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*Czas pracy lekarza jako pracownika szczególnej kategorii*

*(Working time of a physician as an employee of a specific category)*

**SUMMARY**

PhD Thesis prepared at the Labour Law  
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The aim of the thesis is to analyse the legal regulations for the physicians' working time as a significant criterion determining the actual status of this professional group. The thesis applies to current issues, both from the legal perspective and from the social perspective. The considerations contained in the thesis are consistent with the trend in the discussion on the shape of the currently binding system for the organization of working time of the indicated category of health professionals.

The issues related to the working time of physicians are of key importance to the functioning of the entire health care system. Therefore, the development of the optimum model for the organization of the working time of physicians seems to be a priority at present. This justifies the efforts to write this thesis, which is an attempt to fill in the gap in the labour law with regard to a comprehensive study on issues related to the working time of the professional group in question.

The thesis consists of six chapters. Chapter one is the introduction. It starts with an analysis of the nature of health care institutions, the diversity of which significantly affects the conditions under which the physicians work. The considerations in this part of the thesis demonstrate the exceptional nature of the physicians' work, depending on the type of the entity in which the health care services are provided. This, in turn, made it possible to conclude that the form of the health care institution may determine the forms of the physicians' employment. The various types of health care institutions as well as the specific nature of work in these institutions requires not only employing an appropriate number of health care personnel, but it also significantly affects the selection of the form of employment. This statement justifies the analysis of legal grounds for employing physicians with breakdown into employee employment and non-employee employment conducted in a further part of this chapter.

With regard to non-employee forms of work by the physicians, the analysis covered the physicians' work both on the basis of civil law agreements, as well as under business operations conducted by the physicians, namely self-employment. Therefore, the conditions of work on the basis of an agreement for a contract for health care services as well as an agreement for health care services were examined in detail. The chapter's summary indicates the advantages and the disadvantages of both forms of employment, which made it possible to answer the question whether the specific nature of the physician's work depending on the nature of the health care institution as well as the related need to employ an appropriate number of health care personnel should be a sufficient premise to extensively use civil law agreements, and thus to gradually depart from employee employment. Therefore, the key



problem was indicated, namely the excessive use of civil law employment towards physicians which, in turn, justifies the need to cover this professional group with the protection of employee employment developed as part of non-code regulations, that is in the Polish Act on medical operations.

Chapter two includes the analysis of the main components of the physicians' working time, by comparing the regulations of the Polish labour code with regard to the working time and the working time standards as compared to provisions regulating this issue contained in the Polish Act on medical operations. This analysis made it possible to demonstrate the differences between both regulations, and thus made it possible to formulate conclusions on the need to use separate legal regulations regarding the physicians other than those that cover all the employed.

An important place in the discussion conducted in this chapter is taken by *the opt-out* clause, as an institution which applies solely to the physicians. The introduction of *the opt-out* clause to the Polish Act on medical operations made it possible for entities managing health care institutions to impose an obligation on the physicians to work in time exceeding 48 hours a week on average. The thorough review of regulations regulating the discussed issue proved the thesis on the need for the existence of this form of the physicians' work but, at the same time, it showed the need to provide more details for *the opt-out* agreement in a specific act.

Chapter three starts with the presentation of the evolution of legal solutions regarding the physicians' working time. This fragment of the thesis contains an analysis of legal acts binding from 1918 to 2012. The outline of the evolution of legal regulations regarding the physicians' working time was of key importance for the understanding of the contemporary organization of the work of the professional group in question. Tracing back the legislative changes which took place over the years turned out to be helpful in the development of a new optimum system for the organization of working time of the physicians. Based on the experience from previous years, one may avoid making the same errors, especially not using regulations which did not perform well in the previous legislation.

The further part of chapter three consists of a discussion regarding the systems of working time of health care personnel. An important fragment of this part of the thesis is the attempt to settle a discourse taking place in legal literature on which system of working time should be considered basic with regard to the representatives of health care professions. The analysis of the systems of working time regulated in the Polish labor code was helpful in this case. The detailed study covered: the system of shift work, the system of disjointed hours as well as the system of continuous work. The systems for the organization of working time indicated above

appear to be interesting from the perspective of their application in health care entities. The analysis of the above issues was enriched with the opinions presented in the doctrine, as well as with the position of the Polish Ministry of Health and the Main Labour Inspectorate. The review of the positions of institutions indicated above made it possible to assess the acceptability and the rationality of using the code systems of working time towards the professional group in question. The conclusions drawn made it possible to formulate arguments for making changes which would be acceptable for the Polish legislator.

The content of chapter four is the analysis of particular elements of the organization of working time which include: overtime work, work on Sundays and holidays as well as work at night. An important element of this part of the thesis is the discussion regarding the possibility to refuse work in overtime, the limits for such work and the principles of compensation for such work. These issues become very significant from the perspective of specific conditions under which the physicians work. This applies, first of all, to the doubts as to the existence of the possibility to refuse to work in overtime if the physician exceeds the limits for such work. Although it would seem obvious that the refusal to work in overtime would indeed be justified in such a situation, it is difficult to find the grounds for such refusal both in the doctrine of the labour law and in judicial decisions.

An important fragment of this part of the thesis is taken by considerations regarding the principles of compensation for work in overtime. Two types of compensation were analysed: remuneration with a relevant addition, as well as a rest period. The nature of both forms of compensation for work in overtime proved the thesis that the rest period with regard to the physicians should prevail over additional remuneration for work in overtime.

The further part of this chapter contains an analysis of legal standards related to working on Sundays and holidays as well as working at night. The unique nature of the physicians' work resulting from the need to continuously meet the health needs of the society is strictly related to working on holidays, on Sundays or at night. Due to the inconvenience of working, especially at night, it seems justified to reward it with an appropriate remuneration. Therefore, the legislator's actions, who planned more favourable principles of compensation for the physicians' work at night in the Polish Act on medical operations than those found in the Polish labour code regarding all the employed, should be considered legitimate. The reasoning in this fragment of the thesis revealed a number of disadvantages of the present regulation, in particular its unfavourable impact on the status of the discussed professional group. The omission of such an important issue as work in overtime in the specific act revealed the need for the legislator's urgent intervention.



Chapter five of the thesis contains an analysis of the institution of duty hours. The expanded formula of this part of the thesis presents a multidimensional perspective of the issue. This fragment of the thesis starts with comments regarding the comparison of an employee's duty hours and duty hours in the health care system. As a result of this comparison, the similarities and differences between both institutions were indicated, and thus an important argument confirming the need to use different regulations for the physicians than those that relate to all the employed was found. Another research problem undertaken in this chapter was related to the possibility to impose an obligation on a physician to provide work during the duty hours other than the work defined in the employment agreement. An attempt was made to answer the question whether the possibility to indicate another type of work than that defined in the employment agreement in a command to work in overtime may be transferred to the institution of duty hours in the health care system which is not work in overtime, after all.

The further part of the considerations was related to the time of duty hours in the health care system as compared to the actual working time. At this point, the clear impact of the implementation of the directive on working time on the national legislation was indicated. At the same time, the far-reaching consequences of accepting the EU regulations on working time in the Polish legal order was emphasized, especially with regard to the need for the rest period directly after completed duty hours. The adoption of such solutions resulted in the lack of the possibility to develop a full-time working time by the physicians. Therefore, it was necessary to complement the contractual working time with duty hours in the health care system which, in consequence, resulted in difficulties regarding the legal qualification of the physicians' working hours which were not performed in full. This issue is in strict relation with the ban to complement the full-time working hours with duty hours in the health care system.

The conclusions from the discussion which took place in this matter in the doctrine made it possible to assess the legitimacy of accepting the possibility to complement a physician's regular working hours with duty hours in the health care system; they also enabled the indication of resulting consequences. These consequences are strictly related to the remuneration for the duty hours in the health care system. The research on this matter was used to settle the judicial and the doctrinal dispute with regard to the qualification of a physician's working hours as well as the resulting remuneration.

The considerations undertaken in the thesis end with chapter six, which is the summary of the thesis. The first part of this chapter contains an analysis of the legal regulations of the

physicians' working time binding in three member states of the European Union: in Austria, in the Republic of Slovenia and in the Czech Republic. The review of solutions valid in the above states made it possible to suggest that the legislator transfer some regulations favourable in practice to the Polish legal order.

The wide analysis of the regulations of systems for the organization of the physicians' working time binding in the indicated states showed the disadvantages and the advantages of the solutions effective in those states. The further part of the thesis expressly indicates the defects of the Polish system for the organization of the physicians' working time, and emphasizing them made it possible to diagnose the source of the existing problem. This part of the thesis is a specific end of the thesis presenting the argument of the thesis from the perspective of the analysis conducted in its content. The presentation of the system for the organization of the physicians' working time, functioning once and now, confirmed the need to change the legal regulations regarding the employment of health care personnel in order to adapt the regulations to current circumstances. The above does not exclude the legal areas indicated in the thesis in which the regulations for the physicians' working time should be changed. The legislator should aim at a standard in which the system for the organization of working time will protect the professional group in question against exceeding the legally permitted working time standards and which, at the same time, will guarantee the continuity and the safety of the health care process.

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