

Health at Work,
Ageing and
Environmental
Effects on Future
Social Security
and Labour Law
Systems

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Edited by

Nuno Cerejeira Namora

Lourdes Mella Méndez

Duarte Abrunhosa e Sousa

Gonçalo Cerejeira Namora

and Eduardo Castro Marques

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PREFACE

LOURDES MELLA MÉNDEZ

As always happens when I have to introduce a new book, my first words should be to highlight the honour that this implies for me. On this occasion, the honour is greater, if possible, because the work that is now presented has its origin in the *I International Congress “Labour 2030. Rethinking the future of work”*, co-organised by important international entities (Law Academy, AJJ and CIELO Laboral), and held in Porto (Portugal) in July 2017.

The first part of the book, entitled “Health at work and ageing as challenges for Social Security”, addresses key aspects of decent work that the legislator of the 21st century must guarantee for every worker. In this line, the protection of occupational health is fundamental and it is necessary to pay attention to the new psychosocial risks derived from new technologies in the workplace.

In the recent labour market, competitiveness and the desire for professional promotion gain priority, giving rise to toxic business organisations. Rigid management styles and pressures to increase productivity have caused the job to become a psychosocial risk factor by itself. It is possible to recognise psychological pressure exercised by the employer in the workplace as the worker’s health is affected. The extension of the use of new technologies in the labour context affects the worker’s privacy and provokes the excess of non-paid overtime, generating a lot of different problems. Employers must create workplaces with lower levels of stress and provide a family-friendly working environment. The correlation between work-related stress and diseases is clear. Psychosocial stress directly and indirectly affects workers’ health, leading to physio-pathological syndromes. In particular, so-called technostress is increasingly becoming a major problem associated to the digital innovation on work and its main symptoms are techno-fatigue, insomnia, depression or techno-anxiety. Low levels of empowerment, low levels of co-worker support, unbalanced reward systems, and injustice at the workplace are named among the various business factors that generate this type of stress.

Several studies from Hungary, Italy, Portugal and Spain go deeper into this issue. The chapter from Hungary brings together the results of medical and legal researches and demonstrates the importance of soft law in employment policies fighting work-related stress. From Spain, some important insights are given related to the incorporation of NICTs in the workplace, which has led to the emergence of a new labour culture of continuous performance or full availability that favours the extension of working hours, causing the boundaries between working time and rest time to be diluted. In this context, and on the assumption that working time policies at company level must aim to achieve a “decent work time” (ILO), Spanish researchers analyse this “technological availability time”, assessing its nature and its implications for work-life balance and the psychosocial health of employees. The key question is to analyse whether the digital disconnection should be incorporated into our legal system as a “new” right or, on the contrary, its consideration as a “right to rest” can be sufficiently guaranteed by current labour legislation. The principles for strategies of prevention of stress caused by interaction with technology, in the light of the framework of Spanish collective agreements, are considered too.

Additionally, chronic diseases and the ageing of the workforce are matters related to prevention of labour risks and the social security system. Particular attention is given by Italian and Portuguese research to the situation of employees with cancer, who require necessary special protection. On the other hand, the management of healthy ageing in the work environment has given rise to new challenges for the enterprises, conceiving the need to reformulate legal, technical and doctrinal approaches to occupational safety and health. Governments and public administration should promote the application of specific protection and prevention measures aimed at groups exposed to “particularly sensitive risks”. The specific protection for this group of workers who are particularly sensitive to occupational hazards should also take account of occupational diseases caused by exposure to chemical, physical or biological agents, that could produce oncological pathologies.

Other fundamental issues connected to social security regimes are faced in this book. For example, the increase of the ageing population and the sustainability of the social security systems or the serious problems that arise from the aggregation of contributions for access and determination of the amount of the retirement pension of returned migrant workers after they have provided services in another Member State.

The second part of this book, titled “Trade unions and environment: key issues for Labour Law”, includes chapters about these important

aspects from different countries. The existing regulatory schemes governing the representation and participation of workers are affected by some new factors such as the transformation of work as a consequence of technological changes and the consolidation of outsourcing as a way of organising business activity. It implies the necessity of overcoming the present legal regulation related to this representation and to establish new mechanisms that modernise these representative bodies and their means of action for a better defence of the workforce. Besides, representative bodies and trade unions must be prepared to address new challenges such as the issues concerning the impact of Industry 4.0 on occupational levels and organisation of work or the green economy and protection of the environment. In this sense, the preservation of the environment has become one of the most complex challenges of the current century, requiring the promotion of sustainable development by social agents. In light of the international concern about this situation, some corporations have adopted different Corporate Social Responsibility initiatives of a voluntary and unilateral nature that, however, have been considered insufficient. In this context, it is advisable to impulse the negotiation of International Framework Agreements between transnational corporations and global union federations, so the role of these unions is fundamental.

Another interesting matter for representative bodies is related to the adequate protection of workers who are in a mobile situation. In this sense, the third part of this book deals with interesting chapters related to the new forms of labour migration in a global labour market, including the researcher's mobility in universities. Different authors analyse these aspects and provide solutions to improve the labour status of the workforce. In addition, the book also contains some insights about whistleblowing and dress code as relevant issues in a daily labour activity.

Finally, the last words for authors and readers; to the first ones, we thank their research and professional work; to the second ones, we desire a good and useful reading of this book.

Santiago de Compostela, December 2017.

I.

SALUD LABORAL Y ENVEJECIMIENTO COMO RETOS PARA LA SEGURIDAD SOCIAL / HEALTH AT WORK AND AGEING AS CHALLENGES FOR SOCIAL SECURITY

CHAPTER ONE

EMPLOYERS' TWO CENTS FOR A HEALTHIER WORKING ENVIRONMENT— HOW COULD EMPLOYMENT POLICIES REDUCE WORK-RELATED STRESS IN HUNGARY?

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Abstract

This chapter is intended to demonstrate that employers have a role to play in increasing productivity by two means: creating workplaces with lower levels of stress and providing family-friendly working environments. The correlation between work-related stress and oncological diseases is clear. Psychosocial stress directly and indirectly affects our health, leading to physiopathological syndromes. Several studies prove that these syndromes could be due to work-related stress. Among various factors, a low level of empowerment, a low level of co-worker support, an unbalanced reward system, and injustice in the workplace are named. In Hungary about 6 per cent of the working population experiences workplace related stress on a daily basis. Health problems could be challenged by a targeted employment policy, including the encouragement of child birth and oncological disease control programs. I will argue that employers could effectively contribute to these employment policies by introducing workplace policies given there is a national strategy.

The aim of the chapter is to bring together the results of medical and legal researches and to demonstrate the importance of soft law in employment policies fighting work-related stress. The primary research focus is on the employment situation of working parents in Hungary. The first part gives an overview on the current demographical challenges in

Hungary linked to work-related stress. The second part explains the medical background of occupational stress. The third part analyses the legal background of related employment issues, with special regard to vulnerable employee groups, such as single parents or fathers. The fourth part analyses the hard and soft law solutions, while the last part concludes.

Introduction: Health situation and demographic challenges in Hungary

Researches demonstrated that cancer is the second leading cause of death globally and was responsible for 8.8 million deaths in 2015; in other words, nearly one in six deaths are due to cancer globally. However, more than two-thirds of the deaths occur in low- and middle-income countries. Around one-third of the incidents are closely connected to behavioural and dietary risks, like high body mass index, and tobacco and alcohol use.¹ Forecasts suggest that around 26 million deaths would be registered by 2030.² In Hungary the first cancer-related deaths were recorded as early as 1860; the number of cases has quadrupled in the last five decades, bringing Hungary into the list of the most vulnerable countries in the world.³ In the European Union Hungary is also among the worst performing countries, having ten times more cancer-related deaths than member states with similar demographical and socio-economic backgrounds. In Hungary the ratio of death due to ontological issues has increased by 148 per cent in the last decades.⁴

The economic output of a country has special importance, and it is in the interests of employers as the good health condition of employees could be directly linked to better work performance. Thus, employers should implement necessary prevention measures at workplaces. The correlation between work-related stress and oncological diseases is clear. Psychosocial stress directly and indirectly affects our health, leading to physiopathological syndromes. Several studies prove that these syndromes could be due to work-related stress. Among various factors, a low level of

¹ Stewart, W. Bernard, Wild, P. Christopher, eds., *World Cancer Report 2014* (WHO Press, 2014), 14.

² Tompa, Anna, "Daganatos betegségek előfordulása, a hazai és a nemzetközi helyzet ismertetése" *Magyar Tudomány*. 172. 11 (2011): 1333–1346.

³ See also: World Cancer Report 2014, 396; and Hungarian Bureau of Statistics, 2012 Population Health Report.

⁴ Hungarian Bureau of Statistics (2012).

empowerment, a low level of co-worker support, an unbalanced reward system, and injustice in the workplace are named.⁵

The focal point of researches related to work-related stress is how individuals could effectively tackle the problems arising from stressful situations. It is argued that the effectiveness of any techniques developed largely depends on the antecedents of an individual's experiences in his environment. Some of the negative precedents could be when the employee permanently loses control over his job, the negative atmosphere at the workplace, or the threat of being unemployed.⁶ Other researches added factors like an unreasonably high expectation level, uncertainty in the workplace, a lack of support from co-workers or supervisors, low wages, increased overtime, and shift work.⁷ When employees experience these factors in the long term the sense of hopelessness, unableness and isolation occurs and may spread to situations beyond the workplace as well. This sensation necessarily takes its toll on the individual's health condition.⁸ Kopp et al. argue that according to their large national representative study a cluster of stressful work-related psychosocial conditions accounts for a substantial part of the variation in the self-reported mental and physical health of the economically active population in Hungary.⁹ They also found important gender differences: while lack of job security was the most important factor for men, women more often reported a lack of support—especially from supervisors, a lack of job satisfaction and a lack of control over their job as contributors to stress. Women suffered from the unbalanced reward system more than men (20.0 per cent and 16.5 per cent respectively), and they tended to take up more

⁵ For a list see Salavecz, Gyöngyvér, “A munkahelyi stressz és az egészség összefüggései hazai és nemzetközi viszonylatban”, PhD diss., University of Medical Sciences (SOTE), Hungary, 2011, 10ff.

⁶ Seligman, E. P. Martin, *Helplessness: on depression, development and death* (San Francisco. Freeman, 1975).

⁷ Kopp, Mária et al., “Work stress and mental health in a changing society” 18 *Eur. J Public Health* 3 (2008) 238-44; J. Siegrist et al., “Linking sociological with physiological data: the model of effort-reward imbalance at work.” *Acta Physiol. Scand.* 161 (1997) 112–116; Johnson and E. M. Hall, “Job strain, work place social support, and cardiovascular disease: a cross-sectional study of a random sample of the Swedish working population.” 10 *American Journal Public Health* 78 (1988): 1336-1342.

⁸ Kopp, Mária et al., “Psychosocial risk factors, inequality and self-rated morbidity in a changing society.” *Soc. Sci. Med.* 51 (2000) 1351-1361.

⁹ Kopp, Mária et al., “Work stress and mental health in a changing society”, 3 *Eur. J Public Health* 18 (2008) 238-244.

overtime as well (28.6 per cent and 24.1 per cent respectively).¹⁰ Also, the research proved a correlation between stress level and education: employees with an elementary school degree suffered from work-related stress the most (13.8 per cent) and employees with tertiary education the least (4.3 per cent).¹¹

Creating a mentally and physically healthy society would have a positive effect on the economic output of the country as well. Hungary faces a demographic challenge: the number of births has been drastically decreasing, the number of deaths outnumbered the number of live births first in 1981 and ever since there has been a decline in population.¹² These trends lead to the worsening of the dependency ratio¹³ and the relatively fast ageing of the population.¹⁴ This is assumed to be one of the contributing factors of the low economic performance of the country. A stable and predictable legal environment regarding the employment situation may also positively affect fertility. Researches demonstrate that the increasing competition in the labour markets and employers' rising demands for workers' extended flexibility discouraged childbearing in general, and in particular, the first birth. The difficulties in performing well induce women to postpone childbearing until they have established a relatively solid position in the labour market. Employment instability and job precariousness increase uncertainty and intensify the difficulties experienced by parents, negatively affecting fertility. Work-related stress has an impact on an employee's health condition and could even lead to oncological problems, further deepening demographic problems in Hungary. Therefore, it is important to support employers in creating family-friendly policies by improving self- and co-regulatory processes and by adopting and implementing long-term strategies. Before analysing the regulatory aspects, the medical background of occupational stress is discussed.

¹⁰ Also confirmed by Salavecz (2011) 72.

¹¹ Kopp (2007).

¹² Hungarian Bureau of Statistics (2017) for detailed long-term data see: https://www.ksh.hu/docs/eng/xstadat/xstadat_long/h_wdsd001a.html (last retrieved on 14 June, 2017).

¹³ From 2001 to 2016 the dependency ratio changed from 46.5 to 48.7 (Hungarian Bureau of Statistics). For detailed data see https://www.ksh.hu/docs/eng/xstadat/xstadat_annual/i_wnt002.html (last retrieved on 14 June, 2017).

¹⁴ It is forecast that 50 per cent of the Hungarian population will be older than 50 years by 2050. See: Molnár, Tamás and Barna, M. Katalin, "Demográfiai jellemzők Magyarországon és az Európai Unióban, különös tekintettel a daganatos megbetegedések okozta halálózásra", *Statisztikai Szemle*, 90. 6 (2012): 553-555.

I. Occupational Stress and Health Condition

For salaried employees the primary source of income in most cases is the wage they earn during employment. Therefore, employment is one of the most important factors for our social status and identity. Work is very important in building social relations; once the job is performed well, social rewards such as recognition or the sense of belonging are benefits which are able to positively contribute to one's self-image.¹⁵ Therefore psychosocial factors linked to work are able to largely influence our mental and physical health.¹⁶ It is assumed that psychosocial stress present in workplaces constitutes a larger threat to the physical and mental wellbeing of workers in Central-Eastern Europe, where social changes of the past decades were significant.¹⁷ It is argued that in post-socialist countries a common belief is that after the fall of the state, socialist regime social redistribution became unequal and some privileged groups, who for example benefited from privatization, were rewarded unjustifiably. Traditional values and morals lost their significance. Due to the structural transformation triggered by capitalism, the nature of collective consciousness and collective actions has changed remarkably.¹⁸ Traditional forms of work and institutional ties have been diminishing; individuals face increased challenges in developing their own career path. Individualization, mobility and flexibility are the most lucrative strategies in an ever-changing economic and social environment. Individuals are pressurized from a great many directions and forced to enrol in multiple social groups, which are heterogeneous and often contradictory. Traditional elements of working-class consciousness, such as solidarity or mutual support have been replaced by the need that actors should define themselves through various self-narrations and act individually to represent their own interests in a pluralistic way.¹⁹ Therefore, the risk of experiencing some forms of psychosocial stress is more present in post-socialist countries, especially in connection with one's working life.²⁰ For

¹⁵ Siegrist, Johannes, Klein D., Voigt K. H. "Linking sociological with physiological data: the model of effort-reward imbalance at work." *Acta Physiol. Scand.* 161 (1997): 112–116.

¹⁶ Bobak, Martin et al., "Socioeconomic factors, material inequalities, and perceived control in self-rated health: cross-sectional data from seven post-communist countries." *Soc. Sci. Med.* 51 (2000): 1343-1350.

¹⁷ Ibid.

¹⁸ Boltanski, Luc and Chiapello, Eve, *The New Spirit of Capitalism*, Verso, 2006.

¹⁹ Lahire, Bernard, *The Plural Actor*, Polity, 2011.

²⁰ Bobak et al., Socioeconomic.

example, in Hungary about six per cent of the working population experiences workplace related stress on a daily basis.²¹

Work-related stress has been studied since the late 1970s. Karasek argues in his widely studied job demands-control model that control buffers the impact of job demands on strain and can help enhance employees' job satisfaction with the opportunity to engage in challenging tasks and learn new skills.²² Other models have been created as well, for example in the early 1990s the effort-reward imbalance model was developed.²³ This model postulates that jobs characterized by a perceived imbalance between high effort and low rewards are stressful and will lead to negative health outcomes, especially for persons with limited coping abilities. According to this model, a person with a high need for control will respond in an inflexible way to work situations of high effort and low reward; and will therefore be more stressed and disease-prone than a person in the same situation who has less need for control.

Many factors could be examined in connection with occupational stress, this chapter focuses on one specific area: the stress that working parents experience while trying to balance the duties of family and job. The situation of parents in general, and single parents, pregnant women and fathers in particular, is going to be examined here in the context of the Hungarian Labour Code.

II. Hungarian Labour Market Policies affecting Families

It is important to analyse the economic and social contexts of the labour market together with the gender roles present at workplaces to detect what kinds of roles society and politics are assigning to men and women. In Hungary there have not been significant changes in gender policy during the past decades. Traditional gender roles were implicitly consolidated by the socialist governments and labour market access and political presence were not accelerated. However, the present conservative governing party Fidesz and its politically subordinate ally, KDNP

²¹ Molnár and M. Barna, *Demográfiai*, 553.

²² Kain, Jason and Jex, Steven, "Karasek's (1979) job demands-control model: A summary of current issues and recommendations for future research", in Pamela L. Perrewé, Daniel C. Ganster (eds.) *New Developments in Theoretical and Conceptual Approaches to Job Stress* (Research in Occupational Stress and Well-being, Volume 8) Emerald Group Publishing Limited, 2010: 237–268.

²³ Siegrist, Johannes et al., "Low status control, high effort at work and ischemic heart disease: Prospective evidence from blue-collar men" *Soc. Sci. & Med.* 31 (1990): 1127–1134.

(Christian Democrats) explicitly aim to reserve the homemaker and mother role for women and the breadwinner and decision-maker one for men. The government's standpoint has not been altered by civil society organisations, mostly because consultation and social dialogue were cut off as early as 2010.

It is well-known that the length and quality of time that parents spend with their children have a significant impact on the physical and emotional wellbeing of their children, and also on couples' relationship, thus they influence the psychosocial status of the whole family. On the other hand, if families have no opportunity to spend time together and give active attention to their children, that is definitely influencing a couple's willingness to have children at all. It could be assumed therefore that labour market issues have crucial importance for policy makers, and parents would enjoy a high level of protection on the labour market as well. By taking a close look at the current Hungarian labour law reforms, it could be argued that in the current regulatory environment employees cannot be good workers and good parents at the same time. Stress rising from this dividedness and constant compulsion for conformity may contribute to a weaker health condition and exposition to work-related oncological illnesses as well. Regulatory problems are discussed first in general, then specific issues related to vulnerable employee groups are indicated.

1. General Issues

The stated aim of the new Labour Code was to create the most flexible labour market among Visegrad countries by all means including internal and external flexibility and wage flexibility. However, while the new Labour Code clearly changes the balance between employees and employers to the benefit of the latter, no additional measures were adopted to increase employee security. Moreover, some of the previous provisions relating to security were changed to the detriment of employees.²⁴ By reducing the minimum standards of employment and increasing flexibilisation, the key provisions of the new Labour Code allow employers to increasingly shift the business risk to employees.²⁵

²⁴ Kollonay Lehoczky, Csilla "Génmanipulált újszülött–Új munkatörvény az autoriter és a neoliberális munkajogi rendszerek határán" In Kun, Attila (ed.) *Az új Munka Törvénykönyve Dilemmái* (Budapest, Károli Gáspár Református Egyetem, Állam- és Jogtudományi Kar, 2013).

²⁵ For example, Section 146 of the Labour Code stipulates that in the event of the employer's inability to provide work as contracted during the scheduled working

Flexibilisation of working time puts most of the burden on employees working in non-standard working arrangements, like on-call and standby duty, shift workers, and employees with flexible working time arrangements.

The regulations on working time for employees working on duty were amended in 2016, abolishing the legal protection which had prohibited employers from scheduling regular working time for Saturday in case an employee was on duty on Sunday as well.²⁶ The amendment does not specify how many weekends an employee could work on both Saturdays and Sundays.²⁷ A parent who cannot spend time with her/his family at the weekend is obviously failing the family duties. Moreover, single parents may need to have somebody to look after their children, even if it is financially burdensome for them.

The Labour Code was recently amended regarding flexible working time arrangements.²⁸ While the new regulations allow employers to order employees to perform a task at a specific time without any statutory limitation, flexitime employees are not entitled to guarantees and benefits regarding overtime (and overtime allowance), daily and weekly rests, and public holidays. Moreover, it is the employer who can unilaterally decide which employee has a flexible working arrangement; if the consent of the employee is thus not required for such an arrangement, it means that the employee's choice is restricted to whether or not he takes up the job.

Flexibilisation of the workforce could be further accelerated by the various atypical forms of employment. The most common atypical employment for parents, but mostly for women, is part-time work. Part-time work is argued to be ideal for parents with young children, as it helps to balance family and professional life.²⁹ The Hungarian Labour Code also provides for the opportunity for parents upon returning from parental leave to modify their full-time job to a part-time one until their children reach the age of three. Even though the employer shall not refuse the request of a mother to amend the employment contract in such a way, employers are only obliged to amend a full-time contract for a four-hour part-time

time, employees are not entitled to the basic wage if the inability of the employee to provide work is due to unavoidable external reasons.

²⁶ Section 105 of the Labour Code.

²⁷ Apart from that one free Sunday per month should be provided for all employees for part-time workers working Saturdays and Sundays only. Section 106 para (2) of the Labour Code.

²⁸ Section 96 para 2 of the Labour Code.

²⁹ In Hungary only 5.7 per cent of employees work part-time, compared to 19.6 per cent of the EU-28 average. Hungarian Bureau of Statistics (2015).

position.³⁰ Thus, if a parent wishes to have any other working arrangement, he/she has to bargain with the employer and the final decision remains at the employer's discretion. This might be one reason why part-time work is not common in Hungary. On the other hand, generally speaking the ratio of part-time workers is very low in Hungary compared to other Member States of the European Union. It is argued that the low wage a part-timer could earn explains why employees prefer full-time jobs. If the pay difference could be covered by social security for parents, more families may choose this option to achieve a better work-life balance. However, it should also be remembered here that part-time workers do not enjoy adequate guarantees at workplaces and are often discriminated against compared to full-time employees.³¹

The 2012 Labour Code significantly reduced the protection of employees in cases of termination. On the one hand, the process of termination by the employer was simplified to lower the costs of dismissal, and on the other hand, the legal consequences of unlawful termination were eased. In cases where dismissal is not lawful the employer is liable to provide compensation for damages resulting from the wrongful termination of employment. However, the compensation for loss of income from employment payable to the employee may not exceed twelve months' absentee pay.³² In lieu of damages, the employee may demand payment equal to the sum of the absentee pay due for the notice period when his/her employment is terminated by the employer.³³ In addition to damages, the unlawfully dismissed employee may apply to the court for reinstatement; however, the cases on which such an action could be based were narrowed down.³⁴ This combination puts a heavy burden

³⁰ Section 61 para (3) of the Labour Code.

³¹ Burri, Susanne and Aune, Helga, *Sex Discrimination in Relation to Part-time and Fixed-term Work*, European Commission, 2013.

³² Section 82 paras (1) and (2).

³³ Section 82 para (4). The regulations concerning the consequences of wrongful termination were at the centre of attention during the debate on the new Labour Code, as they are considered to be major changes to the detriment of employees compared to the regime of the 1992 Labour Code. Formerly, the employee was entitled to payment between the dates of the termination of employment and the decision of the court, beyond an extra payment of 2-12 months' salary or reinstatement in the job. The employee was not obliged to mitigate the cost to the employer by searching for a new job in this period. On the other hand, many welcomed the changes, as it was deemed to be unfair to make employers liable for the long court proceedings, lasting on average three to four years.

³⁴ Section 83 of the Labour Code.

especially on vulnerable employees, as their job insecurity has grown and their possibilities to seek justice for unjustified dismissal are limited.

These simplifications of termination hit hard employees with bad health conditions. The employer is allowed to dismiss an employee during the period of sick leave, as opposed to the previous regulations, which did not allow employers to give notice until the employee returned from medical leave.³⁵ It means that an employee on sick leave could receive his notice during his medical leave, and the notice period starts upon his return to work. That may not contribute to a speedy recovery. Also, the employer is allowed to terminate by notice the employment relationship of a worker who is receiving rehabilitation treatment or rehabilitation benefits due to the worker's capacity related to medical reasons if the worker can no longer be employed in his/her original position and no other job is available that is considered appropriate for his/her medical condition, or if the employee refuses to accept a job offered by the employer without good reason.³⁶ These regulations are beneficial for business as there is no strict obligation for employers to provide reasonable accommodation for those who have partially lost their ability to work, and the provision of "good reason" gives a wide margin of appreciation for employers. The job insecurity of employees on rehabilitation is therefore great, which could further increase their vulnerability, especially since the system of social security allowances was modified in 2011 narrowing the scope of beneficiaries and tying the amount of the allowances to old age pensions.³⁷

2. Single Parents

Working arrangements of single parents constitute a great issue. Generally, no alleviation is provided for single parents, except a relative ban on the dismissal of single fathers and some restrictions on night work.

³⁵ Section 68 para (2) of the 2012 Labour Code. It shall be noted that one of the most contested regulations of the 1992 Labour Code was the prohibition of notice during medical leave, as reportedly many employees took unlawful advantage of the protection.

³⁶ Section 66 para (7) of the Labour Code.

³⁷ In 2017 those who lost at least 70% of their working capacity are entitled to a rehabilitation allowance of HUF 34,475 (EUR 114.1) per month. The allowance of those who suffered less impairment is based on their previous average wage, and depending on their condition, it is 40% to 100% of their previous wage. To contextualise these amounts of money, the poverty threshold for a single person household is HUF 73.900 (EUR 244.1) per month in Hungary (National Bureau of Statistics, 2016).

However, the latter does not provide sufficient protection, as the Labour Code gives an exception to single parents from night work only until the child reaches the age of three. Knowing that there is not much difference in the need for the supervision of pre-schoolers or of children in elementary school as none of them could be left alone for the night, this provision indicates that single parents need to arrange supervision for their children, even if it leads to additional costs.³⁸

One of the most detrimental changes in the regulations introduced by the 2012 Labour Code is related to the protection of parents. Single fathers raising a child in their household who are not taking up parental leave or unpaid child care leave do not enjoy full protection against dismissal, but the law requires the employer to offer a vacant position, if available.³⁹ This relative protection is also ceased after the child reaches the age of three. However, without adequate active labour market policy measures this regulation is not sufficient to protect parents against unemployment. The existential fear created by job uncertainty increases the vulnerability of these employees. Moreover, if these employees are terminated wrongfully, they cannot apply for reinstatement, therefore they need to look for other employment after the unfair dismissal.

3. Pregnant Women

The protection of pregnant women was a subject of heated debate. The original version of the Labour Code required pregnant women to inform their employers about their condition to activate protection against termination.⁴⁰ However, the Constitutional Court reviewed the named section and found that it unjustifiably restricted the privacy of pregnant women and therefore violates human dignity.⁴¹ Based on the Constitutional Court's decision the Labour Code was amended stating that if the employee supplied information about her pregnancy *after* giving notice, the employer *may withdraw* the notice of termination in writing within fifteen days upon receipt thereof. Although the decision of the Constitutional Court is most welcome as it abolished a clearly unconstitutional stipulation, the rights of the employee and the duties of the employer have remained unclear. First, there is no deadline provided for the employee to notify the employer about her condition and there is

³⁸ This age limit should be adjusted to the age when parents could take sick leave to take care of their children at home, which is the age of 12.

³⁹ Section 66 para (6) of the Labour Code.

⁴⁰ Original Section 65 para (5) of the Labour Code effective in 2012.

⁴¹ 17/2014. (V. 30.) ABH (Constitutional Court decision).

no time frame given to the employer to react to that notification. Based on Section 83 of the Labour Code it is possible to notify the employer after the dismissal, but the Labour Code provides that a claim against unfair dismissal shall be filed within 30 days after the notice. Furthermore, upon receiving the notification from the employee, the employer *might* withdraw the notice. This is thus not a straightforward obligation of the employer, rather it gives unilateral discretion to the employer; and in the case that the employer decides not to withdraw the notice, the—pregnant and jobless—employee has to file a claim for unfair dismissal, after which she may ask for her reinstatement to the job, if she is still keen to work for that employer. Not to mention that the withdrawal of the notice is only possible until the end of the notice period, if the employment relationship is over, the employee could not do anything but sue the employer for unfair dismissal. Overall, the job security of pregnant women has largely remained a procedural issue and does not genuinely protect the condition of pregnancy.⁴² The burden of timely notification remains on the pregnant employee while the employer's margin of appreciation is large.

Wage flexibilisation was also the subject of intense debate, and the regulations were mostly contested due to detrimental changes relating to shift work. A less discussed aspect of the regulatory changes concerns pregnant women. According to Section 126 para (2) the employee is not entitled to take sick leave during her pregnancy. That means that the wages of these employees are also reduced, as in this case they are only entitled to health care allowances up to 60 per cent of their wages.⁴³ Thus, a woman who has an endangered pregnancy suffers a significant income loss. This is violating Directive 2006/54/EC which prohibits all kinds of discrimination related to pregnancy.⁴⁴

The Labour Code does not guarantee an equal wage for women who cannot carry on their original position due to their health condition from the time of the pregnancy until the child reaches the age of one. Even though the employer is obliged to offer a job fitting the employee's health condition, the wage of the original position is not guaranteed, instead she is entitled to the basic wage normally offered for that job, which cannot be lower than the original basic wage. In other words, the employee is ripped off from additional wage elements, which are frequently used to motivate

⁴² Section 287 para (1) of the Labour Code.

⁴³ Act LXXX of 1997.

⁴⁴ Directive 92/85/EEC on the protection of pregnant women does not cover endangered pregnancy, thus the Equal Treatment Directive is applicable in this case.

employees or to pay for any extra effort made by them.⁴⁵ The employee is entitled to the basic wage in the case that the employer was unable to offer a suitable position to the employee, except the employee refused to take up the offered position without a good reason.⁴⁶ However, there is great uncertainty about what amounts to a good reason, as the employer has no obligation to offer a position which is matching the educational or professional background of the affected employee. Employers thus have uncontrolled discretion over that matter which again enhances the vulnerability of pregnant women or mothers of young children.

4. Fathers

Probably the weakest part of the Hungarian Labour Code in terms of employee protection is related to the protection of fathers—or to the lack of it. A research study conducted in 2009⁴⁷ revealed that half of the Hungarian population considers the breadwinner and the caretaker roles of fathers to be equally important, 28 per cent of the population prefer the caretaker role over the breadwinner role and only 15 per cent deem that fathers should only concentrate on their professional life. However, the current regulatory environment does not support fathers to break out from traditional gender roles. First and foremost, fathers do not enjoy any preferential treatment in terms of working time arrangements. This restrictive understanding on gender roles further cements the traditional family roles, possibly creating tension for parents who wish to allocate tasks differently.

Fathers are entitled to take a five-day period of parental leave. Previously this instrument was not regulated as a form of leave but as a working time arrangement, therefore it provided much more flexibility to fathers over their leave period. Now fathers are required to request parental leave at least fifteen days ahead. Moreover, parental leave could be requested until the end of the second month from the date of birth, but in the case that the father is not able to take it due to his sick leave it expires anyway. These regulations do not serve family needs after childbirth, which argument is supported by statistical data showing that only one-quarter of fathers are taking this parental leave.⁴⁸

⁴⁵ Section 60 paras (1) and (2).

⁴⁶ Ibid.

⁴⁷ Spéder, Zsolt, “Ellentmondó elvárások között... Családi férfiszerepek, apaképek a mai Magyarországon” In: *A családi értékek és a demográfiai magatartás változásának kölcsönhatása* (OTKA, K 75909. 2009)

⁴⁸ Hungarian Bureau of Statistics (2015).

Legislative changes of the past years severely affected working parents. Even though it is argued that flexibility is beneficial for both employers and employees, in Hungary's case the adopted flexibilisation measures are beneficial mostly for employers. Insecurity due to the unclear rights and obligations of employers puts working parents in a vulnerable position in the workplace and increases existential fear.

III. Employers' duties and opportunities to improve the health condition of employees

One of the core obligations of employers is to provide healthy and safe working conditions for employees. Traditionally, safety measures are focusing on the physical protection of employees. However, psychosocial risks, such as work-related stress, have increasingly gained attention in the literature and also appeared as a subject matter of European and national regulations. In the following part, first hard law then soft law instruments are analysed.

1. Hard Law measures

In the Central-European region Hungary was the first Member State which implemented Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.⁴⁹ The Act on Occupational Health and Safety⁵⁰ obliges employers to take the measures necessary for the safety and health protection of workers, including prevention of occupational risks and provision of information and training, and to list potential risks that might occur at the workplace including psychosocial risk.⁵¹ The employer should adjust these measures to the changing circumstances and aim to improve existing situations, taking the individual condition of the employee into account. Psychosocial risk is defined by the commentary to the law as any impact, such as conflicts, work arrangement, working time, and job insecurity, which may affect individual responses of the employee and which in connection to this may relate to the occurrence of work accidents or

⁴⁹ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work OJ L 183, 29/06/1989 P. 0001–0008.

⁵⁰ Act No. XCIII of 1992 (hereinafter Mvtv).

⁵¹ Section 54 para (1) d) of Mvtv., effective from 1 January, 2008.

psychosomatic disease.⁵² The Labour Code also obliges the employer to provide safe and healthy working conditions for employees.⁵³ The law stipulates that the employee should take care as far as possible of his own safety and health, including cooperation with the employer on mitigating the negative effects of work-related stress.⁵⁴

The current regulatory environment openly prefers employers' needs in terms of internal and external numerical flexibility as well as wage flexibility. Moreover, some of the previous provisions relating to security were changed to the detriment of employees, as it was explained above. By reducing the minimum standards of employment and increasing flexibilisation, the provisions of the new Labour Code allow employers to increasingly shift the business risk to employees. Collective rights, especially trade union rights have been circumvented and the trade union presence has been decreasing at workplaces.⁵⁵ As collective interest representation has been shrinking, employers have a wider margin of appreciation in shaping employment conditions.

One of the assumed advantages of the 2012 Hungarian Labour Code is its regulatory techniques, originally created to provide even more flexibility. The new Labour Code introduced the possibility to derogate from the statutory norms to the detriment of employees in certain cases.⁵⁶ This possibility however is not only provided for collective agreements but also for individual employment contracts, and of course employers are not prevented from providing better working conditions for employees even in

⁵² Rúzs-Molnár, Krisztina and Berki, Gábor. "A Munkahelyi Stressz Egyes Munkajogi Összefüggései" 4 *Munkaügyi Szemle* 52 (2008). 35-39. old.

⁵³ Section 51 para (4) of the Labour Code, and regarding working time arrangements. The Labour Code stipulates in Section 97 that employers shall ensure that the work schedule of employees is drawn up in accordance with occupational safety and health requirements and in consideration of the nature of the work.

⁵⁴ Council Directive 89/391/EEC Art. 13; Instruction of the Hungarian Labour Inspectorate, last modified on 11 April, 2008. http://ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=163.

⁵⁵ Hungler, Sára, "Freedom of services and trade unions: Could an alliance be provided as a cross-border service?" *Hungarian Labour Law Journal* 1 (2017); Hungler, Sára and Király, Miklós, "Hungary" *Quaderni Fondazione Marco Biagi* (2015). 119-156.

⁵⁶ An example could be that while the Labour Code stipulates that employees are entitled to additional days holiday based on their age on top of the 20 days of the basic allowance, the collective agreement could stipulate that employees are not entitled to the additional holiday based on age.