of protection, the multidimensional evaluation functions as a complementary process. It contextualizes the outcomes based on the individual's needs and objectives, ensuring that the life project formally incorporates measures that enhance social and professional inclusion, including reasonable accommodations.

Although the implementation of certain provisions in Legislative Decree No. 62/2024 is contingent upon a ministerial decree and the completion of an experimental phase (expected by the end of 2025), the legal framework already holds significant relevance for chronically ill individuals and, more broadly, for all persons with disabilities. Once fully enacted, this legislation is expected to provide a clearer and broader protective *status* for chronically ill workers, facilitating their integration into disability classifications and addressing existing regulatory shortcomings.

In this context, it is also noteworthy that collective bargaining, despite its recent attention to protections for workers with chronic and debilitating conditions, has primarily extended benefits to those formally classified as disabled, underscoring the importance of precisely defining disability within the legal framework.

b) It determines the barriers and facilitators in the domains mentioned in letter (a) and adaptive competencies; c) It formulates assessments regarding the physical, mental, intellectual, and sensory health profile, personal needs, and quality-of-life domains, aligned with the individual's priorities; d) It establishes objectives to be pursued within the life project, incorporating any previously activated support plans and their goals”.

<sup>68</sup> Article 18, Paragraph 2 of Legislative Decree No. 62/2024.

Collective agreements have introduced several key measures<sup>69</sup>, including:

- extending job retention periods by excluding absences due to severe illnesses from absence calculations and granting specific leave and permits;
- facilitating the reintegration of disabled workers or those deemed unfit for their original roles, promoting reasonable accommodation policies;
- assigning employer-sponsored organizations, bilateral entities, joint commissions, and working groups the role of developing initiatives and strategies aimed at improving workplace conditions and supporting targeted inclusion for disabled workers.

Thus, greater clarity in the legal definition of disability has direct implications for the application of contractual provisions, ensuring stronger protections for individuals with chronic illnesses.

#### 5. *Sustainable employment for chronically ill workers: ensuring health protection and equal opportunities*

Even before the adoption of Legislative Decree No. 62/2024, the recognition of the biopsychosocial concept of disability led to a broader interpretation of labour law protections. This extension allowed chronically ill workers, who did not formally meet the national definition of disability under the biomedical model, to access certain safeguards originally designed for disabled individuals, particularly those derived from EU law aimed at facilitating job retention and workplace reintegration.

These protections include: occupational health and safety regulations, ensuring workplaces implement preventive and protective measures that minimize health risks by adapting job roles, equipment, and work methodologies to individual needs<sup>70</sup>; anti-discrimination laws, requiring reasonable

<sup>69</sup> For further details, see the comprehensive analysis conducted within the PRIN PNR-R SUNRISE Project (Sustainable Solutions for Social and Work Inclusion in Case of Chronic Illness and Transplantation), Prot. P20229FEWC, carried out by the research units of the University of Udine and the University of Modena and Reggio Emilia, under the coordination of Professor Valeria Fili. The project database is available at <https://prinsunrise.uniud.it/database/mapping-italian-case-law-regarding-assessment-of-the-workers-suitability-for-the-specific-jobs>.

<sup>70</sup> Article 6, Letter d) of Directive No. 89/391/EEC, see also Article 18, Paragraph 1, Letter c) of Legislative Decree No. 81/2008, which includes among the employer's obligations the duty to assign tasks to workers while taking into account their abilities and conditions in relation to their health and safety.

accommodations to guarantee equal treatment for disabled workers, a principle increasingly applied to those with chronic illnesses<sup>71</sup>.

Such measures grant chronically ill workers specific rights while also reshaping employer responsibilities. This becomes especially relevant in return-to-work policies, where the core concept is sustainable employment<sup>72</sup>, intended as an approach ensuring that individuals with physical or psychological impairments can continue working through adaptations that align with their needs and abilities. Sustainable employment supports high-quality jobs, a reasonable balance between work and personal life, and job security.

There exists a reciprocal relationship between the health and psychological changes caused by chronic illness – which affect an individual's work capacity and career trajectory – and the impact of the workplace environment on their health and professional engagement.

Based on these premises, sustainable employment for chronically ill workers can be structured around two main pillars:

- ensuring work does not harm health, by integrating universal workplace protections with targeted safeguards for individuals at higher health risk, in line with occupational health and safety regulations;
- implementing additional measures, beyond risk prevention, to provide specialized protections for vulnerable groups, through workplace, role, and organizational adaptations tailored to individual needs.

These frameworks enable chronically ill individuals to remain in employment, reinforcing their rights while enhancing workplace inclusivity.

### *5.1. Safeguarding workplace health and safety*

The first fundamental pillar of sustainable employment for chronically ill workers lies in implementing health and safety measures that ensure working conditions do not negatively affect their well-being or work capacity. In other words, employment must actively contribute to maintaining their physical and mental health.

In this context, a specific obligation is placed on employers, who must

<sup>71</sup> Article 5 of Directive No. 2000/78/EC and Article 3, Paragraph 3-bis of Legislative Decree No. 216/2003.

<sup>72</sup> This concept was initially introduced in reference to work sustainability throughout life, particularly in response to demographic shifts and the need to extend working life, as analysed in EUROFOUND, *Sustainable Work and the Ageing Workforce*, 2012, pp. 7–8.

guarantee both workplace safety and, more broadly, workers' health in all aspects related to work<sup>73</sup>. This duty is established in Italian law through the transposition of Directive No. 89/391/EEC into Legislative Decree No. 81/2008, known as the Consolidated Law on Health and Safety at Work, which also implements the preventive obligation under Article 2087 of the Civil Code<sup>74</sup>.

For chronically ill workers, fulfilling this obligation requires considering the unique characteristics of their conditions, particularly the physical and psychological changes associated with their illnesses. Employers must also account for the effectiveness and invasiveness of medical treatments and the progression of the disease, which, unlike acute illnesses, is irreversible, has an unpredictable trajectory, and alternates between critical phases and periods of improvement.

Beyond medical factors, social and occupational aspects also play a crucial role. These include the worker's socioeconomic status, education level, type of employment contract, nature of their duties (especially if physically demanding), work schedule flexibility, as well as company-specific policies – whether mandatory or voluntary – aimed at supporting employees with chronic conditions. Additionally, gender differences must be considered, as chronic illnesses affect men and women differently, both in terms of prevalence and workplace impact<sup>75</sup>.

<sup>73</sup> Art. 5 of the Directive 89/391/CEE.

<sup>74</sup> On the obligation laid down by Article 2087 of the Italian Civil Code and its implementation under Legislative Decree No. 81/2008, the literature is vast. Accordingly, reference is limited here to a selection of key contributions, including: DELOGU, *La funzione dell'obbligo generale di sicurezza sul lavoro. Prima, durante e dopo la pandemia: principi e limiti*, Aras Edizioni, 2022; NATULLO, *Ambiente di lavoro e tutela della salute*, Giappichelli, 2021; BUOSO, *Principio di prevenzione e sicurezza sul lavoro*, Giappichelli, 2020; PASCUCCI, *La tutela della salute e della sicurezza sul lavoro: il Titolo I del d. lgs. n. 81/2008*, Aras, 2014; FANTINI, GIULIANI, *Salute e sicurezza nei luoghi di lavoro, le norme, l'interpretazione, la prassi*, Giuffrè, 2015; PERSIANI, LEPORE (eds.), *Il nuovo diritto della sicurezza sul lavoro*, Utet Giuridica, 2012; and ALBI, *Adempimento dell'obbligo di sicurezza e tutela della persona. Art. 2087*, in BUSNELLI (dir.), *Il Codice Civile. Commentario*, Giuffrè, 2008.

<sup>75</sup> To illustrate the significance of biological differences – defined by sex – and socioeconomic and cultural factors – defined by gender – on health and disease, one need only look at the growing focus on gender medicine. This field examines variations in the onset, progression, and clinical manifestations of diseases common to both men and women, as well as differences in responses to treatment and adverse effects associated with therapies.

At the international level, this is reflected in initiatives such as the WHO Programme for Gender Equality, Human Rights & Health Equity, while in Italy, significant steps have been taken with the adoption of Law No. 3/2018, which delegates authority to the govern-

These specific considerations must be taken into account by the employer, primarily in fulfilling one of the most essential preventive duties prescribed by the Legislative Decree No. 81/2008 – namely, risk assessment<sup>76</sup>. Article 28 stipulates that this assessment must identify all potential risks to workers' safety and health, including those affecting specific groups of workers exposed to particular risks. The employer must then implement preventive measures in the workplace, including appropriate selection of work equipment and workplace adjustments.

Among the groups considered particularly at risk, individuals with reduced work capacity, such as disabled and chronically ill workers, must be included. For these workers, the employer is required to assess their specific vulnerabilities in the Risk Assessment Document, recognizing that they often face more unfavourable conditions compared to other employees. Based on this assessment, additional or tailored safety measures must be adopted to protect them. However, it is crucial to acknowledge that chronically ill workers, like those with disabilities, form a highly diverse group, each affected by distinct impairments that expose them to varying degrees of vulnerability and heightened risks compared to healthy workers<sup>77</sup>.

ment on clinical drug trials and includes provisions for reorganizing healthcare professions and the leadership of the Ministry of Health. Further developments include the Decree of the Ministry of Health of 13 June 2019, which establishes the Plan for the Application and Dissemination of Gender Medicine, in implementation of Article 3, Paragraph 1 of Law No. 3 of 11 January 2018. Also relevant is the MINISTERO DELLA SALUTE, *Il genere come determinante di salute. Lo sviluppo della medicina di genere per garantire equità e appropriatezza della cura*, in QMS, April 2016, 26.

<sup>76</sup> Article 17, Paragraph 1, Letter a) of Legislative Decree No. 81/2008 explicitly states that the evaluation of all workplace risks, leading to the drafting of the risk assessment document under Article 28, is among the non-delegable responsibilities of employers. On the topic of risk assessment, see among many others: TORRE, *La valutazione del rischio e il ruolo delle fonti private*, in CASTRONUOVO et al. (eds.), *Sicurezza sul lavoro. Profili penali*, Giappichelli, 2021; ANGELINI, *La valutazione di tutti i rischi*, in PASCUCCI (ed.), *Salute e sicurezza sul lavoro a dieci anni dal d.lgs. n. 81/2008. Tutele universali e nuovi strumenti regolativi*, Franco Angeli, 2019, p. 81 ff.; STOLFA, *La valutazione dei rischi*, in *Working Paper Olympus*, 2014, No. 36, p. 1 ff.; NATULLO, *Sicurezza sul lavoro modello procedurale organizzativo*, in NATULLO, SARACINI (eds.), *Sicurezza sul lavoro. Regole organizzazione partecipazione*, Editoriale scientifica, 2017, p. 17 ff.

<sup>77</sup> On the specific features of risk assessment with particular regard to workers with disabilities or illnesses, see among many: BORDIN, *Sicurezza sul lavoro e invecchiamento*, in *I&S Lav*, 2024, 1, p. 44 ff.; PASCUCCI, *L'emersione della fragilità nei meandri della normativa pandemica: nuove sfide per il sistema di prevenzione?*, cit., esp. p. 713 ff.; SCLIP, *Sicurezza sul lavoro dei disabili: VdR e accomodamento ragionevole*, in *I&S Lav*, 2018, 12, p. 633 ff.; EU OSHA, *Priorities for Occupational*

Beyond the severity of the impairment itself, the nature and level of risks to which these workers are exposed depend significantly on the conditions and environment in which they work. A proper risk assessment should therefore be customized, taking into account individual differences and workplace contexts, adapting its scope and content to specific worker needs to protect those particularly exposed to certain hazards. However, this process should be guided by reasonableness, avoiding the assumption that simply being ill or disabled automatically warrants a distinct risk assessment, as such an approach could itself lead to discriminatory outcomes.

Adopting a dynamic approach tailored to the specific needs of each individual and workplace is essential, moving away from standardized models and adapting both to the worker's unique risks and the conditions of their employment. In other words, as defined by the European Agency for Safety and Health at Work (EU-OSHA), what is needed is a “disability-sensitive risk assessment”<sup>78</sup>.

Risk assessment is thus a complex and ongoing process, requiring regular adjustments and updates. For this reason, the legislator has mandated that, both in drafting the Risk Assessment Document and more broadly in structuring the work environment, customized solutions for ensuring health and safety must be identified with the support of key figures, such as the occupational physician, the head of the protection and prevention service, and the workers' safety representative. This reflects a participatory model of workplace safety, involving all individuals with the capacity to influence working conditions. The consultation of workers themselves is particularly valuable, especially when they suffer from a medical condition, as their involvement allows for a more precise identification – and therefore prevention – of specific risks associated with their health *status*.

Among these figures, the occupational physician<sup>79</sup> plays a central role

*Safety and Health Research in Europe: 2013–2020*, 2013; and BERLIN ET AL., *Occupational Health and Safety Risks for the Most Vulnerable Workers*, Milieu Ltd, 2011.

<sup>78</sup> EU-OSHA, *Workforce Diversity and Risk Assessment: Ensuring Everyone is Covered*, 2009.

<sup>79</sup> The role of the occupational physician is described in Article 2, Paragraph 1, Letter h) of Legislative Decree No. 81/2008, as amended, as the “physician possessing one of the qualifications and professional training requirements set forth in Article 38, who collaborates, pursuant to Article 29, Paragraph 1, with the employer for risk assessment and is appointed by the latter to conduct health surveillance and fulfil all other duties prescribed by this decree”; on this figure in the Italian legal order see, among many, PASCUCCI, *Dopo il d.lgs. 81/2008: salute e sicurezza in un decennio di riforme del diritto del lavoro*, in ID. (ed.), *Salute e sicurezza sul lavoro*, cit., p. 20 ff.;



in protecting the health of disabled and chronically ill workers. This professional is not only responsible for identifying workplace risks, but also for preventing and managing them through health surveillance programs<sup>80</sup>. This activity consists of a set of medical actions designed to protect the health and safety of workers in relation to their work environment, occupational risk factors, and job execution methods<sup>81</sup>. It is carried out through specific health protocols, including medical check-ups, specialist examinations, and instrumental or laboratory assessments, whenever the risk evaluation process indicates the necessity of preventing occupational hazards via health surveillance measures<sup>82</sup>.

Although workplace health monitoring has traditionally focused on occupational and environmental risk prevention, the National Prevention Plan 2020–2025 suggests a broader approach that aligns health surveillance with

LAZZARI, *I «consulenti» del datore di lavoro*, in PASCUCCI (ed.), *Salute e sicurezza sul lavoro*, cit., p. 124 ff.; BORTONE, *Commento agli artt. 38-41* and NOGLER, *Commento all'art. 42*, both in ZOLI (ed.), *I principi comuni*, in MONTUSCHI (dir.), *La nuova sicurezza sul lavoro*, Zanichelli, 2011, vol. I, respectively p. 470 ff. and p. 478 ff.; GRAGNOLI, *La sopravvenuta inidoneità del lavoratore subordinato allo svolgimento delle sue mansioni*, in F. CARINCI, GRAGNOLI (eds.), *Codice commentato della sicurezza sul lavoro*, Giappichelli, 2010, p. 380 ff.; MONDA, *La sorveglianza sanitaria*, in L. ZOPPOLI, PASCUCCI, NATULLO (eds.), *Le nuove regole per la salute e la sicurezza dei lavoratori*, IPSOA, Milan, 2010, p. 339 ff.; and ALBI, *Sub artt. 38-42 D.leg. n. 81/2008*, in GRANDI, PERA (eds.), *Commentario breve alle leggi sul lavoro*, Cedam, 2009, p. 2820 ff.

<sup>80</sup> Article 25, Letter b of Legislative Decree No. 81/2008.

<sup>81</sup> According to Article 2, Paragraph 1, Letter m of Legislative Decree No. 81/2008, as amended, while Article 41 of the same decree establishes the different types of medical examinations included in the health surveillance activities assigned to the occupational physician, detailing their objectives and timelines.

<sup>82</sup> A relevant development was introduced by Article 14 of Decree-Law No. 48/2023, converted into Law No. 85/2023, which amended Article 18 of Legislative Decree No. 81/2008, adding that among the employer's and managerial duties is the appointment of an occupational physician not only in cases explicitly mandated by the Legislative Decree No. 81/2008, but also when required by the risk assessment under Article 28. This extends health surveillance to all instances where the risk evaluation suggests its necessity, rather than only in cases where the law expressly mandates it. On this point, see PASCUCCI, *Le novità del d.l. n. 48/2023 in tema di salute e sicurezza sul lavoro*, in *DLRI*, 2023, no. 3, p. 413 ff.; RAUSEI, *I ritocchi al Testo Unico: tra medico competente, formazione, attrezzature di lavoro e nuovi obblighi per lavoratori autonomi e imprese familiari* (art. 14, d.l. n. 48/2023, conv. in l. n. 85/2023), in DAGNINO, C. GAROFALO, PICCO, RAUSEI (eds.), *Commentario al d.l. 4 maggio 2023, n. 48 c.d. "decreto lavoro", convertito con modificazioni in l. 3 luglio 2023, n. 85*, ADAPT University Press, no. 100, pp. 125 ff.; and SCUDIER, *D.L. 48/2023 - Modifiche al d.lgs. 81/08. Prime note sulle principali novità per il MC e per la sorveglianza sanitaria*, 11 May 2023, <http://www.anma.it>.

the prevention of individual risks<sup>83</sup>. This ensures that workplace safety contributes to overall well-being and serves as a comprehensive health protection system, known as Total Worker Health<sup>84</sup>.

Thus, the occupational physician's role should not be limited to eliminating and controlling risks within the workplace (primary prevention) or identifying symptoms related to occupational hazards (secondary and tertiary prevention). Instead, it should also consider risk behaviours in daily life, including those related to non-occupational chronic illnesses that could eventually impact work capacity.

However, it is important to note that the occupational physician cannot infringe on workers' personal lives, but should instead recommend preventive measures to mitigate risk factors that originate within the workplace and, when combined with external influences, increase the likelihood of illness<sup>85</sup>. In this way, workplace health surveillance programs can significantly enhance workers' well-being, without unwarranted intrusion into their private lives.

### 5.2. *Implementing reasonable accommodations*

Turning to the second aspect that ensures sustainable employment for individuals with chronic illnesses, it is necessary to analyse the concept of reasonable accommodations – those structural or organizational adjustments that are necessary and appropriate to guarantee the right to work not only for disabled persons but also for those affected by chronic or severely debilitating illnesses, ensuring equal treatment with other workers.

The obligation to provide such accommodations primarily originates from EU legislation, which requires Member States not only to adopt rules ensuring workplace health and safety, mandating that workplaces be

<sup>83</sup> The National Prevention Plan 2020–2025, available at [www.salute.gov.it](http://www.salute.gov.it), was adopted on 6 August 2020 through an agreement within the State–Regions Conference. It serves as a strategic framework for planning health prevention and promotion interventions nationwide, ensuring both individual and collective health protection as well as the sustainability of the National Health Service.

<sup>84</sup> For further analysis, see PELUSI, *New Competencies for Risk Prevention in the Fourth Industrial Revolution. From New Risks, New Professional Roles*, in *WP SALUS*, 2020, 1, p. 15 ff.

<sup>85</sup> The prevention of chronic diseases has long been recognized as a fundamental medium- and long-term objective by the European Commission. See EUROPEAN COMMISSION, *The 2014 EU Summit on Chronic Diseases - Conference Conclusions*, Brussels, 3–4 April 2014, pp. 2 and 4.

adapted to meet the needs of individuals particularly exposed to specific risks or disabilities, but also to guarantee equal treatment for such individuals.

The first set of provisions ensures that employers modify workplaces following risk assessments to eliminate hazards and make necessary workplace adjustments – or, as Directive No. 89/391/EEC puts it, adapt the nature of work itself to meet the requirements of disabled or ill employees, ensuring safe working conditions. The second establishes a general prohibition of direct or indirect discrimination based on disability in employment, as outlined in Directive No. 2000/78/EC, which obliges employers to provide appropriate solutions that ensure access to and retention of employment for individuals with disabilities on an equal footing with other workers.

Both cited regulations, though implemented through different mechanisms, ultimately aim to apply the principle of equality, establishing the obligation to adapt the work environment to the varied abilities and life conditions of disabled workers<sup>86</sup>. This ensures their effective workplace participation, regardless of their health status, while also protecting their well-being.

Reasonable accommodations serve as the intersection between anti-discrimination protections and workplace health safeguards. They are both an essential part of the equality paradigm and a means of fulfilling the employer's preventive duty under Article 2087 of the Civil Code<sup>87</sup>. By requiring workplace adjustments, reasonable accommodations affect the employer's organizational authority and simultaneously pursue two complementary objectives: eliminating disadvantages faced by disabled and chronically ill workers while preserving their physical health and moral integrity. Their shared goal is to ensure workforce inclusion and prevent health-related risks.

Workplace solutions for disabled employees thus act as tools for removing barriers, addressing the challenges that arise from their interaction with the work environment, and ensuring equal access to employment.

<sup>86</sup> BARBERA, *Discriminazioni e pari opportunità (diritto del lavoro)*, in *Enciclopedia del Diritto*, Annali VII, 2014, p. 385.

<sup>87</sup> See, on the reference to Article 2087 of the Italian Civil Code, among others, CINELLI, *Insufficiente per la Corte di giustizia la tutela che l'Italia assicura ai lavoratori disabili: una condanna realmente meritata?*, in *RDSS*, 2013, p. 623 ff.; and PASCUCCI, *L'emersione della fragilità nei meandri della normativa pandemica: nuove sfide per il sistema di prevenzione?*, cit., p. 704.

Additionally, they represent a practical application of the employer's duty to assign tasks to workers while considering their abilities and health-related conditions<sup>88</sup>, allowing them to perform their duties safely and effectively.

Regarding the scope of the obligation to provide reasonable accommodations, it is established both at the supranational level<sup>89</sup> and in national legislation, which references the former. Article 3, Paragraph 3-bis of Legislative Decree No. 216/2003<sup>90</sup>, along with the new Article 5-bis of Law No. 104/1992 – introduced by Legislative Decree No. 62/2024<sup>91</sup> – incorporates the definition of reasonable accommodations from the UN Convention on the Rights of Persons with Disabilities, which forms an integral part of the EU legal framework.

According to Article 5 of Directive No. 2000/78/EC, reasonable accommodations are “appropriate measures, tailored to the needs of specific situations, to enable persons with disabilities to access employment, perform their jobs, be promoted, or receive training”. Further clarification is provided in Recital 20 of the directive, which describes “effective and practical measures aimed at adapting the workplace to the disability, such as modifying premises, adjusting equipment, work schedules, task distribution, or providing training and mentoring”. This list is not exhaustive but rather

<sup>88</sup> Article 18, Letter c) of Legislative Decree No. 81/2008.

<sup>89</sup> See Article 5 of Directive No. 2000/78/EC and Article 2 of the UN Convention on the Rights of Persons with Disabilities (2006), which defines reasonable accommodations as “necessary and appropriate modifications and adjustments that do not impose a disproportionate or excessive burden, adopted when required in specific cases to ensure that persons with disabilities can enjoy and exercise, on an equal basis with others, all human rights and fundamental freedoms”. This definition embraces a broader concept, extending beyond the professional sphere, which, according to the CJEU, must also be considered when interpreting Directive No. 2000/78/EC. See CJEU 18 January 2024, C-631/22, point 41; 21 October 2021, C-824/19, point 59; 15 July 2021, C-795/19, point 49; 11 September 2019, C-397/18, point 40.

<sup>90</sup> Article 3, Paragraph 3-bis of Legislative Decree No. 216/2003 was introduced by Article 9, Paragraph 4-ter of Decree-Law No. 76/2013, converted into Law No. 99/2013, to align national legislation with EU legal requirements, following a CJEU ruling against Italy for failing to mandate all employers to implement reasonable solutions adapted to specific situations for all disabled individuals, thereby violating the obligation to properly and fully transpose Article 5 of Directive No. 2000/78/EC. See CJEU 4 July 2013, C-312/11.

<sup>91</sup> See Article 17, Paragraph 1 of Legislative Decree No. 62/2024, which introduced Article 5-bis of Law No. 104/1992.

illustrative, and both CJEU case law<sup>92</sup> and national jurisprudence<sup>93</sup> have expanded its interpretation to include additional types of workplace modifications.

Reasonable accommodations consist of various types of adjustments, including both material changes to the workplace – such as modifications to physical environments – and organizational adaptations, such as task reassignments, flexible schedules, and shift modifications<sup>94</sup>. These measures must be applied throughout all phases of employment, including recruitment, active work engagement, and employment termination<sup>95</sup>.

<sup>92</sup> Additionally, various CJEU rulings have clarified the scope of reasonable accommodations, including reduced working hours as a valid adaptation under Article 5 of Directive No. 2000/78/EC. See CJEU 11 April 2013, cit., points 49 and 56; 4 July 2013, C-312/11, point 60; 11 September 2019, C-397/18, point 64, which established that the concept of reasonable solutions must be understood as encompassing the removal of various barriers that hinder full and effective participation of disabled individuals in professional life on an equal footing with other workers. See, in legal scholarship, DELOGU, “Adeguare il lavoro all’uomo”: l’adattamento dell’ambiente di lavoro alle esigenze della persona disabile attraverso l’adozione di ragionevoli accomodamenti, cit., p. 12; VERZULLI, cit., p. 19 ff.; and SPINELLI, *La sfida degli “accomodamenti ragionevoli” per i lavoratori disabili dopo il Jobs Act*, in *DLM*, 2017, I, p. 42 ff.

<sup>93</sup> See Cass. 23 February 2021, No. 4896 and Cass. 9 March 2021, No. 6497, in *RIDL*, 2021, 4, p. 597 ff., with commentary by ALESSI, *Disabilità, accomodamenti ragionevoli e oneri probatori*, in *RIDL*, 2021, 4, p. 613 ff.; DE PETRIS, *L’obbligo di adottare accomodamenti ragionevoli nei luoghi di lavoro: approdi definitivi della Suprema Corte e questioni ancora aperte*, in *ADL*, 2021, 4, p. 1061 ff.; DE FALCO, *L’accomodamento per i lavoratori disabili: una proposta per misurare ragionevolezza e proporzionalità attraverso l’INAIL*, in *LDE*, 2021, 3, p. 2 ff.; Trib. Lecco, 9 February 2023, in *DRI*, 2023, 4, p. 1057 ff., with note by AMBROSIO, *Le soluzioni ragionevoli quali argomenti a favore della tutela antidiscriminatoria*.

<sup>94</sup> Regarding case law, see Rome Court ruling of 18 December 2023, which recognized the right to obtain remote work (agile work) as a reasonable accommodation for a disabled worker; see CUCCHISI, *Il diritto al lavoro agile fra accomodamenti ragionevoli e normativa emergenziale. Spunti dalla recente giurisprudenza di merito*, in *Boll. ADAPT*, 2024, 7. See, in legal scholarship, on the use of remote work (lavoro agile) as a form of reasonable accommodation for vulnerable and disabled workers: CARACCILOLO, *Patologie croniche e lavoratori fragili*, in BROLO et al. (eds.), cit., p. 130 ff.; ZILLI, *Il lavoro agile per Covid-19 come “accomodamento ragionevole” tra tutela della salute, diritto al lavoro e libertà di organizzazione dell’impresa*, in *Labor*, 2020, p. 533 ff.; TUFO, *Il lavoro agile (dell’emergenza) esordisce in giurisprudenza: come bilanciare gli interessi in gioco nell’era della pandemia?*, in *LDE*, 2020, 2.

<sup>95</sup> Given the vague formulation of existing legislation and the atypical nature of the solutions that can be adopted, a useful tool for identifying appropriate accommodations has emerged through the catalogue of reasonable accommodations outlined in the Guidelines on Targeted Employment Placement for Persons with Disabilities, adopted – albeit six years later than the original deadline of 22 March 2016 – by Decree No. 43 of the Minister of Labour on

It is essential to note that the specific solutions adopted should be based on the individual needs of persons with disabilities and the unique characteristics of their work environment. Their primary function is to eliminate barriers to exercising rights, which arise from the interaction between the individual and their surroundings.

For this reason, reasonable accommodations implemented by employers are not fixed but rather subject to evolution over time. As the Committee on the Rights of Persons with Disabilities defines it, they constitute an “*ex nunc* duty”<sup>96</sup>, meaning that they must be continuously reassessed and adjusted in response to changing circumstances and workers’ evolving needs.

The obligation to provide reasonable accommodations, despite its dynamic nature, is expressly limited by economic sustainability. This condition is outlined in the UN Convention on the Rights of Persons with Disabilities (2006), which states that accommodations must not impose a “disproportionate or excessive burden”. Similarly, Article 5 of Directive No. 2000/78/EC establishes that the requirement to take appropriate measures applies “unless such measures impose a disproportionate financial burden on the employer”. The directive further clarifies that a solution is not considered disproportionate if the cost is sufficiently offset by existing policies within the Member State supporting individuals with disabilities.

Thus, the employer’s obligation and the disabled worker’s right to appropriate measures that enable them to perform their job under equal conditions are inherently subject to financial feasibility. This means conducting an assessment of the measure’s viability within the specific organizational framework in which the worker is employed and evaluating its proportionality in relation to the company’s structure and financial situation – including factors such as business size, number of employees, available resources (such

11 March 2022. These guidelines were established based on the directive criteria set forth in Article 1 of Legislative Decree No. 151/2015, particularly concerning the analysis of workplace characteristics assigned to persons with disabilities. See BARBIERI, *Acomodamenti ragionevoli e politiche d’inclusione organizzativa*, in *DPL*, 2022, 19, p. 1192 ff.

<sup>96</sup> See Committee on the Rights of Persons with Disabilities, General Comment No. 6 on Equality and Non-Discrimination, 2018, UN Doc CRPD/C/GC/6, Paragraph 24. In legal scholarship, attention has been drawn to the need for reasonable accommodations to be specifically tailored to the individual needs of disabled workers. See, among others, FERRI, *L’accomodamento ragionevole per le persone con disabilità in Europa: da Transatlantic Borrowing alla Cross-Fertilization*, in *DPCE*, 2017, 2, p. 390; and NUNIN, *cit.*, p. 890.

as revenue or profit), and any financial distress the company may be experiencing<sup>97</sup>.

An additional factor to consider, as explicitly outlined in legislation, when determining whether reasonable accommodations impose excessive costs, is the existence of compensatory measures within national policies, such as public funds or subsidies that provide financial support for employing disabled individuals<sup>98</sup>.

In this legal framework, which establishes a shared responsibility between the employer and the State in implementing reasonable accommodations, public incentives contribute to defining the criterion of economic sustainability for workplace adaptations. At the same time, they mark the boundary between what is not legally enforceable and what is considered a mandatory obligation.

From this perspective, a fundamental distinction emerges between the obligation to provide reasonable accommodations and the duty of workplace safety under Article 2087 of the Civil Code. Unlike the former, the latter is not subject to economic or organizational feasibility constraints. Instead, safety measures must be adopted solely based on the nature of the work, experience, and available technical knowledge<sup>99</sup> and are not contingent on proportionality or reasonableness assessments<sup>100</sup>.

<sup>97</sup> As highlighted in Recital 21 of Directive No. 2000/78/EC, determining whether specific measures impose a disproportionate financial burden requires evaluating financial and other costs, the size and financial resources of the organization or company, and the possibility of accessing public funds or other subsidies.

Regarding Italian case law, see Cass. 28 April 2017 No. 10576, which recognized different thresholds for financial feasibility depending on whether a company is in financial distress, and Cass. 2 May 2018 No. 10435.

<sup>98</sup> In the Italian context, Article 14, Paragraph 4, Letter b) of Law No. 68/1999, introduced by Article 11, Paragraph 1, Letter b) of Legislative Decree No. 151/2015, establishes the Regional Fund for the Employment of Disabled Persons, which provides financial contributions for the partial reimbursement of expenses related to the adoption of reasonable accommodations for workers with a reduction in work capacity exceeding 50%. Covered expenses include telework technologies, removal of architectural barriers that hinder workplace integration, and the establishment of a workplace inclusion officer.

<sup>99</sup> As established in Article 2087 of the Civil Code and Article 2, Paragraph 1, Letter n) of Legislative Decree No. 81/2008, workplace health and safety protections are non-negotiable obligations.

<sup>100</sup> According to Recital 14 of Directive No. 89/391/EEC, “the improvement of workers’ safety, hygiene, and health at work is an objective that cannot be dependent solely on economic considerations”.

In fact, the need to protect workers' health can limit entrepreneurial freedom, as stipulated in Article 41, Paragraph 2 of the Constitution, which establishes that economic activity must not harm health, the environment, safety, freedom, or human dignity<sup>101</sup>. Consequently, if a reasonable accommodation is deemed necessary not only to guarantee equal opportunities for disabled workers but also to prevent harm to their health, its economic unsustainability cannot serve as a justification for failing to implement it<sup>102</sup>.

Beyond proportionality, the existence and scope of the obligation to adapt workplace structures to meet disabled workers' needs are also subject to the criterion of reasonableness. This principle defines and qualifies the measures employers must implement, ensuring they are practical, effective, and suited to both individual circumstances and organizational contexts.

This criterion has been defined in its scope by case law, which – though not entirely consistent<sup>103</sup> – has recognized its autonomous value distinct from proportionality in financial burden. The judiciary has anchored it to broader obligations of fairness and good faith, requiring employers to implement only those organizational modifications that are reasonable, meaning they

<sup>101</sup> See, on the constitutional amendment to Article 41 of the Italian Constitution introduced by Constitutional Law No. 1/2022 – which included the protection of health and the environment among the limits to private economic initiative – *ex multis*: CASSETTI, *Riformare l'art. 41 della Costituzione: alla ricerca di "nuovi" equilibri tra iniziativa economica privata e ambiente?*, in *federalismi.it*, 2022, 4, p. 188 ff.; BARTOLUCCI, *Le generazioni future (con la tutela dell'ambiente) entrano "espressamente" in Costituzione*, in *Forum QC*, 2022, 2; BIN, *Il disegno costituzionale*, in *LD*, 2022, 1, p. 115 ff.; PASCUCCI, *Modelli organizzativi e tutela dell'ambiente interno ed esterno all'impresa*, in *LD*, 2022, 2, p. 335 ff.

<sup>102</sup> See PALLADINI, *Licenziamento, inidoneità sopravvenuta e ragionevole accomodamento*, in *VTDL*, 2024, p. 93 ff.; DELOGU, *"Adeguare il lavoro all'uomo"*, cit., p. 26; D'Ascola, *Il ragionevole adattamento nell'ordinamento comunitario*, in *VTDL*, 2022, 2, pp. 205–206; TORSELLO, *I ragionevoli accomodamenti per il lavoratore disabile nella valutazione del Centro per l'impiego*, in *VTDL*, 2022, 2, pp. 229–230.

<sup>103</sup> Regarding case law, see Cass. 23 February 2021 No. 4896, and 9 March 2021 No. 6497, contra Cass. 19 December 2019 No. 34132 in *Labor*, 2020, no. 5, pp. 636 ff., with note by MARGIOTTA, *Tutela dei disabili, "accomodamenti ragionevoli" e obbligo di "repêchage"*; 26 October 2018 No. 27243 and 19 March 2018 No. 6798, both in *RIDL*, 2019, 2, p. 145 ff., with note by AIMO, *Inidoneità sopravvenuta alla mansione e licenziamento: l'obbligo di accomodamenti ragionevoli preso sul serio dalla Cassazione*, and in *RGL*, 2019, 2, p. 244 ff., with note by SALVAGNI, *Licenziamento per sopravvenuta inidoneità psicofisica: reintegrazione per mancata adozione di accomodamenti ragionevoli e per violazioni del "repêchage"*.



do not impose a sacrifice exceeding the level of tolerance deemed acceptable by “common social evaluation”<sup>104</sup>.

This assessment must be carried out considering the subjective positions of all parties involved, taking into account the worker’s interest in maintaining a job suited to their health condition, the employer’s legitimate interest (under Article 1464 of the Civil Code) in securing productive labour, and the interests of other employees who may be affected. However, just as colleagues’ concerns cannot be regarded as absolute barriers, but must be balanced with the disabled worker’s rights – as long as accommodations do not impose an excessive burden on other employees or infringe upon their legal entitlements – the same principle applies to business operations. Employers must reasonably adjust their organizational structure to ensure equal treatment for disabled workers, striking a balance between workplace efficiency and inclusivity<sup>105</sup>.

According to the most recent case law, the right of workers with disabilities to retain their jobs can justify limitations on managerial freedom, granting judges the power to review not only whether reasonable accommodations have been adopted (*an*) but also the adequacy of the measures taken (*quantum*).

This results in an expansion of employers’ obligations, requiring them to actively engage in adaptive measures. Their duty is not limited by their freedom to organize the workplace, but rather by the reasonableness and proportionality of the adopted solution<sup>106</sup>.

<sup>104</sup> See also Cass. 9 March 2021 No. 6497, point 5.4.

<sup>105</sup> Similarly, in recent CJEU rulings, see Judgment of 18 January 2024, C-631/22, which affirmed that Article 5 of Directive No. 2000/78/EC, interpreted in light of the EU Charter of Fundamental Rights (Articles 21 and 26) and the UN Convention on the Rights of Persons with Disabilities (Articles 2 and 27), precludes national legislation that would allow an employer to terminate an employment contract solely due to permanent incapacity arising from disability during the employment relationship, without first considering or maintaining reasonable accommodations to allow the worker to retain their position, nor demonstrating that such accommodations would impose a disproportionate burden.

<sup>106</sup> See VOZA, *Eguaglianza e discriminazioni nel diritto del lavoro. Un profilo teorico*, paper presented at the XXI AIDLaSS Congress, Diritto antidiscriminatorio e trasformazioni del lavoro, Messina, 22–25 May 2024, typescript, p. 52. The Author observes that today, the obligation to provide reasonable accommodations is assuming a systematic significance in assessing the legitimacy of the exercise of managerial powers, in their broader organizational dimension rather than solely in the context of an individual employment relationship. This tends to neutralize the effects of Article 30 of Law No. 183/2010, which traditionally shields the employer’s “tech-

Additionally, within the reforms introduced by Legislative Decree No. 62/2024, there is a strengthened emphasis on reasonable accommodations, particularly to ensure the full workplace inclusion of individuals affected by chronic illness or transplants, where they are explicitly recognized as disabled.

This legislation introduces the concept of a “life project”, to be developed based on a multidimensional assessment, aimed at promoting social inclusion and participation on an equal footing with others, while also improving personal well-being and health conditions<sup>107</sup>.

The life project<sup>108</sup> identifies the individual’s objectives, including health-care and assistance services, reasonable accommodations to enhance quality of life and participation across different areas of life, as well as tailored supports and interventions that ensure full inclusion and equal access to civil and social rights and fundamental freedoms<sup>109</sup>.

Since it is specifically tailored to the needs of the disabled individual across different contexts, the measures within the life project inevitably influence one another, working to coordinate emerging needs and objectives from the multidimensional assessment<sup>110</sup>. In this way, the concept of reasonable accommodation acquires a renewed significance.

nical, organizational, and production-related decisions” from scrutiny. The resulting restriction of entrepreneurial prerogatives, brought about by the duty to provide reasonable accommodations, can be read in light of Article 41 (2) of the Constitution—particularly following its reformulation, which added “health and the environment” to the foundational values of “safety, freedom, and human dignity”.

<sup>107</sup> Art. 18, comma 1, d.lgs. n. 62/2024.

<sup>108</sup> Article 26, Paragraph 3, Legislative Decree No. 62/2024.

<sup>109</sup> Alongside these elements, Article 26, Paragraph 3 establishes that the life project also identifies: “b) The interventions defined in the following areas: 1) Learning, social interaction, and emotional well-being; 2) Training and employment; 3) Housing and social habitat; 4) Health; (...); d) Operational and individualized action plans for the measures and support linked to the project’s objectives, including the indication of possible priorities, or, in the case of existing plans, their realignment – also in terms of objectives, services, and interventions; e) The professionals and other figures involved in providing the designated support, specifying roles and responsibilities; f) The individual responsible for its implementation; g) The scheduling of periodic reviews and updates, including to verify the continuity and adequacy of the provided services concerning the objective; h) The details and full set of human, professional, technological, instrumental, and economic resources – both public and private – as well as those from the third sector, already available or activatable within territorial communities, family networks, and informal support systems, forming the budget plan under Article 28”.

<sup>110</sup> Article 19, Paragraph 1 of Legislative Decree No. 62/2024, which states that the life

The formalization of reasonable accommodations within the life project represents a process of harmonization with the other integrated interventions, such as care and assistance measures. Although these may not initially seem connected to employment, they can still affect the identification of appropriate workplace accommodations in each specific case. This is further reinforced by the required periodic reviews of the life project<sup>111</sup>, which allow for adjustments to services based on the progression of chronic illness or post-transplant health changes – thus ensuring that accommodations remain aligned with the evolving needs of the individual.

## 6. *Final considerations*

The workplace inclusion of individuals with chronic illnesses and transplant recipients plays a crucial role in fostering social and economic progress, especially in light of significant demographic shifts and technological advancements in production systems. With an aging population, a rising prevalence of chronic conditions, and continuous improvements in medical treatments, the workforce has expanded to include individuals with specific health needs. As a result, employment policies must be redefined to ensure equitable labour market access. Beyond being a matter of fundamental rights, integrating these workers strengthens social cohesion and enhances economic sustainability.

An inclusive approach to employment promotes corporate policies that optimize human resources and create accessible, efficient work environments. On a broader social scale, guaranteeing employment for individuals with chronic illnesses or transplants helps prevent exclusion and isolation, improving both individual and collective well-being. Work is not only a source of income but also a foundation of dignity, personal fulfilment, and active community participation. Economic systems that value diversity and ensure equal opportunities foster social cohesion, prevent discrimination, and contribute to a more inclusive society.

project ensures coordination between intervention plans for each life context and their respective objectives.

<sup>111</sup> Article 26, Paragraph 3, Letter g) of Legislative Decree No. 62/2024 reinforces the necessity of periodic monitoring, while Article 26, Paragraph 5 establishes that the life project is subject to updates upon request by the disabled person or their legal representative, ensuring ongoing alignment with evolving needs.

Ensuring the full participation of chronically ill workers is therefore not merely an ethical and legal obligation but a strategic necessity that reinforces economic resilience, drives innovation, and aligns workplace accessibility with broader environmental and technological progress, ultimately building a society that embraces diversity and sustainable growth.

Despite the evident benefits of inclusive employment policies, legislative gaps have created significant uncertainty in the protection of chronically ill individuals and transplant recipients. Until now, no specific regulatory framework has fully addressed their needs, with only the recent Legislative Decree No. 62/2024 offering a potential solution. The increasing number of workers affected by chronic illnesses presents challenges for employment management, particularly regarding job stability and continuity. In the absence of targeted legislation, protections for chronically ill workers have often been drawn from disability regulations, initially through interpretative means, based on the biopsychosocial concept of disability established at the supranational level with the 2006 UN Convention on the Rights of Persons with Disabilities.

The adoption of this definition has allowed for an expansion of EU-derived protections to individuals who, despite lacking formal disability certification under national regulations, suffer from long-term conditions that hinder full and effective professional participation. However, apart from anti-discrimination protections and workplace health and safety rights, the broader aspects of employment management have relied on various legal frameworks whose applicability was contingent on meeting specific disability criteria. This fragmentation created considerable uncertainty, making it difficult to establish a coherent regulatory framework, as protections were determined on a case-by-case basis rather than through clear, universally applicable rules.

This uncertainty has been problematic not only for employers but also for vulnerable workers, as the unpredictability of legal protections has led to increased litigation with uncertain outcomes and costs. Legislative Decree No. 62/2024 is therefore a welcome development, introducing a unified disability assessment process based on a social and dynamic model. This innovation yields several benefits: first, the broad definition of disability permeates all protective measures for disabled individuals, serving as a consistent reference across multiple regulatory disciplines. Second, access to protections for chronically ill workers becomes more straightforward, as eligibility is no

longer determined solely by the severity or permanence of impairments but by the extent to which these limitations affect relational and professional participation.

Moreover, legal certainty improves as the decree removes the need for interpretative assessments regarding whether an individual qualifies as disabled and is entitled to associated protections. Once fully implemented, this framework will provide clarity on the applicability of disability-related protections, limiting the need for judicial interpretations that have previously expanded protections but often placed excessive burdens on employers. By establishing clear criteria, the new legislation ensures that employment protections are appropriately applied, balancing the rights of chronically ill workers with the responsibilities of employers, and contributing to a more stable and inclusive labour market.

**Abstract**

The essay examines the employment inclusion of individuals with chronic illnesses and transplant recipients, focusing on the legal uncertainties arising from the absence of a coherent regulatory framework within the Italian legal system. Building on the supranational recognition of the biopsychosocial model of disability, it illustrates how existing protections have traditionally been drawn from disability law through interpretative means. The recent adoption of Legislative Decree No. 62/2024 introduces a unified and dynamic definition of disability, broadening the scope of applicable safeguards and enhancing legal certainty. This reform constitutes a pivotal development, paving the way for a more systematic and inclusive approach to the protection of workers with long-term health conditions, consistent with constitutional and EU principles of equality and non-discrimination.

**Keywords**

Chronic illness, Transplant recipients, Labour inclusion, Disability law, Biopsychosocial model.