

PROVING
DISCRIMINATION

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Shifting the Burden of Proof

The scope of European equality law is wide and strong
- *JF v TP SA* -

2

It can be difficult to prove discrimination



3

Shifting the burden of proof can be a real tool



4

The Equality Directives

Article 19(1) of the Reast Directive

“Member States shall take such measures as are necessary in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.”

5

Danfoss

A non transparent pay system that did not allow workers to identify reasons for difference in pay was challenged as discriminatory. The ECJ found that national rules on the burden of proof could be adjusted in special cases where necessary for the effective implementation of the principle of equality.

6

Enderby



Where a prima facie case of discrimination is established, the burden of proving objective justification moves to the employer.

This can be done by statistics.

7

Dansk Industri

-
- Differential wages for male and female workers within a piecemeal wage scheme.
 - But that mere finding was not suffice to establish discrimination.

8

Feryn



The employer's burden of proof could be discharged by showing that the actual recruitment practice did not correspond to its racist statements.



Associata
Accept



Association
Avvocatura

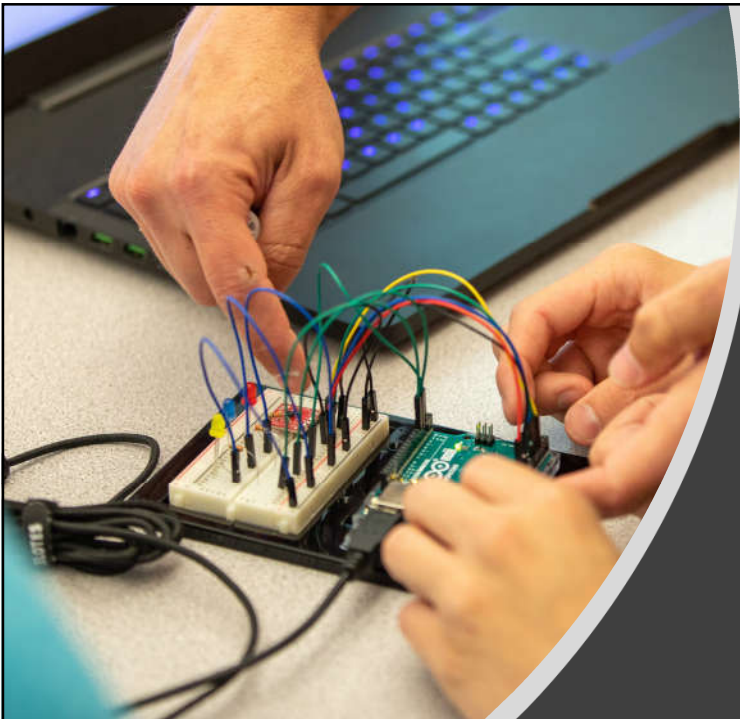
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Disclosure of Information

- Kelly v University College Dublin
- Refusal of information could deprive the equality principle of its effectiveness.

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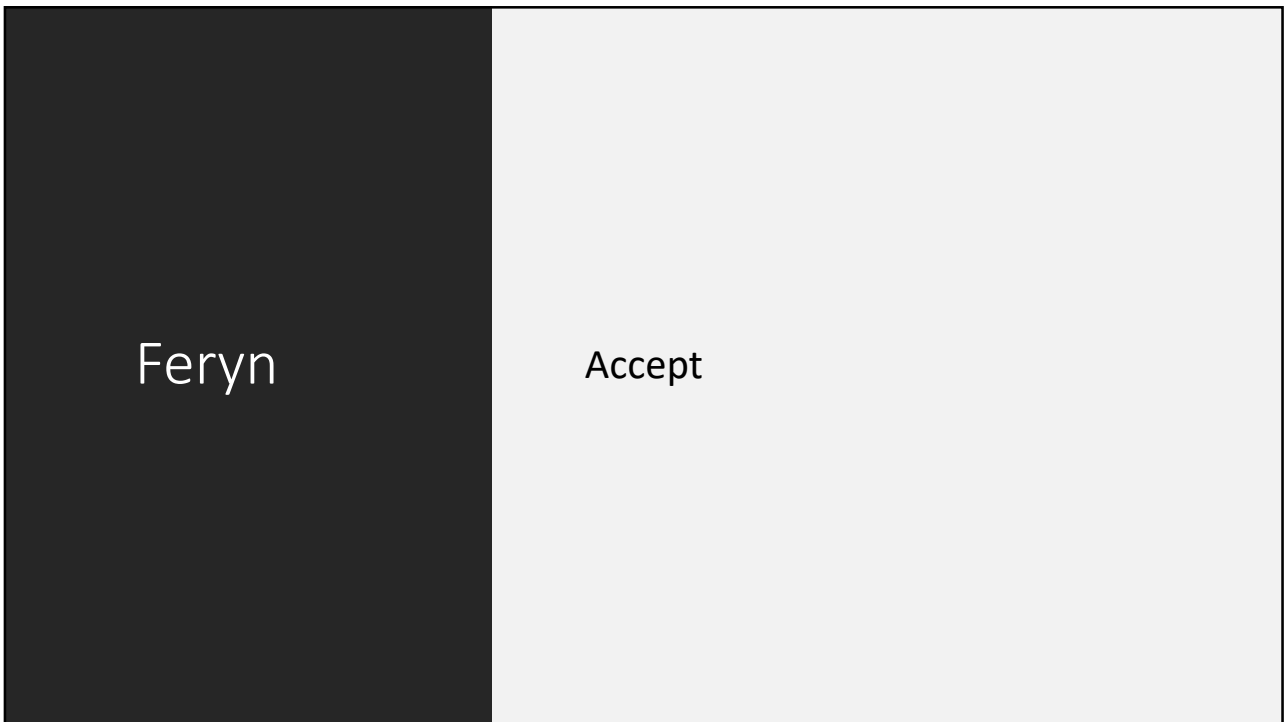


Meister

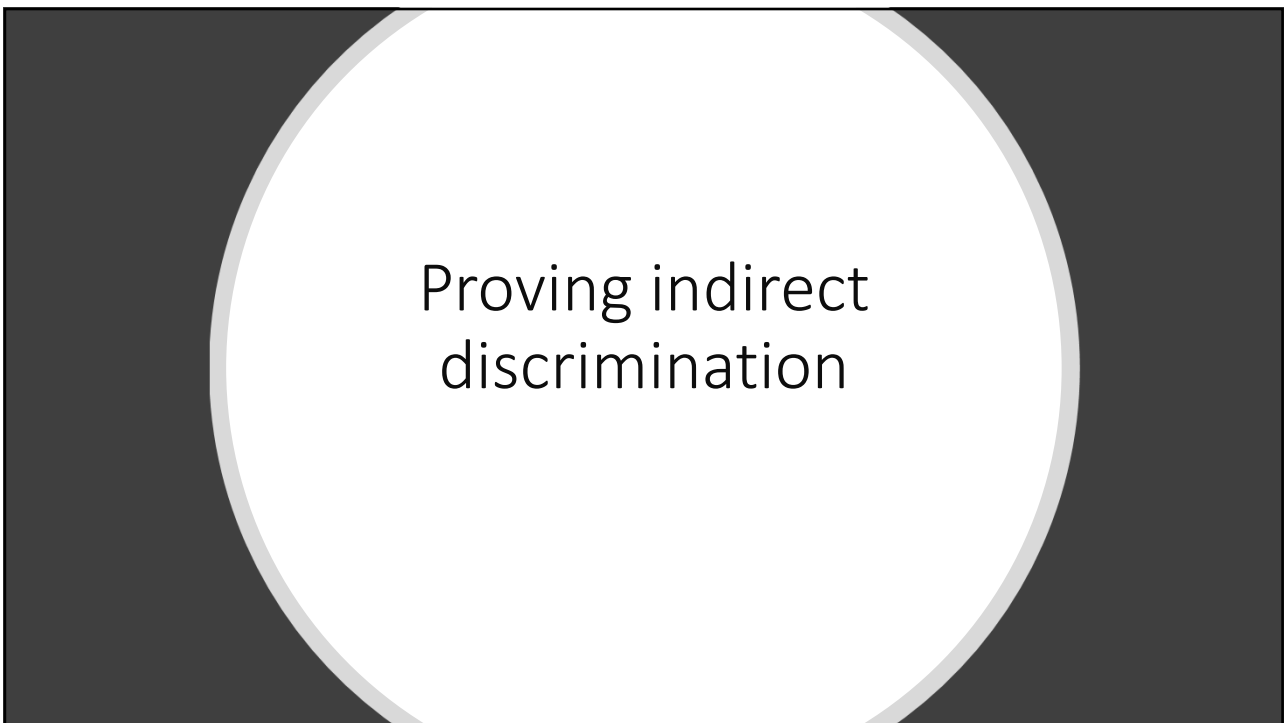
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Proving direct
discrimination

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Enderby



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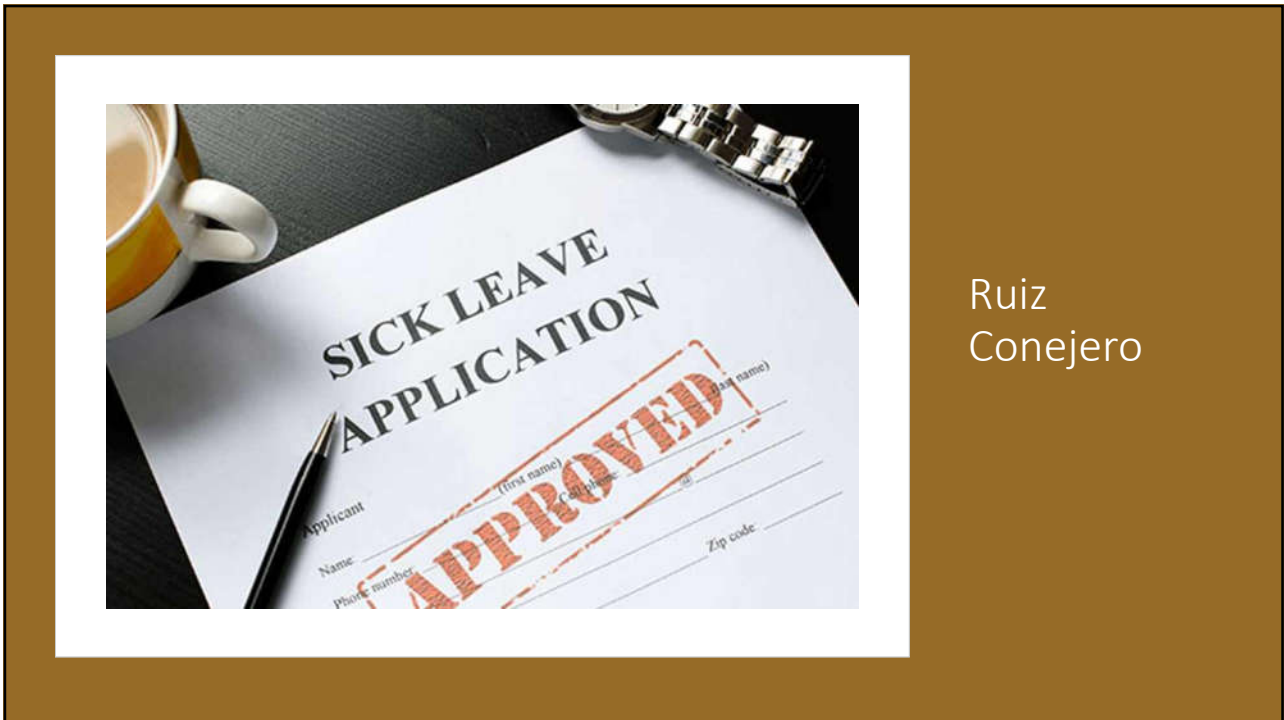
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Jyske Finans

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Ruiz
Conejero

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Particular disadvantage

- *Achbita*
- *LF v SCRL*

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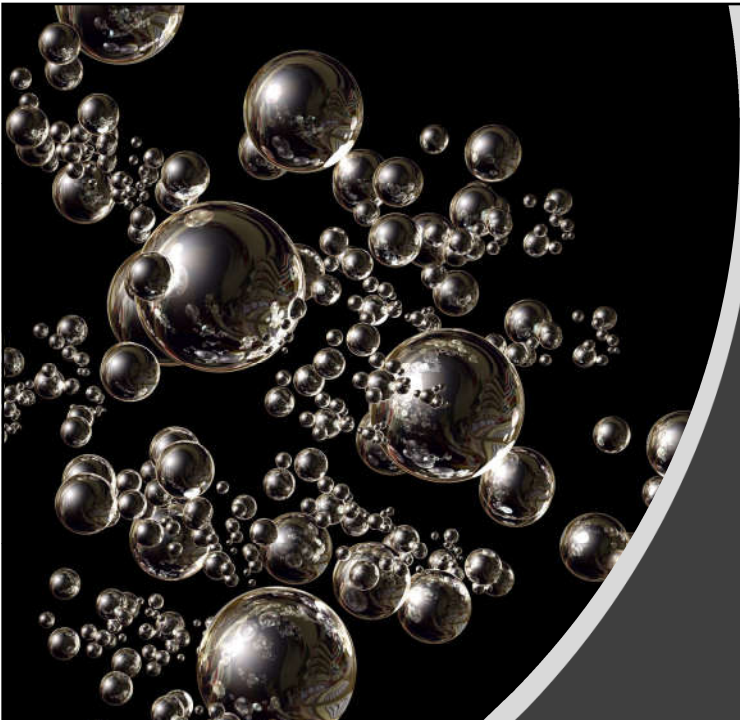
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Essop

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CONCLUSIONS

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