DIFFICULTIES IN THE PROCESS OF RETURNING THE EMPLOYMENT MARKET AFTER THE END OF THE CHILD-RAISING LEAVE

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Abstract

Child-raising leave is a right conferred by applicable law; however, in many cases, exercising this right can lead to a career break, in the vocational training, in the process of reintegrating into the group the employee who returns to work at the end of 2/3 years.

Keywords: *individual employment contract; child-raising leave; vocational training; the named clauses; labor market.*

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1. Introductory issues

A) Persons who, during the last 2 years prior to the date of birth of the child, have achieved for at least 12 months incomes (from salaries and assimilated to salaries, incomes from independent activities, incomes from intellectual property rights, incomes from agricultural activities, forestry and fish farming), subject to income tax according to the provisions of the Fiscal Code, they benefit from leave for raising the child up to 2 years, respectively 3 years, in the case of the child with a disability, as well as a monthly allowance[2] (in accordance with the provisions of art. 2 para. 1 of the Government Emergency Ordinance (O.U.G.) no. 111/2010 on leave and monthly allowance for raising children[3]).

Persons who, during the period in which they are entitled to benefit from the child-raising leave, obtain income subject to income tax are entitled to an incentive for insertion[4] in a monthly amount of 50% from the minimum amount of the allowance established in art. 2 para. 2 of the O.U.G. no. 111/2010.

In the case of persons who benefit from the monthly allowance and request the right to the insertion incentive, the payment of this allowance is suspended.

The monthly allowance and the insertion incentive benefit (according to art. 8 paragraphs 1 and 2 of the O.U.G. no. 111/2010): any of the child's natural parents, if he fulfills the conditions of granting provided the applicable legal regulations; one of the persons who adopted the child, to whom the child was entrusted for the adoption or who has the child in placement or emergency placement, except the professional maternal assistant who can benefit from these rights only for his children, as well as the person who she was named guardian.

B) The leave and the monthly allowance as well as the insertion incentive are appropriate for each of the births or, as the case may be, for each of the situations provided for in art. 8 para. 2 of the O.U.G. no. 111/2010.

The duration of the child-raising leave shall be extended in the case of overlapping two or more situations which may generate this right; in this case, only one allowance is granted, in the amount provided by the legal depositions (according to art. 9 paragraphs 2 and 3 of O.U.G. no.

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[2] The amount of the monthly allowance is 85% of the average of the net income realized in the last 12 months of the last 2 years before the date of the child's birth. The minimum amount of the monthly allowance may not be less than the sum resulting from applying a multiplication coefficient of 2.5 to the value of the reference social indicator, and its maximum amount may not exceed the value of 8,500 lei (art. 2 para. 2 of O.U.G. no. 111/2010).

[3] Published in the Official Gazette of Romania, Part I, no. 830 of 10 December 2010.

[4] For persons who obtain income subject to income tax at least 60 days before the child reaches the age of 2 years, respectively 3 years, in the case of the disabled child, the insertion incentive is granted as follows: a) until the fulfillment of to the child of the age of 3 years; b) until the child reaches the age of 4 years, in the case of the child with a disability, without benefiting in this period from the provisions of art. 31 para. 1 and 2 (art. 7 para. 2 of the O.U.G. no. 111/2010).

111/2010).

2. The legal effects of parental leave for child in the field of labor relations

A), a) While the individual employment contract is in existence, certain situations may arise that prevent the mutual benefits of the contracting parties from being realized.

In the labor law system, the suspension of the individual employment contract concerns the main effects of the individual employment contract – respectively, the provision of work and the payment of wages.

The measure of the suspension of the individual employment contract can intervene: by law; by the unilateral act of one of the parties; by agreement of the parties[5].

The suspension on the initiative of the employee of the individual employment contract may take place, according to art. 51 paragraph 1 (a) a of the Labor Code, as a result of his option, in the situation of granting the leave for raising the child up to 2 years or, in the case of the disabled child, until reaching the age of 3 years.

b) Regardless of the reason for which it intervened, the suspension of the individual employment contract has as main effect the interruption of the work provision by the employee and the payment of the salary rights by the employer.

During the suspension, the employee will receive, as we have shown, the monthly allowance in the amounts stipulated legally.

c) Whenever during the period of suspension of the contract a cause of law termination of the individual employment contract occurs, the cause of law termination prevails (art. 49 paragraph 5 of the Labor Code).

d) In the case of suspension of the individual employment contract, all the terms related to the conclusion, modification, execution or termination of the individual employment contract are suspended, except in cases where the individual employment contract ceases legally (art. 49 para. 6 of the Labor Code).

e) The leave to raise the child is granted on the basis of a request by the employer to whom the legally entitled person carries out his activity (art. 31 para. 3 of the O.U.G. no. 111/2010).

B) Labor legislation states *expressis verbis* – in the content of art. 60 paragraph 1 (e) from the Labor Code in conjunction with art. 21 paragraph 1 (d) from O.U.G. no. 96/2003 regarding the protection of maternity at work places[6] – the temporary prohibition to order the dismissal of the employees during the leave for the raising of the child up to 2 years or, in the case of the disabled child, until the age of 3 years; these provisions do not apply in the case of dismissal for reasons that arise as a result of judicial reorganization, bankruptcy or dissolution of the employer, according to the law (art. 60 paragraph 2 of the Labor Code).

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[5] Ion Traian Ştefănescu, *Tratat teoretic şi practic de drept al muncii*, 4th ed., revised and added, Universul Juridic, Bucharest, 2017, p. 230 et seq.; Ion Traian Ștefănescu (coord.), *Codul muncii și Legea dialogului social. Comentarii și explicații*, Universul Juridic, Bucharest, 2017, p. 270 et seq.; Raluca Dimitriu, *Dreptul muncii. Anxietăți ale prezentului*, Rentrop&Straton, Bucharest, 2016, p. 50 et seq.; Brânduşa Vartolomei, *Dreptul muncii, Curs universitar*, Universul Juridic, Bucharest, 2016, p. 70 et seq.; Ion Traian Ștefănescu (coord.), Monica Gheorghe, Irina Sorică, Aurelian Gabriel. Uluitu, Brânduşa Vartolomei, Ana Vidat, Veronica Voinescu, *Dicţionar de drept al muncii*, Universul Juridic, Bucharest, 2014, p. 314; Raluca Dimitriu, *Contractul individual de muncă – prezent şi perspective*, Tribuna Economică, Bucharest, 2005, p. 150; Alexandru Țiclea, *Tratat de dreptului muncii, Legislaţie. Doctrină. Jurisprudenţă*, Xth ed., updated, Universul Juridic, Bucharest, 2016. P. 240 et seq.

[6] Published in the Official Gazette of Romania, Part I, no. 750 of 27 October 2003; this normative act transposes the provisions of Directive 92/85/EEC on the introduction of measures to promote the improvement of safety and health at work in the case of pregnant workers, who have recently given birth or are breastfeeding published in the Official Journal of the European Union, the series L, no. 348 of 28 November 1992.

3. Difficulties in the process of reintegration into the labor market of employees after the completion of the leave to raise the child

A) O.U.G. no. 96/2003 regulates social protection measures only for: pregnant[7] and breastfeeding[8] employees, mothers or nursing mothers recently given birth[9] of Romanian citizenship or of a Member State of the European Union and of the European Economic Area, who have employment or service relations with an employer; citizens of other states and stateless persons, who, according to the law, have their domicile or residence in Romania, if they belong to the categories of employees mentioned above.

B) Employees who resume the execution of the individual employment contract after the termination of this agreement cease to face numerous difficulties that underline the behavior of an extremely reluctant employer regarding the possibility of the mother employee to reintegrate professionally, to be continuously trained, to perform professionally continuously, to provide additional work, to find solutions that give the interaction of the professional life with the family one, to express the readiness for the execution of the tasks of service through internal or international trips, etc. The diminution of the confidence of the employer in the professional qualities of the one in question is, as a rule, an immediate effect of acquiring the quality of mother.

C) We appreciate that the employer, after the expiration of the protective period of 6 months from the moment of returning to the workplace, could resort to the following solutions – which we consider the abusers, abusive:

- switching to a position that respects the professional training of the mother employee, but is extremely demanding – there is a firm belief that the one in question is or will soon become inadequate from a professional point of view;

- modification of the job description in the sense of adding attributions that trigger the professional, mental exhaustion of the one in question – given that the mother employee, as a rule, no longer has the same temporal resources, of physical, mental resistance as those existing in moments before birth; many employed mothers have difficulty adapting to stress, the intense work pace at work;

- temporary wage reduction[10], until the economic difficulties are removed; in this context, the modification of the individual employment contract represents an alternative to dismissal for reasons that are not the responsibility of the employee. Most of the times, under the responsibility of a family, the mother employee, facing such a situation, begins to look for another job that does not cause a decrease in the salary income.

Although, the measure outlined above takes the protective form *in favor prestatoris*, we consider that, in this context, it could be another way to remove the mother employee.

- lack of involvement in projects of real importance for the employer; at the base of drawing such an intention is the installation of the employer's distrust in the availability of the mother employee to correspond from a professional point of view, of her professional availability;

- clearly creating a work atmosphere in total disagreement with harmony, collegiality, understanding, cooperation;

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[7] The pregnant employee is the woman who announces in writing the employer about her physiological state of pregnancy and attaches a medical document issued by the family doctor or by the specialist doctor attesting this condition [art. 2 letter c) of O.U.G. no. 96/2003].

[8] The breastfeeding employee is the woman who, when resuming the activity after the leave of absence, breastfeeds her child and notifies the employer in writing of the presumed beginning and end of the breastfeeding period, annexing medical documents issued by the family doctor in this regard [art. 2 letter e) of O.U.G. no. 96/2003].

[9] The newly born employee is the woman who resumed her activity after taking the leave of absence and asks the employer in writing for the protection measures provided by law, attaching a medical document issued by the family doctor, but not later than 6 months from the date to which he was born [art. 2 letter d) of O.U.G. no. 96/2003].

[10] The Constitutional Court ordered, through the Decisions no. 872/2010 (published in the Official Gazette of Romania, Part I, no. 433 of 28 June 2010) and no. 874/2010 (published in the Official Gazette of Romania, Part I, no. 433 of 28 June 2010), that the temporary reduction of wages in the public sector is possible, because those who are employed in working relationships in the budgetary environment (employees and civil servants, mainly) are essentially related, from the point of view of the source from which the salaries/allowances/balances are fed, to the national public budget, respectively to the receipts and expenses from this budget.

- the inclusion of the mother employee in a work team with a totally foreign composition to the one in question; thus, the priorities change, the relationships of subordination in the collective – the professional status, personally not changing the one existing in the past.

4. Conclusions

From the emphases mentioned in the above, the following conclusions are drawn:

A) In order to create the harmonization of the professional life with the family one, the employer can establish individual work programs; such a measure may be ordered with the agreement or at the request of the employee concerned (art. 118 paragraph 1 of the Labor Code).

Individualized work programs require a flexible way of organizing work time.

The daily duration of working time is divided into two periods: a fixed period in which the staff is simultaneously at the workplace and a variable, mobile period, in which the employee chooses his arrival and departure times, respecting the daily working time.

B) The adaptation of the one concerned to the amendments intervened at the workplace can be materialized by organizing some forms of vocational training.

In correlation with the aspects mentioned above, we emphasize that it would be useful for the employer to decide within the conventional part of the individual contract of work clear and precise clauses designed to create a natural connection between work and family life, a natural return at the workplace after exercising the legally recognized right to child-raising leave – without raising the question of any abuse of law.

Bibliography

1. Alexandru Țiclea, *Tratat de dreptului muncii, Legislaţie. Doctrină. Jurisprudenţă*, Xth ed., updated, Universul Juridic, Bucharest, 2016.
2. Brânduşa Vartolomei, *Dreptul muncii, Curs universitar*, Universul Juridic, Bucharest, 2016.
3. Ion Traian Ștefănescu (coord.), *Codul muncii și Legea dialogului social. Comentarii și explicații*, Universul Juridic, Bucharest, 2017.
4. Ion Traian Ştefănescu (coord.), Monica Gheorghe, Irina Sorică, Aurelian Gabriel. Uluitu, Brânduşa Vartolomei, Ana Vidat, Veronica Voinescu, *Dicţionar de drept al muncii*, Universul Juridic, Bucharest, 2014.
5. Ion Traian Ștefănescu, *Tratat teoretic şi practic de drept al muncii*, 4th ed., revised and added, Universul Juridic, Bucharest, 2017.
6. Raluca Dimitriu, *Contractul individual de muncă – prezent şi perspective*, Tribuna Economică, Bucharest, 2005.
7. Raluca Dimitriu, *Dreptul muncii*. *Anxietăți ale prezentului*, Rentrop&Straton, Bucharest, 2016.