

IMPORTANCE OF FLEXIBLE EMPLOYMENT IN TERMS OF NEW TECHNOLOGIES

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Abstract: Besides working in employment for an indefinite time and of working methods that are employed there are shapes and forms of employment with the characteristics of an employee or part-time employees, whose use in given moments and instances, flexible and adaptable to specific requirements and nature work. Flexible forms of employment were created as a result of the introduction of new technologies in the workflow (automation, computerization, robots) and employers' reactions to so-called, standard (typical) form of work-time employment with full-time. Flexible forms of employment have become, because of their increasing importance in the practice of employment and manpower, the subject of intense national and international regulation. Flexible forms of employment law scholars systematized in different ways, highlighting their characteristics through a greater or lesser importance to influence the employment situation. Flexible forms of employment in our country, through the solution in the employment law, make certain types of employment, that is, more or less, made more flexible employment (employed part-time, employed part-time employment to perform outside the premises of the employer and the employment of household helpers) and forms of work-time employees (temporary and part-time jobs, contract for professional training and development / volunteer work / self-employment). And the short and long term projections of employment must seriously take into account the possibility of using flexible work through the available shapes and forms of employment.

Keywords: flexible forms of employment, adaptability to the labor needs, new technologies, human resources

PHENOMENOLOGY OF FLEXIBLE EMPLOYMENT

Flexible employment, through certain forms and shapes, represents the adaptation to changes and needs of the labor market. Nature, technology, intensity, durability of performing business and its conditionality and determination of various factors preclude the possibility of its performance through the permanent forms of work (permanently employed or employed full-time), it is essential that this work is in the second institution form. Therefore, the practice impose the need to create multiple types and forms of work and the employment and part-time employees, whose use in such cases, must be adaptive to needs of the particular job, and the state formed these needs, with more or less understanding, and institutionalized in specific forms of work, creating a basis for rational and successful pursuit of economic activities.

General characteristic of shapes or forms of flexible employment is that these are forms of engagement of non-permanent employment or employment for an indefinite period of time (here we think on other types of employment and part-time employees), but the theory emphasizes the importance of some of these forms or forms of work in relation to others, given their prominent feature of applicability. Thus, the essential definition of flexible forms is as follows, "forms of engagement that does not represent the classic

full time work.”¹⁰ Mass business relationships and versatility concentrated on the labor market through the process of supply and demand required a multitude of forms of engagement so that employers could choose the most optimal form of the elections on time executive in status form that are most rational ones. Although some of these means of engagement, sometimes, abuse of the real needs of the employer for permanent or more permanent work, though it is a form of legal employment.

“Flexible forms of employment have arisen as a result of the introduction of new technologies in the workflow (automation, computerization, and robots) and the reaction of employer to the so-called standard (typical) form of work. The standard or typical form of employment is that an employer is devised with the employee for an indefinite time with full working time.”¹¹ From this definition, it follows that flexible forms or forms of employment are also called “non-standard” forms of work, which supports much of the theory that deals with this issue. Non-standardization means that temporality of application, when using the character of the adaptability of each form of specific needs of the employer or client.

INTERNATIONAL STRUCTURE OF FLEXIBLE EMPLOYMENT FORMS

Flexible forms of employment have become, due to their increasing importance in the practice of employment and labor, the subject of intense national and international regulation. At the international level, the Institute are engaged in: International Labor Organization (ILO), Organization for Economic Cooperation and Development (OECD), European Union (EU), European Council (EC) and the International Industrial Relations Association (MRA).

International Labor Organization, bearing in mind the importance of flexible forms of work, introduced great number of conventions and recommendations, to give the impetus to national laws to enrich their own equal labor theory and practice of new forms of employment and create mechanisms for their significant impact on reducing unemployment. These are 122 Employment Policy Convention; Convention No.177 on the work at home of 1996, and Recommendation no.184 on the work at home since 1996; Recommendation br.189 on providing jobs in small and medium enterprises of 1996, Convention No.175 on working part-time and Recommendation no. 182 on part-time work of 1994.

The importance of this problem is not neglect by the European Union (EU), which in 1991 adopted The Directive on the part-time work (based on previous collective agreement for the territory of the EU) and the directive on part-time work since 1999 (also derived from the signed collective agreement). In addition, the largest trade union and managers organizations (UNICE, ETUC, CEEP) are engaged in, among other things, the conclusion of the European collective agreement on temporary work (as a valuable form of flexible employment).¹²

¹⁰ Prof. dr Radoje R. Brković, „*Radno pravo (novo zakonodavstvo)*“, Projuris, Beograd, 2005., str. 99.

¹¹ B. Šunderić, „*Pravo Međunarodne organizacije rada*“, Beograd, 2001., str. 244.

¹² S. Jašarević, „*Fleksibilne forme zapošljavanja u Zakonu o radu*“, Radno i socijalno pravo, br.1-3/2002, Beograd, str. 93

The importance of international regulation of flexible employment to solve the unemployment problem is confirmed by the fact that within the European Union over 60 million employees working in one of the flexible forms of employment. Usually those are part-time employment, work at home, occasional, and temporary employment, self-employment (in various forms of individual, team, or cooperative engagement); work on weekends, help at home work.¹³ Flexible forms of employment, law theorists systematize in different ways, highlighting their characteristics through a greater or lesser importance to influence the employment situation. S. Jasarevic emphasize the systematization of flexible forms of employment such as 1) part-time, 2) fixed-term work, 3) self-employment, work at home, self-employment, and informal sector jobs.¹⁴ The types of contracts on temporary work conduct flexible forms of employment, such as, for example, *zero hours* contract (contract with deferred fulfillment), which requires the performer that it must always accept a job offer, but the employer does not have to provide him with job. Some modalities of this contract are *on call* and *stand by* contracts (usual type of these agreements are preliminary agreements and contracts with deferred fulfillment). In case when employer is calling the performer regularly to do, this deal with deferred fulfillment can be considered as a normal part-time employment contract. The practice of job contract used for contracting of flexible forms of employment, except *stand-by* agreement (work on invitation) knows *fixed-term* contracts concluded for certain time and so-called, *minimum maximum* contract showing the minimum and maximum hours of work per week. The main question in these contracts is whether the mutuality of these obligations of contracting parties (employer and job performer) is a necessary element for the validity of contracts. Reciprocity would be, legally and socially, should exist but the practice is another thing.

FLEXIBLE FORMS OF EMPLOYMENT IN SERBIA - LEGAL SOLUTIONS

Flexible forms of employment in our country, through the solutions in Employment law¹⁵, make certain types of employment, that is, more or less, made more flexible employment (employed part-time, employed part-time employment to perform outside the premises of the employer and the employment of household helpers) and forms of work-time employees (temporary and part-time jobs, contract for professional training and development and self-employment).

- 1) **Fixed-term work** is based on time whose duration is predetermined when it comes to seasonal jobs: work on a project, increasing the volume of work that takes some time and so on, but cannot last more than 12 months, continuously or intermittently. This form of employment can be established to replace a temporarily absent employee, until his return to work. This form of employment has its practical justification in engaging in activities that do not have permanent characters, but it is often misused by the statutory extension of

¹³ Fleksibilni oblici zapošljavanja u Srbiji, Studija, Beograd, 199., str. 56-kod Borivoja Šunderića, Pravo međunarodne organizacije rada, op.cit., str. 245.

¹⁴ S. Jašarević, ibidem.

¹⁵ „Službeni glasnik RS“, br.24/2005, 61/2005 i 54/2009.

time that can be deployed and through the nature of the work that is not covered by legal norms as a possible reason for the use of the employment relationship.

- 2) **Part-time work** may be established for an indefinite or specified period. The duration of this type of employment depends on the specific needs of the employer (in practice, this is usually half of working time). Employees in this form of employment have all employment rights in proportion to the time spent at work, unless some rights by general laws and the contract provides otherwise. Part-time work represents flexible component of this work, and when employees by working for another employer achieves full-time, and both are full-time works, it is no longer a flexible form of employment, but a “full-time” work. However, flexible work in this form is a significant for employee, whether to stay at part time work, whether to realize full time.
- 3) **Employment for performing work outside of the employer’s premises** in the previous legislation presented work outside of employment, which emphasized the flexible nature of its methods of work and employment. This work is usually done at employee’s home, and legally this type of work is known as “*service providing*”. The nature of work, although it is in the form of non-fixed work, it is characterized by flexible form of employment, because the physical location (space at employee’s home or some other place outside of the headquarters of the employer) that factor of adaptability makes relationship specific, as the way of doing business, because the employee in performing the duties and may be assisted by close family members, unlike in other forms of work.
- 4) **Employment with domestic assistance** (home work) was introduced by the previous Labor Act. Otherwise, work of domestic assistance is a senior legal institution, which dates from the early twentieth century in the German labor law doctrine and legislation. The flexibility to this form of employment, which is part of comparative law outside of employment, gives the nature of work place and working conditions, and the fact that the earnings of the employee can be paid in kind (food, shelter), but no more than 50% of earnings. Revenue share to be paid in kind shall be expressed in monetary form. This form of employment or work in general is essential for the reduction of “illegal employment”, regardless of its poor applicability in our practice.
- 5) **Temporary and part-time jobs** are a form of the work outside of employment, where the employer can conclude a contract for these works with the unemployed person or with the employee working part-time - to full-time and retired person for the jobs whose duration will not be more than 120 working days per calendar year. Employer may for performing temporary and occasional jobs to conclude a contract with a person who is a member of the youth cooperative, up to 30 years old.

Performing temporary jobs is renowned form of flexible employment, which, in the context of our labor market, important, especially for performing jobs that have not permanent character, but they appear in a certain continuity, with a regularity of time, in specific seasons, cycles of work processes and the like. Predictability of common needs for these jobs in future periods allow the employer and the potential performer of the work, either individually or through cooperatives, to count on work engagement and a significant portion of

the unemployed of the possibilities of this work, no matter what it is, mostly, less complex and mainly physical work.

- 6) **Contract on vocational education and training** represent *the return of the voluntary work into labor regulations* (which former legislator unjustly thrown out of regulation), differently named, but with almost identical content, so the essence of the previously formulated voluntary work - internship and the professional exam, acquiring of the necessary knowledge and skills to work in the profession and specialization – is taken over as the contents of contracts for professional qualification and training.

The motive of the employer to engage performer from the labor market under this contract is the low cost of such engagement, the ability to qualify the experts of certain profiles, and, simultaneously, show to the community its effort to help reducing unemployment. On the other hand, a volunteer, although aware of the shortcomings of its status and temporary work, of the performer whose work, due to lack of qualification and experience in the labor market is very cheap, finishing voluntary work become more competitive to solve its status adequately to its abilities.

- 7) **Self-employment** The labor law defined as the probability that an individual performs work independently as an entrepreneur, in accordance with the law governing the issue of entrepreneurship. Prediction of this institute, the legislator seeks to emphasize the importance of self-engagement of unemployed persons to find job, especially if there is some important assumptions of self-employment (received severance pay, the action of the former employer to finance incentives offered by the state in certain employment programs, etc.). Therefore, self-employment, as a flexible form of employment, may be a transitional form of engagement to one type of employment, even permanent.

NEW FORMS OF EMPLOYMENT IN TERMS OF NEW TECHNOLOGIES

The problem of unemployment is a continuous problem of states and societies and with creation of economic conditions for its solution, it was necessary to look into new forms of engagement that would suit the needs of employers and opportunities. In places where no opportunities and conditions for the establishment of a permanent working relationship, it is expected that theory and legislators to establish new forms of employment, which meet the needs of the labor market. These forms of employment characterize flexibility and adaptability. In addition to objective determination of employment in market conditions, this employment requires a complete change of consciousness about the role of their own work and attitude towards work in general, where the required maximum engagement of each employed performer, expertise, competence, high levels of work culture and efficiency is necessary.

In the introduction, we pointed out that flexible forms of work incurred as a result of the introduction of new technologies in the work process. Although from the standpoint of the general progress of mankind new technology are a means to achieve a new quality of life, they carry certain difficulties which are reflected differently on individual companies, depending on their overall development. New technology, in general, reduces the need for labor or abolishes jobs, reducing the need for live performance and

was replaced by materialized labor. Maximizing the impact of new technology requires significant changes in the ways of engaging and organizing the work force so employers require a change of working mode, or in many cases, replacement of other employment, and flexible (adaptive) forms of work. Mode of employment makes it difficult for employers to get rid of redundant employees.

Redundancy does not apply to workers in certain production and other work processes, but also some management structure and managers. The abolition of permanent employment in certain cases would allow the employer to manage the workforce in line with the characteristics of new technologies. A new approach for organized labor, caused by the introduction of new technologies, needs to make full use of production and employment potential, so that their work is most productive when it is most needed, "a flexible organization of work requires a flexible and mobile workforce."¹⁶ In addition to introducing flexible forms of, a *flexibilization of working hours* is also done, to ensure the optimal use of production and processing capacity and working capacity of employees or hired employees. New terms and conditions are determined by specific technological and organizational changes and they are changing models of human resources utilization, in relation to the legal basis of their work involvement (types of work that is not full-time employment) and flexibility of their working abilities.

Methods of human resources utilization are different in given circumstances, but directed towards the full-time employment. Reduced volume of work and termination of the need for certain types of work obliges the employer to reorganize operations, and personnel restructuring of the professional human resources management, to maximize the available human resources. Personnel restructuring of the employer goes through three related processes, 1) the restructuring of knowledge and skills of employees, 2) the restructuring of work motivation and morale, and 3) restructuring the system of organizational roles.¹⁷

Recently, flexibility in employment is a formula used as a concept for solving the employment problems in terms of "*new fields of work*" conception.¹⁸ In relation to outlined, the flexibility involves a range of interventions in all spheres, and some of them are "reducing wages, changes in terms of collective bargaining at the national level, changes in regulations on protection of workers, changes in regulations of laying off workers, changes in social security (Euro-Flexibility and Jobs, Myths and Realities, Brussels, 1985)."¹⁹

¹⁶ Dr Brana Marković, Nove tehnologije, radnička klasa i sindikati-kod Borivoja M. Šunderića, Pravo Međunarodne organizacije rada, op.cit., str.244.

¹⁷ B. Čukić, Ljudski resursi firme (u okviru teme "Zapošljavanje i socijalni problemi"), Pravni fakultet Univerziteta u Beogradu, Beograd, 1966., str.27-29.

¹⁸ V. Brajić, Dileme i koncepcije u pogledu zapošljavanja (u okviru skupne teme: "Tržište radne snage i pravo na rad"), Zbornik radova sa savetovanja pravnika 8-12. juna 1998.g., Budva, Beograd, 1998., Budvanski pravnički dani, str.120-122.

¹⁹ Ibidem.

RESUME

Flexible forms or forms of employment differ from so-called standard (typical) ways of making a work contract for an indefinite time and full work time. Flexibility of work is related to its duration, by temporary and specific conditions in which they perform. The significance of these forms of work confirms the fact that within the European Union over 60 million employees working in one of the flexible forms of employment. Usually those are the part-time employment, work at home, occasional and temporary employment, self-employment (in various forms of individual and team or cooperative engagement); work over the weekend, home care and so on.

Short and long-term projections of employment in our country must seriously take into account the possibility of involvement of the work through legally available flexible forms of employment. The state should ensure effective functioning of the labor market functioning in which supply and demand many types of work will find, whose shape and method of engagement is not a permanent employment.

Reducing unemployment is not the only objection of the use of flexible forms of work, but also the suppression of "illegal employment", in a variety of informal and illegal work, which also affects the increase of employment and provides a more realistic insight into the employment situation in society.

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