

SARA BAGARI

TEACHING AND RESEARCH ASSISTANT, UNIVERSITY OF LJUBLJANA,
FACULTY OF LAW

**WORK-LIFE BALANCE MEASURES IN AMENDMENTS TO
THE SLOVENIAN EMPLOYMENT RELATIONSHIP ACT**

On 7 November 2023, the National Assembly of the Republic of Slovenia adopted amendments to the Employment Relationships Act (ZDR-1D)¹, which entered into force on 16 November 2023. The ZDR-1D transposes Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union² and the Directive (EU) 2019/1158 on work-life balance for parents and carers³ into Slovenian legislation and introduces some other novelties.

This paper focuses on the following: (i) the right of parents and carers to request part-time work, (ii) carers' leave and (iii) the right to disconnect. These measures all have in common that they are intended to make it easier for workers to reconcile work and private life and can therefore be described as work-life balance (WLB) measures. The paper also discusses the interaction between the new provisions and the provisions and rights that were already in place prior to the amendment of the ZDR-1.

ZDR-1D also introduced a number of other measures for the additional protection of workers, which will not be discussed further in this paper due to limitations in space.

The main ones are:

- an extension of the period during which the right to take annual leave may be exercised in line with CJEU case law (Article 162(4) of the ZDR-1) ;
- higher wage compensation for agency workers when the employer does not provide the worker with work (Article 61(3) of the ZDR-1) ;
- the right of victims of domestic violence to work part-time (Article 67.a of the ZDR-1),
- the right to five days of paid leave of absence for workers who are victims of domestic violence (Article 168.a of the ZDR-1) ;
- special protection of workers, who are victims of domestic violence (Articles 189.a and 189.b of the ZDR-1) ;
- withholding the effect of a dismissal for workers' representatives and trade union trustees (Article 113(3)(4)(5) of the ZDR-1) ;
- the subsidiary liability of the contractor for the payment of wages not paid by the subcontractor to its own workers for work carried out in the construction sector (Article 141.a of the ZDR-1).

1 Official Gazette of the Republic of Slovenia, no. 114/23.

2 OJ L 186, 11.7.2019, p. 105.

3 OJ L 188, 12.7.2019, p. 79.

I - THE RIGHT OF PARENTS AND CARERS TO REQUEST PART-TIME WORK (ARTICLE 65.A OF THE ZDR-1)

The new Article 65.a transposes the requirements on flexible working arrangements set out in Directive 2019/1158. It guarantees workers with a child up to the age of eight and workers providing care (carers) the right to request part-time work to meet the needs of reconciling work and private life. However, the right to request part-time work for the purpose of reconciling work and private life already existed before the ZDR-1D, since, according to Article 148(3) of the ZDR-1, a worker may at any time propose a different working time arrangement for the purpose of reconciling work and private life, and the employer must justify its decision in writing, taking into account the needs of the work process. The novelty of Article 65a is the fifteen-day period within which the employer must respond to the worker's proposal.

Although it is not explicitly stated in Article 65a, I believe that the employer may not reject the worker's proposal simply because it would mean a different organisation of the work process but must assess in each individual case whether the proposed change in the allocation of the worker's working time would constitute a disproportionate interference in the organisation of the work process and must give reasons for its decision. This also follows from Article 9 of Directive 2019/1158, which states in its second paragraph that the employer's decision must take into account the needs of both the employer and the worker. Any other interpretation would be contrary to the purpose of the Directive.

A worker who starts working part-time for the purpose of reconciling work and private life shall have the same rights and obligations under the employment relationship as a full-time worker, and shall enjoy them proportionally, unless otherwise provided by law. However, a worker is not entitled to social security contributions for the time he/she is not working. According to the rules on parental protection insurance, the right to part-time work and the right to paid contributions is granted (only) to a parent who takes care of a child up to the age of three or (in the case of more than one child) to a parent who takes care of at least two children up to the age of eight of the youngest child.

In practice, the right to request part-time work under the new Article 65.a will therefore be relevant for workers who takes care for a child between the ages of three and eight, as they are not entitled to part-time work with paid social security contributions under parental protection insurance and for carers⁴.

ZDR-1 also introduced a new paragraph in the provisions on telework. Paragraph five of Article 68 of the ZDR-1 now gives the worker the right to request telework for reasons of reconciling work and private life. Again, the employer must respond to the worker's proposal and justify its decision in writing within 15 days at the latest.

4 In this respect, see also S. Bagari, « L'équilibre entre vie professionnelle et vie privée en Slovénie à la lumière de la nouvelle Directive européenne 2019/ », *Revue de droit comparé du travail et de la sécurité sociale*, no. 3, 2020, p. 70.

II - CARERS' LEAVE (ARTICLE 167.A OF THE ZDR-1)

The right to carers' leave is particularly important in the light of the increasing need for long-term care⁵. Article 167.a transposes the requirements for five days of carers' leave set out in Directive 2019/1158. It entitles workers (carers) to five days of leave per calendar year to provide substantial care to a family member (a spouse or civil partner, children, adopted children and children of the spouse or partner, and parents) or to a person who lives in the same household, for health reasons. Although it is not explicitly stated whether or not the worker is entitled to an allowance during the period of carers' leave, the explanatory memorandum to the amendment states that « this is a form of unpaid absence from work, as the legislator has not explicitly provided for wage compensation in this case ».

The worker must inform the employer in advance of the reason for the absence from work and prove to the employer that he or she is entitled to this type of absence by submitting a statement explaining the reasons for the absence, together with details of the person who is in need of significant care and the relevant supporting documents (such as a medical certificate).

This right is (also) not completely new in Slovenian law. For example, in health insurance there is already a right to care for an immediate family member, during which insured persons (including workers) are entitled to a compensation benefit (amounting to 80 % of the insurance base). In addition, the ZDR-1 already grants parents of children with special needs three additional days of annual leave.

III - THE RIGHT TO DISCONNECT (ARTICLE 142.A OF THE ZDR-1)

With ZDR-1, Slovenia became one of the few countries to regulate the right to disconnect. Article 142.a stipulates the employer's obligation to ensure workers' right to disconnect, so that they are not at the employer's disposal during periods of rest or justified absence from work. In this respect, employers are obligated to implement measures to give concrete effect to this right. However, the law therefore does not specify what measures should be taken to ensure the right to disconnect but leaves this decision to the employer or the parties to the collective agreement. This arrangement makes sense, since the measures may vary according to the nature of the activity carried out by the employer and the nature of the work carried out by the individual worker. Therefore, Article 142.a states that measures that implement the right to disconnect must be defined in a collective agreement at the sectoral level. If the measures are not laid down in a collective agreement at the sectoral level (either because there is no such collective agreement, or because the employer is not bound by any collective agreement, or because the social partners fail to agree on their regulation), they should be laid down in a collective agreement at a narrower level. However, if this is not possible either (if there is no trade union at the employer), the fourth paragraph provides that the employer must submit the proposed measures to the works council or other workers representatives for an opinion before adopting them. The employer must adopt the measures within one

5 See, for example, G. Strban and S. Bagari, « Reliance on long-term care as a „new“ social risk in national and EU law », *Acta Universitatis Wratislaviensis*, no. 123, 2020, p. 87.

year of the entry into force of the amendment to the ZDR-1D, i.e. by 16 November 2024.

Furthermore, Article 142.a establishes an important presumption that, in the event of a dispute where the worker claims that the employer has violated his or her right to disconnect, the burden of proof is on the employer.

Although the right to disconnect is a new right, it is worth pointing out that before the right to disconnect, labour law already had mechanisms in place that essentially served the same purpose. However, with digitalisation and its impact on the world of work, classic labour law institutions such as working time, overtime and rest periods have taken on a new perspective, and theory and practice have been faced with the challenge of interpreting or applying them appropriately. The problem of the constant availability of workers, as well as the excessive use of ICT for teleworking, is thus not only fully addressed by protective standards on working time, but also requires additional regulation and action in various areas⁶. The Slovenian legislature's decision to regulate the right to disconnect (before being obliged to do so by EU law) is therefore more than welcome.

IV - PENALTIES FOR VIOLATION

If an employer violates the obligation to respond to a worker's request for part-time work, or if he does not allow the worker to take carers' leave or does not grant the worker the right to disconnect, he is liable under Article 217a of the ZDR-1 to a fine of between EUR 1,500 and EUR 4,000 (for employers with more than ten workers), EUR 300 and EUR 2,000 (for a smaller employer), EUR 150 and EUR 1,000 for each individual employer or responsible person.

Conclusion

Although the ZDR-1D introduces some new developments in the field of labour law, we can conclude that (at least in the case of the WLB measures discussed) they are largely an improvement on the existing legislation. This demonstrates the relevance and role of the strong and well-established labour law framework in Slovenia. However, as changes in the world of work and society in general also require changes in the law, it is right that the Slovenian legislator has responded. In part, it is also obliged by EU law to make changes, which again shows the importance of developing labour law at EU level.

For the most part, the amendments are to be warmly welcomed, although the literature is already pointing out that the legislator has been too modest in protecting workers and has not gone beyond the minimum requirements already laid down in EU law. Ensuring that the newly adopted rules are effective in practice is now the responsibility of all stakeholders in the labour market.

⁶ D. Senčur Peček, « Pravica do odklopa in druga pravna vprašanja upravljanja delovnega časa v dobi digitalizacije (The right to disconnect and other legal issues of working time management in the age of digitalisation) », *Delavci in Delodajalci*, no. 21(2/3), p. 295.