



Striving for an inclusive labour market in Poland

Positive actions and reasonable accommodation to facilitate hiring and employment of persons with disabilities involving employers and employer initiatives

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Positive actions and reasonable accommodation to facilitate hiring and employment of persons with disabilities involving employers and employer initiatives

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1 Executive summary

1.1 Support and incentives directed at employers to promote the employment of persons with disabilities, including guides on good practice, websites, and advice services

The Polish system provides employers hiring persons with disabilities with several incentives including reimbursement of social security contributions, as well as wage subsidies. There is also a 6 % quota for employers hiring at least 25 employees. The failure to meet the duty of reasonable accommodation is recognised as a form of discrimination. Financial support is available for workstation adaptation, as well as for covering some costs of employees who assist an employee with disability at work, and the costs of training these employees.

There are several guides aimed at employers to promote the employment of persons with disabilities, including the 'Information Webpage of the Financial Support Service System financed by the National Disabled Persons Rehabilitation Fund (PFRON)', which is a publicly funded and hosted information web page providing up-to-date official information on PFRON support for employers hiring persons with disabilities; '*Sprawni w pracy*', a website supporting employers; and *Employment of disabled people in organisations* by ngo.nl, which focuses on civil society organisations.

The funds collected by the quota system are the main source of funding for wage subsidies for workers with disabilities and other measures to combat unemployment and the social exclusion of people with disabilities. There is therefore a certain paradox in that the more employers employ people with disabilities, the fewer resources the fund accumulates. The functioning of the support system is assessed by scholars as having low effectiveness due to a relatively stable disability employment gap in Poland, despite the quota system in operation. Among the biggest hindrances are bureaucratic barriers, concerns about sanctions for improper spending of subsidies and difficulties in navigating the complex legislation and obligations, which is partially due to the legislative separation of labour market regulations for citizens with disabilities from the Labour Code.

There is no comprehensive evidence of the effectiveness of other measures.

The various guides provide clear and comprehensive information for employers, however more practical guidance, beyond the legal framework, would be beneficial.

1.2 Support and partnerships available to employers to assist them in making reasonable accommodations

The support focuses mostly on financial remuneration for workstation adaptation and related services. An employer who has employed a person with disability for at least 36 months may be reimbursed from the State Fund for Rehabilitation of Persons with Disabilities, among other sources, for the costs of adaptation of workplaces, adaptation or purchase of equipment, purchase of software and assistive or adapted technology devices and identification by occupational health services of the needs referred to above.

Guides for navigating reasonable accommodation exist, although they do not fully address the diversity of persons with disabilities, intersectional questions or the practical common dilemmas employers may encounter.

The Central Institute for Labour Protection–National Research Institute (CIOP-PIB), along with the National Disabled Persons Rehabilitation Fund (PFRON), the National Association for the Rehabilitation of Invalid and Blind Co-operatives and the Friends of Integration Association, developed a model to support people with disabilities in the work environment. The model includes a network of actors who work directly with the employer and support them in eliminating barriers.

A study by Magdalena Kocejko (2018) on partnerships to support the employment of persons with disabilities in small towns and rural areas revealed recurring problems: the lack of a coordinating institution and the weakness of local partnerships, the absence of a common database, the ‘fight for clients’ phenomenon, low complementarity of activities, a lack of recognition of persons with disabilities as a separate group, and the particularly difficult situation of persons with disabilities from rural areas and small towns, among others.

There is no comprehensive evidence of the effectiveness of the support for reasonable accommodation that is available to employers.

1.3 Illustrative examples of good employer practice for providing reasonable accommodations for persons with disabilities

1. *Postaw na pracę. Dostępne miejsca pracy* (Count on work: Accessible workplaces) – a guide prepared by the Activisation Foundation on reasonable accommodations and workplace accessibility.
2. *A person with a visual disability at work: A Guide for Employers* – a series of guides focusing on diverse disabilities, prepared in partnership between the Central Institute for Labour Protection–National Research Institute (Leader), the State Fund for Rehabilitation of Persons with Disabilities, the Friends of Integration Association and the National Association for the Rehabilitation of Disabled and Blind Co-operatives.
3. *The Deaf employee: A Guide for employers* – This guide was prepared in partnership with the Dobre Kadry project, which was implemented in partnership between the Research and Training Centre, the Polish Deaf Association, Łódź branch, and the Fortbildungsakademie der Wirtschaft (FAW) gemeinnützige Gesellschaft mbH Akademie Chemnitz.

There are several Supreme Court judgments regarding reasonable accommodation, as well as research on supporting employers of persons with disabilities, with analysis of case studies involving employers in diverse sectors.

There is no evidence of the effectiveness of the good practice guides or other sources of information directed at employers.

1.4 Recommendations

Recruitment and Hiring

- invite persons with disabilities to apply when posting job;
- provide reasonable accommodation during job interview;
- during the job interview it is important to ask about the expectations in relation to the job, including the reasonable accommodation;
- employers are encouraged to cooperate with experts in the field;
- provide information on how to request reasonable accommodation at the recruitment stage;
- inform the new employee about all the procedures connected with reasonable accommodations.

Initial employment

It is crucial to consult on all reasonable accommodation measures with the person concerned. Some guidelines indicate that, at the initial stage of employment, it is important to consider assigning a 'guide' for an employee with a disability. Develop reasonable accommodation in close cooperation with the employee.

Promotion and Career Development

This aspect is lacking in most of the guides.

Retention

Regularly revise reasonable accommodation to understand that better solutions are needed. Check that organisational culture (including informal norms) is not reinforcing ableism.

2 Support and incentives directed at employers to promote the employment of persons with disabilities, including guides on good practice, websites, and advice services

2.1 Employment quotas

The Act of 27 August 1997 on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities¹ regulates the quota system that operates in Poland for both public and private employers. Persons who hold official disability certificates² are eligible under the quota system.³ The types of certificates are as follows:

- Disability certificate of a mild, moderate or significant degree of disability;⁴
- Disability certificate of total or partial incapacity to work;⁵
- Disability certificate of disability issued before the age of 16.⁶

According to Article 21(1-2) of the Act of 27 August 1997 on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities, employers who employ at least 25 workers are required to pay a monthly fee to the National Disabled Persons Rehabilitation Fund (PFRON) if they do not ensure that the proportion of their employees who are disabled reaches 6 %. The payment amount is calculated by a formula in which 40.65 % (which may be reduced by 5 % in special circumstances) of the official national average gross wage in the preceding quarter is multiplied by the theoretical number of employees who should be taken on in order to reach the threshold of 6 % disabled individuals among all the people employed by the specific employer. The sum may be reduced under certain conditions (e.g. due to the purchase of a product or service, excluding trade, produced or provided by an employer who employs at least 25 employees with a significant or moderate degree of disability). Moreover, as stipulated in Article 21(4) of the act, the payment rate may be reduced in the case of employees with disabilities who have medical conditions that make it particularly difficult for them to work.⁷

¹ Act of 27 August 1997 on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities,

<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19971230776/U/D19970776Lj.pdf>.

² See: <https://www.pfron.org.pl/pracodawcy/dofinansowanie-wynagrodzen/status-osoby-niepelnospprawnej/>.

³ Since 1 January 1998, the basis for recognising a person as disabled has exclusively been a certificate issued by a municipal, district or voivodeship disability evaluation board or a certificate issued by a doctor from the Social Insurance Institution. Judgments issued by other bodies after 31 December 1997 do not constitute grounds for considering a person disabled in the meaning of the Act on Rehabilitation.

⁴ Act of 27 August 1997 on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities,

<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19971230776/U/D19970776Lj.pdf>.

⁵ As set out in the Act of 17 December 1998 on Old-Age and Disability Pensions from the Social Insurance Fund,

<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19981621118/U/D19981118Lj.pdf>.

⁶ See the Ordinance of the Minister of Labour and Social Policy of 1 February 2002 on disability assessment criteria in persons aged up to 16 years of age,

<http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20020170162>.

⁷ The types of these conditions are defined in the Regulation of the Minister of Labour and Social Policy of 18 September 1998 on the types of conditions justifying a reduction in the employment rate of disabled persons and the manner of its reduction (Dz.U.98.124.820, as amended), and they include multiple sclerosis, paraplegia, tetraplegia, severe visual impairment (blindness) and low

Some of institutions are subjected to a lower quota – this includes public and non-public higher education institutions, schools, kindergartens, other forms of pre-school education and care institutions, regional care and therapy centres, intervention centres, re-socialisation centres and nurseries. The indicator of employment of persons with disabilities in these types of institutions is established at 2 %.

The following institutions are exempted from making payments:

- social welfare homes;
- hospices;
- care and treatment institutions;
- public and non-public organisational units whose sole role is social and medical rehabilitation or the education of persons with disabilities.

PFRON presents regular statistics on numbers of employers who are obliged and not obliged to make obligatory contributions to PFRON, wage subsidies and refunds of social security contributions, as well as on monthly income from mandatory contributions paid by employers to PFRON. In February 2022, the monthly income from mandatory contributions reached approximately EUR 99 million (PLN 455 million).⁸ The data for the same month reveals that contributions were paid by 31 271 employers who employ at least 25 persons and do not meet the 6 % quota.⁹

According to the Supreme Audit Office (NIK), the public administration does not meet the quota. NIK inspected 35 units from seven voivodeships (provinces), and two local government units, one government administration unit and two state legal entities in each of them. The audit findings show that the average employment rate of persons with disabilities in the audited entities was low, at just 3.05 % as at the end of June 2018 (3.3 % in government administration units, 2.73 % in local government units and 3.24 % in state legal entities).¹⁰

One of the criticisms of the functioning of the quota system in Poland is the fact that the funds collected by the quota system are the main source of funding for wage subsidies for workers with disabilities and other measures to combat unemployment and the social exclusion of people with disabilities. There is therefore a certain paradox in that the more employers employ people with disabilities, the fewer resources the fund accumulates.¹¹ According to analysis carried out by Andrzej Koza between 2010 and 2015, the average share of funds from employer contributions (from penalties for not employing the required percentage of people with disabilities) was over 79 % of

vision, deafness, HIV infection and AIDS, epilepsy, chronic mental illnesses and intellectual disability.

⁸ PFRON, Income in the journal for mandatory contributions to PFRON in 2022, 2021, 2020, 2019, 2018, 2017 and 2016, <https://www.pfron.org.pl/o-funduszu/dane-statystyczne-i-inf/dane-dotyczace-wplat-na/przychod-w-memoriale-z-tytulu-obowiazkowych-wplat-na-pfron-w-2017-r-2016-r-i-2015-r/>.

⁹ PFRON – for employers obliged to make obligatory contributions to PFRON (who do not reach the legal quota of employment of disabled persons), see <https://www.pfron.org.pl/o-funduszu/dane-statystyczne-i-inf/dane-dotyczace-wplat-na/pracodawcy-zobowiazani-do-dokonywania-obowiazkowych-wplat-na-pfron-nieosiagajacy-ustawowego-wskaznika-zatrudnienia-osob-niepelnosprawnych-dek-i-o-dek-i-a-i-dek-i-b/>.

¹⁰ Supreme Audit Office (NIK) (2019), Report 'on (un)employment of disabled people by public employers', <https://www.nik.gov.pl/aktualnosci/nik-o-zatrudnieniu-osob-niepelnosprawnych.html>.

¹¹ Koza, A. (2016), 'The Quota Scheme as the Source of the Financial Problems of the State Fund for Rehabilitation of Disabled Persons', <https://journals.umcs.pl/h/article/viewFile/3830/3498>.

the PFRON budget. The main expenditure from the Fund's resources between 2010 and 2015 was related to subsidising the salaries of employees with disabilities (under the System for Subsidies and Reimbursements (SODiR), operating within the structures of PFRON). In 2018, the payments of subsidies towards the salaries of employees with disabilities amounted to EUR 719 million (PLN 3.3 billion), with EUR 371 million (PLN 1.7 billion) transferred to establishments other than sheltered workplaces (the so-called open market) and EUR 349 million (PLN 1.6 billion) to sheltered workplaces.¹² The functioning of the quota system has been assessed by scholars as rather ineffective due to the relatively stable disability employment gap in Poland, despite the quota system in operation.¹³

It is important to highlight that the most important factors discouraging employers from hiring persons with disabilities have been well defined through several pieces of research: the bureaucratic barriers, concerns about sanctions for improper spending of subsidies, and difficulties in navigating the complex legislation and obligations. As Katarzyna Roszewska points out in her analysis, this is, to a certain extent, due to the fact that the employment of persons with disabilities is regulated mainly by the Act on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities, thus the well-known provisions of the Labour Code do not apply. This legislative separation contributes to the ongoing segregation of persons with disabilities, as most employers are unfamiliar with the regulations. It is recommended to incorporate disability regulations in the Labour Code, similarly to regulations on parenthood.¹⁴ In addition, numerous studies have demonstrated that attitudes are a critical obstacle to the employment of persons with disabilities.¹⁵

Notably, a 2019 report by the Supreme Audit Office states that the majority of the audited public administration units (77.2 %) did not take effective measures to remove barriers to the employment of people with disabilities, which resulted in a low average employment rate of workers with disabilities, standing at only 3.05 % as at the end of June 2018. The majority of the employers that were inspected did not take any additional measures to increase the employment of workers with disabilities (e.g. cooperation with DPOs). Moreover, in 46 % of the units audited there were cases of

¹² Strategy for persons with disabilities 2021-2030, <https://niepelnosprawni.gov.pl/p.170,strategia-na-rzecz-osob-z-niepelnosprawnościami-2021-2030>.

¹³ See Arczewska, M., Giermanowska, E. and Raclaw, M. (2014), in Giermanowska, E. (ed.), *Zatrudniając niepełnosprawnych: Dobre praktyki pracodawców w Polsce i innych krajach Europy* (Employing persons with disabilities: Good practices among employers in Poland and other European countries), http://polscyniepelnosprawni.agh.edu.pl/wp-content/uploads/ksiazka_zatrudniajac_niepelnosprawnych_dobre_praktyki.pdf; Koza, 'The Quota Scheme as the Source of the Financial Problems of the State Fund for Rehabilitation of Disabled Persons'; Kowalczyk, O. (2018) 'Quarter-century of reform in the social security system for the disabled in Poland — selected aspects', <http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-96e48fd2-c438-42de-89e0-beeaa11777ae>.

¹⁴ Roszewska, K. (2019), 'The Implementation of the Rights of Persons with Disabilities to Employment on the Basis of the Convention on the Rights of Persons with Disabilities (CRPD)', https://www.researchgate.net/publication/334290949_The_Implementation_of_the_Rights_of_Persons_with_Disabilities_to_Employment_on_the_Basis_of_the_Convention_on_the_Rights_of_Persons_with_Disabilities_CRPD.

¹⁵ Giermanowska, E. (2019), 'Economic versus Cultural Determinants of Changes in Employment of People with Disabilities: Good Practices in Poland', *Studia Humanistyczne AGH*, Vol. 18, No. 2.

non-compliance with the rights of employees with disabilities, i.e. working time standards or additional vacation leave.¹⁶

Some interesting data addressing public institutions' failure to reach the quota is provided in the recent research report, *Meta-analysis of research results of evaluation studies concerning the evaluation of ESF support*,¹⁷ which concluded that, in implementing institutions, persons with disabilities are not thought of as potential employees, but mainly as clients.

2.2 Tax relief / reduced social security contributions / wage subsidies for employers employing persons with disabilities

The Polish system offers wage subsidies for employers hiring persons with disabilities, as well reductions in social security contributions, yet no tax relief for employers of persons with disabilities exists.

It is worth emphasising that an employee with disability is not obliged to inform the employer of his / her disability. The use of the privileges to which an employee with disability is entitled is voluntary. However, the employer is obliged to grant them to the employee if the latter presents a disability certificate.

Wage subsidy

An employer who employs persons with disabilities can receive a monthly wage subsidy for employees with disabilities if the employee is listed in the register of employed disabled persons kept by PFRON.¹⁸ Employers are eligible for subsidies regardless of the number of employees. However, importantly, if the employer hires at least 25 full-time equivalent employees, the employer must comply with the 6 % quota for hiring people with disabilities to apply for funding. The employer must have documentary evidence of the employee's disability certificate from the first day of employment (except where the employee acquires the disability during their employment period). According to the provisions of the Act on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities,¹⁹ a person with disabilities is a person who has an appropriate certificate: a certificate attesting to a mild, moderate or significant degree of disability, a certificate of total or partial incapacity to work, or a disability certificate issued before the age of 16. Since 1 January 1998, the basis for recognising a person as disabled has exclusively been a certificate issued by a municipal, district or voivodeship disability evaluation board or a certificate issued by a Social Insurance Institution doctor.²⁰ The amount of the subsidy is related to the degree shown on the disability certificate, and is currently around

¹⁶ NIK (2019), Employment of persons with disabilities by public administration and state legal entities (*Zatrudnianie osób niepełnosprawnych przez administrację publiczną i państwowe osoby prawne*), <https://www.nik.gov.pl/plik/id,21407,vp,24048.pdf>.

¹⁷ Meta-analysis of research results of evaluation studies concerning the evaluation of ESF support (2019), https://www.power.gov.pl/media/77550/Metaanaliza_raport_koncowy_2019.pdf.

¹⁸ See: <https://sod.pfron.org.pl/>.

¹⁹ Act of 27 August 1997 on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19971230776/U/D19970776Lj.pdf>.

²⁰ See: <https://www.pfron.org.pl/pracodawcy/dofinansowanie-wynagrodzen/status-osoby-niepelnosprawnej/>.

EUR 420 (PLN 1 950), EUR 260 (PLN 1 200) or EUR 98 (PLN 450), depending on the degree of disability.

The amounts referred to above, in relation to persons with disabilities who have been diagnosed with mental illness (02-P), intellectual disability (01-U), holistic developmental disorders (12-C) or epilepsy (06-E) and blind persons with a significant or moderate degree of sight loss (04-O), are increased by:

- EUR 260 (PLN 1 200) for people with disabilities classified as having a significant degree of disability (the total amount of funding is EUR 684 (PLN 3 150));
- EUR 196 (PLN 900) for people with disabilities classified as having a moderate level of disability (the total amount of compensation is EUR 455 (PLN 2 100)); or
- EUR 130 (PLN 600) for people with disabilities classified as having a mild level of disability (the total amount of co-financing is EUR 227 (PLN 1 050)).²¹

The amount of the subsidy is determined in proportion to the employee's working hours. In addition, the amount of the monthly subsidy may not exceed 90 % of the monthly wage costs that are actually incurred during each month or 75 % of these costs in the case of an employer engaged in economic activity, within the meaning of the provisions on proceedings in public aid cases.

There are exemptions, as the monthly subsidy is not granted to employers. These are: being in debt to PFRON; if the remuneration of the worker with disability has not been transferred to his / her bank account, if the salary was paid after the date on which the application for monthly financial contributions was submitted; or if the remuneration funds come from public resources (with exemptions).²² Public institutions cannot use the PFRON wage subsidies, even if they have an employment quota of 6 % of employees with disabilities. However, they can obtain financial support for the employment of employees with disabilities from labour offices and they can obtain funds for the adaptation of workstations and infrastructure and participate in other support projects.

Data concerning wage subsidies (both for the open labour market and the sheltered labour market) is regularly published via SODiR.²³ The latest data for October 2021 shows 141 100 employees with disabilities and 31 733 employers registered through SODiR. The numbers have significantly increased over the past decade, with average monthly totals of 39 115 registered employees and 6 739 employers in 2008 and 141 939 employees and 30 983 employers in 2020. The data is disaggregated by degree of disability, which allows us to conclude that the majority of employees with a severe degree of disability comprise 9.6 % of subsidised employees, while those with moderate and mild disabilities comprise 61.7 % and 28.5 % respectively. In comparison to 2008, we see a shift towards more persons with a moderate degree on

²¹ Office of the Government Plenipotentiary for Persons with Disabilities, Wage subsidies for persons with disabilities, <https://niepelnosprawni.gov.pl/a,17,dofinansowanie-do-wynagrodzen-osob-niepelnosprawnych>.

²² If the remuneration comes from public funds, unless the employer has financed the employee's salary; from public funds from the activities referred to in Article 5(1)(5) of the Act of 27 August 2009 on public finance; from public income referred to in Article 5(2)(3) of the act; see <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20091571240>.

²³ Office of the Government Plenipotentiary for Persons with Disabilities, SODiR PFRON Database, <https://niepelnosprawni.gov.pl/index.php?c=page&id=83&print=1>.

their disability certificates being subsidised, as in 2008 5.3 % of people had certificates of severe disability, 33.5 % had certificates of moderate disability and 61.2 % had mild disability: thus, the majority of persons subsidised had a certificate of mild disability.

Reduced social security contribution

Regarding social security contributions, compulsory contributions to pensions and disability pensions are refundable for self-employed persons with disabilities. The refund for social security contributions is administrated by PFRON. To obtain a refund it is necessary to submit an application on a monthly basis.²⁴

The amount of the refund depends on the degree of disability and is:

- 100 % of pension contributions for persons with severe disabilities;
- 60 % of pension contributions for persons with a moderate degree of disability;
- 30 % of the pension contribution for persons with mild degree of disability.²⁵

Statutory sick pay is shared between the employer and the Social Insurance Institution (ZUS) under conditions defined in the Act of 25 June 1999 on cash benefits from social insurance in case of sickness and maternity (*Journal of Laws* 1999, No. 60, item 636).²⁶ If an employee (regardless of pre-existing health conditions or impairments) is ill for longer than 33 days, the obligation is transferred to ZUS. In the case of persons over 50 years of age, from the 15th day of their inability to work, this obligation will be taken over by ZUS. An employee who is unable to work is entitled to sickness benefit for 182 days in a calendar year. Exceptions are employees diagnosed with tuberculosis and pregnant women. These two groups of employees may benefit from sickness benefit for a longer period – for 270 days per calendar year. After that period, rehabilitation benefit can be issued, which is granted for the period necessary to restore the person's ability to work, but not for longer than 12 months.

The equalisation of wage subsidy rates for the open and sheltered markets in 2014 caused some employers to abandon their operations within the sheltered labour market. This resulted in changes to the structure of entities benefiting from support and full-time positions covered by co-financing.²⁷

The Supreme Audit Office research report²⁸ revealed some malpractices with regard to wage subsidies, including fictitious employment, enforced surrender of some earnings, and falsifying disability assessments. These malpractices should be addressed in order to comply with the European Pillar of Social Rights as their existence is often based on ableist stereotypes and deprivation of agency. Moreover,

²⁴ See: <https://www.pfron.org.pl/osoby-niepelnosprawne/dofinansowanie-dzialalnosci-gospodarczej/refundacja-skladek-zus/warunki-ubiegania-sie-o-refundacje-skladek-zus/>.

²⁵ See: <https://www.pfron.org.pl/osoby-niepelnosprawne/dofinansowanie-dzialalnosci-gospodarczej/refundacja-skladek-zus/wysokosc-refundacji-skladek-zus/>.

²⁶ Act of 25 June 1999 on cash benefits from social insurance in case of sickness and maternity (*Dziennik Ustaw (Journal of Laws)* 1999, No. 60, item 636), <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19990600636>.

²⁷ NIK (2018), *Dofinansowanie wynagrodzeń pracowników niepełnosprawnych Z państwowego funduszu rehabilitacji osób niepełnosprawnych*, Lublin, <https://www.nik.gov.pl/plik/id,17362,vp,19931.pdf>.

²⁸ NIK, *Dofinansowanie wynagrodzeń pracowników niepełnosprawnych Z państwowego funduszu rehabilitacji osób niepełnosprawnych*.

the effectiveness of the system for verifying the fulfilment of conditions to receive wage subsidies was, according to NIK, insufficient. This resulted from a failure to observe internal procedures, or the inadequacy of these procedures for the scale of the task, with insufficient involvement of human and IT resources and limited powers on the part of the Fund, as defined in the Act on Rehabilitation.

A comprehensive study of good practices for employers of persons with disabilities conducted by Professor Ewa Giermanowska and her team suggests that the impact of economic instruments on employers is limited. Financial instruments are very important, and for many organisations they are even necessary, but without a change in the attitudes of employers, employees, people with disabilities and other members of society, the anticipated participation of persons with disabilities in the labour market will not take place. The analysis of good practices of employers shows the great importance of an organisational culture that promotes equal treatment and an individual approach to the employee, which is characterised by values such as egalitarianism, tolerance, openness and orientation towards the other person.²⁹ Moreover, employers wishing to employ people with disabilities often have problems finding suitably prepared employees on their own, and can only count on support from public institutions to a limited extent.³⁰

Importantly, according to the concluding observations for Poland by the Committee on the Rights of Persons with Disabilities, the State Party is recommended to 'promote decent work for persons with disabilities, particularly women with disabilities, in public and private sectors and provide specific incentives and support for reasonable accommodation, including individual assistance for employing persons with a wide range of disabilities' and to 'take specific measures to foster respect for the rights and dignity of persons with disabilities.'³¹

2.3 Reasonable accommodation

Polish law defines the obligation on the part of employers to provide reasonable accommodation in the Act of 27 August 1997 on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities.³² Importantly, this relates only to the employment contracts under the scope of the Labour Code, but not to contracts under civil law,³³ which poses an important challenge due to the casualisation of working

²⁹ Giermanowska, E. (ed.) (2014), *Zatrudniając niepełnosprawnych. Dobre praktyki pracodawców w Polsce i innych krajach Europy*, Kraków, AGH, http://polscyniepelnosprawni.agh.edu.pl/wp-content/uploads/ksiazka_zatrudniajac_niepelnosprawnych_dobre_praktyki.pdf.

³⁰ Giermanowska, E. and Raław, M (2014), 'Pomiędzy polityką życia, emancypacją i jej pozorowaniem. Pytania o nowy model polityki społecznej wobec zatrudnienia osób niepełnosprawnych', *Studia Socjologiczne*, Volume 2, No. 213, https://www.studiasocjologiczne.pl/img_upl/studia_socjologiczne_2014_nr_2_str107_127.pdf.

³¹ Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Poland' (CRPD/C/POL/CO/1), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/326/15/PDF/G1832615.pdf?OpenElement>.

³² Act of 27 August 1997 on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19971230776/U/D19970776Lj.pdf>.

³³ Bojarski, Ł. (2021), Country report: Non-discrimination: Transposition and implementation at national level of Council Directives 2000/43 and 2000/78: Poland, <https://www.equalitylaw.eu/downloads/5519-poland-country-report-non-discrimination-2021-1-91-mb>.

conditions, with numerous persons with disabilities working on more precarious contracts, especially young persons with disabilities.

The act states in Article 23a(1-3) that:

- an employer is obliged to provide the necessary reasonable accommodation for a person with disability with whom they are in an employment relationship, or who is participating in a recruitment process or undertaking vocational or professional training or an apprenticeship or internship;
- necessary reasonable accommodation means introducing necessary changes and adjustments in a particular case in line with the specific needs reported to the employer stemming from somebody's disability, unless the introduction of such changes or adjustments would impose a disproportionate burden on the employer;
- the burden is not deemed disproportionate when it is sufficiently remedied by public funds;
- failure to provide necessary reasonable accommodation is deemed an infringement of the principle of equal treatment in employment within the meaning of Article 183a(2-5) of the Labour Code.³⁴

The amendment³⁵ of 20 December 2002 to the Act of 27 August 1997 on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities³⁶ introduced a definition of a workstation adapted to the needs of a person with disability, which is a workstation that is suitably equipped and adapted to the needs arising from the type and degree of disability of the individual (according to the certificate of disability granted under the act).³⁷

2.4 Other relevant actions targeted at employers

There are multiple financial support schemes for employers of employees with disabilities. The State Fund for Rehabilitation of Persons with Disabilities may reimburse the employer the monthly costs of hiring employees who assist an employee with disabilities at work, and the costs of training these employees. Moreover, at the employer's request, training costs incurred by the employer for their employees with disabilities may be reimbursed from the funds of the State Fund for Rehabilitation of Persons with Disabilities. Training costs can be reimbursed by up to 70 %, but by no more than double the average salary per person.

³⁴ Bojarski, Ł. (2021), Country report: Non-discrimination: Transposition and implementation at national level of Council Directives 2000/43 and 2000/78: Poland, <https://www.equalitylaw.eu/downloads/5519-poland-country-report-non-discrimination-2021-1-91-mb>.

³⁵ Act of 20 December 2002 amending the Act on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities and amending other Acts, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20030070079/T/D20030079L.pdf>.

³⁶ Act of 27 August 1997 on Vocational and Social Rehabilitation and the Employment of Persons with Disabilities, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19971230776/U/D19970776Lj.pdf>.

³⁷ Bojarski, Ł. (2021), Country report: Non-discrimination: Transposition and implementation at national level of Council Directives 2000/43 and 2000/78: Poland, <https://www.equalitylaw.eu/downloads/5519-poland-country-report-non-discrimination-2021-1-91-mb>.

Several awareness-raising campaigns targeted at employees have been implemented, mostly by NGOs. One of the most visible campaigns was 'Able at work' (*Sprawni w pracy*)³⁸ by the Integration Foundation, in partnership with PFRON. This NGO-led campaign addressed the stereotype that persons with disabilities want to work in job roles that are hardly possible due to the type of disability. The compendium 'Good and bad practices: Hiring People with Disabilities' explains and justifies the best solutions for hiring candidates with disabilities in an accessible and humorous way. In each episode, the authors show the same situation in two versions: incorrect and correct. The scenes are supplemented by a voiceover that explains the errors and suggests appropriate solutions.

A campaign called 'Just like me' led by the Pod Aniołem Foundation, another NGO, focused on learning about the benefits of employing persons with disabilities. It was held from August to November 2018 in Szczecin, Koszalin and Świnoujście, and helped employers to obtain information on the benefits and specifics of employing persons with disabilities. Information was provided on conditions of employment as well as on profits and refunds available in this respect.

An interesting social campaign developed after the COVID-19 pandemic was the STOP Barriers campaign – a nationwide educational campaign and an information campaign for people at risk of social exclusion due to their disability. The second stage of the campaign focuses on encouraging entrepreneurs to employ persons with various disabilities. The goal is to break down barriers in this area, as well as to provide support and up-to-date, reliable information to employers and employees with disabilities on legal regulations.

2.5 Examples of good practice

Wage subsidies provide a well-established mechanism known as an incentive for hiring persons with disabilities. Because of how they work, they have contributed to the shift from sheltered employment to the open labour market. Moreover, according to empirical research conducted among 439 employers of persons with disabilities, the most effective financial forms of support were considered by employers to be subsidies towards the salaries of employed people (62 %), reimbursement of the costs of adapting workstations (58 %) and reimbursement of the costs of equipping workstations to meet the needs of persons with disabilities (34 %). Importantly, as many as 89 % of the respondents have knowledge about the forms of financial support that are available for the employment of persons with disabilities.³⁹

³⁸ See: <https://sprawniowpracy.com>.

³⁹ Bugajska, J. et al. (2018), *Model wsparcia osób niepełnosprawnych w środowisku pracy. Mapa drogowa* (Model for supporting disabled people in the work environment: A road map), Warsaw, https://www.ciop.pl/CIOPPortalWAR/file/88309/Model_wsparcia_osob_niepelnosprawnych_w_srodowisku_pracy-Mapa_drogowa.pdf.

2.6 Good practice guides, websites and advice services directed at employers

There are several guides available, authored by public institutions, non-governmental organisations and other entities.

Websites

- Information Webpage of the Financial Support Service System, financed by PFRON,⁴⁰ a publicly funded webpage providing up-to-date official information on PFRON support for employers hiring persons with disabilities. The portal offers comprehensive information on various incentives, support tools and step-by-step information on how to receive certain support.
- 'Able at work' (*Sprawni w pracy*),⁴¹ a website by the Integration Foundation (*Fundacja Integracja*), with knowledge resources including those aimed at supporting employers. The resource pack includes basic information on disability assessments as well as practical information on how to apply for the available financial support.

Guides

- *Employing disabled persons: Employers' good practice in Poland and other European countries (Zatrudniając niepełnosprawnych. Dobre praktyki pracodawców w Polsce i Europie)* – a comprehensive guide based on extensive qualitative and quantitative research edited by Professor Ewa Giermanowska as a part of comprehensive study conducted between 2012 and 2014 on disability-related social policy. Research headed 'From a comprehensive diagnosis of the situation of people with disabilities in Poland to a new model of social policy towards disability' was funded by PFRON.
- *How to employ a person with disability?*⁴² – a guide by the Institute of Public Affairs (*Instytut Spraw Publicznych*), which presents a comprehensive legal framing of the employment of persons with disabilities, covering quota systems, available financial support as well as flexibility in the employment of persons with disabilities.
- *The employment of disabled people in organisations*⁴³ – an easy-to-navigate and accessible guide on a well-established website focusing on civil society organisations. The guide highlights the non-discrimination principle, as well as exploring the benefit trap – where income, including remuneration for work and remuneration under civil law contracts, may be associated with the need to

⁴⁰ Portal informacyjny Systemu Obsługi Wsparcia finansowanego ze środków PFRON (information portal for PFRON-funded support-handling system), <https://portal-sow.pfron.org.pl/opencms/export/sites/pfron-sow/sow/baza-wiedzy/informator/pracodawcy/>.

⁴¹ *Sprawni w pracy, Baza wiedzy dla pracodawcy* ('Able at work', knowledge base for the employer), <https://sprawniwpracy.com/kategorie/dla-pracodawcy/baza-wiedzy-pracodawcy/>.

⁴² *Instytut Spraw Publicznych* (Institute of Public Affairs) (2014), *Jak zatrudnić osobę z niepełnosprawnością?*, <https://www.isp.org.pl/uploads/drive/oldfiles/21020802430090215001250063574.pdf>.

⁴³ *NGO.PL, Zatrudnianie osób niepełnosprawnych w organizacjach*, <https://poradnik.ngo.pl/zatrudnienie-osob-niepelnosprawnych-w-organizacjach>.

reduce or suspend pensions (including social or family pensions). This knowledge allows employers to better understand the dynamics of the labour market that persons with disabilities have to navigate.

There is limited access to free advice for employers. One of the public advice channels available is PFRON's Infoline, where information on obligatory contributions and wage subsidies can be obtained.⁴⁴ The National Database of Disabled Persons' Employers (OBPON), a company specialising in supporting employers of persons with disabilities, offers a telephone consultation service,⁴⁵ and the Activation Foundation offers comprehensive support and advice for employers as a job agency.⁴⁶

⁴⁴ See: <https://www.pfron.org.pl/aktualnosci/szczegoly-aktualnosci/news/dodatkowa-infolinia-pfron/>.

⁴⁵ See: <https://www.obpon.pl/ourCompany.html>.

⁴⁶ See: <https://aktywizacja.org.pl/wspolpraca-z-pracodawcami/>.

3 Support and partnerships available to employers to assist them in making reasonable accommodations

3.1 Support available to employers for making reasonable accommodation

The Polish system offers mainly financial support to employers in adapting workstations.⁴⁷ An employer who has employed a person with disability for at least 36 months may be reimbursed from the State Fund for Rehabilitation of Persons with Disabilities⁴⁸ for the costs of:

- adaptation of workplaces to the needs of persons with disabilities, in particular costs incurred in connection with the adaptation of newly created or existing workstations for these persons, in accordance with the needs resulting from their disability;
- adaptation or purchase of equipment making it easier for a person with disability to perform work or function at work;
- purchase and authorisation of software for use by employees with disabilities and assistive or adapted technology devices;
- identification by occupational health services of the needs referred to above.

The costs are reimbursed to persons with disabilities who are unemployed or seeking employment or who are remaining in employment with an employer applying for reimbursement, except in cases where the disability arose during the period of employment with this employer for reasons attributable to the employer or employee for infringement of regulations, including labour regulations. The costs are reimbursed by the *starost* (the chair of the district executive board) on the basis of a civil law agreement which specifies the obligations of the parties entering into it (*starost* and employer).

The maximum amount of aid for the adaptation of one workstation is 20 times the average salary (i.e. the average monthly salary in the national economy in the previous quarter from the first day following the announcement by the President of the Central Statistical Office) for each adapted workstation of a person with disability.

An employer interested in employing a person with disability with the aid of the Fund should submit an application to the *starost*, as specified in the Regulation of the Minister of Labour and Social Policy,⁴⁹ specifying:

⁴⁷ See: <https://www.gov.pl/web/gov/skorzystaj-z-dofinansowania-przystosowania-stanowiska-pracy-pracownika-z-niepelnosprawnoscia>; Act of 27 August 1997 on professional and social rehabilitation and employment of disabled persons (*Journal of Laws* 2021, item 573, as amended), <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19971230776/U/D19970776Lj.pdf>; Regulation of the Minister of Labour and Social Policy of 23 December 2014 on reimbursement of additional costs related to employment of disabled employees (*Journal of Laws* 2014, item 1987), <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20140001987>; Ordinance of the Minister of Family and Social Policy of 24 June 2021 amending the Ordinance on reimbursement of additional costs related to employment of disabled employees (*Journal of Laws* 2021, item 1151), <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20210000573>.

⁴⁸ See: <http://pfron.org.pl>.

⁴⁹ Regulation of the Minister of Labour and Social Policy of 11 March 2011 on the reimbursement of additional costs related to the employment of employees with disabilities (*Journal of Laws* 2011, No. 62, item 316).

- the place of registration of a person with disability as an unemployed person or a person seeking work without employment (if the refund of costs concerns that person); or
- the place of employment of the person with disability, the location of the employer's registered office or the employer's place of residence (in other cases).

The reimbursement of costs applies only to the additional costs of the employer resulting from the employment of persons with disabilities (i.e. such costs that would not be incurred by the employer while employing persons without disabilities). The conclusion of an agreement on reimbursement of the costs of equipment of a workstation is preceded by negotiations between the *starost* and the employer, during which the amount of reimbursement to be paid to the employer is agreed, as well as other terms of the agreement (including the date and method of settling the aid, the method of documenting the implementation of the agreement, etc.). Costs incurred by the employer before the date of conclusion of the agreement are not reimbursed. It is a condition of reimbursement to obtain a positive opinion from the National Labour Inspectorate – issued at the request of a *starost* – about adapting a workstation to the needs resulting from the disability of an employee or, in cases where the employment of a person with disability did not require adaptation, about compliance with health and safety conditions at that workstation.

If the period of employment of a person with disability is shorter than 36 months, the employer returns to the State Fund for Rehabilitation of Persons with Disabilities, through the *starost*, funds amounting to 1/36 of the total amount of reimbursement for each month – but not less than 1/6 of that amount. The employer does not reimburse funds if, within three months of the date of termination of the employment relationship with the person with disability, he / she employs another person with disability who is registered at the district office of employment as an unemployed person or a jobseeker not remaining in employment, while the resulting break is not included in the required period of 36 months.

Moreover, the State Fund for Rehabilitation of Persons with Disabilities can reimburse the costs of equipping the workplace of employees with disabilities.⁵⁰ Reimbursement of the costs of adapting a workstation can be claimed by an employer who:

- runs a business for at least 12 months – regardless of the type of business;
- employs a person with disability registered at the district labour office as an unemployed person or a jobseeker who has not been in employment for 36 months.

An employer is an organisational unit, even if it does not have legal personality, and also a natural person, if they employ workers (persons employed on the basis of an employment contract, cooperative employment contract, appointment, nomination or election). Thus, an employer may be, for example, an entrepreneur, an entity not conducting business activity, such as a foundation, association or other social organisation, or a farmer. The maximum amount of aid for equipping one position is 15

⁵⁰ [GOV.PL](https://niepelnosprawni.gov.pl/a,19,zwrot-kosztow-wyposazenia-stanowiska-pracy-osoby-niepelnosprawnej), *Skorzystaj z dofinansowania przystosowania stanowiska pracy pracownika z niepełnosprawnością* ('Take advantage of co-financing for the adaptation of the workplace of an employee with a disability'), <https://niepelnosprawni.gov.pl/a,19,zwrot-kosztow-wyposazenia-stanowiska-pracy-osoby-niepelnosprawnej>.

times the average salary. The obtaining of aid does not depend on whether the employer has its registered office or workplaces in the area serviced by the district labour office where the person with disability is registered.

When considering an application, the *starost* takes into account:

- the needs of the local labour market;
- the number of persons with disabilities with specific qualifications registered at the *poviat* (second-level units of local government and administration in Poland) labour office as unemployed or seeking employment or not being under an employment contract;
- the costs of equipping the workstation;
- the employer's contribution to equipping a workstation that has been set up;
- the amount of Fund resources allocated for this purpose in a given year.

The detailed regulations are similar to the abovementioned provisions.

Regarding other types of support, much less information on logistical support, needs assessment support or guidance on appropriate reasonable accommodation on a case-to-case basis can be found. Guidebooks offering information on general rules and the steps that may be taken are available. Training and workshops for employers on employing persons with disabilities are organised by non-governmental organisations (e.g. by the Aktywizacja Foundation, which conducts comprehensive recruitment projects for people with disabilities for positions at various levels as well as offering workplace audits and providing individual consultations to show how to optimise processes related to the employment of people with disabilities).⁵¹

3.2 Partnerships to assist employers to make reasonable accommodations

The Central Institute for Labour Protection-National Research Institute (CIOP-PIB), along with the National Disabled Persons Rehabilitation Fund (PFRON), the National Association for the Rehabilitation of Invalid and Blind Co-operatives and the Friends of Integration Association, developed a model to support people with disabilities in the work environment. The model includes a network of actors who work directly with the employer and support them in eliminating barriers. According to the road-map document, one of the outcomes of the project is the creation of a nationwide network to support employers in the process of preparing for the employment of persons with disabilities. This support will provide, among other things, analysis on the adaptations needed and the financial support available. The network will be based on regional contact points located in PFRON branches and specialist support teams.

The Polish Organisation of Employers of Persons with Disabilities (POPON) was established to represent the interests of its members in the area of legislation. POPON is the largest association of entrepreneurs employing people with disabilities. It has been active since 1995 and brings together nearly 600 companies and institutions employing a total of approximately 65 000 employees, including more than 35 000 persons with disabilities. POPON is also an information-sharing network, organising training and webinars and publishing reports including on the economic aspects of workplace adaptation.

⁵¹ Aktywizacja Foundation, Pracodawcy (for employers), <https://aktywizacja.org.pl/pracodawcy/>.

An interesting study was conducted on model partnerships for the employment of people with disabilities from small towns and rural areas. The study, concluded by Magdalena Kocejko and the Aktywizacja Foundation, has shown that actions are poorly coordinated, informal, duplicated and not very effective. NGOs often function alongside the institutional support system and are not treated as a stable and trustworthy partner for public institutions,⁵² while ‘employers are an important but absent partner’. The survey showed that cooperation is difficult, that tools are lacking and that it is mostly labour offices and NGOs that cooperate with employers.⁵³ The study revealed recurring problems that hamper the effectiveness of activation activities, including the absence of a common database, the ‘fight for clients’ phenomenon, low complementarity of activities and the particularly difficult situation of persons with disabilities from rural areas and small towns.⁵⁴ The study also envisioned a model partnership for the employment of persons with disabilities that would focus on multisectoral engagement, increasing the complementarity of activities as well as cooperation with employers.

⁵² Kocejko, M., *Modelowe partnerstwa na rzecz zatrudnienia osób z niepełnosprawnością z terenów małych miast i wsi. Raport z badania* (Model partnerships for the employment of people with disabilities from small towns and villages. Research report), Warsaw, https://www.aktywizacja.org.pl/images/PROGRAM/Raport_z_badania_Modelowe_partnerstwa_M.Kocejko.pdf, p. 24.

⁵³ Kocejko, *Modelowe partnerstwa na rzecz zatrudnienia osób z niepełnosprawnością z terenów małych miast i wsi*, https://www.aktywizacja.org.pl/images/PROGRAM/Raport_z_badania_Modelowe_partnerstwa_M.Kocejko.pdf, p. 25.

⁵⁴ Kocejko, *Modelowe partnerstwa na rzecz zatrudnienia osób z niepełnosprawnością z terenów małych miast i wsi*, https://www.aktywizacja.org.pl/images/PROGRAM/Raport_z_badania_Modelowe_partnerstwa_M.Kocejko.pdf.

4 Illustrative examples of good employer practice for providing reasonable accommodations for persons with disabilities

4.1 Good practice guides for employers regarding reasonable accommodation

Count on work: Accessible workplaces (*Postaw na pracę. Dostępne miejsca pracy*)⁵⁵

This is a guide prepared by the Activation Foundation, a well-established Polish NGO supporting the labour market participation of persons with disabilities and directly working with employers. The foundation offers a variety of support tools for employers including an easy self-audit online tool that helps employers understand what they need to do when it comes to accessibility and ensuring welcoming working conditions for persons with disabilities. The *Postaw na pracę* guide offers good practices in employing persons with four types of disabilities (blind persons, persons with a psychosocial disability, deaf or hard-of-hearing persons, and persons with physical disability), suggesting common solutions and providing examples. The publication is presented in the form of a practical guide to help employers go through the processes of recruitment, employment and workplace adaptation smoothly. The guide also tackles organisational culture.

A person with a visual disability at work: A Guide for Employers⁵⁶

This guide focuses on the processes of recruitment, workplace adaptation and retention of persons with low vision and blind persons. It is one of four guides for employers on adapting the work environment for people with motor, visual, hearing and intellectual disabilities. The guides are supplemented by: ErgoON–checklist, an interactive mobile application for the assessment of a workstation for adaptation to the needs of a person with a motor, visual, hearing or intellectual disabilities; ErgoON–benefit calculator, an interactive mobile application for calculating the financial resources an employer will receive for employing a person with a disability; ErgoON–visualisations, an application with interactive visualisations of the possibilities for adapting the office and industrial work environment to the needs of people with motor, visual, hearing and intellectual disabilities, using virtual reality techniques; and ErgoON–design, an interactive application that uses virtual reality (VR) techniques to create an optimal office work environment (most common in public administration, and also the most accessible for people with disabilities).

These guides were developed as part of project No. POWR.02.06.00-00-0054/17 entitled 'Developing and disseminating, in cooperation with social partners, a model for supporting persons with disabilities in the work environment', co-financed by the European Social Fund under the Operational Programme for Knowledge Education Development 2014-2020.

⁵⁵ Fundacja Aktywizacja (2020), *Postaw na pracę. Dostępne miejsca pracy* (Count on work: Accessible workplaces), Warsaw, <https://aktywizacja.org.pl/wiedza/publikacje/broszura-dostepne-miejsc-pracy/>.

⁵⁶ CIOP-PIB (2019), *Osoba z niepełnosprawnością wzrokową w pracy: Poradnik dla pracodawców*, (A person with a visual disability at work: A Guide for Employers), Warsaw, <https://www.gov.pl/attachment/7563e43e-87b9-41e1-91f9-fb8f364a870b>.

The deaf employee: A Guide for employers⁵⁷

A detailed guide focusing on the employment of deaf persons. It addresses the recruitment process, workplace adaptation, organisational culture and good practices. It also tackles diverse dilemmas that employers with disabilities may face, including how to navigate an assessment when the employee does not fulfil expectations. The guide provides also rationale for frequently encountered job trajectories of deaf persons – for instance, why some deaf employees stay with one employer for long periods of time. This guide was prepared in partnership with the Dobre Kadry project, which was implemented in partnership between the Research and Training Centre, the Polish Deaf Association, Łódź branch, and the Fortbildungsakademie der Wirtschaft (FAW) gemeinnützige Gesellschaft mbH Akademie Chemnitz.

No evidence on how the guides are being used has been found.

4.2 Any other sources of information regarding good practice for employers regarding reasonable accommodation

The analysis carried out by Łukasz Bojarski highlights the ruling of the Supreme Court of 12 November 2014:⁵⁸

‘Both European and Polish law imply an obligation on the employer to introduce reasonable accommodation for an employee with disability, as long as it does not constitute a disproportionately high burden. It is for the court / judge to assess all the circumstances of a given case. In any case, the concept of accommodation should be interpreted broadly and take into account both material and organisational measures. Thus, the termination of an employment contract may be considered justified only if the employer does not have any reasonable means of enabling the person with disability to continue employment. In this judgment, the Supreme Court was of the opinion that Article 23a of the Disabled Persons Act should be interpreted in such a way that by adopting appropriate, i.e. effective and practical measures to adapt the workplace to take into account disability, one should understand not only the adaptation of premises or equipment, but also of working time and division of duties. As in any case of this type, it is necessary to consider all possible changes, taking into account the rationality of their introduction in terms of the burden put on the employer. The employer’s failure to take any actions, limiting itself only to the finding that they constitute a disproportionate burden, cannot be regarded as fulfilling the obligation under Article 23a of the Disabled Persons Act. It should also be remembered that it is possible for the employer to obtain public funds for the introduction of changes enabling the further employment of an employee with disability.’⁵⁹

⁵⁷ Polski Związek Głuchych (PZG) (Polish Deaf Association), Łódź branch (2017), *Model zwiększenia dostępu do zatrudnienia Głuchych. Głuchy pracownik Poradnik dla pracodawców* (The Deaf employee: A Guide for employers), Łódź, https://pzg.lodz.pl/publikacje/Poradnik_dla_Pracodawcow.pdf.

⁵⁸ Supreme Court, judgment of 12 November 2014 (I PK 74/14), OSNP 2016/8/101, <https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/i-pk-74-14-wprowadzanie-racjonalnychusprawnien-dla-521661154>.

⁵⁹ Bojarski, Ł. (2021), Country report: Non-discrimination: Transposition and implementation at national level of Council Directives 2000/43 and 2000/78: Poland, <https://www.equalitylaw.eu/downloads/5519-poland-country-report-non-discrimination-2021-1-91-mb>, p. 35.

The 3rd Congress of Persons with Disabilities formulated a recommendation so that the definition of 'reasonable accommodation' should be provided within the Labour Code. The Commissioner for Human Rights supported this demand in a letter in 2018.⁶⁰

Beyond legal cases, there are no other sources of information on good practice for employers regarding reasonable accommodation.

4.3 Examples of individual reasonable accommodations which reveal good practice

Extensive qualitative research on good practices in the employment of persons with disabilities in Poland has been conducted by Professor Ewa Giermanowska and her team, providing analysis of several case studies of individual reasonable accommodation cases. The main points of the analysis of one of the case studies carried out by the team are presented below.

Telemarketing team manager

The case concerns Emil, a salesman with low vision, who manages a telemarketing team. Emil came to the company concerned when he wanted to change his job, and applied by himself, because the company is well-known on the market, and he had also previously worked at a place where disabled and blind persons are employed, and the company was mentioned there. His workstation was equipped with the necessary equipment. During his induction, Emil did not encounter any problems related to his disability. Emil has been treated in the same way as his non-disabled colleagues – he is subject to the same appraisal system and participates in the same training and integration activities. In everyday work there are some difficulties due to his disability, but according to Emil, as well as to his co-worker and supervisor, he believes that these are occasional. These difficulties are sometimes connected with filling in forms or paper documentation. In such cases Emil can count on the help of his colleagues. Being a salesman, he sometimes also needs help to get to the customer's premises, but this happens very rarely. In the opinion of his colleagues and subordinates, his particular advantage is the fact that he understands the needs of his subordinates with disabilities. Emil's workstation is adapted to his needs – it has an adapted computer, a magnifier (installed at his request) and a speech synthesiser. Adapting the workstation is treated in the company as natural, while the legitimacy of the 'special way' of treating persons with disabilities is sometimes questioned. For instance, the provision of software is treated as reasonable in this case – after all, all the company's employees need software in order to work. He considers financial and material support in the form of necessary equipment to be the most beneficial form of assistance.

⁶⁰ Commissioner for Human Rights (RPO) (2018), 'RPO on insufficient assistance for people with disabilities in entering the open labour market', <https://bip.brpo.gov.pl/pl/content/rpo-o-niewystarczaj%C4%85cej-pomocy-osobom-z-niepe%C5%82nosprawno%C5%9Bciami-we-wchodzeniu-na-otwarty-rynek-pracy>.

5 Recommendations and guidance regarding good practice and reasonable accommodation

5.1 Recommendations regarding good practice and reasonable accommodation in recruitment and hiring

When preparing a job advertisement for a new employee, it is important to avoid direct statements stating that the company is only looking for persons with disabilities. Instead, it is advisable to clearly encourage people with disabilities to take part in the recruitment process, or to clearly emphasise the employer's willingness to also employ persons with disabilities. A positive message will contain information about the accessibility of the company's building for people with disabilities, about how to get there by public transport or about workstation adaptations for people with a specific type of disability. If the company already employs people with disabilities, it is worth including this information in the advertisement.⁶¹ During the job interview, it is important to ask about the expectations in relation to the job, including with regard to reasonable accommodation.

Carefully 'look around' the job, check whether, in order to get to a particular workstation, a person has to overcome stairs or other obstacles – even small ones. Also check whether there is an accessible toilet at all, and if so, how far it is from the future workstation.⁶²

It is crucial for companies to offer reasonable accommodation during the recruitment process, with a clause in the job advertisement on how to request reasonable accommodation when applying for the position. Job advertisements should also meet accessibility standards.

One of the good practices in supporting employers in reasonable accommodation in the recruitment process is going beyond legal information. Providing legal information is not sufficient for establishing good recruitment and hiring processes, and more training is needed for HR to help with understanding and navigating complex situations in recruitment. More focus is required in solving practical dilemmas that employers may encounter as, while general information is available, it rarely includes analysis of commonplace challenges faced by employers. Moreover, strategies on how to organise the shortlisting process should be prioritised, so that the need to provide reasonable accommodation during the interview does not hinder the recruitment process for persons with disabilities.

Reimbursing the costs of adapting workstations is a very important support measure for employers, but the procedures related to financial support should be made simpler, more accessible and less bureaucratic.

⁶¹ CIOP-PIB, *Osoba z niepełnosprawnością wzrokową w pracy*, https://www.ciop.pl/CIOPPortalWAR/file/88315/Osoba_z_niepelnosprawnoscia_wzrokowa_w_pracy-Poradnik_dla_pracodawcow.pdf.

⁶² See: <https://aktywizacja.org.pl/wp-content/uploads/2020/04/Broszura-Fundacja-Aktywizacja-Dost%C4%99pne-miejsca-pracy.pdf>.

5.2 Recommendations regarding good practice and reasonable accommodation in initial employment

It is crucial to consult on all reasonable accommodation measures with the person concerned. Some guidelines indicate that, at the initial stage of employment, it is important to consider assigning a 'guide' for an employee with a disability. The designated guide will be the first contact for the new employee and will help him / her to commence his / her tasks and relationships within the team.

At the start of an employment contract, the employer should include a site visit, during which the person's accessibility needs will be established, and it can be decided whether and when those needs will be reviewed again. It is crucial to ensure accessibility in the digital space also. It is equally important to introduce the new employee to the organisational culture at the workplace.

It is good practice, in the new employee's first discussion with the manager, to establish how they will be introduced to the team. Regardless of who the introducer is, the first discussion with the employee requires joint arrangements on the basic issue of whether to inform colleagues (and whom) about the disability and the connected rights (e.g. reduced working hours) and needs (e.g. adjusting the height of a printer or rearranging desks in a room). By communicating openly about disability and the resulting needs in the workplace, we can avoid potential misunderstandings and conflicts in the team.

Support from successful employers should entail better access to practical assistance in providing reasonable accommodation. The reasonable accommodation process is perceived as very complex and over-bureaucratic, which hinders its implementation, so employers could benefit from professional advice on making appropriate decisions. It is also recommended to diversify the examples of reasonable accommodation that are provided, with guidance on the reasonable accommodation of persons with multiple disabilities, persons using ACC, deaf and blind persons and neurodivergent persons, for example. The available guides usually focus on certain types of disability, not reflecting fully the whole diversity of persons with disabilities.

5.3 Recommendations regarding good practice and reasonable accommodation in promotion and career development

This aspect is somewhat missing from many of the guides reviewed. It is recommended to develop a stronger focus on promotion and career development, especially with regard to the incentives for hiring persons with disabilities on higher job positions.

5.4 Recommendations regarding good practice and reasonable accommodation in retention, i.e. enabling people to stay in work if they develop an impairment or their impairment changes

Retention and revision of reasonable accommodation is usually only briefly tackled within the guides. It is recommended that the guides on reasonable accommodation address retention in much more comprehensive ways. This should include a broader diversity of the disability community (e.g. including invisible disabilities). This should include instructions on how to regularly revise reasonable accommodations for employers. The guides should also tackle practical aspects of negotiating the scope of reasonable accommodation, as well as offering solutions for frequently encountered dilemmas. Given the fact that, according to the quantitative research⁶³ conducted among 439 employers, the most important barrier that they identified was high expectations regarding the productivity and physical fitness of the employee (42 %), it is necessary to strengthen understanding of the rights-based approach and to address organisational culture. There is a clear necessity to support employers in dismantling ableism within organisational culture, as it is a key factor hindering the employment of and provision of reasonable accommodation to persons with disabilities.

⁶³ Bugajska, J. et al., *Model wsparcia osób niepełnosprawnych w środowisku pracy*, https://www.ciop.pl/CIOPortalWAR/file/88309/Model_wsparcia_osob_niepelnosprawnych_w_srodowisku_pracy-Mapa_drogowa.pdf.

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