

CONDITIONS OF EMPLOYMENT PROTECTION FOR WOMEN IN ROMANIAN LEGAL SYSTEM

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Abstract

This paper aims to outline the legal regime of protection of women's labor in the Romanian legal system through a summary analysis of the most important legal provisions both general (Labor Code) and specific (special laws). Romanian legislator granted special attention to the analyzed institution, which results from the considerable number of statutory provisions. Thus one can not talk about legal discrimination of women in labor relations, doctrine, however, referring to the existence of actual discrimination to be inferred from concrete reality.

Key words: protection, women, legal sistem, discrimination, labor relation

1. GENERAL CONSIDERATIONS

Health and safety at work, as an institution of labor law represents "all legal rules governing social relations established between those who organize, lead or control the work and state administration bodies on the one hand and part of the legal relationship labor related to achieving the best working conditions in the process, aiming health and life protection of the participants in the process of working by preventing accidents or occupational diseases "(Top, D., 2008).

In addition to ordinary measures to ensure the health and safety at work, Romanian legal rules established special protection measures for women, particularly in relation to their special status of parent, youth and persons with disabilities.

Thus, the system of protection of women's work, which is the subject examined in this work is governed by a set of legal principles, namely (Stefanescu, I.,T., 2007):

- Equal opportunities and treatment, prohibiting discrimination based on sex, devoted specifically to the provisions of Articles 5 and 6 of the Labor Code, the provisions of Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination, with subsequent amendments and supplements and those of Law 202 of 2002 on equal opportunities between men and women, as amended and supplemented;
- For equal work equal value with men, equal payment for women, according to article 6 paragraph 3 of the Labor Code provisions;
- Employed women benefit from special measures and health care and health care conditions for children.

In connection with the last mentioned principle, labor law legal system provides for special measures referring to Romanian pregnant women and nursing measures that will be presented in detail in the work content (Tunsoiu, C., 2004).

Concerning the special protection measures for women, the existing European Union established in the Directives. 92/85/EEC on the implementation of measures to improve safety and health of pregnant women who gave birth or are breastfeeding. Community legislation on social protection, together with the International Labor Organization regulations were also an inspiration source for the Romanian legislature regulation analysis.

2. SPECIAL MEASURE

a. Emergency Ordinance no. 96 of 2003 on maternity protection at workplaces

The Romanian legal system of GEO no. 96/2003 on maternity protection at workplaces establish the obligation of employers to take all necessary measures in order to prevent exposure of pregnant or lactating women employees to risks that could affect their health and safety. Thus, women employees who are in one of these situations can not be forced to carry out harmful work to their health or condition of pregnancy or child, newborn, as appropriate (article 4). For any activity likely to present a specific risk of exposure to agents, processes and conditions of employment, the employer is required to assess annually and any change in working conditions, nature, extent and duration of exposure of pregnant women employees who have recently given birth or lactating, to determine any risk to their health or safety repercussions on pregnancy and lactation (art5). Within 10 working days after the employer has been notified in writing by an employment that there is one of those situations, the occupational physician is required to be notified and also the Labor Inspectorate on whose area they perform their work (Article 7 paragraph 1) and to preserve the confidentiality of the state of pregnancy of the employee. (article 8). Also, if one is employed in one of those situations and conduct workplace activities that pose risks to health or safety of her or the repercussions on pregnancy and lactation, the employer must appropriately modify its conditions and / or working hours, without risk to health or safety, as recommended by the occupational physician and family doctor, maintaining wage income (Article 9). Not taking into account the obligations stipulated by the legislative act that constitutes the offense and it is punishable by fine.

These provisions are added to employers' obligations under the Labor Code expressly referring to the fact that pregnant women and nursing women who

have recently given birth can not be used in jobs having harmful conditions, heavy, dangerous or medically contraindicated. In these situations they will be placed in other jobs without lowering wages. Also pregnant women and nursing women who have recently given birth may be required under the provisions of Art. 125 paragraph 1 of the Labor Code, to perform night work. According to the normative document referred to, the women employees can also enjoy the holiday of maternal risk. This represents a common term of labor protection measures, particularly maternity protection at work but also there is among the main duties of the women employees who are in special circumstances such as pregnancy, recent birth or breastfeeding period (Philip, L., Paul, L., 2004).

In order that an employed person to be entitled to a maternity risk leave she must accomplish the following conditions:

- The physiological state of pregnancy or that the employee has recently given birth or breast-feeding should be certified by the family doctor and / or practitioner;
- Employees mentioned to work in jobs that present risks to health or safety or the effect on the pregnancy or lactation, the existence of such risks should be established by the employer as a result of its evaluation or other body empowered, ex officio or upon request of any interested person (Top, D., 2007);
- The employer should be in the impossibility objectively justified to change the above-mentioned employee the conditions and schedule of work or give any other job for the protection of motherhood;
- The employee who has recently given birth and breastfeeding employee has not requested leave and childcare allowance and rise the child up to 2 years, or if the child is disabled up to 3 years;
- The applicant should be specific as the employee be granted leave of maternal risk after taking note of the contents of the information on maternity protection at work.

Maternal risk leave is for employees is granted to the pregnant employees/applicants before the maternity leave may be granted in whole or split, for a period not exceeding 120 days by a GP or specialist doctor (Article 10). He will issue a medical certificate to that effect provided that the employee to be submitted to prenatal and postnatal consultations, according to the regulations of the Ministry of Health.

Maternal risk allowance is supported by the state social insurance budget being an amount equal to 75% of average monthly income in the last 6 months of the previous 12 month to be granted maternity leave. (Voiculescu, N., 2007). Receiving maternity allowance for risk the employees do not owe to the state social insurance contribution and maternal risk leave period represents the period assimilated to the

traineeship fee. Maternal risk allowance is paid monthly to the employee by the employer the latest together with the date to pay per month liquidation rights when the leave of maternal risk is granted (Article 11 paragraph 4);

During maternity leave at risk the individual employment contract of the employee concerned is suspended, we actually being in a situation suspending the individual employment contract at the employee's initiative, provided by art.51 of the Labor Code. (Ticlea, A., et al., 2006);

In accordance with Article 2 letter d of GEO no. 96/2003 on maternity protection at the workplace, the employee who has recently given birth and who returns to her unit and resume work after maternity leave. She may on the basis of medical documents issued by the family doctor, that adequate protective measures should be taken within 6 months from the date of birth.

Under these laws, during the work program, units are required to provide two breaks for breastfeeding women and childcare for one hour each, until the child reaches the age of one year. In these include breaks and time travel, there and back, to where to find the child. (Stefanescu, I., T., 2007).

At the request of the mother, lactation breaks will be replaced by reducing the normal duration of her working time with 2 hours daily. If the employer provides, in the establishment, special rooms for breast-feeding, they must meet appropriate hygiene sanitary rules in force. Breaks and respectively reducing working hours, given to supply and child care, are included in the working time and are not affecting the rights of labor involved. The employer is obliged to transfer the concerned employee to another job if she is recommended by the conclusion of the risk assessment report, no later than 15 working days from the date of its conclusion.

b. Ordinance no. 158 of 2005 on leave and allowances for health insurance
In order to protect the health of mother and child, in accordance with Chapter IV of Government Emergency Ordinance no. 158 of 2005 on leave and insurance benefits, pregnant women are granted leave for pregnancy and confinement for a period of 126 calendar days. (Article 23 paragraph 1). That legislation is consistent with International Labor Organization Convention no. 183 of 2000 on the revision of the Convention on protection of motherhood in 1952, ratified by Romania by Law no. 452/2002. According to art. 4 point 1 of the Convention nr.183, the minimum length of maternity leave is 14 weeks in which the 6 weeks required after birth.

Thus, pregnancy leave is granted for a period of 63 days before birth and the confinement to a period of 63 days after birth. The two leaves compensate each other, according to clinical recommendation and at the receiving person option. However, Article 24 paragraph 2 of the same Ordinance provides that the mandatory minimum confinement leave shall be 42 calendar days. (Article 23 paragraph 1 and Article 24 paragraphs 1 and 2). The same rights also enjoy women who have given birth within 9 months

from the date of loss of assured quality. Loss of that product not for reasons attributable to the person, is proved by official documents issued by employers or their assimilated (Top, D., 2007).

The insured disabled persons benefit provided a request of pregnancy leave beginning with the 6th months of pregnancy. If the baby is born dead or dies during confinement leave, maternity allowance is granted for the whole duration (Ticlea, A., 2006).

The monthly amount of maternity allowance is 85% of average monthly income on which to calculate the contribution of leaves and allowances in the last 6 months prior to the loss of assured quality (article 23 paragraph 3). During the period the employee is on maternity leave her individual employment contract is suspended by law, thanks to circumstances beyond the control of the concerned, that is impossible for work performed (Ticlea, A., 2007). In that period the employer can not employ on the job the concerned employee a person with individual employment contract of indefinite duration, but only with a fixed period until the return of the concerned person.

According to the GEO no. 158/2005 employees are entitled to vacation and sick child care allowance until the age of 7 years and for children with disabilities who require hospitalization, treatment at home for ambulatory or intercurrent diseases before the age of 18 years (as amended by Art. 12 paragraph 1 letter b of Law no. 448/2006 on the protection and promotion of disabled people).

One of the parents receive, optionally, on request, the allowance for care of sick, if the applicant meets the conditions of contribution period. Also enjoy the same rights and the insured (a) adopted, was appointed guardian, entrusted the child for adoption or placement was given.

GEO no. 158/2005 does not expressly exempt from the benefit of professional child-minder for the care of sick leave, as in the case of GEO no. 148/2005, which we review below.

Sine qua non condition to qualify for parental leave if the sick or disabled for intercurrent diseases before the age of 18 years, is the person to engage in individual employment contract or service in the report (Stefanescu, I., T., 2007).

The allowance shall be granted on medical leave certificate issued by your family and Disability certificate issued under the law (Article 28).

The duration of compensation shall not exceed 45 calendar days per year for a child unless the child is diagnosed with infectocontagioase disease, cancer, is immobilized in plaster device is subjected to surgery, duration of sick leave in such cases will be determined by the doctor, and after exceeding the 90 days of the practitioner, the social insurance expert medical approval

(Article 29). The gross amount monthly allowance is 85% of base established by Article 10 of the Ordinance (Article 30).

Law nr.448 of 2006 on the protection and promotion of disabled persons (article 12 paragraph 1 letters a and b), the disabled child has been amended and such leave is granted until the age of 7 years (instead of 3 years) of children with disabilities. Between 7-18 years of age the person whom is dependent to will benefit from the one-time 4 hours programme every day and if another illness condition appears together with the disability the caring person have the right to leave (Top, D., 2007).

c. Ordinance no. 148 of 2005 on family support to rise a child

Under the provisions of Government Emergency Ordinance no. 148/2005 on family support to child-raising, those in the last year before child birth, have done for 12 months of professional income subject to income tax benefits from parental leave until the age of 2 years and respectively 7 years for children with disabilities, and a monthly allowance amounting to 600 RON (Article 2).

The legal dispositions mentioned have undergone a change in the amount of the allowance, so that beginning January 1, 2009 the beneficiary may choose between fixed amount of 600 lei, and 85% of revenue for the past 12 months prior to birth right up to a maximum of 4000 lei.

Also by Law no. 239/2009 to amend Article 2 of Ordinance no. 148/2005 from June 18, 2009 mothers who have born twins, triplets or multiplets receive for each child born since the second one an allowance in the amount mentioned above.

The periods in which the beneficiaries have an income above the rights under the income tax underwent training is given an incentive amount of 100 lei per month and payment of compensation shall be suspended.

The compensation and incentives under the order under review, entitled, optionally, any of the natural parents of a child or adopted child of persons, entrusted with the child for adoption or having the child in placement or placement in a matter of urgency, except asistentuli maternal care and the person who was appointed guardian.

The leave and the monthly allowance is entitled for each of first 3 births, or where appropriate, for the persons who adopted the first three children, the child entrusted to adoption or having the child in placement or placement in a matter of urgency, and and the person who was appointed guardian (Article 6).

Of course, exercising the legal right analysed involves the disruption of the, thus suspending the individual employment contract (Ticlea, A., 2007).

d. Other special provisions

The category of other provisions that contribute to shaping the legal regime of protection of women's work is also included the rule of law that

enshrines the idea that women with children aged up to 6 years can work part time, if they do not benefit from nursery or canteens, while both were placed in those circumstances considering the length of service is to calculate the time worked full time (Stefanescu, I., T., 2007).

Another category of special provisions applicable to the area examined are those in the art. 60 para. 1 of the Labor Code, as a temporary ban on dismissals, which are interpreted as meaning that the employer must postpone the firing range of the employees for the period covered by the situations referred above. Thus, the employer is forbidden to have termination of employment or service ordered, as a protection of the person concerned, in case of:

- a. pregnant employee who has recently given birth or are breastfeeding for reasons directly related to his condition;
- b. employees who are during maternal risk holidays;
- c. employees who are during maternity leave;
- d. employees who are during parental leave of up to 2 years respectively for the disabled to 3 years;
- e. employees who are during leave to care for sick children aged up to 7 years, or for the disabled, aged up to 18 years.

CONCLUSIONS

The legal regime for protection of working women in Romania consists of a set of general provisions (Labor Code) and special (special acts) which illustrates the strong interest of the legislature for analysis. The legal standards set lies mostly in the realm of social security, which implies pre-existence of guaranteed quality of beneficiary benefits issue directly related to an employment relationship

The analysis of the relevant legal provisions mentioned points out that legislation on social protection, with the International Labor Organization regulations were also an inspiration for the Romanian legislature regulation in the domain.

A wide range of situations in which to find a woman who is part of an employment relationship: pregnancy, childbirth, confinement, growth and child care, work by night, dismissal, etc. are covered by specific legislation.

Thus, we consider that, from the general principles governing the legal regime for protection of women in the Romanian legal system and go forward with the implementation of their laws mentioned in the Romanian legal system is set up a system of protection of women's work necessary and enough to create specific rights.

Natal policies promoted by the Romanian state in the current context justifies the legislator's attitude in this area, considered of special interest,

so any violation of rights enshrined is expressly sanctioned also by the Romanian public opinion, which has internalized the need for special attention in relation to demographic trends unfavorable at this time.

REFERENCES

1. Ștefănescu, I. T., 2007, Treaty of labor law, Wolters Kluwer Publishing House, Bucharest
2. Ticlea, Al. 2007, Treaty of labor law, the Legal Universe Publishing, Bucharest
3. Ticlea, Al., (coord.), 2006, The Labor Law-annotated and commented, ed. a-II-a, Editura Lumina Lex, Bucharest
4. Top, D., 2007, Treaty of Labor Law, Wolters Kluwer Publishing House, Bucharest
5. Voiculescu N., 2003, Community and national rules, Editura Lumina Lex, Bucharest
6. Philip L., L., Paul 2004, Maternal Risk Leave, the Romanian labor law journal, no. 4/2004, pp.15-24
7. Tunsoiu C., 2004, Maternity Protection at Work in Judicial Courier, no. 7-8/2004, pp.10-19
8. Ticlea Al., 2006, Holidays and Health Insurance Benefits, the journal of Romanian labor law, nr.4/2006, pp.45-57
9. Law no. 96/2003 on Maternity Protection at the Workplace, published in the Journal nr.750 of October 27, 2003, approved with amendments by Law no. 24/2004, published in Official Gazette no. 214 of March 11, 2004
10. Government Emergency Ordinance no. 158 of 2005 on Leave and Insurance Benefits, published in Official Gazette no. 1074 of November 29, 2005, approved by Law no. 399 of 2006, published in Official Gazette no. 901 of November 6, 2006.