



11 February 2016

STUDY DAY

*Reasonable accommodation and disability
Role and implementation of a new legal tool*

EHESP, La Plaine Saint-Denis

This study day looks at the legal framework of reasonable accommodation as well as its social uses in the context of employment of people with disability.

- **A recent legal arsenal**

The concept of accommodation isn't new in the workplace, but "reasonable accommodation" as a legal means to support the employment of disabled people has only recently been introduced. This concept can be found under Article 8 of the European Directive on equal treatment in employment and occupation (2000). The United Nation's Convention on the rights of persons with disabilities (2006) considers "reasonable accommodation" to mean necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms Here reasonable accommodation extends to all areas of social life. Under the French law of 2005, it encompasses "appropriate measures" and "undue burden". Private law (article L.5213-6 of the labour code) and by public law (article 6 sexes of the law no. 83-634 of 13 July 1983) both refer to this.

The concept of reasonable accommodation is part of a relatively new set of broad legal measures designed to combat discrimination. It's also part of France's drive to promote the professional integration of people with disability which includes the obligation to employ such people.

The new framework of reasonable accommodation adopts a two-pronged approach:

- Firstly it seeks to **support disabled job applicants and employees without affording them preferential treatment.** Cases are assessed on an individual basis according to the person's circumstances and the job under consideration. The approach used is one of equality where no individual is favoured simply on the basis of disability.
- Secondly, **the framework provides a set of new and legally binding tools** aimed at employers and covers the whole employment process: recruitment, career plan, access to professional development, job retention etc.

- **A technical concept that is blurred around the edges**

The **concept of reasonable accommodation remains somewhat complex** with each case being assessed on an individual basis. The law does state that accommodation should not constitute an undue burden on the employer but there is no clear definition of what this means exactly. Furthermore, a clear basis cannot yet be derived from legal precedents. The French labour law only provides that public funding for employers should be considered when assessing how much of an "undue" burden reasonable accommodation would be. In order to strike a fair balance between the needs of running a business and the need to allow more disabled people to integrate professionally, the "*Défenseur des droits*", or ombudsman charged with ensuring equal rights, has set out various assessment criteria: the cost and nature of adjustments to the workplace; impact on how the company is organised; the human and financial resources of the employer; impact recruitment would

have on government benefits for the employer, health and safety issues both for the person concerned and for other staff.

- **How the concept of reasonable accommodation is called upon and used**
 - In France there is little literature on how this concept is called upon or used. Work undertaken in other countries including the US and Canada, and to some extent France, points to the need for a negotiation process not just involving the employer and the disabled worker, but also the management and staff.
 - **The requirement to make accommodations doesn't aim to produce an ideal situation but rather a practical and efficient situation.** The work also highlights attitudes towards disability in the workspace: how employers consider the potentially higher costs of adjustments; how disabled workers may be reluctant to reveal their disability; how their valid colleagues may consider compensations as perks. The introduction of reasonable accommodation is therefore about recognising, and as need arises, changing work practices, rather than merely referring to positive law.

Agenda

- 9.00am **Reception**
- 9.30 - 9.40am **Opening**
André Montané, President of the FIPHP national board
- 9.40 - 10.00am **Introduction**
Emmanuelle Fillion, Research fellow at MSSH-EHESP-UMR CRAPE
Jean-François Ravaud, Research director at INSERM
- 10.00 - 11.00am **Scope and sociological and legal definitions**
Moderator: *Jean-François Ravaud, Research director at INSERM*
- Reasonable accommodation and workers with disability: sociological approaches
Aude Lejeune, Research associate at CNRS/CERAPS, Université de Lille
- "Shining the spotlight on US legal precedents in reasonable accommodation at work": a look at the concept from a foreign legal perspective
Marie Mercat-Bruns, Senior lecturer at Conservatoire National des Arts et Métiers, member of LISE (UMR 3320 CNRS-CNAM), affiliate lecturer at the Sciences Po law school.
- 11.00 - 11.15am *Coffee break*
- 11.15 - 12.30pm **Procedures for exercising or forfeiting the right to reasonable accommodation**
Moderator: *Emmanuelle Fillion, Research fellow at MSSH-EHESP-UMR CRAPE*
- The requirement to make reasonable accommodation as part of the right to equal treatment
Fabienne Jegu, Disability expert advisor – Défenseur des droits (ombudsman)
- Is the introduction of the concept of reasonable accommodation into French law achievable?
Sophie Robin-Olivier, Lecturer at Sorbonne-Paris 1 law school
- Panel discussion with speakers from the morning session:
Vincent-Arnaud Chappe, Research associate at CNRS CSI-Mines ParisTech
- 12.30 - 1.45pm *Lunch*
- 1.45 - 2.45pm **A European principle and national transpositions**
Moderator: *Pascale Roussel, Research fellow at MSSH-EHESP*
- How the UK, Spain and Sweden transpose reasonable accommodation. A question of context.

Dominique Velche, Social scientist at MSSH-EHESP

Reasonable accommodation pushing its way into Belgium law: the difficult introduction of a new legal tool

Julie Ringelheim, scientist at the Belgian Fund for Scientific Research - FNRS / Lecturer at Université catholique de Louvain - UCL

2.45 - 3.00pm Coffee break

3.00 - 4.30pm Staff practices and attitudes towards reasonable accommodation

Dominique Lhuillier, Professor Emeritus in work psychology at CRTD - CNAM

Roundtable: Effectiveness and practical procedures of reasonable accommodation

Guillaume Depincé, Ergonomist in the health department of transport company RATP, member of CFDT union

Marie-Cécile Mocellin, Human Resources Manager - Centre Hospitalier Sainte-Anne

Arnaud de Broca, Secrétaire general of FNATH

Claire Patard, Occupational health physician at Académie de Créteil education authority

Guy Tisserant, TH Conseil consultancy

Moderator: Marie-Renée Guével, Lecturer at EHESP-UMR CRAPE

4.30 - 5.00pm End of the proceedings

Organising committee **Marie-Aline Bloch**, EHESP-SHS-MSSH, IFRH, **Emmanuelle Fillion**, EHESP-SHS-MSSH, Chaire Participation sociale et situations de handicap, **Marie-Renée Guével**, EHESP-SHS, Programme de recherche "Emploi des personnes handicapées dans la fonction publique", **Philippe Nicolle**, FIPHFP, **Jean-François Ravaud**, INSERM, Chaire Participation sociale et situations de handicap, IFRH et **Pascale Roussel**, EHESP-SHS-MSSH.

