

FACILITATION OF EMPLOYMENT OF PERSONS WITH DISABILITIES: LEGAL ASPECTS

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ABSTRACT

This article explores the legal obligations of states and businesses in facilitating the employment of persons with disabilities, emphasizing the intersection between sustainable business practices and human rights. It examines key international legal frameworks, including the Convention on the Rights of Persons with Disabilities, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and the International Labour Organization's Tripartite Declaration of Principles. The study highlights the role of corporate sustainability due diligence, particularly in light of the EU Directive 2024/1760, in ensuring equal employment opportunities. It focuses on measures to facilitate employment, including affirmative action, support for career development, vocational training, self-employment opportunities, and public sector initiatives aimed at fostering an inclusive labour market.

Keywords: Employment of persons with disabilities, Human rights obligations, Sustainable business

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1 INTRODUCTION

The right to work is fundamental, integral to human dignity, and crucial for realizing other human rights. It supports individual and family survival and, when freely chosen or accepted, fosters personal growth and social recognition (CRPD, 2022, para. 2).

Disability is part of being human. An estimated 1.3 billion people – about 16% of the global population – currently experience significant disability. (WHO). Persons with disabilities face significant barriers to equal employment, including high unemployment, lower wages, job instability, poor hiring conditions, and inaccessible workplaces. They are less likely to hold managerial roles and more often work in vulnerable or informal employment. These challenges are even greater for women with disabilities. (CRPD, 2022, para. 4).

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The study published by the International Labour Organization stresses that people with disability are consistently less likely to participate in the labour market. On average across countries, having disabilities decreases the likelihood of labour market participation by 29 percentage points for men, and by 20 percentage points for women” (Ananian, Dellaferrera, 2024, p. 14). Persons with disabilities face higher unemployment rates and are more often in self-employment or precarious work than those without disabilities. When employed, they also tend to earn lower wages on average. It is important to note, that such disparity is not fully explained by differences in education, experience, or occupation, but rather by factors like insufficient workplace accommodations, limited job flexibility options, and outright discrimination (Ananian, Dellaferrera, 2024).

This article aims to reveal the content of the obligation of states and businesses to facilitate the employment of persons with disabilities. It will demonstrate the link between sustainable business and assurance of human rights; the links between the notion of sustainability and disability as well as will cover specific obligations of states set out in the norms of international law regarding facilitation of employment of persons with disabilities. This paper seeks to answer the following questions: (1) How do selected international legal instruments influence national efforts to employ persons with disabilities? (2) What role does corporate sustainability due diligence play in enforcing these obligations in practice? The research uses a doctrinal legal method and limited comparative analysis.

2 DISABILITY AND SUSTAINABLE DEVELOPMENT

The Sustainable Development Goals (hereinafter – SDGs), developed under the auspices of the United Nations include the aspect of disability in their content. Disability is referenced in various parts of the SDGs and specifically in parts related to education, growth and employment, inequality, accessibility of human settlements, as well as data collection and monitoring of the SDGs (UN DESA). “The 2030 Agenda pledges to leave no one behind, including persons with disabilities and other disadvantaged groups, and recognizes disability as a cross-cutting issue to be considered in the implementation of all of its goals. The Agenda also includes seven targets and 11 indicators explicitly referencing persons with disabilities, covering access to education and employment, availability of schools that are sensitive to students with disabilities, inclusion and empowerment of persons with disabilities, accessible transport, accessible public and green spaces, and building the capacity of countries to disaggregate data by disability” (UN DESA-a).

Specifically, regarding employment, Goal 8 states the aim to “Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”. The UN analysis showed that people with disabilities are 1/3 to 1/2 less employed than person without disability (UN DESA-a).

To bridge employment gaps and achieve SDG Goal 8 for persons with disabilities, States should take the following actions:

- Enact and enforce national legislation that prohibits discrimination against persons with disabilities in all aspects of employment.
- Promote the hiring of persons with disabilities in the public sector.
- Implement public procurement policies that incentivize the employment of persons with disabilities.
- Ensure public employment services are inclusive and accessible to persons with disabilities.
- Adapt mainstream vocational education to accommodate persons with disabilities.
- Include persons with disabilities in mainstream entrepreneurship training and microfinance systems.
- Establish policies to support job retention and return-to-work options for individuals who acquire a disability, including those with mental health conditions.

- Provide support for individuals in sheltered employment to transition into the mainstream labour market.
- Design social protection systems that ensure income security and address disability-related needs.
- Develop evaluation frameworks to monitor and improve employment initiatives for persons with disabilities.
- Create and maintain a database with comprehensive, disaggregated data on disability and employment (UN DESA-a).

3 SUSTAINABLE BUSINESS AND HUMAN RIGHTS

Corporate sustainability is a notion where businesses commit to value system and principles-based approach in conducting business (UNGC-a). The notion of responsible business, or socially responsible business has been developed on the level of the United Nations (hereinafter – UN) by forming the UN Global Compact, which is a corporate sustainability initiative¹. Its first principle states that “Businesses should support and respect the protection of internationally proclaimed human rights” (UNGC). The UN Global Compact is a voluntary initiative, but it adds to the implementation of human rights.

Companies should determine their responsibility to respect human rights by assessing three key factors. First, they should evaluate the country and local context for human rights challenges, especially in regions with weak laws or enforcement, using resources like NGO reports, trade union data, and risk assessments. Second, they must examine whether their own activities, such as production, employment practices, or political actions, cause or contribute to adverse human rights impacts and adjust policies to prevent infringements. Finally, companies should analyse relationships with governments, partners, and suppliers to identify risks of being implicated in human rights abuses, including complicity in violations caused by others (UNGC).

This notion is further stressed by the UN “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” which were endorsed by the UN Human Rights Council in 2011 (OHCHR, 2011). Despite being formally a recommendation, it is an authoritative source for states seeking to uphold their human rights obligations. Principles state that “in meeting their duty to protect, States should:

- a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps.
- b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights.
- c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations.
- d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts” (OHCHR, 2011, p. 4).

The discussed concept of human rights due diligence was also addressed by the Organisation of Economic Cooperation and Development in its Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD, 2023). They emphasize the positive contribution that enterprises can make to economic, environmental and social progress, including contribution to ensuring human rights.

¹ With more than 15,000 companies and 3,800 non-business signatories based in over 160 countries, and 69 Local Networks, the UN Global Compact is the world’s largest corporate sustainability initiative.

The concept of due diligence is also integral to the recommendations outlined in the International Labour Organization's Tripartite Declaration of Principles on Multinational Enterprises and Social Policy. "The principles laid down in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) offer guidelines to multinational enterprises, governments, and employers' and workers' organizations in such areas as employment, training, conditions of work and life, and industrial relations" (ILO, 2022).

Corporate sustainability due diligence notion as a legal obligation is currently being developed in the European Union. EU Directive 2024/1760, adopted on 25 July 2024, aims to foster sustainable and responsible corporate behaviour in companies' operations and across their global value chains (European Parliament and Council, 2024). "The new rules will ensure that companies in scope identify and address adverse human rights and environmental impacts of their actions inside and outside Europe." (European Commission).

This Directive establishes a corporate due diligence obligation, requiring companies to identify and address actual or potential adverse impacts on human rights and the environment within their operations, subsidiaries, and value chains, including those of their business partners. The Directive applies primarily to large EU limited liability companies and partnerships with over 1,000 employees and a net global turnover exceeding EUR 450 million, encompassing approximately 6,000 entities. It also covers around 900 large non-EU companies with a net turnover of more than EUR 450 million within the EU (European Commission).

However, the research by Stein and Bantekas (2021) illustrates that despite this progress in business and human rights issue, "persons with disabilities and disability rights are absent from both the key instruments and practice of business and human rights." This gap is in place even though the United Nations (UN) Convention on the Rights of Persons with Disabilities (hereinafter – CRPD) is almost universally ratified. Furthermore, persons with disability constitute over 15 per cent of the global population and the operations of multinational corporations impact persons with disability greatly and disproportionately. Therefore, the future lies in "the development and self-enforcement of disability-specific human rights due diligence (HRDD) processes, and creating a general culture of diversity, equity and inclusion that encompasses disability." (Stein, Bantekas, 2021).

4 HUMAN RIGHTS OBLIGATIONS REGARDING EMPLOYMENT OF PERSONS WITH DISABILITY

"The right to work has occupied a central place in the human rights discourse. It is increasingly being acknowledged as inextricably linked with human dignity, life, identity and privacy among a host of other fundamental rights" (Bhattacharjee, 2013, p. 42). It is recognized by major international human rights treaties. The Universal Declaration of Human Rights (UN, 1948) enlists it as one of the universally applicable human rights. As a legal obligation it is established in Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (hereinafter – ICESCR), which states that "the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right" (UN, 1966). The right to work is also covered in International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and other universal and regional international treaties.

The Convention on the Rights of Persons with Disabilities (hereinafter – Convention or CRPD) and its Optional Protocol was adopted on 13 December 2006 and came into force on 3rd May 2008 (UN, 2006). "The Convention adopts a broad categorization of persons with disabilities

and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptation has to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced” (Vasiliauskienė, Pranevičienė, p. 83; CRPD-a).

Article 27 of the Convention highlights the right of persons with disabilities to work on an equal basis with others, emphasizing the importance of an inclusive, accessible, and open labour market. It acknowledges the right of individuals with disabilities to freely choose or accept employment and earn a living under favourable conditions. To achieve this, the article outlines specific measures that States Parties must take to promote and safeguard this right. These measures include prohibiting discrimination in all aspects of employment, ensuring equal pay for work of equal value, and providing safe and healthy working conditions, free from harassment.

The article also focuses on empowering persons with disabilities to participate fully in the labour market. It mandates the promotion of technical and vocational training, access to career advancement opportunities, and the facilitation of self-employment and entrepreneurship. Additionally, it calls for the inclusion of persons with disabilities in both the public and private sectors through policies such as affirmative action and reasonable accommodation. Rehabilitation, job retention, and return-to-work programs are also emphasized to ensure continued participation in the workforce, even for those who acquire disabilities during their careers.

Lastly, Article 27 unequivocally condemns slavery, servitude, and forced labour, ensuring persons with disabilities are protected from such practices. By implementing these comprehensive measures, the article seeks to foster a labour environment where persons with disabilities can achieve economic independence, dignity, and equality, while contributing meaningfully to society.

Article 27 of the Convention provides guidance to States Parties on ensuring the right to work for persons with disabilities by establishing key principles:

1. Non-discrimination: Persons with disabilities must have the right to work on an equal basis with others;
2. Accessibility: The right to work includes the opportunity for persons with disabilities to earn a living in an accessible work environment, which requires identifying and removing barriers that impede their ability to work equally with others;
3. Reasonable Accommodation: States must facilitate equal access to work by ensuring that reasonable accommodations are provided to persons with disabilities upon request. Denial of such accommodations should be recognized as a form of discrimination, and effective measures, including legislative actions, should be taken to address this;
4. Positive Measures: Beyond imposing obligations on private-sector employers, States are encouraged to adopt proactive measures to promote employment opportunities for persons with disabilities (Della Fina, Cera, 2015, p. 147).

One of the actions that include facilitation of the employment of persons with disabilities, listed in Article 27, is to “promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment” (UN, 2006, Article 27(1)(e)). The Committee on the Rights of Persons with Disabilities, established according to the provisions of the Convention under the auspices of the UN (hereinafter – the Committee), elaborates that “States parties should ensure that persons with disabilities have meaningful opportunities to develop their careers, whatever the form of their employment. Opportunities for development include reskilling and upskilling, training, lifelong learning and mentorship programmes” (CRPD, 2022, para. 36). It stresses the need to ensure fair, merit-based and transparent processes for promotion in the field of employment. Furthermore, it outlines the importance of analysis of

barriers which directly or indirectly hinder career advancement of persons with disabilities, including training necessary for advancement of their career (CRPD, 2022, para 37).

Further, another provision regarding facilitation of employment of persons with disabilities encourages states to “Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one’s own business” (Article 27(1)(f)). The Committee underscores that “States parties should take targeted measures to protect and support persons with disabilities in the informal economy, to promote and accelerate their transition to the formal economy, and to prevent work in the formal economy from becoming informal.” (Commentary, para. 38.) The persons with disabilities should be able to get information about entrepreneurship, micro, small and medium-sized enterprises, and other forms of business models and economic units, such as cooperatives. The integrated policy framework should be inclusive for persons with disabilities, ensuring effective coordination among various levels of government and fostering collaboration between relevant entities and authorities, including tax agencies and social security institutions. (CRPD, 2022, para 39)

Other obligation of states is to “employ persons with disabilities in the public sector” (Convention). The Committee stresses that States Parties should establish objective criteria for hiring and promoting persons with disabilities based on merit while actively working to increase their representation in the workforce. Where necessary, targeted measures should be implemented to raise awareness within the public sector, attract and recruit persons with disabilities, and provide support for employees with disabilities. These efforts should aim to reflect the diversity of society and leverage the valuable lived experiences of persons with disabilities. The Committee urges States Parties to boost employment of persons with disabilities through affirmative action, such as targeted funding and vocational programs in public and private sectors. Additional measures include quotas or targets, with mandatory annual compliance reporting by public authorities (CRPD, 2022, para. 40–41).

Lastly, Article 27 also requires states to “promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures”. The Committee outlines that “Specific affirmative action measures may be required, such as quotas to increase the employment of persons with disabilities in the private sector. At the same time, quotas alone are insufficient to promote the employment of persons with disabilities and may be resisted by persons with disabilities if the system focuses on impairment rather than ability.” (CRPD, 2022, para. 42). Affirmative action measures include public procurement preferences for businesses owned by or employing persons with disabilities, along with targeted funding for workplace modifications, wage support, tax deductions, and subsidies. However, policies supporting segregated employment do not align with the Convention. (CRPD, 2022, para. 42–43).

5 CASE STUDY: IMPLEMENTATION OF CRPD ARTICLE 27 IN LITHUANIA

In 2023, Lithuania reported that 42.7% of persons with disabilities were at risk of poverty or social exclusion, significantly higher than the EU average of 28.8%. Furthermore, the at-risk-of-poverty rate among persons with disabilities in Lithuania stood at 36.6%, compared to 14.1% for those without disabilities. These figures highlight the socioeconomic disparities experienced by individuals with disabilities. (European Commission, 2024). In 2021, expenditure on disability benefits in Lithuania amounted to EUR 795.4 million, representing 7.8% of total social protection benefits. This marked a 17% increase compared to 2020, indicating a growing investment in supporting persons with disabilities (Lithuanian Department of Statistics).

Lithuania has undertaken significant steps to align its national employment policies with international human rights standards, particularly the CRPD. The country’s Law on Employment (Lietuvos Respublikos Seimas, 2016) and complementary legislation set forth

a legal foundation that prohibits discrimination based on disability and mandates equal treatment in all aspects of employment. These commitments are reinforced by the “Neįgalumo reforma” (Disability Reform), which aims to modernize the support system and promote independent living and labour market participation for persons with disabilities (Ministry of Social Security and Labour).

The Law on Employment (Lietuvos Respublikos Seimas, 2016) recognizes persons with disabilities as a distinct group entitled to additional support in the labour market. Article 25 of the Law on Employment classifies certain persons seeking employment as “additionally supported,” including those with various levels of reduced working capacity and individuals formerly employed in social enterprises. To facilitate their integration, the Law introduces subsidized employment measures under Article 41. Employers hiring such individuals may receive wage subsidies ranging from 50% to 75%, depending on the degree of disability and employment status of the worker. These subsidies serve as financial incentives for employers to overcome reluctance and accommodate workers with disabilities. Additional support includes coverage of job assistant costs and sustained support during times of economic disruption, such as national emergencies.

Further measures to ensure inclusiveness are embedded in public sector employment policy. As of January 2024, public institutions and state-owned enterprises in Lithuania must meet a 5% quota for employees with disabilities, provided qualified candidates are available (Lietuvos Respublikos Seimas, 1991, Art. 10). This affirmative action requirement, overseen by the Ministry of Social Security and Labour, is designed to ensure that public sector bodies serve as role models in advancing inclusive employment. Where candidates with disabilities are not available, institutions are expected to coordinate with the Employment Service to facilitate appropriate training or upskilling measures.

Lithuania’s evolving legal and institutional framework reflects a rights-based approach to disability and employment. Through its combined use of quotas, financial incentives, individualized support services, and monitoring mechanisms, the country demonstrates a comprehensive commitment to integrating persons with disabilities into the open labour market. However, the success of these measures depends on effective implementation, including adequate funding, employer awareness, and systemic cooperation between institutions. As a case study, Lithuania offers a valuable example of how national legislation can concretely operationalize CRPD obligations and promote economic participation for persons with disabilities.

6 DISCUSSION AND CONCLUSIONS

Achieving sustainable development requires the full inclusion of persons with disabilities in the labour market, as emphasized by the Sustainable Development Goals (SDGs). Despite commitments to economic growth and decent work for all under SDG Goal 8, persons with disabilities remain significantly underrepresented in employment. To bridge this gap, states must take concrete actions, including enacting anti-discrimination laws, promoting public sector hiring, adapting vocational education, and ensuring inclusive public employment services. Additional measures, such as supporting entrepreneurship, facilitating transitions from sheltered to mainstream employment, and establishing social protection systems, are essential for fostering economic security. Developing evaluation frameworks and maintaining disaggregated employment data will further enhance policy effectiveness. By implementing these strategies, states can create more equitable and inclusive labour markets, ensuring that persons with disabilities are not left behind in sustainable economic growth efforts.

Corporate sustainability and human rights protection are essential components of responsible business conduct, requiring enterprises to integrate ethical principles into their operations. Frameworks such as the UN Global Compact, the UN Guiding Principles on

Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and the ILO's Tripartite Declaration of Principles emphasize corporate responsibility in assessing and mitigating human rights risks. The increasing formalization of human rights due diligence, as seen in EU Directive 2024/1760, reflects a shift from voluntary commitments to legal obligations, ensuring greater accountability in business practices. To achieve meaningful progress, businesses must actively implement due diligence processes, foster transparency, and collaborate with stakeholders to uphold human rights and sustainability standards within their operations and supply chains.

The right to work is a fundamental human right recognized in major international treaties, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of Persons with Disabilities (CRPD). Article 27 of the CRPD provides a framework for ensuring that persons with disabilities have equal access to employment, emphasizing non-discrimination, accessibility, and the promotion of inclusive labour markets. States are required to implement legal and policy measures to remove employment barriers, such as prohibiting discrimination in hiring and workplace conditions, ensuring equal pay for equal work, and facilitating safe and healthy work environments. Additionally, promoting technical and vocational training, as well as career advancement opportunities, is crucial in enabling persons with disabilities to participate fully in the labour market.

Facilitating employment also includes support for self-employment and entrepreneurship, ensuring access to business development resources and financial mechanisms. The CRPD Committee highlights the importance of integrating persons with disabilities into mainstream employment through affirmative action, hiring quotas, and targeted public sector initiatives. States are encouraged to implement public procurement measures that prioritize businesses owned by or employing persons with disabilities and to establish compliance monitoring frameworks. Furthermore, cross-sector collaboration between government agencies, tax authorities, and social security institutions is essential in developing a coordinated approach to inclusive employment policies. By enforcing these measures, states can foster an equitable labour environment where persons with disabilities can achieve economic independence, career development, and social inclusion.

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