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WYDZIAŁ PRAWA
I ADMINISTRACJI

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*Zakres swobody pracodawcy w nawiązaniu i kształtowaniu
umownego stosunku pracy*

*(Purview of the employer licence to establish and shape of
contractual employment)*

SUMMARY

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The title of Doctoral Dissertation is *Purview of the employer licence to establish and shape of contractual employment*. As part of the work was carried out in-depth analysis of the problem of existence and shape of contractual license, which is the appropriate use under Art. 300 of the labour law also realized at the level of employment - particularly contractual relationship. The specificity of the work is revealed in the fact that a point of view was adopted rights of the employer and under the terms of considerations has been subjected to regulation of the labour law. As part of the hearing attempt is made to indicate the scope of the contractual freedom of the employing entity using the method of negative - by specifying restrictions on the license to put before the employer labour laws in the majority of guaranteeing protection of employees' interests. Often, assessing the impact of binding legal regulation on the freedom of the contracting employer must oppose the needs of the employing entity, arising especially from the organizational function, the provisions of the labour law, the nature protection to employees follows directly from the nature of the labour law.

In view of the changes in political and economic, have a direct impact on the labour market and the structure of the group of entities employing. There is a need to analyze the news of labour law provisions contained in the labour law of 1974. With a relatively small change of the structure of the institutions of labour law at the time of the Labour law, especially in the field of contract law employment relationship, the discussion on the corresponding adjustment of labour laws to the current economic conditions and the needs of employers, giving a guarantee of further development of the labour market seems to be fully justified.

In the literature, the subject has not yet been presented, including the development of collectively and comprehensively the subject of the discretion of the employer based on an analysis of existing individual institutions of the employment relationship, which developed in the Polish employment code regulations for decades. The hearing is so original approach to the problem of freedom of the employer, because thanks to a comprehensive analysis of the subsequent stages of the establishment and development of the employment relationship will be possible to assess the scope of the license of the employer also in more general terms covering the position of employers throughout the employment process.

The research into this topic was limited to contractual employment relationship as the basic form of employment. It is precisely at the level of classical contract of employment in the fullest possible way manifested the freedom of contracting parties to the employment relationship. As part of the trial analysis we have highlighted two stages - the establishment

and development of the employment relationship, where the parties' autonomy, especially derived from the powers of the employer, are of utmost importance. The work was divided into four chapters, the first of which serves as an introduction to the subject of the work, the second and third cover issues related to the stage of the employment relationship between the parties, while the last chapter concerns the formation of the employment relationship during his lifetime.

The first chapter, entitled *License of establishment and development of employment - basic determinants*, was divided into three parts. First, it contains a definition of civil principle of freedom of contract, a description of its proper application in relation to the employment relationship and identify the fields in which it manifests itself. Then attempt is made to highlight the determinants of freedom, in which shall be provided by the employer. Among the factors justifying the need to guarantee the freedom of decision-making on the side employing included freedom of economic activity as a manifestation of the right of the employer, employer's risk function and organization of the labour law. License of employers to establish and shape the employment relationship seems somewhat counterbalance the risks menacing side and employing a tool for the realization of freedom of establishment and organizational tasks whose fulfillment is it closely related. The last part of the first chapter is the historical development of legislation in the field of labour law, that introducing a guarantee of protection of the interests of employees (such as occupational health and safety, working hours, remuneration) at the same time created new restrictions for employers both in terms of the admissibility of employment and create conditions work, corresponding to the imposed by the legislature minimum standards.

The content of the second chapter focuses on the stage of creating the job by an employer who intends to hire a potential candidate. It is important to analyze the real needs of the employer, which should be reflected in the determination of the job, including the responsibilities of the staff hired and the conditions under which it should be provided work. Due to the specific needs of the employer for a specific job, including type of work, the period of its implementation, the need for autonomous or subordinate, the employer has the possibility to choose the appropriate legal basis of employment, the civil law. License in this respect legal standards limit the correct use of a specific legal basis in a given situation, characterized by the presence of elements that are determinant conclusion of a civil law relationship (contract of mandate, contract work, management contract) or employment (employment contract). It also identifies legal regulation that may affect the decision of an employer hiring a particular candidate, and also describes the possibilities of the entity

employing the stage of recruitment for the definition of criteria for recruitment and checking the skills and experience of the candidates. In spite of the principle of freedom to establish an employment relationship, which in relation to the employer manifests itself primarily in the freedom of choice of personnel, it is subject to restrictions under anti-discrimination laws (which apply to the recruitment stage to work) and the rules concerning, among others restrictions on access to data about a candidate for the job.

The third chapter titled *Restrictions on license of the entrepreneur in connection with the employment relationship* is a kind of vision of the verification of the employer on the job, which was mentioned in the previous chapter. Considerations apply to the stage to create and negotiate the terms of employment, which are essential elements of the content of the employment contract. The legislator limits the freedom of employers not only introducing exhaustive list of types of employment contract, as well as establishing the necessary elements that the content of the agreement must be found. Selecting the type of contract and the method of determining the type of work, jobs, wages and working hours, due to the protection of workers is limited to the extent narrower or wider provisions of the labour law, depending on the specifics of work organization in the workplace. In addition, the employer must take into account the limitations symptoms resulting from legal regulations concerning the protection of the special work of women and minors. Not with any job, because of the conditions for its exercise, it will be possible for them to work. In parallel with the analysis of the ability of employers shaping individual elements of the employment relationship, in a dissertation on a regular basis to assess whether the boundaries of the freedom of the employer, under the law in force.

In the fourth chapter, entitled *License of employers to shape the employment relationship during his lifetime*, discussion focused on the freedom of the employer on the stage of the employment relationship. Due to the changing needs of employers primarily due to the volatility of economic conditions, it should be equipped with the tools to customize the shape of the ongoing labour relations to the current situation in the workplace. Starting from the employer's obligation to the actual hiring the employee, identified institutions that give him the opportunity to implement it by modifying the conditions of employment of employees - both temporary and permanent. With regard to the modification of the time it must be regarded as a kind of permission for the employer - due to the special conditions that in a temporary manner prevent the work done by the employee in the form specified in the contract, he has the opportunity to engage the employee to another job, and thus, further use of its potential manufacturing, although in a modified form. Likewise assess the institution

notice changing the agreement of the parties, which seem to be necessary to maintain the employment relationship between the parties, despite the changing economic realities. This is also an expression of the protection of its durability.

In the course of the considerations set out in the work of doctoral, efforts were made to get the answer to the question closely connected with the thesis work, i.e. whether the currently effective regulation of the labour law, which is a guarantee for the protection of the rights and interests of workers, adequately and reasonably interferes with the license of employers to make and shaping the employment relationship. Attempts to assess under the terms of individual institutions highlighted in chapters hearing lead to a partial conclusion that the value of constituting a necessary and absolute limit freedom of the employer to protect the life and health of employees and other interests enshrined primarily in the Polish Constitution. Carried out in the manner described analysis takes into account most of the issues related to the act of an employment relationship and the shape of its contents by the employer and realizes staked thesis work and an introduction to further discussion on the possible need to change the existing regulation of labour law.

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