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## FLEXIBLE WORK FORMS AND SAFE LABOR

**Abstract:** *Conventional work forms are being steadily replaced with those work forms which correspond to the requirements of science, economy, global market trends, and interests of organizations, i.e. employers and employees. Flexible work stands for elastic and adaptable approach to work and all relevant questions regarding the organization and performance of labor. A special challenge in those forms of labor is securing the highest possible level of occupational safety and health for employees, which means that all unwanted consequences must be mitigated or reduced. This paper is about flexible work forms and safe labor. An insight into these work forms from the perspective of occupational safety and health will provide a much better understanding of these work forms of labor, as well as understanding of the problems of occupational safety of the employees who perform these forms of labor, with certain ideas on the improvement of the whole system of occupational safety and health.*

**Key words:** labor relation, flexibility, occupational safety and health, employees

## INTRODUCTION

Every society aims for the labor which is safe and does not impact on the health of employees in a negative way. Regular and conventional work forms are being steadily replaced with more flexible ones. These forms of labor are currently one of the burning legal issues.

Labor flexibility can nowadays be perceived multidimensionally. As such, flexibility incorporates different aspects of labor organization – ranging from working hours (e.g. part time) and location of work (geographic labor mobility) to receiving compensation according to labor relation (e.g. rewards or bonuses), and relocation and allocation of work tasks. Broadly speaking, this includes all forms of labor which are not full-time [5]. However, the term flexibility usually incorporates the so-called non-standard forms of employment like a fixed-term labor contract, part-time labor contract, work from home, etc. There are two mutually conflicting requirements for all those forms of labor – the requirement for labor organization flexibility and requirement for secure payment and employment [8]. Another requirement that should be added is the requirement for occupational safety and health of employees, which is in the interest of both the employer and employee.

Occupational safety and health is an important issue for the employer and employee. As the need for new flexible forms of labor is increasing, it is necessary to perceive specific aspects of occupational safety and health of employees who perform that form of labor. Due to the variety of flexible forms of labor, there is a need for analyzing every flexible work form separately from the perspective of occupational safety and health. In the Republic of Serbia flexible work forms are regulated by the Labor Law [12], while occupational safety and health for employees who perform that kind

of labor is specified under the Law on Workplace Safety and Health [16]. In this paper, the flexible forms of labor recognized by the Labor Law and Law on Workplace Safety and Health will be analyzed, based on the regulations in force. An overview of these matters from the perspective of positive law will provide an insight into advantages and disadvantages of existing legal solutions, along with the guidelines for their improvement.

## CONCEPT AND TYPES OF FLEXIBLE WORK FORMS

Despite the great variability of flexible forms of labor, we can still identify the most common types used in almost all legal systems, including the Republic of Serbia. Those are non-standard forms of labor which differ from full-time employment. The most common forms of flexible labor include fixed-term labor, part time jobs, work from home, self-employment, employment by agencies, “hour banks”, zero hour contracts, etc. [6] In member states of the European Union one can see the following forms of labor: crowd employment, casual work, employee sharing, ICT based mobile work [7]. Legal nature of flexible forms of labor is variable. For some of the above-mentioned forms of labor formal employment is mandatory, while others represent labor outside employment relationship [8].

In the Republic of Serbia, the Labor Law regulates all forms of labor based on and outside labor relation, including flexible work forms [9]. This includes the following: fixed-term labor relation, part-time labor relation, labor relation for jobs performed outside employer’s premises, labor relation for household help, as well as forms of flexible labor where formal employment is mandatory [12]. Labor Law finds the

following work forms flexible: temporary and periodical jobs, labor based on a temporary service contract, supplementary work, labor based on the vocational education and training contract [12]. Furthermore, in labor law theory there are many others forms of flexible work, such as weekend jobs, jobs via an employment agency, work on request, etc. [1]

Fixed-term labor relation is based upon labor whose duration is already determined by objective reasons that are justified by the schedule or completion of a specific job, or by the occurrence of a specific event during those needs [9]. The most common reasons for this kind of labor relation are the replacement of a temporarily absent employee, work on a specific project during its duration, etc. [12] [9]. Therefore, objective reasons enforce the need for this kind of labor that cannot be indefinite. Fixed-term labor relation cannot last longer than 24 months, with some exceptions determined by the law [12]. Lower threshold for fixed-term labor relation is not set, but it is unreasonable to be shorter than one month as one month is a standard payoff unit. Therefore, labor relation can last less than 24 months, but not more, because if that is the case, i.e. if an employee works at least five work days after the contract has expired, then that labor relation becomes full-time [12]. During the fixed-term labor relation, employees have the same rights and responsibilities as full-time employees. The only difference is that the period for performing the job is already determined [5].

Part-time labor relation is labor relation where employees do not work full time. Part-time labor carries fewer working hours than a full-time job, that is, less than 40 hours a week and less than 35 hours for minors [12]. Labor relation of this kind can last indefinitely or temporarily. The reason for part-time labor relation is usually insufficient scope of work. If there is work, but its scope does not require full-time employment, the employer may establish a part-time labor contract with an employee. If that is the case, the employee has labor rights proportionate to the time they spent at work, unless otherwise provided by the law, general act or employment contract. [12].

Labor relation for the jobs outside employer's premises stands for remote labor and work from home (Labor Law). This kind of labor differs from the conventional in that the employee does not perform the work within the employer's premises, and often they provide the work space themselves (living space or else). Labor outside the employer's premises is atypical as the employer does not control it directly. Therefore, the norm is work efficiency instead of the manner of execution. This is precisely the reason why this kind of labor is specifically convenient for IT, textile industry and art. Nevertheless, the labor is still performed for the employer. The intertwining of the private and business field is the most limiting factor influencing this form of work. This kind of labor shall not be dangerous or hazardous to the health of the employee and other persons and to the environment as well [12].

In this form of work, an employee has the same rights and responsibilities as an employee working within the premises of an employer, unless otherwise provided by the general act or employment contract. One should specifically have in mind that the volume and time periods for execution of the tasks cannot be determined in a manner that prevents the employee to use a daily, weekly or annual rest period and that the earnings of an employee who works outside the employer's premises may not be established in a smaller amount than the earnings of an employee who performs the same work within the employer's premises. (Labor Law).

Labor relation with household help includes jobs like babysitting, personal driver, as well as some more complex jobs, such as teaching. This form of labor offers different types of contracts with a wide variety of options, where employer can offer accommodation, or where one or more types of work can be performed for one or more employers. The employee who performs this form of work has standard rights and responsibilities, with some exceptions. Under the labor contract, part of the salary can be paid in kind (providing accommodation, food, etc.), and the lowest percentage which is mandatory to be paid in money cannot be less than 50% of the total earnings. Moreover, this form of labor relation cannot be formed with a spouse, adoptee, and blood relative in a straight line regardless of the degree of kinship, and in the collateral line up to the second degree of kinship, and with affinal kin up to the second degree of kinship. [12].

Temporary and periodical jobs are a type of flexible form of labor outside the scope of employment that incorporates those jobs that are not constant and continuous, but last shorter or are performed occasionally. Therefore, no special position is provided for them [9]. Those jobs do not require more than 120 work days in a calendar year and an employer may conclude a contract with an unemployed person, a part-time employed person to full working hours, a pension beneficiary, or a member of the youth/student association [12]. Temporary jobs take a shorter period of time, but are performed continuously until completion (e.g. harvesting), while periodical jobs also take a shorter period of time, however, they are not performed continuously, but from time to time (e.g. bill collecting). For this kind of engagement, the rights and responsibilities of engaged persons and employers differ greatly from the rights and responsibilities of a person who is subject to labor relation.

Labor based on a temporary service contract is a form of work outside labor relation that an employer can form with a specific person for performing the jobs outside employer's line of business. Those jobs may include independent manufacture or repair of a particular item, independent performing of particular physical labor or intellectual work, as well as particular artistic or other activity in the sphere of culture [9] [12]. Taking into account that these jobs are not classified with the employer, the employer may

conclude a contract with their own employee [9]. This form of flexible work outside labor relation is similar to labor relation due to the fact that the contract is concluded with regard to the personal characteristics and abilities of the person who performs the work, therefore, he/she is obligated to personally perform the work specified in the contract, similar to a person under the labor relation. Nevertheless, the rights and responsibilities of parties under the temporary service contract differ greatly from the rights and responsibilities of a labor relation.

Supplementary work is a form of work where an employee, who is employed full time with an employer, may conclude a contract with another employer up to a maximum of one-third of full working hours [9] [12]. Supplementary work contract shall specify the right to monetary compensation and other rights and responsibilities on the ground of labor. Both the employer and employee are motivated to establish this form of labor. The employer's motivation refers to the need for deficient personnel who are not available as unemployed persons as they are already employed full-time. An employee is motivated to establish a supplementary work contract due to the possibility of gaining additional income along with other rights [9]. Supplementary work contract determines the right to supplementary compensation for performed labor (which shall not be considered a salary) and other work-related rights (e.g. transport costs) and responsibilities. In the case of supplementary work, one should pay special attention to the balance of working hours spent with two different employers, as well as the clause prohibiting competition, if it is provided in the labor contract with the employer where the person performs a full-time job. If the clause is provided and the supplementary work violates it, the consent of the employer for supplementary work is required [9].

Labor based on the vocational education and training contract is also a form of flexible work outside labor relation. An employer can form this kind of contract with a person who wants to start an internship and take a vocational exam, if those are the conditions for independent practice, as well as for the purpose of professional development and acquisition of special knowledge and skills i.e. specialization [9]. Therefore, this is the work where an employer is not obligated to provide a monetary compensation, but it can be done. A person employed in this manner has the rights and responsibilities specified by the law, general act of the employer or contract.

## **WORK FLEXIBILITY AND SAFETY AND HEALTH OF EMPLOYEES**

Since the idea of work flexibility is to increase employee's productivity and employer's profits, it is very difficult to pinpoint the parties which will benefit from this form of labor. Certainly, flexibility is excellent for the capital, i.e. the persons who control it. Workforce is cheaper in conditions where workplace is

unsafe and where employees are not well protected. This fact raises the question of the quality of legal protection of persons who are performing flexible forms of labor. In that sense, it is crucial to take into account the right to occupational safety and health [15]. The right to occupational safety and health in the Republic of Serbia is considered one of the most important rights, which is confirmed by the Constitution stipulating that everyone has the right to safe and healthy work conditions [2]. This provision already indicates that this right refers to all persons who perform jobs with an employer regardless of the type of employment. The Law on Workplace Safety and Health of the Republic of Serbia regulates this issue in detail. This law regulates the implementation and improvement of the workplace safety and health of persons involved in work processes as well as persons currently in the working environment with the aim of preventing injuries at work, occupational diseases and work-related diseases [16].

This law provides that an employee is a domestic or foreign natural person, employed by the employer, as well as the person who carries out work on any grounds or is trained by the employer, except for the person employed to carry out domestic assistance [16]. From this provision one can see that this regulation does not only refer to persons who have established a labor relation with the employer but also to persons who perform work outside labor relation. In terms of flexible work forms, it means that the Law on Workplace Safety and Health applies to employees who work part-time, based on a fixed-term contract and outside employer's premises.

The only form of flexible labor relation that is not addressed by this law is the one involving household help. Taking into account the nature of this flexible labor relation, one could find this exception somewhat logical. If this law applied to household staff there would be a plethora of responsibilities for both the employer and employee, which would be very difficult to fulfill (e.g. the adoption of Risk Assessment Act). The fact is that there are no regulations in Serbia which would properly deal with this form of labor, and because of that the employer is the one who decides on the work conditions. This is the reason why household help is often referred to as the so-called actual work. However, the rights and responsibilities of household help (methods of payment and so forth) are standardized. It is still necessary to regulate this issue in much more detail, especially in terms of occupational safety and health, since the application of the Law on Workplace Safety and Health is explicitly excluded. Therefore, one may ask a question on the regulation which will involve this category.

Also, based on the abovementioned legal regulation, one could see that the Law on Workplace Safety and Health pertains to flexible work forms outside labor relation - temporary and periodical jobs, labor based on a temporary service contract, supplementary work and labor based on the vocational education and training

contract. Therefore, excluding the household staff, all other forms of flexible labor are covered by the Law on Workplace Safety and Health. This is supported by the provision that determines the scope of persons entitled to occupational safety and health. In addition to employees, this right is guaranteed to pupils and students performing mandatory manufacturing, professional practice or practical training, vocational training, re-qualification or additional qualification, as well as all persons who are currently in the working environment for performing specific jobs. In this manner, all persons who perform some form of flexible labor are incorporated in this law.

Beside the law on Workplace Safety and Health, the protection of employees in the legal system of Serbia is further reinforced by health, retirement and disability insurance. The Health Insurance Law [13] regulates the rights and responsibilities deriving from compulsory health insurance of employees and stipulates that compulsory health insurance shall incorporate insurance in case of disease and injury outside work and insurance in case of work-related injury and professional disease. Persons who have compulsory insurance according to this Law are, among others, the persons who are in employment relation, persons who work outside the premises of an employer, persons who work as household staff, persons who perform temporary and periodical jobs, persons who work under the temporary service contract, and under contracts which include monetary compensation for the job performed [13]. Therefore, it can be seen that this law incorporates all persons who are conducting flexible forms of labor (with or without labor relation).

The Law on Retirement and Disability Insurance, as a basic regulation that assures compulsory retirement and disability insurance, regards employees as persons entitled to compulsory insurance [14]. Compulsory insurance is guaranteed to persons who perform work outside employer's premises, persons performing temporary and periodical jobs, persons under a temporary service contract and other contracts which include monetary compensation for the job performed [14]. Therefore, as is the case with health insurance, this law applies to persons who are engaged in flexible work forms.

## CONCLUSION

Work flexibility presents a new approach to labor legislation different from conventional full time employment [3]. It is one of the most frequent and controversial trends in labor relations triggering discussions by employers, employees, the state, unions, associations of workers. This is the reality and inevitability of modern social circumstances. Reasons for work flexibility are numerous – globalization, economic crisis, unemployment, internationalization of business, privatization of public sector, etc. This indicates that the existing legislation is not sufficient, i.e. legal frameworks for labor are “too narrow” and

“rigid” [6]. This is, precisely, the motive for deregulation of labor legislation, which nowadays presents a general trend, because a modern and democratic state implies dynamics, development and adaptation to constant social changes [4], even in the realm of labor relations. Here, there is a need and possibility for a social dialogue where we can gain some insight into interests of employers and employees [11].

Until recently, the employment in Serbia meant a full-time labor relation on an indefinite period of time until the end of one's working life. However, numerous circumstances have affected this point of view recently, especially employers' need to quickly adapt to constant market fluctuations. Flexibility and deregulation of labor relations are basically motivated by economic factors and need for profits.

These circumstances raise the question of the position of workers. If social welfare is to be achieved, one must provide and adequately respect workers' rights. This also applies to persons who perform flexible work forms and their occupational safety and health.

Labor legislation of Serbia recognizes the occupational safety and health of “flexible” workers through the Labor Law, Law on Workplace Safety and Health, Health Insurance Law, Law on Retirement and Disability Insurance and other regulations. By analyzing these regulations, one could conclude that “flexible” workers are guaranteed equal occupational health and safety rights as conventionally employed persons, with some justified exceptions. Also, these forms of labor, as well as “conventional ones” have their shortcoming which vary from one form of flexible work to another [10] [17], but this is another research topic.

The scope and quality of legal protection for occupational safety and health of “flexible” workers has become an increasingly important issue for legislators because these forms of labor will become more and more popular in the future. This trend is justified, not only by employers', but also by employees' interests. The only thing that matters is appropriate protection of the interests of both parties.

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## FLEKSIBILNI OBLICI RADA I BEZBEDAN RAD

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**Apstrakt:** Standardne forme rada sve više bivaju zamenjene onim oblicima rada koji odgovaraju zahtevima razvoja nauke, ekonomije, globalnim tržišnim trendovima, kao i interesima organizacija, odnosno poslodavaca i zaposlenih. Fleksibilan rad podrazumeva elastičan i prilagodljiv pristup radu i svim bitnim pitanjima koja se tiču organizovanja i odvijanja rada. Kod takvih oblika rada poseban izazov predstavlja obezbeđivanje najvišeg mogućeg nivoa bezbednosti i zdravlja zaposlenih na radu, a sa ciljem da se sve neželjene posledice svedu na najmanju moguću meru. Ovaj rad se bavi fleksibilnim oblicima rada i bezbednim radom. Sagledavanje ovih oblika rada iz ugla bezbednosti i zdravlja na radu omogućuje njihovo bolje razumevanje, kao i razumevanje problema bezbednosti i zdravlja zaposlenih koji obavljaju ovakav rad, a uz određene ideje za unapređenje celokupnog sistema bezbednosti i zdravlja na radu.

**Ključne reči:** radni odnos, fleksibilnost, bezbednost i zdravlje na radu, zaposleni

