

SOCIAL CHANGES AND RESPONSES IN LABOUR LAW

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Abstract:

Coming to terms with all the roles we play in our lives, as they may be defined female or male, or more distinctively mother or father, with the work which does satisfy and nurture our truest being is something that a very large proportion of us encounter with difficulty. Inasmuch as we are already equal partners as parents with all the duty and responsibility incumbent on us, no one will say it's anything but obvious, therefore, that the European Union policy placed parity of partnership within these most essential roles centrally on its agenda and as one of its flagships.

The introduction of smart working in addition to home office and teleworking introduces both challenges and possibilities. The concept of working time seems to be vanishing in this concept. Meanwhile, for the reconciliation of work and private life, it seems that we cannot give up on the conventional protective function of working time regulation.

In the course of our research, we present two distinct examples that serve to fully illustrate the various issues we encountered.

The very first issue for discussion is the court case in Romania that is related to the issue of confusing professional duties and private life. This particular case has raised a lot of controversy and interest in various professional communities, drawing the interest of many individuals concerned about the consequences.

The second approach is to clearly lay out and discuss at some length the key research results of Profeta and Angelici, who put forward the argument that the elimination of both spatial and temporal constraints regarding work can be a highly successful approach to achieving greater effectiveness in the organization of work activities. It is also noteworthy that their results indicate a very pronounced impact for women, with the implication that the flexibility allowed through the use of smart working practices can be an important element in helping to eradicate and ultimately close the widespread gender gaps that are observed in numerous workplace settings.

Keywords: *work life balance, smart working, burn out, working time, flexibility, right to disconnect*

1. Changes

Over the past 25 years, labour market flexibility has increased. In 2016, a quarter of all new contracts were for 'non-traditional' forms of employment, and over half of all new jobs in the past ten years have been in 'non-traditional' forms. (COM (2017) 797) The process of digitalisation has played a crucial role in facilitating the development of entirely new forms of employment opportunities, while,

simultaneously, demographic changes have given rise to the formation of a more diverse and heterogeneous active population. This new flexibility offered by these new types of employment has helped tremendously in the overall job creation and the growth of the labour market, as well as in the development and transformation of the labour market itself. Since 2014, more than five million jobs have been developed, and a notable proportion of these conform to these new and modern forms of employment that have been developed as a result of changing times. The capacity of new emergent employment models to respond and adjust effectively to the numerous economic changes and vicissitudes that occur has been central to facilitating the emergence and development of new business models. This is highly observed in the social economy context. Furthermore, this capacity to adjust has facilitated the previously marginalized and disenfranchised people who had been locked out of work and the labor market to now join and participate in the labor market. The prevalence of non-standard forms of work, as well as self-employment, is heterogeneous when observed across Member States, regions, sectors, and even across various generations. To be specific, the proportion of younger employees, i.e., those in the 20 to 30 years age bracket, engaged under temporary contract terms or working "on other contracts or without a contract," is substantially higher—twofold—vis-à-vis those in the remaining age categories. In addition, the gender division between these types of employment is very clear; there is an overwhelming presence of men among the self-employed group of workers, whereas women are more likely than not to occupy temporary and/or part-time positions in the workforce. (COM(2018) 132final. p. 1) In 2024, the employment of individuals who were aged between 20 and 64 years in the European Union was at an impressive level of 197,566,000. This high rate represented approximately 75.8% of the overall population of that specific age group. Throughout time, the employment rate of this age group has been consistently and gradually increasing towards the European Union target. It increased significantly from a lower rate of 70.9% in 2017 to a promising rate of 75.8% in 2024. (Employment – annual statistics) During the unstable years of the financial crash that happened in 2008, the number of people who were employed full-time was around 158.7 million. This number, however, dropped drastically, falling to around 147.9 million by the year 2013. It is interesting to see that it was not until ten years later, in the year 2018, that the number of full-time employees was able to rise back and recover to levels that were in line with the figures noted before the crisis. By comparison, the number of part-time workers has been on a constant and steady increase since the year 2002, moving from fewer than 25 million people being employed part-time to more than 35 million by the year 2023. (Number of full-time and part-time employees in the EU 2002-2023)

Alongside the continuous and profound restructuring of the labour market, it is essential to note that the demographic challenge we are experiencing has underscored the urgent necessity for a life-course approach to working conditions in a comprehensive manner. These demographic changes we are experiencing are going to result in a decline in the total working age population, which is a source of great concern. Currently, merely two-thirds of the total working age population is actually working; interestingly, in both the United States and Japan, this is over 70%. It is also important to note that employment levels among certain groups, especially women and older workers, continue to be remarkably low, indicative of underlying problems in the workforce. The current economic crisis has also had a significant impact on the young people, as reflected in the staggering unemployment rate of 21% at present. This represents a very real risk to those who are not active in the labour market or who have only tenuous links to it; there is a very real risk that they lose contact with the labour market altogether, and possibly be excluded from future opportunities. It is also noteworthy that some 80 million individuals possess low or basic skill sets, and too often the gains from lifelong learning accrue to those who are already the most highly qualified members of the workforce. For extended working lives, we may need to obtain or gain new skills during life. Before the crisis, 80 million people were at risk of poverty, of which 19 million were children. 8% of those in employment have earnings of less than sufficient to keep them above the poverty threshold. The unemployed are the most vulnerable. (Communication from the Commission Europe 2020)

The capacity of individuals to reconcile and fulfill these conflicting expectations across several roles, including working, caring, or volunteering, represents a significant challenge that should receive greater prominence and firm support through dedicated policies and practices. It is a challenge of paramount importance if Europe is to successfully promote longer working lives together with a concerted effort to enhance gender equality in working life as well as private life for men and women.

In order to tackle this challenge successfully, it is of the utmost importance to implement and reinforce care infrastructure, launch comprehensive leave policies, and supply a range of complementary supports. Additionally, an offer of quality of work that allows individuals to work efficiently with evolving needs at all phases of the career matters too. As a result of such efforts, the reality that the European workforce possesses a skills level higher than anything it has ever demonstrated before is striking. The nature of employment and conditions under which work is performed are inextricably tied to the proper matching and alignment of skills possessed by the labor force. This, in turn, means not only the design of the workplace that maximally uses and capitalizes on the diverse talent and ability of workers but also the critical enabling of lifelong learning initiatives. In addition, one also has to enable learning organizations solely dedicated to the continuous development of competencies, which is also a key task of not letting skills become outdated with the progression of time. Moreover, the nature of work itself is becoming increasingly knowledge-based, which has a unique set of challenges in itself; in fact, it is far more difficult to ascertain precisely when a given piece of work will be considered complete. Furthermore, account and consideration must be taken of the emergence of new risks that are present in the working environment. At the other end, the situation of low-skilled workers is a significant policy issue that must be considered, particularly in the context that inequalities are increasing and unemployment levels are still persistently high. (Eurofound, 2017)

2. Roles

Spanning the various roles which we all have in life, those which are termed female or male, mother or father, with those which actually complete and make us whole, such as our work, is a genuine and serious challenge for a great many of us. As we are already recognized to be equal partners in our role as parents, it comes as no surprise that European Union policy

¹ has placed the equal sharing of these major roles firmly at the top as a flagship matter of great importance.

Article 153 (1) (i) of the Treaty on the Functioning of the European Union (TFEU) expressly provides that the Union shall support and supplement the various activities and endeavours of the Member States in the important area of ensuring equal opportunities and equal treatment of men and women in the labour market and at work. The gender equality of men and women is set forth as a founding and integral tenet of the general principles and objectives of the Union. The second sentence of Article 3(3) of the TEU unequivocally states that it shall be the task of the Union to promote and ensure equality between men and women and ensure that both sexes have equal rights and opportunities. Similarly, Article 23 of the Charter ordains that this most fundamental principle of equality between men and women must be guaranteed and ensured in all areas of life and in all spheres including employment, occupation by profession, and pay. Article 33 of the Charter specifically provides that, in a bid to achieve a balance between family life and professional life, everyone is entitled to some protection. More specifically, this includes the right to protection from dismissal from work on grounds of the responsibilities of having children. It also offers the right to paid maternity leave and parental leave where a person gives birth or opts to adopt a child. However, work-life balance remains a major challenge for many workers with parenting and caring responsibilities, particularly due to longer working hours and changing working patterns, which have a negative impact on women's employment.

A major factor underlying the visible under-representation of women in the labour market is the tremendous difficulty that occurs in trying to reconcile the exigencies of work with family commitments. Following the childbearing process, it becomes all the more usual for women to work reduced hours of paid work, which typically results in their allocating more time and energy to unpaid care work, including the care of children or aging relatives. The data at hand unmistakably show that the presence of sick or dependent relatives within the household has the general tendency to negatively impact women's participation in the labour force. In light of these difficulties, some women are compelled to exit the labour market altogether, which results in their having reduced prospects for economic autonomy and career advancement.

So, what is the solution? Are there any solutions?

¹ See the preamble of Directive (EU) 2019/1158/EC of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

3. Work without borders

The analysis of the EWCS (European Working Condition Survey) series highlights the diversity, richness and complexity of working people's lives in Europe. It shows that there are multiple and contradictory pathways to change among workers. There is considerable variation between Member States in terms of job quality and working conditions, and it is clear that Member States are not converging and moving upwards in improving job quality over time. The tensions between security and flexibility, commitment and mobility, training and knowledge transfer, cooperation and individualisation are being addressed in different ways. *The transformation of work has resulted in growing and multiple sources of inequalities in working conditions.* In some cases, adverse working conditions are cumulative and disproportionately affect certain groups. (Eurofound, 2017, p. 14.)

The quality of working time index measures the prevalence of long working hours, the possibility of taking breaks, atypical working hours, working time scheduling and flexibility. Overall, the working time quality index has improved in the EU28 since 2005. 43% of workers work very regular hours. One in five workers (22%) work more than once a month in their free time to meet the demands of the job. (Eurofound, 2017, p. 8.)

It is therefore no exaggeration to that the growing use of BYOD (also known as „*Bring Your Own Device*”) in corporate practice (Weiss, 2016, p. 651.), big data (Lestavel, 2015, p. 70-76.), *cloud computing* (Valenduc & Vendramin, 2016, p. 20.) and artificial intelligence inevitably transform *the way work is organised and organised in the near future.* Carl Frey and Michael Osborn, researchers at the University of Oxford, looking at 702 occupational groups, found that 47% of US workers are likely to have their jobs automated in the next 20 years. (West, 2015)

It is crucial to examine the occupational health risks of platform-based and digital work, as these modern work models often involve excessive workload and uncertainty. It is no coincidence that in Japan, for example, there is already a specific term, *karoshi*, which refers to people who lose their lives as a result of excessive workload and overwork. This also highlights the serious long-term consequences of workplace stress, especially in systems where workers are more vulnerable and where work is less regulated.

The proliferation of teleworking in the digital world, and the growing expectation of employers that employees should be available at all times, has made it much harder to achieve and maintain a healthy work-life balance. This need to be constantly available can lead to increased stress in the long term and significantly increase the risk of burnout, which not only has a negative impact on employee well-being but also on workplace productivity. (Eurofund, 2017. p. 49-50.)

The phenomenon of work-life balance, the quasi dissolution of working time, became particularly worrying in the wake of the Covid-19 crisis, as the social distancing during the quarantine seemed to completely upset the balance among home workers. Working outside working hours was no longer a matter of individual choice, but often an employer's expectation. As a result, the introduction of a '*right to disconnect*', which can be a way for employees to refrain from electronic communications at work during their rest periods, has been the subject of debate in a growing number of countries. As Ildikó Rácz pointed out, there are three basic reasons for introducing a '*right to disconnect*'. Firstly, it would be necessary to counteract the negative effects of work-life balance. In addition, it has a particularly important role to play in the precise definition of working time for teleworkers, which is essential to ensure a clear separation between working time and rest time, thus guaranteeing adequate rest for workers. Furthermore, the '*right to disconnect*' would also be of paramount importance in the regulation of working time, as it could help to reduce the number of hours worked at irregular hours, while at the same time it is important to ensure that it does not increase the risk of a real reduction in rest periods. Overall, therefore, a '*right to disconnect*' would not only protect the interests of individual workers, but would also make workplace practices more balanced and sustainable. (Rácz, 2018, p. 4-5.)

A recent legal case in Romania illustrates the growing recognition of employer responsibilities in addressing workplace burnout. The Cluj Tribunal's ruling in case number 2064/117/2022 emphasizes

the need for companies to take proactive measures to support their employees' mental health and ensure a healthy working environment.

The case revolves around a former recruitment specialist who sought compensation from her employer, a multinational IT company, for damages resulting from workplace-induced burnout. During her employment from 2016 to 2019, she experienced excessive workload, inadequate support, and a toxic work culture that contributed to her deteriorating mental health. This situation reflects a widespread issue in many organizations where employees are expected to perform under immense pressure without adequate resources. For instance, in various industries, employees often face unrealistic expectations that can lead to stress and burnout, highlighting the urgent need for employers to prioritize mental health.

The claimant sought compensation amounting to 31,100 RON for medical expenses and 50,000 EUR for moral damages due to emotional suffering. These claims underscore the significant impact that burnout can have on individuals' lives, affecting their emotional well-being and overall quality of life. Numerous studies have demonstrated that mental health issues can lead to decreased productivity and increased absenteeism, ultimately costing organizations more in the long run. In response to the claims, the employer argued that the statute of limitations applied, suggesting that the employee was aware of her condition but delayed filing her lawsuit. This defense points to a common challenge in workplace burnout cases: the lack of documented complaints and the difficulty in establishing a direct causal link between workplace conditions and mental health issues. However, the court acknowledged the claimant's emotional and physical distress, recognizing that the absence of formal complaints does not negate the reality of her suffering. This aspect of the ruling reinforces the idea that employers should create environments where employees feel safe to voice their concerns and seek help without fear of retaliation.

Ultimately, the court ruled in favor of the claimant, awarding her compensation for damages. This decision is significant as it sets a precedent in Romania for recognizing workplace burnout as a legitimate legal concern. It emphasizes the responsibility of employers to ensure their employees' mental health and implement effective measures to prevent burnout. The ruling serves as a reminder that organizations must prioritize employee well-being, fostering a culture of support and open communication.

In conclusion, the case adjudicated by the Cluj Tribunal highlights the critical importance of addressing workplace burnout and the legal implications for employers. As mental health issues continue to rise globally, it is essential for companies to take proactive steps to support their employees. By prioritizing mental health and creating a supportive work environment, organizations can not only prevent burnout but also enhance productivity and employee satisfaction. The time has come for employers to recognize their role in safeguarding the well-being of their workforce, ultimately leading to a healthier, more productive workplace for all.

4. Smart working

But the problems of work-life balance are even more acute with newer forms of remote working. Smart working has emerged as a fully flexible work system that can adapt quickly and intelligently to different situations. Smart workers agree with their supervisor to work outside the company's physical workplace for a set period of time, according to a personalised schedule. Thanks to the use of technology, smart workers can perform the same tasks and activities as regular workers and achieve the same goals and results, while choosing a workplace and schedule that is more convenient for both the activity to be performed and their personal needs. *Flexibility in time and space is creating a new organisation of work based on results rather than on presence at the workplace and working at fixed hours.* (Angelici & Profeta, 2015, p. 2.) The integration of the worker into the organisation disappears completely and the concepts of working time and rest time are dissolved.

The results of a research are important to highlight at this point: first, smart workers claim to be more satisfied with their leisure time and social life. Would this mean that they reduce the number of hours they are paid to work and thus their earnings? Although we did not have earnings data to directly test this effect, importantly, smart workers also claim to be more satisfied with their earnings, suggesting that smart work does not have a negative effect on earnings. Second, the observed increase in productivity implies that for the same pay, smart workers put more effort into their work than non-

intelligent workers. Smart workers are more focused and active. This may be the result of a different and more efficient organisation of their time, including reduced commuting time and better time management within the household. This effect is also reflected in work-life balance indicators, which show that smart workers spend more time on household and care activities. It is also recorded that a corresponding increase in well-being indicators suggests that productivity gains go beyond different and better time management. The fact that job satisfaction increases even when workers put in more effort means that intelligent workers have a positive perception of the new form of work organisation: they are willing to trade more effort for more flexibility to maintain or even increase their job satisfaction. Smart working is an emerging approach that is spreading rapidly and is now regulated in many countries. Removing the spatial and temporal constraints on work appears to be a promising way to organise work more effectively, according to the researchers. Moreover, their results are stronger for women, suggesting that the flexibility introduced by smart working can help reduce gender gaps in the workplace. Smart working also seems a promising way to promote work-life balance, an increasingly important issue in modern societies. Interestingly, this result was not clear-cut, as previous analyses have warned of the risk of overworking associated with flexible work organisation, with all its possible negative consequences (stress, well-being, health, etc.) (Angelici & Profeta, 2015, p. 31-32.). So there is already research showing the benefits of working without limits.

Concluding thoughts

Burnout has evolved from everyday vocabulary to a very real concern affecting a large number of people within working spaces. As workers contend with increasing pressure and stressors, the potential for burnout becomes increasingly more likely. A significant court case in Romania serves to underscore the issue and illuminate the significance of mental health concerns within workplaces. This case not only legitimizes workplace burnout as a legal cause of action but also highlights employers' duty of care to establish conducive working conditions and adopt preventative strategies for occupational stress.

The identification of burnout as a problem of law is a major milestone in the law of employment. The ruling establishes a precedent that motivates employees to pursue remedies whenever their mental well-being is adversely affected by working conditions. For instance, previously, most employees were frustrated when trying to deal with their problems of burnout, often suffering silently. This case gives people the power to act and force their employers to ensure a productive workplace. As evident across many professions, including education and healthcare, excessive stress can have severe effects, ranging from physical ailments to poor job performance. By legalizing burnout, a louder message is conveyed to organizations regarding the importance of mental health.

Employers are now faced with the crucial responsibility of ensuring their workplaces are mentally healthy. To achieve this, active measures need to be taken. Effective workload management is one area where employers can establish clear guidelines for task delegation. For instance, a company can create well-balanced teams to share tasks in a way that no employee is overwhelmed. In addition, it is essential that support systems are initiated, including access to mental health professionals and regular assessments with staff. These systems are helpful in identifying and addressing issues before they develop into greater difficulties.

Training in management is essential in creating a supportive working environment. Training managers to identify signs of burnout and offer proper support to employees is essential. Open communication encourages the workers to raise their concerns without fear of reprisal, hence building trust. The use of appropriate feedback mechanisms in the organization ensures the workers can disclose issues of stress without fear of reprisal. These actions show that an organization is concerned with the well-being of its workers and is making efforts to enhance as per their recommendations.

The significance of this ruling goes well beyond individual cases because it encourages a change in the way that organizations approach employee well-being. As such cases spread, it becomes even more obvious that mental health is an integral component of work culture. Employers are required to conform to evolving legal frameworks and social expectations to make sure that they give equal attention to mental well-being and physical safety. This change works in favor of the employee and also improves overall productivity and employee satisfaction, eventually developing a mutually beneficial situation for both parties.

In summation, the seminal decision rendered in Romania highlights the necessity of taking workplace burnout seriously and clarifies the legal obligations of employers. In validating burnout as a legitimate issue, this case contributes to a healthier and more supportive professional landscape. Employers must take proactive steps to prioritize mental health and ensure workers feel appreciated and supported. This change is not merely needed; it is necessary for the realization of a future where individuals will be capable of excelling within their workplaces. The time to act is now, and investing in mental health will forge a more empathetic and productive working culture.

We are experiencing changes in the economy and the labour market that are fundamentally shaking up what we have learned about classical labour law., extensive right of direction, management and control, organisational integration. Yes, the edge of all the qualifying marks is fading in today's flexible market operation. Fading, blurring, but not disappearing. In this piece, we restate the earlier observation by one of the authors that when we speak of protection by labour law, labour law in its classical sense is not 'everyone's labour law'. Indeed, not all workers require protection by labour law, for example, provisions on working time, rest breaks and remuneration. Not all workers have limited capacity to advance their interests. Consider the case of smart working. Others are able to utilize the power of agreement. They utilize the autonomy they possess, they are able to move across positions. So, time and space flexibility is bringing about a new work organisation founded on outcome and not on workplace presence and fixed-hour working. At the same time, there have always been, there are, and there will always be workers in the labor market who genuinely need restrictions. In this dilemma, we assert that, to clarify the nature of protecting the labor force, the precedence of human rights in contractual relations is essential. In addition, this postulate can become a constitutive factor for a life-course approach to employment conditions. This is the sole means of ensuring freedom, security, equality, and respect for human dignity in legal relations. All these, in conjunction, reflect the necessity of human rights in labor law. One of the fundamental constants in our society is the phenomenon of change; however, the rhythm of this change is hastening, and it necessitates attention to the individual in the course of such change. Organizational culture change follows the life cycle of an employer. Organizational culture change can be addressed by numerous strategies; however, the most sustainable long-term method is one that prioritizes people first. This focus on people is no less important in the face of ongoing uncertainties in the labor market and economy as well. Since the dawn of the industrial revolution, labor law has provided a set of protections to workers. Nevertheless, in the last decades, it has become apparent that the protection of the workforce needs to be somewhat extended to cover self-employed individuals in the labor market, i.e., those pseudo-self-employed. Within this protection context, working time laws are progressively losing their traditional function as a means of alleviation in this new flexworking context. And this is the very reason why we talk about the need for decoupling, as if we had to protect ourselves from ourselves and also from the employer's expectations: from endless work. But this is clearly an outcome of the hussle culture, and it is possible that with some restraint on both sides, the work-life balance can be avoided.

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