

# Type 2 diabetes not recognized as a disability in Denmark

Type 2 diabetes by itself does not constitute a disability covered by the Danish Act on Prohibition against Discrimination on the Labour Market. This has just been determined by the Eastern Division of the Danish High Court, however, in its judgment opening the way for interpreting that the sequela Charcot foot may constitute a disability within the meaning of the Act.

Recently, the Danish Eastern High Court decided on the questions whether type 2 diabetes constitutes a disability within the meaning of the Danish Act on Prohibition against Discrimination on the Labour Market and whether employees diagnosed with this disease therefore enjoys special protection against dismissal based on the disease.

## Long absence due to illness owing to sequela

The case concerned an employee working as a cleaner at a public hospital. The employee had been diagnosed with type 2 diabetes and various sequelae to her diabetes, including *Charcot foot*, and these complications resulted in the employee not being able to perform her job as a cleaner. The employee had therefore been absent from her job due to illness for several periods.

On 28 January 2014, the employee was dismissed.

Subsequently, the employee filed a lawsuit against the employer claiming compensation for having acted in contravention of the Danish Act on Prohibition against Discrimination on the Labour Market. The employee argued that she, due to her type 2 diabetes, was covered by the concept of disability.

## Type 2 diabetes does not constitute a disability

Initially, the Eastern High Court stated how to interpret the concept of disability according to the Danish Act on Prohibition against Discrimination on the Labour Market. According to the interpretation of the Eastern High Court, the concept covers:

*A condition, caused by a curable or incurable disease, when the disease gives rise to a limitation of the employee, which prevents the employee from fully and effectively participating in work life on an equal basis with other employees.*

Based on the above, the Eastern High Court determined that the employee's type 2 diabetes did not prevent the employee from participating in work life on an equal basis with other employees, whereas the sequela Charcot foot constituted such a limitation. This sequela might thus constitute a disability pursuant to the Danish Act on Prohibition against Discrimination on the Labour Market.

However, the Eastern High Court determined that the employee's absence due to sequela was not of long duration at the time of dismissal, and in this specific case, the employee's illness thus did not constitute a disability pursuant to the Danish Act on Prohibition against Discrimination on the Labour Market.

Accordingly, the dismissal was not in contravention of the Danish Act on Prohibition against Discrimination on the Labour Market.

## The decision shows that ...

Even if type 2 diabetes by itself does not constitute a disability, various sequelae to diabetes may be of such a nature that they may jointly constitute a disability within the meaning of the Danish Act on Prohibition against Discrimination on the Labour Market.

The circumstance that the employee was considered fit for duty within a period of three months was decisive for the case, because it is a precondition for compensation according to law that the absence due to illness has been of long duration at the time of dismissal, and this condition had not been met in the specific case.