



handling er ikke i strid med forbudet når den har et saklig formål, når det er nødvendig for å oppnå formålet og ikke er uforholdsmessig inngripende. Likestillingsombudet har lagt til grunn at det er en saklig forbigåelse, og ikke i strid med loven, å legge avgjørende vekt på søkers mangelfulle skriftlige norskkunnskaper ved ansettelse i en stilling hvor språket er sentralt i forhold til stillingen.

Yrkeskvalifikasjonsdirektivet og språkkrav

EUs Yrkeskvalifikasjonsdirektiv er nylig revidert, og språkkravene er klargjort. Direktivet gir norske myndigheter anledning til å stille språkkrav dersom dette har betydning for yrkesutøvelsen. Godkjenningsmyndighetene (SAK) kan kontrollere

språkkunnskaper i yrker hvor det har konsekvenser for pasientsikkerheten. Vurdering av den enkeltes språkkompetanse må vanligvis gjøres etter godkjenning av søkers yrkeskvalifikasjoner.

Kontrollen av språkkunnskaper skal være rimelig i forhold til den aktivitet som skal utføres. Forskjellige stillinger kan ha forskjellige krav til språkferdigheter. Dette gjelder både for de ulike helsepersonellgruppene og innen samme gruppe. De språkkravene som stilles må være nødvendige for en forsvarlig yrkesutøvelse, noe som må vurderes konkret. Dette innebærer blant annet at EØS-statene ikke kan forlange systematiske språktester.

Det er opplyst at Kunnskapsdepartementet arbeider med gjennomføringen av endringene i Yrkeskvalifikasjonsdirektivet

i norsk rett, og tar sikte på å sende ut høringsnotat våren 2015.

Helse- og omsorgsdepartementet opplyser at de arbeider med et høringsnotat om vilkårene for autorisasjon av tannleger og annet helsepersonell når det gjelder søkere utdannet i tredjeland (utenfor EU/EØS og Sveits). Spørsmålet om språkkrav vil bli drøftet i den forbindelse. HOD tar sikte på å sende ut høringsnotatet i løpet av året.

NTF er høringsinstans ved forslag om lov- og forskriftsendringer på rettsområder som har betydning for helsepersonell.

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Norwegian language proficiency as a requirement for obtaining an authorization to practice as a dentist in Norway

The Norwegian Registration Authority for Health Personnel (Statens autorisasjonskontor for helsepersonell (SAK)) does not require Norwegian language proficiency for authorization of dentists educated within the European Economic Area (EEA). However, this does not mean that dentists with a foreign background and education can get a Norwegian authorization and practice in Norway without Norwegian language proficiency. This will be explained below.

Norwegian authorization without language evaluation

Both written and spoken language proficiency are required of all dentists who practice in Norway. However, dentists educated and trained in the EEA are not required to document Norwegian language proficiency when applying for an authorization or a license to practice as a dentist in Norway.

SAK considers it to be the employers' obligation to make sure employed health personnel have sufficient knowledge of

the Norwegian language. However, dentists running their own private practice must also have sufficient Norwegian language skills to fulfill the legal language requirements, and must therefore be acquainted with possible consequences of inadequate language skills.

Section 4 of the Norwegian Health Personnel (Helsepersonelloven) – Responsible Conduct

Health personnel shall conduct their work in accordance with the requirements of professional responsibility and diligent care that can be expected based on their qualifications, the nature of their work and the situation in general.

All health personnel have a personal and independent responsibility for reliable and safe practice. The Norwegian Board of Health Supervision (the NBHS – Helsetilsynet) has passed several decisions regarding health personnel who have practiced without adequate language skills. Referring to section 4 of the Norwegian Health Personnel Act, the NBHS has

stated that: *“The ability to understand the Norwegian language and to be able to communicate with other health personnel, patients and their next of kin, is also a requirement for functioning as a medical doctor.”* This also applies to dentists.

In a case brought before the NBHS, a hospital trust (“helseforetak») was instructed: *“The employer is responsible for its staff having adequate language skills to function reliably and safely.”*

Section 24 of the Regulation concerning authorization, licensing, and specialist validation for health personnel with qualifications from countries outside the EEA or from Switzerland

Foreign dentists whose professional qualifications have been approved within the EEA, must have the language skills necessary to deliver safe and reliable professional care in Norway (as the host country). Both the employer and the individual health professionals shall ensure that their language skills are adequate. Section 24 re-

garding language requirements can contribute to an increased awareness that EEA citizens who apply for positions in the Norwegian health system must meet the general legal requirements that apply to all health personnel practicing in Norway.

The EFTA Court has stated that an authorization to practice as health personnel in Norway may be denied when it is documented that the conditions for retracting or suspending an authorization in accordance with national regulations are fulfilled, cf. section 57 and 58 of the Health Personnel Act.¹ This applies even if the applicant fulfills the requirements set out in Directive 2005/36 EC (Yrkeskvalifikasjonsdirektivet) on the mutual recognition of professional qualifications. The advisory opinion from the EFTA Court is followed up by the Norwegian Appeal Board for Health Personnel which has upheld a decision from the NBHS rejecting an application for authorization partly based on inadequate language skills².

Section 3–2 of the Patients' Rights Act (Pasientrettighetsloven) and section 10 of the Health Personnel Act

In this context, the basic concern for the welfare of the patient is of great importance and must therefore always be considered.

The patient has a natural need for information and communication in a language he/she understands. Hence, it follows from section 3–2 that the patient shall have the information that is necessary to obtain an insight into his/her health condition, the content of the health care offered, as well as the possible risks and side effects. Health personnel must, as far as practically possible, also make sure that the patient has understood the content and significance of the information given. This is necessary for the patient, to be able to assess the situation and give an informed consent to the treatment offered.

Section 7 of the Medical Record Regulation (Journalforskriften) and section 4 of the Health Personnel Act – The use of Norwegian language in medical records

Patient records shall preferably be written in Norwegian. It follows from the commentary to section 7 of the Medical Record Regulation that patient records

generally must be written in Norwegian. Foreign health care providers offering their health services in Norway are obliged to keep patient records, and must therefore have a command of the Norwegian language sufficient to write the records themselves. It is important that the journal is written in a language which can be easily understood also by other health care providers in the Norwegian health system. Established medical terms may also be used in the journal.

Medical records may also be written in Danish and Swedish. Words and expressions that differ essentially from the Norwegian language should not be used in order to avoid misunderstanding or uncertainty.

In exceptional circumstances the NBHS may give permission to write the patient records in another language, e.g. English. Permission is given only in special cases, for example if a foreign dentist is only treating employees at the embassy of his/her own country. The NBHS is however most likely to give permission to write the record only in a language that can be easily accessed by them in the event of a supervision of the dentist in question.

Section 6 of the Anti-Discrimination Act regarding Ethnicity (Diskrimineringsloven)

Discrimination on the basis of language is as a main rule prohibited. However, differential treatment that is necessary in order to achieve a legitimate aim, and which does not involve a disproportionate intervention in relation to the person treated differently, is not regarded as discrimination pursuant to the said Act. The Equality and Anti-discrimination Ombud (Likestillings- og diskrimineringsombudet) has established that it is acceptable to place decisive importance on an applicant's lack of written language proficiency when hiring for a position where language proficiency is essential to carry out the position in question.³

The Professional Qualifications Directive (Yrkeskvalifikasjonsdirektivet) and language requirements

The European Union's (EU) Professional Qualifications Directive has recently been revised, and language requirements have thus been clarified. The di-

rective allows Norwegian authorities to set language requirements if this is of importance for performance of a given profession and also to check for language proficiency in professions where patient safety may be in question. The assessment of the professional's language skills must however normally not be carried out before the applicant's professional qualifications have been approved.

The requirements regarding language proficiency must be reasonable. They may vary depending on the profession in question and also on the type of job carried out within the same group of health personnel. The language requirements imposed must also be necessary in order to carry out a safe and correct professional service and must be evaluated specifically for each task or position in question. This means that the EEA countries cannot introduce systematic language tests as a requirement to obtain authorization as health personnel.

The Ministry of Education and Research has informed that it is currently revising the regulation implementing the Professional Qualifications Directive in Norwegian law, and plans to publish a discussion paper during the spring of 2015.

The Ministry of Health and Care Services has informed that it is working on a discussion paper dealing with the requirements for the authorization of dentists and other health personnel educated and trained in a third country (outside of EEA, EU, and Switzerland). The question of language proficiency will also be discussed in this connection. The Ministry plans to publish a discussion paper this year.

Fotnoter

1. (EFTA = the European Free Trade Association). Cfr. the EFTA-court's verdict of December 15, 2011. This is an advisory opinion given to the NBHS regarding the authority for a member state to set out language proficiency skills as an additional requirement for obtaining authorization as a medical doctor from the EEA-area.

2. Case 11/169 of the Norwegian Appeal Board of Health Personnel. Cf. section 53, second paragraph, of the Health Personnel Act.

3. Cfr. Decision of the Equality and Anti-discrimination Ombud in Case 08/1222.