



RESEARCH ARTICLE

Current Legal Framework on the Protection of the Rights of Employees with Disabilities in Vietnam – Recommendations and Improvements

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ARTICLE INFO	ABSTRACT
Received: Oct 19, 2024 Accepted: Dec 5, 2024	Vietnamese labour law has increasingly developed and been refined, focusing on protecting the rights of specific groups of employees, including persons with disabilities (PWD). Previously, PWD often engaged in unstable, low-income jobs, primarily within informal sectors. However, opportunities for PWD to access the labour market are expanding, with more people being hired into enterprises and organizations. The State has created conditions for PWD to enjoy social benefits and vocational training, while also offering unique incentives, such as reduced working hours and rest time, as well as the right to work overtime. In addition to protecting employees' rights, labour law must also balance the rights of employers to maintain a harmonious and stable labour relationship. Employees "sell" their labour in exchange for reasonable wages from employers, who in turn invest in creating jobs and paying wages. Thus, labour policies need to ensure the rights of both PWD and employers, encouraging the hiring of PWD, thereby enhancing their employment opportunities while safeguarding the legitimate interests of both parties. These solutions should extend beyond employment relationships to include job placement and policy recommendations.
Keywords	
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INTRODUCTION

Vietnamese laws, particularly labour laws, are progressively improving over time. Not only have lawmakers revised and supplemented new, more advanced provisions to protect all parties before and after entering labour relations, but they have also paid special attention to the legal rights and interests of specific groups of employees, such as persons with disabilities (PWD).

For many years, PWD have often engaged in unstable jobs with low income, living in rural areas, and primarily working with their families in agriculture, forestry, and fishery. This situation stems from the fact that PWD have limited opportunities to participate in the labour market. However, there is positive evidence that the labour market is enhancing the accessibility of PWD. As a result, the number of PWD working in enterprises and organizations is gradually increasing. The State not only

provides equal opportunities for PWD to benefit from social welfare and develop the social security system, but also creates conditions for them to improve their cultural and vocational skills.

Moreover, legal provisions protecting the rights of employees with disabilities have distinctive characteristics compared to other employees. Since they often face certain challenges in their work, lawmakers are required to provide them with special “incentives” compared to able-bodied employees, such as working hours, rest time, overtime, and night work.

However, the issue arises that, in addition to the principle of protecting employees, labour law must also contain regulations that safeguard the legitimate rights and interests of employers (ER). The purpose of these dual principles is to create a balanced, stable, and harmonious labour relationship. Employees “sell” their labour to receive fair wages from employers, while employers invest their money and assets to “purchase” labour, create jobs, and provide income for employees, thereby helping them stabilize their lives and support their families. Hence, though these two principles seem opposed, they are entirely reasonable and correct. If labour law protects employees, it must also correspondingly protect employers. In addition, balancing economic policies with social policies is a key principle of labour law. When formulating labour laws, no element should be overlooked, as that would render legal provisions impractical. Therefore, in devising regulations to protect the rights of employees with disabilities, the interests of employers must also be considered. Overemphasis on measures to benefit employees with disabilities, while undermining employers’ rights, would be counterproductive. Thus, alongside protecting the rights of employees with disabilities, it is essential to ensure the legitimate rights of employers. This balance must be a focus when improving Vietnam's labour policies and legal framework. Only then will employers be more willing to hire employees with disabilities, thereby increasing their employment opportunities while simultaneously protecting their lawful rights.

MATERIALS AND METHODS

The author uses various research in Vietnam as well as overseas ones such as *Laws on Labor and Employment Rights of Persons with Disabilities and Their Implementation in Practice* of Bùi Hữu Toàn and Đỗ Mạnh Hùng (2023); *In Depth: China’s ‘No-Show’ Jobs Market for Disabled Deepens Employment Woes* of Fan Qiaojia et al.; *Equality of Opportunity or Employment Quotas? — a Comparison of Japanese and American Employment Policies for the Disabled* of Hasegawa Tamako (2007); *Promoting Employment Opportunities for People with Disabilities - Quota Schemes (Volume 1)* of ILO (2019), etc.

This article was also conducted using specific research methods, including:

Qualitative Method: The author utilized this method to gather legal theories related to the topic, results from previously published research, legal policies, and real-life situations concerning the topic.

Systematization, Synthesis, and Logical Analysis: These methods were used to collect information during the research process, which was then synthesized and systematized into groups of issues. Basic concepts were analysed and generalized into arguments concerning the current legal research situation and the creation of a legal theoretical framework related to the topic.

Comparative Method: Throughout the research, the author referred to existing research and international law, as well as notable perspectives on the topic. The author compared legal regulations and their practical application in Vietnam with those of other countries. This broader perspective allowed for more objective evaluations, providing the basis for recommendations that are tailored to Vietnam’s specific context and labour trends.

RESULTS

Evaluation of the Current Legal Framework for the Protection of the Rights of Employees with Disabilities in Vietnam

Strengths of the Legal Framework and Policies Protecting Employees with Disabilities

The Legal Framework for Protecting the Rights of Employees with Disabilities

Vietnam has been continuously improving and amending legal provisions for the protection of employees with disabilities. Currently, the legal regulations for employees with disabilities are spread across various legal documents, including the Constitution, the Law on Persons with Disabilities, and the Labour Code. Over the years, Vietnam's Constitution has affirmed that persons with disabilities are legal citizens of the Socialist Republic of Vietnam, possessing the same rights and obligations as all other citizens. In addition to the Law on Persons with Disabilities and the Labour Code, the State has also enacted the Employment Law, the Law on Occupational Safety and Hygiene, and the Law on Vocational Education (previously the Law on Vocational Training). Beyond enacting direct laws for the protection of employees with disabilities, Vietnamese lawmakers have also passed regulations that support and incentivize employers who hire employees with disabilities, such as provisions in the Law on Corporate Income Tax.

The State has also implemented various schemes and directives aimed at supporting employees with disabilities in accessing the labour market, such as the "Assistance Project for Persons with Disabilities 2012-2020" and the Ministry of Labour, Invalids and Social Affairs' Directive No. 3930/BLĐTBXH-TCDN, dated October 21, 2014, concerning vocational training and job creation for persons with disabilities. Disabled individuals who are self-employed or whose families employ them are eligible for preferential loans at reduced interest rates for production and business purposes, technology transfer, and product consumption support as provided by government regulations. Many lending programs are designed to create jobs and support poor persons with disabilities in securing employment and improving their living conditions. Through these efforts, persons with disabilities can borrow from the National Employment Fund, as stipulated in Decree No. 61/2015/NĐ-CP, dated July 9, 2015, Circular No. 45/2015/TT-BLĐTBXH, dated November 11, 2015, and Decree No. 74/2019/NĐ-CP, dated September 23, 2019, of the Government, concerning policies supporting job creation and the National Employment Fund.

Vietnam has also participated in and ratified several international conventions related to human rights, particularly the labour rights of persons with disabilities, such as the 2006 Convention on the Rights of Persons with Disabilities (CRPD) and ILO Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons) of 1983. Based on these international commitments, Vietnam has harmonized its domestic laws to align with international standards, ensuring the effective implementation of the rights and interests of persons with disabilities when they enter the labour market (Bùi Hữu Toàn and Đỗ Mạnh Hùng, 2023).

Employment and Vocational Training for Persons with Disabilities

Currently, regulations encourage agencies, organizations, and businesses to employ persons with disabilities (PWD), creating conditions for them to integrate and develop their capacities in the workplace. This is one of the key provisions for building a more equitable and inclusive society. Encouraging recruitment and providing suitable working conditions for PWD not only allows them to actively participate in the labour market but also helps create a more diverse and richer working environment.

According to Article 27(e) of the Convention on the Rights of Persons with Disabilities (CRPD): *"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"*. This

provision has been institutionalized in Vietnamese law to align with practical conditions, as reflected in Article 35 of the 2010 Law on Persons with Disabilities, which encourages agencies, organizations, and businesses to recruit and accept PWD into their workforce. Both the Convention and the 2010 Law on Persons with Disabilities emphasize that the State needs to create favourable conditions and opportunities for PWD to seek, maintain, and engage in jobs that are suitable for their abilities and characteristics. This is not only a legal obligation but also a moral and societal commitment to ensuring that every individual, including those with disabilities, has equal rights and opportunities for employment.

Promoting the hiring and support of PWD can also bring economic benefits to both businesses and society. Utilizing a diverse workforce can enhance creativity, productivity, and foster a positive and supportive work environment. Additionally, reducing dependence on welfare and increasing incomes for PWD are essential components of building an inclusive and sustainable society. Effectively implementing these regulations not only provides PWD with positive opportunities to engage in the labour market but also contributes to creating a society that includes all members and fosters a diverse and progressive working environment.

Anti-Discrimination Regulations

Current regulations prohibit discrimination against persons with disabilities in employment, working conditions, etc., ensuring that PWD enjoy the same benefits regarding wages, bonuses, social insurance, and health insurance as regular employees. The right to work is a natural right enshrined in Article 35 of the 2013 Constitution of Vietnam, affirming that all citizens, including persons with disabilities, have the right to work.

Despite this, real-world challenges persist, as demonstrated by the data provided. Society often views PWD as a special group in need of care and support, leading to their exclusion from recruitment processes. Even when they are employed, PWD often face limited opportunities for promotion and career advancement. Moreover, being in a vulnerable position, they are more likely to suffer from unfair treatment and violations of their legitimate rights.

Persons with disabilities deserve to be treated with respect and fairness, and their rights must be safeguarded. To protect them from discrimination, the 2006 CRPD includes provisions that prohibit discriminatory practices and emphasize the protection of PWD's rights. At the same time, Vietnamese law has been harmonized to prohibit discrimination against PWD in various forms. Article 33(2) of the 2010 Law on Persons with Disabilities states that agencies, organizations, and businesses are prohibited from refusing to hire PWD who meet job requirements or imposing unlawful recruitment standards to restrict their employment. Article 8(1) of the 2019 Labour Code also strictly prohibits acts of discrimination in labour, including exclusion or preference based on disability, which negatively affects equal employment or career opportunities.

These regulations ensure that discrimination is not only ethically wrong but also legally unacceptable. By banning all forms of discrimination, these laws help protect PWD from stigmatization in recruitment, working conditions, and promotion. This guarantees that they have fair opportunities to demonstrate their abilities and contribute to the workplace. Ensuring PWD are entitled to fair wages, bonuses, and social insurance is a vital part of promoting equality and fairness in the work environment.

Labor Protection and Reasonable Adjustments for Employees with Disabilities

For employees with disabilities who are hired and participate in the labour process, ensuring safety, occupational hygiene, working hours, and rest time is crucial. Based on the definitions of persons with disabilities (PWD) in Vietnamese legal documents and international conventions, it is clear that PWD generally have limited health and physical capabilities compared to able-bodied individuals. As

such, specific regulations beyond the general labour safety provisions applied to regular employees must be enacted to protect PWD and reduce the risks they may face in the workplace.

In terms of working hours and rest time, there are no specific separate provisions for PWD because the law assumes that they can fully meet the standard work time of up to 8 hours per day, or 48 hours per week, as per the 2019 Labour Code. However, the idea of having separate regulations on work time and rest for PWD has received mixed reactions. Some argue that special regulations would discourage employers from hiring PWD due to concerns about productivity and work intensity. The 2006 Convention on the Rights of Persons with Disabilities, as well as Vietnamese regulations such as Article 159 of the 2019 Labour Code and Article 33(4) of the 2010 Law on Persons with Disabilities, ensure that employers provide PWD with reasonable accommodations in the workplace.

Additionally, the 2012 Labour Code stipulated a ban on employing employees with disabilities for overtime, night shifts, or hazardous and dangerous jobs. However, the 2019 Labour Code amended this, allowing employees with disabilities to decide whether to work overtime or night shifts, provided that the employer offers accurate and comprehensive information about the job. This change enhances job opportunities and promotes equality in labour market access for PWD, ensuring compliance with the 2006 CRPD and ILO Convention No. 159 (Bùi Hữu Toàn and Đỗ Mạnh Hùng, 2023).

Limitations of the Legal Framework for Protecting the Rights of Employees with Disabilities in Vietnam

Definition of Persons with Disabilities in the 2010 Law on Persons with Disabilities

The definition of persons with disabilities is provided in Article 2(1) of the 2010 Law on Persons with Disabilities: *“Persons with disabilities are those who have one or more impairments of body parts or functions, manifesting in a form of disability, which causes difficulties in work, daily activities, or learning”*. This definition focuses on the individual's physical impairments based on a medical model. However, this approach often overlooks social factors such as inadequate transportation infrastructure or discriminatory attitudes. As a result, some persons with disabilities are unable to obtain the necessary Disability Certificates that would allow them to access essential social services (UNDP, 2020).

The author argues that adjusting the physical and social environment to improve the quality of life and opportunities for everyone is feasible and would yield long-term benefits. Therefore, applying a definition of disability based on a social or human rights model, which is adopted by many countries worldwide and is emphasized in the 2006 CRPD, would be more effective. This approach shifts the focus from the individual's impairments to the external barriers that limit the full participation of persons with disabilities in social life.

The Concept of Discrimination

According to Article 2 of the CRPD, discrimination on the basis of disability is defined as any distinction, exclusion, or restriction based on disability, which has the purpose or effect of impairing or nullifying the recognition, enjoyment, or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. Discrimination includes the denial of reasonable accommodation, which refers to necessary and appropriate modification or adjustments, where needed in a particular case, to ensure persons with disabilities enjoy or exercise all human rights and fundamental freedoms equally with others.

The 2019 Labour Code has introduced a more comprehensive definition of discriminatory acts in labour, consistent with international legal instruments (Nguyễn Hữu Chí and Nguyễn Văn Bình, 2022). According to the Labour Code, “discrimination in labour” is described as *“acts of discrimination, exclusion, or preference based on race, color, national or social origin, ethnic group,*

gender, age, pregnancy, marital status, religion, belief, political opinion, disability, family responsibilities, or HIV status, or any reason relating to trade union membership, affecting equality in employment or occupation opportunities". In line with the approach of Vietnamese law, Article 2(3) of the 2010 Law on Persons with Disabilities defines discrimination against PWD as *"acts of isolation, refusal, mistreatment, insult, prejudice, or restriction of the rights of PWD based on their disability."* This regulation highlights specific acts that directly impact PWD, but it fails to account for indirect discrimination, such as the lack of necessary infrastructure like ramps, accessible walkways, or braille signage, which can prevent PWD from integrating fully into society. This reflects the lingering influence of the individual or medical model of disability in Vietnamese law.

Moreover, the current definitions of discrimination are somewhat general and lack specificity. The concept and forms of discrimination specifically against employees with disabilities have not been fully defined in Vietnamese legal documents. Consequently, employees with disabilities may still face unfair treatment. Discriminatory acts in the workplace can take various forms, such as performing the same job but not receiving the same recognition or reward as able-bodied employees, or being unfairly dismissed on the grounds of not meeting job requirements, only to be replaced by able-bodied employees. Thus, to better protect the legitimate rights of PWD, it is essential to issue specific legal documents that detail prohibited discriminatory acts, supplementing Article 8(1) of the 2019 Labour Code. Additionally, those responsible for adjudicating violations must ensure accurate, flexible, and fair implementation in each specific case.

Article 2(3) of the 2010 Law on Persons with Disabilities defines discrimination primarily as acts of isolation, refusal, mistreatment, insult, or prejudice against a person with a disability. However, this definition is somewhat narrow, focusing only on individual actions and overlooking acts by organizations or systemic discrimination. Moreover, the law only addresses direct discrimination, leaving indirect discrimination largely unaddressed. As a result, PWD cannot seek appropriate protection or legal recourse against organizations or individuals who engage in discriminatory acts against them (UNDP, 2020).

In both the 2010 Law on Persons with Disabilities and the 2019 Labour Code, the concept of discrimination mainly refers to direct impacts on PWD, failing to capture the broader scope of indirect discrimination that might affect able-bodied individuals connected to persons with disabilities. For instance, an employee may be dismissed shortly after informing their employer that they have a disabled child, or they may face harassment at work for needing time off to care for a disabled family member. In one notable case from the Labour Court of Louvain (Louvain Employment Tribunal), Belgium, the court found a connection between an employee's disclosure of their child's disability and their subsequent dismissal, ruling that the dismissal constituted discrimination based on disability. Similarly, the Court of Justice of the European Union (CJEU) ruled that an employee who was harassed for caring for a disabled family member had suffered discrimination, noting that EU law protects not only individuals with disabilities but also those who have a close relationship with a disabled person (CJEU).

Vocational Training for Persons with Disabilities

According to Articles 32 and 33 of the 2010 Law on Persons with Disabilities, the State guarantees persons with disabilities the right to free vocational counselling, the freedom to choose and pursue vocational training according to their abilities, and equal opportunities to work as others. Persons with disabilities also have the right to free job placement services, as well as access to employment that is appropriate to their health and personal characteristics. Vocational training and job placement for persons with disabilities receive significant attention from government authorities, social organizations, and local administrations because it represents the first step in helping them integrate into the labour market. As of the end of 2021, there were a total of 1,912 vocational education institutions for persons with disabilities in Vietnam, including 402 colleges, 446 intermediate

schools, 1,044 vocational training centers, and two specialized vocational schools for persons with disabilities. On average, 17,000 to 20,000 persons with disabilities are trained annually (National Committee for Vietnamese Persons with Disabilities, 2021). Across the country, there are also 63 employment service centers, which aim to help persons with disabilities find suitable jobs.

However, according to the National Survey on Labour and Employment and the National Survey on Persons with Disabilities, conducted by the General Statistics Office in the last six months of 2022, only 31.7% of persons with disabilities are employed, while only 7.8% of severely disabled individuals have jobs (Nguyễn Hà, 2023). These numbers indicate that barriers and limitations still exist in helping persons with disabilities find suitable employment.

Both the 2010 Law on Persons with Disabilities and the 2014 Law on Vocational Education (formerly the 2006 Law on Vocational Training) contain provisions on special incentives for vocational teachers who train persons with disabilities. These provisions include policies on wages, allowances, and special benefits for teachers working in specialized schools or in economically disadvantaged regions. Teachers who train persons with disabilities are also entitled to special allowances (Article 58.1.a of the 2014 Law on Vocational Education). However, there are no specific provisions in labour law offering incentives for vocational teachers, despite the fact that those who directly teach persons with disabilities should be entitled to greater incentives than regular teachers. This would help attract a sufficient number of vocational teachers to meet both the quantity and quality requirements of vocational training for persons with disabilities.

Furthermore, vocational training for persons with disabilities is often short, primarily focused on elementary training, with programs lasting less than three months. These short training programs do not necessarily match the actual needs of the labour market. For many persons with disabilities, such as those with illiteracy or physical impairments, a three-month training period may not be enough to gain necessary skills, particularly in fields like information technology or machine operation. Consequently, persons with disabilities may struggle to find work due to a lack of professional competence.

In March 2019, Vietnam ratified ILO Convention No. 159, which marked a significant step toward promoting the right to employment for persons with disabilities. Article 1(2) obligates member states to implement measures for vocational rehabilitation and employment, ensuring that persons with disabilities can find suitable employment, advance professionally, and reintegrate into society. While Vietnam's Law on Persons with Disabilities primarily focuses on job creation, it does not address the issues of maintaining employment or supporting career advancement for persons with disabilities. This gap in the law has adversely affected the income protection of persons with disabilities.

Employment Quota for Persons with Disabilities

In the past, Vietnam's labour laws (specifically Decree No. 81/CP dated November 23, 1995, Decree No. 116/2004/ND-CP dated April 23, 2004, and Inter-Ministerial Circular No. 19/2005/TTLT/BLĐTBXH issued on May 19, 2005) established an employment quota system for persons with disabilities. Under these regulations, all businesses were required to hire 3% of their workforce from persons with disabilities (2% for heavy and hazardous industries like coal mining, oil, and gas extraction). Companies that failed to comply with this requirement were subject to fines, which were paid into the provincial employment fund for persons with disabilities (ILO, 2010). This fund was used for vocational training and job creation for persons with disabilities. Currently, Article 35 of the 2010 Law on Persons with Disabilities only encourages agencies, organizations, and businesses to hire persons with disabilities, rather than imposing a mandatory employment quota. This leaves recruitment decisions to the discretion of the employer, based on their needs, capacity, and "humanitarian" considerations.

In contrast, developed countries and some developing nations have implemented more robust and enforceable legal policies regarding the employment of persons with disabilities. There are two main policy approaches globally to promote employment for persons with disabilities: 1) the "equal opportunity" approach based on anti-discrimination laws, and 2) the quota system (Hasegawa Tamako, 2007), which mandates both public and private sectors to reserve a minimum percentage of jobs for persons with disabilities (Juan Liao, 2020).

Preferential Treatment Regulations for Enterprises Hiring Employees with Disabilities

The 2010 Law on Persons with Disabilities does not specify detailed criteria for the entities entitled to preferential treatment when employing persons with disabilities, which has not adequately encouraged businesses to actively recruit disabled employees.

Article 34 of the 2010 Law on Persons with Disabilities stipulates: *"Business establishments employing 30% or more of their workforce from persons with disabilities are eligible for support in renovating their work environment to accommodate disabled employees; they are exempt from corporate income tax, may access preferential loans for production and business projects, and are prioritized for land leases, water surface leases, and exemptions or reductions on related fees, depending on the proportion of disabled employees employed, the degree of their disability, and the scale of the business."* The corporate income tax exemption provision in this article was amended to state that the income from production and business activities of enterprises employing 30% or more persons with disabilities (with an average of at least 20 employees per year, excluding companies in finance and real estate) is exempt from tax. Specifically, Article 4(4) of the 2008 Corporate Income Tax Law (amended and supplemented in 2023) regulated that:

"Income from the production and business activities of enterprises where at least 30% of the average annual workforce consists of persons with disabilities, rehabilitated drug users, or individuals infected with the human immunodeficiency virus (HIV/AIDS), and where the average annual workforce is 20 or more employees, excluding enterprises operating in the fields of finance or real estate business".

However, as noted by the author, the 2023 amended Corporate Income Tax Law has posed challenges for small-scale businesses, which often struggle to meet the minimum requirement for the number of disabled employees. In Vietnam, small and micro-sized businesses make up a significant portion of the economy (accounting for 98% of enterprises across agriculture, industry, construction, and trade sectors) (Lê Anh, 2024). Consequently, these businesses often cannot benefit from these preferential tax policies (Nguyễn Thị Hồng Vân, 2023), leading to an inequity in treatment between enterprises that employ disabled employees and those that do not (Hoàng Xuân Trường, 2020).

Setting criteria for eligibility for state preferential policies is necessary to prevent enterprises from abusing the state's progressive and humane policies for unjust gain. However, the 2018 National Committee on Persons with Disabilities survey across eight provinces (Hanoi, Quang Ninh, Hai Duong, Thai Binh, Vinh Phuc, Thanh Hoa, Thua Thien Hue, and Ho Chi Minh City) revealed that few businesses met the 30% quota for hiring persons with disabilities. In contrast, many businesses did employ disabled employees but fell short of the 30% requirement and therefore could not access state benefits (Bùi Hữu Toàn and Đỗ Mạnh Hùng, 2023). This situation demonstrates that current laws have not effectively incentivized businesses to hire disabled employees. Moreover, the gap between employing 10 disabled employees and meeting the 30% quota is substantial, particularly for companies with large workforces. This is also an issue that needs to be considered to ensure fairness for businesses employing people with disabilities, as well as to encourage companies to hire more workers with disabilities (Trần Thị Thuý Lâm, 2013).

To be eligible for corporate income tax exemption, businesses must employ 30% or more of their average workforce from persons with disabilities and maintain an annual average of at least 20 employees (Article 34 of the 2010 Law on Persons with Disabilities; Clause 4, Article 4 of the 2008

Corporate Income Tax Law; Clause 3, Article 1 of the 2008 Corporate Income Tax Law (amended and supplemented in 2023). As discussed earlier, while setting such conditions for businesses to access preferential policies is both reasonable and necessary, it is important to recognize that overly stringent criteria can diminish the effectiveness of the policy and deter businesses from employing persons with disabilities. The criteria should be realistic and feasible to encourage both businesses and the inclusion of disabled employees in the workforce.

Article 35 of the 2010 Law on Persons with Disabilities states: *“The State encourages agencies, organizations, and businesses to employ persons with disabilities. Enterprises employing large numbers of disabled employees shall receive preferential treatment as prescribed in Article 34 of this Law.”* This demonstrates that the State’s current approach is merely “encouragement” and lacks any mandatory provisions or penalties for businesses that do not hire disabled employees. Consequently, the decision to recruit persons with disabilities rests solely with employers based on their own business needs, scale, and moral considerations.

As a result, persons with disabilities are often excluded from the labour market, unable to provide for themselves, which increases the burden on their families and society, as well as exacerbates feelings of inadequacy among disabled individuals.

Working Hours, Rest Time, and Working Conditions

Article 33 of the 2010 Law on Persons with Disabilities and Article 159 of the 2019 Labour Code stipulate that employers who hire persons with disabilities must ensure suitable working conditions and environments. This means that the work environment must allow disabled employees to perform their tasks under the same conditions as other employees. However, no law specifically defines exact standards for facilities and equipment at workplaces. Due to the high cost of renovating or repairing workplaces to accommodate disabled employees (National Committee for Vietnamese Persons with Disabilities, 2018), many employers prefer to pay administrative fines ranging from 1,000,000 VND to 15,000,000 VND for violations involving fewer than 100 employees (Article 13.2 of Decree no.144/2013/NĐ-CP). However, Decree No. 144/2013/ND-CP has been replaced by Decree No. 130/2021/ND-CP, which removed the provisions related to employer responsibilities towards disabled employees.

Currently, the 2019 Labour Code contains general regulations on working hours and rest times applicable to both disabled and non-disabled employees, without distinguishing between the two categories. The intention behind this regulation is to avoid creating a disparity between disabled and non-disabled employees, ensuring that persons with disabilities can participate in the labour market without facing additional barriers. According to a 2019 survey by the International Labour Organization (ILO), businesses typically apply the maximum working time of 8 hours or negotiate working hours with employees without differentiating between types of employees (See Figure 1 and Figure 2).

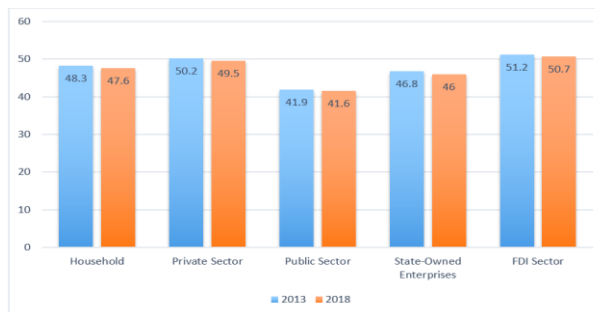


Figure 1. Average working hours of employees by type of economic sector (ILO Country Office for Viet Nam, 2019)

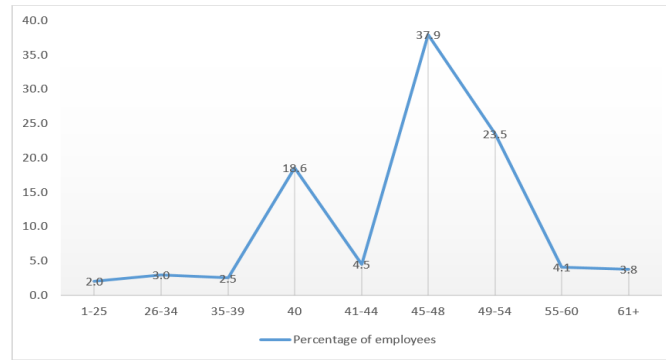


Figure 2. Average working hours of employees by age group (ILO Country Office for Viet Nam, 2019)

However, the essence of working hours and rest time is to give employees, particularly persons with disabilities, time to recover after working under the supervision and control of the employer. In reality, persons with disabilities may have certain physical limitations compared to able-bodied individuals, so not differentiating between working hours and rest time for disabled and non-disabled employees fails to meet the specific needs of persons with disabilities.

Additionally, Article 160(1) of the 2019 Labour Code provides: *“Employees with mild disabilities, those with 51% or more reduction in working capacity, those with severe disabilities, or those with particularly severe disabilities may work overtime or at night, provided that they consent to do so.”* As previously discussed, the 2019 Labour Code extends the right of disabled employees to decide whether or not to work overtime or night shifts. However, this raises a question: if disabled employees decline to work overtime, could this pose challenges for employers in situations of sudden increases in orders or production?

Recommendations for improving policies and laws to balance the protection of the rights of employees with disabilities and the interests of employers

Balancing the rights and interests between employers and employees with disabilities means establishing a harmonious relationship between the legitimate interests and obligations of both parties, ensuring fairness and reasonableness in the workplace. In other words, balancing the rights and interests between employers and employees with disabilities is about reconciling benefits to create favourable conditions for both sides, ultimately fostering social justice by increasing the employment and protection of more PWD, while in return, employers gain additional benefits when hiring PWD.

3.2.1. Employment Quota for Persons with Disabilities

Employment quotas are a widely used measure in many countries around the world to promote job opportunities for PWD. As of 2019, 103 countries globally have implemented employment quotas in their legislation (ILO, 2019). By applying this target, governments can ensure that a certain percentage of jobs in businesses are reserved for PWD through incentives or by setting a minimum number of disabled employees in businesses (Patricia Thornton, 1998). Currently, there are no regulations enforcing quotas or mechanisms for implementing these standards. Quotas vary between countries in terms of percentage, the scale of organizations affected, whether they apply to public or private sectors, how compliance is monitored, and the measures taken in case of non-compliance. For example, Japan has a 2.3% quota, Germany has 5%, while France and Poland have 6% (Patricia Thornton, 1998).

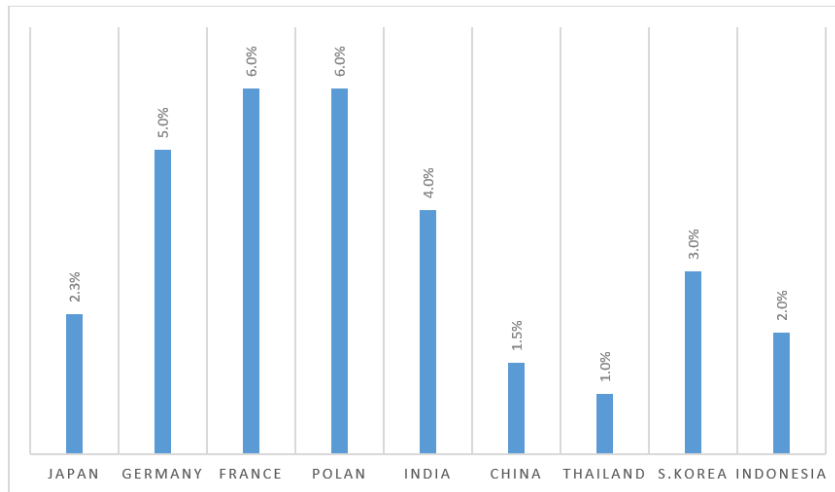


Chart 4. Employment Quota for Persons with Disabilities in Some Countries

Employment quotas originated after World War I in countries like Italy, Germany, and Poland to create opportunities for physically disabled veterans. After World War II, quotas were expanded to include individuals with intellectual and psychosocial disabilities. Initially, quotas were voluntary, but they later became mandatory, with penalties established for non-compliance. While early plans were developed with the participation and commitment of employers, recent quotas are typically imposed by the state with little or no consultation with relevant parties (ILO, 2019).

Article 33 of China’s 1990 Law on the Protection of Persons with Disabilities specifically outlines the responsibility of government agencies to allocate a certain quota for the recruitment and employment of PWD. In 2007, China issued the **Regulations on the Employment of People with Disabilities**, which mandates that employers allocate at least 1.5% of jobs for PWD. Additionally, in 1995, China introduced a system of levies on employers who fail to meet the minimum statutory quota for employing PWD. Employers who do not meet the local quota are fined through the "Disabled Person’s Employment Security Fund" (残疾人就业保障金), with the amount dependent on the employment shortfall and the local average wage (Fan Qiaojia et al., 2023). This fund is used to support employers in hiring PWD and providing employment services and vocational training for them. The quota system has brought significant results to China, with an average of over 1 million PWD being employed annually through the quota system. According to China Statistical Yearbook on the Work for Persons with Disabilities (2000-2015), employment for PWD has steadily increased since the policy began in the late 1990s, peaking in 2005.

India’s law mandates that no less than 3% of positions in each establishment be reserved for persons with disabilities. If, for any reason, an employer does not hire enough PWD, the shortfall is carried over to the next recruitment year, and there is no quota for private sector employers. In 2017, the quota was raised from 3% to 4% for government jobs, and for educational institutions, it was raised from 4% to 5%. Penalties for non-compliance include fines of up to 500,000 Rs (7,750 USD) and the possibility of imprisonment under the **Rights of Persons with Disabilities Act** (Kate Vernon, 2018).

Similarly, Section 33 of Thailand’s **Persons with Disabilities Empowerment Act** mandates the implementation of an employment quota system for PWD. Employers in both the private and public sectors are required to hire one PWD for every 100 employees (1%) in production, business, or government agencies (UNDP, 2022). In 2021, approximately 17,000 positions were available under the quota system in the public sector. Around 2,700 PWD were hired under Sections 33 and 35, while more than 14,000 positions (84%) remained vacant (UNDP, 2022).

South Korea implemented an employment quota system in 1990 with the passage of the **Act on Employment Promotion for Persons with Disabilities**. Employers with at least 300 employees are required to ensure that persons with disabilities account for at least 2.5% of their workforce (Zafar Nazarov et al., 2015). In 1999, South Korea passed the **Act on the Promotion of Employment and Vocational Rehabilitation for Disabled Persons**, which amended the earlier law. The new act expanded the number of companies required to follow the mandatory employment quota for PWD. The percentage of positions exempt from quotas was also reduced or abolished. By 2009, the mandatory employment quota for PWD increased from 2% when the law was first introduced to 3% (Global Delivery Initiative, Korea Program for Operational Knowledge and Ministry of Economy and Finance, 2020). The country also established the **Korea Employment Agency for the Disabled** and 18 local units to provide counseling, vocational training, and other services for PWD. Agencies that fail to meet the PWD employment requirement are fined an amount equal to 60% of the wages of the shortfall, and they are publicly named in the media.

In Japan, the minimum percentage of PWD working in the private and public sectors is 2% and 2.3%, respectively (UNDP, 2022). Based on the revised **Act on Employment Promotion for Persons with Disabilities**, the minimum threshold for private enterprises was increased from 2.2% to 2.3% on March 1, 2021 (Japan Organization for Employment of the Elderly), and is expected to rise to 2.7% by 2026 (S-Pool). In addition to the 1.9% quota for disabled employees, large Japanese corporations have "subsidiaries" where 100% of the workforce consists of PWD, most of whom work in manufacturing for the parent companies. Across the country, there are about 176 subsidiaries to ensure that 176 parent companies meet the required quota for PWD. Penalties for companies that fail to meet the quota are paid to companies that successfully fulfill the quota to help cover the costs incurred in employing PWD.

In Indonesia, **Law No. 8 of 2016** stipulates that each state-owned company must employ at least 2% of employees with "differently-abled" status, and private companies must employ at least 1%. In Austria, according to Section 1, Part 1 of the Austrian Disabled Persons Employment Act (*Behinderteneinstellungsgesetz*), all companies employing 25 or more employees are required to hire one eligible PWD (a recognized PWD) for every 25 employees.

Thus, employment quotas are an effective tool to increase the number of PWD with jobs, combat discrimination, and support PWD in finding employment. These quotas should be continuously adjusted to fit the local economic context and labour market. Therefore, when issuing quota regulations, the following should be considered:

(i) Consultation with employers. The recruitment percentage should match the scale and nature of the organization: larger businesses should have higher quotas than small- and medium-sized enterprises (SMEs); state organizations should apply higher rates than private entities to set an example and facilitate management and implementation. For instance, in Brazil, private sector employers with more than 100 employees must hire a certain percentage of PWD, depending on the company's size, with quotas ranging from 2% to 5%: 2% for 100-200 employees, 3% for 201-500 employees, 4% for 501-1000 employees, and 5% for more than 1000 employees (ILO, 2019).

(ii) PWD must meet a certain degree of disability (e.g., severely disabled) to be eligible for the quota policy. For example, in Germany, only severely disabled persons (with a disability degree of 50 or more) qualify for benefits under quota regulations, while temporarily disabled persons do not. In Lithuania, PWD eligible for special labour market conditions include those with 40% working capacity or severe or moderate disabilities. In India, persons with at least 40% disability are entitled to benefits under the quota system (ILO, 2019).

(iii) In some cases, based on the severity and type of disability, the quota may count one PWD as equivalent to two or three employees. For example, if an organization hires a PWD with more than

61% disability (or a specific number) or hires persons with mental, intellectual, or neurological disabilities, the organization may count this as hiring two PWD. In Japan, physically and intellectually severely disabled persons and those with psychosocial disabilities are counted as two disabled employees (Vai Io Lo, 2013). In Austria, blind persons, individuals who primarily rely on wheelchairs, and PWD under 19 or over 55 years of age are counted as two when calculating compliance with the quota (European Commission, 2022). In Poland, employers can reduce their quota obligation by hiring intellectually disabled persons. In the Czech Republic, severely disabled individuals are counted as three. In China, during the global financial crisis, a circular on strengthening employment for disabled university graduates stipulated that from 2009 to 2010, one disabled graduate could count as two for the purposes of meeting the quota (ILO, 2019).

(iv) A financial support mechanism should accompany penalties when organizations exceed or fall short of the statutory ratio (to be clarified in Section 3.2.2). In Austria, if the quota obligation is not met or is only partially met, employers must pay a compensation tax for each unfulfilled mandatory position each month. The amount of the compensation tax depends on the company's size. For 2022, the following rates apply: 276 EUR per month per unfilled mandatory position for companies with 25-99 employees; 388 EUR if there are 100-399 employees; and 411 EUR if there are more than 400 employees (European Commission, 2022). All of this money goes into a compensation tax fund and is used for measures and programs supporting the vocational integration of PWD in Austria. In Japan, if a company with more than 301 regular employees fails to meet the legal quota, the company must pay a levy of 50,000 Yen per month for each person below the quota (Article 17 of the Enforcement Decree of the Act on Employment Promotion for Persons with Disabilities of Japan (障害者の雇用の促進等に関する法律施行令)). If a company with 300 or fewer regular employees does not meet the legal quota, it must pay a levy of 40,000 yen per month per person below the quota during the first five years (Article 2 of the Act on Employment Promotion for Persons with Disabilities of Japan).

Although quota systems allow for an increase in the number of disabled employees and their livelihoods, they can convey a negative message that hiring PWD is merely a compliance with legal requirements rather than genuine recognition of PWD's skills and contributions to the employer. However, the general trend is that quota systems are considered a form of positive action within the framework of anti-discrimination law (UNDP, 2022).

3.2.2. Financial Support

As mentioned above, the government issues recruitment quotas requiring employers to hire a certain percentage of employees for their organizations, and it ensures enforcement through a series of sanctions. However, this regulation has sparked much debate as it violates the principle of employer freedom in recruitment and raises concerns about low productivity and the ability of PWD to meet job requirements (ILO, 2019). Therefore, to make these recommendations practical, there must be a financial support mechanism for employers who meet or exceed the recruitment quota.

First, the government should provide financial support for improving the working environment to accommodate the recruited PWD. When hiring PWD, employers must invest in modifying the workplace, such as building ramps, constructing accessible restrooms, adjusting the height of workstations, and widening paths to accommodate wheelchair users. Currently, Point A, Clause 1, Article 9 of **Decree No. 28/2012/ND-CP** stipulates: "The Chairperson of the People's Committee of provinces and centrally-affiliated cities shall determine the financial support for improving working conditions and environments for production and business establishments that employ 30% or more of their total workforce as persons with disabilities." In Vietnam, although there are regulations supporting workplace modifications, the conditions for receiving this support are too high, which has not truly encouraged employers to hire PWD. Therefore, the law should move towards implementing a recruitment quota with accompanying support in line with global trends. In Japan, besides

providing monetary incentives for exceeding the quota, the government also offers grants to cover additional costs for upgrading the workplace that employers incur when they attempt to recruit or retain PWD who have become disabled for various reasons (Article 49.1 of the Act on Employment Promotion for Persons with Disabilities of Japan).

Second, the government should introduce a reward policy when employers hire PWD according to or exceeding the quota. In addition to the obligation to hire PWD and corresponding penalties for non-compliance, to promote fairness and counter objections from employers, the government should provide a reward system when employers meet or exceed the recruitment quota. This reward could come from the state budget or be drawn from fines collected from non-compliant employers. The amount of the reward would vary based on how much the employer exceeds the quota or whether they hire persons with severe or particularly severe disabilities, such as those with mental or intellectual disabilities. In Japan, if a business meets the legally prescribed quota, it may receive an **Adjustment Allowance for Employing Persons with Disabilities** of 27,000 yen per month for each employee hired above the quota (Article 15 of the Enforcement Decree of the Act on Employment Promotion for Persons with Disabilities of Japan). For businesses that have never paid fines for failing to meet the quota and employ a certain number of PWD, they are eligible for a reward of 21,000 yen per month for each PWD employed (Article 4.3 of the Act on Employment Promotion for Persons with Disabilities and Article 3.3 of the Enforcement Decree of the Act on Employment Promotion for Persons with Disabilities of Japan).

Third, the government should implement a wage subsidy policy. In other words, the government and employers would share the responsibility of paying wages to employees with disabilities. Under this policy, the government would allocate funds from the state budget or fines to assist employers in paying wages to PWD. This would provide additional motivation for employers to hire PWD without having to worry about whether the wages they pay are commensurate with the productivity of the PWD.

Fourth, there should be tax support policies for businesses that employ employees with disabilities or meet the recruitment quota for PWD. As previously analysed, businesses in Vietnam are currently eligible for tax exemptions if they employ PWD as at least 30% of their average workforce per year, with an average of at least 20 employees per year (excluding businesses operating in the finance and real estate sectors). This regulation does not currently reach the majority of businesses in Vietnam, where small and micro-sized enterprises make up the vast majority. Therefore, this regulation should be revised to provide tax incentives proportional to the number of PWD employed, their disability type, and severity. Similarly, businesses that meet the recruitment quota should be eligible for tax incentives or exemptions.

3.2.3. Having a Plan/Commitment/Contract with State Agencies Regarding the Recruitment of Persons with Disabilities When Applying for Business Investment Permits

To bind employers (ER) to recruit persons with disabilities (PWD) into their workforce, one proposed measure is to require ER to have a plan, commitment, or contract with the competent state agency, or to consider the recruitment of PWD as a condition when registering the establishment of a business.

With this condition, ER must commit to the State that they will recruit PWD, or they must have a recruitment plan for PWD when establishing their organization. Once these organizations are established, the state agency will inspect and monitor compliance with the commitments and plans. If they meet the requirements, they may receive financial support as mentioned in **Section 3.2.2**. If not, the state management agency may revoke the business license, cancel the enterprise registration certificate, or impose administrative penalties.

3.2.4. Recruiting Persons with Disabilities as a Criterion for Evaluating and Ranking Organizations

Currently, according to the Ministry of Finance's **Circular No. 200/2015/TT-BTC**, the effectiveness of enterprises with 100% state-owned capital or state-invested enterprises is assessed based on five criteria: (i) Total revenue; (ii) Profit margin after tax on equity; (iii) Overdue liabilities and debt repayment capacity; (iv) Compliance with current legal regulations; and (v) The performance of public service products. It can be seen that one basis for evaluating the effectiveness of state-owned enterprises or state-invested enterprises is their compliance with current legal regulations. However, this compliance is limited to taxation and finance, and has not expanded into other areas such as labour. Therefore, including the recruitment of PWD as a criterion for evaluation is truly necessary. This would increase the responsibility of businesses, not only in the field of taxation and finance but also in their social responsibility, particularly towards vulnerable groups in society. Furthermore, there is currently only a mechanism for ranking enterprises with 100% state-owned capital or state-invested enterprises, with no criteria for ranking non-state enterprises.

In modern business, companies are recognized not only for their financial performance and market position but also for their responsibility to the community, support for employees and business partners, care for the environment, and commitment to sustainable development. Company rankings play an important role in evaluating and comparing the performance, reputation, and value of businesses in the market. The main purposes of company rankings are:

- (i) Providing information to investors: Investors can compare companies within the same industry to select the most promising ones;
- (ii) Guiding business development: Rankings help companies identify their strengths and weaknesses, allowing them to develop suitable growth strategies and improve operational efficiency. By comparing themselves to competitors, companies can learn and apply measures to enhance their performance;
- (iii) Enhancing reputation and brand: Companies with high rankings are generally trusted more by customers, making it easier to attract new customers and retain existing ones. High rankings help businesses assert their position and credibility in the market, creating a competitive advantage;
- (iv) Attracting talent: Companies with good rankings often attract more talent, helping them build a high-quality workforce. The working environment in highly ranked companies is often appealing, motivating current employees;
- (v) Meeting management and supervision requirements: Rankings give regulatory agencies a comprehensive view of the operational status of companies, allowing them to develop appropriate management policies. Ranking requires companies to be transparent in financial reporting and operations, enhancing accountability.

In summary, company rankings not only provide valuable information for investors and customers but also help businesses improve performance, boost reputation, attract talent, and promote responsible business practices. Additionally, they assist regulatory agencies in monitoring and managing the market, contributing to a transparent and fair business environment. Therefore, specific regulations on company rankings should include criteria for recruiting and employing PWD. Annually, companies should be ranked, and those with higher scores should receive more state incentives.

3.2.5. Transferring the Burden of Proof to the Employer

Article 6.1 of the 2015 Civil Procedure Code states:

“1. The parties have the right and obligation to actively collect and submit evidence to the Court and to prove that their requests are grounded and lawful.

Agencies, organizations, and individuals who initiate lawsuits to protect the lawful rights and interests of others have the right and obligation to collect and provide evidence, just like the parties involved.”

According to the above provision, providing evidence is both a right and an obligation of the parties when initiating a lawsuit to protect their lawful rights and interests in order to prove that their requests are grounded and lawful. When making a request, the plaintiff must prove their claims against the defendant, meaning they have the obligation to provide evidence, participate in evidence examination, engage in questioning and debate, etc., to prove their case. This is because the defendant is presumed to have no responsibility towards the plaintiff until the defendant's liability is proven (Lê Xuân Quang and Nguyễn Thị Tường Vi, 2022). However, in labour cases where the employee (the plaintiff) is unable to provide evidence to the Court because such documents or evidence are managed and retained by the employer, the employer has the responsibility to provide and submit that evidence to the Court (Article 91.1.b of the 2015 Civil Procedure Code). For the defendant, the burden of proof arises only when the defendant counters the plaintiff's claims or makes requests related to the plaintiff's claims, or when the defendant disagrees with the plaintiff's requests.

Due to the nature of discrimination, these situations pose significant challenges in proving discrimination when applying the burden of proof if the plaintiff must directly prove it. The root of the issue arises from the fact that in civil proceedings, plaintiffs must provide evidence for the allegations they make, but in many cases, discrimination leaves no evidence at all. Furthermore, when documents that could constitute evidence of discriminatory practices exist, they are often held by the discriminator (Julie Ringelheim, 2019).

To combat discriminatory acts that violate the law or established practices, in cases of discrimination, the burden of proof may be shared equally between the plaintiff and the defendant. This principle has been developed by the Court of Justice of the European Union (CJEU) in discrimination cases based on gender and is now entrenched in European anti-discrimination law. Generally, there are two main reasons why EU law provides for the shifting of the burden of proof: (i) To protect the weaker party in legal relationships, and (ii) To provide access to information based on the principle of equality of arms in proceedings (OSCE Mission to Skopje, 2023). Protecting the weaker party in legal relationships and shifting the burden of proof from the plaintiff to the defendant contributes to achieving one of the fundamental objectives of European policy on equal treatment in proceedings, namely pursuing legal protection for victims of inequality. In its legal system, the CJEU continually affirms that within EU law, the social aspect, including equality of treatment, is equally or even more important than the economic aspect (OSCE Mission to Skopje, 2023). The second reason specifically relates to the fact that parties harmed by discrimination may, by regulation, sometimes lack access to important information affecting the determination of violations of equal rights in proceedings; thus, the burden shifts to the party holding that information or data, ensuring that the victim has access to effective remedies.

The standard for transferring the burden of proof is clearly stipulated in EU law. Article 8 of Directive 2000/43/EC of the European Parliament and Council of June 29, 2000, implementing the principle of equal treatment between persons regardless of racial or ethnic origin, based on Article 47 of the Charter of Fundamental Rights of the European Union, states: “Member States shall take the necessary measures, in accordance with their national judicial systems, to ensure that, when persons are treated in a manner contrary to the principle of equal treatment, the facts from which it may be presumed that there has been direct or indirect discrimination are established, the defendant must prove that there has been no breach of the principle of equal treatment.”

European courts have effectively applied the shifting of the burden of proof and have well protected employees. The Federal Labour Court of Germany in Case No. 8 AZR 170/1951 (in this case, the plaintiff, a person with a severe disability, applied for a job at a community health insurance company but was not invited for an interview. The plaintiff established the assumption that his exclusion from the interview and consideration for the job was due to his disability) shifted the burden of proof to the employer; however, the employer could not refute the employee's allegations, leading the court to declare that there was discrimination based on disability.

Thus, to facilitate the protection of PWD against discriminatory acts in recruitment and labour relations, anti-discrimination laws need to stipulate the transfer of the responsibility to collect and provide evidence from the plaintiff to the individual deemed to have engaged in discriminatory acts.

CONCLUSION

The protection of the rights of employees with disabilities is an important issue in both domestic and international labour law. In recent years, Vietnam has made significant strides in enhancing its legal framework to support persons with disabilities in the workplace. However, there are still many challenges that need to be addressed to ensure that persons with disabilities can fully participate in the labour market and enjoy equal opportunities for employment and career advancement.

Through this article, the author has analysed and reassessed the current legal provisions, evaluating both the strengths and weaknesses of these regulations, as well as reviewing the practical implementation of these legal rules. Based on this analysis, the author realizes that in order for PWDs to have more employment opportunities and to encourage employers to hire more PWDs, we must create a balance of rights and interests between employees with disabilities and employers. To achieve this balance, the author has proposed a series of recommendations (ranging from the employment quota system and the burden of proof to financial support and rewards for employers), which not only impose obligations on employers but also offer incentives when they fulfill their legal responsibilities well.

Vietnam's commitment to protecting the rights of employees with disabilities, in line with its international obligations under the Convention on the Rights of Persons with Disabilities and ILO Convention No. 159, should be reflected in its continued efforts to refine and implement effective labour policies. These measures will not only improve the quality of life for persons with disabilities but also contribute to the broader goals of social equity and economic development.

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