

Report on the employment of disabled people in European countries

Country: Republic of Ireland
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Background:

The [Academic Network of European Disability experts](#) (ANED) was established by the European Commission in 2008 to provide scientific support and advice for its disability policy Unit. In particular, the activities of the Network will support the future development of the EU Disability Action Plan and practical implementation of the United Nations Convention on the Rights of Disabled People.

This country report has been prepared as input for the *Thematic report on the implementation of EU Employment Strategy in European countries with reference to equality for disabled people*. The purpose of the report ([Terms of Reference](#)) is to review national implementation of the European Employment Strategy from a disability equality perspective, and to provide the Commission with useful evidence in support of disability policy mainstreaming. More specifically, the report will review implementation of EU Employment Strategy and the PROGRESS initiative with reference to policy implementation evidence from European countries, including the strategies addressed in the EU Disability Action Plan (such as flexicurity and supported employment).

PART ONE: GENERAL EVIDENCE

1.1 Academic publications and research reports (key points)

The issue of promoting employment for persons with disabilities raises complex issues. A number of different bodies in Ireland have examined and continue to investigate these issues. The National Disability Authority is a leading organisation in producing disability research in Ireland. Research produced by the NDA has found that people with disabilities in Ireland are far less likely to have a job than other people of working age. The participation gap according to the NDA is largest for people whose disability is most restrictive.¹

Irish Business and Employers Confederation (IBEC) and the Irish Congress of Trade Unions (ICTU) produced a Report in 2005 that made a number of important recommendations in relation to the employment of persons with disabilities.² The following are the chief recommendations:

- The additional development of the mainstream supported employment model.

¹ Fitzgerald "Employment and disability- what the facts and figures show" NDA Available at: [http://www.nda.ie/cntmgmtnew.nsf/0/A3CFE76BE6EE5B7080257117005B2A1B/\\$File/disability_research_conference_06.htm](http://www.nda.ie/cntmgmtnew.nsf/0/A3CFE76BE6EE5B7080257117005B2A1B/$File/disability_research_conference_06.htm).

² "The Way Ahead: Workway Policy Paper" Workway. Available at: http://www.workway.ie/fileupload/Publications/WorkwayPolicyPaper2_06263135.pdf.

- Pre-Employment or preparation for employment development work to address many of the concerns in respect of a person’s capacity for work and employability.
- Enhancing Training Provision. (This recommendation aims to address the mismatch between the perceived skill pool among people with disabilities and job opportunities that are available locally.)
- Reform of the existing National Employment Guidelines in order to achieve greater mainstreaming.
- The development of Advocacy Services.
- A more strategic approach to policy and service planning achieved through greater cross Government Department and agency links.
- Resolution of the Benefits Trap, reconciling the need to provide support for those who are unemployed as well as providing supports in such a manner as to encourage employment.
- Enhancing service provision and an information service.
- Achieving change in relation to attitudes in the workplace.
- Built Environment.
- Achieving greater accessibility, the establishment of an Information
- Achieving greater accessibility through general Information on disability issues including:
 - Information on financial incentives available to employers.
 - Advice on workplace adaptation for people with disabilities.
 - Information on best practice models.
 - Information on conducting an access audit within the workplace.
 - Information on retention and retaining strategies for staff member who acquire a disability.
 - Practical guidelines on implementing requests for reasonable accommodation.

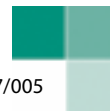
A recent joint publication between the Equality Authority and the Economic Social and Research Institute (ESRI) highlighted that disabled people are twice as likely to report work related discrimination compared to their non-disabled counterparts.³ Another key finding of this research was that the discrimination was more prevalent in the workplace as opposed to discrimination in respect of seeking employment.⁴ The research showed that disability is one of the strongest predictors of discrimination risk. The research also indicated that persons with disabilities were at higher risk of discrimination across all domains with the exception of education.⁵

The Central Statistic’s Office first national survey on discrimination in Ireland established that disability accounted for 6.2% of discrimination. Discrimination on the basis of age accounted for 19.3%, race 16.3%, sex 11.5% and family status 10%. Marital status, sexual orientation, religion, membership of the traveller community, other accounted for the other types of discrimination reported.

³ “The Experience of Discrimination in Ireland: Analysis of the QNHS Equality Module” Equality Authority and the ESRI 2008 page 17. Available at: <http://www.equality.ie/index.asp?locID=105&docID=723>.

⁴ *Ibid*, at 29.

⁵ *Ibid*, at 4.



A NDA commissioned report found that a majority of disability discrimination cases initiated under the *Employment Equality Acts 2000-2004* related to access or conditions of employment.⁶ The NDA also produced a report in 2006 on Part 5 of the *Disability Act 2005*, all Government Departments reached or exceeded to employment target under the Act.⁷

The National Disability Authority commissioned a review of literature on women and disability. This research was commissioned to examine where gender issues and disability issues intersect.⁸ The literature review also sought to synthesise and summarise the knowledge in respect Ireland and other jurisdictions.⁹ The NDA committed itself to further research which will collaborate with the National Women's Council of Ireland. Key pieces of further research are to be commissioned based on the recommendations within the report. In the Report the following gaps in research were identified:¹⁰

- The labour market needs and experiences of women with disabilities
- Reasons for early school leaving among girls with special education needs
- The factors involved in job retention/leaving employment following the onset of a disability
- The efficiency of the labour market supports in meeting the needs of women with disabilities
- Personal assistance needs of disabled women in the workplace
- The costs of disability in respect of support needs in the workplace
- Gender disaggregated data on open supported employment needs

From a review of the available studies and research on disability and employment there is an obvious gap in research in respect of the use of positive action/discrimination. In particular, research on the level of positive discrimination and the success in integrating persons with disabilities within the Irish labour market would be welcome.

There is also a noticeable absence of a major research project that has examined the employment of persons with mental ill health in the Irish labour market. Research is needed which will examine the difficulties facing people with mental health problems in the workplace. Data on the withdrawal from work due to mental illness and the barriers and discrimination in seeking return to employment is much needed.

⁶ Murphy and O'Leary "Emerging Trends in Disability Discrimination Cases Investigated Under the Employment Equality Acts, 1998-2004" (Ralaheen Ltd). Available from the National Disability Authority Website at:

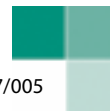
[http://www.nda.ie/cntmgmtnew.nsf/0/A3CFE76BE6EE5B7080257117005B2A1B/\\$File/disability_research_conference_17.htm](http://www.nda.ie/cntmgmtnew.nsf/0/A3CFE76BE6EE5B7080257117005B2A1B/$File/disability_research_conference_17.htm).

⁷ "2006 Report: Compliance with Part 5 of the Disability Act 2005" National Disability Authority (2006) at page 30. Available at: <http://www.nda.ie/cntmgmtnew.nsf/0/60DD74656B72013F802573B5005CD6C7?OpenDocument>.

⁸ See the National Disability Authority website at: <http://www.nda.ie/cntmgmtnew.nsf/0/BF3A14B644017A648025729D0051DD2B?OpenDocument>.

⁹ Ibid.

¹⁰ See the National Disability Authority (NDA) Website at: [http://www.nda.ie/cntmgmtnew.nsf/0/BF3A14B644017A648025729D0051DD2B/\\$File/womens_literature_and_disability_06.htm](http://www.nda.ie/cntmgmtnew.nsf/0/BF3A14B644017A648025729D0051DD2B/$File/womens_literature_and_disability_06.htm).



Mental Health Ireland has identified that there needs to be greater support in the retention and expansion of Community Employment Programmes, which provide a supported and flexible work option for people with a mental illness. They also identify the need to promote access to flexible training and employment options for people with mental health problems. Mental Health Ireland also recognised that public bodies have a role to play in leadership in the promotion and development of initiatives to promote access to employment by people recovering from a mental illness.

The National Disability Authority has delivered a number of initiatives that seek to challenge the negative attitudes faced by persons with mental health problems in Ireland. Their approach has involved research on attitudes to disability and media campaigns to challenge negative attitudes. The NDA ran the first phase of a major national advertising campaign that ran from December 2007-until January 2008.

The campaign involved television, radio and bus shelter advertisements that feature a number of people who have experienced mental health problems. These people include a prominent Irish sport personality, a journalist, a chess player and a prominent successful business personality.

The Central Statistic Office is currently undertaking a National Disability Survey (NDS). The aim of this survey will provide a comprehensive analysis of the situation of persons with a disability or longstanding health condition. The data from the survey will be used to inform and plan services for people with a disability. It is expected that the Central Statistics Office (CSO) will produce this research in August 2008.

Gannon and Nolan produced a Report in 2004 entitled “Disability and Labour Market Participation”.¹¹ This study provided a detailed description of the labour market situation in respect of people with disabilities in Ireland. It also analysed the factors affecting the participation or non-participation of persons with disabilities in the labour market. The Report concluded that:¹²

- There was a need for more research to not just on the presence of a chronic condition but on the impact this has on the individual’s capacity to function effectively in work and daily life. This data is necessary in providing a full understanding of this relationship. This would require a dedicated large-scale survey, and experience elsewhere has amply demonstrated both the feasibility and value of such data collection exercises.

It is noteworthy that the National Disability Authority has made some progress since the publication of this Report in 2004. However, further research providing a more comprehensive data base that measures disability much more fully is still required.

Gannon produced research on the overpayment of disability benefits in Ireland.¹³ She concluded that:

¹¹ “Disability and Labour Market Participation” Equality Research Series (ESRI) and the Equality Authority 2004. Available at: <http://www.equality.ie/index.asp?locID=105&docID=81>.

¹² *Ibid*, at 60-61.

¹³ Gannon “Disability Benefit: Controlled or Under Controlled” Budget Perspectives (2007). Available at: http://www.esri.ie/UserFiles/publications/20061103102203/BKMNINT192_Gannon.pdf.

“... relative to employed there was substantial mis-reporting in the late 1990s. Within the disabled/ill group almost 30 per cent had reported a severe disability, whereas this was reduced to approximately 15 per cent if individuals in this group would have responded as if employed. Similarly, the level of mis-reporting by the early retired group was reduced by half. These results are complemented by evidence from the PAC report that there was a substantial amount of overpayments in all social welfare in 2003, one-third of which were attributed to fraud. Some overpayments were due to the time lag in obtaining medical assessments, whereby some individuals had recovered and were then found capable of working.”¹⁴

Gannon suggests that policy reform is required to address the issue overpayment of disability benefits. However, she did emphasise that any solution should not affect those in need of disability payments.¹⁵ She suggested that improved medical assessments with shorter waiting times, and efficient monitoring were appropriate methods for addressing the issue. She also highlighted that these measures would only amount to a small fraction of the benefits as demonstrated by international research.¹⁶ The revenue saved in the detection of fraud and over-payment of disability payments could be invested in other programmes that support the employment of persons with disabilities.

1.2 Employment statistics and trends (key points)

The Central Statistics Office is an important source of data on employment statistics and trends. The Census 2006 and the National Quarterly House

Census

The number of people with disabilities who are in employment in relation to the total number of employed is 4% according to the 2006 census.¹⁷

In the Equality Authority and ESRI Report “The Experience of Discrimination in Ireland: Analysis of the QNHS Equality Module” it identified that disability has a strong effect on work-related discrimination.¹⁸ The group are 2.8 times more likely to perceive problems.¹⁹

The Central Statistic’s Office conducted research on Disability in the labour force in the second quarter of 2002. Some key questions from this module were repeated in the first quarter (December to February) of 2004. This represents the most up-to-date research from the Central Statistics Office. This research demonstrated that 10.9% (298,300) of all persons

¹⁴ Gannon “Disability Benefit: Controlled or Under Controlled” Budget Perspectives (2007). Available at: http://www.esri.ie/UserFiles/publications/20061103102203/BKMNINT192_Gannon.pdf at 18.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ See the Central Statistics Office Website at: http://www.cso.ie/census/census2006_volume_11.htm.

¹⁸ “The Experience of Discrimination in Ireland: Analysis of the QNHS Equality Module” Equality Authority and the ESRI 2008 page 80. Available at: <http://www.equality.ie/index.asp?locID=105&docID=723>. It should be noted that this research did not engage in new research rather it pulled together existing data.

¹⁹ *Ibid*, at 80.

aged 15 to 64 indicated that they had a longstanding health problem or disability in the first quarter of 2004. This compared with 10.3% (274,200) in the second quarter of 2002.²⁰

The follow up survey in 2004 found that just over 37% (110,800) of all persons aged 15 to 64 with a disability or health problem indicated that they were in employment compared with an overall rate of 63.8% for the total population in the same age category. Of those (1,748,700) in employment aged 15 to 64, the highest percentage who reported a disability or health problem were in the Agriculture, forestry and fishing (8.2%) sector. Other production industries had the lowest percentage at just 4.9%. According to the survey the most commonly reported disabilities or health problems were heart, blood pressure or circulation problems (46,300) followed by back or neck problems (43,000) and chest or breathing problems (41,100).

- 18,600 of disabled persons in employment reported having chest or breathing problems
- 18,200 had Heart, blood pressure or circulation problems
- 18,000 reported having back or neck problems

Persons reporting a disability or health problem worked on average 34.9 hours a week. This statistic compared to 36.8 hours a week for the total population in employment in the same age category.

The National Disability Authority carried out research on attitudes to disability in Ireland and published the findings of the survey in February 2007.²¹

In January 2008 the Association for Higher Education Access and Disability (AHEAD) commissioned independent market research.²² The objective of the research was to establish a broad overview of the employment situation of graduates with disabilities. The research (conducted by an independent market research company) involved a survey of 300 businesses nationwide, which employed 20 persons or more. The following were the main findings of the research:

- 25% of the businesses surveyed currently employed a graduate with a disability (71% did not).
- 52% of the recruitment managers surveyed at some point had interviewed a graduate with a disability. (69% of these came from companies who had in excess of 100 employees).
- 73% of respondents stated that graduates with disabilities should disclose their disabilities (24% said that they should not be required to do so).
- When asked at what stage graduates with disabilities should disclose their disability, 57% of the sample identified the interview stage.

²⁰ However, the CSO explained that this change may be explained by small survey changes in the 2004 questionnaire, meaning that there was little or insignificant change recorded between the two surveys.

²¹ “Public Attitudes to Disability in Ireland: Report of Findings” National Disability Authority February 2007. Available

at: [http://www.nda.ie/cntmgmtnew.nsf/0/FD9B9DBF1F1CF617802573B8005DDED5/\\$File/Survey.pdf](http://www.nda.ie/cntmgmtnew.nsf/0/FD9B9DBF1F1CF617802573B8005DDED5/$File/Survey.pdf).

²² See “AHEAD & TNS mrbi Research Findings on Employing Graduates with Disabilities: A survey of 300 businesses in Ireland”. Available at: <http://www.aheadweb.org/home/pages/show/228>.

- When asked what the benefits of disclosure for the employer the following were the top 3 responses: the increased ability to reasonably accommodate an employee (49%); ability to deal with any issues such as a health and safety issue (35%); and better awareness of the person's needs (22%).
- Only 26% had ever taken part in any form of disability equality training. 74% had never taken part. (94% of those who had taken part found it to be effective).
- 42% of those who had taken part in some form of disability equality training were currently employing a graduate with a disability
- 66% of responses stated that they did understand what the term 'reasonable accommodation' meant in relation to the employment of persons with disabilities. 34% did not fully understand the term. Under half of responses (45%) from businesses with 20-49 employees stated that they did not understand the term.

The research commissioned by AHEAD indicates that much more needs to be done in respect of disability training for employers. The research indicates that employers who received disability equality training employed almost double the number of employees with disability (45% compared to 25%). AHEAD suggested that the difference indicated a direct correlation between taking part in disability equality training and employing graduates with disabilities.²³

Disability and Employment

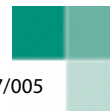
The research indicated that nearly three-quarters of respondents (71%) thought people with disabilities do not receive equal opportunities in respect of employment.²⁴ Respondents to the survey expressed the view that employers were most willing to employ people with physical disabilities 32%, this statistic was followed by hearing disabilities at 27%. The research indicated that there was a high unwillingness to employ people who had mental health difficulties; only 7% of respondents thought employers would be willing to hire people with this disability.

When asked how comfortable respondents would be having people with different disabilities as work colleagues, there were similar high levels of comfort for all disability categories except for the lower rated mental health difficulties. Respondents with a disability were more comfortable working with people with disabilities regardless of disability type compared to respondents that had no disability.

Some of the other key findings from the research was that there was an increased awareness of disability when compared to the 2001 study. Compared to the 2001 research more respondents were aware of people with disabilities with 71% of respondents knowing someone with a disability compared to 48% in 2001. The research also showed that less than half of respondents 45% held the opinion that people with disabilities were treated fairly in Irish society. What is concerning from this research is that the most negative attitudes relate to people with mental health problems.

²³ Ibid.

²⁴ It is noteworthy that according to the research there was not a significant difference in response to this question regardless of presence or absence of a disability by the respondent.



As such there is clearly more work to be done in terms of challenging negative attitudes. In relation to education 36% of respondents agreed that children with mental health difficulties should be in the same school as other children and 21% of respondents stated they would object if children with mental health difficulties were in the same class as their own child. An interesting statistic from the research is that 91% of respondents expressed the opinion that more could be done to meet the needs of people with disabilities in regard to access to buildings and public facilities.

1.3 Laws and policies (key points)

Disability Policy Generally

There have been major changes in disability policy in Ireland over the past number of years. The National Disability Authority has been to the fore of the recent developments in disability policy in Ireland. The National Disability Authority (NDA) is an independent statutory agency that was established under by the Department of Justice, Equality & Law Reform by way of the *National Disability Authority Act 1999*. The role of the NDA is to ensure that the rights and entitlements of people with disabilities are protected. The NDA plays an important role in assisting in the coordination and development of disability policy and in carrying out research on disability in Ireland.

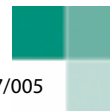
It is Government policy to mainstream the service provision for people with disabilities within the State agencies that provide the service to citizens generally. The Government announced that the policy of mainstreaming when it established the National Disability Authority. The most significant recent policy change was that the Disability Act 2005 has given legal effect to Government policy. The Act requires every public body to consider people with disabilities and disability issues as part of their core work. Thus, public bodies from the development of policy to the planning and delivery of services must consider disability.

The National Disability Strategy (NDS)

The Government launched the National Disability Strategy on September 21 2004. According to the Government the National Disability Strategy builds upon on the existing Irish legislative and infrastructural framework for equality. As mentioned above the National Disability Strategy (NDS) was identified in the *Programme for Government 2007-2012* as underlying its approach to disability policy. The Strategy aims to supplement the legislative and infrastructural framework for equality through the provision of new supports for people with disabilities. The strategy comprises four key parts:

- *Disability Act 2005*
- Comhairle (Amendment) Bill 2004
- Six Outline Sectoral Plans
- A commitment to a multi-annual Investment Programme for disability support services.

The Disability Act 2005 is designed to support the provision of disability specific services to people with disabilities and to improve access to mainstream public services for people with disabilities. The Act makes provision for an individual right to an independent assessment of need, to a related Service Statement and to independent redress and enforcement. The Act



also provides a statutory basis for accessible public buildings and services. Section 31 of the *Disability Act 2005* requires that six Government Departments publish a Sectoral Plan which relates to matters specified in the Act. These Sectoral Plans are to be laid before the Oireachtas. The following Governments Departments:

- the Minister for Health and Children
- the Minister for Social and Family Affairs
- the Minister for Transport
- the Minister for Communications, Marine and Natural Resources
- the Minister for the Environment, Heritage and Local Government
- the Minister for Enterprise, Trade and Employment

Under the National Disability Plan the NDA plays an essential part in providing independent voice on the impact of the National Disability Strategy. The NDA has also been given important additional statutory functions under the Disability Act 2005. These include:

- Preparation of draft Codes of Practice in relation to accessible public buildings and services under Part 3 of the Disability Act.
- Monitoring compliance with the statutory employment target for the public sector under Part 5 of the Disability Act and recommending actions to be taken by public bodies to promote and achieve compliance.

Establishment of a Centre for Excellence in Universal Design

In preparing our own strategic plan for 2007 – 2009 we recognised how the effective implementation of the National Disability Strategy could improve the lives of people with disabilities in Irish society, and the important role that the NDA can play in helping to achieve that.

Disability has been identified as an important political issue in Ireland over the past number of years. A new Minister of State portfolio has been created entitled the Minister for Equality, Disability & Mental Health. The current Minister is John Maloney.

Towards 2016 Ten-Year Framework Social Partnership Agreement 2006-2015

Towards 2016 is a ten year framework agreement between the social partners that outlines a number of key objectives for economic and social development in Ireland.²⁵ Section 33 of the agreement concerns disability.

“The parties to this agreement share a vision of an Ireland where people with disabilities have, to the greatest extent possible, the opportunity to live a full life with their families and as part of their local community, free from discrimination.”

In order to achieve this Government and the social partners set out how they will work together until 2016 towards. Some of the long term goals set out in *Towards 2016* include commitments to ensuring that:

²⁵ “Towards 2016 Ten-Year Framework Social Partnership Agreement 2006-2015”. Available at http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Towards2016PartnershipAgreement.pdf.

- Every person with a disability would have access to an income which is sufficient to sustain an acceptable standard of living;
- Every person with a disability would, in conformity with their needs and abilities, have access to appropriate care, health, education, employment and training and social services;
- Every person with a disability would have access to public spaces, buildings, transport, information, advocacy and other public services and appropriate housing;
- Every person with a disability would be supported to enable them, as far as possible, to lead full and independent lives, to participate in work and in society and to maximise their potential, and;
- Carers would be acknowledged and supported in their caring role.

The Government and the social partners agreed that the National Disability Strategy represents a comprehensive Strategy for this aspect of the life cycle framework and that implementation of the Strategy should be the focus of policy over the lifetime of the agreement. An important aspect of *the Social Partnership Agreement* is the monitoring progress provisions contained in the document.²⁶ Under the Agreement progress reports will be prepared on the sectoral plans after 3 years and a review of the *Disability Act* is due after 5 years.

It was also agreed that the sectoral plans will include monitoring and review procedures. Government Departments are also required to set out in the sectoral plans the actions that will be taken to monitor the compliance of state agencies and other relevant service providers with the provisions of the *Disability Act 2005*. The Government agreed to revise the Cabinet Handbook in order to include a requirement that all substantive memoranda submitted to Government consider the impact on people with disabilities. In the Agreement there was a commitment to creating a National Carers' Strategy, It is planned that this strategy will focus on supporting informal and family carers in the community and will deal with issues such as transport and some labour market issues.²⁷

There was a commitment to developing the Strategy by the end of 2007; however, the strategy has yet to be developed. However, the Government have engaged in a consultation process on the strategy.

Programme for Government 2007-2012

The Government did include specific disability issues in its Programme for Government in July 2007. The Government stated that it has "... determined to continue to prioritise the interests of people with disabilities over the next five years, through a series of significant measures."²⁸ The Government's commitment to disability the disability agenda "... is driven and managed from a whole Government perspective and it will be overseen and supported by the Department of the Taoiseach."²⁹ As part of this the Government, will for each year of the Programme for Government, set out the objectives and outcomes to be reached in the

²⁶ "Towards 2016 Ten-Year Framework Social Partnership Agreement 2006-2015" at 69.

²⁷ See the Carers Association website at: http://www.carersireland.com/carers_consultation.html.

²⁸ "Programme for Government: A Blueprint for Ireland's Future 2007-2012" July 2007. Available at: http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Eng%20Prog%20for%20Gov.pdf.

²⁹ *Ibid*, at 55.

National Disability Strategy. The Governments approach is to be monitored properly and there is a commitment to achieving at least half of the strategy is implemented by 2010.³⁰

There was a commitment in the Programme for Government to complete the roll out of the *Education for Persons with Special Educational Needs Act*, which will give all children with special needs the right to an Individual Education Plan to ensure the best outcome for them, and a commitment to creating a new appeals procedure.³¹ There was also a pledge to ensure that all teachers and assistants have access to specialist training and provide for improved access to lifelong learning for adults with disabilities.

In terms of enterprise and employment there was a commitment by the Government to put in place a comprehensive employment strategy for people with disabilities. This strategy is aimed to ensure employment of persons with disabilities within all sectors of the economy.³² There was also a fresh commitment to ensure that the quota for the employment of people with disabilities in the public sector was met. The Programme for Government 2007-2012 also stated that it was Government policy to allow people with disabilities to work without losing key essential medical card cover after 3 years.³³ According to the Programme it is also Government policy to ensure that people with disabilities have full access to accessible vocational training and provision of access to flexible and responsive supports and programmes to enable people with disabilities to gain, retain and progress in employment. The Programme for Government 2007-2012 also promised to boost disability employment by providing more funding to programmes such as the FÁS Wage Subsidy Scheme and the Workplace Equipment Adaptation grant (WEAG).³⁴

The Government also outlined other policy initiatives which will if achieved positively impact on persons with disabilities seeking employment. In terms of the environment & local government there was a promise to make public spaces more accessible.³⁵ There was also a promise to enforce building regulations to ensure that appropriate accessibility for new buildings, as well as buildings which undergo major refurbishment.³⁶ There was also an undertaking the Government to ensure that developers are reminded at the pre-planning stage of their obligations to make buildings accessible. There were further disability policies outlined in respect of welfare with a focus on offering "... people with disabilities further improved pathways to participation in employment or education, (and in) avoiding the benefits trap."³⁷ The Government also confirmed their commitment to implementing the strategy for making public transport accessible, with detailed actions for implementation in the areas of air, bus, taxi, rail and sea transport.³⁸ Part of this strategy will ensure all public transport is accessible and that cities have 100% wheelchair accessible taxi fleets.

Disability Law

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*, at 56.

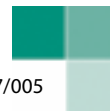
³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*



Key Pieces of Legislation

The primary pieces of Irish legislation concerned with disability and employment are as follows:

- *Employment Equality Act 1998*
- *Employment Equality Act 2004*
- *Equal Status Acts 2000*
- *Disability Act 2005*

The most important of these in the employment context is the Employment Equality Act 1998, as amended by the Equality Act 2004. The Equal Status Act 2000 is concerned with discrimination in the provision of goods and services, for example in education. The 1998 Act was amended by the 2004 Act in order for Ireland to transpose the Framework Directive Establishing a General Framework for Equal Treatment in Employment and Education (Directive 2000/78/EC). The *Employment Equality Act 1998* provides that it is illegal to discriminate in relation to pay and non pay issues in the employment context. This Act covers 9 protected grounds among which disability is included. Cases of discrimination in employment are heard at first instance by the Equality Tribunal, an independent and quasi-judicial forum whose decisions are legally binding, and on appeal in the Labour Court. A further appeal on a point of law only can be taken from the Labour Court to the High Court.

The following are the remedies which can be provided by the Equality Tribunal and or the Labour Court:

- An order for compensation;
- An order for equal treatment;
- An order that a person or persons take a course of action which is so specified;
- An order for re-engagement or re-instatement

Section 2 of the 1998 Act provides a definition of disability which is medical definition in nature. It has been widely interpreted by Irish tribunals. For example, in *Fernandez v. Cable & Wireless EE/2001/199*, an Equality Officer of the Equality Tribunal held that a kidney infection amounted to a disability within the 1998 Act and accordingly an onus lay on the employer to provide reasonable accommodation. This is noteworthy given the lack of a definition of disability in the Framework Directive and the recent judgment of the European Court of Justice *Chacon Navas v. Eurest Colectividades SA*, Cases C-13/05 which held in order for an illness to fall within the concept of 'disability', it must therefore be probable that it will last for a long time. The European Court of Justice concluded that there was nothing in Directive 2000/78 to suggest that workers are protected by the prohibition of discrimination on grounds of disability as soon as they develop any type of sickness.

The 1998 Act prohibits direct and indirect discrimination, harassment and victimisation on the ground of disability. The definition of discrimination includes discrimination which can be imputed to an individual. It remains to be seen whether the definition can be expanded to include discrimination by association with a person with a disability as was established in the recent European Court of Justice decision in *Coleman v Attridge Law*.³⁹ It is an implied term of all employment contracts that employees with a disability are entitled to equal

³⁹ Case C-303/06, decision of the Grand Chamber of 17 July 2008.

remuneration for like work when compared with an employee without a disability or a different disability than the employee with a disability. However, it is permissible for an employer to pay an employee with a disability less during a particular period if the amount of similar work done, or which would reasonably be expected to be done, during that period by an employee without the disability.

The Employment Equality Act 1998 also allows for positive action measures to prevent or compensate for disadvantage linked to disability.

Section 16 (1) of the 1998 as amended by the 2004 Act provides that an employer is not required to recruit, retain, train or promote a person who will not, or is not available to, carry out the duties of a position or who is not fully competent to carry out the duties concerned. However, an employee with a disability is considered to be competent to undertake the duties if he or she can do so if provided with reasonable accommodation (in the form of special treatment or facilities) by his or her employer which does not amount to more than a disproportionate burden to his employer.⁴⁰ Section 16(3) of the Act requires the employer to consider what, if any, special treatment or facilities may be available by which the employee can become fully capable once the provision of such treatment or facilities does not impose a disproportionate burden on the employer. This is the duty of reasonable accommodation. It is noteworthy that unlike the United Kingdom, failure to provide reasonable accommodation does not amount to discrimination of itself. In other words, failure to provide reasonable accommodation is not a free standing or separate cause of action. Instead, it operates where an employer seeks to rely on section 16(1) so as to justify treating an employee with a disability less favourably than an able bodied employee. Where an employer has failed to consider or provide reasonable accommodation, he or she cannot rely on the section 16(1) defence that the employee with a disability is not competent to undertake the duties associated with a particular employment. It is interesting to note that section 4 of the Equal Status Act 2000 expressly provides that a service provider's failure to reasonably accommodate a person with a disability is discrimination of itself.

The 1998 Act covers discrimination in the following areas of employment:

- Access to employment;
- Conditions of employment
- Pay;
- Training or experience for or in relation to employment;
- Promotion or re-grading;
- Classification of posts
- Dismissal⁴¹

Part 5 of the *Disability Act 2005* obliges public bodies to as far as practicable to take all reasonable measures to support and promote the employment of people with disabilities. Such bodies must comply with this provision unless there are good reasons. The target is to employ 3% of employees with disabilities. This legal

⁴⁰ This was amended by the Equality Act 2004 to disproportionate burden as required by the Framework Directive. Prior to July 2004, there was a duty on an employer to provide reasonable accommodation where this was not more than a nominal cost to the employer.

⁴¹ Section 46 of the Equality Act 2004 transferred jurisdiction in cases of dismissal from the Labour Court to the Equality Authority at first instance. In a recent determination of the Equality Tribunal, *Kavanagh v. Aviance* (DEC-2007-039), an Equality Officer awarded compensation for discrimination and dismissal under separate heads of compensation. For a discussion of this case see Bolger and Bruton "Recent Developments in Employment Litigation" [2008] 5(1) *Irish Employment Law Journal* 19.



requirement took effect in 2006. Under the *Disability Act 2005* the National Disability Authority reports on the progress of public bodies in realising the obligations. Monitoring Committees in all Government Departments oversee the public bodies under them and the NDA base their report on the information received from these Committees.

The Department of Justice, Equality and Law Reform contains a Disability Equality Unit. The role of the unit is to develop the legal framework in line with Government policy to support the equal participation in society of people with disabilities. The Disability Equality Unit also participates and monitors progress in the development of international equality policy at European Union, Council of Europe and United Nations level.

1.4 Type and quality of jobs (summary)

Supported Employment

FÁS is Ireland's National Training and Employment Authority. It oversees the Supported Employment Programme, which is an active labour market initiative to assist persons with a disability to secure employment in the open labour market. The Supported Employment Programme aims to integrate persons with disabilities into paid employment in the open labour market. In Ireland this is achieved by supporting the integration process in the workplace and through meeting the labour requirements of employers.

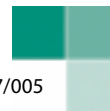
According to FÁS Supported Employment has 4 main phases:

- A Needs Assessment
- Job Sourcing and Development
- Matching the jobseeker with a suitable employer.
- Aftercare and Follow-up

FÁS provide this service to all persons with a disability who are considered to be ready for employment. Under the Supported Employment Programme, job readiness is defined in terms of "a person who has the necessary training, education, motivation and ability to pursue work/career in the open labour market and if needed, has the transport to get to and from work".⁴²

The Supported Employment Programme provides a job coach. A job coach will provide assistance to both the employer and the person looking for employment. In Ireland the Supported Employment Programmes operate through a number of local organisations. These organisations are often from voluntary and community sectors. People secure different types of jobs through supported employment. A job coach and a jobseeker agree on the type of work they are interested in. The type of employment is largely determined the skills and interests of the jobseeker. Once employment is secured the job coach can provide ongoing support. This support may involve training on the job and provision of support immediately following employment. It may also involve liaison with the employee or employer.

⁴² See the FÁS website at: <http://www.fas.ie/en/Communities/Supported+Employment.htm>.



Sheltered Employment

Supported, sheltered or protected work settings are a prevalent feature of the employment of people with mental or emotional impairments in Ireland.⁴³ The employment rate of persons in this group is very low 75% of this group do not hold a job according to the census (74%) and the Quarterly National Household Survey (78%), and approximately 40% of those not in employment report that they would require assistance to work.⁴⁴ For a lot of people with these disabilities who go to work, the primary income comes from social welfare rather than earnings.

According to the National Intellectual Disability Database in 2007 there were a total of 4315 attending a sheltered work centre.⁴⁵ This statistic is breaks down into 1817 residents and 2498 day attendees.⁴⁶ In respect of the long-term training schemes, there were a total of 124 persons attending this scheme.⁴⁷ This statistic breaks down into 24 resident attendees and 100 day attendees.⁴⁸

There is a concern in relation to sheltered employment in Ireland. The National Intellectual Disability Database shows that only a small minority of persons in receipt of sheltered employment services are considered to be in employment. The majority of persons are in what is classified as sheltered work. The concern with this is that the normal employment relationship is not to persons classified as such. Persons falling into this category are not entitled to avail of the national minimum wage in the Republic of Ireland. As the National Disability Authority noted the earnings of these persons are nominal.

David Begg the General Secretary of the Irish Congress of Trade Unions (ICTU) called for the issue to be investigated by the Equality Tribunal.⁴⁹ He was very critical of the failure of action on this issue which was on the agenda of the partnership talks in 2002. A document

⁴³ "How far towards equality? Measuring how equally people with disabilities are included in Irish Society" National Disability Authority (2005). Available at: <http://www.nda.ie/cntmgmtnew.nsf/0/5419C80ECE72C05D802570C8003E1D36?OpenDocument> chapter 5, at 64.

⁴⁴ For a discussion of these statistics see "How far towards equality? Measuring how equally people with disabilities are included in Irish Society" National Disability Authority (2005). Available at: <http://www.nda.ie/cntmgmtnew.nsf/0/5419C80ECE72C05D802570C8003E1D36?OpenDocument> chapter 5, at 64.

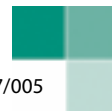
⁴⁵ Kelly, Kelly and Craig "Annual Report of the National Intellectual Disability Database Committee 2007" (2007) (Dublin: Health Research Board). Available at: http://www.hrb.ie/display_content.php?page_id=72&stream=1&div_id=3. The Intellectual Disability Database includes people with a mild intellectual disability where they use or are considered to require an intellectual disability services. A higher proportion of persons with mild disabilities who are registered on the database are in open employment. It is noteworthy that it is likely that adults with a mild intellectual disability who are not registered on the database are less likely to hold a job than the population at large.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ "ICTU alleges bias against disabled in workshops" Irish Times 14 April 2008. Available at: <http://www.irishtimes.com/newspaper/ireland/2008/0414/1208115797535.html>. Inclusion Ireland supported David Begg in his criticism see: <http://www.inclusionireland.ie/InclusionIrelandwelcomesICTUcallforInvestigationintoShelteredWorkshops.asp>.



entitled *Code of Practice for Sheltered Occupational Services* was produced in 2004, however, there has been no progress on this issue as of yet. The National Disability Authority recommended that the Department of Enterprise, Trade and Employment should develop and implement a policy that supports these enterprises which have been established specifically to employ people with disabilities. The National Disability Authority formed the opinion that the *Code of Practice for Sheltered Occupational Services* as such could not be implemented without a comprehensive policy that supports these enterprises.⁵⁰

The National Disability Authority in a Report in 2005 identified that there was an “overwhelmingly segregated” approach to the training of people with disabilities.⁵¹ The three main training schemes are as follows:

- Rehabilitation training funded by the Department of Health and Children
- FÁS training contracted to specialist providers of training for people with disabilities
- FÁS mainstream training

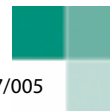
The NDA identified that “[as] many disability service providers offer a spectrum of employment-related services, there is considerable overlap between the organisations providing rehabilitation training, and those providing FÁS-funded specialist training.”⁵² the NDA identified that until there was a common way of measuring disability at different points as people move through the FÁS system, it is currently impossible to precisely compare how well disabled trainees do in mainstream training or whether they perform as well as non-disabled trainees.⁵³

⁵⁰ “Towards Best Practice in the Provision of Further Education, Employment and Training Services for People with Disabilities in Ireland” National Disability Authority of Ireland. Recommendation 6, at page 84. Available at: [http://www.nda.ie/cntmgmtnew.nsf/0/D1D9E829E33A5FE980256E630034E03B/\\$File/education.pdf](http://www.nda.ie/cntmgmtnew.nsf/0/D1D9E829E33A5FE980256E630034E03B/$File/education.pdf).

⁵¹ “How far towards equality? Measuring how equally people with disabilities are included in Irish Society” National Disability Authority (2005) at 65. Available at: <http://www.nda.ie/cntmgmtnew.nsf/0/5419C80ECE72C05D802570C8003E1D36?OpenDocument>.

⁵² Ibid.

⁵³ Ibid.



PART TWO: SPECIFIC EXAMPLES

2.1 Reasonable accommodation in the workplace

From case law on the issue, the following non-exhaustive examples can be provided of suitable forms of reasonable accommodation in the workplace:

- Allowing a disabled employee to take time off work to attend medical appointments in connection with their condition which amounts to a disability;
- Providing car-parking facilities
- Carrying out a medical assessment on the disabled employee and considering the findings of this medical report in light of the duty to provide reasonable accommodation in the workplace;
- Providing induction training suitable for the disabled employee;
- Providing suitable specialised equipment
- Adapting premises, by providing wider doors, a lift, etc so as to make them accessible for disabled employees;
- Provision of a job coach for a number of months;
- Allowing disabled employees to work flexible hours;
- Allowing an employee to ease his or her way back into the workplace post illness connected with his or her disability
- Providing accessible premises for job interviews

In addition, IBEC and ICTU cite a number of practical examples of reasonable accommodation and their cost.⁵⁴ For example, a headset for a phone could be purchased and which would allow for an insurance agent with cerebral palsy to write while talking. The cost of this is approximately €19.00. A timer with an indicator light could be provided for a medical technician who is deaf and enable her to perform laboratory tests required for her job, at a cost of €27.00.

2.2 Other activation policies

In “IBEC ICTU Workway Disability and Employment Guidelines” a number of examples, of best practice a number examples of best practice in the employment were outlined.⁵⁵ The first example involved employment practices in Merit Medical Ireland Ltd, which is a subsidiary of an American multinational based in Utah. In 2001 the human resources manager agreed to integrate a number of persons with hearing impairments into the work force using control and support such as interpretation. This was done in partnership with Tony Dolan of the National Association for the Deaf (NAD). Merit Medical agreed to participate, and interviewed four candidates at the time, and Tony Dolan as interpreter. The four candidates were hired following the normal process of reference checking, attending a medical examination etc. Exactly the same criteria were used as for all candidates. The

⁵⁴ IBEC ICTU Workway Disability and Employment Guidelines” (2004) Appendix B at 66-69. Available at: http://www.fas.ie/NR/rdonlyres/94BD28FA-8B5C-418B-84B0-91319B44466D/0/Workway_Disability_Employment_Guidelines.pdf

⁵⁵ “IBEC ICTU Workway Disability and Employment Guidelines” (2004) Appendix B at 66-69. Available at: http://www.fas.ie/NR/rdonlyres/94BD28FA-8B5C-418B-84B0-91319B44466D/0/Workway_Disability_Employment_Guidelines.pdf.

quality of their applications, qualifications, work experience and skills was examined. The ordinary format was used for the interview with the assistance of an interpreter.

Since this imitative Merit Medical 5% of Merits workforce are persons with disabilities. The company in this case used existing employees with sign language skills to assist on the training of people with a hearing impairment and making them aware of the policies and procedures of the company. This assisted the employees in understanding the information contained in the manual and in the on the job training. The company also adapted their health and safety procedures to provide for an informal buddy system where for example, if the fire alarm sounds, the team leader or designate will alert persons with a hearing impairment about the alarm.

2.3 One example of best practice

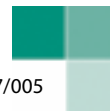
IBEC and ICTU provide the following example of suitable reasonable accommodation in operation in the workplace which is an example of best practice.⁵⁶ A employee with a cleaning company works in an office building has a prosthetic leg which enables him to walk but makes climbing steps painful and difficult. He is able to perform the essential functions of the job without encountering any problems but he cannot perform the ancillary function of cleaning the steps located through the office building. It is the function of another staff member to clean a small staff room, a task which the employee with a disability can complete with ease. In consultation with the two employees concerned, the supervisor switches the ancillary functions performed by these two employees.

It is also clear that reasonable accommodation is a duty imposed on employers. We submit that the judgment of Judge Dunne of the Circuit Court in *Niamh Humphries v. Westwood Fitness Club*⁵⁷ is a useful example of best practice for employers on the issue:

"At a minimum, however, an employer, should ensure that he or she is in full possession of all the material facts concerning the employee's condition and that the employee is given fair notice that the question of his or her dismissal for incapacity is being considered. The employee must also be allowed an opportunity to influence the employer's decision."

⁵⁶ IBEC ICTU Workway Disability and Employment Guidelines" (2004) Appendix B at 66-69. Available at: http://www.fas.ie/NR/rdonlyres/94BD28FA-8B5C-418B-84B0-91319B44466D/0/Workway_Disability_Employment_Guidelines.pdf

⁵⁷ [2004] 15 E.L.R.



PART THREE: SUMMARY INFORMATION

3.1 Conclusions and recommendations (summary)

It is clear from the research outlined in this paper that people with disabilities are considerably less likely to participate in the labour market in Ireland.

There is a need to increase information as to the supports and funding available with regard to the employment of persons with disabilities. Currently the information is provided in a haphazard way and a more mainstreamed approach would certainly make the integration of persons with disabilities into the work place an easier process.⁵⁸

There is a clear requirement for in-depth study to be completed on the provision of positive action in the sphere of employment of individuals with disabilities. This research could provide a discussion on best practice models for positive actions for differing disabilities and employment areas.

It would be useful for an examination of the promotion prospects for individuals with disabilities when they are in the workplace.

The issue of reasonable accommodation as a non-free standing or independent form of discrimination needs to be considered in detail.

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⁵⁸ This was a criticism voiced by Merit Medical Ireland in respect of their experiences of employing hearing impaired persons. See “IBEC ICTU Workway Disability and Employment Guidelines” (2004) Appendix B at 66-69. Available at: http://www.fas.ie/NR/rdonlyres/94BD28FA-8B5C-418B-84B0-91319B44466D/0/Workway_Disability_Employment_Guidelines.pdf.

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