

The Pandemic as a Litmus Test for EU Anti-Discrimination Law - Debating Change

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Changing work arrangements during the pandemic as a challenge for EU non-discrimination law

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Abstract

The worldwide pandemic and the national responses to control the spread of Covid-19 have exposed and increased many of the existing social and structural inequalities. The virus posed a severe health risk for some vulnerable groups within society and relatively lower skilled segments of the labour market within retail, food production and care work were more likely to contract the virus as they - alongside other health professionals- were in high demand and unable to shield themselves at home. Lower skilled workers were also likely to be negatively affected by the lockdowns and business closures, for example in relation to the closure of restaurants and childcare facilities and the structurally vulnerable were less able to compensate for the lack of services during the stay-at-home orders. Overall, deep-rooted gender roles reemerged to the forefront, as women were mostly burdened with the additional care responsibilities at home while also often working remotely. These findings in themselves are not surprising. Indeed, it has long been recognized that apparently neutral measures can have different effects on different groups because of structural inequalities that situate them differently within the employment market and wider society. Nevertheless, EU non-discrimination law and its corresponding national bans on discrimination seemed relatively toothless in challenging or preventing these inequalities to widen during the worldwide public health crisis. As such, the paper explores some of the difficulties with applying the common concepts of EU non-discrimination law to the changing world of work during the pandemic and its aftermath and explores its capability to address structural inequality. With a special focus on indirect discrimination, it argues that a wider recognition of structural vulnerability is indeed possible, but that it requires the reconsideration of its established frame of references.