



WORK LIFE BALANCE DIRECTIVE IN EUROPEAN UNION – A CHANCE FOR GENDER EQUALITY?

DIRETIVA SOBRE O EQUILÍBRIO DA VIDA PROFISSIONAL NA UNIÃO EUROPEIA – UMA CHANCE PARA A IGUALDADE DE GÊNERO?

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ABSTRACT

Reconciling parental responsibilities with work is a significant challenge for today's communities. The uncertainty of the labor market, the growing competitiveness, increasing prevalence of extended working hours, variable work schedules and the desire of employers to reduce labor costs all contribute to the need for greater emotional and time commitment of employees. On the other hand, a demographic crisis is noticeable in many countries, which is a huge social and economic problem that will grow stronger with time. The aim of this publication is to introduce the new European Union regulation, the Directive on work-life balance for parents and caregivers, and to undertake an evaluation of the regulation.

Keywords: parental entitlement, women's rights, work-life balance, EU law.

RESUMO

Conciliar as responsabilidades parentais com o trabalho é um desafio significativo para as comunidades de hoje. A incerteza do mercado de trabalho, a crescente competitividade, a crescente prevalência de horários de trabalho estendidos, horários de trabalho variáveis e o desejo dos empregadores de reduzir os custos trabalhistas contribuem para a necessidade de um maior comprometimento emocional e de tempo dos funcionários. Por outro lado, uma crise demográfica é perceptível em muitos países, o que constitui um enorme problema social e econômico que vai se fortalecer com o tempo. O objetivo desta publicação é introduzir o novo regulamento da União Europeia, a Diretiva sobre equilíbrio entre trabalho e vida familiar para pais e cuidadores, e realizar uma avaliação do regulamento.

Palavras-chave: direito dos pais, direitos das mulheres, equilíbrio entre trabalho e vida privada, direito comunitário.

*The imagination of the world - like the world itself - is the work of men.
They describe the world from their point of view, without distinguishing it from absolute truth.*

Simone de Beauvoir, The Second Sex

1.INTRODUCTION

Many countries face demographic challenges and the low birth rate of children. As fewer children are born, the ratio of younger to older people shifts. It shifts even further if those born earlier live longer. This distorts the demographic age structure. The problem in the near future will not only be pensions, but the budget needed to organize efficient health care¹. "An aging population requires an exponential increase in health care expenditure, adversely affects the functioning of social care and poses risks to the sustainability of the pension system." Changes in the demographic structure may slow down intellectual and technological progress, because a fall in the birth rate means statistically less new scientific, technological, artistic, political and sporting talent. However, the state should not only pursue a pro-natalist policy, but at the same time an economic and social policy, with the development of infrastructure to facilitate the raising of children by working mothers. This affects the lower level of women's labor force participation. It should also be added that "women across the European Union are increasingly qualified and perform better than men in terms of educational attainment, their participation in the labor market and thus their economic independence is still much smaller. In 2015, the average employment rate among women aged 20-64 was 64.3% in the EU, compared with 75.9% for men"². One of the main reasons for this may be the difficulty in reconciling family responsibilities with professional work. However, it should be pointed out that throughout the European Union, it has been possible to increase the employment rate of women by 10% over the last 20 years, mainly thanks to active support for working mothers. This has occurred in connection with policies to support working parents. Research clearly shows that the employment rate is highly correlated with the proportion of children in pre-school care. This does not mean that the problem has been solved. Data show that still in the European Union,

¹ „As Europe ages – how can we tackle its demographic decline?”. European Parliament (2008). <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20080414FCS26499+0+DOC+XML+V0//EN> accessed 12.02.2022.

² COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS AN INITIATIVE TO SUPPORT WORK-LIFE BALANCE FOR WORKING PARENTS AND CAREERS EUR-Lex - 52017DC0252 - EN - EUR-Lex (europa.eu)

women remain considerably underrepresented in the labor market and in management and the overall employment rate of women is still 11.5 pp lower than that of men³.

The differential employment situation between women and men is particularly true for parents and those with other caring responsibilities. The institutional aspect of the family performs many functions that are of great importance not only for the family but also for society as a whole. Apart from the procreative function, an extremely important function in the family is the care and educational function, connected with the implementation of norms of conduct, shaping of the system of social values and preparation. This function is connected with the implementation of standards of conduct, the shaping of a system of social values and preparation for life in society. The realization of this function is associated with women's professional work, which has become an almost universal attribute of women's behavior as they acquire education and professional training. Insufficient formal childcare is a major barrier to women's participation in the labor market. A special group are women with disabilities who are perceived as less independent due to their bodily dysfunction. Disability also restricts access to all kinds of services (labor market-related, social services, etc.) and makes these women perceived as unable to have children and prove themselves as mothers. A consequence of this is the marginal treatment of issues related to their coping both as mothers and as workers. Polish parents are in the top three in terms of parental burnout, according to a study by researchers from UCLouvain⁴. As part of the "Parental Burnout Around the Globe: a 42-Country Study" project, they surveyed over 17,000 parents in 42 countries. Parental burnout is a state of physical and mental exhaustion that results from prolonged, excessive stress with no way to balance it. In the Hays study "Women in the Labour Market 2021" 67% of women and 43% of men say they have experienced difficulties in balancing work and parenting⁵.

The culturally imposed division of roles in society forced and still forces women to be active mainly in the home and social sphere, while men - mainly in supporting the family and in the professional sphere. This division has influenced the emergence of gender stereotypes and social attitudes, resulting in gender-based discriminatory practices. In 2015, the average employment rate for women with one child under the age of 6 was nearly 9% lower than for women without young children, and in some countries the gap exceeds 30%. As a result of their caring responsibilities, women are also much more likely to work part-time, which has a negative impact on their pay and consequently on the benefits and pensions they receive. This difference can be as much as 40%,

³ A NEW START TO SUPPORT WORK-LIFE BALANCE FOR PARENTS AND CAREERS, European Comision 2019,

⁴ Roskam, I., Aguiar, J., Akgun, E. et al. Parental Burnout Around the Globe: a 42-Country Study. *Affec Sci* 2, 58–79 (2021). <https://doi.org/10.1007/s42761-020-00028-4>

⁵ Hays study "Women in the Labour Market 2021", <https://www.hays.pl/kobiety> accessed: 14.02.2022.

resulting in a higher risk of poverty and social exclusion. In addition, the pandemic coronavirus has changed the lives of women all over the world. It is as a result of the socio-economic crisis resulting from COVID - 19 that women have been affected much more than men. Many more women have lost their jobs, the burden of childcare has fallen on them due to the closure of pre-school facilities and schools during the lockdown, and it is mostly women who are involved in the remote education of children at home, which makes professional work very difficult⁶. The above data take on particular significance in the context of ratified international regulations. Work-life balance regulations should contribute to the achievement of gender equality by promoting the participation of women in the labor market, the equal sharing of caring responsibilities between men and women, and the closing of the gender gaps in earnings and pay. The Member States have ratified the 1989 United Nations Convention on the Rights of the Child. The Convention provides that both parents have common responsibilities for the upbringing and development of the child and that the best interests of the child should be the parents' basic concern (Articles 18).

The legislative activity of the European Union is largely focused on ensuring equal treatment of women and men in the labor market. Social and economic processes are strongly reflected in the changes occurring in the traditional division of roles in the family.

One of the main disincentives to having children is concerns about the sustainability of employment. It is more difficult for women to choose a child if they have, for example, a fixed-term contract or a self-employed contract, because the birth of a child makes it difficult or impossible to continue to work. The prospect of losing a livelihood makes it more difficult to care for a child in an organized form, in a crèche or kindergarten. It is very important to take care of the situation of mothers who are discriminated against by employers who are reluctant to look at plans to expand their families. The need for state influence and activity on the promotion of parental rights in employment is noticeable. This is an example of public-legal obligations, which are already implemented through regulations for the protection of pregnant women, women who breastfeed a child, the granting and protection of parental rights.

Low participation of young mothers in the labor market is most often caused by insufficient availability of childcare facilities. In Poland, this care is most often provided by parents, sharing it with grandparents or older children [11]. The situation is slightly different for children over 5 years of age. According to the Education System Act of September 7, 1991, a five-year-old child is obliged to attend kindergarten, so for these children the availability of childcare facilities is guaranteed by law. European studies show that Poland is on the last place among all the European

⁶ 10% kobiet straciło pracę w czasie pandemii, to 2 razy wyższy odsetek niż wśród mężczyzn.
<https://static.im-g.pl/im/6/26955/m26955216,NIEUSTRASZONA-W-PRACY-V2.pdf>

Union countries in terms of the percentage of children indifferent to formal care from the age of 3 to starting compulsory education. A particularly low rate (50.4%) of participation of 4-year-olds in pre-school education was recorded in northern Poland. In countries such as Belgium, Denmark, Germany, Ireland, Spain, France, Italy, Luxembourg, the Netherlands and the United Kingdom, as well as Iceland and Norway, the rate is about 95%, while the overall rate for Poland is about 70%⁷. More than 94% of economically inactive mothers declare their intention to return to the labour market. However, almost 50% of mothers of children under 3 do not return to work⁸. Why not? The reason is simple: economically inactive mothers want to return to work but at the same time almost 70 percent of them say that they do not take up work because they cannot combine work and parental duties as they would like. More than a third of respondents cite the desire to develop as the main motivator for returning to work, but most young mothers are afraid to take on a job. 51.7% of the mothers surveyed cite arranging their schedule to meet employer requirements and organising childcare outside the home as reasons preventing a return to work. Frequent illnesses of the child and the related limited availability are cited by 45.7% of the women surveyed as factors hindering a return to work. Another important aspect is the feeling of lack of own competences or their loss after absence from the profession. This is a problem for 25% of mothers. Low self-esteem is largely due to social undervaluation of the time women spend at home with their children. A study of 27,000 EU-27 residents aged 15 and over found that 41% of respondents found it most feasible and practical for one parent to combine work and childcare on a full-time basis with the other parent working part-time. One parent staying at home with the child while the other parent takes up full-time employment was indicated by 25% of respondents as the most optimal solution. When asked to evaluate child care solutions for preschool children (up to 6 years of age), 6 out of 10 respondents indicated a combination of child participation in preschool activities (in private or public institutions) and care provided by grandparents or other family members as the best solution⁹.

⁷ Education statistics at the regional level. Eurostat 2013 http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Education_statistics_at_regional_level/en#Participation_of_four.C3.B3w_in_education (accessed 18.01.2022)

⁸ Report "Motherhood and professional activity" Parent Foundation in city, <https://rodzicwmiescie.pl/> accessed 14.02.2022.

⁹ Flash Eurobarometer Family life and the needs of an aging population. Analytical report. Eurobarometer, 2008

2.THE EXISTING REGULATIONS

In many legislations, despite the perceived problem of women's lower working lives and the challenges they face in combining the role of worker and parent, the resources that men who wish to participate in caring responsibilities with women can benefit from are quite limited. At European Union level, there have so far been no rules on paternity leave or leave for caring for the sick person, with the exception of absences due to force majeure (urgent family matters, random events). Laws in many countries already allow fathers to take child-rearing leave, but men still rarely choose to take them and stay at home with their child. The lack of paid paternity and parental leave in many Member States contributes to low take-up by fathers. Women who have children tend to devote fewer hours to paid work and more time to unpaid care duties. Having a sick or dependent relative also appears to have a negative impact on women's employment and causes some to withdraw from the labor market altogether. This inequality between men and women perpetuates gender stereotypes and widens gender gaps in work and care. Research shows that the EU economy loses €370 billion a year due to the gender gap in employment rates in member states.

In accordance with Article 153(1)(f) of the Treaty on the Functioning of the European Union (OJ C 153, 11.12.1998, p. 1). with a view, inter alia, to promoting employment and improving living and working conditions (Article 151 TFEU), the European Union is to support Member States' efforts to create equal opportunities for women and men in the labor market and to treat them equally at work. The second subparagraph of Article 3(3) of the Treaty on European Union (TEU) provides that the Union shall promote equality between men and women. Similarly, Article 23 of the Charter of Fundamental Rights of the European Union requires that equality between men and women be ensured in all areas, including employment, work and pay. Article 33 of the Charter also provides for the right to protection against dismissal for maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child, in order to reconcile family and professional life. Member States have ratified the 1989 United Nations Convention on the Rights of the Child. Article 18(1) of this Convention states that both parents share responsibility for the upbringing and development of the child and that the best interests of the child should be a primary consideration. The European Social Pillar signed in 2017 at the Social Summit for Fair Employment and Growth in Gothenburg, it is based on 20 principles divided into three categories: equal opportunities and access to employment, fair working conditions and social protection and inclusion. One of the principles of the European Pillar of Social Rights is work-life balance. It aims to ensure the right of parents/careers to leave, flexible working arrangements and access to parenting and care services, taking into account gender equality.



3. AIMS AND THE ASSUMPTION OF THE WORK-LIFE BALANCE DIRECTIVE

The new regulation that supports these activities is Work-Life Balance Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and careers, commonly referred to as the Work-Life Balance Directive. Member States have until 2 August 2022 to adopt the new legislation. The implementation of the provisions of the Directive will affect and change the current legislation.

The regulations introduced are intended to encourage men to share childcare responsibilities more equitably, thus enabling an early bond to form between fathers and children. Such a mechanism is of lasting importance, as studies show that men who take paternity leave acquire significantly more knowledge of their children and become involved in their upbringing in later years¹⁰. The aim of the new regulation is to prevent women from completely withdrawing from the labor market and to achieve a more equivalent distribution of caring roles between women and men. The new rules are designed to help parents strike a balance between work and family. In the longer term, the proposed measures aim at levelling the playing field in the labor market and reducing the wage gap between men and women. The father's right to participate in the upbringing and care of the child, as well as the benefits for the child of contact with parents are of great importance. The changes are designed to encourage men to exercise their powers. The regulation is also intended to benefit employers who gain a more diverse talent pool and to the fact that work-life balance workers are simply more satisfied and motivated to work. On the other hand, from the point of view of the Member States, it may be an asset to minimize the effects of the demographic crisis.

The Work-Life Balance Directive aims to make it easier for people working to balance paid work and private life, including caring responsibilities. It has the potential to improve the situations of family members of people with intellectual disabilities, and people with intellectual disabilities themselves, to better combine their work with their parental and/or caring responsibilities. Eurocarers reports that in Europe it is mostly informal carers, such as family members, who look after their relatives or other persons close to them¹¹. The European Quality of Life Survey showed that 15% of working men and 19% of working women are caring for a relative or friend with a disability or impairment. These are high numbers, which means that a lot of people with caring responsibilities in the EU would benefit from the directive. The study notes existing inequalities in the distribution of care responsibilities and access to work between men and women. Practice indicates that a higher percentage of women than men care for a person with a disability or

¹⁰ <https://www.nytimes.com/2020/04/17/parenting/paternity-leave.html>

¹¹ <https://www.inclusion-europe.eu/work-life-balance-directive/#Who-will-benefit>

impairment (15% of women compared to 9% of men). Of those providing care, 73% of men but only 58% of women are also working. This is a significant disparity that severely limits women's career opportunities. This is a disadvantage for them at the moment, but also casts a shadow over their future. In many cases, such situations lead to social exclusion. The possibility to apply for flexible working arrangements and care leave would therefore contribute to increase the labour market participation of both men and women with care responsibilities. At the same time, the aim is to enable a better distribution of caring responsibilities between men and women. Family caregivers often have unstable employment or no employment at all. This can lead to financial insecurity, which puts additional strain on the family. The Union has ratified the 2006 United Nations Convention on the Rights of Persons with Disabilities. The Convention is an integral part of the Union legal order, and Union legal acts must be interpreted in a manner that is consistent with the Convention. Legal Act provides, that Member States are to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children (Article 7(1)). It is important to put in place mechanisms that will allow family carers to find and keep jobs more easily. A more inclusive and flexible labour market is fundamental to achieving this goal. It is not possible to avoid looking at the truth and acknowledging reality. Carers should not only have a real right to work, but precisely to additional days off and to adequate compensation. Caring for family members must not lead to financial insecurity. The directive does not provide for any compensation for caregiving leave. However, the recitals of the directive recommend and encourage the introduction of an appropriate allowance or payment to ensure the effective use of this leave (recitals 29 and 32).

According to the Directive achieving equilibrium should take place at two levels by the introduction of holiday regulations and flexible forms of work.

The Directive provides for the guarantee of the right to:

- paternity leave,
- parental leave and careers' leave,
- flexible working organization for working parents and careers.

It should be emphasized that countries that already have rules that are more favorable than those proposed in the Directive will not have to amend their legislation. The directive takes into account the current socio-economic situation of EU countries and micro and medium-sized enterprises.

The Directive applies to all workers with contracts of employment or employment relationships of part-time workers, fixed-term workers or persons employed under a contract with a temporary work agency. It is left to Member States to define employment contracts and employment relationships, as well as to define marital and family status and to determine which

persons are to be considered a parent, mother and father. To avoid discrimination between married and unmarried couples and between heterosexual and homosexual couples, the right to paternity leave should be without prejudice to marital or family status as defined by national law. The Polish Labour Code, in the Act of 24.7.2015, introduced legal definitions, for the purpose of determining in further provisions of this section the rules for sharing the use of parental leave and maternity benefits by parents, and in certain circumstances also in favour of immediate family members who are employees, as well as those who are not entitled to employee status. This situation may concern, among others, persons performing work on the basis of so-called civil contracts or persons conducting their own business activity. The provision speaks about the insured - mother or insured - father, but they are not employees. The introduction of this category in the CPC results from the fact that the right to maternity or parental leave must be clearly distinguished from the right to maternity benefits. Insured non-employees may only be entitled to the latter. Thus, situations may arise in which the right to the benefit is shared between employees and insured non-employees. Social insurance coverage is based on the provisions of the Social Insurance System Act. The novelty introduced by the above-mentioned amendment is granting, in certain specific circumstances, certain employment entitlements related to parenthood to persons who are not parents of a child over whom they will exercise custody during the period of exercising such entitlements. However, the basic interpretation difficulty is caused by the term "other member of the immediate family," because neither the Civil Code, nor even the Benefit Act in Article 29.5, to which the commented provision refers, defines this notion. A. Sobczyk argues that for the purpose of understanding the term, it may be assumed that the following are considered members of the closest family: parents, grandparents, grandchildren and siblings of any of the parents, as well as adult siblings of the child, provided that they remained and remain in the same household with the child's mother or child¹².

The Directive introduces a right to paternity leave of ten working days, which is granted on the occasion of the birth of an employee's child (Article 4). Paternity leave is defined as leave on the occasion of the birth of a child for the father to care for the child. It is left to the discretion of the member states whether paternity leave will be taken partly before the birth of the child or only after the birth of the child, and whether they allow such leave to be taken on flexible terms. The right to paternity leave cannot be made conditional on prior service or length of service.

¹² A. Sobczyk (ed.), *Labor Code. Commentary*. 5th edition, Warsaw 2020

Over the last ten years, parenthood-related employee rights in many European countries have undergone a fundamental evolution, due to a number of factors¹³. First, there has been a significant change in the division of parental responsibilities between both parents, resulting not only from a new outlook on the role of women in professional and family life, but also a modern approach towards the rights of the children-raising father. As the share of women participating in professional activities grows, so does the involvement of men in bringing up their children. Factor number two is granting the right to care for the child not only to employees that are parents. Until 2016, the rights were, in fact, enjoyed only by parents bearing the employee status. Currently, it is the protection of the child himself/herself that is taken into account, the rights in question being granted to the people that actually look after the child, irrespective of whether they are his/her parents. In addition, the rights of the persons exercising the care are now enjoyed by those covered by social insurance schemes and not only ones doing work as employees. And, finally, a fundamental change in the rights related to raising children has resulted from the EU-imposed requirement to facilitate the reconciliation of parental and professional duties. All that has brought about considerable flexibility in the way that parental leave can be used, the sharing of the leave, and has created a possibility of dividing relevant responsibilities between persons caring for the child. The law provides for the following types of leaves related to parenthood:

- 1) maternity leave and leave under conditions of maternity leave;
- 2) paternity leave;
- 3) parental leave and leave under conditions of parental leave;
- 4) leave to raise a child.

Maternity leave is defined as a statutory leave from work for the period of childbirth and childcare in the first weeks of the baby's life. Another entitlement is parental leave. The term 'parental leave' means leave for parents on account of the birth or adoption of a child to care for that child. Article 5 of the Work Life Balance Directive indicates that each parent should be granted a parental leave entitlement of 4 months to be taken before the child reaches a certain age (maximum 8 years). Moreover, half of the leave entitlement cannot be transferred to the other parent. In practice, this means that the two months available to the child's father will only be used by the child and will be forfeited if not used. These kinds of proposals are a big extra dimension of leave for young parents. Parental leave can be granted immediately after maternity leave is taken. The introduction of such a regulation is intended to encourage fathers to exercise their right, while at the same time making it easier for women to return to the labor market more rapidly. Parental leave

¹³ J. Stelina, M. Tomaszewska, M. Zbucka-Gargas, Introduction to Polish Labour Law with Cross-Border Aspects, Warszawa 2021.

aims at forming and deepening the bond between parents and their newborn offspring or adopted children. The size of these leaves depends on the number of children born at one birth. In many European countries, including Poland, nowadays after maternity leave an employee or an employee-father has the right to parental leave. The amount of maternity leave varies in different countries of the European Union. In Poland an employee is entitled to 20 weeks of maternity leave in case of giving birth to one child in one birth. In a situation where during childbirth she gives birth to more than one child the length of maternity leave is higher. The maximum is 37 weeks in the case of giving birth to five or more children in one birth. The right to maternity leave is granted to an employee-father raising a child in situations strictly defined by the Labor Code. Maternity leave legislation has been amended several times. Basically, they consisted in a systematic extension of the periods during which employees exercising rights related to parenthood remain outside the workplace. The essence of the latest comes down to the abandonment of the principle according to which maternity leave is solely derived from the entitlements of the employee-mother. The previous legal status of the employee-father raising a child could not realize the right to maternity leave when the mother was insured on a basis other than employment relationship. The changes introduced in 2016 were very important, as they allow not only employee-parents, but also other insured persons to share rights related to childcare. Additionally, in certain cases they include members of the immediate family in the group entitled to use part of the maternity leave and maternity benefit. Maternity leave serves to protect the health of the mother and the health and development of the child. For this reason, certain periods of maternity leave are due to the woman regardless of whether she actually cares for the child. The values protected by this leave are so important that the use of certain portions of maternity leave is, in fact, an obligation of the parents, primarily the mother. For this reason, an employer cannot refuse to grant the leave, and the general social security system provides a maternity benefit to the person who takes it¹⁴. A female employee - mother, having used up (after childbirth!) at least 14 weeks of maternity leave, may "renounce" to the employee - father, with his consent, the rest of the unused maternity leave. In such a situation, it is necessary to synchronize in time the written requests to the employer(s) in the matter in question of both employees - parents, which are: (1) the employee's application for leave for the period corresponding to the portion of the employee's unused maternity leave, and (2) the employee's application containing a statement that she has waived part of her maternity leave. The employee's application must be accompanied by a certificate from the employer of the employee-father, confirming the aforementioned dates, concerning both the commencement of the "paternity" leave

¹⁴ A. Sobczyk (red.), Labour Code. Commentary, Warsaw 2020, Legalis.

and the resignation of the employee from part of the maternity leave. However, in general, the average length of "paternity" leave can not be too long, as in the birth of one child it will oscillate only for a period of several weeks¹⁵. The idea of using the maternity leave by an employee-father is based on the principle that he uses the part of the leave which could not be used by an employee-father. The employee-father has the right to use the maternity leave in a situation when the mother resigns from a part of her leave. An employee, having taken at least 14 weeks of maternity leave after childbirth, has the right to resign from the remaining part of the leave and return to work if the remaining part of the maternity leave is taken by the employee-father raising the child. This type of leave is commonly referred to as paternity leave. The father also has the option of taking maternity leave when the child's mother requires hospitalization or when the child's mother has died.

Maternity leave is compulsory, while parental leave is optional and its purpose is to continue to provide personal care for the child. This regulation is not new in many European countries, for example, in Poland, parental leave of 32 or 34 weeks is currently granted to both parents of the child in total, but in practice the whole leave is usually used by mothers. Practice shows, the existing Council Directive on parental leave (2010/18/EU of 8.3.2010) has not sufficiently enabled both parents to exercise their rights equally. Most fathers do not exercise their right to parental leave and transfer a significant part of their parental leave entitlement to mothers. Because many do not guarantee cash benefits during parental leave, many families may not be able to afford to take this leave. However, this does not mean that this is the case in every country. For example, in Poland the leave is paid and the pay received during parental leave depends on the mode of application for the leave. And so:

- if the application for parental leave is submitted up to 21 days after the birth, 80% of the salary base will be paid throughout the year (maternity and parental benefits).
- if the application for parental leave is submitted later (21 days before the start of the leave, 100% of the base pay is paid for the first 6 weeks and 60% for the remaining weeks).

The employer is obliged to grant the employee's request.

The employee-father is entitled to take parental leave. In addition, both parents of a child may take parental leave at the same time. Legislative solutions are currently being developed in many countries to combine the needs of parents and employers. Member States may make the right to parental leave conditional on a prior period of work or length of service, but these may not exceed one year. National legislation may determine the circumstances in which an employer, after consultation with employee representatives, may postpone the granting of parental leave for a

¹⁵ W. Muszalski (ed.), Labour Code, Warsaw 2004, Legalis.

reasonable period, if the taking of parental leave during such a period would seriously disrupt the smooth running of the establishment. The employer shall indicate in writing the reasons for such postponement of parental leave. The employer should take into account the needs of both the employer and the employee when considering the application for leave.

The Directive also introduces careers' leave, i.e. the right to time off from work because of the so-called force majeure requiring the presence of a worker (e.g. sudden illness, accident) EU legislation also provides for entitlements in the event of other family situations, not related to parenthood, which may require the employee's presence and justify his justified absence from work: The taking of leave may require proof of sickness and proof of the reasons for such leave. It is crucial to clarify the concept of carer, which, according to Article 6 of the Directive, means an employee providing personal care or support to a relative or person living with the employee in the same household who requires substantial care or support on serious medical grounds, as defined by individual Member States. This kind of entitlement refers to a broader catalog of people, it is not aimed solely at parents. It applies to the right to additional days off to care for a child, as well as to care for other people living with the employee, such as a parent or partner. The introduction of an additional 5 days off per year will allow employees who, for various reasons, are caring for others to take paid days off for this purpose. It may also allow such employees to have the necessary regeneration and constitute a reward for their work on behalf of another person.

An important novelty regulated by the Directive is the introduction of regulations providing for the granting of time off work due to force majeure. The member states are to introduce provisions according to which every employee will be entitled to time off from work due to force majeure, in urgent family matters caused by illness or accident, if the employee's immediate presence is necessary. The remuneration for the exercise of the powers provided for in the Directive

Paternity leave and 2 months of non-impassable parental leave for each parent are compulsorily paid from the leave regulated by the Directive. In accordance with the Directive, when determining the appropriate level of remuneration, Member States should take into account that, when exercising such a right, a worker must be compensated in such a way as to ensure a decent standard of living. There is no requirement for career's leave to be paid, although the Directive encourages Member States to introduce such a payment. With regard to paternity leave as referred to in Article 4(1), such remuneration or benefit must guarantee an income at least equivalent to the income which the worker concerned would have received in the event of a break from his professional activity for reasons related to his state of health. Member States may make the right to remuneration or benefit subject to a period of prior employment, which may not exceed six months immediately before the expected date of birth of the child. With regard to parental leave, the

remuneration shall be determined by the Member State or social partners and shall be fixed in such a way as to facilitate the use of parental leave by both parents.

The Work-life balance Directive contains provisions relating to the flexibility of working time. Availability of flexible working arrangements are very important solutions for reconciliation of professional and parental responsibilities. This includes, but is not limited to telework, flexitime, reduced working hours or job sharing. The right to request flexible working arrangements for care is intended for employees with children up to at least eight years old and for careers. The introduction of flexible working organization is intended to help with childcare and may consist, inter alia, in reducing working time or performing it remotely. Employers deal with applications for flexible working organization taking into account the needs of both the employer and the employee. In the event of the refusal, the employer is obliged to state the reasons for such a decision. Polish legislation already provides for regulations in this regard m.in. a worker who does not take parental leave is entitled to apply for a reduction in working time, and the employer is obliged to take such a request into account. Reduction of working time is only one of the forms of making it more flexible. This entitlement is intended to make it easier for employees to combine family and professional life. Its introduction is also expected to facilitate the return of the parent taking care of the child to the job market. On the other hand, it is also beneficial to the employer who may count on the employee's earlier return to work, which is particularly important in the case of positions requiring specialist qualifications. It is permissible to grant the parental leave for a part of the daily working time (e.g. for 3 hours a day the employee performs work and for the remaining 5 hours he/she is granted parental leave). Thus during the parental leave an employee may perform 1/2 full-time job or 1/4 or 2/5 full-time job. An employee who combines work with parental leave is entitled to:

1) remuneration for work determined proportionally to the time of work in which the work is performed,

2) maternity allowance proportional to the working time the employee takes parental leave.

By flexible working we should understand, above all, the possibility of performing work in a remote or hybrid manner, allowing for combining work with childcare, of course, as far as it is possible to perform such work depending on the specific nature of the work in question. The duration of flexible work arrangements may be reasonably limited. The regulation of the directive is a development of the postulate indicated in the Demographic Strategy 2040, giving the right to flexible work to persons who care or parents of children at least 8 years old. Flexible work arrangements are becoming increasingly popular in many countries, both in the private and public sectors. It will certainly continue to play an important role in providing employees with a better

work-life balance. Research shows that work-life balance is one of the conditions for maintaining health, well-being and satisfaction with life and work. In turn, the lack of balance between both spheres can lead to frustration, burnout and even significant health deterioration due to overload of responsibilities and effects of chronic stress. It's worth noting that companies that are quick to provide flexible work options to their employees will be better positioned and more reputable in the job market. It's also a step in understanding the new generations entering the workforce.

It is worth remembering that the labor market has changed in the last almost two years due to the COVID-19 pandemic and some solutions that seemed abstract and impossible to implement even in 2019, such as remote work in a wide range, today - on the eve of 2022. - is a certain standard. Thus, the labor market has become more flexible despite the lack of implementation of the Work Life Balance Directive. The challenge will be the effective operation of companies in these conditions, control of quality of work and working time, issues related to the safety of remote work. Without regulation of these issues, it is difficult to talk about satisfactory solutions. Another very important element is to maintain a real work-life balance, that is, to set boundaries between the time of work and rest from work. In practice, we use the phone more and more often or use corporate e-mail after working hours. Employees increasingly expect regulations that would clearly define when they can turn off their cell phones. At the moment, many employees are not sure whether ignoring text messages or e-mails sent outside working hours will not result in unpleasant consequences. This is a real problem of the modern labor market. The regulation concerning this issue is in force in France, where employers must determine in the course of negotiations with employees the hours when the employees in their companies will not have to use the company's mailbox or answer phone calls on business matters. The right to disconnect is codified into article L2242-17 of the Code du travail (Labor Code). The regulation does not define exactly how the right to disconnect is to be implemented, leaving employees and employers to determine the arrangements that best suits their needs. The regulation applies to companies with a minimum of 50 employees. The section of the Labor Code that governs also telework, does not explicitly mention the right to disconnect, but refers to it implicitly. Article L1222-9 requires that telework arrangements specify how the employer may monitor the employee's work hours. It should be added that the telework arrangement must specify when the employer can expect to be able to reach the employee. This is especially important during lockdowns, as a result of COVID-19. Both parties of employment contract must do their best to keep distinct work hours, and employees have a "right to disconnect" during private time. In reality this is not easy task but it is really necessary especially for employees - parents and especially when children are at home because of school closures.

It should also be pointed out that the directive, as well as the Demographic Strategy 2040, places great emphasis on the implementation of regulations that will guarantee the protection of persons exercising additional rights and eliminate all attempts to discriminate against them. The regulations should be prepared in such a way that every employer is obliged to treat equally employees who use the rights provided for in the directive and those who do not. Article 10 of the Work Life Balance Directive indicates that Member States shall entitle workers to return to their previous or equivalent posts following the end of parental leave. They are also entitled to benefit from any improvement in working conditions to which they would have been entitled had they not taken their leave. This provision is intended to ensure that employees who take additional leave entitlements are not discriminated against for doing so. The employer should also ensure that they are implemented on the job after the absence. Such a solution is supposed to result in employees getting a chance to improve their competences and personal development on the same level as those who did not take such leave. Many women indicate that the reason for fear of returning to work is the feeling of lack of competence or its loss during the absence. Therefore, it is advisable to enable the implementation of the employee returning to work after a long absence. These may be developmental activities in the form of training, to which the employee will be referred, but also support may be on-the-job training, mentor.

The Directive requires Member States to lay down penalties applicable to infringements of the national provisions adopted pursuant to this Directive and to take all measures necessary to ensure that they are implemented. The penalties must be effective, proportionate and dissuasive. This is an elaboration of the protection for persons who will exercise the rights contained in the Directive. It will be incumbent on the legislator to draw up a catalog of effective provisions, with penalties that are sufficiently high to make it unprofitable for any employer to discriminate against employees. Provisions implementing such goals are another part of the anti-discrimination package that is being prepared by the EU legislator. One of them will be the fight against the so-called wage gap. Employment rights must be prepared in such a way that no employed person is afraid to use the provisions of the directive or the Demographic Strategy 2040.

This initiative is intended to benefit individuals, businesses and society. The Regulation also touches on the issue of combating discrimination against workers. Member States are required to take the necessary measures to prohibit less favorable treatment of workers as a result of their request for leave provided for in this Directive. Protection against dismissal and unfavorable treatment is ensured by EU law in the Maternity Directive , the Part-Time Work Directive , the Equal Opportunities Directive , the Equal Treatment of Women and Men On Own Account Directive and the Parental Leave Directive. Protection has been strengthened by the case law of the

European Court of Justice. Such legislation is expected to help improve fertility rates in Poland and other member states. It is also planned to implement anti-discrimination education through the creation of internal procedures related to counteracting gender discrimination, as well as the development of rules on reporting and responding to an employee's request about pay differences. The directive contains non-legislative measures to support member states in achieving the objectives imposed by the regulation. This is to be achieved by ensuring that employees - parents and careers - are protected against discrimination and dismissal and - making better use of European funds to improve the provision of formal care services (childcare, after-school care and long-term care).

The European Commission has also analyzed the estimated cost and benefits for citizens, businesses and society as a whole¹⁶. The data show that although the costs of the proposed measures, mainly due to the decrease in production, processing of applications and replacement costs, are short- and medium-term. In the longer term, however, costs for businesses will be reduced, which should not be an undue burden on employers, including micro-enterprises. The Work-Life Balance Directive was adopted in 2019 and Member States have until 2 August 2022 to adopt the new rules. The Directive is a step in the right direction for equality in the workplace. It will also bring about an improvement in the work-life balance of many people. It will certainly also bring many benefits to mothers and families. Until now, there has been no legislation that has so much more scope for adapting work to the individual needs of parents, careers, families and employees. Will employees who feel that they are working in a workplace that understands their needs be more loyal to their organization? Will they give more of themselves in the form of increased productivity and work ethic? Time will tell. Certainly, what is needed in this regard is not only a change in the law, but also a cultural evolution. should try to convince employers to create a work environment in which employees (both men and women) can work less than full-time without worrying about the fate of their careers. This is also important for the state, as it protects the largest group of citizens - i.e. women - from the risk of poverty in their youth, economic dependence on men, or social welfare, and provides an opportunity to earn retirement benefits. Research shows that women's future earnings increase by around 7% for every month of leave taken by the father of a child.

Member States should take into account that equal take-up of family-related leave by women and men also depends on other appropriate measures, such as the provision of accessible and affordable childcare and long-term care services, which are key to enabling parents and others with caring responsibilities to enter, remain in or return to the labor market. Removing economic

¹⁶ Commission SWD Impact assessment accompanying the Communication "A new start to support work-life balance for parents and careers".

disincentives can also encourage second earners, most of whom are women, to participate fully in the labor market. Reconciling work and family responsibilities is a major challenge for parents. It is crucial to introduce new legal solutions, but also to make employers aware of the fact that an employee-parent needs to go with the child to the doctor from time to time during working hours or accompany the child to important school and kindergarten events, which may justify flexible working hours. Directives are a legitimate promotion of flexible work that goes against the tide of criticism of the "uberization" and "sickness" of work. Motherhood and fatherhood are sources of obligations to offspring. It is also an accepted duty to the state and society, not a privilege of parents. Examples to support this thesis include child support obligations.

It is also an incentive for mothers to provide trustworthy child care or to subsidize it. A huge role is also played here by support from the child's father, relieving them of duties or taking over their part, as well as a supportive atmosphere at work, which encourages to return to the office. It should also be mentioned that the companies themselves introduce solutions to meet the needs of female employees - mothers. Subsidies for babysitters, kindergartens or schools in the company are highly valued. Such mechanisms increase the loyalty of female employees, decrease their absenteeism and increase their sense of comfort at work. In addition, it should be noted that an increase in the employment of women also contributes to solving the problem of the ageing of society and ensuring the financial stability of Member States.

4.CONCLUSIONS

The situation of people bringing up children on the labor market is very complex. On the one hand, this group is particularly threatened by difficulties in finding work. Employers are concerned about the limited availability of employees - especially women of childbearing age - who are raising children, excessive absenteeism and related organizational difficulties. This threat is reflected in the Act on employment promotion and labor market institutions, which treats unemployed people caring for children as being in a special situation in the labor market. To these people, public authorities provide special assistance in finding and taking up employment. On the other hand, people caring for children are particularly vulnerable to losing their jobs for this reason. The negative attitude of employers towards employees burdened with parental responsibilities, especially women taking parental leaves, is well known. Hence, the legislator's actions aimed at making it easier for employees caring for children to return to work after taking parental leaves and incentives addressed to employers who continue employment with such employees. It should also be noted that the need to care for children for a large group of people is an obstacle to taking up

employment. According to the CSO data, about 1830 thousand people are economically inactive due to the need to perform family duties

Unpaid work performed by women at home is still beyond legal regulations and public discourse. Globally, it is women who do about 75% of the work, devoting between 3 and 6 hours a day to it. As a result, it is women who have really long, excessive working hours. This not only diminishes their earning and developmental capabilities, but also has a very negative impact on their health and condition.

On the other hand, the proposed solutions may give the impression - despite assurances that employers' needs will also be taken into account - that the directive assumes that the entrepreneur has significant financial resources to implement the proposed solutions. This is not always the case, especially for small employers. An example here is the practical prohibition, driven by anti-discrimination clauses, of dismissing an employee who requests parental leave, reduction or change of working hours, or the possibility of teleworking, even if there are other reasons for such dismissal. It is conceivable that an employee-parent may be covered by anti-discrimination laws at virtually all times, since he or she often uses flexible work arrangements because of child care - so that even if an employer had substantive reasons to fire such a person, it would be very likely that by firing him or her he or she would appear to be discriminating against parents; especially in light of the "spirit" of the directive and the journalistic climate of antipathy toward the free market. Once the directive is in place, working parents of young children may become non-exempt employees, so employers will avoid hiring young parents. But there are many enterprises which support parents. Some employers use a variety of measures to facilitate mothers' return to the labor market and to provide them with the opportunity to reconcile work and non-work life, thus enabling them to perform better at work. Their form varies depending on their purpose.

A high employment rate is both a cause and an effect of an efficient economy. On the one hand, an advanced and competitive economy creates many attractive, well-paid jobs. On the other hand, a large supply of qualified people willing to work allows entrepreneurs to realise their ambitious plans. Therefore, action is needed from both sides - both to encourage people to be active in the labor market and to give them the opportunity to do so. However, we are aware that the above postulates and legal solutions require cooperation and good will of many parties. There are two parallel and opposing trends in the world today. On the one hand, many countries are pursuing active policies to improve the position of women. The situation of women has changed enormously over the past century - no European country has a law that says that men are superior to women, and equality between men and women is enshrined in the constitution of every European country. Member States experiences of good work-life reconciliation practices include:



- providing places for children in kindergartens and nurseries,
- 10 days of additional sickness leave for each parent for children up to 12 years of age,
- family allowance for children up to the age of 18 to even out the financial differences between families with and without children and to cover part of the expenses for children,
- 480 days of paid parental leave to be taken by both the father and the mother (with each having to take 60 days), the leave does not have to be taken continuously, it can be taken up to 8 years after the birth of the child (in Sweden),

Other measures aimed at facilitating the reconciliation of work and family life used by employers in Europe include:

- the possibility to work in individual working time, to perform part of the tasks at home, to reduce the working time (up to a maximum of 6 hours a day), to maintain full employment privileges during maternity leave,
- the possibility of teleworking a few days a week,
- the opportunity to benefit from special training courses, e.g. on how to manage your time and deal with stress.
- flexible scope of responsibilities.

On the other part, however, there is a general tendency for the position of women to deteriorate very markedly in many Muslim countries, e.g. Afghanistan, Iran. We also know that just changing the law is not enough. In order for women to have the same chances as men for a good job, career and independence, we need to change the social consciousness, i.e. how we think and how we raise our children. This, however, takes time.

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