

Legal and Social Aspects of Employment of Disabled Persons in Poland

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Abstract

This study is an effort to characterize the legal and social aspects of the Polish regulations relating to the employment of people with disabilities in sheltered conditions. In Poland, the role of activation of the disabled in the protected labor market performs three types of operations: sheltered workshops, factories professional activity, and social co-operation. Authors discuss the formal requirements to obtain the status, specific rights, and the obligations of employers who are employing the establishment of protected or reinsured activity. The research included in the study was supplemented by an analysis of available statistical data based on the number of operators protected labor market and the number of disabled people employed in these workplaces.

Keywords: disability, work, market, Polish regulations, social exclusion

Introduction

Disability as a Social Category

Researchers who were interested in disability issues created many different theories and concepts. The representatives of functionalism isolated the standards and behavior to be adopted by the sick person. However, social interactionists tried to interpret the disease and investigate how it affects behavior and human activities. Theories were also formed that disability was explained using social deviance and social theories of marking. Subsequently, an important approach to disability is also a form of discrimination and social exclusion. The interest of sociologists on the problem of disability was seen in the works already published in the sixties of the twentieth century (Mikołajczyk-Lerman, 2013).

Disability was initially analyzed from the perspective of social roles. They are separated team roles played by a disabled person. Society had

difficulty accepting other roles for people with disabilities than those that were automatically assigned to them.

T. Parsons believed that the role of the patient is a functional element for the entire social system. He said that every person has been assigned to certain social roles. However, diseases has a significant impact on the body because it slows down the performance of assigned roles. The disease has been recognized as an undesirable state of the patient. Also, the patient attempts to eliminate diseases by seeking help and active participation in therapy. The patient through their own willingness might not recover as quickly as expected, because society gives him treatment time to get out of the current "normal" social roles (Sokołowska & Ostrowska, 1976).

In the past, disability was viewed as a form of deviance and marking, focused on the visibility of injuries and dysfunctions. This was the direction designated by E. Lemerta, E. Goffman, and H. Becker. Therefore, disabled people are stigmatized and labeled by society. This look at disability made him to begin to relate to prejudices and stereotypes. In this sense, disabled people are stigmatized when they have a disease, infirmity, and disability (Mikołajczak-Lerman, 2013).

Following Erving Goffman's theory, every society produces its ways of categorizing human communities. Also, representatives of each category equips the attributes that are considered a typical features and that are normal. The stigma are attributes that are disparaging and disclosed in social relations. Stigma is characterized by the fact that it does not believe that such a unit is fully human. Therefore, it is a form of discrimination resulting in the loss of opportunities in the social life. Each individual expects respect and recognition. However, people with disabilities are not an exception. In a normal environment, they are often denied these privileges. As a result, branded unit detects such features, which aims to reject the expectations of the society. Stigma is a phenomenon that has great strength. The basis for stigma is fear and various forms of superstition. Consequently, E. Goffman distinguishes between three types of stigma. The first is associated with physical disgust that is felt at the sight of the deformation of the body. The second is the negative character traits. The third type of stigma is the stigma of racial minority religious. Thus, the strength of the stigma depends on its visibility. When the mark is not a recognized entity, the carrier can hide them when it interacts (Goffman, 1963).

The Methods of Functioning of Disabled People in the Society

The process involve in adapting the unit to live in a society is focused on the approaches which is biological, social, and psychological. People with disabilities often display the attitude of low self-esteem. This involves the acceptance of their disability. Disability is divided into two categories:

reversible and irreversible disability. Disability is perceived differently by a person who was born with certain defects, than a person who has become disabled by accident or by adversity. The process of acceptance of a sudden disability is very dramatic. The first reaction to what appears in his or her psyche is shock and depression. He or she finds it difficult to accept the fact that they have become disabled. Thus, they lost the value of their health. The response to disability, which is progressing slowly, is different from the sudden loss of health. Reaction to slow proceedings disease is not associated with a sudden shock. Such a man has a lot of hope that the disease will not have the impact that is expected to bring. The person has to come to terms with the situation (Klonkowska & Szmulc, 2013).

People who are born with the so-called congenital disability do not realize that they are different from other people by their own limitations. The visibility of these differences only appears in adolescence. Thus, this happens when the disabled person is in contact with their peers. Sometimes, her peers realize that it is different from all. For people who are physically challenged, they find it difficult to compare themselves with physically and psychologically healthy men. Such people are more readily to accept their situation because of their disabled body. However, such people often blame themselves. They believe that they have done something wrong and deserve such a fate. However, it is commonly believed among healthy people that disable persons are suffering the punishment for their sins. This is how the unit sees itself and the extent to which they accept each other. Therefore, this depends on personal characteristics and the maturity of the mind which affects the nervous system.

Disability Workers as Part of a Labor Market

People with disabilities are a group of employees of sensitive law. According to available statistical research, the number of people with disabilities with certificate of disability in 2011 which amounted to 3 384 000 people, was approximately 2 024 000 people (Statistical Data of the Central Statistical Office LFS). Among people with disabilities aged 15 and so, there were 581 000 economically active (including approximately 495 000 are employed, while approximately 86 000 are unemployed). Also, 2 803 000 people were economically inactive. Consequently, the data for the people of working age was nearly 535 000 active professionals (including 452 000 who are employed, 83 000 who are unemployed, while the majority, almost 1489000, are inactive persons)(see: <http://www.pfron.org.pl/pl/programy-unii-europejs/program-operacyjny-kap/zakonczone-projekty/wsparcie-osob-ze-stwar/2453,Statystyki-aktywnosc-zawodowa-osob-niepelnosprawnych.html>, access the web site: 04.01.2017 r.).

In the EU, we can distinguish between three main forms of support for the employment of people with disabilities:

1) Employment Subsidized: States uses subsidies for employers to offset part of the costs of employing people with disabilities, e.g. by subsidizing the salaries of employees,

2) Employing Supported - for the use of various forms of support for individual disabled workers, e.g. by financing the assistant of disabled worker.

3) Sheltered Employment - Through supporting the organization of work under special conditions, e.g. through support to entities that have the status of a protected work (Grzonka, 2010, p. 1-2).

Also, the Polish State implementing the provisions of the National Constitution from 1997 (Dz. U. 1997 No. 78 pos. 483) and the provisions of international law and the European Union law promotes the employment of this social group. People with disabilities can be employed in the open or protected labor market. The so-called open labor market people with disabilities apply for jobs on the same basis as non-disabled people. On the other hand, the protected labor market covers employers with the status of a protected work or business activity. Subsequently, the law maker foresaw the possibility of creating and maintaining entities which protected labor market by private entrepreneurs. It also involves the case of establishment activity such as local government units.

The Status of "Protected Work Enterprise"

The meaning of the Polish regulations relating to people with disabilities application for granting the status of a protected work can apply for an employer who runs a business for at least 12 months. Thus, they employ at least 25 employees in full-time work and have met certain criteria. The first required condition is the employment rate of disabled people for at least 6 months. Legal norm indicates that this level must be at least 50% of employed people, including at least 20% of the workforce. This workforce must be a person with severe or moderate degree of disability. On the other hand, 30% of the staff will serve the blind or mentally ill or mentally disabled people with severe or moderate degree of disability. Another criterion applies which is building in the workplace. Buildings and facilities used by the employer must comply with the provisions and principles of occupational health and safety, including the needs of persons with disabilities. This can be seen in terms of its adaptation to the workplace, hygienic sanitation facilities, and traffic routes. Therefore, control made the polish National Labour Inspectorate at the request of the entity. This was accomplished by applying for the status of a protected work. The last requirement refers to the provision by the

employer of emergency, specialist medical care, and counseling and rehabilitation services. The fulfillment of the above conditions confirms the province governor issuing an administrative decision to grant the status of a protected work for a period of three years. The law imposed on the provincial governor and the State Labour Inspectorate is responsible for monitoring entities which have the status of sheltered workshops. Not less frequently than once every two years by the province governor, and at least once every three years, the State Labour Inspection often verify the fulfillment of the conditions and obligations upon which to achieve the status of a protected work. As a result of the inspection in the event of failure by the employer to certain conditions, the province governor issues a decision to revoke the status of a protected work. Also, the governor issues a decision to restore the deposit by the employer proposal. Therefore, this demonstrates the fulfillment of certain conditions. The standard of Act 30, paragraph 4, of the Law on the rehabilitation of the employer imposes disclosure obligations. Subsequently, they rely on the obligation to submit semi-annual palatine information confirming the fulfillment of the criteria of the entity operating in a sheltered workshop. In addition, the employer must provide information on any change in these conditions over a maximum period of 14 days of their occurrence. Employer operator work can enjoy numerous tax advantages. The law exempts the entity from taxes on real estate, agriculture, and forestry as well as transfer tax, provided that this action is in direct connection with the operation of the plant. The exception is the gambling tax, value added tax and excise tax, as well as income tax and tax on means of transport. Furthermore, the laws indicate that the sheltered workshop is also exempted from fees, except for stamp duty and fees as *sanatio*. However, it should be emphasized that the funds derived from tax must be properly spent. The employer is required to provide 90% of this amount to the capital fund rehabilitation of the disabled, while the remainder goes to the State Fund for Rehabilitation of Disabled Persons (pol. *PFRON*). This was according to the legal requirement that the operator is a protected labor oblige to create a capital fund for disabled persons (pol. *ZFRON*). The capital fund is created in particular with funds obtained from tax exemptions and fees, part of the income tax payments from individuals, revenue from legacies, and donations with the proceeds from the sale of fixed assets. This is acquired with its finance and interest on funds deposited into the account of the fund itself. Furthermore, the disposition of the operator of the plant sheltered employment. The employer in accordance with applicable laws and regulations (Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 19 grudnia, 2007 r. w sprawie zakładowego funduszu rehabilitacji osób niepełnosprawnych), decides on the allocation of these funds, in particular, to create jobs and adapt its ambient to the needs of people with disabilities.

Thus, this involves the purchase or modernization of machinery and equipment, financing of construction projects included in the records of a protected labor, and equipping and adaptation of space in the plant. In addition, an entity may finance part of the cost of introducing new technologies and prototype models and organizational programs in proportion to the number of full-time job of disability employed persons.

The funds from the described fund (ZFRON) may also be spent on the creation, modernization, renovation, expansion, rehabilitation, and maintenance of the database (clinic, physiotherapy), social (dormitory, hotel canteen), and leisure. Fund resources could be used to finance basic and specialized medical care and rehabilitation services. It should be emphasized that the funds from the ZFRON employer might be used to fund the training and re-skilling of workers in order to improve their professional qualifications, the additional remuneration of employees who use sign language, and teachers for the visually-impaired employees. The employer can also purchase vehicles to transport people with disabilities who have difficulty using public transport. The measures may also be allocated for sports activities, recreation and tourism, and the organizing of rehabilitation (Skóra, 2015).

Subsequent expenses arising from the described fund (ZFRON) may relate to individual's aid granted at the request of employees with disability. The grant can be allocated to cover the costs of stay and treatment in hospitals, nursing homes, purchase of medicines, individual rehabilitation equipment, adaptation and equipment of flats. They even maintain the blind guide dog or pay for a sign language interpreter. The amount of individual aid granted depends on the financial situation of the applicant and it is done randomly. Grants may be awarded as non-refundable aid or in the form of an interest-free loan, which can be completely or partially canceled in the event of a situation when it was used as intended. It should be emphasized that the ZFRON employer may also finance individual rehabilitation programs aimed at reducing restrictions on disabled workers. The law allows financing, among others, the costs of counseling, specialized medical and psychological research, and training in order to raise the professional qualifications of workers. Help conditioned the development of a rehabilitation program for employees with disability who in particular have the lowest qualifications. Thus, this constitutes an obstacle towards doing the work. In addition, they lost their ability to perform the current job or they are changing their professional qualifications. The preparation of a rehabilitation program deals with the committee appointed by the employer, which includes: a doctor or nurse performing benefits sheltered workshop, a physical therapist, and a counselor. Rehabilitation program in their contents in particular include: professional diagnosis of the situation of the disabled,

the purpose and methods of the implementation of the program, and the schedule of rehabilitation activities. Subsequently, distribution should also provide deadlines for assessing progress in rehabilitation and designate individuals responsible for its implementation. The program should be developed with the participation of the disabled workers that it was designed for. Evaluation of the effects the implementation of the rehabilitation program is made by the committee. If justified, they need to modify the program, identify opportunities, and form further rehabilitation after completion. Also, the common tasks of employers operating plants in the field of vocational rehabilitation should be mentioned to cater for the social and therapeutic disabled. During their implementation, actors can allocate up to 10% of the funds coming from ZFRON. Also, measures may be spent in a special way for the creation and modernization of infrastructure rehabilitation, social investment activities, and research and analysis of the labor market of people with disabilities. The entity conducting the sheltered workshop, upon application, may be obtained from the PRRON grant to implement its activities. Subsequently, this assistance consists of financing up to 50% interest on bank loans taken out. The condition, however, involves the use of funds for purposes related to vocational rehabilitation and social disabled people. In addition, the employer may apply for reimbursement of costs incurred for the construction or expansion of facilities and the premises of the plant. Financing requirement is the employment rate of disabled persons of at least 50%. It also portrays the fact that the additional costs results from the engagement of this group of employees.

Until 1 January 2015, employer who holds the status of a protected work shall have the PFRON monthly grant of the compensation of employees with disabilities included in the records. Also, the amount of grant depends on the degree of disability. In the case of persons admitted due to a significant degree of disability, grant is awarded in the amount of 1 800 PLN. Help in the case of workers classified as moderate degree of disability is equal to 1 125 PLN. In contrast, when it comes to people with disabilities, a mild grant of 450 PLN is awarded. Additionally, in the case of persons with mental illness adjudicated, mental retardation, partial developmental disorder or epilepsy and blindness, the grant amount is increased by 600 PLN. Consequently, the amount of subsidy is fixed in proportion to the employee's working time and it cannot exceed 90% of the costs of the actually incurred monthly wage.

Supported Employment Enterprise as a Part of Protected Labor Market

Units of local and regional authorities (commune²⁴, district²⁵), as well as a foundation, association or other social organization whose statutory task is professional and social rehabilitation of persons with disabilities, can create organizationally and financially separate unit. In addition, they can apply for this entity status of a supported employment enterprise under certain conditions.

The first determining factor in obtaining the status of a professional activity is to hire people with disabilities of at least 70% of the total crew.

In particular, they should be directed to work by the district labor offices, be counted as a significant degree of disability or moderate degree, and should be diagnosed with autism, mental retardation or mental illness. In addition, the program board took the investigation to take employment and continue vocational rehabilitation in conditions of protected labor. It should be emphasized that such a person cannot represent more than 35% of total employment with the employer.

Secondly, they must be complied with conditions similar to sheltered workshops in terms of facilities and rooms, emergency healthcare, and specialist healthcare. In addition, the applicant must spend his/her income on capital fund activity. The last condition is to obtain a positive opinion of the governor about the need for the establishment of factory activity.

Furthermore, the relevant application employer translates marshal of the province, which signed an agreement for funding from PFRON cost of setting up and operating the plant. One should note that the amount of the negotiated grant may not exceed 65% of the expenditure in question. In the case of co-financing, the operation of the plant does not exceed 90%.

After fulfilling the above conditions and the control of the State Labour Inspectorate, the province governor issues a decision on granting the status of a professional activity.

It should be emphasized that betting activity can lead any business. This is with the exception of manufacturing industry products fuel, tobacco, alcohol, and precious metals.

The cost of developing the plant was financed on the basis of an agreement with the organizer (PFRON). As part of these expenses, entity can finance adaptation based on the needs of people with disabilities production facilities or premises for the provision of services. This includes; job with the purchase of machinery, tools and equipment necessary to perform the work, and places of social and intended rehabilitation. Additionally, these measures can purchase or rent rehabilitation equipment. It can also provide means of transport for disabled workers.

²⁴ pol. gmina

²⁵ pol. powiat

Based on the costs of operation of the plant activity from the PFRON, they can spend the salaries of employees classified as significant or moderate degree of disability, up to 100% of the minimum wage, in proportion to the working time. The measures may be used to provide additional annual wages and salaries, retirement and death, as well as the jubilee. The law also covers the contributions of the employer and employee social security and health, as well as contributions to the Guaranteed Employee Benefits Fund and the Labour Fund. The entity may also finance the purchase of materials, energy, services, tangible and intangible, and the transportation of disabled people. It stressed that for the PFRON, the employer might pay for training workers with disabilities. However, this is often associated with preparing them to practice in the open labor market. In addition, the courses are related to the economic activity of the plant. The entity may also employ finance charges to benefits fund or the payment of holiday benefits. The law allows for the exchange of motorized machines, devices, and equipment necessary for the production or provision of services which is also related to the change in the profile operation of the plant.

Consequently, working time of persons with disabilities with severe or moderate degree of disability is at least 0.55 working hours specified provisions of the Act (i.e. 7 hours a day, 35 hours per week). It can be increased up to a height of 0.8 working hours at the request of the program team. However, the time spent on activities should not be more than 60 minutes a day, but can be extended to 120 minutes at the request of the rehabilitation staff.

Head of department activity is obliged to create a program team which includes: counselor, psychologist, and job coach. The team develops individual programs of vocational and social rehabilitation. They assume, in particular, the diagnosis of the social and professional purpose, the expected results, deadlines for assessing the progress of the employee, and the person responsible for their implementation. Individual rehabilitation program is created with the participation of a disabled person. Then, it was approved by the manager of the plant. Based on the plan, the plant manager supports employees with significant or moderate disability which have reached a satisfactory level of the efficiency of social and professional finding of suitable jobs. However, operators of the supported employment enterprise create a fund activity with funds coming from tax exemptions and income generated in connection with their activities. Finance funds are collected in a separate bank account and must be recorded by the organizer. Financial resources of the capital fund activity can be spent on the improvement of the work of persons with disabilities, improve working conditions and rehabilitation, social conditions, and health and hygiene. Also, there is the purchasing of equipment that helps the disabled in

independent living and participation in social, cultural, and recreational activities. Measures may also be spent on assistance in preparation to work after the plant activity. In addition, there are equal opportunities in the new place of employment. The law maker also aid in the construction, renovation and adaptation of housing and the costs of training, retraining and professional qualifications of employees with severe or moderate degree of disability. The fund may be forgiven to help in meeting other needs of people with disabilities, e.g. the purchase of medicines and individual equipment for the rehabilitation. In addition, supported employment enterprise in tax matters have similar privileges and obligations as sheltered workshops.

Conclusion

Analyzing available statistics from the first half of 2016, it should be noted that Poland had 1120 employers who have the status of a protected (supported) work enterprise. Thus, they are employing a total of 163 455 employees where 129302 were persons with disabilities. The employment rate of disabled persons stood at 79.1%. Most sheltered workshops were in the provinces of Wielkopolskie (171), Śląskie (122), and Mazowieckie (101). On the other hand, the smallest number was found in Lubelskie (21), Opolskie (17), and Podlaskie (16) province (<http://niepelnosprawni.gov.pl/p,84,dane-dotyczace-zakladow-pracy-chronionej>, access the web site: 04.01.2017 r.).

At the same time, it should be noted that there is an annual systematic decline in the number of employers engaged in this type of activity. Majorly, this is due to a reduction in the economic benefits of employing people with disabilities.

On the other hand, a yearly increase in the number of betting activity was recorded. In June 2002, in Poland, there were only 3 entities carrying out this type of activity, employing 138 people including 103 persons who were with disabilities. While analyzing data from June 2016, an increase to 100 vocational activity establishments employing a total of 5396 employees should be noted. This includes 4085 people with disabilities. Subsequently, the employment rate of disabled persons stood at 75.7%. The largest number of plant activity is in the *Podkarpackie Province*. Also, 13 employers employs a total of 625 employees of which 478 were people with disabilities (<Http://niepelnosprawni.gov.pl/p,85,dane-dotyczace-zakladow-aktywnosci-zawodowej>, access the web site: 04.01.2017 r.).

Summing up the above considerations, it is clear that the sheltered workshops, as well as betting activity such as subjects protected labor market, was entrusted by the legislator role. In addition, it aims at activating the work force and preventing the exclusion of disabled people from the labor market.

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