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DIVERSITY IN WORKPLACE – EQUALITY OF WORKERS: REALITY VS LEGAL AND ECONOMIC CONDITIONS

ABSTRACT

The modern labor market changes as society changes. Employees should be treated equally, regardless of age, gender, race, beliefs, etc. Such a right is guaranteed in international and national legal acts. Despite legal regulations, the situation of different groups varies.

The subject of the issue is extremely extensive, therefore the article summarizes selected data on the realities of the labor market, which are juxtaposed with the legal framework within which it should function.

In the article European statistical data was used. The author has analyzed literature in the field of law and human resources management, legal acts.

KEYWORDS: *diversity management, age management, discrimination, organization, employee, gender equality*

INTRODUCTION

In modern Europe, equal treatment of men and women, younger and older etc. is one of the fundamental principles of European law. These principles are guaranteed in all basic international human rights documents signed and ratified by Poland. The issue of equality of workers and their treatment without discrimination arises in various public and private organizations and institutions. This is true for both underdeveloped states and countries with a high level of civilization. The purpose of the article is to compare legal regulations (taking into account both applicable law, such as EU directives, UN conventions and soft law such as Agenda 2030) and confront them with practice basing on the research studies.

DIVERSITY MANAGEMENT IN WORKPLACE – A CLASH WITH REALITY

Diversification in the workplace means diversity of employees, but treating them equally. This diversity may appear in terms of gender, age, race or ethnicity, religion or belief, disability, or sexual orientation. On the one hand, employees should be treated equally, on the other hand, everyone should be provided with conditions that meet the needs, for example, employees with disabilities or pregnant women, or young mothers. Hence, the colloquial Polish saying “fair does not mean everyone equally” seems correct. Currently, employers are required to be extremely sensitive in order to be able to read the needs of their employees and future employees and to create working conditions in such a way that the employee can work in it most efficiently, develop and receive a decent remuneration. This is related to, inter alia, with the concept of corporate social responsibility^[1], which is not only a fashion anymore, but also a requirement for the company’s credibility.

^[1] More: Szejniuk, A. (2013). Społeczna odpowiedzialność biznesu instrumentem budowania autorytetu organizacji wśród społeczności lokalnej. In Łażewskiej, D. (Ed.), Autorytet

Labour market undergo constant changes, impacted also by changes in demographic structure of different countries.

In 2017 in 4 Visegrad countries: Poland, Czech Republic, Slovakia and Hungary a research was conducted on the diversity management.^[11] The study noted that although most of the respondents believe that diversity management can positively affect the performance of the enterprise, the majority of the „companies/organizations do not concern themselves with the effective management of “disadvantaged” employees of different ages, moreover, organizations have not — or only rarely — identified what needs people belonging to different groups of employees might have, however employees do have expectations.”^[111]

A researcher from Hungary points out that “practices are discriminatory in: hiring young people, new entrants to the labour market aged between 19 and 26 year old and older people (over the age of 50); hiring people living with disabilities and members of the LGBTQ community is an even more divisive issue for organisations, though the hiring of the members of these groups is typically included in the strategies of larger companies. There are further expectations among people in active employment as well; persons with children and single persons have different needs and expectations of their employer. Managers intend to make the organisation effective by ignoring or only partially taking these expectations into account, which is no longer sufficient in the 21st century. The concept of diversity is often difficult to interpret for them; the principle of efficiency is highlighted in the relation between employees and work to be carried out.”

Very often implementation of the concept of diversity management can only be seen in the organisation of large (multinational) companies.

w wychowaniu i edukacji (pp. 253-272). WSGE;Szejniuk, A. (2016). Etyka menedżerska w zarządzaniu zasobami ludzkimi. *Journal of Modern Science*, 28(1), 89-104.

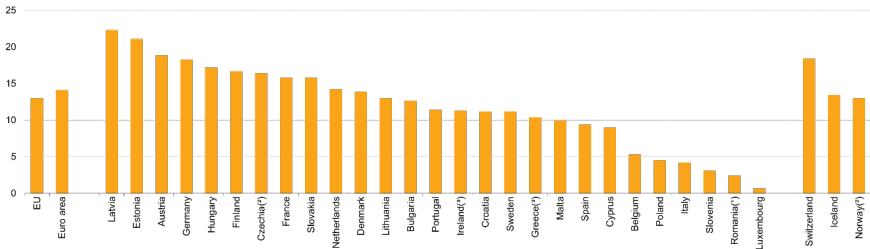
[11] Anrdovicova, J., Florek, I., Gross-Gołacka, E., Laki, I., Marková, J., Sitek, M. ... Uhlerova, M. (2017). *Diversity Management In The V4 Countries As An Answer For Demographic Changes*. WSGE.

[111] *Ibid*, 32.

Figure 1. Gender pay gap of average gross hourly earnings in selected European countries in 2019

The unadjusted gender pay gap, 2020

(difference between average gross hourly earnings of male and female employees as % of male gross earnings)



Note: For all the countries except Czechia and Iceland: data for enterprises employing 10 or more employees, NACE Rev. 2 B to S (-O); Czechia: data for enterprises employing 1 or more employees, NACE Rev. 2 B to S; Iceland: NACE Rev. 2 sections C to H, J, K, P, Q. Gender pay gap data for 2020 are provisional until benchmark figures, taken from the Structure of Earnings survey, become available in December 2024

(*) Estimated data

(*) Definition differs (see metadata)

(*) 2018 data

Source: Eurostat (online data code: sdg_05_20)

eurostat

Source: Eurostat, [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:The_unadjusted_gender_pay_gap,_2020_\(difference_between_average_gross_hourly_earnings_of_male_and_female_employees_as_%25_of_male_gross_earnings\).png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:The_unadjusted_gender_pay_gap,_2020_(difference_between_average_gross_hourly_earnings_of_male_and_female_employees_as_%25_of_male_gross_earnings).png) [Date of access: 09.12.2022]

Studies on work group diversity reveal that diversity can be a double-edged sword. While on one hand, many studies show that group diversity can lead to an increased performance and innovation capacity, on the other hand, it can also make work groups more vulnerable to conflicts and reduce their cohesion.^[IV]

^[IV] Köllen, T. (2019). Diversity Management: A Critical Review and Agenda for the Future. Journal of Management Inquiry, 105649261986802. doi:10.1177/1056492619868025.

Warszewska-Makuch and Mockało^[V] indicate the main problems related to gender inequality in the labor market:

- differences in the level of employment between women and men;
- men are perceived as more attractive employees; women are less available due to traditional roles. The influence of fertility on the level of employment and differences between women and men workers-parents will be pointed out;
- differences in remuneration, working time, breaks in employment (including mandatory breaks in employment due to the birth of a child – mandatory maternity leave);
- concentration of women in lower paid professions.

Gender discrimination in the labor market may manifest itself in the form of barriers to access to positions (the so-called *glass ceiling*) and stereotyping of professions.

In addition to problems related to gender inequalities in the labor market, issues related to employees in different age groups are increasingly noticeable in aging societies. Hence the term age management in organizations.

Pulut^[VI] in the article points to the grounds of ageism, the so-called ageism:

- stereotyping: an elderly person is infirm, sick, requiring care, dependent, poor, lonely;
- the widespread belief that older workers lack technological competence;
- lack of legal incentives to employ older people.

^[V] Warszewska-Makuch, M. (2019). Nierówności płci na rynku pracy: przegląd literatury. *Bezpieczeństwo Pracy: nauka i praktyka*, 15-19.

^[VI] Pulut, S. (2021). Zarządzanie wiekiem w organizacji jako antidotum na wykluczenie społeczne osób starszych. *Archiwum Wiedzy Inżynierskiej*, 6.

EUROPEAN LEGISLATION IN THE AREA OF GENDER EQUALITY IN THE WORKPLACE

The European Union, built on the basis of the European Communities, has developed a canon of common values. According to Art. 2 of the consolidated version of the Treaty on European Union, equality between men and women has become one of the fundamental values, next to respect for human dignity, freedom, tolerance, non-discrimination, justice and solidarity. And in accordance with Art. 3 one of the objectives of the European Union is to combat all forms of discrimination and inequality, including between men and women.^[VII]

As a result of changes in legal acts of international organizations, such as the United Nations and the Council of Europe, and in response to rapidly occurring social changes, the EU legislator began to develop a social policy that corresponds to the economic policy, adopting a number of legal acts, both binding and representing instruments in the field of the so-called soft law, which were introduced by equality issues, among others in the area of access to employment or training and professional promotions. As a result, EU protection against discrimination goes beyond the vertical relationship typical of human rights and also applies to mutual relations between individuals.^[VIII] As a consequence, the actions of the European Union went beyond the conceptual limits of formal equality before the law, taking into account the requirements of de facto equality aimed at correcting real inequalities.^[IX]

In subsequent European acts in this area, it can be seen how the European legislation has evolved. Starting from the protection of objectively weaker entities in the labor market that need to be supported, i.e. pregnant women,

^[VII] Sitek M. (2009) Równość kobiet i mężczyzn jako jeden z podstawowych elementów zasady dobrych rządów – «good governance» – świetle art. 15 wersji skonsolidowanej Traktatu o Funkcjonowaniu Unii Europejskiej, *Studia Prawnoustrojowe* nr 9, 397.

^[VIII] Sadowska D. (2006) Zakaz dyskryminacji, [in:] *Prawa i wolności I i II generacji*, (ed.) A. Florczak, B. Bolechow, Toruń, 20

^[IX] Szczerba-Zawada A. (2011) Zasada równego traktowania kobiet i mężczyzn w zakresie dostępu do zatrudnienia oraz warunków pracy w świetle orzecznictwa Trybunału Sprawiedliwości Unii Europejskiej, *Studia Iuridica Toruniensia*, tom IX, 231.

workers who have recently given birth and workers who are breastfeeding; through negative law prohibiting discrimination, to positive law requiring equal treatment. This evolution reflects how the law is changing in general: from protecting the weakest, through prohibitions, to determining the correct state of affairs by issuing strategies, white or green books.

The first seeds were already identified in the framework of Council Directive 76/207 / EEC^[XI] of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions with regard to the prohibition of discrimination direct and indirect with regard to gender and equal treatment of women and men.

In 1992, the European Communities set the goal of protecting women in a special situation related to motherhood. Council Directive^[XII] of 19 October 1992 on the introduction of measures to promote the improvement of the safety and health at work of pregnant workers, workers who have recently given birth and those who are breastfeeding, specifies the conditions to be ensured by the state of this particularly vulnerable group, incl. appropriate safety and health measures should be taken, their protection should not lead to discrimination against women in the labor market.

In the basic document prohibiting all forms of discrimination, Council Directive 2000/43 / EC^[XIII] of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, the European legislator prohibits in particular discrimination in relation to “conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

[XI] Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

[XII] Council Directive 92/85/ EEC of 19 October 1992 on the introduction of measures to promote the improvement of the safety and health at work of pregnant workers, workers who have recently given birth and those who are breastfeeding.

[XIII] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; employment and working conditions, including dismissals and pay; membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations”.

Council Directive 2000/78/EC of 27 November 2000^[XIII] establishing a general framework for equal treatment in employment and occupation has established the general framework for combating discrimination based on religion or belief, disability, age or sexual orientation in relation to employment and work. The document points to the weaker position of women in the labor market, orders to increase the accessibility of the labor market to people with disabilities and to help older workers so that they can participate in working life to a greater extent. It prohibits any direct or indirect discrimination on the basis of religion or belief, disability, age or sexual orientation. The Directive is a tool for implementing the European Employment Strategy, which aims to support a skilled, trained and adaptable workforce.

In 2006 there was European legislator has issued Directive 2006/54/EC^[XIV] of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) The latter directive is of a consolidating nature current legal status. By repealing some of the previous solutions, it also introduces a new legal status regarding the prohibition of discrimination on grounds of sex in the area of employment and labor law. It is generally emphasized that the purpose of this directive is to implement the principle of equal opportunities and the principle equal treatment of men and women in employment and work. It is also aimed not so much at explaining the concepts that have already been specified (in the vast majority by previous directives and by the case-law of the ECJ), but at

[XIII] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

[XIV] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

emphasizing the need to create appropriate procedures to ensure the practical effectiveness of its solutions.^[XV]

Apart from acts on equal treatment of employees, there are provisions on equal treatment of transnational companies in Member States^[XVI] which also oblige employers to proper human resource polity within organization.

The main strategic document in European Union for the gender equality in workplace is Gender Equality Strategy 2020-2025^[XVII] which stipulates the main goals to be achieved in the field of women empowerment in the social life. The main goal in this field, according to the document is to combat gender-based violence, overcome gender stereotypes, reduce the gender gaps in the labor market, ensure equal participation in different sectors of the economy, solve the problem of the gender pay and pension gap, reduce gender gaps in terms of to care for dependents and achieve gender balance in decision-making and in politics. The strategy seeks a dual gender mainstreaming approach combined with targeted actions where intersectionality is the horizontal principle of implementation. Therefore 6 areas of activity were designated: 1. Freedom from violence and stereotypes, 2. Opportunities for development in an economy based on gender equality, 3. Performing important roles in society on equal terms, 4. Gender mainstreaming and an intersectional perspective in EU strategies, 5. Funding actions for progress towards gender equality in the EU, 6. Actions for gender equality and women's empowerment around the world.

This document seems correct and needed, however, Members of European Parliament point to the lack of specific goals by 2025 – binding instruments are needed to close the gender pay gap. In addition, there are concerns about actions against gender equality, especially in Poland and Hungary.^[XVIII]

[XV] Jabłoński M., Jarosz-Żukowska S. (2010) W sprawie prac nad ustawą wdrażającą dyrektywę „równościowe” Unii Europejskiej do polskiego porządku prawnego, *Acta Universitatis Wratislaviensis*, No 3171, 114.

[XVI] Funta R. (2018) Crossborder mobility of companies in light of the ECJ case law on freedom of establishment, *EU LAW JOURNAL* 01/2018, 2.

[XVII] Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions A Union of Equality: Gender Equality Strategy 2020-2025 (COM/2020/152 final)

[XVIII] <https://www.europarl.europa.eu/news/pl/press-room/20210114IPR95617/strategia-rownowaznosc-pracy-2020-2025-wklad-i-reakcje-parlamentu>

This concerns seem highly justified, as it can be noted from the gender employment gap, which reaches 12% (67% of women are currently employed, whereas 79% of men are in employment).^[XIX] This situation seem unfair taking into consideration that more women-girls graduate from universities in Europe. Furthermore, more women take on non-paid work like: domestic duties, day-to-day, care.

POLISH LEGAL BASIS FOR EQUAL TREATMENT IN WORKPLACE

Employees should be assessed on the basis of criteria that apply to their work (such as experience, qualifications, scope responsibility, compliance with obligations).

It is unacceptable to treat an employee worse only and purely because of the legally protected qualities he possesses.

According to the provisions of the Polish Labor Code^[XX], employees should be treated equally in terms of:

- establishing and terminating an employment relationship,
- employment conditions,
- promotion and access to training in order to,
- raising professional qualifications.

The prohibition of discrimination is indicated in the general principles governing labor law in Article 11³, in which the legislator prohibits any form of direct and indirect discrimination on the grounds of sex, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin religion, sexual orientation, type of contract and working time.

^[XIX] https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/women-labour-market-work-life-balance/womens-situation-labour-market_en

^[XX] Labor Code (Journal of Laws 1974 No. 24, item 141, i.e. OJ of 2022, item 1510).

Sex equality in Polish legal system

The prohibition of discrimination on the basis of legally prohibited criteria of differentiation in employment in terms of establishing employment relationships means that employers cannot use the gender criterion as a basis for making decisions when selecting candidates for work for any positions. employees, the same provisions that govern the rules and procedure of employers when terminating employment contracts and guarantee the same protection of the durability of the employment relationship.

The above statement cannot be taken as an indication of the need to repeal or amend the provisions of the labor law on the protection of the durability of the employment relationship during pregnancy and maternity leave (Article 177 § 1 of the Labor Code). Differentiation of the legal status of employees, covering some of them with increased protection of the durability of the employment relationship is based on accepted premises. One of them is the state of pregnancy and the period of maternity and parental leave. The stabilization of employment guaranteed by the provisions of the labor law, which is not absolute, is intended to enable the employee to concentrate on matters related to the birth and maternity care of a small child.^[XXI]

Age management according to Polish jurisprudence

On the basis of Polish jurisprudence on the issue of age discrimination, two groups of situations have emerged in which reaching the retirement age by an employee and acquiring the right to a retirement pension may occur:

- criteria for selecting employees for redundancy,
- the reason for termination of the employment relationship,^[XXII]
- professional development path.

^[XXI] Świątkowski A. (2018) Kodeks pracy. Komentarz. Ed. 6, CH Beck, Warsaw, Legalis, online access

^[XXII] Walczak K. (2021) Kodeks pracy. Komentarz(ed), CH Beck, Warsaw, Legalis, online access.

In the case of restructuring of the workplace, reaching the retirement age and obtaining the right to a pension is a prerequisite for selecting a given employee for dismissal. Thus, it becomes the right criterion for selecting an employee for dismissal, because employees who do not have the means of subsistence in the event of losing their job are left in employment. The Supreme Court decided that in such a case age is not a discriminatory criterion, but a justified criterion of differentiation (judgment of the Supreme Court of December 3, 2003, I PK 80/03, OSNP 2004, No. 21, item 363).

On the other hand, it is not acceptable to indicate reaching the retirement age as the reason for termination of the employment relationship. Termination of an employment contract justified solely by the acquisition by a woman of the right to a railway pension at the age of 55 violates the principle of 11³ of the Labor Code and other provisions of this Act prohibit discrimination on grounds of sex. Circumstances arising after the termination may not constitute the basis for recognizing the legitimacy of the termination in a situation where the reason indicated in the notice of termination is unjustified (judgment of the Supreme Court of March 19, 2008, I PK 219/07, MoPr 2008, No. 9, p. 480).

Employers should take the necessary steps to provide employees who wish to develop their knowledge and acquire new qualifications.^[XXIII] Differential treatment due to age does not constitute discrimination if, under national labor law, it is rationally and objectively justified by the employment policy, labor market and vocational training objectives in line with the provisions, and is appropriate and necessary to achieve these objectives (SN 24.6. 2015, II PK 197/14, OSNP 2017, No. 4, item 41).

^[XXIII] Świątkowski, op.cit.

CONCLUSIONS

Diversified human resources is a standard in many organizations. The managers must deal with proper management of different types of employees to meet their need and at the same time ensure smooth functioning of their organization. It is not easy to answer needs, use the advantages of the employee and meet the legal standards.

As mentioned above, there is still inequality at the labor market taking into consideration gender pay gap. Moreover, some authors state that there is negative picture of older workers, which can also influence the organizational culture.

Its solutions in the area of diversity management in enterprises must be respected by all EU member states. This mainly applies to areas such as^[XXIV]:

1. Discrimination and exclusion-related issues should be eradicated by the organization.
2. Competitive advantage based on human capital shall be developed.
3. Modern organizations must be open to constant changes.

^[XXIV] Szejniuk, A., Michalski, K. (2022). Zarządzanie różnorodnością w organizacji. [In:] Michalski, K., Szejniuk, A. (Eds.), Współczesne kierunki transformacji organizacji – wybrane aspekty zmian (pp. 293-312). Wydawnictwo Wyższej Szkoły Gospodarki Euroregionalnej im. Alcide De Gasperi w Józefowie, Polska. <https://doi.org/10.13166/WSGE/KZ/NJFC8956>.

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https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/women-labour-market-work-life-balance/womens-situation-labour-market_en
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LEGAL ACTS:

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Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to promote the improvement of the safety and health at work of pregnant workers, workers who have recently given birth and those who are breastfeeding.

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

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