

## **Abstract in English**

Obstacles to work as a set of legal facts have fundamental influence on employment relations and concern each and every employee as well as employer (correlatively). The goal of this thesis was to explore this area of employment law thoroughly and to indicate individual rights and duties of both parties in employment relations, including those which surpass the Labour Code and its implementing legislation. This was to be accomplished by providing a comprehensive treatise on the subject with solutions to possible unexpected situations not covered in the Labour Code.

Obstacles to work are defined as legally acknowledged circumstances that – on the part of the employee – impede or forbid the performance of work, and - on the part of the employer – impede or forbid the assignment of work, in cases when the employee's absence from work is excused by the employer in compliance with the terms stated by employment laws, internal regulations or employment contract. Compensatory wage or salary and conditions of payment to idle workers are determined by the above-mentioned documents.

The introduction of this doctoral thesis deals with the reasons why this particular topic was chosen and introduces Eurostat's surveys which are further analyzed to the details. The main objective of this thesis is to analyze employee's obstacles to work of personal nature, in particular those related to care of children. The reader will be acquainted with definitions of relevant terms, such as employment relations, parties to employment relations, i. e. employer and employee. Furthermore, employment as a legal relation between two parties based on mutual consensus is specified, i. e. conclusion of an employment contract and the essential elements of such a contract are defined. Subsequently, other agreements which do not constitute employment as such, but whose parties agree to perform specified work or assignment, are analyzed, namely agreement to complete a job and agreement to perform work.

Another supporting, yet significant chapter is *Principle of equal treatment and prohibition of discrimination*. The concept of providing equal treatment and compliance with the prohibition of discrimination is one of the fundamental principles of employment law. This principle is fundamental especially in employment

law considering the uneven status of employer and employee in standard employment relation. The thesis focuses in particular on the Antidiscrimination Law and related international documents.

International documents relevant to the topic of this thesis are mentioned in a separate chapter depicting ratified international treaties such as conventions adopted by the International Labour Organization, UN and others.

Attention is also drawn to contribution of the European Union, namely in subchapter named “Legislation of the European Communities/ European Union concerning the barriers to work (particularly for staff).” It analyses Council directive 96/34/EC of 3 June 1996 on the framework agreement on paternal leave concluded by UNICE, CEEP and the ETUC, and subsequently analyzes the revised framework agreement that is reflected in Council directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC. Furthermore, it depicts directive proposal on prolongation of minimum obligatory maternal leave to duration of twenty consecutive weeks, spread before and after birth, obligatory maternal leave for at least six weeks after birth and acknowledgement of fathers’ right to two weeks of paid leave in relation to the birth of their child.

Subsequent chapters dealing with “Obstacles to work as legal concept”, “Classification of obstacles to work” and “Protected individuals and their employment status” and so on represent the very foundation of the thesis.

“Obstacles to work on the part of the employee” is a chapter that specifies the nature of this subject and concentrates on its legislative classification in the Labour Code and relevant definitions. It also states employer’s and employee’s duties in case of an obstacle to work and provides more detailed analysis of obstacles to work on the part of the employee.

Chapter “Protected individuals and their employment status” disserts upon a special category among obstacles to work on the part of the employee. It contains definitions of types of protected individuals, pro-familial measures and so on. It recognizes the necessity to influence employers and to offer them a variety of measures that would lead to expansion of their opportunities in relation

to the employees, their needs and towards finding a balance between work and family life. In this regard, attention is paid to a project called “Family and employment audit” that was developed from so called “family-friendly-index” originated in the USA. The brand “work & family” which is widely recognized in Europe, is mentioned as well.

Following chapters deal with each obstacle to work on the part of the employee individually, focusing first on the legislation in force, then outlining the possibilities of regulating this area through mutual consensus between employer and employee (eventually by means of internal regulations or collective agreement) and suggesting solutions de lege ferenda.

To illustrate the system on particular examples: when dealing with temporary incapacity to work, the exact definition (positive and negative) is provided first, then are stated the conditions under which an employee is entitled to receive financial support and the term „waiting time“ is explained. Subsequently particular situations are stated when the employee’s right to take the leave of absence is granted. Within the context of this theme the amounts of reduction limits for 2010 are given as well as examples of wage compensation calculations. Also covered is the employer’s right to monitor employee’s compliance with the regime of a temporarily incapacitated insured person. The section is concluded by parallel legal regulations that apply to temporary incapacity to work of individuals working on the grounds of an agreement to perform work with employer’s obligation to determine the lay-out of weekly working hours in shifts. The legislation in force is critically analyzed from the viewpoint of de lege ferenda.

Obstacles to work in connection with childbirth constitute one of the chapters, further divided into following subchapters: „*Maternity leave, parental leave, reduction of maternity and parental leave, maternity and parental leave to take over the child, obstacles to work in child care after returning to work.*” Breastfeeding as an obstacle to work is mentioned as well.

Further on the doctoral thesis also deals with „Other important obstacles to work according to provision of section 199 of the Labour Code and government regulation no. 590/2006,” or barriers to work due to public interest, staff training, and other forms of education and upskilling. A special chapter „Obstacles to work caused by floods“

was introduced due to recent events. The chapter contains specification of basic obstacles to work caused by floods on the part of both employer and employee and their possible solutions, although each such situation must be assessed individually due to specific nature of this phenomenon.

A separate chapter analyzes a specific kind of obstacles to work on the part of the employee, a strike. The analogy to strike on the part of an employer is lay-off as partial or total cessation of business by an employer. In order to maintain the complexity of regulation of the above mentioned two institutes, they are reviewed at the same place.

Following chapter titled „Consequences of obstacles to work – rights and duties of employer and employee“ concludes the analysis of relevant Czech legislation. Among the main consequences are influence on working hours and vacation and stability of employment. All of the above mentioned situations are analyzed in detail.

The comparison of Czech legislation with those of some other European countries focuses primarily on Slovakia and Great Britain and outlines possible future development. These particular countries were chosen because of a great degree of similarity between Czech and Slovak legal regulation on one hand and a great degree of difference between Czech and British legislation on the other.

The thesis concludes with comparison of the legislation in force to international documents, in particular to European law stating possible influence of Parliament directives on Czech labour law and its possible changes with regard to obstacle to work *de lege ferenda*.

Among the questions and topics that have been raised in the process of completing this thesis, the following deserve particular attention: introduction of paternity leave, tax (and other) relieves for employers that establish kindergartens and nurseries in the workplace, acknowledgement of attendance to probate proceedings as an obstacle to work which would entitle the employee to necessary time off from work and extension of time off in case of decease of next of kin.

Another area that deserves special attention of the professional public is escort of a handicapped child to or from social care premises, school or specialized educational establishment for handicapped children. In my opinion, the legislation

should raise the minimum standards for such cases and the employer should be obliged to allow one member of a family to escort the handicapped child to and from school with the possibility to rotate.

The main motto that is omnipresent in the entire doctoral thesis is compromise and willingness of the two parties to reach an agreement, given that the employment law will interfere with the legitimate interest of the employer only in the extent necessary to carry out its principal protective function. In other words, fulfilment of the „flexicurity“ principle.