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***Status prawny osób świadczących pracę w ramach  
umownego zatrudnienia nietypowego***

***(Legal status of people working on the basis of atypical  
contractual employment)***

**SUMMARY**

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The present thesis aims to analyse the legal status of people working on the basis of atypical contractual employment, approaching the most current issues in the field from a legal vantage point. As such, it makes a contribution to the general discussion concerning the character of legal regulations in employment.

The work attempts to fill a conspicuous gap in the study of labour law, namely the one requiring a model legal presentation of the situation of people working on the basis of atypical contractual employment. To make the attempt successful, a systemic analysis of their status appears necessary. The analysis performed in the present work allows to define the normative areas which require intervention on the part of the legislator in order to unify or introduce common standards for the regulations that shape the legal status of all workers under contractual employment, whether typical or not. It also allows to assess the validity and accuracy of the norms differentiating the legal status of individuals working on the basis of atypical contractual employment.

The underlying premise for the present work is that various employment models generating different legal statuses of employed people need to coexist. This, however, does not exclude the rationality of the postulate of providing every employed entity with social security. A model presentation of the legal situation of employed people allows to identify significant differences resulting from the core assumptions of particular legal bases and organisational forms of work under atypical contractual employment. The reason for such differences to exist is the correct assumption that there is a socio-economic need for contractual bases of employment to function in law. By meeting different objectives, the bases give rise to disparate models of the legal status of employed people.

The subject matter of the work is the analysis of the legal diversity in employment relationships, leading to a diversity in the legal status of people working on the basis of atypical contractual employment. Thus, the work does not centre on the extra-contractual work relationship, appointment, election, nomination and co-operative employment contract since the possibility of establishing such relationship is defined by the circumstances specified in relevant acts rather than the parties themselves.

The term 'atypical employment' is a legal term defined widely in opposition to typical employment. The commonly accepted model of the latter is mostly uniform and

is believed to embrace full-time employment contracts for an indefinite period of time fulfilled in a place and at the times specified by the employer and for the benefit of the employer. The starting point of the present thesis is the model of the legal status of a person employed on the basis of typical employment. The juxtaposition is made due to the systemic distinction of typical employment, which serves as a reference point in the definition and description of legal constructs different than typical employment, but also based on human work.

The work discusses the legal status of people working on the basis of different employment contracts including an organisational form of employment - telework, temporary work, which has a special tripartite structure, and civil-law employment. In the domain of civil-law employment the legal situation of people employed on the basis of contracts for industry, mandate contracts, service contracts to which provisions on mandate contracts apply, specific work contracts and agency contracts are considered.

The work consists of five chapters. The first one serves as an introduction, comprising general and terminological remarks which form a necessary background for further discussion. Not only does this part define the borderlines between typical employment and atypical contractual employment, but also describes particular legal bases for atypical contractual employment as well as its organisational forms, both presented later from the point of view of working people. By defining the aim of introducing the discussed legal bases and organisational forms of atypical contractual employment a review of their validity and applicability is conducted. The final section of the chapter points to the regulations affecting the legal status of working people through which the use of atypical contractual employment is limited. Enforcing the existing laws restricting the use of atypical contractual employment allows to define the areas in which the selection of a given legal basis of atypical contractual employment is approved by the legislator.

The second chapter boasts issues concerning the creation of contractual employment relationship. Given the diversity of socio-economic aims of particular legal bases and organisational forms of atypical contractual employment, the process of work relationship formation decides on a different status of a working person. The chapter opens with a selection of remarks on the freedom of parties to choose employment and



shape it. The result of the analysis conducted in the chapter is the establishment of borderlines in the use of particular types of atypical contractual employment, which differentiate legal statuses of particular working people. Significant differences in the status of people working on the basis of atypical contractual employment can be noticed in the model of personal data protection, the conditions of allowance to perform work and the area of protection against discrimination. The discussion in this respect involves the socio-economic purpose of particular legal bases and organisational forms of atypical contractual employment. The approach has provided evidence that the model of personal data protection for people who work under employment relationships is more structurally complex than in the case of contractual civil-law employment. The presentation of the legal status of people working under atypical contractual employment regarding the conditions of allowance to perform work covers issues that concern medical examinations performed before admitting to work, training concerning health and safety at work, the provision of working clothing and shoes as well as other items necessary to perform work. As for the preliminary medical examination, the health and safety training preceding employment it is the status of temporary workers and people employed under civil law contracts that appears particularly atypical. The regulations concerning the provision of items necessary to perform work, greatly influence the legal status of teleworkers and people working under civil-law contracts. When it comes to protection against discrimination, atypical norms apply to the legal status of teleworkers, temporary workers and people working under civil-law contracts.

The third chapter begins with a presentation of differences in the legal status of people working on the basis of atypical contractual employment from the perspective of the obligations owed to the employer that the law imposes on such workers. The reviewed duties reveal different rights of the people working on the basis of atypical contractual employment. The chapter presents the rights of normative significance and the ones clearly indicating differences in the legal status of people employed on the basis of atypical contractual employment. The presentation of the issues discussed next, i.e. the responsibility of the parties of a work relationship, allows to describe the legal situation of working people both from the perspective of their responsibility and the rights to assert a claim. The chapter concludes with a section on the models of social

and health insurance to which people under atypical contractual employment are subject to during the course of the contract.

In the light of the differentiation made between collective labour law and individual labour law, the latter being tightly interwoven with the former given the subject matter, the next part of the work considers the legal status of people working on the basis of atypical contractual employment in relation to collective labour law. The issues raised in this part embrace the right to unite in trade unions and related rights, the right to conclude collective labour agreements and the right to be covered by their provisions, and the rights concerning the participation in the management of a company. All these issues seem of the utmost importance to the legal status of people employed on the basis of atypical contractual employment, and therefore become the focus of the chapter. The differences in the status of working people are assessed in terms of the justification of their presence.

The content of the fifth chapter is focused on termination atypical contractual employment. The legal status of people working under atypical contractual employment is different in all respects in terms of termination of employment. First of all, the differences concern protection against termination of the employment contract with notice and termination of the employment contract without notice as well as the legal situation of people employed in the case of unlawful termination of the contract and, finally, the legal status of people performing work under atypical contractual employment connected with termination of employment in the context of, for example, issuing a work certificate or financial settlement between the parties. As for protection against termination of atypical contractual employment with notice and termination without notice, it is vitally important to juxtapose it with the legal status of employees employed typically as it is their legal situation that is believed to be the most privileged when it comes to protection against termination without notice as it is subject to trade union consultation and obliged to be substantiated.

The dissertation is summarised in the final part, which approaches its main postulate from the perspective of the analysis conducted earlier in the work. The presentation of the legal status of people working on the basis of atypical contractual employment allows to confirm the differences between its models, which should be preserved in order to ensure that various types of contractual employment

coexist. This does not exclude the existence of areas in which the legal status of working people should be standardised. The desirable standard might be the one defined by the regulations concerning typical employment.

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