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## **Legal Regulation of the Occupational Health and Safety in the Non – Standard Work in The Slovak Republic<sup>1</sup>**

### **Abstract**

As it is typical for the current world of work, employees often perform dependent work in forms that are not standard. They are characterized by the specificities of the legislation, including working conditions. When using the term non-standard work, we follow the definition of the International Labour Organization. For the purpose of this paper, we may regard especially these forms: work from home, teleworking, temporary agency work and work performed on the basis of contracts for work performed outside the employment relationship as an institute typical for Slovak (but also Czech) labour law. The aim of the paper is to analyze the legal regulations on health and safety at work in the Slovak Republic, in the context of the mentioned forms of dependent work. We will attempt to investigate the effectiveness of the current legal regulation, including some theoretical and application problems. We will also focus on assessing the impact of non-standard work on the physical and mental health of employees and on the possibilities of managing the factors of this work by the employer.

**Key words:** non – standard work, teleworking, occupational health and safety, physical health, mental health

### **Ustawodawstwo zdrowia i bezpieczeństwa zawodowego w niestandardowych pracach w Republice Słowackiej**

### **Streszczenie**

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Ponieważ jest to typowe dla obecnego świata pracy, pracownicy często wykonują prace zależne w formach, które nie są standardowe. Charakteryzują się one specyfiką przepisów, w tym warunkami pracy. Używając terminu "praca niestandardowa", kierujemy się definicją Międzynarodowej Organizacji Pracy. Na potrzeby niniejszego dokumentu możemy szczególnie uwzględnić następujące formy: praca w domu, telepraca, praca tymczasowa i praca wykonywana na podstawie umów o pracę wykonywanych poza stosunkiem pracy jako instytucja typowa dla pracy słowackiej (ale także czeskiej) prawo. Celem niniejszego artykułu jest analiza przepisów prawnych dotyczących bezpieczeństwa i higieny pracy w Republice Słowackiej w kontekście tych form pracy zależnej. Postaramy się zbadać skuteczność obecnej regulacji prawnej, w tym niektóre problemy teoretyczne i aplikacyjne. Skupimy się również na ocenie wpływu niestandardowych prac na zdrowie fizyczne i psychiczne pracowników oraz na możliwościach zarządzania czynnikami tej pracy przez pracodawcę.

**Słowa kluczowe:** niestandardowa praca, telepraca, bezpieczeństwo i higiena pracy, zdrowie fizyczne, zdrowie psychiczne

## I. Introduction

Flexibility and its reflection into the atypical forms of dependent work have become a common part of national labour law. In the paper, we decided to analyze a specific issue of Occupational Health and Safety (OSH) in the context of the forms of work we call atypical, or in the terminology used by the International Labour Organization (ILO), as non-standard.<sup>2</sup> Although the extent of non-standard work has spread over the past decades as result of the shared economy, we would like to focus on "traditional atypical forms" that are regulated by the Slovak labour law.

Working environment is full of unfavorable working factors, originating in physical, chemical or biological factors, including the influence of psychosocial factors. All these risk aspects cannot be considered in isolation. According to the wording of international, union or national legislation we assume that the area of OSH must be understood not only in terms of exhaustively established public employment protection rules, but in direct connection to the institution of working time, holidays and social policy of the employer. Studies confirm that the resting time has a direct impact on the physical and mental health of employees, including

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<sup>2</sup> <http://www.ilo.org/global/topics/non-standard-employment/lang--en/index.htm>

the occurrence of occupational injuries.<sup>3</sup> In the Art.36 of the Constitution of the Slovak Republic<sup>4</sup> is guaranteed that employees have the right to fair and satisfactory working conditions; one of them is the protection of health and safety at work. In direct context we must consider the importance of the other constitutional rights, concretely the right to maximum allowable working time, to adequate rest after work and the right to the shortest allowable length of paid leave for recovery. It results also from Directive 2003/88/EC concerning certain aspects of the organisation of working time which refers to the occupational health and safety (for example according to the point (4) „The improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations.“)

For all selected non-standard contractual relationships is applied a uniform legal regulation of health protection at work. Besides the guarantee provided by the Constitution of the Slovak Republic, the provisions of the Labour Code, Act no. 311/2001 Coll. as amended (health protection, social policy and others) are applied. Specifics are contained in the Act no. 124/2006 Coll. on Safety and Health at Work, as amended (hereinafter referred to as the "OSH Act") and Act No. 355/2007 Coll. on Protection, Promotion and Development of Public Health, as amended (hereinafter referred to as the Public Health Protection Act). (Not only) for Slovak legislation is typical the existence of number of subordinate regulations laying down precise "parameters" that must be respected in the coordination of health and safety at work systems (especially The Decree of the Ministry of Health No 542/2007 Coll. on details of health protection against physical strain at work, mental workload and sensory load at work).

The aim of the paper is to highlight the problematic aspects of the current work protection, which arises in connection with the emergence of other forms of work performance, as well as with the poorly solved impact of working conditions on the mental health of employees.

## II. Agreements on work performed outside employment relationship

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3 See e. g. S.W. LOCKLEY, L. K. BARGER, N. T. AYAS, J. M. ROTHSCHILD, CH. A. CZEISLER, CH. P. LANDRIGAN, *Effects of Health Care Provider Work Hours and Sleep deprivation on Safety and Performance*. The Joint Commission Journal on Quality and Patient Safety, 2007, Volume 33 Number 11 Supplement, p. 7 – 18.

4 Constitutional Act no. 420/1992 Coll.

Agreements on work performed outside employment relationship are typical for the legislation of Slovakia and the Czech Republic. There are three types of agreements on work performed outside the employment relationship, namely a work performance agreement, an agreement on temporary job of student and agreement on work activity.

Very similar to them are institutes known in many other countries such as casual work or zero hours contracts.<sup>5</sup> Agreements are a special labour contract types. Their contractual basis differs in many aspects, even despite of the fundamental legislative changes to which the "agreements" have been subjected. To keep the legal wording, "agreements" should be used for exceptionally work, not regularly.<sup>6</sup> The work must identify by result (a work performance agreement) or by the type of work that should be occasional.

Agreements are considered as very convenient form of employing for employer and employees. From the positive perspective they are beneficial ways for employers when it comes to one-off work tasks. For employees they represent the possibility of work, obtain work experiences and habits, including opportunity for earnings. It is a flexible way of performing dependent work that is required for the current job market. Compared to new non-standard ways of employing (like crowdsourcing), employees are still guaranteed labour law protection and social security protection. At an unfavorable level, agreements may become the subject of simulation of the employment relationship.<sup>7</sup> The application scope of Labour Code provisions is also limited for the relations based on "agreements".

Many deficiencies of agreements 's regulation removed in the recent period. An obligation to pay a health insurance and social insurance has been introduced, a condition for paying at least a minimum wage and, with efficiency of 1<sup>th</sup> May 2018, the obligation to pay wage benefits during work performed on Saturdays and Sundays has been established.<sup>8</sup>

The purpose of this paper is to critically assess the current legislation in the context of researching the possibility of threatening or damaging (no only mental) health of employee.

We are considering about the meaning of limit duration of this labour law relations for a period of one year. Legal dictation allows to close arrangements for up to one year (12

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5 See H. BARANCOVÁ, *Theoretical Problems of Labor Law*. Plzeň: Aleš Čeněk, 2013, pp. 365 - 369

6 They are intended only for occasional work, limited in time - 350 hours per year in a work performance agreement, 10 hours a week in agreement on work activity and 20 hours a week on average in an agreement on temporary job of student.

7 Judgement of *Supreme Court of Slovakia*, file ref. 5Sžo/222/2015 from 19th October 2017

8 According to the provision § 122a and § 122b of Labour Code is employee entitled for wage and wage compensation in case of performing work during the Saturday (minimum 50% of minimum wage) or during Sunday (minimum 100% of minimum wage).

months). Further regulation of the prohibition renewing the agreements does not exist. If the sense of limitation is intended to be temporary, it often disappears in practice. It is usual that "agreements" are regularly renewed, by a new agreement with the same content for another period of one year. This practice is also confirmed by the Social Insurance Company which recommend to employer their obligation to file a new application for social insurance purposes upon the repeated conclusion of the agreement after one year. This makes their temporal limitation to become only formal and without its practical sense.

The law establishes the possibility of negotiating an employment contract for any working time (e.g. 1 hour / week or performing work 2 days/week) known as employment contract with reduced working time. However, the renewal of employment relationship is limited according to the provision § 48 of Labour Code. The employees working on basis of agreements may in some situations find themselves in a "comparable position" as employees in employment contract (more likely to be part-time workers), but still with the absence of certain legal entitlements. We can concretely demonstrate it on example of ensuring catering: an agreement's employee is not entitled to provide a catering, even though he / she will work more than four hours on a certain day at the workplace. The employee in the employment relationship is the same situation entitled to it.<sup>9</sup> Ensuring catering for employees is a part of employer's social policy, which is very important social measure for creating healthy working environment.

As serious gap we consider the absence of entitlement to paid holiday. We share the views of law experts that dispute their compliance with transnational obligations (ILO Convention No. 52 Holidays with Pay Convention, 1936).<sup>10</sup> This is inconsistent with the provisions of ILO Convention no. 52/1936 (revised in 1970 by the ILO Convention no. 132)<sup>11</sup> and Directive 2003/88/EC of the European Parliament and of the Council on certain aspects of the organization of working time (Article 7). According to Art.7 of the Directive, Member States shall take the necessary measures to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement and the granting of such leave laid down by national rules and / or practice. A person performing work on the

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<sup>9</sup> Employee is entitled to provide catering from employer when he spends more then four hours in the regular workplace (§ 152 of Labour Code).

<sup>10</sup> M. ŠVEC et al., *Dependent work and agreements on work performed outside the employment relationship*. Culture of the world of work. Bratislava: Friedrich Ebert Stiftung, representation in the Slovak Republic, 2012, p. 29 -36

<sup>11</sup> It guarantees everyone's right to paid holiday after 1 year of continuous service. "Agreements" are agreed for the period of 12 months.

basis of agreement falls under the legal definition of employee in compliance with national provision of § 11 of Labour Code<sup>12</sup> and work he/she performs has the character of dependent work.

Holiday is an institute that provides for the purpose of regeneration of an employee's workforce. This is confirmed (for example by the requirement for drawing holiday up to a minimum of two weeks (unless otherwise agreed by the parties), but also by the exclusion of the possibility of granting compensation (wage compensation) in the situation when an employee do not draw the basic scope of paid holiday to the end of following calendar year under the conditions laid down by the Labour Code.

We consider it important to admit the right to take a leave for this group of employees, especially in the purpose of implementing the right to health at work in the context of the constitutional right of every employee to the shortest allowable length of recovery leave.<sup>13</sup> Application of occupational health and safety is obvious from the regulation. The institute of labour protection (§ 146 of Labour Code) includes the social measures to the set of instruments ensuring the occupational health and safety. Social measures consist in the social policy of employer as well. The solution could be implementation the concept of holiday for hours worked. The legislative proposal of a Labour Code, which would bring such general change of the holiday concept, has been recently submitted to the legislative process in the Czech Republic.<sup>14</sup>

A suitable example which added the necessity of paid holiday is the absence of working schedule for agreement's employees. Beginning and end of working hours defined in the provision § 90 of Slovak Labour Code and the employer's obligation to notify the scheduling of working time at least one week in advance and with a validity of at least one week is not be expressly applied on these employment relationships. In the consequences it often happens that the employer is able to call/assign work to employee at any time. The employee may (not necessarily) find himself in a constant expectation that the job will be assigned to him at any

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12 An employee shall be a natural person who in labour-law relations and, if stipulated by special regulation also in similar labour relations, performs dependent work for the employer.

13 This is also confirmed by H. BARANCOVÁ, referring to decisions of the Court of Justice of European Union. For more details see: H. BARANCOVÁ, *Labour Code. Commentary*. Bratislava: C.H. Beck, 2017, p. 836

14 P. SOCHOROVÁ – E. DRŠTIČKOVÁ, *Major changes in the Labour Code - the amendment is to redefine holidays, flexibility of employment places and the delivery of labor law documents*. Available online: <https://www.epravo.cz/top/clanky/velke-zmeny-v-zakoniku-prace-novela-ma-nove-vymezit-dovolenou-flexibilitu-zamestnaneckych-mist-i-dorucovani-pracovnepravnich-dokumentu-108099.html?mail>

given day and time during the day. Employees are guaranteed the possibility to be exempt from "work standby" in accordance with the provision § 223 section 2 of Labour Code. From the definition of work standby results that there is any work standby until work is done above the working schedule or over the specified working time. However, it may not always be known in advance in the case of agreements.

This situation would fulfill the flexibility of this contractual relationship, which is expected and required. However, their occasional character does not prevent the employee from being informed in advance when his work should be carried out. The current absence of the right of the employee to leave may have a significant impact on the health of the employee. Therefore, we consider that in the case of agreements on work performed outside the employment relationship, the employee and the employer should be obliged to agree on a minimum of time when the employer is obliged to notify the employee the need to perform the work.

In the context of protecting and preserving health, we also pay attention to the possibility of termination agreements on work performed outside the employment relationship in relation to the legal reasons of termination directly related to the health of the employee. In the case of agreement on work activity and an agreement on temporary job of student, the possibility of immediate termination on both sides is only possible if the participants have negotiated this possibility in the agreement, for the same reasons as in the employment relationship. Thus, there is no right to unilateral immediate terminate the legal relationship directly by law. For example, if the employee violates the OSH regulations and thus commits a serious breach of work discipline (on the part of the employer) or vice versa if the life or health of the employee (by the employee) is directly threatened. The contractual parties should assume such situations and agree them in the agreement.

Since the effectiveness of Act no. 361/2012, there have been few amendments to the Labour Code, which have extended the scope of the legal provisions currently applied to the legal relations established by agreements (working time, obstacles at work, minimum wage). There have always been evidently that the framework of rights and obligations related to OSH must apply even on the relationships based on these agreements. The employer's liability for an accident at work is also maintained.<sup>15</sup> Despite of this fact the National Labour Inspectorate

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<sup>15</sup> According to the Act. § 225 (2) of the Labor Code, the employer shall be liable to the employee for any damage suffered in the performance of the work concluded under or in direct relation to agreement, as well as in the employment relationship.

of the Slovak Republic, based on the results of control activity carried out in 2017, confirms the practice of underestimating the importance of OSH to the employees working on the agreement and the fact that employers do not realize that the occupational safety obligations apply equally to all employees.<sup>16</sup> The emphasis of control authorities should be focused on respecting the working time which is in practice often reduced to adhere the legal limitations.

Within the framework of the prevention general principles defined by the OSH Act, the employer is obliged to implement the prevention policy by improving the working conditions (where we can include the leave) through social measures (§ 3 of the OSH Act). There is a narrow connection between work protection and social policy. However, the part about social policy of Labour Code is not applicable on the agreements on work performed outside the relationship. We perceive an employer's analogous duty to improve the culture of work and the working environment. Protection of work is not ensured only by technical, organizational or health measures, but also by a set of social measures as it results from the provision § 146 section 1 of Labour Code.

### III. Occupational health and safety of temporary assigned employees

The National Employment Strategy by 2020 approved in 2014<sup>17</sup> assumes clarifying the legal framework for temporary employment agencies in relation to the findings of illegal employment. The part of scientific literature considers the regulation of agency employment in the Slovak Republic as one of the most liberal.<sup>18</sup> However, it has undergone significant legislative changes (the presumption of temporary assignment, the limitation of the duration of the temporary assignment, the co-responsibility of the user employer for a comparable level of wage conditions) in recent period.<sup>19</sup> Other opinions, on the other hand, provide reasonings that the current legal regulation should no longer be subject to tightening but only

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16 Available online: <https://www.ip.gov.sk/kontrola-dodrziavania-povinnosti-zamestnavatela-pri-zamestnavani-na-dohody-o-pracach-vykonavanych-mimo-pracovneho-pomeru/>

17 Approved by Government Resolution no. 665 of 17. December 2014.

18 See for example H. BARANCOVÁ, *New legal regulation of agency work in the Slovak Republic*. *Societas et Iurisprudentia*, 2015, vol. III, no. 1, p. 24

19 Especially, Act No. 96/2013, amending Act no. 5/2004 Coll. on Employment Services and on amendments to certain acts with effect from 1st May 2013, Act no. 14/2015 Z. z., amending act no. 311/2001 Coll. Labour Code, effective from 1. March 2015.



a modification to exclude its misusing.<sup>20</sup> In the context of OSH we consider the current legislation as partially insufficient.

National strategy in generally points out the importance of the strengthening the labour protection in line with the worldwide demand for the so called "decent work" consisting in increasing protection against a large amount of working time, bullying or protection in the field of high psychological load.<sup>21</sup>

Foreign research reports confirm that temporary agency work brings number of health hazards to employees, in particular, due to failure to comply with OSH obligations, allocation of less demanding tasks and working periods/shifts, including night work, mutual non-communication between the agency and the using employer, whether the user fulfills his legal obligations of occupational health and safety. Some studies also show increased occupational accidents in temporary agency workers.<sup>22</sup>

On the contrary Slovak studies (according to experts of the selected survey of employers' enterprises) show that agency work is not only used for auxiliary work but also for professional work. Most reporting employers have declared the respecting of guarantee the equal working conditions for regular staff and agency employees (overtime work, weekend's work, night work). Even in the field of occupational health and safety, it has been found that employers fulfill their obligations under the law and internal regulations, at the same level for both agency employees and employee of using employer.<sup>23</sup>

Directive 2008/104 / EC of the European Parliament and of the Council on temporary agency work contains prohibitions and restrictions on temporary agency work. According to the article 4 (1) prohibitions or restrictions shall be justified only on grounds of general interest relating to the protection of temporary agency workers, the requirements of health and safety at work or the need to ensure that the labour market functions properly and abuses are prevented. According to the article 5 of this Directive member states shall have the option of

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20 J. VOJTKO, *Agency employment in the context of employee protection and the maintenance of labour market flexibility*. Prague: Leges, 2016, p. 119.

21 *National Employment Strategy of the Slovak republic until 2020*, pp. 46-48. Available online: <https://www.employment.gov.sk/sk/praca-zamestnanost/podpora-zamestnanosti/narodna-strategia-zamestnanosti/>

22 M. QUINLAN, *The effects of non-standard forms of employment on worker health and safety*; International Labour Office, Inclusive Labour Markets, Labour Relations and Working Conditions Branch.- Geneva: ILO, 2015, No. 67, pp.5-7

23 See more: R. BEDNÁRIK – M. KORDOŠOVÁ – J. URDZIKOVÁ, *Survey of conditions of employment through temporary employment agencies. Report from the research task*. Bratislava: Institute for Labour and Family Research, 2017, pp. 32-34

prohibiting workers with an employment relationship as referred to in Article 1 from being used for certain work as defined in national legislation, which would be particularly dangerous to their safety or health, and in particular for certain work which requires special medical surveillance, as defined in national legislation.

A single prohibition was imposed in the Slovak Republic, namely the prohibition of temporary assignment for works, which are classified in the 4th category of hazardous work under the Public Health Protection Act.<sup>24</sup> "Most Member States have adopted considerably broader restrictions in the interests of health and safety at work or because of the abuse of temporary agency work at the expense of standard employment."<sup>25</sup> An example of other possible restrictions applied in other Member States is, in particular, the limitation of the number of staff temporarily assigned (France, Poland, Italy), legal grounds for temporary assignment (Belgium, Sweden),<sup>26</sup> limitation of temporary assignment to specific, unstable work (Luxembourg).<sup>27</sup>

Because of the general interest in ensuring safety and health at work and a number of foreign studies proving their impact on health, we think the legislator could have access to other reasons for limiting temporary assignment. In our view, the prohibition of temporary assignment should also be covered on the third category of hazardous work, as it was originally the subject of amendment.<sup>28</sup> Other restriction should be the limitation of number of temporary assigned employees to using employer, for example in depending on the quantity of occupational accident in agency/using employer. However, the risk of tightening legislation of the position of agencies may cause the increase cases of circumvention of legislation.

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24 Depending on the level and nature of the factors of work and the working environment, which may affect the health of employees, the assessment of health risks and the changes in the health status of employees, the work is grouped into four categories (§ 31 (1) of Public health Act).

25 H. BARANCOVÁ, *New legal regulation of agency work in the Slovak Republic*. *Societas et Iurisprudencia*, 2015, vol. III, no. 1, p. 37

26 *Ibidem*

27 M. DOLOBÁČ, *Prohibition of the abuse of agency employment*. *STUDIA IURIDICA Cassoviensia*, vol. 2, 2014, no. 1, p. 63

28 K. HUDCOVÁ – A. MIKUŠINCOVÁ – R. TRNKA, *Agency Work (Documentation for National Employment Strategy)*. Bratislava: Institute for Labour and Family Research, 2014. p. 11. Available online: [https://www.ceit.sk/IVPR/images/IVPR/NSZ/nsz\\_12.pdf](https://www.ceit.sk/IVPR/images/IVPR/NSZ/nsz_12.pdf)

Although Slovakia does not belong to countries with a high proportion of temporary agency work, more than 10% of total employment (statistical data from 2015) is a significant indicator of adherence to adequate working conditions for temporary employees.<sup>29</sup>

The status *de lege lata* is fragmented and unsystematic in the field of labour protection. We see insufficiency especially in a clear identification of scope of the rights and obligations of the user employer and the agency and maybe the process of evaluation the occupational accident and identification of employer's accountability. The process of evaluation and liberation from accountability for health damages must realize both, using employer and agency, after narrow cooperation. There should exist the legal obligation about reciprocal cooperation of agency and using employer in this process and the obligation to provide all necessary material about ensuring OSH for employees from using employer to agency. Separation of obligations between agency and employer is only partially explicitly defined. In the rest, the obligations of the user employer may be only logically deduced from the obligation of the user's employer who ensures, during temporary assignment, occupational safety and health as well as to other employees. In the practice are obligations in ensuring OSH subdivided according to contractual arrangements between the agency and the user employer. The question is division of responsibility is in compliance with legislative and which subject should be sanctioned if there is a breach of legal obligations of OSH.

i.) Using employer is expressly obliged to provide information about the procedure of the occurrence of an occupational accident. It is obliged to immediately notify the agency about an accident at work. In the case of a registered occupational accident<sup>30</sup>, using employer has a duty to report (to employees' representatives, to The Police Force and Labor Inspectorate), the obligation to find out the causes of the accident, after writing a registered work accident to send this document to temporary work agency and to adopt and implement the necessary measures to prevent the recurrence of similar occupational accidents (§17 of Occupational Health and Safety Act). ii.) The using employer is also obliged to ensure the necessary information and guidance of OSH will be received to the temporary employees, with a demonstrative calculation of information being involved (about the dangers and threats that may occur during work and in relation to it the results of the risk assessment, preventive

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29 M. KORDOŠOVÁ, *Illegal work, fraudulent work, agency employment and their impact on working conditions and OSH*. IN: H. BARANCOVÁ (et. al.): *New technologies in labor law and health and safety at work. Legal and psychological aspects*. Prague: Leges, 2017, p. 49

30 Registered occupational accident is an occupational accident which caused employee's incapacity for work of more than three days or the death of an employee.

measures and protective measures that the employer has taken to ensure safety and health at work, measures and procedures in the event of damage to health) according to the provision § 6 (4) of OSH Act. This obligation in our view is not intended for agency employees because of the standard duty of using employer to ensure all obligations of acquainting and informing of employees in compliance with provision art. 7 of OSH Act., on the basis of his general duty to provide healthy and safety working conditions for agency employees. iv.) The using employer is obliged to inform in writing the preventive and protective services (occupational health and safety services) about the employment of a temporarily assigned employee. It is remarkable that the legislator in the OSH Act uses only the term “employer” or if the work is performed at another employer the collocation “at another employer's workplace” but never the term “using employer”. This can sometimes cause the mistiness of possible division of legal duties. v.) The set of obligations for a user employer includes a Public Health Protection Act, which consists mainly in the assessment of health risk from exposure to work and work environment and in the assessment of health capability for work.

As it has already been mentioned, we assume that the extent of other obligations arises from the Section 58, par. (8) of the Labour Code, according to which the employer is obliged to ensure the occupational health and safety to the temporary assigned employees. The general prevention policy, general obligations of the employer, obligations of measures against direct and serious threat to life and health or control activities can be assumed to fall within the competence of the using employer.

The survey found that some using employers also use the agencies to ensure compliance with OSH legislation.<sup>31</sup> Are there covered certain statutory obligations in the field of OSH by the agency? If so, in what extent? An example of this is an obligation to inform and obligation to acquaint. According to the Art. 7 of Directive No. 91/383/EEC, the user employer shall specify "inter alia the required professional qualifications and the specific characteristics of the position to be filled (point 1), and agency will communicate them to employees (point 2)." Information obligation of agency in the meaning of Directive is not explicitly known from OSH Act and from Labour Code. This explicit duty of agency is insufficiency of national legislation. However, we can use an interpretation of deducing it from pre – contractual relations (§ 41 (1) of Labour Code). According to the provision § 41

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31 See more: R. BEDNÁRIK – M. KORDOŠOVÁ – J. URDZIKOVÁ, *Survey of conditions of employment through temporary employment agencies. Report from the research task*. Bratislava: Institute for Labour and Family Research, 2017, pp. 33.

par. 1 of Labour Code, prior to conclusion of an employment contract, an employer shall be obliged to acquaint a natural person with working conditions under which he/she shall perform work. Agency is the employer concluding the employment contract. Working conditions should involve inter alia ensuring occupational health and safety. If there is an intention to inform about OSH rules, the obligation should include the specificities of each position to reach this purpose. On the other hand there should exist the explicit obligation of agency to communicate required professional qualifications and specific characteristics of positions in purpose to adhere the Directive obligations.

The agency's other obligations related to safe and healthy working conditions can only be deduced from the nature of the specific provisions, the general duty of the user's employer and the fact that the work is performed in the user's work environment.

For example, the provisions of Section 17 (6) (a) of the Occupational Health and Safety Act show that almost all obligations about occupational accidents of temporary assigned employee are in the competence of the using employer. At the same time, the provision § 17(6) letter b) of OSH Act states certain obligation of employee's employer (agency) like adopt and implement measures to prevent the recurrence of an accident at work, writing a record of registered occupational injury, notification of occupational accident, or keep register of occupational accidents at work.

The question is if the division of responsibilities for OSH can be left to contractual arrangements between the agency and the using employer in the temporary assignment agreement. As we mentioned, the fact that the contractual division of liabilities in relation to OSH is a common practice confirms the Research Report of 2017 containing the results of ensuring the working conditions of agency employees. The report states that in some cases it is contractually stipulated that part of the personal protective equipment is provided by the user's employer and part by the agency.<sup>32</sup> In our opinion, it is not in compliance with labour law regulation. These are mandatory labour law provisions that the contracting parties can not regulate by the contract of temporary assignment. Their business relationship must be kept within the limits of the given rules stated in the provision § 58 (8) of Labour Code. In each case, if the breach of obligations in the OSH is found, the using employer should be sanctioned by contractual party.

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32 See more: R. BEDNÁRIK – M. KORDOŠOVÁ – J. URZIKOVÁ, *Survey of conditions of employment through temporary employment agencies. Report from the research task*. Bratislava: Institute for Labour and Family Research, 2017, p. 29

The following question is the obligation to conclude an agreement on the coordination of the OSH rules mentioned in the provision § 18 of the OSH Act. According to this provision, if employees of several employers fulfill their tasks in a joint workplace, the employer's cooperation must be agreed in writing in the provision of OSH and its coordination. The agreement determines who is required to create the conditions to ensure the safety and health of employees at the joint workplace and to what extent. We share the expert opinions according to which the closure of the coordinating arrangements for agency employment are not necessary as it replaces the general obligation of the user to provide OSH to the assigned employees.<sup>33</sup> Similarly, there is no overlapping of different forms of OSH by multiple employers in the performance of work, but one designated OSH scheme is enforced at the user's workplace, which is contained in the user's business regulations.<sup>34</sup>

Examples above demonstrate the confusing character of the OSH regulation. Inspiration for the future legislation may be a law on public health protection defining the full range of obligations of a user employer. A similar situation is also found in the conditions of the Czech Republic, where labour law theory is also based on the approach that it is not clear to what extent the using employer passes on the employer's rights and obligations in the field of OSH.<sup>35</sup>

The most problematic is the issue about ensuring health surveillance in terms of funding and ensuring the quality of health assessment on work between employers and agencies.<sup>36</sup> According to the Public Health Protection Act the using employer is obliged to ensure health surveillance. In the connection with his general duty to provide healthy and safe working conditions we believe that all fundings should bear the using employer where the work is factual perform and for which is the health capacity of employee important.

Liability for damage caused to an employee who was temporarily assigned to a user's employer and which occurred discharge of work tasks or in direct relation to discharge of work tasks is defrayed by the agency, not by the user employer. The agency is subsequently entitled to request corresponding compensation from using employer. The law gives them

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33 A. OLŠOVSKÁ, J. TOMAN, M. ŠVEC, S. SCHUZTEKOVÁ, M. BULLA, *Agency employment*. Bratislava: Wolters Kluwer, s.r.o., 2015, pp. 350 -351

34 R. BEDNÁRIK – M. KORDOŠOVÁ, *Illegal work, fraudulent work, agency employment and their impacts on working conditions and OSH (1<sup>st</sup> Stage of Research Task)*. Bratislava: Institute for Labour and Family Research, 2016, p. 32

35 M. BĚLINA, L. DRÁPAL, et al., *Labour Code. Commentary*. 2nd edition. Praha: C. H. Beck, 2015, p. 1210

36 See more: R. BEDNÁRIK – M. KORDOŠOVÁ – J. URDZIKOVÁ, *Survey of conditions of employment through temporary employment agencies. Report from the research task*. Bratislava: Institute for Labour and Family Research, 2017, p.33

possibility to agree on other regulation. Although, there is an absence of the connection with the relevant provisions of the Labour Code for the area of accountability,<sup>37</sup> we believe that the agency has standard liberation options of getting rid of the responsibility for occupational accidents. The agency enters into the position of using employer who is liable for the OSH and in narrow cooperation with the using employer, has the option of being completely or partially exempt from liability. The exemption of accountability for the work accident by the agency is, in our opinion, also an exemption of the responsibility of the user employer.

#### **IV. Homework / telework in the context of occupational health and safety**

The legislation on homework and telework allows employer and employee to agree in the employment contract another place for performing work than employer's workplace. The obligation to secure the OSH, without any explicit exemption, is in the hands of the employer. Issues related to the obligation of providing OSH rules for employees / teleworkers we can divided into two basic areas:

- i.) Scope of the employer's rights and obligations to ensure OSH - whether this is the same extent as for the standard employees.
- ii.) The actual possibility of employer to provide employee OSH at the required level, due to a) limited possibilities for control by the employer, trade union or employee representative for safety and health at work); b) possibility of the employee to prove that he has experienced an accident at work, and c) the possibility of getting rid of the employer's accountability for an occupational accident / occupational disease.

The level of safe and healthy working conditions should be comparable to that of other employees. The nature of analyzed form of work shows that the employer has no obligations regarding the specific conditions of the employer's place (for example, taking measures related to the storage of dangerous substances, the banning of smoking in workplaces where non-smokers work, etc.). The basic framework of obligations of the employer remains the same, in particular within the scope of general principles of prevention, such as the assessment of risks arising from work at home or elsewhere ensuring that the employee is informed and notified about the OSH rules, as well as other statutory obligations (e.g.

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37 A. OLŠOVSKÁ, J. TOMAN, M. ŠVEC, S. SCHUZTEKOVÁ, M. BULLA, *Agency employment*. Bratislava: Wolters Kluwer, s.r.o., 2015, p. 332

determination of safe working practices, inspection, requirements for illumination, work with imaging units, etc.).

By agreeing to this work organization, the employer “disclaims” his right to continuous and personal control of the employee during the performance of working tasks. The employer's obligation to ensure that the working environment meets all the safety requirements is determined by the explicit consent of the employee. The employer's control over the employment relationship is limited by the fact that the employer is not authorized to enter the workplace at home without knowledge and consent of employee (Article 8 of the 2002 Teleworking Agreement).

Another related problem is assessing and demonstrating the injury that the employee suffers during the work. All accountable assumptions are proved by the employee. Employee has always not available evidence that the accident occurred at the time of performance work or in the direct connection with the performance of work. Employees are not subject to the provisions on working time scheduling.<sup>38</sup> Therefore, we consider as appropriate that employees and employers should agree on the obligation of employee to inform the employer of the anticipated time periods in which the work will be carried out on a specific day, and after completing the work, he will send another statement recording the time when the work tasks were performed. We realize that even this system does not ensure, without real monitoring through remote access, that work was performed in the stated time slots. Some opinions suggest establishing rebuttable legal presumption that occupational injury happened unless the employer proves otherwise.<sup>39</sup> In our view such procedure will place an unreasonable burden on an employer who also has no adequate means (or only minimum) to prove that the occupational accident has not occurred. In the process of getting rid of employer's accountability for occupational disease/accident we can then consider about using the similar rule, based on the ground that employer is not liable, until the employee immediately allows entering home – workplace to identify circumstances of an accident, with subsequent demonstration of all responsible assumptions by employee. However, in practice often happens that employers do not evaluate the accident as occupational accident, even on the workplace of employer.

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38 J. ŽUŠOVÁ, *Working conditions of teleworkers*. In: Law, Business, Economics VII: Proceedings of the Scientific Symposium: 11-13 October 2017, High Tatras - Košice: Pavol Jozef Šafárik University in Košice, 2017, p. 316 -317

39 L. JOUZA, *Homeworking - advantages and disadvantages*. Buletin – advokacie, 2017. Available on: <http://www.bulletin-advokacie.cz/prace-z-domova-vyhody-a-nevyhody?browser=mobi>



The performance of dependent work at home must be necessarily based on the mutual trust and loyalty between the parties and on the respecting of contractual obligations (*pacta sunt servanda*) agreed in the employment contract (the conditions under which the work will be done, a precise calculation of the employee's obligations regarding the respect of the OSH rules such as respecting safety breaks, adherence to rules for working with imaging units, etc.).<sup>40</sup> For the purpose of assessing work-related risks before the performing work, the employer (or even the occupational health service employee) should be able to enter the place of work of the employee for finding the working environment to meet all health and safety requirements. We propose to lay down the substantive content of employment contract for a home work employee, which will make the establishing of employment relationship conditional. Further contractual parties should agree on the possibility of employer's control realized in a periodicity (e.g. once a month) without a specific day for maintaining the effectiveness of the check, with the employee's notice given at least one hour prior to control, as well as the general approval of the employee to enter the workplace when reporting an accident at work.<sup>41</sup> Immediate admission to the workplace of an employee can even facilitate the possibility of employee to prove the occupational accident. There should be the compulsory part of OSH rules of employee to send reports (check sheets) about work environment and its imperfections (form of it reminds a questionnaire). These check sheets should be sent to the employer regularly with a declaration of completeness, correctness and truthfulness of the provided data. It will confirm that the environment in which work is done is healthy and safety. We believe that the check sheet should be sent to the employer under the terms agreed in the employment contract at a predetermined periodically intervals. In case of imperfections of homework environment, the employee should be obliged to allow the employer to remove them.

## V. Mental healthcare in labour relations

One of the ILO documents dealing with the effects of non-standard forms of work on health at work includes the results of various studies about the impact of this work on physical

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40 See T. NEUGEBAUER, *Safety and health at work in a cube or what is the current OSH about*. Prague: Wolters Kluwer, 2016, p. 165

41 For example for the legal regulation in Poland see: V. KADLUBIEC, *Legislation of Teleworking in the Republic of Poland*. In: HRABCOVÁ, D. (et al.) *Proceedings of the International Scientific Conference. Labor Law 2015, Harmonization of work and family life*. Brno: Faculty of Law, Masaryk University. 2016, p. 129

and mental health of employees.<sup>42</sup> Uncertainty (agency workers), lower social rights (absence of paid holiday in out-of-work contracts), absence of social interactions, isolation, blending of work life and private life (homework / teleworking) have a significant impact on the mental health of employees.

There is no complex of special regulation in the Slovakia regulating the protection of mental health. Its protection we derive from the basic duty of the employer to continuously ensure safety and health at work and, for that purpose, to take the necessary measures, including the provision of prevention, the necessary resources and an appropriate system for managing labour protection (§ 147 (1) of Labour Code). Occupational health protection includes (or is intended to include) an obligation for the employer to ensure safe and healthy working conditions equivalently in relation to physical and mental health.

Slovak legislation contains the rules for managing the mental factors. Factors affecting psychological workload are contained between other factors of working environment to not endanger the safety and health of employees according the OSH Act. Similarly, according to the Act on Public Health Protection, the legislator also included psychological factors to one of the factors of working conditions. Assessing the mental workload is part of the Regulation of the Ministry of Health of Slovakia no. 542/2007 Coll. of details on health protection from physical activity at work, mental workload and sensory workload. According to the provision § 38 (3) of Act on Public Health Protection is the employer obliged to ensure assessment of mental and sensory workload, ensure measures to exclusion or elimination the increased mental and sensory workload and to keep minimum safety and health requirements when working with display units.

Legal regulation of psychic or psychological factors do not fail completely. However, we can assume that the rules against the stress at workplace (in general) can often lose their effectiveness if there are the part of general framework of ensuring health and safety at work. In the case of proving the increased extent of physical workload, the employer must elaborate the operating rules and submit them for approval by the public health authority. The operating rules are established in other cases, such as heat or cold load, or for certain kinds of facilities (medical or catering facilities). Analogical approach could be required if the increased psychological workload is confirmed. The consideration *de lege ferenda* is to accept the

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<sup>42</sup> M. QUINLAN, *The effects of non-standard forms of employment on worker health and safety*; International Labour Office, Inclusive Labour Markets, Labour Relations and Working Conditions Branch.- Geneva: ILO, 2015, No. 67, 40 p.

obligation to create internal employer's regulation including the anti – stress rules with the system of reporting the cases of mental workload. On their basis employer would be obliged to assess the rate of mental workload and with approval of employee, employee will subject to a medical examination, including a compulsory psychological examination.

The national Strategy of Occupational Health and Safety for years 2016 – 2020 states as a priority to promote non – using of non – standard employment relations with the purpose to reduce the risks arising from such relations to ensure occupational health and safety of employees, including the elimination of stress in all kinds of employment relations.<sup>43</sup> On the other hand the one of the priorities established by the National Employment Strategy of the Slovak Republic until 2020 is the improving the conditions for work – life balance and to support the flexible work forms, including the appropriate adaptation of working time to increase the employing of people with parental responsibilities. There was also created an Initiative to support work-life balance for working parents and carers at European Union level<sup>44</sup>, which emphasizes the using of flexible forms of work organization for the purpose to improve the work life balance and their positive impact on the employing of women. The Initiative in the footnote no. 37 states, that an important aspect should be that flexibility is employee-friendly, i.e. employees can maintain control over certain dimensions of employment such as working hours.<sup>45</sup> Similarly, the Proposal for a Directive on work-life balance points out that digitalisation can support flexible working arrangements by allowing employees to work remotely, it can also present some challenges and risks (article 4. 4. 5 of Proposal of Directive). These risks can adversely affect the mental and physical health of employees in flexible working forms.

The positive effect of flexible forms of performing work for increasing employing of certain categories must be appreciated. At the same time, it is also necessary to address the negative aspects of these flexible forms, which, on the contrary, can often restrain the boundary between private and professional life. However, new technologies lead to the opportunity be reachable everywhere and at any time, even during the rest time of employees.

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<sup>43</sup> See *Strategy of Occupational Health and Safety for years 2016 – 2020*, p. 3. Available online: [https://www.ceit.sk/IVPR/images/IVPR/strategia\\_bozpv\\_sr\\_na\\_roky\\_2016\\_2020.pdf](https://www.ceit.sk/IVPR/images/IVPR/strategia_bozpv_sr_na_roky_2016_2020.pdf)

<sup>44</sup> Communication from the commission to the European parliament, the Council, the European economic and social committee and the Committee of the regions, An Initiative to support work-life balance for working parents and carers, COM (2017) 252 final, Brusel 26. 4. 2017

<sup>45</sup> Communication from the commission to the European parliament, the Council, the European economic and social committee and the Committee of the regions, An Initiative to support work-life balance for working parents and carers, COM (2017) 252 final, Brusel 26. 4. 2017, p. 11

Such approach can lead to many stressful situations and influence the health of employees.<sup>46</sup> Flexible forms (especially homework or telework) can cause counterproductive effects. To ensure employing on the one hand and to disturb the rest time designed for relax and family. Sometimes we can barely imagine to manage without stress the work from home and take care about family in the same time. That can lead to perform tasks during the night, which can have again a significant influence on the health of employee.

If we try to regulate the work – life balance, there should exist the rules dealing with negative risks arising from flexible forms of work. Especially it is important to encourage the organization of working time in the teleworker, including the provision of continuous rest and safety breaks. The employer is also obliged to take measures against social isolation of employee in the context of mental health care. In particular, the emphasis is placed on the obligation to ensure occupational health and safety at the employees in the separated workplaces and those employees who work at the workplace themselves (the provision of § 6 (1) letter r) of OSH Act.

We have already mentioned the instruments for improvement the protection of both mental and physical health in another analyzed atypical working forms. In the “agreement” the aspect of working schedule and/or at least the paid holiday for working hours should be legally granted. Using the employment by agencies the temporality of this form of work should be control (and ensured), to reduce the uncertainty of employment. This uncertainty should also be compensated maybe by the higher employees benefits and social measures.

Another problem of protecting mental illness in the employment relationship is the lack of addressing the issue of accountability for mental illness or psychological harm that has arisen from work performance for the employer. Under the current legal situation, no mental illness related to work is included in the list of occupational diseases according to the supplement no. 1 of Social Insurance Act, no. 461/2003 Coll. There is also a lack of case law that outlines the direction of compensation for the employee's mental injury. We can find guidance how to proceed only in one of the decisions of the Supreme Court of the Czech Republic which proceeded through the provisions of the general accountability of employer for damages.<sup>47</sup> According to the provision § 192 of Slovak Labour Code an employer acting

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<sup>46</sup> More about technostress see M. DOLOBÁČ, *Telework Impact on Mental Health Employee*. In: Law, Business, Economics VII. Proceedings of scientific symposium: 11-13 October 2017, High Tatras. - Košice: Pavol Jozef Šafárik University in Košice, 2017, pp. 193 - 200.

<sup>47</sup> Judgment of Supreme Court of Czech Republic, file reference *21 Cdo 4394/2014* from 24th March 2016.

shall be accountable to an employee for damages caused due to violation of legal obligations or deliberate action against good morals to the employee in the performance of work tasks or in direct relation to it.

In the Czech Republic's legislation, we find one of the provisions of the Labour Code, the subject of which is neither occupational injury nor occupational disease. The provision of § 271n (2) of the Czech Labour Code, which provides the possibility of incurring other damage or non-material damage caused by other causes, such as an accident at work or an occupational disease. In the view of expert opinions here we include, for example, various allergic reactions.<sup>48</sup> Until a future extension of occupational diseases, we can imagine solving the compensation of non-pecuniary damage for work-related mental illnesses through the provision of general accountability of employer or subsuming them under the illnesses of the other health damage.

As it was analyzed, slovak legislation regulates the psychological and social factors of working conditions, including the assessing of psychological workload. A problem is how to control and sanction not respecting and realizing the rules protecting mental health of employees. There is an absence of methodics for employers which would help them in the process of fulfilling their obligations in realizing measures against stress at work.<sup>49</sup> The necessity of creating such (transnational) methodics would be appropriate instrument for improving the mechanism of antistress policy on the organisational level.

Slovak legislation provides some scope for improving the regulation of mental stress and protection of mental health for employees beside the measures we suggest. The current legislation offers some instruments to protect it in the interest to increase efficiency, productivity, reduce work absenteeism and long-term incapacity of employees. In addition to the OSH rules (for example, replacing monotonous work with others, taking into account human abilities in determining work practices), the employer has the option to take care of: i) the organization of work; ii) employee benefits; or iii) the reinforcement of social policy. With regard to the organization of work, we would recommend to make the training courses for home employees / teleworkers to rationally allocate working hours and rest periods on arbitrary work-time scheduling. The employer can support employees in the use of out-of-

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<sup>48</sup> See also T. NEUGEBAUER, *Safety and health at work in a cube or what is the current OSH about*. 2. updated and extended edition. Prague: Wolters Kluwer, 2016, p. 228

<sup>49</sup> J. URZIKOVÁ, – M. KORDOŠOVÁ, *Management systems and their impact on occupational safety and health management, work related stress, risk behavior, working conditions and their impacts on OSH. Report from the research task*. Bratislava: Institute for Labour and Family Research, 2015, p. 108

work activities (for example by providing different weekend stays). Employer's social policy is also based on the care of a work culture and working environment concerning both workplace relationships and aesthetic work environment.

## VI. Conclusion

The benefits of non-standard forms of dependent work are undeniable. Especially they provide employees the opportunity to acquire work skills, habits, economic income and also match maternity or parenting with professional life. At the same time, they bring the disadvantages that also affect the safety and health of employees. We note that the Slovak Republic's legal regulations fulfill their international and EU obligations and therefore do not show any discrepancies (exceptions are agreements on work performed outside the employment relationship). At the same time, it turns out that many aspects of non-standard work provide platform for other legislative solutions. Despite of this fact, even in the current legislation, we find some instruments to improve the quality of OSH. We particularly point to the need to increase mental health care for employees. Disadvantages and risks of non-standard forms of dependent work require to take attention to care for mental health of employees. We believe that at least the employer's duty should be to adopt internal rules for the prevention and reduction of stress at work, including the introduction of an internal mental load notification system. It is also necessary to address the possibilities of compensation for damaging the mental health of the employee, which is currently not sufficiently enough. Non-standard work contributes to the creation of additional unfavorable health-risk factors for employees which should be adequately reflected into occupational health and safety regulation.

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