



# When Staff with Disabilities and Universities Meet: Some Reflections from an International and Comparative Perspective

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- If a university is a good employer for staff with disabilities, then it is likely to be a good employer for all its staff, with all their diversities.
- And that will contribute to making that university a good place to study for students with disabilities.

# Presentation

1. An analysis of the obligations found in the UN Convention on the Rights of Persons with Disabilities (CRPD) regarding the employment of staff at universities.
2. A case from the Netherlands involving disability discrimination against a university employee.
3. Key principles, actions and examples of good practice regarding the employment of staff with disabilities by universities.

# Obligations under the CRPD (1)

- Article 27 of the CRPD requires States Parties to recognise the right of persons with disabilities to work, on an equal basis with others.
- State Parties should adopt legislation which imposes relevant obligations on public and private sector employers, including universities.

# Obligations under the CRPD (2)

- Prohibiting discrimination on the basis of disability with regard to all matters and concerning all forms of employment.
- Protecting the rights of persons with disabilities, on an equal basis with others, to just and favourable working conditions, including equal opportunities and equal pay, safe and healthy working conditions, protection from harassment, and redress of grievances.
- Ensuring that reasonable accommodations are provided to persons with disabilities in the workplace.

# Obligations under the CRPD (3)

- General Comment No 8 on the CRPD:
- Non-discrimination and equality are core obligations of Article 27. They apply throughout the employment cycle, covering recruitment, hiring and employment, ongoing employment, training programmes, career advancement and exiting work.
- Four main forms of discrimination should be prohibited: direct discrimination, indirect discrimination, denial of a reasonable accommodation, harassment. Discrimination by association with someone with a disability should also be prohibited.

# Obligations under the CRPD (4)

- Denial of reasonable accommodation occurs when the necessary and appropriate individualised modifications, adjustments and supports, that do not involve a disproportionate or undue burden, are not implemented.
- Public and private employers need to have a clear, accessible and timely process for dealing with accommodation requests and, where a barrier is identified, two steps must be taken:

# Obligations under the CRPD (5)

1. The organisation should work with the individual to identify potential solutions to remove or avoid the barrier, including identifying the preferred solution of the person with a disability.
2. The organisation should implement the preferred solution, unless this would result in an undue burden. In that case, the organisation should implement another solution that does not impose such a burden, or implement the preferred solution to the extent possible without incurring the burden.



# Obligations under the CRPD (6)

- A failure by the organisation to implement these steps amounts, in itself, to a denial of reasonable accommodation.

# Obligations under the CRPD (7)

- Other issues addressed in the General comment: equal pay, the need for effective remedies, the content of collective bargaining agreements, consideration for promotion on an equal basis with others through fair, merit-based and transparent procedures, access to vocational training and accessible training courses.
- Employers should respect the privacy of workers with a disability, and must obtain their consent to share any disability or impairment-related information that is disclosed to them.

# Exploration of Case Law regarding University Staff with Disabilities

- In the Netherlands, the Equal Treatment of Disabled and Chronically Ill People Act has prohibited disability discrimination with regard to employment since 2003. It prohibits all the forms of discrimination referred to in the General comment, including a denial of a reasonable accommodation.
- The Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*) (NIHR) plays an important role in interpreting and applying equality legislation. It has a quasi-judicial task and hears individual complaints and issues Opinions.

# Opinion 2012-19 (1)

- The claimant was a woman who had a form of autism. She was employed by a Dutch university which seconded her to one of its research institutes.
- The claimant was not asked to work on external projects because other colleagues did not want to work with her.
- The claimant asked for accommodations, including receiving information in writing, working on tasks one at a time instead of working on more than one task at a time, and not being exposed to a hectic work environment with lots of work pressure and short deadlines.

# Opinion 2012-19 (2)

- Medical information which the Institute received confirmed the need for the accommodations.
- The Institute argued that, even with these accommodations, the claimant would not be able to carry out her job and, furthermore, it could not be expected to provide these accommodations.

# Opinion 2012-19 (3)

- The NIHR found that the assessment of the Institute that the claimant was not able to carry out her work could not be seen in isolation or separate from her disability.
- The NIHR held that the Institute had a duty to investigate whether the accommodations requested would allow the claimant to work on external projects, and had done this to an insufficient extent.
- Since the Institute had not done this, it could not determine that the claimant was not able to carry out her work.

# Opinion 2012-19 (4)

- The NIHR found that the Institute had not taken action against colleagues who refused to work with the claimant on projects.
- This meant the Institute had taken insufficient care to provide a workplace which was free from discrimination.

# Opinion 2012-19 (5)

- The NIHR concluded that the Institute had directly discriminated against the claimant and also failed to meet its obligations to provide a reasonable accommodation by failing to investigate sufficiently whether accommodations could be made.



# Themes common to cases of disability discrimination of staff at universities revealed by this case (1)

- The unsubstantiated claim that a person is not able to do the job because of their disability.
- The unsubstantiated claim that a reasonable accommodation is not possible or feasible.

# Themes common to cases of disability discrimination of staff at universities revealed by this case (2)

- A failure to investigate with the person with a disability whether a reasonable accommodation would allow her to do the job. In itself, this amounts to a failure to provide a reasonable accommodation.
- A failure to address discriminatory behaviour of colleagues and failure to remove barriers which prevent the worker with a disability from doing her job.

# Good Practice regarding the Employment of Staff with Disabilities

- Four Key Principles / Actions:
- “Nothing about us without us”
- Building disability inclusion into all policies
- Setting goals / targets and providing for transparent monitoring and reporting
- Support from leadership at a senior level

# “Nothing about us without us” (1)

- Designing disability-related policies with staff / students with disabilities is good for the university and good for staff / students with disabilities, as it results in better and more inclusive policies.
- Example: the Disability Inclusion Group (DIG) at the University of Queensland.
- Established in 2016 under the leadership of Prof. Paul Harpur.
- Applies the principle “Nothing about us without us” to all UQ business, meaning that decision-making, policy and programmes should not be made / done without the full and direct participation of staff and students with a disability.

# “Nothing about us without us” (2)

- DIG consists of staff and students with lived experience of disabilities as well as staff working in key areas within the university. The Chair must be a person with a disability.
- Terms of Reference:  
[https://staff.uq.edu.au/files/83449/Terms%20of%20Reference\\_UQ%20DIG\\_updatedMarch2022.pdf](https://staff.uq.edu.au/files/83449/Terms%20of%20Reference_UQ%20DIG_updatedMarch2022.pdf)

# “Nothing about us without us”(3)

- The Disability Equality Steering Group at University College London.
- This group represents the views of Disabled staff and staff who are closely associated with Disabled People, and acts as a body of expertise on disability issues at UCL
- Terms of reference:

<https://www.ucl.ac.uk/human-resources/equality-diversity-inclusion-committees-and-networks/disability-equality-steering-group>

# “Nothing about us without us” (4)

- Important to avoid “advocacy exhaustion” at both the individual and systemic level and to involve “allies” who can help to facilitate (systemic cultural) change.



- Photo l to r: Prof. Elizabeth Kendall, Prof. Paul Harper and his dog Sean, Prof. Lisa Waddington



# Disability Inclusion must be built into all policies

- Disability inclusion must not be an add-on, but be part of the day-to-day to activities of staff.

# Set Goals / Targets and have Transparent Monitoring and Reporting (1)

- Set goal / targets; identify who is responsible for taking action; and set deadlines e.g through a Disability Action Plan / Programme.

# Set Goals / Targets and have Transparent Monitoring and Reporting (2)

- Many Universities have Disability Action Plans or Programmes:
- The University of Queensland, Disability Action Plan, 2023-2025  
<https://staff.uq.edu.au/files/110634/Disability%20Action%20Plan%20V8b.pdf>
- University of Leeds Disability Equality Framework 2021  
[https://equality.leeds.ac.uk/governance\\_strategy\\_policy/equality-and-inclusion-frameworks/disability-equality-framework-2021/#:~:text=The%20aim%20of%20our%20Disability,systems%20and%20processes%20is%20essential](https://equality.leeds.ac.uk/governance_strategy_policy/equality-and-inclusion-frameworks/disability-equality-framework-2021/#:~:text=The%20aim%20of%20our%20Disability,systems%20and%20processes%20is%20essential)

# Set Goals / Targets and have Transparent Monitoring and Reporting (3)

- Disability-related monitoring should be built into what is already being done.
- Monitoring should involve staff with disabilities.
- Reporting should be transparent.

# Leadership must be at a senior level within the university

- This sends out the signal that this is important to the university and that staff are expected to commit to / work on this.
- Disability inclusion, and creating an inclusive environment more generally, must be one of the core values of the university and this must be understood and accepted by staff and students.

# Four specific fields

- Recruitment
- Creating a space where staff with disabilities can come together
- Assessment and Appraisals
- Disability specific policies and a policy on reasonable accommodation

# Recruitment (1)

- William E Donald and Larisa Yarovaya, 10 ways universities can reject ableism
- 1. Inclusive Attraction and Selection Processes
- Include students and staff with disabilities in marketing literature and use inclusive language in job postings.

# Recruitment (2)

- Consider using alternative measures for productivity when making selection and promotion decisions.
- Ensure reasonable accommodations are made during the recruitment process.
- Include persons with disabilities in the interview panel.
- Remember the challenges persons with disabilities have overcome – their skills and tenacity can benefit your institution.



# Creating space where staff with disabilities can come together

- Consider having a focus / network on research on disability across the university.
- At Griffith University in Brisbane one of the university's core interdisciplinary research programmes is Inclusive Futures; Reimagining Disability.
- Target staff with disabilities in training, e.g. on leadership.

# Assessment and Appraisal (1)

- An assessment procedure which assesses performance relative to opportunity can facilitate an inclusive workplace.
- Melbourne University's policy on *Assessing Academic Performance Relative to Opportunity (Guidelines)*.
- Assessing performance relative to opportunities does not assume or expect lesser standards of performance, but instead involves assessing the quality and impact of achievements relative to the opportunities available.

# Assessment and Appraisal (2)

Assessing performance relative to opportunities can be relevant to staff who experience restricted opportunities whilst working their standard working hours. This can be particularly relevant for staff with disabilities.

# Assessment and Appraisal (3)

- A staff member who had to wait for an accommodation to be put in place will have had restricted opportunities whilst waiting. This should be taken into account in any assessment. The staff member can be assessed according to the usual standards for the period following the putting in place of an effective accommodation.
- A staff member with a disability may need more time to carry out research / prepare for teaching than others, and this should be taken into account when assessing output. The output should be assessed according to the usual standards regarding quality – but not quantity.

# Assessment and Appraisal (4)

- A staff member who experiences pain or fatigue may travel less to external conferences than other colleagues, and therefore have limited opportunities to present at such conferences. However, the staff member has carried out other research activities. This should be taken into account when assessing research output.
- A staff member might have a non-standard set of tasks as a reasonable accommodation. This enables the staff member to focus on tasks they do efficiently / well, rather than tasks which are particularly challenging for them for a disability-related reason. The staff member should only be assessed on the tasks they were assigned, and not be negatively assessed because they have not carried out other tasks which someone in their position might otherwise be expected to do.

# Disability specific policies and a policy on reasonable accommodation (1)

- University policies regarding staff with disabilities provide guidance to managers on how they should behave, and enable staff with disabilities to know how they should be treated and what to expect.
- There should be both disability specific policies and mainstream policies which include a reference to staff with disabilities.

# Disability specific policies and a policy on reasonable accommodation (2)

- It is important to have a policy on reasonable accommodation, describing what an accommodation is, how to request it, and the process to be followed in deciding what accommodation to provide.
- It is important that this policy acknowledges that making a reasonable accommodation is a legal duty and staff members with disabilities have a right to receive an accommodation.

# Disability specific policies and a policy on reasonable accommodation (3)

- Trinity College Dublin has a Code of Practice applicable to the Employment of People with Disabilities, which covers reasonable accommodation.
- [https://www.tcd.ie/media/tcd/disability/docs/Code-of-Practice-applying-to-the-Employment-of-People-with-Disabilities\\_Board-Aprd-June-2018.pdf](https://www.tcd.ie/media/tcd/disability/docs/Code-of-Practice-applying-to-the-Employment-of-People-with-Disabilities_Board-Aprd-June-2018.pdf)
- The Code describes entitlements and duties regarding staff with disabilities. It also describes obligations of managers to implement the Code.



# Disability specific policies and a policy on reasonable accommodation (4)

- Trinity College Dublin has a Disability Service which carries out needs assessments of staff with disabilities to determine what accommodations are needed in individual cases.
- Decisions regarding accommodations are not made by the line manager, but the line manager is required to facilitate the implementation of the accommodations identified by the Disability Service.
- Funding is available at the central level of the university to cover the cost of making accommodations.

# Disability specific policies and a policy on reasonable accommodation (5)

- The Disability Service brings together expertise on reasonable accommodation, including experts on technology, ergonomics and psychologists. It has 12 staff members.
- It has an ergonomic suite, where staff and students with disabilities can try out equipment and assistive technologies.
- The Disability Service provides a hub and physical meeting place for staff and students with disabilities.

# Conclusion (1)

- Useful literature references
- Times Higher Education (THE) newspaper: Routes to improving disability support in higher education:
- <https://www.timeshighereducation.com/campus/spotlight/routes-improving-disability-support-higher-education>

# Conclusion (2)

- Articles on staff with disabilities on THE homepage:
- Ten steps to recruitment equity for disabled academics
- 10 ways universities can reject ableism
- Where are the leaders with disability in higher education?
- Carol Evans and Xiaotong Zhu: The Disability Inclusion Framework (DIIF), Promoting Disability Inclusion: A higher education resource, 2022 – “a checklist for making disability inclusion a reality in higher education”:
- <https://inclusivehe.org/disability-inclusion/>

# Conclusion (3)

- There are international obligations which are relevant for universities with regard to staff with disabilities – these obligations are also relevant with regard to students with disabilities.
- There is a lot that universities can do to put a framework in place which can prevent discrimination and make universities an open and welcoming place for persons with disabilities.
- We can learn from each other!