

Basic employment relations and their development tendencies

Abstract

The dissertation focuses on basic employment relations and tendencies in their development. First, attention is drawn to the conception of labour law and its position within the system of law. Second, basic employment relations are analysed, namely work performed under an employment contract, and work done under agreements other than an employment contract. Only such relations allow for what is called “dependent” work which is (a) subject to superiority of an employer and subordination of the employee, (b) done on behalf of an employer, (c) in compliance with an employer’s instructions, and (d) the employee must do the work in person. Dependent work is the subject of individual employment relations.

Legal regulation of employment relations is analyzed in the dissertation. A significant change was introduced by the Labour Code 2006. The main principle of the Code is that “everyone may do whatever is not prohibited by the Code, and no one may be forced to do what is not imposed by the Code” (or in other words “what is not prohibited is allowed”). Section 4 of the Labour Code expressly declares the principle of subsidiarity of the Civil Code in relation to the Labour Code, namely that employment relations are governed by the Labour Code; should the latter not be applicable the Civil Code is, but always in compliance with the basic principles of employment relations.

The fundamental function of labour law is a protective function which is carried out through the peremptory provisions of the Labour Code. The purpose is that an employee should be protected, at least at an elementary level, against an absolute freedom of contract, which may be abused by the employer against the employee and might lead to the creation of undignified working conditions. Not only the Czech legislation, but also a major part of EU legislation in the social area, primarily Directives, are strongly motivated to protect the position of an employee.

Attention is paid to nontypical types of employment, whose concept is not precisely defined within Czech law. In practice, this covers employment relations with a lower extent of regulation and parties are provided with more freedom in their organization of work and observance of working time. The legal regulation is flexible and provides lower protection to full-time employment and indefinite term employment. A higher degree of flexibility of the legal regulation of employment is what employers seek to attain.

Nontypical forms of employment are more and more used within the labour market both in the Czech Republic and abroad. Their purpose is usually declared as reducing unemployment rate, allowing for adaptation of employing entities to the new requirements of the market and harmonizing working and family life.

The influence of new technologies make work for another entity or person more individualized. Employees work through digital platforms and not in a team in person. Such individualisation of work invokes changes in the recent understanding of duties on the part of the employer and that of the employee.

New phenomena penetrating the work environment are dealt with in the final part. They were introduced by the 4th industrial revolution launching new technologies into almost all fields of industrial production and work. For example, the right of detachment was introduced in legislation for the first time in France. The main purpose is for employees to harmonize their life at work and family life and prevent the risk of burnout. Employees must have a chance to disconnect their IT devices and not to be contacted by their employers outside their working hours.

A potential development of the protective function of labour law is considered, for example, what is feasible in the time of emerging new forms of employment with employers preferring so-called precarious work which is less protected by the law.

The extent and forms of the protective function of labour law will be indicated by expected social development. It is always necessary to strive for healthy, safe and dignified working conditions.

Key words: employment relation, nontypical employment, protective function of labour law