

WOMEN AND LABOUR LAW

When we think about how the Labour Code protects women, the first thing that comes to mind is the provisions related to maternity, i.e. the possibility to take maternity, parental, or childcare leave. And indeed, Polish legislation protects mothers to a very high degree. In addition, the code precisely specifies which jobs women absolutely cannot perform. Of course, there is also a provision in the Code on the need for equal treatment by employers irrespective of a range of characteristics, including gender, but this is a more complicated issue.

‘Indeed, woman’s parental functions and motherhood are treated in a special way under Polish labour law’, says Urszula Torbus, PhD, from the Faculty of Law and Administration of the University of Silesia in Katowice. ‘According to the ruling made by the Supreme Court, the Labour Code protects pregnant women from the moment of conception, while in other EU countries protection applies only from the moment when the employer is informed of the pregnancy’. By law, a woman expecting a child is protected in a number of ways – the employer cannot terminate or amend the employment contract or delegate the woman outside her permanent place of work and must adjust her working conditions and working hours, which may not exceed eight hours a day, while overtime is strictly forbidden. In addition, the relevant regulation of the Council of Ministers sets out a list of the types of work that are prohibited for pregnant women and women who are breastfeeding. All for the benefit of not only the mother but also the child.

In general, the Labour Code prohibits the performance of remunerative activities of a certain specific nature out of concern for women’s procreative functions. Does this mean that a woman, even if she really wanted to, gave her consent, and had the physical capabilities to do so, would never be able to work, for example, as a miner?

‘This is an absolute provision, so a woman cannot work in a coal mine “at the face”. There is a so-called prohibition of deviating from the law to the worker’s detriment, and setting a precedent could result in the imposition of certain conditions on other women who might not want them. The principle of equal treatment between men and women cannot be fully applied if we take into consideration the biological differences between the two genders. Rather than formal equality, we are talking about substantive equality in this context’, explains the labour law expert.

In which areas do women most often experience violations of their labour rights? They particularly face gender

discrimination, expressed more or less explicitly. We observe, among other things, that the higher the position, the more the ratio between female and male employees skews in one direction. Having children is also becoming a reason for discrimination: mothers are denied parental rights and are overlooked for promotions on the assumption that ‘they are less available’. The stereotypical division into male and female (i.e. better and less well-paid) sectors also persists.

‘It is difficult to describe the scale of discriminatory phenomena, as they still constitute a small percentage of cases brought before labour courts. Cases of sexual harassment are also closely related to these issues – let us remember that harassment can also include lewd jokes or overly familiar treatment from a man, to which a woman does not agree’, explains Urszula Torbus, PhD.

Discrimination can also be manifested by the disparity in wages. We can express it using several indicators, one of

The Labour Code prohibits women from performing work:

- ✗ involving strenuous physical activity and transport of heavy goods,
- ✗ requiring exposure to noise and vibration,
- ✗ involving forced body positions,
- ✗ requiring staying underground, below the ground level,
- ✗ requiring exposure to high altitudes,
- ✗ risking exposure to electromagnetic fields, ionising and ultraviolet radiation, and involving electronic visual display,
- ✗ requiring contact with harmful biological agents.

which is the so-called gender pay gap. It is the difference between the average gross hourly rates received by men and women, calculated on the basis of wages paid directly to employees before deducting income tax and social security contributions. However, only companies with at least ten employees are taken into account. If differences in employment, education level, and work experience are factored in, we arrive at the so-called adjusted wage gap.

According to the European Commission data from November 2022, it stands at 13% almost across the entire European Union (no data from Ireland and Greece are available). Luxembourg is the leader with 0.7%, and at the opposing extreme is Latvia with 22.3%. Poland is in fifth place with 4.5%, ahead of Sweden, Denmark, the Netherlands, France, Finland, Germany, and Austria, among others.

'I wouldn't overestimate these statistics. Firstly, when the wage gap is calculated, small businesses, i.e. companies employing up to nine people, are not taken into consideration, and

they are the foundation of the economies of many countries, including Poland. According to the October 2022 report by the Polish Agency for Enterprise Development, as many as 97% of all companies were considered small businesses', the lawyer points out. 'Secondly, women in Poland cannot afford to work part-time, unlike their counterparts in richer countries. Moreover, Polish women had to – and still have to – bring in the highest possible salary into household budgets. If we consider the percentage of women employed part-time, in Western countries it reaches 30-40%, while in Poland it does not exceed 10%.

One other indicator worth mentioning is that, according to the Statistics Poland, the average gross monthly remuneration of men is 14.7% higher than that of women.

This brings us to the question of whether wage inequality is not simply a breach of the law in light of Article 18(1) of the Labour Code. It is certainly difficult to enforce it, partly due to such nonquan-

tifiable factors as the stereotypical understanding of men's and women's social roles. According to the lawyer, there is still a belief that the wife's salary is just a bonus on top of the salary of her husband, the main breadwinner in the family, and that a newly-employed young woman is bound to become pregnant... Another issue is the policy of exaggerated secrecy with regard to salaries, because while in the public sector, where the freedom of salaries is limited by regulations, the wage gap reaches 3.9%, in the private sector, where employers have more freedom, it is as high as 17%.

'Fortunately, due to the influence of EU legislation, the labour law is trying to equalise the rights of both working parents, e.g. the father is now also entitled to parental leave, and Directive 2019/1158 on work-life balance for parents and carers should finally be implemented within the next six months. These are important steps towards correcting the existing stereotypes', concludes Urszula Torbus, PhD.