

Equal Rights for Disabled People in Employment Law – A Critical Assessment

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This article presents a pioneering research project, which seeks to explore whether and to what extent the Equal Rights for People with Disability Law, 1998, has had an impact on courts' rulings on matters related to disability employment discrimination. In particular, it seeks to examine (1) whether a consistent and instructive legal doctrine has evolved, reflecting the principles that guided the framers of the legislation, and (2) whether the legal discourse on disability has changed. The article presents the emerging theory of disability legal studies and its unique and original contribution to legal scholarship. Disability legal studies seek to expose the fundamental role of law in the socio-cultural construction of disability as a state of inferiority and personal tragedy, as well as to present an alternative reading of disability as a product of dynamic social relations. Based on an empirical analysis of the entire pool of published disability employment discrimination cases, the article integrates theoretical evaluation with detailed doctrinal analysis.

The research shows that disability discrimination in employment law, the very arena that was expected to become the flagship of disability discrimination in general, has in fact been a disappointment. Indeed, there are only sporadic cases decided by lower courts that interpret the law in a way that is consistent with the law's principles. The majority of cases lack both systematic analysis and normative clarity. Furthermore, most cases tend to express conservative and narrow views concerning the innovative mechanisms that the law provides. The article seeks to expose the inner tensions among the legal concepts embedded in the law – “a person with a disability,” “accommodations,” “undue hardship,” “qualified individual” and “substantial work requirements” – and to show that they express fundamental difficulties that underlie the disability rights discourse. These difficulties are also related to the continuing impact of the traditional understanding of disability as a matter of inherent difference that justifies disparate treatment and therefore rarely constitutes a claim for discrimination or injustice.