



European Agency Meeting 1^{er} février 2012

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INTRODUCTION



Two constitutional principles:

One principle defined within the Constitution introduction:

« ***Citizen equality in front of the law***»

One principle defined within the Constitution:

«***Every citizen benefits from a job***».

These two principles prepare a legislation disposal which forbids discrimination.


INTERDICTION OF ANY DISCRIMINATION

■ 27th may 2008 law *first article*

« is a direct discrimination ,the situation in which on the basis of one 's or no membership, real or supposed, to an ethnic group or a race, religion, convictions,age, disability, sexual orientation, a person is treated in a less favourable way than another one is, has been or will be i a similar situation ... »

A report :

- ***Non discrimination principles whether they are foreseen by the constitution or the law are not enough.***
- ***Historically the legislator had to create particular obligations generating consequently a real principle of positive discrimination.***



Laws which have established a
principle of positive discrimination:

La loi du 26 avril 1924 : this law forces employers to recruit war pensioners and widows. (10% employment in firms of more 10 employees)

Loi du 23 novembre 1957: creation of obligation to employ 3% (included inside the 10%) of disabled people. (10% employment in firms of more 10 employees)

Loi du 30 juin 1975: Disabled people inclusion becomes a national obligation.

Loi du 10 juillet 1987: Firms of more than 20 employees must employ people recognized as disabled workers up to 6% of the staff.

Fines for non respecting this law payed to AGEFIPH

Loi du 12 juillet 1990 ; relating to the protection of people against discrimination due to their health of disability.

Loi du 30 décembre 2004 : foresee fines for any diffamation or insult towards a person because of sexe, sexual orientation or disability.

Loi du 11 février 2005 : for rights and opportunities equality, as well as participation and citizenship for disabled people.

Loi du 1^{er} janvier 2010 : reinforcing of the fine quota 0 for 3 years



I) RECRUITMENT OF THE DISABLED WORKER



A) Obligation to respect a quota of disabled workers

- a) The disabled workers employment compulsory obligation



Statement of disabled workers employment obligations (DOETH)

- Each year firms counting more than 20 employees must declare to the state the amount of disabled workers recognized by the CDAPH.


b) Penalties:

- Non respect of the 6% obligation activates a penalty whose contribution is paid to the AGEFIPH - FIPHFP according to the firm size.
- - Firms from 20 to 199 employees (400 times the SMIC hour for every missing unit)
- Firms from 200 to 749 employees (500 times the SMIC hour for every missing unit)
- Firms from 750 and more employees (600 times the SMIC hour for every missing unit)
- IF quota 0 for 3 consecutive years, fines are inscreased (1500 times the SMIC hour for every missing unit)

c) flexibilities for the obligation to employ disabled workers *(article L 5212-6 du code du travail)*

Employers subjected to disabled workers employment obligation can discharge of this obligation in certain conditions :

- *By signing subcontracting agreements : for materials or service providing with EA (adapted firms), distribution centres of work at home or ESAT (structures or services to help through work)*
- *transferring possibility of disabled staff in EA in a using ordinary firm.*



Experimentation is going to enable private and public employers to finance themselves posts in adapted firms , as a partial deduction of their l'AGEFIPH contribution

(conférence nationale du handicap du 8 juin 2011)

d) A few figures

At a national level :

- 49% of the firms which must employ disabled workers in France respect the 6% quota imposed by the Law.
- 29% of the firms have entirely answered to the obligation by employing only people benefiting from DOETH

■ At Mayenne level :

Among 532 firms of more than 20 employees submitted to the obligation, 54% have accomplished their disabled workers employment obligation

B) Pôle Emploi Task

- As a work placement structure Pôle Emploi prospects firms and collects all job offers sent by employers. It gets in contact all job seekers (including disabled workers) with the firms.

C) CAP EMPLOI ROLE

- **CAP EMPLOI** a specialized placement structure leading a public service mission registered in the February 2005 Disability Law and dedicated to disabled people work inclusion
- Its mission is to take in charge a diagnosis, orientation and accompaniment of disabled people and employers wishing to employ them
- These services are financed by :
 - AGEFIPH
 - FIPHFP
 - Pôle Emploi within its programs frame



II) General Obligation for a firm which employs

A) Premises accessibility

a) Accessibility definition

(R 4214 - 26 articles from the work code)

- Work premises, including side premises , settled in a new building or the new part of an existing building are accessible for any disabled person, whatever the disability is.
- Work premises are considered as accessible for any disabled person when they can:
 - Access to these premises,
 - move inside them,
 - evacuate them,
 - to find one's bearings,
 - Communicate with the biggest autonomy

b) From accessibility towards adaptability

(R.4225- 6 – 7 – 8 articles from the work code)

- «Work premises are designed so as to enable work posts adaptation for disabled people or to make it feasible later... »



■ B) **Adapted premises**

(article R 4225-6 et suivants du code du travail)

« Work post as well as lavatories and restaurant which disabled workers are supposed to use in the firm must be fitted so that these workers can easily accede to them.»



III) Financement of helps to firms which employ

A) The AGEFIPH

a) Collected funds by the AGEFIPH

(employers contributions)

- We can notice a decrease of penalties collected by the AGEFIPH at a national level.

Thus, the AGEFIPH has collected :

600 millions euros in 2007

539 millions euros in 2010



■ For Mayenne departement

- 12% less of penalties collected between 2009 and 2010
- 25 firms out of 567 are at quota 0 in 2010
- 55% of the 567 firms in Mayenne respected the obligation to employed disabled workers in 2010 and 85% of them did it through flexibilities.
- 15% of firms have paid a contribution



Reasons for this decrease

- The more restricting 11th February 2005 law and the fine hardening applicated on the 1st January 2010 have produced the desired effect.
- We can also notice a renewal of public- spiritedness from firms in particular concerning their image improvement
- The crisis has led to a noticeable lessening of the contributing structures (8% less)

b) COLLECTED FUNDS USE

- From the 1st January 2012 financial helps will not any more be automatically paid
- Definition of a priority having public (Disabled job seeker away from empmoyment and PME)
- Help mobilisation as soon as the common right has fulfilled its role
- Help prescription and allowances according to these principles byCAP EMPLOI (for access to work) and SAMETH (for keeping in employment)
- Regional Policy adapted to the concerned population needs
(training 29% of the AGEFIPH budget, quality of accompaniment and advice given to the firms and disabled people, a better way to take into account disabled people (qualification levels, age, disability nature).

C) RLH (acknowledgement of the disability weight)

transferred from UT to AGEFIPH on 1st July 2011

- This disposal seeks to compensate disability consequences on the professional activity which are studied on the basis of the costs that the firm supports because of the employee's disability

RLH is given if the cost over is at least 20%

Taking in charge the cost of tutoring is possible.

After a AGEFIPH decision (*valid between 12 and 36 months*) employers can benefit from a financial help

- **help to employ** (400 times the SMIC rate if the additional cost is between 20 and 49%) or 900 times the SMIC rate from a 50% additional cost

For the firms over 20 employees a choice between:

- help to employment or a decrease of the AGEFIPH contribution



IV) ADAPTED FIRMS

(employment in ordinary environment)

B) FUNCTIONING MODES

a) Recruiting modes

SPE (public service for employment) and the CAP EMPLOI network could offer a job in adapted firms according to the professional project of the disabled person, his/her needs and his/her difficulties

New aspects from the 1st January 2012



Report : *with an employment rate 2 times higher than the national average disabled employees are more often subjected to discriminations than others during their professional courses.*

Adapted firms must :

1) Firstly employ disabled people who have been registered and « orientated towards work market » and:

:

- Benefit from the disabled adult allowance***
- have been employed for at least 12 months on a period of 18 following months***
- must be more than 50 or less than 25 years old***
- are coming from ESAT***

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- 2) - Favour professionalisation and professional mobility of disabled workers
- Recruiting at least 600 disabled employees in professionalisation contract or apprenticeship

(84% of the employees in EA soare non skilled workers for their jobs)

b) Administrative modes

3 year aim Contract triennial concluded with the STATE

- **This 3 year aim Contract between the STATE and the adapted firm gives to the structure the right to be « ADAPTED FIRM » .**

This aim Contract defines the characteristics and projects of the structure and fixes agreements for 3 years.

After these 3 years UT 53 values the executive appraisal of the aim Contract for the social and professional aspects.

c) Financial modes

- **Help for the post:**

This financial help is given every month by the State up to(80% of SMIC) for each recognized disabled worker

- Help to start** (creation or takeover) 4 600€ for each disabled worker employed in the two first years

- **Special help** is composed of a 900€ inclusive basis for each disabled worker and a second part given according to other aspects:

- Keeping disabled workers who are getting older
- economical development of the structure
- disabled worker professional mobility (favour **aim Contract** the transfer of the disabled worker towards firms which are not adapted
- one part about project (structure extension, new activity)
- help to advise
- help to structures with difficulties

- **Garanty Funds**(convention with the State and France Activ guaranty)

- **National accompaniment plan**

■ C) A few figures

At the national level

650 adapted firms employ 28000 disabled workers

At the departemental level

4 adapted firms for

218 helps to state financed posts

V) ESAT

(Employment in protected environment)

The former centres of help through work (CAT) are now known as structures of help through work terme d'établissements et services d'aide par le travail.

ESAT are social and medical-social institutions in regards of the 2nd january Law

They have a double purpose:

- A social one: to include the disabled person,
- An economical one: to produce goods or services



Thank you for your attention