TEMPORARY WORK AS AN UNUSUAL FORM OF EMPLOYMENT IN THE STATE OF CRISIS

Summary: Temporary job is an unusual form of employment which has been developing in Poland very dynamically for a period of time. Its unusual nature results mainly from a trilateral legal structure. Temporary job has a lot of characteristic features not included in the typical employment code. It gives rise to many questions and doubts both among employees and employers. In the study the following questions are discussed: the notion and reasons for emergence and development of unusual forms of employment on the Polish job market. Certain inaccuracies are also pointed out in the law concerning employment of temporary workers.


Key words: temporary work, temporary work agency, unusual forms of employment, job-sharing.

Introduction

Temporary work is one of unusual forms of employment which has been developing in Poland very dynamically for some time. Nowadays about half a million Polish people have this type of job. The name “temporary work” is connected with limited time of doing the work introduced by the legislator [Ustawa z dnia 9 lipca 2003, as amended]. It is seasonal, temporary or casual work. Temporary workers are often employed in trade (e.g. as cashiers or hostesses), catering, construction, transport or distribution.

Its unusual nature results mainly from trilateral legal structure. It is not two parties which take part in realization of temporary employment (as it is established in the employment code) but three parties: temporary employment agency, end user employer and temporary worker.
As a consequence temporary work agencies have settled on the Polish job market because contacting a legally working agency is the first step while searching for temporary employment. The agency signs a job contract for a definite time or for the period of doing the job.

Temporary work has many characteristic features which do not exist in the typical employment code and it gives rise to many questions and doubts not only among employers and employees but also among others who have familiarized themselves with its specific and very interesting structure from the point of view of labour legislation. As soon as the law concerning employing temporary workers took effect, many mysteries about links connecting certain parties were to be solved. For over five years the law has been in effect and there are still doubts about the content of the legal act. The legislative faults of the law lead to abuse from both temporary employment agencies and the employers. In certain cases one needs to give some thought to what the legislator had in mind. That problem is also faced by people working in temporary employment agencies [Szulaw 2009, p. 9]. Moreover there is a very limited number of publications on the discussed matter. In controversial issues regarding unusual temporary employment there are unfortunately not enough theoretical achievements for practical use.

1. Notion of unusual forms of employment

In the Polish legal system the rule of contract liberty applies, which means that both parties of the employment contract, i.e. the employer and the employee, can freely choose employment basis, provided that it does not infringe universally binding regulations. For that reason employment can have various characters and more and more unusual forms of employment come into existence. It is not easy to give a clear definition of unusual forms of employment. The question arises whether there is a need to form such a definition at all. It is namely claimed that because those forms of employment are gaining importance so quickly and they substitute the traditional form of employment more and more often, how could they be called unusual? Despite these opinions, researchers of employment law separate the traditional form of employment from other ones which they call unusual. They focus on their legal structure to determine if there are any differences between those forms and the traditional form of employment, what differences there are and to what extent

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1 The list of temporary work agencies is available on the webpage of the National Register of Entities Running Employment Agencies [www.Kraz.praca.gov.pl]. The entry to the register is made by the marshal of the voivodeship where the agency is based. The information about whether the defined agency is entered to the register can be obtained also in the marshal’s office. The rule is that the temporary work agency cannot accept fees from people attempting to find employment through that agency.
they are used. In order to determine all these factors we need to discuss the notion of typical employment. Open-ended contract is the employment contract regarded as classical, traditional or typical. There the employee is in bound exclusively with their employer doing full-time job in the employer’s working space. We can draw certain conclusion from the above presented facts, that four characteristic features prove the typicality of employment. Those features must appear together and lack of any of them makes employment unusual. Hereby we come to forming the notion of unusual employment which is both part – time employment and employment based on a contract – other than an open-ended one. Unusual employment is characterized by doing the job in a place which is other than employer’s working space and with relationships of more complex lateral structure than the classical bilateral relationships. It needs to be pointed out that literature often provides a more narrow definition of unusual employment. It mainly results from the tendency to consider unusual employment and its certain special aspects equivalent. The example of such aspect would be fulfilling the employer’s occasional or immediate needs. Apart from the unusual forms of employment, the literature provides the notion of atypical employment. According to prof. Tadeusz Zieliński unusual forms of employment are” new, in comparison with code legal actions, ways of employing people to work which do not fall with the notion of either the formerly defined employment contract or any other actions within employment relationships (appointing, selecting, nominating and collective employment contract). Whereas atypical employment is work defined as codified law of employment but not typical in the sense that it is done in a partly different way than the work compliant with universally applied general rules” [Zieliński 2003]. The accepted broad definition of unusual employment also includes so called non-labour employment relationships. That is why the distinction between labour and non-labour employment relationships is reasonable. In the Polish legal system, as mentioned above, the rule of liberty of contract applies. The employer and the employee can freely choose the basis of employment provided that it does not infringe universally binding regulations. The basic forms of employment are employment relationships and relationships under civil law. In order to apply non-labour forms of employment (such as freelance agreement and fee-for-task agreement) in compliance with the law, it is necessary to analyse the characteristic features of the employment relationships and contrare to what civil law contracts cannot include so as to avoid being perceived as employment relationship.

The statutory elements of employment contract include:
- provision of work in person,
- payment for the job done,
- employee’s submission to superiors in the work process,
- employer’s risk.

If the character of work meets these criteria, such employment is based on employment relationships regardless of the name of the contract concluded by the
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It is not allowed to replace the employment contract by a civil law contract, retaining the working conditions determined in § 1 K.P. (§ 1 Labour Code). The unusual labour employment is formed mainly on the unusual employment contract structure. Therefore it is worth mentioning that the notion of unusual employment was introduced while searching for the legal basis for new forms of employment. The employment relationship, being an obligation relationship, is the subject to the rule of liberty of contract. That enables the parties to form the relationship as they please, provided that the binding legal regulations do not restrict it.

2. Reasons for forming and developing unusual forms of employment

The reasons for forming and developing unusual forms of employment are of a diverse character. One of them is a direct connection with economic transformation. In our economic practice for a longer period of time there has been a constant tendency to use workers’ service as a part of new unusual forms of employment replacing former contracts regulated by employment code. It is mainly caused by high costs connected with traditional employment of workers and consequently with a great package of worker’s rights and regulations of labour law which is not sufficiently flexible. The change of employment forms used by employers is also dictated by the necessity of meeting the demands of competition and adapting the amount of paid work to current demands. Among economic reasons there is the rapid technical development which took place in economically developed countries mostly in the 70s of the 20th century. The development of new technologies and production processes had a direct influence on the shape of employment relationships. Changes connected with technological advancement had great significance for relationships of labour law, which the example of computerization development illustrates the best. The revolutionary effects were caused by information technology and communication development. More and more available and popularized computerization influenced the content and character of employment relationships in a multidimensional way. It even led to distinguishing of a new category of workers employed in teleworking.

Another effect of the technical development was entering new spheres of activity, which significantly affected the development of unusual forms of employment. Namely, technical advancement contributed to forming yet unknown types of workers’ activity which demands innovative and specialist knowledge. Therefore it became a priority for employers to employ workers of high and very high qualifications. Such professionals often expect maintaining their own availability, they want to keep their lifestyle and they usually have a strong need to devote a great deal of their time to their passions and family. They are interested in high salaries, but
at the same time they want to achieve work experience in prestigious companies. They are motivated by “social admiration” and respect they are receiving from their coworkers. People from that group count on the opportunity of using their skills and qualifications to the company’s advantage without the need of becoming tied to it for a longer period of time. That is why employers often have to decide on new forms of employment diverging from the universally applied standards.

Nowadays the conditions of running business are more and more difficult for employers. On the one hand domestic competition makes reducing costs a standard behaviour in every company. On the other, as a result of growing integration of job markets, international competition forces to search for new ways of saving money. Maximization of profits together with minimization of costs have become a priority which determines success or failure of the company in the long run. Normally, the biggest expenses are connected with maintenance of full-time employees. That is why using flexible forms of employment is becoming more and more common. It quickly became clear that as a result of changes in the economic situation, traditional relationship employment is overburdens the employer. The new ways of employing staff do not require so considerable financial outlays as in the case of the classical employment relationship.

The next reason behind such a dynamic growth of unusual forms of employment was also employers’ fear of negative effects of changeable economic situation. They saw the need for introducing proper mechanisms allowing a swift and effective reaction to frequent changes on the market of goods and services. Such changes caused irregular periods of increase and decline of companies’ activity and sometimes even complete idleness. Finally, the changes led to the fall of demand for regular workers employed on the basis of an open – ended employment contract. As a result of those changes employers more and more often chose flexible forms of employment, especially the ones which limited the duration of employment contract. It also regarded employing staff by temporary employment agencies. It is worth pointing out that temporary employment is very convenient for employers and it protects them in case of a decline in companies’ activity. It enables relatively easy termination of employment, which is much more difficult in the case of an open – ended agreement. Temporary employment contracts not only helped employers in the time of crisis, but they were also used in the time of company’s growing season, when the company used that form to attract additional workers. That way it was possible to keep the rhythm in the company’s activity and protect its regular workers from laying off. Those forms of employment give employers additional opportunities as far as workers’ selection is concerned. Especially nowadays, it has become habitual for a great number of companies to employ workers mainly to check their usefulness at work before concluding an open-ended contract. Such a situation very often takes place while employing workers by temporary employment agencies.
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What are the reasons for development of unusual employment forms? They are connected with the occurrence of relocating necessary work resources out of the company space by hiring other professional firms. Temporary employment agencies play an important part in the process. The company using their services delegates procedures connected with employing a single or collective worker to the external company and thus reduces the cost of employing staff, as there is no need to pay the workers for the time of readiness to work. It is important because that way labour costs are optimized. The settlement of salaries on the basis of actual hours of work makes it possible to plan working time and consequently enables controlling costs. With temporary workers doing their tasks it is possible to precisely adapt the structure of employment to the company’s needs, even for short periods of time. It is also worth mentioning that there are no expenses connected with recruitment and dismissing the staff. Recruitment performed by the company itself is very time-consuming and generates great costs, which admittedly is not always realized. The costs are not only the money paid for advertising in papers and the Internet, but also time which a regular worker could use for other duties. Temporary work agencies also exempt the employer from performing formal or administrative tasks. Agencies are obliged to pay the salary to temporary workers. They also have to promptly make all due legal payments connected with the salary. It is tantamount to taking responsibility for natural person income tax and national insurance contribution. Temporary employment agencies are also obliged to refer leased workers to medical tests before admitting them to work. One of the agencies’ tasks is to draw up documentation connected with employment relationship. Buying services outside takes place in accordance with market procedures, which gives the opportunity to negotiate with different specialists, offering at the same time the best conditions as far as the quality is concerned.

A separate group of reasons for creating unusual forms of employment are ones connected with workers’ interests. More and more often employees choose unusual employment because it is convenient. There are a few characteristic groups of workers who consider unusual employment to be very advantageous. One of them is students. They do not have great professional experience, but they are strongly motivated to work. Unusual employment is often an ideal solution for them, as they expect to gain qualifications. But most of all they want to work for financial reasons. Apart from that young people are willing to learn organizational culture at work. They want to take a close look at the potential employer, undergo trainings which help them get an interesting job in the future. They also want to make acquaintances. The main reason why they choose temporary employment agencies is temporary character of work. Students often want to take up a job for a period of time when they are not loaded with studying, especially during holidays. The next group of workers are specialists with rare qualifications, professional experience and specific education. They expect to
maintain their availability and lifestyle. Nevertheless, they usually have a great demand for devoting much of their time to their passions and to family life. This is why unusual forms of employment are the most advantageous for them.

Unusual forms of employment also appear more attractive than classical employment for women because of their role in the family and society. Another group is the disabled who often have difficulties commuting to the workplace.

What greatly contributed to the development of unusual forms of employment is the implementation of certain employment policy concepts in some countries and combating unemployment. Unusual employment often gives people who otherwise would be unemployed the opportunity of taking up a job.

The analysis of development sources of unusual forms of employment leads to the conclusion that economic reasons are the most significant in employment by temporary employment agencies. Development of that form of employment is directly connected with employers’ interests. They can in that way effectively optimize their costs and relieve their own staff. Workers’ needs are much less met by temporary employment. Besides workers of distinctively high qualifications, students or the disabled, other workers decide on temporary employment because they have no other options.

3. Types of unusual forms of employment

Nowadays we have been dealing with a great variety of unusual forms of employment. Sometimes the differences between certain forms are very clear but sometimes they are so little that they are hard to distinguish. Although there are so many forms of employment, we can point out certain features which enable us to group them according to specific criteria. Different ways of employment can be distinguished which are unusual in their duration of the contract effect, in the working time, in the work location and because of special parties configuration.

1. Forms of employment unusual in their duration of the contract effect.

   In these contracts the parties limit the duration of employment relationship. The period of time of the contract may be limited by pointing a calendar date, describing a certain situation which is to happen in the future or by setting the time for completing certain tasks by the employees. The limited time of such contracts places them among casual employment contracts. Employment contracts, which are binding for the time dependent on the kind of job, are certainly seasonal work contracts. The feature which describes best the character of that work is its connection with seasons of the year. Such employment involves doing the work of periodic frequency and intensity. Apart from seasonal work, fixed term employment contracts are most often used when there is a need to replace an absent worker or at times of intense activity of the company. It has
been noticed that fixed term employment contracts are used too often and some attempts to counteract that practice have been made. In the Polish law the limits of using fixed term employment contracts result from art. 25 K.P. (Labour Code) allowing the parties to conclude such a contract twice. The third contract has to be an open – ended agreement.

2. Forms of employment unusual in the time of work.

All forms of unusual employment in this group can be called part-time employment. The worker employed in that way works shorter than full-time workers of similar working situation. Among part-time jobs there are forms worth mentioning such as interrupted work or work on call, job-sharing. In the interrupted work the worker is obliged to work in certain periods combined with periods of idle time. That way of employment is useful when the employer expects times of intense company activity (e.g. in season) and needs additional workers then. The work on-call is when the worker is obliged to be at work on employer’s every call. The worker must be fully available. The worker does not know when the time of work is or they are not sure whether there is any work or not (in the case of interrupted work the periods of working time always appear). Nowadays in Poland on-call employment cannot be used. It is then not possible to conclude an on-call employment contract, where the employee is obliged to be on duty at home as their basic responsibility (not the duty done over standard working hours).

The notion “job-sharing” is used for the organization of work where two or more workers employed on the part-time basis share the position of a full-time job with each other [Pisarczyk 2003, p. 14]. In that kind of employment a group of workers accept their working-time (and salary) reduction to avoid lay-offs. The work is thus shared by more people. Work-sharing is temporary until the employer’s situation improves to such the extent that workers could return to working full-time.

3. Forms of employment unusual in the work location.

In this group there is a kind of employment called working from home. It includes two forms of employment: one – known for a long time and widely used – outwork, the second is teleworking which has been dynamically developing lately thanks to technological development. Outwork is done individually in the worker’s home or another place set for making products or providing services according to the employer’s order for payment regardless of who provides materials or other elements needed for doing the job. In the Polish law the outwork contract is a innominate civil-law contract. Although outwork is not a form of staff employment, the legal situation of workers doing it is similar to employers’ situation mainly because of the fact that they are entitled to most of employee rights. In telework the main work tools are a computer, a telephone and a fax machine. Telework is a form of employment whose development was greatly influenced
by information technology and communication development. What plays a significant role in this work is the time the worker devotes to doing the work outside the employer’s space. In some definitions telework is not limited to working from home. There can appear a situation that the employment relationship is formed from the beginning so that the time of work is divided by the parties in agreed proportions into working partly in the employer’s space and partly outside it, for example in the worker’s home.

4. Forms of employment unusual in special parties configuration.

In the classical point of view employment relationship is entered directly according to the market rule of supply and demand between the employer and the employee. Sometimes, though, the work is done by independent workers and sometimes has a form of trilateral employment. The typical feature of doing the job by independent workers is, as the name indicates, a certain independence of those people. In the classical model of employment relationship one of the features is the worker’s subordination expressed by the possibility for the employer to give orders to workers. Independent workers run their business on their own account and at their own risk so the notion employee sometimes used in reference with them is inadequate.

In trilateral employment the process of entering and especially realizing work relationship is ensured thanks to three parties playing defined roles. Among the most common forms of employment of this kind are: subcontract, hiring employees and temporary employment organized by temporary employment agencies. Subcontracting is a situation when other entities are entrusted with tasks not included in the services provided by the employer’s company. These entities realize the task by sending their own employees to the employer to do the work. Those employees stay in subordinate relationship with their company – with the employer holding managing rights. They are also responsible for their employees and pay them salary for doing the task commissioned by the other employer. Hiring employees is different from subcontract in the fact that delegating employees results in transferring managing rights to the subject they were referred to. Trilateral character is the basic feature in employment by a temporary employment agency. Three subjects are the parties in that form of employment: the temporary employment agency, the end user employer and the temporary worker. The agencies employ the workers and refer them to the employer where they provide their work. Staffing is often cyclic. During the time of staffing the workers are paid by the agency but management rights are held by the end user employer who commissioned the task. Staffing by temporary employment agencies is a specific structure which needs to be differentiated from other forms of employment having a trilateral character. What distinguishes it from a contract employment is mainly the division of management rights which are held by the end user employer. The temporary workers only enter an employment relationship with a temporary employment agency in order to be
referred to another end user employer. But in the case of hiring staff this cannot be
done without the employee’s agreement every time. Moreover, the hired employee
maintains the unbroken employment record while a temporary worker does not
have to be referred to another end user employer after having completed one task.

4. Temporary work on the Polish job market

Although employment by temporary employment agencies has been functioning
for years in many EU countries, it is still a relatively new form of unusual employ-
ment in Poland. It is developing very dynamically and gaining more and more
supporters among employers. Its importance additionally results from the fact that
there frequently appear international and common law acts concerning that form
of employment.

Moreover, the crisis which reached Poland very quickly made the market inter-
ested in that form of employment. Until recently temporary employment agencies
which could not keep up with realizing orders from companies searched for employ-
ees using unconventional forms of recruitment. Since 2008 the agencies have been
experiencing first symptoms of economic slowdown so employers’ euphoria and
the number of orders are about to decrease. Among the agencies there are various
opinions on the effects of “the first wave of the crisis”. The variety depends on the
type of branch the agency works for, the region, the area of activity, diversification
of clients and the range of other services offered. Nevertheless, decline in export,
consumption and incoming investments together with limits in the access to the
capital introduced by the banking sector lead to a significant fall of demand for
temporary employment agencies in many key branches – i.e. automotive, electronic,
financial, transport.

Moreover, economic forecasts for the near future are very divergent, which
makes it difficult to work out a proper strategy of functioning. In spite of constant
demands of employment agencies, flawed regulations concerning temporary em-
ployment are still in use. It is especially problematic in not so easy time of economic
slump when all legal barriers and bureaucratic burdens are very acute. Meanwhile,
the law concerning temporary employment has been binding with all its faults and
merits for over five years. Although while it was being set by the Trilateral Commis-
sion for Social-Economic Matters, representatives of trade unions and employers’
organization agreed on the fact that after a year of binding, the regulations and their
usefulness would be revised [Co jest ważne]. In the current situation the change
of binding regulations and streamlining of temporary employment agencies’ legal
environment in Poland has become a priority for employment agencies. It especially
corns removing the barriers in the laws application and their adaptation to the
specificity of temporary employment.
The first agencies dealing with referring people to other employers appeared in Poland in 1994 [Gazeta Wyborcza 1999]. It has become customary to name employment offered by newly set up agencies as temporary employment or employee leasing. In the first years of functioning of such agencies in Poland end-user employers were mainly foreign companies which had branch offices and production plants in our country. The companies knew the specificity of temporary employment and they had certain experience in that kind of service. Whereas Polish companies were very careful about employing temporary workers mainly because they lacked trust in workers without regular employment. The prevailing opinion was that temporary workers would not do their tasks as precisely or conscientiously as full time workers directly employed by the company. Temporary employment is mainly used when there is a need of doing seasonal work, tasks included in the job description of an absent regular worker employed directly by the employer and at the time of temporary burst of the company’s activity and consequently in demand for workers [Sobczyk 2005, p. 19]. Temporary work is mostly used in production companies and less often in trade and services. It is mainly used by big companies employing over 100 people. In the years 2004 and 2005 34% of employers employed 250 or more workers and 28% of employers employed 101 – 249 workers. Only 15% of employers employed fewer than 20 workers [Przestrzeganie]. Among the advantages of using services of temporary employment agencies there is most of all the possibility to enlist necessary workers fast (57.2%), adapt the number of workers to the employer’s needs (48.1 %), reduce employment costs (42.1%) [Pentor 2003].

Already first temporary employment agencies in Poland showed the direction the market was developing in. Most agencies do not limit their services to temporary employment. Most often temporary employment agencies are connected with personnel consultancy offering their services in recruitment and selection, Assessment Centre, Development Centre and HR Consultancy. Nevertheless some employment agencies also have other solutions for their Client. One of them can be overall administrative service of temporary workers employed in the Client’s company. Another solution can be opening a new branch of the employment agency exclusively for the employer’s demands. The agency, owing to its constant presence in the client’s company area, can better understand the needs and ensure an immediate response. Being close to the whole process, the agency analyses it systematically, searches for solutions together with the client and monitors the effects.

In the first years of carrying out that form of activity in Poland contracts concluded by the agencies and people referred to work were civil law contracts. Nevertheless, the conclusion from the research carried out by the Ministry of Labour and Social Policy is that the situation has been undergoing some changes. In the year 2006 the number of people referred to temporary work by the agencies was 288,440. Among temporary workers 148,800 people were employed on full time employment contract (52%) but 140,106 people (48%) on the civil law contract
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In the year 2005 the numbers were respectively 127,706 (62%) and 78,959 (38%), and in the year 2004 108,064 (64%) and 59,580 (36%) [http://www.mpips.gov.pl]. Unfortunately, the longer the law of temporary employment in the original meaning binds, the more the proportion changes to employee’s disadvantage. In a similar report concerning the year 2008 it is clear how drastically the proportions change. Among temporary workers 214,750 people were employed on fixed term employment contract lasting till certain work is done, which makes 45% of all temporary workers. In comparison to the data concerning the year 2007 the number of temporary workers employed on the full time employment basis decreased by 15,300 people. In the year 2008 the number of people referred to work by temporary employment agencies on the civil law contract basis was 259,997 (55% of all temporary workers) and was bigger by 3,456 than the number of people employed on the civil law contract basis in the year 2007 (256,541). Fast development of services in temporary work in Poland was accompanied by the process of uniting of temporary employment agencies into organizations. First, in 2002 the Association of Temporary Employment Agency (ZAPT) was formed on the initiative of the biggest agencies at that time: Adecco, Connexio (now Start People), Intersource (now Randstad), Manpower. Since that time ZAPT has been representing the environment of temporary work in Poland and sets themselves a task of adapting Polish legal and ethical standards to norms binding in Europe [www.zapt.pl]. In 2005 a new Organization was formed – the Association of Employment Agencies (SAZ). As opposed to ZAPT, SAZ associates not only temporary employment agencies but also other employment agencies as personnel consultancy, employment agencies or career counselling agencies.

The first temporary employment agencies appearing in Poland forced searching for legal basis of such form of employment. Lack of any regulations concerning that form of employment caused doubts about lawfulness of such actions. The regulation most often taken into consideration for that employment was art. 174 k.p. (Labour Code).

According to § 1 of that article the employer, with the employee’s consent in writing, grant the employee unpaid leave to work for another employer for the period of time fixed in the agreement concluded in this matter by both the employers. The opinion recognizing that regulation as the legal basis of temporary employment was quickly questioned because both purposes and reasons of applying that article have little to do with employment offered by temporary employment agencies. Art. 174 k.p. (Labour Code) [Dz.U.1974], was introduced to support employers experiencing temporary economic difficulties and consequent inability to provide their staff with proper employment. Moreover, the regulation was formed to prevent exceptional situations. In the case of employment by temporary employment agencies the employee agrees in advance to do the work for another employer and enters a legal bond with the agency only to be referred by it to work for end user
employer. Because the binding regulations could not be applied for temporary employment, there appeared an urgent demand for enacting new regulations adequate for new forms of employment.

5. Inaccuracies in the law concerning employment of temporary workers

Discussions on the law concerning employment of temporary workers have been held since the law came into use and it has given rise to much controversy. Unusual trilateral character of employment breeds many practical doubts. When the Parliament passed the bill concerning temporary workers employment in July 2003, social partners from the Trilateral Commission indicated that after a year they would subject its regulations to verification considering their practical usefulness. Although the law has been binding for over five years – there has been no verification so far despite the fact that temporary employment agencies and employers regularly make demands to carry it out. There are a few key problematic issues which make using and providing temporary work services difficult. The condition for improvement is abolishing the restrictive limit to a maximum permissive period of temporary employment of employees working for one employer which now is 12 months in the period of subsequent 36 months.

With such little mobility of Poles and in economic conditions companies are functioning, it is completely natural that the goal motivating the legislator to set that limit has not been achieved. With the ban on employing a temporary worker for more than 12 months no one will force the employer to employ the worker on an open ended contract basis. The employer will eagerly take advantage of the opportunity of employing people whose work they could evaluate in their temporary work period. However, the employer will not increase regular personnel costs without being sure that the demand for bigger work supply is constant. The end user employer will place an order by the agency for a new group of employees, which means returning the previous workers to unemployment for at least 36 months, as this is the reference period entitling to reengagement of those workers to work in the same company. That is why many companies cannot prepare or train their workers well enough. That regulation was supposed to function as workers’ protection, but in reality it does not function that way. Both employment agencies and end users employers can evade the law and the one who suffers is the temporary worker. There are a few ways of solving that problematic situation.

The first way is handing the worker over to another employer. The agency does not lose the worker because they are constantly employed, they only do the work for another employer. However, as a result the worker who already knows the employer’s company has to leave it to the advantage of another, less accustomed
temporary worker. This fact disturbs all the three parties. The agency is forced to search for a new proper person to take up the same post, the end user employer loses a reliable worker who is well-prepared to do their duties and the latter has to adapt anew to the working conditions in another company.

The second way is employing the worker by another agency and performing the work still for the same employer. Of course, so as there is no collision with the temporary employment agency’s interests it has to be an agency owned by the same person as the other one. In that situation the temporary worker can work for the same employer for the next 12 months. Obviously that solution is advantageous both for the employer, as they do not have to employ the worker on the open-ended contract basis, and for the worker as they do not have to look for a new job or adapt to new conditions in a new workplace.

The worst solution from the worker’s point of view is abusing the civil law form of employing temporary workers in the conditions typical of full-time employment. The contracts of civil law do not include limits of employment time, so using that option is not only connected with lower costs. The second condition is a simultaneous shifting the industrial safety duties (BHP) on the users. According to the regulations the parties can freely reach an agreement about dividing the responsibility for BHP among them. If the agency does not enclose such agreements in the contract, all the duties formally lie with the agency. In practice it greatly depends on the will to obey the regulations. It is the end user who creates workplaces and most of all the opportunity to undertake certain actions to maintain safe working conditions on certain posts. Moreover, in that situation it is impossible to answer the question which of the parties should count temporary workers in the employees body, which is very important for the structure of BHP service in the company. For the time being irrespective of those decisions it is rather difficult to observe the employer increase their BHP service because of employment of a group of temporary employees. The fact that agencies functioning nationwide have their own BHP inspector in every region does not solve the problem as the workstation and doing the work itself takes place within the employer’s area and under their control. That issue surely requires more precise regulation because the laws should evenly care about each employee’s safety regardless of the form of employment. It is worth mentioning that the law points out the end user employer’s duties which could not be assumed by the temporary employment agency. So, mainly the end user employer is obliged to provide the temporary employee with safe and hygienic working conditions in the location designed for doing temporary work. The temporary worker should be treated equally as other workers as far as the BHP conditions on the workstation are concerned.

The third condition of improvement of the situation of temporary work is eliminating too extended bureaucracy. It is the result of applying many labour legislation regulations without considering the specificity of temporary employment. The
necessity of preparing many documents overburdens the agencies and limits the development of temporary work. For example, work certificates need to be issued with every break in the contract and the Social Insurance Fund (ZUS) has to be informed with every change of the employer. After all, those documents could be replaced with one collective document. The same concerns the annual declaration of income. Until the year 2008 on the basis of art. 39 of the law concerning PIT (tax return) the employee with whom the employment contract was dissolved should get the PIT-11 information from the tax payer by 15th of the month consecutive to the month when the last advance payment for the natural person income tax was charged of the employee’s salary. That information should be at the same time sent to the tax office appropriate for the place of the employee’s residence [Dz.U. 2000]. Temporary employment agencies have thousands of employees a year. Temporary employees often have breaks in employment after having finished work for one employer but in the tax year they take up a job for another employer by the same agency. The employer in both employments was the temporary employment agency who consequently is obliged to issue the PIT-11 information. It is especially problematic with workers employed for short casual work on the basis of civil legal contracts. Those employees sometimes have even between ten and twenty contracts in a tax year. Because of that the agencies leave issuing PITs till the end of the year when so called “PIT actions” are organized. All PITs have to be sent by the end of February of the year consecutive to the year when the last advance payment for the natural person income tax was charged. Now the law has been changed at the request of, among others, temporary employment agencies. According to the new regulation, which has been binding since 1 January 2009, the taxpayer whose duty of charging advance payment for the natural person income tax ceases during a tax year will have to prepare PIT-11 during that year only at the taxpayer’s request. The taxpayer has 14 days from the time of submitting the request to prepare PIT-11. The taxpayer has to send the form to the applicant and to the tax office. In other cases i.e. when there is no such request, the taxpayer has to prepare PIT-11 by the end of February of the year consecutive to the year the information concerns. Agencies must also archive the employee’s documents for 50 years, even if the worker worked only for a few days. Another example are contracts used in temporary work for example a week contracts where the period of binding is shortened on purpose in order to gain additional protection of the employer from widespread usage of sick leaves. However, such a solution is connected with great bureaucracy and administrative effort. If the worker gets a certificate from the doctor during the period of the contract, the agency pays sick pay to the end of the contract time but then, after filling out certain forms shifts that duty to the ZUS.

From the point of view of trade unions the law creates conditions for abuse in employment of temporary workers on the basis of civil law contracts. It is connected with replacement of employment based on the civil code with employment
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based on the employment code. New regulations coming into effect caused the necessity of signing a new contract with every client and negotiating new rates as new formal changes made temporary employment more expensive by 15%. In extreme situations the difference could even amount to 70% when fee-for-task agreements concluded with students and not charged with premiums for ZUS had to be transformed into employment contracts with leveled salaries according to the rule of equal treatment at work. Civil law agreements are obviously still allowed but only in the same situations allowing them by every other employer. Unfortunately, nobody controls that process nowadays, which causes great abuse in obeying the regulations of the Civil Code concerning employment, for example beer production takes place on the basis of a specific task contract.

Many doubts also concern annual leaves (vacations) and their equivalents – benefits for not used annual leaves. It concerns first the vacation time calculated differently than the Employment Code provides for and leaving aside total work experience, placement with the employer and with the agency. The employee is entitled to two days every month at one employer’s disposal. The legislator refers there to the month without defining its meaning. 30 days is normally accepted, though. Separately certain rules of calculating vacation remuneration have been set. The law says that the remuneration is calculated by dividing the actually earned salary by working days. Problems may arise at paying vacation remuneration. It is paid when employment relationship still binds. So, it is crucial to determine whether the salary should include the time until the leave is granted or until the day of setting the amount of vacation remuneration (the end of the month). After having used the annual leave option the employee can get non-periodic benefit which will affect the vacation remuneration amount. The law also says that when the temporary worker is employed for less than six months, their right to leave on demand is excluded. Nowadays there is no law which would clearly regulate such situations.

Other difficulties are connected with medical tests. It concerns especially the situations when the temporary worker performs the work in the same workstation but the periods of employment do not follow one another directly (for example one or two weeks breaks between the contracts concluded). If employment by the same employer takes place on the same or similar post, there should be the possibility to reduce demands about compulsory BHP trainings, medical tests or issuing an employment certificate every time the work has finished. The BHP trainings and medical tests in such situations could be carried out in a more universal way – adapted to a few work posts. The issue is a subject to many controversies between temporary employment agencies and employment bodies. It would be more reasonable to clearly determine in the regulations the break when renewing medical tests would not be required for workers working on the same post.

The issue of group lay-offs is important from the employer’s point of view. A suitable rule has been introduced saying that the end user employer carrying
out group lay-offs should not employ temporary workers for the posts of those laid off. The rule is right but the laws do not tally with the legislator’s intention. If the employer running a construction business all over the country and employing many thousands workers finishes some construction task for example in Rzeszów and lays off 30 workers withholding the gratuity right, the employer cannot employ a temporary worker for that post in another construction site for example in Szczecin. It would be enough to specify more precisely that in the case of group lay-offs the limit to employing temporary workers concerns a certain organizational unit or certain posts. For employers the temporary work has become a solution to problems connected with employing workers in the time of burst in the company’s activity on the market and at the time of concluding temporary contracts. It enabled then using a flexible form of employing workers.

Conclusions

The issues of temporary employment are broad and interesting, however it is controversial at times. It results from the fact that temporary employment is one of the most unusual forms of employment of all forms used in Poland. Its unusual features result mostly from legal regulations and one of its most characteristic features is the trilateral employment relationship. That feature is so different from the code employment relationship that it was necessary to adopt the detailed regulation of temporary employment.

Employment by the temporary employment agency, functioning for years in many EU countries, was also appreciated in Poland. In 2007 the number of entrepreneurs who took advantage of the agency’s service nearly doubled. Temporary work was done by almost half a million Poles. Nobody had expected such an interest in that form of employment. The reason for such an increase was dynamic changes on the job market, economic migration of Poles and failure in adapting education profile, especially vocational education, to economic demands together with the fast growth of the economy which caused a great shortage of personnel in many Polish regions. As employers could not face up to the personnel shortage themselves, they turned to specialized entities – employment agencies, for support. The agencies very often have data bases concerning candidates for work and specialized tools to recruit personnel with certain qualifications and skills. At that time the situation on the job market forced temporary employment agencies to use new forms of recruitment which often can even seem not credible to employers. However, when the situation demanded it, the representatives of the agencies visited people in their homes, local shops, parishes or festivities to promote temporary employment. But the winning streak is over and as in the year 2007 employment agencies had difficulties realizing
orders because of a shortage of candidates for work, in the other half of 2008
a problem connected with lack of orders for employees was widespread. It was
especially much perceptible in the fourth quarter of 2008 when the decrease in
turnover was 13% [http://www.zapt.pl]. The fall of growth impetus observed in
temporary employment business was one of the first symptoms of the economy
slowdown connected with the world crisis. Employers affected by the crisis who
employed temporary workers, in the first place decided to resign from work-
ers employed by the agency. However, in my opinion it is a transitory crisis in
temporary employment. I think that the agencies should wait until employers
get used to the critical situation and make decisions concerning employing per-
sonnel. Then the safest form of employment will be temporary work because
of its flexibility. In the time of economic crisis one of the best ways of cutting
costs is an employment reduction. Contrary to appearances, using temporary
employment agencies’ services will be the best solution. The globalization of
economy demands from employers enhancing flexibility in managing human
resources. It is then a form of employment comfortable for the employer who
can increase or decrease employment in accordance with the situation on the
market. The greatest advantages of temporary work are the possibility to face up
to a regular personnel shortage and temporary increase of productive capacity.
It is also facilitation for companies because the agency takes care of everything
from recruitment and personnel service, to accounting and trainings. Naturally,
the company has to pay the agency for the service but the cost of employing
a temporary worker is lower than the cost of a regular employee.

In spite of workers’ bad opinion on temporary work, that form of employment
also has certain advantages from their point of view. Most of all, temporary work
is a legal form of employment, regulated by the Polish law, enabling the increase
in the employee’s seniority. The agency allots contributions to the national budget
and realizes all the other legal tasks. Besides, temporary work can be a chance for
people remaining unemployed for a longer time to return to the job market. The
majority of jobs offered by agencies do not require specialist knowledge or ad-
ditional skills. That is why there is a chance for people having difficulties to find
a job for a longer time. After the law concerning employment of temporary work-
ers came into effect, temporary worker’s situation has significantly improved. The
same working week applies to them as to other regular workers of the end user
employer, but if they work overtime they are entitled to salary for the extra hours
according to the Labour Code. The questions of annual leave and other benefits
are also important.

Some social benefits result from temporary employment. Using that form of
employment will certainly not cause constant or significant reduction in the num-
ber of the jobless but temporary work, skillfully incorporated in the system of
counteracting unemployment, could be one of the means leading to that objective.
Basic problems brought about by temporary employment agencies’ actions seem to have a universal character, so Poland should draw conclusions from actions performed by other European Union members who are more experienced. Among the matters concerning temporary employment which should be regulated by every employer are most of all: determining acceptable limits to temporary employment, protection of the workers from abuse and setting the division of rights and duties between the temporary employment agency and the end user employer. From the worker’s point of view it is a pity that the Polish employer accepted the possibility of referring people not being the agency’s employees to work. Such a regulation does not exist in the majority of the EU countries, however, what is the most important, it is not in accordance with international and union standards [Makowski 2006, p. 32].

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