

IMPLEMENTATION OF APPROACHES TO FLEXICURITY IN SMES

PROPOSAL OF LEGISLATIVE RECOMMENDATIONS

The Implementation of Approaches to Flexicurity in Small and Medium-sized Enterprises (SMEs) in Conditions of the Czech Republic Using Foreign Cooperation project, Registration No. CZ.1.04/5.1.01/77.00248, is financed from the funds of ESF through the Operational Programme “Human Resources and Employment” and from the CR state budget.

Approaches to flexicurity includes impacts in the form of the duration of working hours, adjustments to the amount of working hours, amendments to employment contracts as well as changes in social security payments etc. Within the implementation of flexicurity measures in conditions of the Czech Republic, one of the outcomes from the project is a proposal of legislative recommendations (key activity 06) containing our own conclusions from investigations performed as well as the transfer of foreign good practice. The basis for the proposal of legislative measures consist of questionnaire surveys performed with three target groups - employers, mothers with children up to the age of 15 and 50+ individuals, where the latter two groups are endangered with social exclusion. The analysis of the current situation in the legislation of the Czech Republic has been performed within the preparation of legislative measures.

Proposals of legislative recommendations in the field of labour law, employment policy - forms of supports, including impacts in the field of social security, aim at allowing flexible and reliable arrangement of contractual relationships between an employee and an employer which guarantee the employee the security of employment and serve for the dialogue with social partners as well as motions to legislative authorities of the Czech Republic.

1) Analysis of Current Situation in Czech Legislation

a) Conditions for flexible forms of work in the Labour Code

Act No. 262/2006 Coll., the Labour Code, regulates the employment relationship, working hours and agreements on works performed outside employment especially in Parts II, III and IV. In general, it can be stated that the provisions of the Labour Code given below enable a relatively wide use of temporary, part-time and other flexible work.

Fixed-term Employment, Section 39

A fixed-term employment relationship between the same contracting parties may not exceed three years and as of the date of the first fixed-term employment relationship and it may be recurrently agreed no more than twice. An extension of an employment relationship shall also be considered as a recurrently agreed employment relationship.

Agreement to Complete a Job, Section 75

The scope of work for which an agreement to complete a job is concluded may not exceed 300 hours in one calendar year. The said scope of working hours shall also include those hours of work for which a certain employee carried out some work for the same employer in one calendar year based on another agreement to complete a job. The agreement must specify a period for which it is concluded.

Agreement to Perform Work, Section 76

Where the average scope of work exceeds one-half of standard weekly working hours, it may not be carried out on the basis of an agreement to perform work. Observance of the agreed and maximum permissible scope of one-half of standard weekly working hours shall be assessed for the entire period for which an agreement to perform work was concluded, however for no more than a period of 52 weeks.

Part-time Work, Section 80

In case of part-time work (shorter working hours), the employee (part-timer) is entitled to be paid wage or salary according to the scope of his agreed part-time work.

In addition, Section 241 (2) enables that if a female employee or a male employee taking care of a child up to the age of 15 years asks for shorter working hours or other suitable modification to the set working hours, the employer shall satisfy the request unless serious operating reasons prevent so.

Uneven Working Hours Distribution, Sections 83 and 84

The length of a shift may not exceed 12 hours at uneven working hours distribution.

The employer shall draw up a written weekly work schedule and inform his employee of the schedule or its alteration latest 2 weeks before the beginning of the period over which the working hours are distributed and where it concerns a working hours account, the employer shall inform their employee of the schedule latest 1 week before the period concerned unless the employer and the employee have agreed on another time-limit with regard to providing this information.

Flexible Working Hours Scheme, Section 85

Flexible working hours scheme consists of bands of core time and flexi-time; the beginning and the end of these time bands are determined by the employer. An employee is obliged to be at his workplace during the determined core time. Within flexible working hours an employee can choose the start and the end of his working time. A total shift length may not exceed 12 hours. A settlement working period to which the employer may distribute working hours may be implemented as one flexible work day or work week, but also 4 work weeks and more.

Working Hours Account, Sections 86 and 87

- (1) "Working hours account" is a method of distributing working hours and this method may only be introduced on the basis of the collective agreement or, where there is no trade union organization operating in the employer's undertaking, on the basis of the internal regulations.
- (2) Working hours accounts may not be applied by the employers referred to in Section 109(3). (e. g. state employees)
- (3) Where a working hours account is applied, a settlement period may not exceed 26 consecutive weeks. The relevant collective agreement may only extend this period up to a maximum of 52 weeks.
- (4) Only where it is laid down in the collective agreement, overtime work that was performed by an employee within the working hours account scheme in a determined settlement period which is fixed in the collective agreement and which does not exceed 52 consecutive weeks and that is in a maximum scope of 120 hours may be credited to the immediately following settlement period.

Section 87

- (1) Where working hours accounts are used, the employer shall keep a working hours account and a wage account for every employee
- (2) An employee's working hours account shall state
 - a) The stated weekly working hours or shorter working hours
 - b) The distribution of working hours to individual work days, including the start and the end of a shift
 - c) The hours worked on individual working days and per week

(3) Where working hours accounts are used and a period shorter than that laid down in Section 86(3) is applied, a difference between the stated weekly working hours, or the shorter working hours and the number of hours worked over such shorter period shall be calculated at the end of this shorter period.

With regard to practice, the aforementioned provisions are satisfactory and provide an employee as well as an employer some flexibility. Agreements to complete a job and agreements to perform work may cause some social uncertainty to employees without a permanent employment relationship and income, where in case that the employee does not reach the minimum income of CZK 2,500 in a calendar month under the agreement to perform work, they do not have any health insurance and social security and the social security and health insurance contributions are not paid on the agreement to complete a job if the monthly income based on the agreement to complete a job does not exceed CZK 10,000.

b) Flexible forms of work not specified in the Labour Code

Shared job positions and home office work

The Labour Code does not expressly regulate shared job positions and home office work but it enables agreements on these and other forms of flexible work between the employer and the employee unless they are in contradiction with the provisions of the Labour Code (the maximum duration of working hours etc.). The establishment of the said contractual relationships is highly free and they can be reached without problems; consequently, their termination may cause problems e.g. when one of the workers participating in the shared job position terminates the job. In this case we consider desirable to regulate this arrangement in the Labour Code to assist in the development of this type of flexible work.

Note: Within EU, the legal framework for flexible types of work is created by Council Directive No. 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and EKOS.

2) Results of Survey and Pilot Verification

a) Target group of employers (SMEs)

This group of respondents consists of individuals at the following positions: an owner, an executive, a head of the Finance or HR Department, other management members.

The following findings were detected by the questionnaire surveys:

- The majority of participants were employed at a senior management position.
- Almost all of the respondents consider external employment to be a certainty of employment.
- All the individuals are interested in education, qualification improvement or re-qualification.
- 80% of respondents are ready to occupy a different job position than currently performed.
- Employers refuse a collective agreement on wages at 65%.
- A flexible working hours account would be appreciated by 80% of respondents.
- Women employers consider the support to women insufficient or even zero; they think the state should protect more mothers with children at the age up to 15 years so that they have a higher certainty of employment and a higher protection at illness.
- Employers miss advantages from the state for employing mothers with children up to the age of 15 years.
- A financial support, a tax allowance, a social security and health insurance allowance would motivate to employ individuals at the age of 50+.
- Employers perceive the protection of all employees by the Labour Code as too strong and only resulting from the difficulty and complexity of dismissing, which they consider to be a factor increasing the rate of unemployment.

b) Target group of individuals at the age of 50+

The following findings were detected by the questionnaire surveys:

- The current employment contract satisfies 98% of respondents.
- 85% of respondents prefer a full-time job. They do not search for a part-time job.
- 76% of respondents are not satisfied with the set compensations at the loss of employment, including social allowances, and sickness benefits are not sufficient for 80% of respondents so as not to endanger their life situation.
- The majority (75%) is willing to accept a modification or reduction of benefits to keep their employment.
- In previous 12 months an employer enabled education along employment as well as the engagement in life-long education to 75% of respondents. Almost all of them agree that education increases the probability of keeping the employment.
- 83% of respondents are interested in adjusting their working hours according to their individual needs and 76% of respondents would appreciate a flexible working hours account.

- The respondents would recommend the state to subsidize job positions for people at the age of 50+ and to reduce the age limit for retirement.
- The respondents are not interested in early retirement; in general they rather do not think about it (70%).
- 92% of respondents are dissatisfied with the present employment policy in the Czech Republic.

c) Target group of mothers with children up to the age of 15

The following findings were detected by the questionnaire surveys:

- Most women (82%) have 1–2 children at the age up to 15.
- The duration of the previous maternity (parental) leave most frequently ranges from 2 to 3 year at responding women (44%).
- Women-respondents rather prefer a full-time employment (54%). Almost all of the respondents would appreciate individual adjustments to working hours, or the flexible working hours without late-afternoon and night shifts.
- According to the majority of respondents, the state should protect mothers with children at the age up to 15 more to have a higher certainty of employment and the employer should have advantages if it employs mothers with children up to the age of 15.
- When mothers with children up to the age of 15 lose a job, they would appreciate the possibility to return to work at least to a part-time job.

d) General conclusions and proposals of solutions for individual target groups

- The labour-law relationship of the majority of respondents included in the project is a full-time job (59%) and an employment for an indefinite period of time (34%).
- 70% of respondents prefer the full-time job
- Most people are not interested in early retirement, namely 30% of them at no case; 33% are rather not interested in it.
- None of the respondents are fully satisfied with the present employment policy in the Czech Republic and only 8% of people are rather satisfied. In contrast, 42% of respondents are dissatisfied with the present employment policy in the Czech Republic, and 45% is rather dissatisfied.
- In case of an illness, sick benefits are (rather) not sufficient for 75% of respondents.
- The state could help to increase flexibility by tax allowances, advantages provided to companies providing and allowing work from home to women and men with small children. It could contribute to a higher certainty of employment by the legal protection of mothers with children up to the age of 15, a longer statutory period when a mother's job position is secured, by a compensation of sick benefits or part-time jobs. In general, the protection of employees by the state is considered low or zero by the responding employees.

One of the conclusions resulting from discussions with entrepreneurs and foreign partners was a clear recommendation that the support to flexible forms by employers should be economically advantageous for them. With regard to motivating the employees, it seems to be suitable to support still the little used forms of employments such as shared job positions and their creation for people at the age of 50+ and mothers with children at the age up to 15, how work (especially for mothers with children at the age up to 15), and to provide tax and social security allowances to employers in such cases. Another efficient solution could be the introduction of the possibility that employing people at the age of 50+ and mothers with children at the age up to 15 would be a compensatory measure against the existing obligation to employ handicapped people or to buy their products.

Shared job positions and their creation can be supported e.g. by means of

- a) contributions to wages during the first 6 months
- b) a tax allowance for an employer which enables creating a shared job position
 - i. shared job positions for mothers with children at the age up to 15
 - ii. shared job positions for people at the age of 50+, inter-generation tandems – they can participate in training of new workers

Examples of possible economic advantages of employing people at the age of 50+

- Reducing social security and/or health insurance per employee
- A tax allowance for the employer
- Providing subsidies for employing people at the age of 50+
- Providing subsidies for training people at the age of 50+

3) Proposal for the implementation of results of the survey and the pilot verification in the legislation of the Czech Republic

The proposal of legislative measures was discussed during its preparation at common meetings with foreign partners, especially with regard to their operation in practice.

The legislative solutions proposed below should improve the position on the labour market to both the categories, i.e. the people at the age of 50+ as well as mothers with children at the age up to 15.

a) Labour-law legislation – the Labour Code

It is recommended to specify in detail the provisions concerning part-time jobs and introducing new types of work. It is recommended to support enabling a part-time job by reducing payments to social security or by another tax allowance.

- i. **It is recommended to introduce the possibility for the transfer of an employee to a part-time job in case they work for the company at least for the period of 6 months and they ask for such change.** For example, this condition in the German Labour Code is subject to the minimum number of employees in the company where at least 15 employees must be employed and the shortening of working hours may not be prevented by organizational or operating reasons and/or by inadequate costs.
- ii. **In relation to the previous provision, it is recommended to introduce the possibility to shorten working hours within a part of a work week** – a so-called “compressed week”, e.g. the work duty for 2 or 3 days at 10 working hours a day etc.
- iii. **The support to the possibility to change over from the part-time work to the full-time work (prolonging the working hours).** In case the employer creates a new full-time job position, it shall preferably offer it to a part-time employee who has asked for it. This obligation does not apply if such solution is prevented by operating reasons or requirements of other part-time employees.
- iv. **The provision of Section 86 (3) states the following: (3) Where a working hours account is applied, a settlement period may not exceed 52 consecutive weeks.** The original provision of Section 86(3) creates unequal conditions for companies where trade unions do not operate because they may not exceed the duration of the settlement period of 26 weeks. In relation to practice, the settlement period of 52 weeks is reasonable for all the companies where seasonal works are typical, e.g. in the building industry where it is suitable to allocate the work to weeks and months when it is technologically feasible to perform work. The settlement period of 52 weeks would also benefit preventing the grey economy.
- v. **Specification of conditions and rules for creating a shared job position.** A shared job position is created upon agreement of the employer and employees on the distribution of work at a single job position to two or more people. In case one of the employees may not perform the work temporarily due to obstacles to work, the co-worker(s) who agreed with this procedure on the basis of an agreement, substitute them. It is not always possible to enable such agreement in small companies where the accumulation of functions is higher and the employer cannot accept such solution due to operating reasons with regard to a small number of employees. In case one of the employees terminates the job, the employment contract of the other co-workers is not terminated. The notice of termination given to the other co-workers on the basis of the employment contract termination by one of them only will be considered null and void.
- vi. **The introduction of “home office”,** respectively specifying in detail the provisions contained in Section 317 of the Labour Code concerning the labour-law relationships of an employee who does not work at the employer’s workplace but who performs agreed type of work under the laid down conditions within working hours which they organize themselves. It is necessary to remove some disadvantageous conditions in this form of employment, e.g. where such employee is not entitled to compensatory wage or salary (compensatory pay) at other important obstacles to work and the employee is neither entitled to wage or salary or compensatory time off in lieu of overtime work, nor to compensatory wage/salary or overtime premium for work on public holiday. It is also necessary to regulate conditions under which this form of work can be terminated, e.g. operating or organizational ones, and to assess potential tax allowances for the employer when providing contributions to the wear and tear of equipment or power expenses.
- vii. **Introducing the institute of “on-call work”.** An agreement between the employer and the employee on work performance according to the current employer’s needs for fulfilling the orders of the company. The essential element of the agreement is the determination of the weekly working hours, or in case of seasonal work or fluctuations of company’s economic cycle, the monthly or quarterly working hours. If a daily quota is set, the agreement shall specify the time advance when the employer shall announce work performance so that the employee manages to arrive at the workplace. Work days at the on-call work shall be set several days in advance, however at least three days in advance, on the basis of a written schedule.

b) Social Security Act

introducing discounts on social security payments in selected types of work.

c) Tax legislation

introduce tax allowances for employers enabling the creation of shared job positions.

4) Factors Supporting the Adoption of the Proposed Legislative Measures

When enforcing the amendment to the legislative provisions concerning flexible forms of work, it is possible to use measures proposed by the Government within the National Programme of Reforms for 2014. Measures within the active employment policy lead as a priority to the maximum use of the working potential of older people and preventing the early departure from the labour market.

5) Other Recommendations Following from Questionnaire Surveys and Interviews

Recommendations for EU

For ESF – give higher support to the active employment policy and flexible forms on work within projects with the goal to support employability of people at the age of 50+ and mothers with children at the age up to 15. Simplify the EU legislation and administration. Set simple procedures and guidelines on what the entities should do if they ask for anything.

Set the EU member states the minimum limit for the amount of contributions to the active employment policy in per cents from the gross domestic product with the goal to support more extensive development of the state aid to the creation of conditions for increasing the rate of employment.

Recommendations for the Government of the Czech Republic

- Tax allowances to employers aimed at employing mothers with children at the age up to 15 and people at the age of 50+.
- Reduce the retirement age limit.
- Prolong the statutory holiday period for mothers with children at the age up to 15 so that they can settle the care for a child during holiday more easily.
- The active employment policy (AEP) is under-financed. (While it is about 1% in most EU countries, this share in the Czech Republic only reaches approximately 0.1% of the gross domestic product). MLSA (2012) mentions re-qualifications, investment incentives, public welfare works, society-purposeful job positions, an in-training allowance, an allowance at the changeover to a new business programme as the main tools of AEP. Besides re-qualification, mothers with children at the age up to 15 do not mention any of these tools in interviews, i.e. they probably do not know them.
- Simplify the legislation of the Czech Republic (do not prepare and adopt a more complicated, more complex and more restrictive regulations than required by EU).

The aforementioned recommendations apply to V4 accordingly.

Recommendations to employers

- Keep an active dialogue with Labour Offices, notify them of comments on active employment policy measures proposed by the Labour Offices and the Government as well as the experience in implemented projects with regard to SMEs.
- Inform them of their needs, including proposals for possible support in the creation of jobs with flexible working hours.
- Use all the forms of employment enables by the Labour Code.

