



## **Dutch Case on wrongfully-sacked barber with HIV**

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# Dutch Law on Medical Examinations, 1998



## Background

- Solidarity approach: everybody part of workforce and no selection (even with a medical condition or health problems in past)
- No health-related questions (present or past) by employer
- No medical examinations (only limited situations and job related)
- No HIV-test
- No questions on HIV
- Employee must only mention his health condition:
  - if not fit2work for that specific job
  - not obliged to mention HIV-status

# Barber with HIV



## Key issues

- Applicant did not make any mention on his HIV status
- Two weeks after his probation time ( of 1 month) he revealed his HIV status during coffee break
- Barber was dismissed immediately by his manager
- Reasons for dismissal:
  - no mention on HIV status
  - endanger colleagues
  - endanger clients
  - endanger his shop since clients would stay away

# Court of Justice, Utrecht



## Court ruling

- Barber did not mislead the employer in saying nothing about his HIV status
- Employer is expected to comply with the appropriate hygienic protocols that form the foundation of labour legislation
- Barber was not constrained by his HIV status in performing his job
- Barber with HIV can do his job normally, accordingly to the Dutch Law of Medical Examinations
- Barber was awarded compensation for intangible damage due to inappropriate action of the employer (3 month salary)

# Recommendation on HIV/AIDS and the world of work, ILO, Geneva 2010



## Key lessons

- Dutch law is accordingly to the new ILO Recommendation
- The rights of all workers with HIV are protected
- No workers, including job seekers and job applicants, should be required to undertake a HIV test or disclose their HIV status
- The ILO Recommendation should be implemented by all national policies and programs
- Organizations representing PWAs play an important role during this implementation process on national level

# Special advise!



Be aware of the GIPA Principle

PWAs and/or Organizations representing PWAs

be visible and let your voices be heard on all levels!!!!!!

