

European network of legal experts in gender equality and non-discrimination
**Thematic Report on Reasonable Accommodation and Accessibility Obligations in
Employment 2015**

Country: Liechtenstein
Expert: Wilfried Marxer / Patricia Hornich – Liechtenstein Institut

1. Nature and extent of the reasonable accommodation duty in employment and occupation

1.1 Scope

The legal basis for reasonable accommodation in employment and occupation is laid down in the

- Act on Equality of People with Disabilities (*Behindertengleichstellungsgesetz*)¹, AEPD/BGIG, 25.10.2006, Article: 10, and the
- By-law of the Act on Equality of People with Disabilities (*Behindertengleichstellungsverordnung*)², AEPDR/BGIV, 19.12.2006.

Art. 10 §1 and §2 of the AEPD specify the extent of the duty to make provisions for the avoidance of discrimination within the area of employment and occupation. People with disabilities may not be discriminated against as employees in the public and in the private sector or at any other workplace, either directly or indirectly. Art. 10 §1 lit. a to lit. k of the AEPD³ include the aspects of recruitment, payment, voluntary social security benefits, vocational training, occupational career and promotion, other conditions for employment, termination of employment, accessibility to job services, vocational training and other services outside an employment contract, membership and co-operation in trade unions, and conditions for the access to self-employment .

Within Art 10 of the AEPD no explicit regulation exists which refers to the employers obligation to create reasonable accommodation and / or adaptation of workplaces for people with disabilities. Thus, judicial interpretation is required to confirm whether such obligations can be subordinated under the term of “other conditions for employment” as stated within Art. 10 §1 f or if rather general provisions as in the Constitution (Art. 9) is sufficient to protect against discrimination based on missing reasonable accommodation and accessibility of workplaces.

There are exceptions to this general rule provided in Art. 10 §3 and §4. Art.10 §3 of the AEPD states that discrimination does not apply if a special attribute is necessary to fulfil the professional task and the disabled person concerned does not fit into this scheme. The law is silent about any obligation of the employer regarding adaptation measurements to the workplace to enable the person with a disability in fulfilling the job requirements (e.g. adaptation in respect of technical equipment etc.).

Art. 7 §3 of the AEPD states, that indirect discrimination is given if no attempts were undertaken to accommodate the situation of a concerned person. In terms of ensuring non-discrimination within employment and occupation the obligations based on the AEPD do not differ in terms of the employment type of the disabled person. Thus the obligations of the AEPD extend to public and private employers of any size and all employees. The law is silent regarding the type of contract the duty arises. Adaptions to workplaces and other integrative activities are to be developed on a case-by-case basis, whilst binding and strong legal obligations on employers are lacking in Liechtenstein legislation.

¹ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243. Source: https://www.gesetze.li/get_pdf.jsp?PDF=2006243.pdf

² Verordnung vom 19. Dezember 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsverordnung; BGIV), LGBl. 2006, no. 287. Source: http://maidstone.advanced.li/Portals/0/docs/PDF-Dateien/Behindertengleichstellungsgesetz/verordnung_behindertengleichstellungsverordnung.pdf

³ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

In case that indirect discrimination is a consequence of barriers, Art. 7 §4 states that it must be proved whether legal provisions regarding accessibility exist, and if so, whether the legal tasks are fulfilled. Within the same article, the AEPD lists the type of disproportionate burden (*unverhältnismässige Belastungen*) that may justify unequal treatment and prevent this from being regarded as indirect discrimination. In detail, Art. 7 §2 specify that the following criteria in particular have to be taken into consideration when deciding whether the likely burden is “disproportionate” or not:

- the costs of the accommodation;
- the resources of the enterprise;
- the extent to which public assistance is available;
- the time period between the entering into force of the AEPD and the complaint;
- the effect on the general interest of people with disabilities.

There is no case law known to the authors on this issue.

With reference to detailed obligations for accessibility of buildings and facilities, section II. C of the AEPD provides regulations regarding reasonable accommodation and accessibility for people with disabilities. These rules as stated in Art. 12 of the AEPD refer explicitly only to buildings and transportation facilities accessible to the public and do not differ regarding the accessibility of the public in general or of employees with a working place within this building. Thus, it can be assumed that these obligations, which are given in detail by the AEPDR, are relevant for working places in buildings with public access. Furthermore these rules can be seen as a general duty to provide accessibility, which exists in the absence of an individual request. According to the AEPD, public buildings must be constructed in a way that gives people with disabilities the possibility to move around freely. Buildings which were built before the AEPD came into force (as of 1. January 2007) should be adapted at the next major renovation (Art. 12 § 1 AEPD); buildings which, for any reason, cannot be adapted may be exempted by the government. This process is done without any specific obligations for a particular disabled person. These subjects are treated in Art. 11 – 14 of the AEPD.

The law is silent about any obligation which arise to private buildings in terms of accessibility for employers with disabilities.

1.2 Knowledge of disability

The law is silent about the degree of knowledge of disability an employer must have to become subject to a reasonable accommodation duty. Equally, the law is silent about the point of time the duties for reasonable accommodation arise to an employer.

Adaptions to workplaces and other integrative activities are to be developed on a case-by-case basis, whilst binding and strong legal obligations on employers are lacking in Liechtenstein legislation. Thus, segregation is practiced more regularly than integration into the common work environment. Thus people with disabilities are mainly employed by one of the specific integration centres or sheltered facilities, which all of them are specialised to assist people with disabilities.⁴

Would it come to a legal case regarding a person claiming to be discriminated as his/her application for employment was rejected by the failure of accessibility to the workplace based on his/her disability, the defendant has the obligation to prove in consideration of all circumstances that the claim has another reason for the difference in treatment and that it is more likely that the facts substantiated by him are truthfully (Art. 26 §2 to §3) of the AEPD. The second part of article 26 states that the defendant can try to prove that he has another reason for the difference in treatment and that this reason is crucial. This can also be applied to the right to accessibility to the working place. If the defendant can come up with a reasonable and crucial reason for him to have ignored the law on this issue the courts can exonerate him.

⁴ The most relevant sheltered facility in Liechtenstein is the HPZ located in Schaan. Source: <http://www.hpz.li/werkstaetten/>

1.3 Duty to consult

Art. 10 of the AEPD is silent about any specific duty to consult the employee or any other organisation to define whether the disabled persons need specific measures for accessibility of the working place. Furthermore the law is silent about any other obligation to the employer to make inquiries about whether they need accommodation or not. Within Art. 10 §1 a it could be assumed, that when creating a working contract between the employer and a disabled person, the employer becomes subject to a reasonable accommodation duty based on the fact, that he assigned to a working contract by knowing about the special requirements of the employee. Nevertheless, the law is silent in this aspect and therefore juridical interpretation is required. From the given legal obligations it can be said, that the political intention was more an approach of low intervention into the private sector in the area of reasonable accommodation when setting up the AEPD.

Regarding the area of working places within public buildings and facilities, the duty for the employer of making inquiries about whether reasonable accommodation is needed or not, arises with the construction application. Based on the AEPDR, the authorities who receive the application have to consult the Office for Equality of People with Disabilities⁵ for formal statement regarding accessibility and reasonable accommodation. The Office for Equality of People with Disabilities has been accepted by the government as organisation with a right of appeal in the field of discrimination based on Art. 31 § 2 APED in conjunction with Art. 10 AEPDR. Disability organisations, which are registered for not less than five years and are domiciled in Liechtenstein, are according to the explicit regulation in Art. 31 §1 AEPD entitled to appeal the enforcement of legal claims of public accessible buildings and facilities.

The law is silent about the extent to which employers are required to consult the disabled person and/or others about what kind of accommodation is appropriate. Thus, adaptations to workplaces and other integrative activities are to be developed on a case-by-case basis, whilst binding and strong legal obligations on employers are lacking in Liechtenstein legislation.

2. Enforcing and Raising Awareness of Reasonable Accommodation Duties in Employment and Occupation

2.1 Official Guidance

In terms of the AEPD, the official authorities issued the By-law of the Act on Equality of People with Disabilities (*Behindertengleichstellungsverordnung*)⁶, AEPDR/BGIV, 19.12.2006, which specifies the regulations given by the AEPD. This regulation is part of the legislation and directly attached to the law itself. Within the AEPDR the legislator refers to additional guidance to accompany the legislation on reasonable accommodation in public buildings and facilities including workplace. The guidelines are:

- Norm N 521/1988 "*Behindertengerechts Bauen*", available from the building authority⁷
- Regulation "*Behindertengerechte Fusswegnetze*" 05/2003, Swiss Institute for handicapped accessible building⁸
- Norm SIA 500⁹, based on the Swiss Norm for buildings and facilities,

These guidelines are designed for the use by non-lawyers and do not pose an immediate and direct law. Instead they reflected practical guidelines for buildings and facilities accessibly to the public to be constructed in line with the given legal requirements for reasonable accommodation.

⁵ Liechtensteiner Behinderten-Verband:

<http://www.lbv.li/Dienstleistungen/B%C3%BCrof%C3%BCrdieGleichstellung/tabid/916/Default.aspx>

⁶ Verordnung vom 19. Dezember 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsverordnung; BGIV), LGBl. 2006, no. 287. Source:

http://maidstone.advanced.li/Portals/0/docs/PDF-Dateien/Behindertengleichstellungsgesetz/verordnung_behindertengleichstellungsverordnung.pdf

⁷ Source: <http://www.lbv.li/#/12667/gesetzliche-grundlagen>

⁸ Source: http://www.hindernisfrei-bauen.ch/beitraganzeigen_d.php?titel=Aktuell

⁹ Source: http://www.sia.ch/fileadmin/content/download/sia-norm/korrigenda_sn/500-C3_2013_d.pdf

Nevertheless as the legal martial refers directly to the guidance it can be assumed that any obligation placed on adjudicators based on discrimination in the employment area referring to reasonable accommodation, can refer to or take the guidance into account when making decisions about the reasonableness of a contested accessibility.

Based on the AEPDR, the authorities who receive a construction application have the obligation to consult the Office for Equality of People with Disabilities¹⁰ when making decisions about the reasonable accommodation aspects of the construction itself. The Office for Equality of People with Disabilities has been accepted by the government as organisation with a right of appeal in the field of discrimination based on Art. 31 § 2 APED in conjunction with Art. 10 AEPDR.

There are no further guidelines known to the authors or officially published / available.

2.2 Remedies

Art. 23 §1 of the AEPD states that the person concerned is entitled in any case to restitution of any financial losses incurred, and to compensation for the personal detriment suffered. The victim can also request an injunction to ban or prevent the threat of future discrimination or to eliminate existing discrimination (Art. 23 §2). In assessing the extent of compensation for the immaterial injury, the length of the period of discrimination, the seriousness of the act, the extent of the detriment and whether there has been multiple discrimination, must in particular be taken into account (Art. 23 §3). These regulations refer to discrimination as stated in Art. 10 and therefore cover aspects of reasonable accommodation in employment and occupation. Art. 23 of the AEPD does not state any limit but lists the criteria for evaluating the amount of non-pecuniary damages.

Based on Art 23 of the AEPD¹¹ the legal basis for court trials is the Code of Civil Procedure (CCP).¹² Art. 25 of the AEPD states that the civil courts (part of the Ordinary Courts) are the appropriate authority to decide upon complaints against discrimination on the ground of disability. Any claim shall be adjudicated according to the CCP, except regarding Art. 26 of the AEPD which provides special provisions on the burden of proof (cf. 3.6 e). Procedures for addressing discrimination are not the same for employment in the private sector on the one hand and the public sector on the other. Whereas in private disputes the ordinary court is the first judicial authority, in disputes between individuals and the public it is the Administrative Court (part of the public jurisdiction, followed by the Constitutional Court as last instance).

Art. 11 of the AEWM¹³ states that the ordinary court designates an arbitration board ("*Schlichtungsstelle*") which seeks to achieve an agreement between the conflicting parties instead of taking the case to court immediately. The arbitration board process is mandatory and has to take place within the period for filing a suit. The out-of-court settlement of disputes is ruled by §§ 594-616 of the CCP.¹⁴ Additionally in 2005 the Act on Mediation in Civil Law Cases (AMCLC)¹⁵ entered into force. This law provides for definitions of mediation and mediators as well as the rights and duties of mediators.

So far, remedies are not confined to monetary damages or extended to ordering that a particular reasonable accommodation should be carried out.

¹⁰ Liechtensteiner Behinderten-Verband:

<http://www.lbv.li/Dienstleistungen/B%C3%BCrof%C3%BCrdieGleichstellung/tabid/916/Default.aspx>

¹¹ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.

¹² Gesetz vom 10. Dezember 1912 über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten (Zivilprozessordnung; ZPO), LGBl. 1912 Nr. 9/1.

¹³ Gesetz vom 10. März 1999 über die Gleichstellung von Frau und Mann; Gleichstellungsgesetz; LGBl. 1999, no. 96.

¹⁴ Gesetz vom 10. Dezember 1912 über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten (Zivilprozessordnung; ZPO), LGBl. 1912 Nr. 9/1.

¹⁵ Gesetz vom 15. Dezember 2004 über die Mediation in Zivilrechtssachen (Zivilrechts-Mediations-Gesetz; ZMG), LGBl. 2005 Nr. 31.

3. Case law

3.1 Case law on reasonable accommodation in employment and occupation

There is no case law known to the authors in Liechtenstein.

3.2 Other discrimination case law on accessibility barriers

There is no case law known to the authors in Liechtenstein.

4. Accessibility Obligations on Employers and their Landlords

4.1 Employers

Art. 68 of the Construction Law (*Baugesetz, BauG*)¹⁶ states, that buildings and constructions which may be addressed by the specifications of the AEPD have to fulfil the obligations from the AEPD. Thus, these regulations do only refer to public buildings and facilities including work places. In this aspect Art. 3 of the AEPDR states that – and this includes employers and landlords to the extent that their public buildings and facilities including work places– do comply with the technical building legislation based on the additional guidelines as mentioned under 2.1 to fulfil the legal requirements in conjunction with the AEPD and the Construction Law of Liechtenstein.

There are no further legal requirements given. In terms of adaptations to workplaces and other integrative activities, the legal requirements are rather vague, saying that they have to be developed on a case-by-case basis. Binding and strong legal obligations on employers are lacking in Liechtenstein legislation.

4.2 Employers' Landlords

The law is silent about the obligations of landlords regarding the request from their tenants to fulfil their reasonable accommodation obligations, e.g. to remove physical barriers, make accessibility adaptations to the building, etc.

5. State Funding for Accommodations

5.1 Eligibility

The provisions of Arts. 19 and 20 of the AEPD¹⁷ are rather vague, saying that the state supports the integration of people with disability, and the community can establish appropriate programmes. Thus, adaptations to workplaces and other integrative activities are to be developed on a case-by-case basis, whilst clear regulations regarding situations in which employers are eligible for subsidies or other State funding to help with the costs of accessibility and reasonable accommodations needed by disabled employees are not given in the legislation.

5.2 Relevance of Accessibility Enhancement

There are no main policies or mechanism known to the authors which provide State funding to cover the costs of reasonable accommodation for employees with disabilities.

¹⁶ Baugesetz vom 11. Dezember 2008; BauG; LGBl. 2009, no. 44.

¹⁷ Gesetz vom 25. Oktober 2006 über die Gleichstellung von Menschen mit Behinderungen (Behindertengleichstellungsgesetz; BGIG), LGBl. 2006, no. 243.