

From Fragmentation to Inclusion: Strengthening Employment Protections for Workers with Cancer in Italy.

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1. Introduction. 1.1. The Facts. 1.2. The European initiatives. 2. Rights at work of people with cancer in Italy: a complex regulatory labyrinth. 2.1. Flexible working time arrangements. 2.2. Measures regarding temporary work suspension. 2.3. Measures in relation to health and safety. 2.4. The right to be forgotten. 3. The limited reach of disability law for cancer-affected workers. 3.1. The impact of the disability reform of 2021. 4. Employment rights for people with cancer in a *de iure condendo* perspective. 5. The role of active labour policies in promoting inclusive employment for workers with cancer. 6. Conclusions.

Abstract

This paper examines the Italian legal framework concerning the employment protection of cancer-affected workers. Particular attention is paid to the challenges posed by discrimination and the ongoing stigma surrounding cancer in the workplace. The analysis situates the employment rights of individuals with oncological conditions within the broader context of disability and health and safety law, exploring both existing protections and recent legislative proposals aimed at extending certain rights to this group. The central objective is to assess whether the current disability law framework is adequate to safeguard the employment rights of people affected by cancer, or whether more tailored legal measures are needed. Through a critical evaluation of the strengths and limitations of existing provisions, the paper proposes recommendations to enhance the legal recognition and protection of cancer patients and survivors in the world of work.

Keywords: Cancer; Cancer-affected workers; Discrimination; Vulnerable Workers; Health and Safety; Law on Oncological Forgetting; Reasonable Accommodation; Disability; Stigma; Survivors.

1. Introduction.

1.1. The Facts.

In spite of the constant increase in cancer cases across Europe and all over the world¹ thanks to advances in early detection, effective therapies, and supportive care, Europe is

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¹ In Europe, the number of new cases is estimated to grow by 22.5% over the next two decades. Euronews, *A New Report Ahead of World Cancer Day Highlights the Growing Burden of Cancer Globally*, 2024, available at

experiencing a significant increase in cancer survivorship. With over 12 million cancer survivors, the survivorship rate has been rising by approximately 3% annually.

In Italy in 2020 some 390,000 new cancer cases were reported, with more than 3.6 million cancer survivors accounting for 5.7% of the population.² In many cases cancer is now curable, and patients can count on a longer life expectancy. However, one of the crucial points remains the possibility for cancer patients and survivors to lead a life of a decent quality where the possibility to remain employed during and after treatment remains one of the main concerns. In this regard scientific progress has not been matched by comparable social and legal progress in terms of policies aimed at encouraging continuity of employment and reinstatement in the workplace of cancer patients and survivors.³

Maintaining employment during and after a diagnosis of cancer remains a challenging issue for most cancer patients because of numerous factors which can be disease-related (e.g., burdensome treatment and long-lasting side effects), physical (e.g., fatigue, pain, or nausea), and work related (e.g., physical demands at work or difficult relationships with superiors and colleagues).⁴ This aspect is closely tied with cancer-related discrimination. In fact, in spite of better prognostic outcomes and even after recovery, individuals affected by cancer face discrimination which occurs in all spheres, including employment (impacting every stage of working life, such as hiring, firing, demotion and pay), health and travel insurance, financial products (mortgages and loans), and other financial and banking services. These individuals are often classified as “at risk” clients or “problematic job applicants” resulting in additional costs or denial of access to services or jobs. Practices of this kind are linked to the scientifically unfounded stigma and prejudices about life expectancy, productivity, and possible absences for medical treatment, that may be perceived as ableism.⁵ Evidence from recent comparative European studies shows that individuals with a history of cancer often experience discriminatory treatment, both unstated and overt, from both employers and co-workers. The most frequently reported kinds of discrimination include stigma and misconceptions on the part of employers, and colleagues (about 67%), as well as difficulties in finding new employment (63%). Over half of respondents indicated that cancer patients and survivors were discriminated against because of a lack of reasonable accommodations at work, for example, a lack of changes in the work environment or in the way things are customarily done (58%) and a higher risk of dismissal for health reasons (51%).⁶

<https://www.euronews.com/health/2024/02/01/cancer-cases-expected-to-grow-by-more-than-20-in-europe-by-2045-who-agency> (last accessed on 12 March 2025).

² See: AIRC, *Le statistiche del cancro*, 2025, available at: <https://www.airc.it/cancro/informazioni-tumori/cose-il-cancro/numeri-del-cancro> (last accessed on 1 May 2025).

³ Rondinone B. M., Fontana L., Buresti G., Fedele M., Fortuna G., Iavicoli S., Lecce M. G., Persechino B., *The Challenges of Managing Patients with Cancer in the Workplace: Needs, Opportunities and Perspectives of Occupational Physicians*, in *PLoS One*, 18, 7, 2023.

⁴ Verbeek J., Spelten E., Kammeijer M., Sprangers M., *Return to Work of Cancer Survivors: a Prospective Cohort Study into the Quality of Rehabilitation by Occupational Physicians*, in *Occupational and Environmental Medicine*, 60, 2003, 352–357.

⁵ Stergiou-Kita M., Pritlove C., Kirsh B., *The “Big C”—Stigma, Cancer, and Workplace Discrimination*, in *Journal of Cancer Survivorship*, 10, 2016, 1035–1050, available at: <https://doi.org/10.1007/s11764-016-0547-2> (last accessed on 1 March 2025).

⁶ Buckingham S., Colonnese F., Broughton A., *Study on Job Retention and Return to Work for Cancer Patients and Survivors*, Publications Office of the European Union, Luxembourg, 2024, 40.

1.2. The European initiatives.

Given the scale of the issue and the number of individuals affected, cancer patients and survivors have been supported at the European level through various targeted initiatives including the *Beating Cancer Plan* (hereafter “the Plan”) adopted by the European Union in February 2021.⁷ This Plan is intended to be a multi-stakeholder response to the growing challenges and developments in cancer control, tackling the entire disease pathway. Among different objectives, it urges Member States to adopt necessary legal measures to ensure a better quality of life for cancer patients and survivors and combat discrimination. As for employment, the Plan stresses the need for measures to facilitate continuity of employment and reinstatement of cancer patients and survivors in the workplace. In this sense an early assessment and adaptation of working conditions and workplace accommodations should become an integral part of the patient pathway.⁸

Another significant European initiative in this regard is the resolution of the European Parliament adopted on 16 February 2022, “*Strengthening Europe in the fight against cancer – towards a comprehensive and coordinated strategy*”⁹ which calls on EU Member States to implement measures to protect cancer patients from discriminatory practices, emphasizing the importance of enacting legislation on the right to be forgotten (RTBF). Such laws have been progressively adopted by a growing number of European Member States.

In spite of these positive developments at the European level, according to recent comparative studies, European countries still lack specific legislation concerning the rights of oncological patients as well as policies aimed at ensuring continuity of employment and the return to work of the cancer patients, survivors and carers.¹⁰ In fact, the above mentioned measures focus mainly on the medical aspects rather than on those related to employment and discrimination, and consist of soft law instruments which may impact the Member States only to a limited extent.

The available hard law instruments such as the European Framework Employment Directive (2000/78/EC), which *inter alia* lists disability among the protected grounds against discrimination, do not recognize sickness as an express ground of discrimination.¹¹ As a result, oncological patients may benefit from this measure to a limited extent linked to the recognition of their disability status.

In general, most of the available legal protections at work are reserved for employees with a recognized disability. In addition, to be entitled to effective rights, the disability should be

⁷ Communication from the Commission to the European Parliament and the Council, Europe’s Beating Cancer Plan COM/2021/44 final, 2021, available at: https://health.ec.europa.eu/system/files/2022-02/eu_cancer-plan_en_0.pdf, (last accessed on 13 February 2025).

⁸ Buckingham S., Colonnese F., Broughton A., nt. (6), 22.

⁹ European Parliament, *Resolution of 16 February 2022 on Strengthening Europe in the Fight Against Cancer – towards a Comprehensive and Coordinated Strategy* (2020/2267(INI)).

¹⁰ Buckingham S., Colonnese F., Broughton A., nt. (6).

¹¹ See in this regard: *Chacón Navas v. Eurest Colectividades SA*, C-13/05 in which the European Court of Justice affirmed that sickness cannot, as such, be regarded as an additional ground of discrimination in relation to which Directive 2000/78/EC prohibits discrimination, since the grounds for discrimination listed in the Directive are exhaustive.

measurable in percentage terms,¹² creating a divide not only between those who have a disability status and those who do not, but also between those who have a “sufficient” recognized disability and those who do not meet the required threshold. As a result, many people with disabilities risk being excluded from legal protection.

It should also be taken into consideration that the disability of cancer survivors expressed in percentage (or equivalent) terms often decreases over time, leading to a corresponding reduction in the level of rights and protection. In the worst-case scenario, such individuals may retain a disability status and face associated stigma and discrimination,¹³ while lacking meaningful rights or protections due to the fact that they fail to meet the eligibility criteria. Considering the heterogeneous nature of legislation regarding disability in the Member States this may be particularly significant in countries with highly restrictive disability thresholds. Moreover, there are numerous legal loopholes that can be potentially exploited by employers paving the way for possible infringements of employees’ rights.

This article focuses on the Italian legal framework, examining both *de iure condito* measures to support cancer patients and survivors at work as well as the perspectives for the ad hoc *de iure condendo* initiatives. Given that many initiatives aimed at assisting individuals with a history of cancer operate in synergy with those designed for people with disabilities, these measures will be analysed through the lens of Italian disability laws, taking into account the possible impact of 2021 disability legislation reform. The questionable point is whether disability law alone is sufficient to adequately safeguard the interests of this category or whether cancer patients should be recognized as a particularly disadvantaged group needing special legislative protection.

2. Rights at work of people with cancer in Italy: a complex regulatory labyrinth.

The Italian legal framework addressing the rights of individuals with cancer contains a number of provisions benefitting this group. However, these regulations are scattered across various legislative acts, especially those related to the people with disabilities, which makes it difficult for the direct beneficiaries to understand and consequently claim their rights. More specific favorable provisions for cancer patients can be found in some collective agreements. However, the extent of the rights and protections varies considerably among the agreements, potentially giving rise to additional legal uncertainty and inequality among workers in different economic sectors.

Provisions of a general nature regarding health issues and related rights are laid down in Article 32 of the Italian Constitution that protects health as a fundamental subjective right of the individual and interest of the community. In addition, Article 38 of the Constitution¹⁴

¹² The relative norms vary from country to country.

¹³ Paraponaris A., Sagaon Teyssier L., Ventelou B., *Job Tenure and self-Reported Workplace Discrimination for Cancer Survivors Two Years after Diagnosis: Does Employment Legislation Matter?*, *Health Policy*, 98, 2-3, 2010, 144-155, available at: <https://www.sciencedirect.com/science/article/pii/S0168851010001715> (last accessed on 3 January 2025).

¹⁴ See more on this point: Colapietro C., *L’inclusione sociale delle persone con disabilità: un imperativo costituzionale*, in *No-profit*, 2, 2011, 2.

grants workers the right to adequate protection in the case of accidents, illness, disability, old age and involuntary unemployment. The Civil Code (Article 2110(1)) ensures economic assistance in the case of illness determined by laws, customs or equity. More specifically, Article 5 of the Workers' Statute (Act No. 300 of 1970) prohibits the employer from evaluating workers' job suitability and infirmity due to illness or injury,¹⁵ while Article 8 of the Statute prohibits the employer from carrying out inquiries, even through third parties, in relation to facts that are not relevant for the purpose of assessing the worker's vocational aptitude.

To access the more specific and substantial protections, oncological patients are required to obtain a disability status which entitles them and their carers to a series of rights such as work-related leave, longer grace periods,¹⁶ flexible working time arrangements, reasonable workplace accommodation, protection against the employer's discretion to transfer the employee to another place or assign certain kinds of work duties or impose particular working-time regimes, in addition to priority in employment and job reassignment.

Most of these provisions can be categorized as measures of reasonable accommodation within the framework of European Directive 2000/78/CE establishing a general framework for equal treatment in employment and occupation (Article 5) regulated in Italy by Legislative Decree 216/2003 Article 3(3bis)¹⁷ as amended by Legislative Decree 62/2024 on disability.

The concept of reasonable accommodation is relevant not only in anti-discrimination terms but also from the health and safety perspective. In the Italian system the main legislative provision in this regard is Legislative Decree 81/2008 (the Consolidated Occupational Health and Safety Act). Even if this Act does not explicitly mention the concept of reasonable accommodation, it incorporates it through different norms such as personalized health surveillance (Articles 18, 25, 41); risk evaluation (Article 28), structural and organizational adaptations (Articles 15 and 18); training and information (Articles 36 and 37).¹⁸

Such measures are intended to combat discrimination and ensure better inclusion of people at work by providing better chances for reconciling private life, health needs and work. In general terms for the purposes of this analysis they will be categorized as those relating to temporary work suspension, flexible work arrangements in relation to working time and the workplace and general measures regarding health and safety.

¹⁵ Giacconi M., *Gli accertamenti sanitari sui lavoratori. Segnali di vita dall'art. 5 st. lav.*, in *Labor. Il Lavoro nel diritto*, 2, 2021.

¹⁶ Moratoria on dismissal due to illness or injury for a limited period of time ("periodo di comporto" in Italian).

¹⁷ Following the ruling of the European Commission regarding the failure of transposition of the Directive 2000/78 in part regarding reasonable accommodation of people with disabilities, *Case C-312/11: Judgment of the Court (Fourth Chamber) of 4 July 2013 — European Commission v Italian Republic* (Failure of a Member State to fulfil obligations — Directive 2000/78/EC — Article 5 — *Establishing a general framework for equal treatment in employment and occupation — Persons with disabilities — Insufficient implementing measures*), available at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62011CA0312>.

¹⁸ Marazza M., *L'art. 2087 c.c. nella pandemia Covid-19 (e oltre)*, in *Rivista italiana di diritto del lavoro*, 1, 2020; Lambertucci P., *Il lavoratore disabile tra disciplina dell'avviamento al lavoro e tutela contro i licenziamenti: brevi note a margine dei provvedimenti attuativi del cd. Jobs Act alla "prova" della disciplina antidiscriminatoria*, in *Argomenti di Diritto del Lavoro*, 6, 2016, 1147.

2.1. Flexible working time arrangements.

Flexible working time arrangements represent one of the most widespread forms of reasonable accommodation for people with disabilities, including oncological patients.¹⁹ In addition to contractual arrangements in relation to part-time and various forms of remote work, different arrangements regarding internal flexibility may be granted to cancer patients and carers (for instance, additional rest breaks, changing shifts or altered working time which are generally regulated in collective agreements). Access to them does not represent an absolute right on the part of the employee but in certain circumstances its denial can be classified as a form of discrimination, especially in the case of workers with disabilities.²⁰ In the following sub-sections, the most common flexible work arrangements, including part-time and remote work (smart work) are examined.

a) *Part-time work*

Part-time work may represent an effective way to reconcile personal needs with work and facilitate a gradual return to work after a prolonged period of inactivity. The legal foundation can be found in the Jobs Act, Legislative Decree 81/2015, Article 8 (3).²¹ Under this Act, employees in both the public and private sectors who are affected by oncological conditions and have experienced a reduction in their working capacity have the right to convert their full-time employment into a part-time contract. Employees also retain the option to return to full-time employment at any time. While this right appears to be designed for oncological patients, the requirement of medical certification of reduced working capacity implies formal disability recognition.

Even if the right to require part-time work is deemed to be the worker's subjective right, the employer retains the right to decide on its quantification and allocation. As for the caregivers of workers with an oncological condition, in this case the law does not provide for a full and immediate right to part-time work but only priority access.

These possible rigidities can be in contrast with workers' immediate needs to balance work and personal circumstances. Moreover, access to part-time work continues to be subject to some limitations. To address discriminatory practices, Article 8, paragraph 5(bis) of the same Decree expressly prohibits retaliatory actions negatively impacting working conditions, either directly or indirectly, as a result of switching a new employment contract. However, given

¹⁹ Verzulli V., *Disabilità, malattia cronica, fragilità: il lavoro agile come accomodamento ragionevole*, in *Diritto della sicurezza sul lavoro*, 1, 2024.

²⁰ Grosseto Tribunal, Sez. Lav., judgment of 23 April 2020, n. 502. Italian Supreme Court judgement n. 605/2025 (Cass. Civ., sez. Lavoro, 10 gennaio 2025, n. 605).

²¹ However, a real turning point in the instruments for the protection of persons suffering from oncological conditions at work was the amendment made by Article 46 of Legislative Decree no. 276/2003 ("Biagi Law") to the regulation of part-time work referred to in Legislative Decree no. 61/2000. Article 12-bis, introduced by the so-called "Biagi reform", established a real "right" to the conversion of full-time employment into part-time employment, both horizontally and vertically, for workers suffering from oncological conditions who, also as a result of the disabling effects of life-saving therapies, have a residual reduced capacity to work, again as a result of an assessment by the medical commission set up at the regional or local health authority.

the inherently weaker bargaining position of affected employees, this provision may still fall short of offering adequate protection and in practice may give rise to an infringement of workers' rights.²²

b) Remote work

Among various types of remote work it is worth mentioning smart working or working from home introduced into the Italian legal system in 2017. Regulated by Act no. 81/2017,²³ it proved to be a valid means of reasonable accommodation which allows people affected by serious medical conditions to continue in employment while undergoing treatment or dealing with long-term medical side effects.²⁴ Its potential became especially evident during the Covid pandemic.²⁵ Even if this measure is of a negotiable nature and in legal terms does not represent an obligation for the employer nor a right for the employee, during the pandemic the right of preferential access to smart working was granted to “vulnerable” workers²⁶ (a category which includes oncological patients).

To underline the temporary and exceptional nature of this measure, the legislator repeatedly extended this measure even after the official end of the pandemic. Then in 2024 preferential access on the part of vulnerable workers to smart working was stopped²⁷ and the negotiable nature of the agreement was re-established leaving the parties to agree on the possibility to adopt smart working and define the specific arrangements. At the same time, Article 18, para 3bis of Act no 81/2017 continues to guarantee priority access to smart working for certain categories of workers with a recognized disability in the public and

²² See: Pogliotti G., *Lavoro, oltre la metà del part time è involontario: ecco chi coinvolge e per quali ragioni*, in *Il Sole 24 Ore*, 2024, available at: https://www.ilsole24ore.com/art/lavoro-oltre-meta-part-time-e-involontario-ecco-chi-coinvolge-e-quali-ragioni-AFSHwftD?refresh_ce=1 (last accessed on 2 February 2025).

²³ Under Act no 81/2017 smart work is defined as a method of work determined by agreement between the parties, which can foresee the forms of work organization by phases, cycles and objectives, and without precise constraints on time or place of work, with the possible use of technological devices for the development of work activity.

²⁴ Garofalo D., *La tutela del lavoratore disabile nel prisma degli accomodamenti ragionevoli*, in *Argomenti di diritto del lavoro*, 6, 2019, 1244; Fili V., *Diritto del lavoro dell'emergenza epidemiologica da Covid-19 e nuova “questione sociale”*, in *Il Lavoro nella giurisprudenza*, 2020, 4; Zilli A., *Il lavoro agile come “accomodamento ragionevole”, fra tutela della salute, diritto al lavoro e libertà di organizzazione d'impresa*, in *Labor*, 4, 2020; Verzulli V., nt. (19).

²⁵ Brollo M., *Fragilità e lavoro agile*, in *Lavoro Diritti Europa*, 1, 2022, 1; Caracciolo A., *Patologie croniche e lavoratori fragili*, in Brollo M., Del Conte M., Martone M., Spinelli C., Tiraboschi M. (a cura di), *Lavoro agile e smart working nella società post-pandemica. Profili giuslavoristici e di relazioni industriali*, Adapt Univeristy Press, 2022; Giovannone M., *Responsabilità datoriale e prospettive regolative della sicurezza sul lavoro. Una proposta di ricomposizione*, G. Giappichelli, Turin, 2024.

²⁶ The definition of the fragile person can be found in Legislative Decree n. 18 del 2020, Article 26(2); it was then integrated by Joint Circular No. 13 of the Ministries of Labour and Health, issued on September 4, 2020, which broadened the concept of vulnerability, defining it as “those health conditions of the worker, in relation to pre-existing pathologies, that could result in more severe or adverse outcomes in the event of infection and may evolve based on new scientific knowledge, whether epidemiological or clinical.” See in this regard: Pascucci P., *L'emersione della fragilità nei meandri della normativa pandemica: nuove sfide per il sistema di prevenzione?*, in *Rivista del Diritto della Sicurezza Sociale*, 4, 2023; Turrin M., *La tutela dei lavoratori fragili nel diritto dell'emergenza epidemiologica da COVID-19 e oltre*, in *Lavoro, Diritti, Europa*, 2, 2021.

²⁷ This right was abolished from 31 December 2023 for public servants and from 31 March 2024 for workers in the private sector. Decreto “Anticipi”, 18 October 2023, n. 145, converted into law of 15 December 2023, n. 193.

private sectors and for their carers. However, the right to priority access cannot be regarded as fully equivalent to the right to access this working arrangement. Furthermore, an employer's potential acceptance may in practice be limited not only by the suitability of the position for remote work but also by whether such arrangements are already adopted within the company for other employees. Additionally, the presence of at least one other request might be crucial, as without it, establishing the discriminatory nature of a refusal on the part of the employer may be challenging.²⁸

However, in the recent Supreme Court judgment no. 605/2025 it was for the first time explicitly stated that smart work is a means of reasonable accommodation and the court could decide on the adoption of smart work in relation to the worker with disabilities even in the absence of an individual agreement and of smart working practices in the company.²⁹ It remains to be seen whether such a decision will pave the way for future case law interpretations regarding smart work as a means of reasonable accommodation.

2.2. Measures regarding temporary work suspension.

a. Leave periods

Paid and unpaid leave constitutes an important form of reasonable accommodation. However, it is reserved for people with a recognized disability or their carers. There are different kinds of paid and unpaid leave. Workers with a disability of more than fifty percent are entitled to an additional thirty days of paid annual leave,³⁰ not necessarily on a continuous basis, for medical care relating to the disability. Such leave is excluded from the calculation of the grace period.

Another important measure can be found in Act no 104 of 1992, Article 33 (3) stating that workers with a duly certified severe form of disability are entitled to three days of monthly paid leave which may be taken as agreed with the employer on a daily or hourly basis. This right is granted also to their carers.³¹ The carers of the person with cancer are also entitled to the biennial unpaid leave under Act no. 53/2000, Article 4(2) jointly with the Ministerial decree n. 278 of 21 July 2000 which provides the possibility of taking a period of biennial leave, continuous or discontinuous, for "serious family reasons" (death, serious illness of family members affected by severe pathologies, including oncological).³² This leave enables employees to retain their job but does not entitle them to remuneration and is not considered in the calculation of seniority or for social security purposes. The carers of

²⁸ Dagnino E., *Priorità per l'accesso al lavoro agile e ad altre forme di lavoro flessibile*, in Garofalo D., Tiraboschi M., Fili V., Trojsi A. (eds.), *Trasparenza e attività di cura nei contratti di lavoro. Commentario ai decreti legislativi n. 104 e n. 105 del 2022*, Adapt University Press, 2023.

²⁹ Italian Supreme Court judgement n. 605/2025 (Cass. Civ., sez. Lavoro, 10 gennaio 2025, n. 605). See: Verzulli V., nt (19).

³⁰ Art 7(1) Legislative decree 119/2011.

³¹ For part-time workers, sick leave periods are reduced in proportion to working hours. Periods of leave not taken in a given month cannot be carried over to subsequent months.

³² Ministerial decree n. 278 of 21 July 2000, art 2(1).

persons with severe disabilities³³ can take periods of paid leave under Article 42(5) of Legislative Decree 151/2001.³⁴ In this case the carers are entitled to full remuneration. Biennial leave can be taken only once within the entire duration of the working life of the individual concerned, regardless of whether it is paid or not.

b. Grace period

The grace period refers to the period during which workers are entitled to retain their job, despite a period of suspension. It is regulated by Article 2110 of the Italian Civil Code.³⁵ The duration is determined by law, by collective agreement, by contract or, in the absence of such agreement/contract, by custom or equity, and varies according to length of service.³⁶ Collective agreements may extend grace periods in the presence of serious illnesses, including oncological ones.³⁷

Pursuant to Article 2110 (2), a dismissal upon the expiry of a grace period is legitimate but considering numerous violations of workers' rights in this regard, there have been a number of case law rulings regarding workers with disabilities or serious medical conditions. According to such rulings, the application of the same duration of the grace period to workers with disabilities and to able-bodied workers may represent a form of indirect discrimination when an apparently neutral criterion regarding the days of absence due to disease or injury places employees in a protected category in a particularly disadvantageous position.³⁸ From this point of view, according to some case law rulings, the grace period should be seen as a form of reasonable accommodation.³⁹

In light of this, before dismissing the worker, the employer may be required to verify not only the number of days of absence but also other elements linked to the absences such as

³³ Certified under art 3(3) of the law 104/1992.

³⁴ As amended by the legislative decree n.119/2011.

³⁵ An employee who is unable to work has the right to payment of a salary or allowance in the amount and for the period determined by law or other legal sources, and to the maintenance of the job for a certain period of time (so-called grace period). The employer is prohibited from dismissing an employee for reasons related to their state of health resulting from the illness or accident, and such a dismissal will be deemed to be null and void (Article 2110, paragraph 2, Civil Code). The employer can proceed to a dismissal in accordance with Article 2118 of the Civil Code only after the relevant grace period has elapsed.

³⁶ In general, in the public sector wider protection for people with oncological conditions is contemplated in collective agreements including the right to 18 months within a period of three years. They have the right to keep their jobs with full pay (100%) for the first nine months, reduced by 10% for the next three months and by 50% for the following six months and for a further period of eighteen months without pay, with the guarantee that they will retain their job. In the private sector, without prejudice to more favourable provisions contained in collective agreements, the duration of grace period is proportionate to the employee's seniority. It contemplates three months if the employee's seniority does not exceed ten years; six months if the employee has more than ten years of service (Article 6, paragraphs 4 and 5 of Royal Decree-Law No. 1825/1924). In the case of life-saving treatment including day-care hospitalization as well as the days used for life-saving treatment can be excluded from the calculation.

³⁷ Circular of the Ministry of Labour and Social Policies no. 40 of 22 December of 22 December 2005. See also: Caneve S., *Lavoratori con patologie croniche e conservazione del posto di lavoro: le soluzioni presenti nella contrattazione collettiva*, in *Diritto delle relazioni industriali*, 2, 2023, 515-522.

³⁸ See in this regard: Cass. Civ. sentenza n. 117431, 02 May 2024; Trib. Roma sez. Lav., sentenza n. 9384, 2 January 2023. See also: Donini A., *L'applicazione indistinta del comparto è discriminatoria se la malattia è riconducibile a disabilità*, in *Rivista italiana di diritto del lavoro*, II, 2023, 254.

³⁹ Italian Supreme Court judgement of 2 May 2024 n.11731.

disability or health emergencies.⁴⁰ Moreover, the position of workers with disabilities may be strengthened by the obligation on the part of the employer (if included in the respective collective agreements) to inform the worker concerned about the proximity of overrunning the grace period.⁴¹ In any case there is still a significant gap between the level of protection granted to public and private employees. Private-sector employees may find more favorable conditions in the respective collective agreements, on condition that they contain such clauses.

2.3. Measures in relation to health and safety.

The main legislative instrument governing health and safety at work in Italy is Legislative Decree No. 81/2008. However, it does not contain any provisions specifically dedicated to workers with cancer. Nevertheless, individuals with oncological conditions can benefit from the general principles and rules laid down in the Act, which are aimed at ensuring protection and adaptation of tasks in line with workers' health conditions..

A relevant provision can be found in Article 28 which governs risk assessment. This article requires that the assessment covers all risks to the health and safety of workers, including those affecting specific groups exposed to particular hazards. It expressly calls for consideration of differences based on gender, age, origin, and health status. This implies that employers are under an obligation to take into account any specific health conditions – such as those resulting from cancer – in the management of workplace risks and safety procedures.

Another significant provision is Article 41, which regulates health surveillance. It mandates that the designated occupational physician carry out preventive, periodic or *ad hoc* medical examinations to determine a worker's fitness for employment, possibly accompanied by specific limitations or recommendations. For workers with disabilities or oncological conditions, such medical evaluations are crucial to ensure a disability rating that includes appropriate adaptations or restrictions. As noted in the literature,⁴² when assessing the capacity of an employee with a cancer history, the occupational physician should consider at least four key factors:

1. The prognosis and type of oncological treatment received;
2. The worker's overall health condition (including comorbidities, long-term side effects of treatment, perceived work capacity, and motivation to return to work);
3. The characteristics and demands of the job, including biomechanical or organizational risks and possible exposure to carcinogens;
4. The relevant legal provisions and scientific guidelines.

⁴⁰ Italian Supreme Court, judgement of 6 June 2024 n. 15845.

⁴¹ Article 2110 of the Civil Code on the provisions of the collective agreement in the case of failure to communicate the imminent expiry of the termination period determines its illegitimacy with consequent application of the protection referred to in Article 18, paragraphs 4 and 7 of Act no. 300/1970. *See in this regard:* Italian Supreme Court, judgment of 15 May 2024 n. 13491.

⁴² Campagna M., Loscerbo R., Pilia I., Meloni F., *Return to Work of Breast Cancer Survivors: Perspectives and Challenges for Occupational Physicians*, in *Cancers*, 12, 2, 2020.

Articles 15 and 18 address the need to adapt the workplace to the individual characteristics of the worker. Although they do not explicitly refer to disability, these provisions imply an obligation to implement reasonable accommodations, consistent with EU directives on the employment inclusion of persons with disabilities. These measures are essential for ensuring the safety and inclusion of workers with specific health needs.

Finally, Articles 36 and 37 concern training and information on occupational safety. Although they do not explicitly mention workers with disabilities, these articles should be interpreted in light of the principles of substantive equality and non-discrimination. Training and safety communication must be accessible, appropriate, and tailored to the individuals' capacities and circumstances. A more inclusive approach to workplace safety requires to move beyond a one-size-fits-all model and acknowledge that disabled workers, including those recovering from cancer, are not exceptions, but full members of the workforce who must be protected through customized and inclusive safety measures.

Moreover, oncological patients with recognized disabilities have the right to request a workplace as close as possible to their place of residence and they cannot be transferred to another site without their prior consent.⁴³ In public competitions, the successful candidate with a disability exceeding 67% has priority in choosing a workplace close to home, and the same applies in the case of transfers.⁴⁴ This provision also extends to carers.

Workers with disabilities have the right to be assigned to tasks that correspond to their ability to work. If their state of health deteriorates, resulting in a reduction or alteration of working capacity, they have the right to be assigned to equivalent or less demanding tasks, provided that they are compatible with their state of health, continuing to receive the same pay and conditions as for the original tasks.

Oncological patients may request not to be assigned to night shifts by presenting to the employer a certificate attesting to the fact that they are not fit for such work.⁴⁵ Those already employed on night shifts who, following deteriorating health conditions, become unfit for such work, have the right to request and be assigned to equivalent daytime work if available. The same provision applies to the carers of disabled workers.

Cancer is also recognized as an occupational disease when it is caused by exposure to specific workplace risk factors. Affected worker may be entitled to a set of social security benefits and protections through INAIL (National Institute for Insurance against Accidents at Work).⁴⁶ If INAIL accepts the claim, the worker may receive:

a) Temporary incapacity benefit (daily allowance) during time off work (paid after four days of absence);⁴⁷

⁴³ Article 33, co. 6, Act no. 104/1992 as amended by Article .24 of Act no.183/2010 (so called "*Collegato lavoro*").

⁴⁴ Article 21, L. 104/1992.

⁴⁵ Delfino M., *Il lavoro notturno e a turni fra problemi teorici e questioni applicative*, in *Argomenti di Diritto del Lavoro*, 2014, 55.

⁴⁶ Occupational cancers must fall within the official list of diseases in Ministerial Decree 10 June on professional diseases (G.U. 12 September 2014, n. 212) or be proved case-by-case. Some examples of occupational cancer include: mesothelioma – from asbestos exposure; lung cancer – in miners, construction workers, foundry workers; bladder cancer – from aromatic amines in dye industry; leukaemia – from benzene exposure; skin cancer – from UV or ionizing radiation exposure.

⁴⁷ Equals 60% of daily wage (1st–90th day), 75% (from 91st day).

b) Permanent disability compensation in case the cancer causes long-term impairment.⁴⁸

These norms represent only a limited set of examples of numerous norms of general nature in matter of health and safety applicable also to workers with an oncological condition.⁴⁹

Although these measures undoubtedly contribute to the protection of employment rights of cancer patients, their scope in practice may be limited as they leave considerable room for employers to exercise economic freedom in organizing business activities as they see fit. These measures may be limited either to a priority right to request (which is not equivalent to the full right for the request to be granted)⁵⁰ or may be contained by the reasonableness of accommodation measures, which should not impose an excessive economic burden on the employer, according to Article 5 of the European Directive 2000/78/EC. This includes rights such as being reassigned to a suitable job, or to a place of work that is closer to home, or to be transferred to another site without previous consent,⁵¹ or adjusting work hours, in cases where the employer does not have available opportunities in place.

From the above analysis two main strands of legislative intervention may be identified. The first regards the possibility of a period of suspension while the second regards flexible work arrangements in relation to working time and the place of work. Despite their importance, they do not exhaust the list of other possible measures in this regard. In fact, considering the highly fragmented nature of the legal framework regarding this category of workers, *de iure condendo* there should be more fields for possible legislative intervention allowing labour law to assume a specific role in the regulation of the oncological diseases.⁵²

In light of this the law on oncological oblivion is a kind of self-standing legal act which addresses a more general right of individuals to be free after a certain period of time from the potentially harmful impact of previous medical history, including the impact on employment.

2.4. The right to be forgotten.

The right to be forgotten (or right to oncological oblivion) is one of few rights directly granted to the more restricted group of cancer patients, i.e. cancer survivors, the people who have been living with this disease for a significant period of time. Needless to say, this represents one of the important practical achievements at the European and national level in relation to the recognition of the rights of cancer survivors as a particular group.

⁴⁸ INAIL may provide: a lump-sum compensation (if disability < 16%) or monthly pension (if disability ≥ 16%)

⁴⁹ Giovannone M., nt. (25).

⁵⁰ Dagnino E., nt. (28).

⁵¹ See: Judgement of the Milan Tribunal (Trib. Milano, sent. 10 febbraio 2025, n. 581) in which the judge recognised that in cases of environmental incompatibility the employer may order the transfer of the employee without the employee's consent even if he/she benefits from the art 3(3), L. 104/1992.

⁵² See more: Levi A., *Sostenibilità del lavoro e tutela della salute in senso dinamico: la prospettiva privilegiata delle malattie croniche*, in *Diritto delle Relazioni Industriali*, 2, 2023.

The right to oncological oblivion is assigned an important role in the Cancer Beating Plan (2021)⁵³ and European Parliament Resolution, Strengthening Europe's Fight against Cancer-towards a Comprehensive and Coordinated Strategy (2022).⁵⁴ It also results from an extensive bottom-up lobby of various cancer-dedicated associations. These measures stress the need for action at European level to prevent any form of discrimination concerning the medical history of workers in the name of equality of all European citizens. However, considering the non-legally binding status of these documents, voluntary action on the part of the Member States is required for the practical implementation of the legislation on oncological oblivion.

In this regard France became the pioneer in adopting a “right to be forgotten” law in 2016.⁵⁵ This law enabled long-term survivors who have been cancer-free for ten years after diagnosis as adults or five years as children to prevent financial institutions from accessing their medical history. In addition, in 2022 France further reduced the ten-year period to five years for all types of cancer, regardless of age.⁵⁶

The French model served as a source of inspiration for other Member States, encouraging the adoption of similar measures to ensure the continuous improvement of the quality of life of cancer patients after overcoming extremely challenging health issues.⁵⁷ Other European countries, including Belgium,⁵⁸ the Netherlands,⁵⁹ Luxembourg,⁶⁰ Romania,⁶¹ Italy,⁶² Spain,⁶³ Cyprus⁶⁴ and Portugal⁶⁵ have enacted laws recognizing the right to be forgotten (RTBF).⁶⁶

⁵³ See: European Commission, *Europe's Beating Cancer Plan – Communication from the Commission to the European Parliament and the Council*, 2021, available at: https://health.ec.europa.eu/system/files/2022-02/eu_cancer-plan_en_0.pdf.

⁵⁴ See: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0038_EN.html.

⁵⁵ Act no. 2016-41, 26 January 2016.

⁵⁶ Act no 270, 28 February 2022, amending Act no. 2016-41, 26 January 2016

⁵⁷ See: European Cancer Organisation, *Time to accelerate: the right to be forgotten*, 2024, available at: <https://tinyurl.com/2e78n9kv> (last accessed on 18 February 2025).

⁵⁸ Loi C-2019/40.839 amending “Loi du 4 avril 2014 relative aux assurances”.

⁵⁹ Decree of 2 November 2020, Besluit van 2 November 2020, houdende regels voor verzekeringskeuringen van ex-kankerpatiënten ten behoeve van het afsluiten van overlijdensrisicoverzekeringen en uitvaartverzekeringen (Besluit verzekeringskeuringen ex-kankerpatiënten), <https://zoek.officielebekendmakingen.nl/stb-2020-453.html> (last accessed on 18 February 2025).

⁶⁰ Convention “Droit à l’oubli” - S’assurer et emprunter avec un risque de santé aggravé en raison d’une pathologie cancéreuse ou d’une infection virale à l’hépatite C ou d’une infection per le HIV, 29 October 2019, available at: https://gouvernement.lu/fr/actualites/toutes_actualites/communiqués/2019/10-octobre/29-schneider-droit-oubli.html, (last accessed on 18 February 2025).

⁶¹ Act n. 200/2022, <https://legislatie.just.ro/Public/DetaliuDocumentAfis/257381>.

⁶² Act nol. 193, 7 December 2023. (GU n.294 del 18-12-2023).

⁶³ El Real Decreto-ley 5/2023, del 28 de junio.

⁶⁴ Act of 23 November 2023.

⁶⁵ Act n. 75 of 18 November 2021. Projeto de Lei n. 75/2021 de 18 de novembro, *Reforça o acesso ao crédito e contratos de seguros por pessoas que tenham superado ou mitigado situações de risco agravado de saúde ou de deficiência, proibindo práticas discriminatórias e consagrando o direito ao esquecimento, alterando a Lei n.º 46/2006, de 28 de agosto, e o regime jurídico do contrato de seguro*, available at: https://pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=3478&tabela=leis, (last accessed on 18 February 2025).

⁶⁶ Some European countries have adopted conventions between government and insurers (Luxembourg) or self-regulatory codes of conduct by the financial and insurance sectors (Ireland, Denmark, Greece and the Czech Republic).

The main objective of these measures was to establish time limits (on average ten years for adults and five for those up to the age of 21)⁶⁷ after which financial institutions and other stakeholders may no longer request information about the medical history of individuals who have been treated for cancer.

In Italy after a long running debate that began in 2017, the respective law, Act no 193, was enacted on 7 December 2023.⁶⁸ Article 1(2) of this Act defines the right to be forgotten as the right of the individuals not to provide information regarding their previous medical history. It lays down the time limits based on an average of the above-mentioned countries, i.e. ten years for prohibition to enquire about the medical history of the adults and five years for those who had cancer before the age of 21 (Article 2(1)). However, the Italian law, unlike the laws on RTBF of the above-mentioned countries, extended this right beyond financial services, embracing the employment field. In this sense, Article 4 (1) extended this right to employment selection procedures, both in the public and private sectors, if their terms lay down certain health-related requisites. After ten years (or five years for patients affected by cancer before the age of 21) the employer no longer has the right to request access to such information.

In this regard it is worth mentioning a greater openness of the Italian law as it does not limit its scope of action only to those who have fully recovered. In fact, Article 4 (2) of Act no. 193/2023 establishes that the Ministry of Labour and Social Policies, in agreement with the Ministry of Health, issues a decree to promote specific active policies to ensure for *every person* affected by an oncological condition equal opportunities in entering and remaining in employment, in the use of necessary services and requalification of career and salary paths.

The legislation also reduced the timeframe for some specific tumors by stating that the duration can be different. Article 5 (2) provides that, with a decree of the Ministry of Health, a list of oncological conditions must be drawn up, and time limits that are shorter than the “ordinary” terms could be applied in relation to certain oncological conditions. Such an arrangement should favour flexible adjustment of the legal norms following the most recent scientific developments.

Arguably, this law should not be considered as a point of arrival but rather the point of departure leading to further improvement of the legislation regarding oncological patients to be aligned with scientific progress. Moreover, it should hopefully act as a trailblazer for other medical conditions other than oncological.⁶⁹

⁶⁷ In general it is a common feature for the legislation in all these countries to establish an average period between 7-10 years (Romania) for adults and a shorten the time limit for exercising the right to oncological oblivion to five years from the end of treatment if the cancer diagnosis was made before age 18 or 21. Some regulations specify certain types of cancer with a favourable prognosis, for which reduced timeframes are established to exercise this right.

⁶⁸ GU Serie generale n. 294, 18 December 2023, entered in force on 2 January 2023, available at: <https://www.gazzettaufficiale.it/eli/id/2023/12/18/23G00206/sg> (last accessed on 18 February 2025).

⁶⁹ Iannelli E., De Lorenzo F., Cinieri S., Beretta G., Perrone F. (eds.), *Il diritto all'oblio oncologico: dalla legge ai decreti attuativi*, in *Osservatorio sulla condizione assistenziale dei malati oncologici*, 16° Rapporto sulla condizione assistenziale dei malati oncologici, Rome, 16-19 May 2024 <https://osservatorio.favo.it/sedicesimo-rapporto/> (last accessed on 21 March 2025).

3. The limited reach of disability law for cancer-affected workers

As mentioned above, most of the available legal provisions are reserved for people with recognized disabilities. Moreover, such disabilities are required to correspond to a certain degree of severity.⁷⁰ Critical issues regarding a strict medical approach to disability became evident during the Covid pandemic as many categories of people with different kinds of vulnerability emerged (for example long-Covid sufferers). At the same time many of them were not entitled to any formal protection or only to a limited protection because of the lack of necessary disability requisites.

In response to the Covid pandemic, the Italian legislator introduced a category of so called “vulnerable workers”,⁷¹ which included individuals affected by certain conditions which made them more exposed to the risk of contagion. They were entitled to certain protections, mainly of a temporary nature, linked to the spread and further evolution of the pandemic. The most evident example was preferential access for the vulnerable employees in public and private sector to smart working or other forms of remote work, though this was limited again with the end of the pandemic.⁷²

This undoubtedly useful measure gave rise to additional terminological uncertainty, resulting in the conceptual overlap of terminology (existing before the disability legislation reform of 2021) such as “invalid”, “disabled” and “people with disabilities”, the concepts having different legal foundations.⁷³ The definition of “vulnerable workers” is provided in the Legislative Decree no. 18 of 2020, Article 26 (2), as a person (public or private employee) with a recognized disability with a degree of seriousness pursuant to Article 3 (3) of Act no. 104 of 5 February 1992, immunosuppressed individuals, including oncological patients, and those subject to lifesaving treatment.

Arguably the pandemic showed the necessity to experiment with extending protection for forms of vulnerability not necessarily coinciding with disability.⁷⁴ However, the attempt to extend the area of protection of vulnerable persons risks being thwarted by the need for a medical assessment of the degree of disability or particular health condition which could lead to exclusion of people whose “vulnerability” is not easily and correctly identifiable in percentage terms.

Workers with oncological conditions may have a permanent or temporary disability, but some may not have a disability at all.⁷⁵ According to the analysis of the data of INPS

⁷⁰ More substantial rights, for instance, paid daily or monthly leave are reserved only for those individuals and their carers who have disability under Article 3(3) of Act no. 104 of 1992.

⁷¹ See: nt. (26).

⁷² See: nt. (27).

⁷³ The terms *handicap*, *disability*, and *invalidity* refer to distinct statuses. A reference to work-related invalidity is found in the Italian Constitution, in Article 38, paragraph 2, as well as in Article 2 of Law No. 118 of March 30, 1971. In contrast, the concept of disability in legal terms is primarily linked to Act no. 104 of February 5, 1992, although Article 3 refers (or referred) to a “person with a handicap.” Similarly, the concept of a “disabled person” for the purpose of job placement finds its legal foundation in Act no. 68 of March 12, 1999. See: Battisti A.M., *Il legislatore accoglie (con qualche riserva) la nozione euro-unitaria di disabilità*, in *Ambientediritto*, XXIV, 3, 2024; Casella C., *La condizione giuridica della persona con disabilità: evoluzione, problemi e prospettive*, in *Rivista di BioDiritto*, 4, 2021.

⁷⁴ Levi A., nt. (52), 5; Giovannone M., nt. (25).

⁷⁵ For instance, they may opt not to apply for certain measures to avoid stigmatization or self-stigmatization.

(National Institute for Social Security), only one third of oncological patients claim disability status under Act 104/1992.⁷⁶ Moreover, the disability calculated in percentage terms may be insufficient for them to be entitled to substantial rights. In addition, even if the disability percentage is high enough, it does not guarantee automatic access to Act 104 Art. 3(3), leaving such an evaluation to the discretion of medical commissions, while the applied criteria are not always transparent and may be complex.⁷⁷ This may result in practice in a large number of cases brought before the courts. The statistical data for 2022 shows that one-fifteenth of all the civil cases at national level are against INPS as a counterpart with 2,800,000 pending cases, 14% of which (around 392,000) regard disability.⁷⁸

Emblematic in this regard is the case of cancer survivors whose degree of disability may diminish over time or result in long-term disabling side-effects not recognized for the purposes of disability provisions but making them more vulnerable compared to other categories of workers. From a medical point of view, vulnerability is often characterized by the state of subjective malaise with perceived stress, anxiety, depression, chronic pain, concentration difficulty, feeling of energy, willpower and physical vigor loss, as well as an increased susceptibility to possible health hazards present in the work environment. These disorders, often encountered in oncological patients, are generally associated with a documented perception of inadequacy to perform one's work task and a weakening of corresponding motivation due to the personal health status.

In addition, cancer patients often face deeply rooted cancer-related stigma resulting in discrimination and exclusion from various spheres of life, work included.⁷⁹ In fact in the case of oncological patients, the consequences of the medical condition continue to heavily impact individuals' lives even long after recovery from the acute phase (in the strict sense as not undergoing specific treatment such as surgery, chemo or radiotherapy). At the same time

⁷⁶ F.A.V.O., *15 rapporto sulla condizione assistenziale dei malati oncologici, Il riconoscimento dell'handicap nella patologia oncologica*, 2023, <https://osservatorio.favo.it/quindicesimo-rapporto/download-15/> (last accessed on 12 March 2025).

⁷⁷ The medical-legal judgments of civil disability in Italy are based on table system based on the Decree of the Ministry of Health February 5, 1992, Gazzetta Ufficiale No. 47, Feb. 26, 1992. Ordinary Suppl. In essence, the evaluation of neoplastic pathology still remains linked, by law, to the stage and aggressiveness of the pathology in both welfare and social security fields, where there are no tabular values established by law, so the principles of analogy are often applied. The evaluation of neoplastic pathologies in the social security field for the purposes of Law No. 222 of June 12, 1984, does not have tabular classifications established by statutory regulations. It is left to the physician to estimate the incidence of the cancer pathology on the ability to work. For the assessment of disability status in case of oncological patients the main parameters are the degree of the spread of the neoplasm and lymph nodes involvement. See: Sammiceli M., Scaglione M., *Implicazioni medico legali della terapia oncologica ai fini valutativi in ambito assistenziale e previdenziale*, in *Pratica Medica & Aspetti Legali*, 11, 1, 2017. However, many side effects are not taken into consideration during the evaluation as not of them may count for the disability definition and also in case when they count, the complex arithmetical formula for multiple disabling diseases based on regression principle is applied.

⁷⁸ Martelloni M., Tettamanti C., Landi G., Fenato F., Palermo V., Pelizza P., Di Mauro L., Bolino G., Lista L., Bergamini P.R., Introna F., Argo A., Carlo Scorretti C., *Law 227 of 22 December 2021 and its implementation according to the united nations convention on the rights of persons with disabilities (CRPD): the proposal of the Italian scientific societies accredited on the basic assessment of disability*, in *Rivista Italiana di Medicina Legale (e del Diritto in campo sanitario)*, 3, 2023; De Falco M., *Ragionando attorno alla legge delega in materia di disabilità: una prospettiva giuslavoristica*, in *Responsabilità civile e previdenza*, 2022, 5.

⁷⁹ Boelhouwer I. G., Vermeer W., Van Vuuren T., *Late effects of cancer (treatment) and work ability: guidance by managers and professionals*, in *BMC Public Health*, 21, 2021, 1255.

most cancer patients continue for years with specific supporting treatment with significant long-term side effects negatively impacting the quality of life, not always adequately assessed by medical panels.⁸⁰ In light of this, it seems unfair to deny these people the recognition of vulnerability and access to the protection guaranteed by disability legislation.

3.1. The impact of the disability reform of 2021.

The reform of disability legislation was enacted in 2021.⁸¹ It consists of various enacting decrees including Legislative Decree no. 62, 3 May 2024, identifying the disability conditions according to international standards.⁸² The topic is extremely wide-ranging and complex and the present study will not attempt to provide a detailed analysis but will be limited to the analyses of some provisions relevant to the topic.

To better align with the European approach to disability, this decree dealt with terminological and definitory matters. First, it provided greater terminological clarity, replacing pre-existing terms (like invalid, disabled, person with handicap) with a single term “person with disability”. However, the most significant aspect is that it embraced a new European paradigm based on the approach to disability from the bio-psycho-social point of view, extending the concept from the strictly medical to a broader set of conditions deriving from barriers of a physical, social, cultural and environmental nature.⁸³

In this light, Article 2(1)(a) provides a definition of disability understood as “physical, mental, intellectual, neurodevelopmental or sensorial impairment [of the person] which, by interacting with barriers of various kinds, can hinder a full and effective participation in the various contexts of life in full equality with other subjects” thus underlining the complex and dynamic character of disability not limited to the mere medical, psychological or physical impairment.

Moreover, the reform contemplates the development of an individual participatory living plan aimed at identifying the resources needed to facilitate social inclusion and ensure coordinated support for people with disabilities, promoting their participation in all contexts of life.⁸⁴ The plan can be adopted directly by the person concerned who participates in its design and implementation by taking an active role in determining their life goals. The involvement of professionals should contribute to the design and implementation of the

⁸⁰ Ciliberti R., Depaoli F., Dati E., *The right to be forgotten for cancer patients: A moral issue of justice*, in *Medicina Historica*, 8, 2, 2024.

⁸¹ Act no. 227 of 22 December 2021.

⁸² Definition of the disability condition, of the basic assessment, of reasonable accommodation, of the multidimensional assessment for the development and implementation of the personalized and participatory individual life project, (24G00079) (GU Serie Generale n. 111 del 14-05-2024), available at: <https://www.gazzettaufficiale.it/eli/id/2024/05/14/24G00079/SG> (last accessed on 1 March 2025).

⁸³ Elmo M. G., *Condizioni di disabilità e stato di salute del lavoratore alla luce del decreto legislativo n. 62 del 2024*, in *Diritto della sicurezza sul lavoro*, 1, 2025.

⁸⁴ Beccoi C., *Il nuovo Progetto di Vita individuale, personalizzato e partecipativo: quale valore aggiunto per le persone con disabilità?*, in *Bollettino speciale ADAPT*, 3, 2024.

plan, including the definition of more effective forms of reasonable accommodation with the active involvement of the affected persons.

The crucial question is to which extent this new disability reform may benefit oncological patients in practice.

To address this complex and delicate issue one should consider first of all the main needs of people affected by oncological conditions and the means to meet these needs. Apart from medical treatment, the primary need for most people concerned is to remain in employment. It is not only the way to continue with normal life but for most workers concerned a necessary economic measure. The second crucial issue concerns working time flexibility which can enable these workers to reconcile work and health needs.

It is worth mentioning that, based on the statistical data, cancer affects people in a particularly frequent way when they are close to the age of fifty and over. Moreover, older people often face more complex recovery paths as by this age many of them are already affected by other conditions which may undermine the tolerance of oncological treatments and considerably worsen the general state of health. At the same time, especially at this life stage people need greater protection since upon the expiry of the ten-year term (and even shorter term) many of the affected individuals are retired or close to retirement age but risk not accruing the necessary pension contributions allowing for an adequate pension. It is common knowledge that people in later life, even if not affected by health problems, have difficulty finding new employment. Due to health needs and in some cases also due to stigma, cancer patients are often forced to prematurely abandon the labour market and risk not finding new employment.

As mentioned above, the current legal framework benefiting this category is highly fragmented and the existing legal mechanisms from which oncological patients may benefit directly are limited to the disability status. Important safeguards concern working time flexibility but, as noted above, they may have such some limitations linked to the employers' rights of economic freedom. The most frequent form of reasonable accommodation consists of periods of leave, though access is limited to cases of severe disability under Article 3(3) of the Act 104/1992 thus excluding many people from protection. Legislative Decree 62/2024 amended Article 3(3), Act 104/1992 as follows:

“If the impairment, single or multiple, has reduced age-related personal autonomy so that permanent, continuous and comprehensive care in the individual or relationship sphere is necessary, *support is intensive* and gives rise to priority in public service programs and interventions”.

The previous wording was as follows:

“If the disability, single or multiple, has reduced personal autonomy, related to age, so as to require permanent, continuous and comprehensive welfare intervention in the individual sphere or in the sphere of relationships, the situation assumes *connotations of severity*. Situations recognized as serious gives rise to priority in public service programs and interventions.”

The formulation “connotation of severity” was substituted by the wording “intensive support” apparently shifting the focus from the degree of impairment to the more global concept of necessity of support of varying degrees of intensity. However, whether such a definition will be able to cover vulnerable individuals previously excluded from the protective scope of Article 3(3) of Act 104/1992 will be clear only in medium- to long-term perspective. Moreover, it will largely depend on the practical implementation of the reform and in particular on the interpretation of the degree of the intensity of the support needed. Arguably, the intention of the legislator to adopt a tailor-made approach to disability and the necessary protections may lead to excessive complication and lack of transparency in evaluation procedures, especially with regard to the interpretation of the concept of “the degree of support intensity”. To prevent this, clear and transparent criteria should be provided along with the adequately trained and competent professionals.

The increasing awareness of the lack of an adequate normative framework for specific categories of workers including workers affected by oncological conditions and the need to provide them greater protection resulted in some legislative proposals regarding the regulation of disability rights, to be examined below.

4. Employment rights for people with cancer in a *de iure condendo* perspective.

To provide greater protection for oncological patients, a legislative proposal regarding the provisions concerning job retention and paid leave for medical examinations and treatments for workers suffering from oncological, disabling and chronic diseases was put forward in 2022. It aimed to enhance their rights in terms of job retention and paid leave for medical examinations and treatment.

The proposed legislation was examined by the Italian Parliament, in particular, the Chamber of Deputies, where several legislative proposals had been discussed during previous legislatures,⁸⁵ with a view to enhancing the existing protections for workers with oncological conditions and encourage job retention. This resulted in the drafting of a consolidated text consisting of four articles.⁸⁶

The first article regulates unpaid biennial leave for persons with oncological pathologies and invalidating and rare diseases. The latest proposal (unlike the previous proposal of 2024 which did not consider disability in percentage terms) limits this benefit to those people whose disability is equal to or greater than 74%. During this period the person concerned does not receive any remuneration and cannot perform any working activity or accrue social security entitlements in relation to employment seniority.⁸⁷ In addition, upon expiry of the period of leave such workers are entitled to priority access (where possible) to smart working under Act no. 81/2017.

⁸⁵ Law proposal AC 153 presented 13 October 2022 (Serrachiani), law proposal AC 202 presented 13 October 2022 (Comaroli) and law proposal AC 844, presented 31 January 2023 (Gatta).

⁸⁶ Unified text of the proposals A.C. 153-202-844-1104-1128-1395-A/R, approved in the first reading by the Chamber, XIX legislature on 26 March 2025, now passed to the Senate.

⁸⁷ Similar provisions are contained in the act 53/2000 and leg. Decree 278/2000.

Article 2(1) of the latest proposal increases paid leave by ten hours per year (compared to the period already envisaged by law and collective agreement) for workers with an oncological condition and recognized disability, equal to or greater than 74% (also in this case this threshold was introduced in the 2025 proposal) in the public and private sectors. Such leave may be used for medical appointments, diagnostic examinations and medical treatment. In the case of minors, the parents are entitled to such leave. It remains unclear whether individuals taking care of adults might benefit from this measure. The provision concerning the possibility of the extension from 30 days up to 45 days of paid leave regulated by Article 7(1) of Legislative Decree no. 119, 18 July 2011 was deleted from the latest proposal as well as the article contemplating the integration of medical panels acting under Act no. 104/1992 with oncologists and psychologists in cases dealing with workers with oncological conditions.⁸⁸

Arguably this proposal represents a further attempt to create a more consolidated legislation regarding the rights of oncological patients. However, the legislator abstained from identifying individuals with oncological condition as a specific category, considering a broader category of people affected by chronic, debilitating and rare conditions. Moreover, the proposed protections were significantly reduced in the readings between the initial proposal of 2022 and final one of March 2025. In particular the 74% of disability threshold was introduced in the case of biennial unpaid leave, the idea of extension of annual leave to 45 days instead of 30 was set aside, and as the proposal to integrate medical panels with oncologists and psychologists was rejected. The only significant innovation concerns the ten extra hours a year of paid leave to be used for medical purposes for those whose disability exceeds 74% as certified by a medical practitioner.

Apparently, the final text of the proposal does not contribute to a significant extent to the enhancement of the oncological patients' rights as the increase by ten extra hours a year of paid leave is extremely modest while the other provisions replicate existing legal provisions (such as preferential access to smart working).

At the same time it is significant that the legislator focuses attention on such provisions as periods of leave, recognizing the particular role of these measures to safeguard the continuity of employment of oncological patients, compared to other forms of reasonable accommodation which can interfere to a greater extent in management prerogative that is safeguarded by the Constitution (Article 41, Italian Constitution). At the same time the proposed increase of annual hours of paid leave is modest and does not adequately meet the needs of these people.

In this regard, the extension of monthly paid leave to all cancer patients, regardless of the degree of disability until they are officially recognized as fully recovered in accordance with the law on oncological oblivion and its addendum (specifying different periods of recovery for some types of cancer) could represent a more significant step toward achieving meaningful protection for this group.

⁸⁸ Proposal to amend Article 4, paragraph 1 of Act no. 104, 5 February 1992, as follows: In cases where the examinations regard subjects affected by oncological conditions, the medical commissions referred to in the first sentence are integrated with an oncologist specialized in the tumour pathology from which the subject examined is affected and by a psychologist with experience in supporting cancer patients.

Such a regulatory approach may potentially give rise to objections in terms of disparity of treatment in relation to people affected by other serious conditions, granting cancer patients a specific status. However, the legislator has already implicitly recognized such a particular status through the Act on Oncological Oblivion, which applies exclusively to cancer patients, setting a specific time limit within which definitive recovery is deemed to be achieved (i.e., ten years after the last treatment with the possibility of a reduced time limit in the case of specific cancers).

Arguably cancer represents a self-standing set of pathologies combining the characteristics of both disabling and chronic illnesses. Similar to a chronic condition, it has a long-time span. At the same time many chronic conditions are characterized by a greater degree of predictability, while cancer may have rapid and unpredictable developments, potentially resulting in an early death. At the same time, unlike many chronic diseases it is possible to recover from cancer. In general terms cancer may also differ from disabling diseases where the reduction of working capacity normally remains stable over time, while in the case of cancer improvement and recovery is possible. In general, the acute phase typically involves intensive treatments such as chemotherapy, radiotherapy or surgery, followed by a prolonged period (as a rule longer than for other conditions)⁸⁹ requiring preventive and maintenance treatments, regular check-ups, and other medical procedures, including psychological support. These medical appointments may necessitate long-distance travel to access specialized facilities or undergo tests that are not available close to home. Furthermore, the frequency and duration of such appointments often give rise to a significant need for additional leave, placing cancer patients in a situation comparable to individuals with severe disabilities (needing intensive support), as defined under Act no. 104, Article 3(3).

In this sense, the legislative provision does not adequately meet the needs for protection of cancer patients in the post-acute stage till recovery, limiting it to severe cases of disability. Moreover, the degree of disability is generally assessed by applying formal medical criteria, at times without duly considering that the state of health of the individual may abruptly change and such changes may be difficult to assess in a timely, objective and accurate manner in terms of a disability percentage. In fact, the effects of cancer-related treatments may result in a range of disabling side-effects which taken in isolation may not count for the attribution of the significant disability score (such as chronic fatigue, and asthenia),⁹⁰ but all together may result in a devastating health effect. Only in the medium- to long-term will it be possible to evaluate whether the new disability provisions contemplating a multidimensional evaluation of disability will ensure a fairer and comprehensive assessment of disability for cancer patients needing intensive support.

Arguably, the very nature of cancer presupposes the character of severity (or necessity of “intensive support” as provided by the revised wording of Article 3(3) of the Act no.

⁸⁹ Rubino R., Spanò I., Todeschini C., *I diritti del lavoratore affetto da patologie oncologiche*, in *Bollettino ADAPT*, 3, 2008.

⁹⁰ The phenomenon of chronic fatigue which undoubtedly represents an important disabling factor, is often underestimated. According to the statistical data it concerns from 15% up to 90% of oncological patients. See: Botta B., Re L., *La fatigue correlata al tumore*, in *L'Infermiere*, 59, 1, 2022.

104/1992) and in this sense Article 3(3) of Act no. 104/1992 should be applied to such patients, at least until they are considered to be recovered, according to the scientifically supported estimations of the law on oncological oblivion, Act no. 193/2023 and its addenda contemplating shorter terms for certain types of cancer.

In practice extended leave apparently represents the most effective form of reasonable accommodation compared to the others examined in this study. First, it constitutes a legally guaranteed right granted to the employee, thus leaving less room for discrimination on the part of the employer. In the event of an unjustified refusal by the employer to grant it, the employer risks legal actions, including claims for damages.⁹¹ Moreover, periods of leave offer greater flexibility compared to other arrangements such as part-time and working from home, as they do not require priority assessments or rigid working time allocations.⁹² It could also enhance the productivity of affected individuals (as they would have additional recovery time), and reduce litigation relating to unfair dismissals and requests for recognition of severe degree of disability to qualify for disability protections.

However, the recent legislative proposal regarding oncological patients highlights the resistance of the legislator to set aside the medical model of disability by focusing on the degree of disability thus limiting the access to the measure to many oncological patients. Such an approach seems to be in contrast with the recent disability reform which in theory should open the possibilities to extend substantial legal protections to wider categories of workers.

The most suitable solution for the protection of the interests of this group would be to draft special legislation dedicated to this category identifying their core rights which could be further specified in regional laws and collective agreements. In fact, the creation of a separate, comprehensive statute dedicated to cancer patients could provide much-needed clarity and protection. Such legislation would establish a clear and accessible framework, preventing stakeholders from having to navigate the complexities of general disability law. It would also broaden the scope of protections available to cancer patients, ensuring that a greater number of individuals affected by oncological conditions can benefit from legal safeguards.

It is undoubtedly the case that the legislation on oncological oblivion can be seen as progressive as it addresses the thorny question of post-recovery discrimination. However, it does not impact the problem of discrimination before the expiry of these conventional ten years (or time limit otherwise provided). Moreover, it has a modest impact on employment issues as it concerns a relatively small percentage of employees who may be required to disclose their medical condition for some limited categories of jobs. In other cases, they are deemed to be covered by privacy laws.

In light of this, the enhancement of the rights of oncological patients by extending some of the existing rights such as days of monthly paid leave pursuant to Article 3(3) of Act no. 104/1992, could better address the specific needs of cancer patients and simplify the complex evaluation procedures. To calibrate the level of protection with the health needs in the intermediate phase between the end of intensive treatments and complete recovery under

⁹¹ La Monaca V., *Estensione della durata dei permessi retribuiti ex art 33, l. n. 104/1992 e gli istituti di supporto dell'assistenza ai disabili in condizione di gravità*, in Garofalo D., Tiraboschi M., Fili V., Seghezzi F. (eds.), *Welfare e lavoro nella emergenza epidemiologica. Contributo sulla nuova questione sociale*, I, Adapt University Press, 2020.

⁹² Even if the employer may ask the employee to provide a plan of the absences planned in advance.

the law on oncological oblivion, the period of paid leave could be reduced to one day per month with the hypothesis to make these days cumulable over year. This measure could help the worker to gradually adapt to their medical condition (as normally after the acute stage the disability percentage point is drastically reduced leaving these workers without substantial protections) and better reconcile their health and work needs improving thus possibilities both to remain in employment and accelerate recovery due to the possibilities to have time for medical checkups, rest and rehabilitation.

In addition, the 74% disability threshold could be eliminated from the draft legislation, leaving the chance to benefit from unpaid biennial leave to all oncological patients (as envisaged in the previous proposals).

Another important provision not included in the consolidated proposal regards the integration of medical panels with oncologists and psychologists. This model has been successfully implemented in the Emilia Romagna Region pursuant to Regional Act no. 4 of 19 February 2008. The inclusion of such a provision in the proposed legislation could be extremely useful for the patients as well as a model for the other regions to adopt.

5. The role of active labour policies in promoting inclusive employment for workers with cancer.

To effectively integrate vulnerable individuals, including workers with cancer, into the labour market, legal measures must be complemented by concrete, targeted and multidimensional practical actions. This integrated approach is essential to promote a truly holistic and multidisciplinary framework in which legislative initiatives are matched by operational tools capable of responding to the complex realities experienced by people living with or recovering from serious illnesses.

In this connection, it is worth highlighting the GOL Program (Garanzia di Occupabilità dei Lavoratori – Guaranteed Employability of Workers).⁹³ Although it does not include cancer patients as a specifically recognized target group, it does envisage customized support pathways based on individualized assessments. Cancer patients may be included within “Pathway Four: Work and Inclusion”, one of the five key routes offered by the GOL framework. This pathway is designed for individuals in conditions of vulnerability or social exclusion who face significant challenges in accessing standard employment or training routes.

Notably, Pathway Four does not require an immediate return to work. Instead, it focuses on personal and social reactivation, allowing for a gradual return to work while carefully assessing the most suitable timeframe and approach for recovery. Implementing this pathway involves a network of stakeholders, including job centres, local social services, health authorities (ASL), physicians, psychologists, the third sector (e.g. social cooperatives and cancer support organizations) and vocational training institutions.

An important feature of this model is that cancer patients can access Pathway Four without formal disability recognition, provided their vulnerability condition is appropriately

⁹³ The GOL program is a reform action under Italy's National Recovery and Resilience Plan (Mission Five, Component One) to upgrade active labour policy services.

certified. This flexibility represents a significant step toward recognizing the relational and situational nature of vulnerability rather than limiting support to rigid legal definitions.

In addition to GOL, active labour market policies in Italy include a range of other initiatives aimed at supporting people with an oncological condition. These measures may include personalized re-employment plans promoted by INAIL and regional authorities, accompaniment and mentoring projects for post-return to work, reskilling and retraining programs for career transition, and incentives for employers who hire individuals recovering from cancer.⁹⁴

Together, these programs and initiatives highlight the need for a paradigm shift in how health and vulnerability are conceptualized within the labour context. Rather than viewing vulnerability as a purely clinical or legalistic condition, it should be understood as a dynamic, context-dependent condition shaped by social, environmental, and organisational factors. With such an approach, vulnerability should not be seen as a marginal condition to be managed, but as a core consideration in designing inclusive and resilient labour policies that uphold the rights and potential of every individual.⁹⁵

6. Conclusions.

In spite of significant medical advances, cancer patients and survivors in Italy continue to face major challenges, compounded by the lack of a unified legal framework that recognizes their specific vulnerability and multifaceted needs. While the Italian healthcare system has made strides in treatment and early diagnosis, the legal system still lacks comprehensive, targeted protections for individuals affected by oncological conditions throughout the course of their illness and beyond. At present, the Italian legal system provides only limited and fragmented support for cancer patients as a distinct category. The law on Oncological Oblivion—which allows former cancer patients to withhold their medical history under certain conditions—is currently the sole legislative provision dedicated exclusively to cancer survivors. However, its scope is narrow, benefiting only individuals who have remained cancer-free for a defined number of years, and leaving out a broader population of patients who are either undergoing treatment or living with long-term effects of cancer.

Although other legislative measures, particularly those aimed at protecting people with disabilities, can be applied to cancer patients, their utility is limited by several factors. Chief among these is their fragmented nature and the strict criteria regarding the degree of disability, which often fail to capture the fluctuating and unique challenges faced by individuals affected by cancer. The recent reform of disability laws introduced a more nuanced and personalized process of multidimensional assessment, aligning more closely

⁹⁴ Promising examples of targeted initiatives include, *inter alia*, the LILT Job Desk, active in several Italian cities, which offers cancer patients personalized career counselling, psychological support, and job placement assistance. Also, the Europa Donna Association actively promotes various targeted initiatives aimed to enable women to return to work after cancer. See for example, the project “*Tumore e lavoro: Trasformazione*”, <https://www.europadonna.it/tumore-e-lavoro-2023/>.

⁹⁵ Giovannone M., nt. (25).

with the biopsychosocial model of health. However, despite its progressive intent, the practical application of this model can be slow and bureaucratically burdensome. As a result, many cancer patients may risk struggling to access substantial benefits in a timely and effective manner.

In light of this the creation of a separate, comprehensive statute dedicated to cancer patients could provide much-needed clarity and protection. Such legislation would establish a clear and accessible framework, preventing stakeholders from having to navigate the complexities of general disability law and ensuring that a greater number of individuals affected by oncological conditions can benefit from legal safeguards.

Furthermore, establishing a clear legal identity for cancer patients could serve as a model for identifying other diseases or health conditions that require dedicated legal recognition and protection. In doing so, it would help shift the paradigm toward a more inclusive and systemic understanding of vulnerability—one that views health not as an isolated clinical condition but as a dynamic, relational state influenced by social, economic, and environmental factors.

Finally, such a dedicated legal framework would create a more robust foundation for the implementation and expansion of targeted inclusion policies, especially those focused on supporting patients' ability to maintain employment or gradually return to work following oncological treatment. It would encourage a much-needed holistic approach to this complex social and medical issue, in which legal provisions are consistently supported by practical interventions—and *vice versa*. This mutually reinforcing dynamic could foster greater societal awareness, institutional responsiveness, and ultimately, a more equitable and human support system for all individuals affected by cancer.

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