

Diversity & Inclusion: Fitness for Work Through a Personalized Work Plan for Workers with Disabilities and Chronic Diseases According to ISO 30415/2021

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SUMMARY

The recent standard ISO 30415-2021 - Human resources management - Diversity and inclusion - was developed internationally within the technical committee ISO/TC 260 "Human resources management" (Working group WG 8 "Diversity and inclusion") and emphasizes the need for measures to create a work environment that is inclusive of diversity (e.g. in terms of health, gender, age, ethnicity, culture). Developing an inclusive work environment requires ongoing commitment and engagement from the entire organization regarding policies, processes, organizational practices, and individual behavior. As far as the role of occupational medicine is concerned, this direction can be supported by the correct management of disabled workers and workers with chronic pathologies that affect their fitness for duty. The "reasonable accommodation" is the way by which first the European Union and then the United Nations intended to support the inclusion of people with disabilities in the world of work. The Personalized Work Plan includes different approaches (organizational, technical, procedural) meant for modifying the work activity envisaged for the disabled worker or for any worker suffering from chronic diseases or dysfunctions. The adoption of the Personalized Work Plan implies the effort of redesigning the workstation, the work procedures, or even the planning of different micro and macro tasks etc., in order to prioritize the adaptation of the working environment to the worker, and to preserve the value of the worker's productivity according to the principle of reasonable accommodation.

1. INTRODUCTION

Several factors may lead to difficulties in placing or transferring a worker to a job based on their health condition. These reasons can negatively affect

their access to the world of work, even for workers with certified occupational diseases or injuries, when they apply for a dedicated and safe job under the supervision of Public Health institutions. The recent standard ISO 30415-2021 - Human resources

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management - Diversity and inclusion - was developed internationally within the framework of the technical committee ISO/TC 260 "Human resources management" (Working group WG 8 "Diversity and inclusion") and emphasizes the need for measures in order to create a work environment that is inclusive of diversity (e.g. in terms of health, gender, age, ethnicity, culture) [1].

Universal values enshrined in the United Nations Convention on the Rights of Persons with Disabilities (CRPD), as well as the European directives, the ICOH ethical guidelines, the specific legal standards, and, recently, ISO 30415:2021 on Diversity & Inclusion, require employers to ensure that workers with any degree of pathology, disability or functional limitations can be placed and relocated into a work environment, that may be adequately and reasonably adapted to their specific health conditions. [2, 3] On this basis, many countries have each adopted specific legislation for the inclusion and integration of people recognized as disabled into the world of work through support services and targeted placement.

In Italy, it has been established that the employer – in order to fulfill his obligations – can draw on public support measures, which can be activated by the "National Institute for Insurance against Accidents at Work" (INAIL) for the reimbursement of expenses for the reintegration of workers who have been victims of accidents and illnesses. In particular, INAIL lines of intervention move along three axes: (i) overcoming and removing architectural barriers in the workplace; (ii) adapting and arranging of workstations; (iii) specific training and redesigning workplaces based on qualifications.

2. THE INTERNATIONAL AND NATIONAL CONTEXT

2.1. ISO 30415:2021 Standard

In May 2021, the ISO (International Standard Organization) published the first International Certification on "Diversity & Inclusion", ISO 30415:2021. The words "Diversity and Inclusion" (D&I) contain an essential concept for all companies: the importance - and the need - to integrate

and give value to people despite their diversity and specificity (by gender, age, ethnicity, culture, and health), creating a truly inclusive work environment. ISO 30415 calls on companies to initiate a process of continuous improvement of inclusive capabilities and enhancement of diversity.

ISO 30415 is aimed at small and large companies of all types (public, private, non-profit) and sectors and involves all corporate stakeholders starting from the company governance. The goal is to establish a series of principles, roles, actions, policies, processes, and measures that make it possible to enhance diversity and support the highest level of inclusiveness in the company.

The principles that permeate this directive, even though they go far beyond mere health aspects, overlaps well with occupational medicine's goals in integrating and reintegrating workers suffering from chronic and disabling diseases into the workplace.

2.2. The "Reasonable Accommodation"

Directive 2000/78/EC placed the protection of the equal dignity of all human beings at the heart of European Union policy, including equal treatment in terms of employment and working conditions and the removal of barriers that hinder the full inclusion of persons with disabilities.

The provision of "reasonable solutions," identified by art. 5 of the same Directive in order to effectively ensure equal treatment, provided for the adoption by employers of some measures aimed at arranging the workplace according to disability.

In line with the sensitivity outlined at the European level, the United Nations Convention "on the rights of persons with disabilities" – adopted in New York on 13 December 2006 – extended the scope of the obligation introduced by European Directive no. 2000/78/EC, which provides for "reasonable accommodations" in corporate bodies consisting of "necessary and appropriate modifications and adjustments" to ensure the "right to work of people with disabilities, on an equal basis with others".

The sentence of the Court of Justice of the European Union (Second Section) of 11 April 2013, in which the judges ruled on an interpretative doubt stemming from Danish legislation regarding the

extension of the notion, clarified that the term «disabled» in the Council Directive 2000/78/EC is to be interpreted as encompassing a pathological condition caused by a diagnosed illness which is curable or incurable, where such disease entails a limitation, resulting in particular from physical, mental or psychological impairments, which, in interaction with barriers of a different nature, may hinder a person's full and effective participation in professional life on an equal basis with other workers, and this limitation is of long duration.

In practice, this means that the measure of “reasonable accommodation” must be applied not only to those who are recognized as disabled and handicapped by specific public bodies in accordance with the legislation of each country but also to any worker affected by a disease that compromises their full fitness for work. It is, therefore, irrelevant whether the disability is certified, and in any case, there is no minimum threshold.

To reinforce this approach, we can read, in the act of accession of the European Union to the United Nations Convention on the rights of disabled persons, in December 2010 in art. 1: “Persons with disabilities are those with long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder full and effective participation in society on an equal basis with others”. Reasonable accommodation, therefore, makes it possible for a worker with a disability, who is qualified for a specific job position, to neutralize the disadvantage resulting from his or her state of health, allowing him to apply for a job and to carry out his work in conditions of equality with other workers.

In some countries, such as the United States and the United Kingdom, not only are there legal provisions (The Americans with Disabilities Act 1990 [4] and the UK Equality Act 2010 [5]), but also specific bodies have been created to implement these provisions specifically. For example, in the United States, the US Equal Employment Opportunity Commission-ADA (EEOC) and the Job Accommodation Network (JAN); in the UK, The Equality and Human Rights Co.

In different national legal contexts, the employer's legal obligations on “reasonable accommodation”

can sometimes face obstacles related to privacy issues. For example, in some EU Member States, (Austria, the Czech Republic, Denmark, Estonia, France, Ireland, Norway, Portugal, and Sweden), the obligation to provide reasonable accommodation only arises when the employer is aware, or “should be aware”, of the existence of the disability. Therefore, when the disability manifests, the employer is immediately subject to the obligation. However, it is unclear in which cases he “should have known” about it, as there are privacy laws and specific provisions for medical examinations as part of a health monitoring program by an occupational health profession. In Estonia, the obligation arises only when the employer receives a medical certificate. In Bulgaria and Luxembourg, the duty arises when the health services or public authorities inform the employer about the health situation and the need to find appropriate solutions. In other countries such as Cyprus, the Netherlands, Poland, and Spain, disclosure by the data subject is required [6].

In Italy, the Legislative Decree n. 81/2008 (establishing the Consolidated Act on health and safety at work, the TU 81 of 2008) [7] provides that the occupational physician issues a certificate of “fitness for duty” to be formally transmitted to the employer. However, the indications accompanying this certificate, which is not harmoniously specified in the national legislation, does not automatically oblige the employer to find reasonable accommodation for the worker.

3. THE CENTRALITY OF THE OCCUPATIONAL PHYSICIAN

3.1. Fitness for Work

Worker disability is considered from different angles and assessed differently in different contexts. For example, the medico-legal commissions that recognize the state of disability have as their main objective to assess the residual working capacity, in its various aspects (psychic and relational activities, posture, locomotion and functionality of the limbs, movement capacity, complex or with particular types of work organization, etc.), above all in order to allocate a wide range of social, economic, rehabilitative

benefits linked to the national insurance system. The Occupational Physician, on the other hand, is mainly concerned with making sure that the worker's physical and mental condition is not altered or, in the case of the disabled, aggravated by a hazard emanating from the work activity or the work environment, which consequently leads to prescriptions or restrictions on the worker's ability to work.

Fitness for work represents one of the main epicuric outcomes of the health surveillance carried out by the Occupational Health Physician based on the risks to which workers are exposed. The European directives from which the individual countries' regulations on occupational health and safety are derived never speak of fitness for work/Fitness for work. Directive 89/391/EEC [8] states that the employer must "adapt work to man" and not vice versa. The ICOH Code of Ethics [9] provides that the objectives of occupational medicine and the methods and procedures of health surveillance must be clearly defined, with the adaptation of the workplace to the worker being the primary concern.

As far as this activity is concerned, the international medical literature to date has not yet made a significant methodological contribution, especially in clarifying the contents of this important professional aspect of the daily practice of occupational physicians. Furthermore, the lack of specific definitions relating to the judgment of suitability for the specific job and the scarcity of EBM support from the international scientific literature make the Scientific Societies of Occupational Medicine guidelines even more important. In particular, the document called "Health Surveillance Guidelines" produced by the Italian Society of Occupational Medicine in 2017 [10] defines "fitness for duty" as the result of a "compatibility assessment" between two quantities: the state of health of the worker or the predisposition to the disease with respect to the risk profile given by the exposure to occupational hazards capable of directly causing, aggravating a disease or triggering a particular state susceptible to a pathological evolution.

In this definition, the assessment of the compatibility of the work environment with the human being is considered paramount and not the other way around. It follows that, in cases where

the comparison of compatibility raises doubts, the assessment process to formulate the derived judgment of suitability must lead to finding adaptive solutions to the work environment before attention is focused on the limitations of the work.

The Occupational Physician, during the health surveillance activity, may have to express an opinion on whether or not workers with disabilities and significant impairments are suitable for the job as part of the health surveillance process. In this case, he or she must assess whether the work task, with its associated risks, is compatible with the conditions of the worker's biological validity and, if so, identify any regulations or limitations.

An important part of evaluating the conditions of "disability", which conditions limitation to the specific task, is that relating to the functioning of the organs and systems. In practice, the aforementioned "compatibility assessment" should not only concern the pathology itself but also what diseases produce in terms of reduction of expected functionality. More often, limited functionality is what most influences the judgment of compatibility with the risks of the specific job. The two elements (diagnosis and function) are cited by two different WHO documents, the ICD 11 [11] and the ICF [12]. Health conditions (diseases, ailments, injuries, etc.) are mainly classified in the ICD-11 (International Statistical Classification of Diseases and Related Health Problems), which provides an etiological reference model. In the ICF, on the other hand, functioning and disability are classified in the context of the health conditions that play the greatest role in assessing incapacity for work and working capacity.

It is, therefore, often necessary to evaluate some elements of the state of health relating to the psycho-physical integrity of the individual ("biological validity"), as in specific cases, elements relating to the "work ability".

The apparent difficulties related to the expression of fitness for work, which directly concerns the occupational physician, are flanked by those of the production manager, who is supposed to translate the indications emerging from the fitness for work certificate into daily operational practice. It is known how difficult it is to determine tasks and

activities to be entrusted to workers with limitations to protect themselves from occupational risks while ensuring productive work. It is, therefore, necessary to develop methodological criteria, procedures and operational solutions for the reintegration of persons with disabilities, as well as the redesign of tasks, activities, working methods, and some other organizational aspects for persons with chronic diseases that require restrictions and prescriptions.

3.2. Personalized Work Plan to Express Fitness for Work for a Specific Job with Limitations

In our experience, an operational methodology that has proven very useful for reintegrating workers with pathologies/disabilities into the labor market is case management through personalized work plans [13, 14, 15, 16].

The Fitness for work (assessment of compatibility between the disability or chronic pathology and the workplace) is expressed through a work plan presented by the employer, based on the indications of the occupational physician, and taking into account the health/proneness of the worker, which modulates/avoids the activities/tasks of the job that could be harmful or aggravate the health condition of the worker, up to the limit of individual technical manipulations.

The assumptions underlying this methodological approach to the formulation of fit for work are essentially represented by the considerable difficulty, often associated with the lack of guarantees of maintaining productivity on the one hand and acceptability/professional satisfaction on the other, in moving the subjects with limitations/prescriptions on suitability for other tasks or different jobs, often less qualified also in terms of professional commitment, as is often the case, with a critical limitation thus being managed as incapacity and consequent job change. The work plan represents a detailed analysis, conducted with the help of procedures agreed upon with the technical figures involved (Responsible for safety, Human Resources, etc.), to verify the working conditions at risk, thus allowing a re-modulation of the activity based on the indications of the occupational physician. In practice, the activities that make up a given workplace can be redesigned by combining

those that are still compatible with those that are made compatible through certain technical (e.g. PPE, changes to tools), organizational (e.g. times, routes, breaks) or procedural interventions.

To ensure both the effectiveness of the intervention and its continuity over time, the operating procedure involves the involvement of all company protagonists (including the occupational physician and the safety officer) as well as the workers themselves with significant impairments and partial unfitness. The role of the occupational physician in the reintegration into work is of fundamental importance in assessing the compatibility between the functional clinical condition and the risks and contents of the work activity.

The risk assessment at work represents a fundamental prerequisite for expressing any suitability for work for the relocation of workers with pathologies or disabilities through the work plan. Therefore, whenever possible (e.g., ergonomic risk assessment), individual workstations should be assessed with specific indications, e.g. ergonomic upper limb index, with a risk classification for the single anatomical districts (green-yellow-red for shoulder, elbow, wrist), NIOSH lifting index, highlighting which specific gesture or posture has the greatest impact.

Ultimately, it is considered necessary to provide at least the following activities: (i) classification of pathology and relative degree of functional impairment by the occupational physician in a multidisciplinary approach with professionals from other disciplines (orthopedists, oncologists, psychiatrists, surgeons, etc.); (ii) identification of a position/task/activity compatible with the health conditions among those available.

The personalized work plan drawn up starting from a Common Work Plan relating to the tasks to be performed, based on the worker's health conditions, is then finally submitted again to the opinion of the occupational physician, who might thus re-formulate a full fitness for work (specifying the reference to the personalized work activity plan).

The methodology for managing Fitness for work through verifying the compatibility of work plans is also reflected in the Guidelines for Health Surveillance of the Italian Society of Occupational Medicine (2017) [10], in the Resolution of the Tuscany

Region n. 421 of 04-16-2018 (Adoption of guidelines for the expression of the judgment of suitability of the Company Occupational Physician and the Commission under Article 41 paragraph 9 of Legislative Decree 81/08 and subsequent amendments on safety and health in the workplace) where in the attachment - Indications for Occupational Physicians and the commissions examining appeals under art. 41 paragraph 9 of Legislative Decree 81/08 where it reads: “...*the judgment of the Fitness for work can be expressed specifically to a personalized work plan, prepared for the worker by the employer in collaboration with the Occupational Physician, who avoids the inclusion of activities that could be harmful to the worker himself. This way, the expression of suitability judgments with limitations can be avoided. This initiative can be considered a good practice voluntarily adopted by the employer*” [17].

4. CONCLUSIONS

Based on our experience, the methodology of personalized work plans, through a multidisciplinary approach, helps the management of disabled and chronically ill workers with limitations in certain tasks and adopting reasonable adjustments. Furthermore, it can also contribute to the achievement of the International Certification on Diversity and Inclusion (ISO 30415:2021), at least in the section related to the achievement of adequate standards of management of health-related diversity.

It should be underlined that the work plan procedure should not be considered a one-off activity. On the contrary, the relocation of workers into work activities should be followed by subsequent and continuous monitoring in the context of health surveillance, from which further, more precise adjustments may result through medical feedback. In some cases, it is also necessary to evaluate the “work ability” and consider that there are examples and supports for an effective intervention [18-19].

For medium and large companies, it would be advisable to set up a professional figure who represents essential support for the job placement of people with disabilities and is an intermediary in managing work plans. This figure, called Disability Manager or Diversity Manager, would help to promote work

placement in the environmental context, being in charge of preparing customized projects for people with disabilities and solving problems related to the working conditions of workers with disabilities, and supporting the organization to make the participation of pathological workers valid, safe and profitable.

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