

DOES THE LABOR LAW REGULATION MAKE YOU HAPPY? LEGAL AND SOCIAL SITUATION OF MALE EMPLOYEES AFTER STARTING A FAMILY

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Research results of other fields of science gain more and more importance in the modern theories of labor law, just like legal science, modern psychology, sociology and economics also analyze the labor environment and relations from their own perspective. Current study was inspired by a study published in the 2017 June/July issue of the periodical called *Economist* 1843. Emily Bobrow, the author of the article discusses the situation of family men in the changing word of labor law.¹ She analyzes it in details that while in the case of women falling out of work when starting a family, as well as consequences originating from this (holiday, parental leave, looking after the child) are socially accepted, even more, result in an acknowledged status, the same event in the case of men though results in a higher salary, it is also accompanied with an increased level of stress. Referring to several American researches she expresses that male employees get into a so called “trap”; though the birth of their child is undoubtedly a happy event, it apparently means a disadvantage at their workplace if they go on a holiday because of this or simply spend more time with their family. In the study the author deals with this slightly researched area in details: can we talk about a so-called negative discrimination in the case of male employees with small children? If yes, can it be remedied with legal tools?

Equal Treatment in the World of Employment

Social Impacts of Equal and Fair Treatment

In the last decades a wide range of legal literature has been dealing with the topic of equal opportunities and equal treatment at workplaces, primarily with regards to vulnerable employees. Therefore, we can find a great deal of literature if we would like to get more information on these groups’ rights and their emergence, as well as on the equality of women,² minorities and underprivileged people. More and more studies

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¹ Bobrow, Emily: The Man Trap. *Economist* 1843, 2017/June-July, 90-95.

² The topic of female rights has been dealt with by the main periodicals, such as the Australian Feminist Law Journal or Feminist Legal Studies.



have emerged dealing with how the effects of equality and connected employee preconceptions affect work ethic and the quality and efficiency of the work performed. It has been demonstrated that if employees find their salary fair, they are willing to put more effort into their job.³ In connection with the relationship of fair wage conditions and health, a 2016 German study presented that there is a connection between fair wage conditions, fair understood from the point of view of employees and the frequency of cardiovascular diseases.⁴ *Coltrane* and the co-authors published quite interesting research results concerning male employees: they established that after starting a family, male employees spend more time at their workplace as before, however, if they resort to paid time off work or holiday, a so-called „flexibility stigma” sticks to them, which results in a significantly lower salary and less chance to be promoted in the long run.⁵

Further researching “flexibility stigma”, *Cech* and *Blair-Loy*, members of the expressly highest ranked American university sphere established that stigmatized employees are less persistent, the balance between their job and private life is worse, they are less satisfied with their job as well, moreover, these negative circumstances undoubtedly derive from the gender and the parental status.⁶ As the result of empirical studies, *Thébaud* and *Pedulla* revealed an interesting connection regarding the topic of the balance of work and private life. It seems to be a generally accepted fact that female employees leave their well-paid jobs themselves in order to have part-time jobs or to be housewives, that is, they are the ones who choose the predominance of private life; while on the other hand, research data do not support this perception, it is rather the work environment and the constraint that form the bases of their decision. Researches among young employees before starting a family have revealed that the initial preference for both genders is the equal family status: that is, men and women plan to participate in the family life as wage earners and do the housekeeping equally. However, as work environment, legislature and company policy forces them to choose, plan 'B' in most cases is that men spend more time at their workplace as this is what results in higher salary and promotion in most companies.⁷ This fact has been confirmed by more studies, too. In spite of that the difference between the salary of male and female

³ Such as: Fehr, Ernst – Kirchsteiger, Georg – Riedl, Arno: Does Fairness Prevent Market Clearing? An Experimental Investigation. *The Quarterly Journal of Economics*, 1993. No. 2, 437-459.

⁴ Falk, Armin – Kosse, Fabian – Menrath, Ingo – Verde, Pablo – Siegrist, Johannes: Unfair Pay and Health. SOEP – The German Socio-Economic Panel, *SOEP papers on Multidisciplinary Panel Data Research at DIW Berlin*, 870/2016. 3.

⁵ Coltrane, Scott – Miller, Elizabeth C. – DeHaan, Tracy – Steward, Lauren: Fathers and the Flexibility Stigma. *Journal of Social Issues*, 2013. No. 2, 279-302.

⁶ Cech, Erin A. – Blair-Lay, Mary: Consequences of Flexibility Stigma Among Academic Scientists and Engineers. *Work and Occupations*, 2014. No. 1, 86-110.

⁷ Pedulla, David S. – Thébaud, Sarah: *Can We Finish the Revolution? Gender, Work-Family Ideals, and Institutional Constraint*. Paper submission for Population Association of America 2014 Annual Meeting. <http://paa2014.princeton.edu/papers/140240>.

employees gradually tends to decrease, overtime and connected company policy results in the increase of the difference again. While in the 1980s less than 9% of employees (13% in the case of male and 3% in the case of female) worked more than 50 hours per week in the USA, by the millennium this ratio was already 14% (19% male and 7% female).⁸ Research results of the American Gallup from 2014 show that 58% of grown-ups in the USA worked more than 40 hours per week, while 39% more than 50 hours per week.⁹ Based on empirical studies, *Cha* and *Weeden* established that company culture and inner rules are highly responsible for this over-time ratio: the ideal (male) employee is fully committed to his employer and is basically available 7/24, which availability is highly supported by today's technology. At the same time, this commitment and constant availability are the bases of promotion.¹⁰

A wide scale research has been conducted in Germany with family men employees; the results highly resemble the ones in the USA. Based on the result of the representative research published in November 2016, more than half of the German family men wish to spend less time at work; this ratio is 69% among young men aged 18-25. However, men participating in the research generally found German workplaces father-friendly (*väterfreundlich*): on a scale of 1-4 they ranked them as 3.15. As for the future, the most interesting part of the study is that the participating family men listed some factors that make a workplace father-friendly. The most important factor is the way of company communication, as the article in *Economist* also expressed. Moreover, flexible working hours, motivating promotion system and predictable payment are also significant factors that make a workplace father friendly according to German fathers.¹¹ In parallel with this, another German study also found similar results: primarily flexible working hours, exchange facility between full- and part-time jobs and better adaptation to family needs (such as the planning of holidays) were the main factors.¹²

With regards to our topic, a relevant question is that among the above mentioned factors which can be supported by legislature. In the opinion of the author, the answer lies in non-standard employment together with some parts of social and support policy.

⁸ Cha, Youngjoo – Weeden, Kim A: Overwork and the Slow Convergence in the Gender Gap in Wages. *American Sociological Review*. 2014. No. 3, 457-484. Electronic copy available at: http://mypage.iu.edu/~cha5/Youngjoo_Cha_files/Cha_weeden.pdf.

⁹ Saad, Lydia: The “40-Hour” Workweek Is Actually Longer – by Seven Hours. Gallup, 29 August 2014. <http://www.gallup.com/poll/175286/hour-workweek-actually-longer-seven-hours.aspx>.

¹⁰ Cha-Weeden: *op. cit.* 5.

¹¹ https://www.erfolgsfaktor-familie.de/fileadmin/ef/Wissenplattformfuer_die_Praxis/Ergebnisse_Vaeter-Barometer_2016.pdf.

¹² <https://www.bmfsfj.de/blob/75876/427470763d967566b32624f0597bebf/memorandum-neue-vereinbarkeit-allensbach-charts-data.pdf>.

Regulation of Working Hours and Gender Differences

Compared to the abovementioned thoughts, in the countries of the European Union statistical data projects a much more promising picture. According to the statement of the Hungarian Central Statistical Office issued in 2014, female employees working full time generally worked 40.2 hours per week in 2013, while men worked 41.1 hours. In the 28 EU member states the standard deviation is quite small: the differences mainly depend on the ratio of self-employed people: where their ratio is high (such as in Greece), the weekly working hours exceed the EU standard. The usual weekly working hour in the case of men is 6.1 (Danish men worked for the shortest period for 39.5 hours in 2013, Greek men worked the most, 45.6 hours), as for women, the number is 4.3 hours (41.8 hours in Austria and Greece and 37.5 hours in Ireland).¹³ However, if we analyze the question more closely and the data of the questionnaire and not the officially reported one, the results are not as good as it was indicated in the statistics in themselves. Even in the case of Germany family men with small children are said to have worked higher hours than what was reported in the statistical data. According to the 2015 data, 34% of German family men with small children said to have worked for more than 50 hours per week.¹⁴

However, overtime work has numerous health risks. An American study cited by many, demonstrated that longer working hours or overtime highly increases the risk of accidents or diseases suffered in connection with work.¹⁵ A Canadian study from 2000 established that old, young, male and female employees listed the exact same stress factors at workplaces: exaggerated expectations and overtime.¹⁶ Compensating the above mentioned, with regards to European Union member states, *Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time* established the minimal safety and health requirements connected to the organization of working time with regards to the aspects of daily rest period, breaks, weekly rest period, maximum weekly hours, number of annual holidays, night shift, shift work and work schedule. According to the directive, general working hours, including overtime must not exceed 48 hours in seven-day periods.¹⁷

¹³ Hungarian Central Statistical Office: Munkaidő, munkaidő-kiesés, műszakrend. [Working Hours, Time Loss, Work Schedule]. *Statisztikai Tükör*, 2014/69. 1.

¹⁴ <https://www.bmfsfj.de/blob/112720/2d7af062c2bc70c8166f5bca1b2a331e/vaeterreport-2016-data.pdf>.

¹⁵ Dembe, Alex – Erickson, Bianca – Delbos, Rachel – Banks, Steven: The Impact of Overtime and Long Work Hours on Occupational Injuries and Illnesses: New Evidence from the United States. *Occupational and Environmental Medicine*. 2005/9, 588–597.

¹⁶ Williams, Cara: Sources of Workplace Stress. *Perspectives on Labour and Income*, 2003/6. <http://www.statcan.gc.ca/pub/75-001-x/00603/6533-eng.html>.

¹⁷ Article 6 of Directive 2003/88/EC of the European Parliament and of the Council of 4th November 2003 concerning certain aspects of the organization of working time, which modified the directive of 1993, contains the same regulation.

According to the previously cited report of the Hungarian Central Statistical Office, the two main reasons of losing a whole week of working time is holiday and illness; these two were the reasons of absence in 84.8% in the case of women and 82.7% in the case of men. According to statistical data, almost exclusively women resort to holiday in order to take care of their sick child. 4.8% of their total absence can be led back to the reasons of maternity leave and taking care of sick children.

Labor Law Regulation and Family Men with Small Children in Hungary

In 2003, just before joining the European Union, among the Visegrad countries Hungary, Poland and the Czech Republic conducted wide-scale researches on social gender reforms. The research results showed that social inequality cannot necessarily be eliminated by social reforms, however, labor law regulation, the formation of values and the proportional distribution of allowances can jointly have actual positive effects.¹⁸ Researches connected to well-being at work highlight that workers enjoying subjective well-being mean a committed group of workers for employers in the long run that is, the well-being of workers is simultaneously the interest of employers.¹⁹

International Labour Organization (ILO) accepted its Convention No. 156 concerning *Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities* on 23rd June 1981. Under the term family responsibilities, the convention not only forms recommendations in connection with dependent children but also concerning other family members and employees who are especially in need of support and care. According to the convention, when planning for the whole community, with special regards to community services, participating states have to do everything in order to take into consideration the need of workers with families (Article 5.) The text of the convention specifically highlights the equality of opportunity and treatment for female and male employees (Article 6.), at the same time, the preamble suggests that the convention was primarily accepted with the aim of decreasing the disadvantageous discrimination of female employees.

The Hungarian *Act on Family allowances* specifies among the basic principles that “one of the most important tasks of the state is to assist families”, and the Act specifically aims at assisting families’ financial safety [Act LXXXIV of 1998 on Family Support, Paragraphs 1 and 3]. Hungarian statistical data show that the income of families with children is significantly lower (even together with family allowances) than the income of families with no children. Based on the calculations of *Szilvia Závecz*, in 2010, families

¹⁸ Fultz, Elaine – Ruck, Marcus – Steinhilber, Silke (ed.): *The Gender Dimensions of Social Security Reform in Central and Eastern Europe: Case Studies of the Czech Republic, Hungary and Poland*. Foreword. ILO, 2003. 9.

¹⁹ Kun, Ágota: *Munkahelyi jóllét és elköteleződés [Well-being and Commitment at Workplaces]*. *Munkaügyi Szemle*, 2010. No. 2, 35-41.

with children generally earned 36% less in Hungary than families without children.²⁰ In spite of that in the Hungarian family allowance system financial supports are in majority, moreover, they especially show an increasing trend. Financial allowances that can be resorted to by fathers as well are the following: *family allowance* and *child raising allowances*. According to main rule, maternity allowance can implicitly be resorted to by mothers but if the mother entitled to maternity allowance dies before granting the allowance, then the maternity allowance has to be paid for the father living in the same household as the mother.

A non-financial form of family allowance is the labor law regulation connected to children. The Hungarian Act 1 of 2012 on Labor Code provides extra vacation time for employees as follows: i) two working days for one child; ii) four working days for two children; iii) a total of seven working days for more than two children under sixteen years of age. [Labor Code, paragraph 118 (1)]. The significance of this regulation is that it not only refers to parents with small children as it is provided until the child reaches the age of sixteen. A regulation especially referring to fathers is that upon the birth of their children, they are provided 5, in the case of twins 7 working days up until the end of the second month from the date of birth, which shall be allocated on the days requested by the father. The leave shall be provided also if the child is stillborn or dies [Labor Code paragraph 118 (4)].

The Hungarian government supports the formation of family friendly workplaces through the Ministry of Human Capacities. An annual tender possibility is the program entitled “*Assisting the formation and the development of family friendly workplaces*”. It aims at supporting those practices and policies which contribute to the effective realization of this objective. Winners of the tender become entitled to use the title “Family friendly workplace”. However, we must note that the total budget for the funding period of 1st June 2017-31st June 2018 (sic!) is 60 million Hungarian forints (~ 190 000 EUR) nationwide, which makes us question the idea’s seriousness, moreover, candidates have to pay a 5 000 Hungarian forint (~ 16 EUR) tender fee.²¹

Summary and Thoughts on Solutions

Modern labor law cannot ignore the fact that if the aim is quality employment, then employers have to ensure workers that their workplace is not a stress factor but a potential area of self-realization, at least with regards to the majority of labor relations. Having regard to that half of the employees are men and the majority of them is family

²⁰ Závecz, Szilvia: A népességfogyástól a gyermekszegénységig: A hazai családtámogatási rendszer dilemmái. [From the Decrease of Population to Child Poverty: Dilemmas of the Domestic System of Family Support]. *E-CONOM*, 2012. No. 1, 104-116.
http://epa.oszk.hu/02300/02301/00001/pdf/EPA-02301-10_ZaveczSz_e-conom_2012_1.pdf.

²¹ See (in Hungarian)
http://www.emet.gov.hu/_userfiles/felhivasok/csbm/csp_csbm_17_palyazati_felhivas.pdf.

men with children, their potential expectations and needs have to be taken into consideration in order to employ satisfied, committed employees. The unique situation of employees with family responsibilities is investigated by several studies, however, for a long time family relations have been mainly researched from the point of view of women. At the same time, the situation of family men as the only wage-earners in families often has an increased effect on the family as a whole itself as families' existential security depends on the profit-making circumstance of the father.

As for the formation of family-friendly workplaces in Germany, the Federal Ministry for Family Affairs has issued special support programs starting from 2006. The aim of the programs entitled 'Family Success factor' (*Erfolgsfaktor Familie*) and 'Company Childcare' (*Betriebliche Kinderbetreuung*) is especially to incent the formation of family-friendly workplaces. In Germany, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth comprehensively examines the situation of family men in the society. They have discovered that 57% of German fathers (62% of mothers) feel the pressure of time; furthermore, it is also interesting that they published such statistical data that confirm the previous statements in connection with the acceptance of part-time jobs and paid time off work after giving birth, or rather with their unacceptance with regards to men.²² As for supporting the formation of family-friendly workplaces, more activities have been urged by the German government: besides flexible working hours and part-time jobs the formation of childcare places is supported (besides also providing 400 EUR maternity support per month). If we strictly investigate the efficiency of the latter one with regards to men, then another German study has revealed that this type of childcare support mainly increases the satisfaction of women, while its effect on men's well-being is marginal.²³

To sum it up, the flexibility of working hours and the frames of employment are obvious worker needs based on the research results mentioned above. One group that can benefit from the spread of non-standard forms of employment can be the fathers themselves, who would like to spend more time with their family. Upon what was mentioned before, the number of such employees is very high. An American research has revealed that flexible working hours as a motivational factor has overtaken higher salary, option for shares or training opportunities when talking about employee loyalty.²⁴ Therefore, this solution can simultaneously serve the interest of employers and employees – and together with it, the increase of society's well-being.

²² <https://www.bmfsfj.de/blob/112720/2d7af062c2bc70c8166f5bca1b2a331e/vaeterreport-2016-data.pdf>.

²³ Lauber, Verena – Storck, Johanna: Helping with the Kids? How Family-Friendly Workplaces Affect Parental Well-Being and Behaviour. SOEP – The German Socio-Economic Panel study at DIW Berlin. *SOEP papers on Multidisciplinary Panel Data Research*, No. 883/2016. 17.

²⁴ Bureau of Business & Economic Research, University of New Mexico: Social Outcomes of Family Friendly Policies and Practices in the Workplace. http://bber.unm.edu/media/presentations/Social_Outcomes_Matrix_9.28.11.pdf