

Female worker in times of corona crisis

Abstract: In this article, the author deals with the issue of the women's status in labor relations both in the Slovak republic during COVID-19 pandemic. State imposed numerous restrictions on employers, which directly affected mainly the most vulnerable employees – working mothers. Working mothers, especially single mothers, are one of the most vulnerable groups in the labor market and the restrictions adopted by the Slovak Republic have often affected them in a devastating way. Are these workers obliged to comply with the restrictions completely or is there a possibility of a middle ground? The author will try to answer this and other related questions in this article.

Keywords: Women; Employer; Employee; Labor Relations; Discrimination.

1. Introduction

The status of women in employment relations has long been worse than the one of men.¹ This is clearly confirmed by the research of the European Institute for Gender Equality, which in 2019 published the results of the European Gender Equality Index. While the average gender equality index in the European Union is 67.4

¹ FREEL, L.: Father on Maternity Benefit., pg. 47

points, the Slovak Republic, as the third worst country, reached only 54.1 points. Areas such as labor relations, time, health, money, and power were evaluated. The corona virus affected all social relations, but it can be fairly stated that working women, especially single mothers, were affected by the measures taken in the Slovak Republic as one of the most endangered groups much more intensively. At the same time, it is necessary to emphasize that the Slovak Republic is the least affected country by the virus pandemic within Europe in terms of the number of infected. At the end of May 2020, the current number of corona virus infections is less than 200 people. More than 1,300 people were cured of the disease and 28 people died. These are very favourable epidemiological statistics, which have been achieved precisely by strict measures introduced by the state, in particular the wearing of surgical masks, closure of establishments and of borders, restrictions on meetings and many others that have had a significant impact on everyday life. To date, not all establishments are open, and most measures are still in place. At the same time, an emergency situation is still declared, which enables the application of the provisions of §250b of Act no. 311/2001 Coll. the Labor Code (hereinafter also referred to as the “Labor Code”), which significantly interfere with labor relations.

Statistics² show that employers have largely reduced job offers to shorter working hours. At the same time, many employers have ordered their employees to stay at home due to obstacles at work or a combination of obstacles at work and performance of work, which deprived employees of a legal right to meal if they work only 4 hours and the rest of the day are at

² Decline in job offers for shorter working hours, which are of particular interest to women, was published by one of the largest job portals, www.profesia.sk, in April 2020.

home or do not work at all. In the Slovak Republic, women show the greatest interest in job positions in the field of administration, trade, services, accounting, or economics. Precisely these areas have stopped hiring the largest numbers of new staff during the pandemic and are only slowly beginning to move to the standard regime. The worst situation is in tourism gastronomy, where the number of new job offers decreased by 72%³ compared to last year. The coronavirus undoubtedly has a devastating impact on the labor market as well as the economy of individual countries. Could the Slovak Republic have taken measures in such a way as not to disadvantage the already disadvantaged? Do employees have the opportunity to find a middle ground in agreement with the employer and thus avoid loss of income or dismissal? We will try to answer these and many other questions in the next section of our article.

2. Legal measures during COVID-19 pandemic and their impact on female workers

The provision of the Labor Code, which in times of emergency situation further strengthened the imbalance between employees and the employer are in sec. 250b of the Act in question. The provisions relating to the emergency situation apply not only during the declaration of the emergency situation but also two months after its end. At this time, the employer may order the employee to perform work from home, if the type of work allows it, and the employee may also request the performance of work from

³ Profesia. [online] [quote 25.05.2020]. Available at: <<https://blog.profesia.sk/pracovne-ponuky-pribudaju-ktore-odvetvia-su-na-tom-najlepsie/?fbclid=IwAR3ubhuDO3P5oLoiA00fDqzQycOdIFkVLWnQQSPjBQPzGPsYVF-DL4IS-1Y>>

home from the employer, if not prevented by serious operational reasons. The employer notifies the employees of the schedule of working hours at least two days in advance, as well as the use of leave from the previous year. If the employee is unable to perform work due to temporary closure of the employer's workplace, he will be entitled to a wage compensation of at least 80% of his average earnings. However, the employer may still, in agreement with the employees' representatives, reduce the wage compensation to 60% of the employee's average earnings, but it may not be lower than the minimum wage. At the same time, a provision was added which obliges the employer to apply the protection period and to maintain the conditions of employment after returning to work also to those employees who personally and fully cared for their relative during emergency situation (i.e. especially a child). All the above-mentioned provisions were added to the Labor Code during the declaration of the emergency situation, as until the time of the COVID-19 pandemic, the Labor Code did not regulate the procedure for declaring an emergency situation at all. We dare to state that we consider this approach to be incorrect towards the labor relation's subjects, as they have the right to know what to expect in the event of an emergency situation. The month of March 2020 was extremely chaotic for labor relations due to the absence of legal regulation and uncertainty on the part of both employers and employees. We are of the opinion that if the state opts for the Labor Code in Slovak form, meaning detailed regulation and very comprehensive legislation, the state should *de lege ferenda* also regulate situations that differ from the usual standards for maintaining the security of the subjects of employment relations. It is these hastily adopted regulations that have had a major impact on employees, and we dare say that especially on women-mothers-employees.

The employer's option to order employees to work from home, where the agreed type of work allows it, is formulated in a significant way for the benefit of the employer. The employer does not have to consider the special conditions of the employee, it is sufficient if the type of work allows the work to be done from home. On the other hand, it is clear from the case-law that serious operational reasons must be assessed in relation to each workplace individually, but the universal principle is that the employer's activity must not be seriously endangered or disrupted.⁴ Therefore, if an employee requests to perform work from home, the employer may refuse, citing serious operational reasons. Even if an employee brought an action to court, with the average length of civil litigation, which lasts almost 24 months by 2020, she could expect a new pandemic to start earlier than to work from home. If the employer orders the performance of work from home, he does not have to consider whether the employee's family situation allows her to perform work from home. It is especially women who have to combine the care of the family and household with their work. If domestic conditions do not allow them to perform their work sufficiently, they will be sanctioned by failure to promote, receive rewards or other benefits that are already more difficult for them to achieve than for men. Women in the Slovak Republic earn on average 20% less than men and make up only about 20% of members of boards of directors or other decision-making bodies.⁵

Another problematic factor is the employer's option to impose obstacles to work with a decrease in wage compensation to 80%

⁴ The Judgement of The Supreme Court of The Czech Republic no. 21 Cdo 612/2006

⁵ Gender Equality Index – Slovakia. [online] [quote 25.05.2020]. Available at:<<https://eige.europa.eu/gender-equality-index/2019/domain/power/SK>>

of the employee's average earnings compared to the original 100% of wage compensation, leaving the possibility for employee representatives to agree with the employer on a further reduction to 60% of the employee's average earnings, will clearly and significantly affect many family budgets. In the Slovak Republic, the classic model of "kurzarbeit" has not yet been introduced, but we adopted only a model of state aid to employers who had to leave employees at home due to a pandemic. We understand that the employee's sacrifice of 20% of the salary is appropriate in the event of a loss of the employer's income, but we consider 60% to be insufficient also in view of other funding shortfalls, which the regulation of obstacles to work means for employees. If the employer imposes the obstacles to work in full, the employees will not be entitled to meals at all. If he imposes the obstacles to work for only partially and the employee has to work part-time, she is very likely not to be entitled to a meal allowance either. This phenomenon is currently not unique in Slovakia and mainly affects employees in preschool facilities, where mostly women work. Employers will order 4 hours of work and then 4 hours of obstacles at work. Although the employer's procedure is in accordance with the Labor Code, the employee will not be entitled to a meal allowance as they do not work more than 4 hours but exactly 4 hours. We consider the above to be at least contrary to good morals, also with regard to the fact, that up to 11% of Slovak citizens are on the brink of poverty, of which the highest risk is posed by women with lower and secondary education, up to 22%. These are precisely the employees who were most often ordered to work part-time in combination with obstacles at work or just obstacles at work, which, in addition to the loss of wages, also meant the loss of meal allowance.

We consider the widespread closure of pre-school facilities and schools to be interference with the constitutionally guaranteed

right to work as well as the right to a decent standard of living⁶. We do not doubt that the closure of universities and secondary schools and the transition to online teaching was appropriate, as these categories of students and pupils travel a lot throughout the country and are also capable of self-study, but we perceive long-term closures and primary schools as problematic. Preschool facilities and the first stages of primary schools in the Slovak Republic will be open on the 1st of June 2020. The second stage of primary schools, secondary schools and universities remain closed and teaching takes place online. Until then, one of the parents was entitled to stay at home with smaller children and pupils up to 10 years of age and receive nursing allowance during the school closure due to a pandemic. For children from the age of 11, the parent could stay at home and receive nursing allowance only if the attending physician determined the need for all-day care or childcare. According to The Social Insurance Agency, there are approximately 450,000 children under the age of 10 in Slovakia, mostly mothers remain at home with them, and by the end of the pandemic they expect approximately 400,000 applications for nursing allowance.⁷ The nursing allowance is provided only in the amount of 55% of the daily assessment basis, which does not cover even half of the employee's net salary. In addition to the impact on the economic situation and the inability to do work, parents, especially mothers who have stayed at home with their children, have to study and do homework with them. Statistics show that up to 35% of Slovak women spend

⁶ MESARČÍK, M.: Predictive policing in the context of fundamental human rights and freedoms.

⁷ SME. [online] [quote 25.05.2020] Available at: < <https://index.sme.sk/c/22363373/ostali-ste-pre-zatvorene-skoly-doma-s-detmi-mate-pravo-na-os-etrovne.html> >

at least an hour a day learning with children, which is by 16% more than men. At the same time, up to 85% of women do most unpaid domestic work without the help of a partner, which makes it impossible to devote themselves to development or further education while caring for a family and household. The pandemic of the COVID-19 virus has drawn working women further into the position of housewives, which has been significantly caused by the widespread closure of schools and kindergartens. At the same time, it should be noted that the employment of mothers with small children was alarmingly low even before the pandemic, at only 8.6%.⁸ As most of the workers who stayed at home with their young children were women, it can be assumed that, despite the protection period, many of their jobs will be lost after reopening of school. Unemployment was at 5.15% before the onset of the pandemic and 54% of the unemployed were women. At the end of April 2020, unemployment was already at 7.4%, of which up to 53% were women.⁹ At the same time, the National Bank of Slovakia assumes that the largest redundancies will occur after the summer and that unemployment will climb to 7-8% till the end of the year.¹⁰ It is therefore fair to assume that an increase in unemployment will cause a greater increase in unemployment for women than for men. It is a circle from which mothers will find it difficult to get out, as they will lack experience, work habits, which will again cause the employers to either not hire them at all or, if so, to low-paid and simple jobs.

⁸ The Institut of financial policy. [online] [quote 25.05.2020]

⁹ The Headquarters of Social Affairs and the Family of SR. [online] [quote 25.05.2020] Available at:< https://www.upsvr.gov.sk/statistiky/nezamestnanost-mesacne-statistiky/2020.html?page_id=971502>

¹⁰ The National Bank of Slovakia. [online] [quote 25.05.2020] Available at:< <https://www.nbs.sk/sk/menova-politika/rychle-komentare>>

3. Conclusions

The analyzed statistics clearly confirm that the position of women in the labor market is much more unfavorable than the position of men, even without the influence of a pandemic. The measures taken by the Slovak Republic in an effort to prevent the spread of COVID-19 have and will have a long-term adverse effect on women-mothers-employees. This could have been prevented by the already mentioned amendment to the Labor Code, which should also regulate the procedure in the event of an emergency in a more complex way. Hastily adopted provisions in the shortened legislative procedure are inadequate and damage one group of workers more than the other. Furthermore, we are of the opinion that if the Slovak Republic supported flexible forms of work in the long run, the adaptation of employees and employers to an emergency situation would be much easier. We expect that in the horizon of 10 years, a large number of employees will switch to regular home office. If employers would have allowed them to work at least occasionally from home, they would have been able to gradually acquire home office working habits without losing productivity. We are convinced that the motivational measures for the involvement of children's fathers or second parents in the upbringing would significantly contribute to relieving mothers and their easier working life. Even during a pandemic, there is a possibility to take turns in full-time childcare, but the social roles of the "traditional" man and woman in the Slovak Republic are quite entrenched and only very few men have decided to stay at home with children or to take parental leave. It is possible to assume that this is also caused by unfairly set remuneration, i.e. if the family lost its husband's income due to childcare, the family budget would be affected much more negatively than if the mother's income were lost. It is necessary for the state, in accordance with European Directive no. 2019/1158

on the balance between private and professional life of parents and caregivers, to begin introducing such measures that involve the other parent in the care of the child to an equal extent.¹¹ In our opinion, it is necessary for single working mothers to introduce more accessible pre-school and school facilities, which would provide childcare for at-risk worker groups even during a pandemic. At the same time, it is essential to support the creation of part-time jobs, which will also enable mothers to participate in working life and improve their position in society as well as in the labor market. This is related to the necessary amendment of the provisions of the Labor Code on a divided job, which are rather a demotivating factor for employers to introduce jobs for shorter working hours. In the current setting, we are of the opinion that the measures taken during the corona virus pandemic are clearly to the detriment of working women. Moreover, the diction of individual provisions of the Labor Code does not allow them to adjust the conditions of work performance more favorably without an agreement with the employer, which is of course optional and unclaimable. In addition, the length and expensiveness of court proceedings significantly reduces the enforceability of law and the efforts of female employees to defend their rights in court (e.g. the case of Mrs. Petrášová, direct discrimination on the grounds of sex, which lasted more than 10 years). Under the circumstances, we are of the opinion that at the time of the pandemic there was no middle ground to which the female employees were legally entitled and they were dependent only on the goodwill of the employers or the help of the family. We are therefore convinced that the proposed steps must be taken without delay in order to gradually begin to equalize the position of men and women in employment relations.

¹¹ KRIPPEL, M.: The Conditions of Father's Entitlement to Maternity Benefit.

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