

PARENTAL RIGHTS AND RECONCILIATION OF WORK AND CHILDCARE – THE IMPACT OF EUROPEAN LAW ON POLISH LABOR LAW

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Abstract: *The provisions of Polish labor law granting employees more rights related to the role of a parent have been constantly changing. This is largely the result of the implementation of EU directives. The purpose of the paper will be to analyze the impact of European law on Polish law, how the directive impacts, directive 96/34/EU, directive 2010/18/EU and directive 2019/1158/EU. The development of Polish labor law legislation regarding parental rights has evolved towards increasing them, not only in the number of these rights, but also in extending the duration of leaves related to child care. The aim of these changes is to facilitate the reconciliation of professional and personal life, share parental rights among parents, equalize opportunities for both sexes on the labor market, but also to ensure the possibility of providing personal care for the child.*

Keywords: *parental rights, parental leave, childcare, work life balance*

INTRODUCTORY REMARKS

The issue of rights related to parenthood has been of interest to both EU and Polish legislators for many years. Since 2004, the provisions of Polish labor law granting employees more rights related to the role of a parent have been constantly changing. This is largely the result of the implementation of EU directives, and the main trends in the development of labor law in recent years related to the so-called work – life balance involving the search for solutions to support the reconciliation of professional work and family responsibilities. Recently, in Polish labor law, employees have been granted new care rights, such as paid leave of 2 days or 16 hours per calendar year due to urgent family matters caused by illness or accident, unpaid care leave of up to 5 days per calendar year to provide personal care or support to a family member, extended parental leave.

Another solution conducive to the reconciliation of work and personal life is the widespread introduction of remote work performed outside the workplace, in this way you can save time commuting to and from work and use it to fulfill your parental role and perform household duties.

There are more solutions conducive to combining work and performing parental duties, such as entitlements for parents in difficult parental situations, restrictions on overtime, night work, individual work schedules, returning to work after maternity, parental or parental leave, combining work with parental or parental leave, reducing working hours.

Promoting ways to facilitate the reconciliation of work and family life is part of efforts to combat discrimination and ensure equal access to the labor market for women and

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men¹. One aspect of the measures taken in this area is the development of labor legislation, in particular issues: 1) in the field of organization of working time and 2) the system of leave related to childcare.

In Polish labor law, for a long period of time, the legal solutions in this area were based on the belief that the fulfillment of care functions is exclusively the responsibility of women. For this reason, originally, Section Eight of the Polish Labor Code was devoted entirely to the protection of women's employment during pregnancy and during the period of caring for a child in the early years of its life, while the right to maternity leave and child care leave was vested exclusively in the employee. During this period, the implementation of the state's pro-family policy essentially consisted of extending maternity leave, which was intended by the legislator to be an effective means of improving childbirth rate among young families².

The evolution of the legal regulation of the childcare leave system gradually proceeded in two directions: the equality of men and women in this regard and greater flexibility in their use by parents, according to their situation and needs.

The purpose of the paper will be to analyze the impact of European law on Polish law.

I. DIRECTIVE 96/34/EU

In the area of parental entitlements, the first piece of EU legislation was Council Directive 96/34/EC of June 3, 1996 on the framework agreement on parental leave concluded by UNICEF, CEEP and the ETUC³, the preamble of which stated that measures should be introduced on the reconciliation of work and family life and ensure equal treatment of men and women with regard to their work and family responsibilities. The framework agreement granted workers (men and women) the right to parental leave due to the birth or adoption of a child, to enable them to care for the child, for at least three months, until the child reaches a certain age, a maximum of 8 years. In order to promote equal opportunities and equal treatment between men and women, the right to parental leave should, in principle, be granted on a non-transferable basis. EU countries could decide whether parental leave is granted on a full-time or part-time basis, in parts or as a „time credit system.” The second entitlement was time off work, due to force majeure, for urgent family matters, such as illness or accident, making it necessary for the employee to be immediately present (clause 3).

In Polish labor law, changes in the legal regulation of parental rights have occurred since 2001. By virtue of the Act of April 25, 2001 amending the Labor Code⁴, new provisions were added to Article 180 of the Labor Code. A female employee could apply to her employer to reduce the length of her maternity leave after taking at least 16 weeks of leave, after which she could return to work early. The employer was obliged to accept this

¹ See LUDERA – RUSZEL, Agata. *Ocena funkcjonowania regulacji prawnej dotyczącej uprawnień rodzicielskich pracowników*, *Studia z Zakresu Prawa Pracy i Polityki Społecznej*. 2016, Vol. 23, p. 96.

² LUDERA – RUSZEL, A. *Ocena funkcjonowania regulacji prawnej dotyczącej uprawnień rodzicielskich pracowników*, pp. 98.

³ Official Journal of the EU L 18.03.2010, p. 13.

⁴ Journal Laws of 2001, No. 52, item 538.

request. In this situation, a request to the employer to use the remainder of the maternity leave could be made by the employee-father raising the child. The employer was obliged to grant this request. Father-employees acquired the right to part of their maternity leave from May 26, 2001.

Further amendments to the Labor Code were made by the Act of December 21, 2001 amending the Act – Labor Code⁵. As a result, the situation of women and men during maternity leave was equalized in terms of protection of the employment relationship from termination, the provision of remuneration for the entire period of unemployment - in the event of reinstatement due to unlawful dismissal from work during maternity leave, and the possibility of taking leave, at one's request, immediately after the end of maternity leave⁶.

Another change came by virtue of the Act of December 6, 2008 amending the Labor Code and certain other acts, by which paternity leave of 2 weeks until the child reaches the age of 12 months was regulated, with the right to protection similar to the solutions for female employees (Article 182³ of the Labor Code).

By virtue of the amendments to the Labor Code of December 6, 2008⁷, additional maternity leave was introduced (Article 182¹ - Article 182² of the Labor Code). The additional maternity leave was up to 6 weeks. A timely application was binding on the employer. Additional maternity leave could be used by either the father or the mother. Another convenience was the possibility of combining additional maternity leave with part-time work - up to a maximum of half time (Article 182(1) § 4 of the Labor Code, Article 182(2) § 1 of the Labor Code). The extension of parental leave was intended to influence the inclusion of men in child care. In addition, it was to enable parents of a child, to a greater extent than before, to share parental rights related to the care of a young child, which was to offset the negative effects for women associated with a longer break in employment during this period⁸.

Such parental entitlements as parental leave and time off work, for urgent family matters, as provided for in Directive 96/34/EC, were not provided for in the Polish Labor Code. The equivalent of parental leave in Polish labor law could have been parental leave. However, the Polish legislator introduced a number of other solutions that were intended to allow employees – fathers – to exercise their parental rights and to combine care for the child with part-time work.

II. DIRECTIVE 2010/18/EU

Another EU act was Council Directive 2010/18/EU of March 8, 2010 implementing the revised framework agreement on parental leave concluded by BUSINESSEUROPE,

⁵ Journal Laws of 2001, No. 154, item 1805.

⁶ Justification of the draft law of 21.11.2001 on amendments to the Law - Labor Code, Print No. 65. In: *Sejm Rzeczypospolitej Polskiej* [online]. [2025-04-10]. Available at: <[https://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/65/\\$file/65.pdf](https://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/65/$file/65.pdf)>.

⁷ Journal Laws No. 237, item 1654.

⁸ SERAFIN, K. Kilka refleksji na temat urlopu rodzicielskiego. *Gdańsko-Lódzkie Roczniki Prawa Pracy i Prawa Socjalnego*. 2014, No. 4, p. 80.

UEAPME, CEEP and ETUC and repealing Directive 96/34/EC⁹. The framework agreement, as an annex to the directive, established minimum requirements to facilitate working parents' reconciliation of parental and professional responsibilities (clause 1). The directive provided for minimum requirements, while EU countries could introduce more favorable provisions (clause 8(1) of the directive's annex). The preamble to Directive 2010/18/EU referred to parental leave as an important means of reconciling work and family responsibilities and promoting equal opportunities and equal treatment between men and women¹⁰. The right to parental leave was granted to female and male employees until the child reaches a maximum of 8 years of age for a minimum of 4 months. To encourage more equal use of the leave by both parents, at least one of the four months was granted without transfer (clause 2). In order to promote better reconciliation of work and family life, EU countries or the social partners took the necessary measures to ensure that workers returning from parental leave could request a change in their working hours or working time arrangements for a certain period of time (clause 6).

In addition, employees were granted the right to time off work due to urgent family matters, such as illness or accident, requiring the employee's immediate presence (clause 7).

Directive 2010/18/EU has resulted in changes to Polish law. Under the Act of May 28, 2013 amending the Labor Code and certain other laws¹¹, a new parental leave was introduced. It was intended to enable care for a young child during the first year of his or her life, by allowing the child's mother or father to use it. The total amount of leave (maternity, additional maternity, parental) was to be 52 weeks in the case of the birth of one child in one birth. The extension of the period of paid childcare leave was not intended to serve the purpose of extending the period of absence from work, but primarily to allow parental responsibilities to be spread over a longer period of time between both parents of a child. This was to promote more frequent assumption of care responsibilities for a young child by the father. The dimension of parental leave was 26 weeks. Parental leave could be taken once or in three parts, each of which could not be less than 8 weeks, falling immediately after the other.

Solutions concerning the possibility of sharing additional maternity leave and parental leave between the child's parents, as well as the possibility of combining the use of leave with work, were intended to mitigate the effects of the extended period of absence of employees exercising their parental rights borne by employers¹².

Further amendments to the Labor Code came in 2015¹³. These introduced a number of regulations to facilitate the reconciliation of family responsibilities with paid work. These included four groups of solutions: 1) simplification, unification and ordering of the system of leaves related to parenthood, 2) increasing the flexibility of these leaves, in a way

⁹ Official Journal of the EU L 2019.188.79.

¹⁰ LUDERA-RUSZEL, A. *Ocena funkcjonowania regulacji prawnej dotyczącej uprawnień rodzicielskich pracowników*, pp. 96.

¹¹ Journal Laws of 2013, item 675.

¹² Justification of the draft law of 18.01.2013 on amendments to the Law - Labor Code and the Act on cash benefits from social insurance in case of illness and maternity, Print No. 1172. In: *Sejm Rzeczypospolitej Polskiej* [online]. [2025-04-10]. Available at: <<https://www.sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=1172>>.

¹³ Law of 24. 07. 2015 on amendments to the Labor Code and certain other laws (Journal of Laws of 2015, item 1268).

that allows parents to better adapt the formula for the use of leaves to their individual choices and needs, 3) increasing the parental rights of fathers, 4) introducing regulations that allow employers to properly plan the organization of work in the absence of employees due to their exercise of rights related to parenthood¹⁴. It was proposed to eliminate additional maternity leave by incorporating it into parental leave. The possibility of both parents taking parental leave at the same time, resigning from the leave and returning to work early, as well as combining the use of the leave with work for the employer who granted the leave has been introduced (Articles 182(1a)).

The increased flexibility of the leaves is manifested in various solutions, for example, in the fact that the time for taking leave is being extended. Parental leave and upbringing leave can be granted until the end of the calendar year in which the child turns 6. Parental leave can be divided into 4 parts, and upbringing leave into 5 parts. Proportional extension of parental leave has been made possible - in the case of combining parental leave with work for the employer who granted it (Article 182(1g) of the Labor Code). The employer may decide whether it is possible for an employee to combine the use of parental leave with work, taking into account the organization of work or the type of work performed by the requesting employee.

Significant changes also concerned the possibility of full interchangeability of entitlements between employees and other insured persons. It is possible for parents to share parental leave and maternity benefit regardless of the title by which they are subject to social insurance for sickness and maternity (they are employees or other insured persons entitled to maternity benefit).

In addition, in order to bring Polish legislation into line with the minimum requirements of the now repealed Directive 2010/18/EU, one month of upbringing leave (36 months) was set aside for each parent or guardian of the child and these months were made non-transferable.

III. DIRECTIVE 2019/1158/EU

Directive 2019/1158 of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU¹⁵ establishes minimum requirements aimed at achieving equality between women and men in terms of labor market opportunities and equal treatment in the workplace by facilitating the reconciliation of work and family life for employees who are parents or caregivers. To this end, Directive 2019/1158 provides for individual rights related to: 1) paternity leave, parental leave and guardianship leave; 2) flexible work arrangements for employees who are parents or guardians.

According to Directive 2019/1158, work-life balance policies should contribute to the achievement of gender equality by promoting women's participation in the labor market, the equal sharing of caregiving responsibilities between men and women, and reducing

¹⁴ Justification of the draft law of 27.03.2015 on amendments to the Law - Labor Code and certain other laws, Print No. 3288. In: *Sejm Rzeczypospolitej Polskiej* [online]. [2025-04-10]. Available at: <<https://sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=3288>>.

¹⁵ Official Journal of the EU L 2019 r., Nr 188, poz. 79.

the gender pay gap. A significant factor contributing to women's under-participation in the labor market is the difficulty of balancing work and family responsibilities. Women who have children tend to devote fewer hours to paid work and more time to fulfilling unpaid care responsibilities. The fact of having a sick or dependent relative also turns out to have a negative impact on women's employment and causes some to withdraw from the labor market altogether.

According to the EU legislator, the current EU legal framework provides limited incentives for men to share caregiving responsibilities equally. Fathers' use of work-life balance regulations, such as leave or flexible work arrangements, will have a positive impact on reducing the amount of unpaid family work performed by women and leave them more time for paid work.

Given that most fathers currently do not exercise their right to parental leave or transfer a significant portion of their leave entitlement to their mothers - to encourage fathers to take parental leave, Directive 2019/1158 extends from one to two months the minimum period of parental leave that is not transferable to the other parent. The total amount of parental leave is four months. This solution also promotes and facilitates the return of mothers to the labor market after a period of maternity and parental leave.

According to Article 4 of Directive 2019/1158, fathers are entitled to paternity leave of ten working days. This leave is granted on the occasion of the birth of the employee's child, and during its period the employee is entitled to a salary or cash benefit at the same rate as in the case of sickness. Participating countries have the option to decide whether the use of paternity leave will also be possible in part before the birth of the child or only after the birth of the child, and whether they allow the use of such leave on a flexible basis.

According to Directive 2019/1158, every employee should have the right to caregiving leave of five working days per year. Employees should also have the right to time off due to urgent and unexpected family matters.

Directive 2019/1158 defined the concept of „flexible work arrangements.” According to its Article 3(f), it means an employee's ability to adjust his or her work arrangements, including remote work, flexible work schedules or a reduction in working hours. According to Article 9 of Directive 2019/1158, participating countries shall put in place the necessary measures to ensure that workers with children up to a certain age - at least up to eight years old - and caregivers have the right to request flexible work arrangements for care. The duration of such flexible work arrangements may be reasonably limited. Employers shall provide justification for denying such a request or deferring such work arrangements.

According to recital 35 of Directive 2019/1158, in order to take into account the needs of both employees and employers, participating countries should be able to limit the duration of flexible work arrangements, including any reduction in working hours or remote working. While part-time employment has proven useful, allowing some women to remain in the labor market after the birth of a child or while caring for relatives requiring care or support, long periods of reduced working hours can result in lower social security contributions and therefore reduced pension entitlements, or their total.

The exercise of employee rights related to the fulfillment of parental and caregiving functions should not have a negative impact on employee status and employment treatment.

According to recital 37 of Directive 2019/1158, participating countries are encouraged to assess whether the conditions for access to paternity leave, caregiving leave and flexible work arrangements, as well as the specific regulations for the exercise of these rights, should be tailored to specific needs, such as those of single parents, adoptive parents, parents with disabilities, parents of children with disabilities or chronic illnesses, or parents in special situations, such as those related to multiple and premature births.

The changes to the Polish Labor Code came in 2023¹⁶, and were designed to make it easier for employees to reconcile work and family life as follows:

1) Extension of the age of a child from the 4th to the 8th year, during which an employee cannot be ordered to work overtime, at night, in the interrupted working time system, as well as delegated outside the permanent workplace without his or her consent (Article 178 § 2 of the Labor Code).

2) Changes to the provisions on combining parental leave with work. Parental leave is a paid leave of an optional nature, and its purpose is to help working parents reconcile their professional and family obligations by allowing them to suspend their professional activity while guaranteeing a return to the same or an equivalent job¹⁷. It can be used by both eligible parents with the rules of division (maximum of 4 parts). No part of parental leave may be less than 8 weeks. Parental leave can be taken no later than the end of the calendar year in which the child turns 6. There has been an increase in parental leave to 41 weeks (43 weeks), with each parent having an exclusive right to 9 weeks of parental leave, which is not transferable to the other parent.

On the grounds of domestic paternity leave regulations, no changes are necessary, as the Labor Code has more favorable solutions than the minimum assumptions of Directive 2019/1158 regarding paternity leave. According to the regulations of the Labor Code, the right to paternity leave is 2 weeks until the child is 12 months old for an employee, that is, a person who is employed under an employment contract, appointment, election, appointment or cooperative employment contract. This entitlement does not depend on the type of employment contract or on seniority or working hours. The right to paternity leave is in no way linked to maternity, upbringing leave or parental leave of the child's mother, nor is it dependent on marital or family status. When parental leave is combined with part-time work, parental leave is extended.

The concept of flexible work arrangements is regulated in Article 1881(2) of the P.P. Code, which provides for a number of solutions available to employees, including working parents: remote work (Article 67(18) of the P.P.C.), intermittent working time system (Article 139 of the P.P.C.), shortened week system (Article 143 of the P.P.C.), weekend working time system (Article 144 of the P.P.C.), individual working time schedule (Article 142 of the P.P.C.) mobile working time (Article 1401 of the P.P.C.), individual working time schedule (Article 142 of the P.P.C.), reduction of working time. Refusal to grant an employee's request for flexible work arrangements will require informing the employee of the reason for the refusal.

¹⁶ Act of March 9, 2023 amending the Labor Code and certain other acts, Journal of Laws item 641.

¹⁷ CZERNIAK-SWĘDZIOL, J. Urlop rodzicielski jako okres (nie)zaliczany do wymiaru urlopu wypoczynkowego na gruncie wyroku TSUE C-12/17. *MOPR*. 2020, No. 5, p. 39.

The impact of Directive 2019/1158 has resulted in the regulation of a new entitlement. An employee is entitled to a leave of absence from work during a calendar year, either 2 days or 16 hours, due to urgent family matters caused by illness or accident, if the employee's immediate presence is necessary. During the period of time off from work, the employee retains the right to remuneration (Article 148¹ of the Labor Code).

As a result of Directive 2019/1158, a new care leave has been introduced. It is granted to an employee for 5 days per calendar year to provide personal care or support to a person who is a family member or resides in the same household and who requires care or support for serious medical reasons (Article 173¹ of the Labor Code).

CONCLUSIONS

The development of EU legislation in the field of parental rights has evolved significantly in the light of the presented directives. Until the entry into force of the new Directive 2019/1158, legal solutions contained only limited measures to encourage men to share caring responsibilities equally¹⁸. There were no specific regulations on paternity leave or carer's leave, except for time off from work due to force majeure related to urgent family matters such as illness or accident requiring the employee's immediate presence¹⁹.

The current regulations of Polish labor law have been fully adapted to EU law. The right to parental leave has been (should be – been) regulated even more favorably, as parental leave is granted for 41 weeks compared to parental leave of 4 months under Directive 2019/1158.²⁰ The development of Polish labor law legislation regarding parental rights has evolved towards increasing them, not only in the number of these rights, but also in extending the duration of leaves related to child care. Following the changes made in recent years in the scope of parental rights, Poland has found itself in the group of EU Member States with very favorable solutions for the family, both regarding the length of leave intended for child care and the level of benefits paid.²¹ Under the current legal situation, a mother employee can spend a total of 52 weeks on paid leave and 35 months (or 71 months of the child is disabled) on unpaid parental leave, with the mother being obliged to use 14 weeks of maternity leave after giving birth. However, the father is entitled to 2 weeks of paternity leave and 1 month of parental leave, but both leaves are completely voluntary for the father. The structure of parental leave includes a separate part of the leave that can only be used by the father, amounting to 9 weeks.

¹⁸ LEWANDOWICZ-MACHNIKOWSKA, M., GÓRNICZ-MULCAHY, A. Dyrektywa 2010/18/UE, [w:] System Prawa Pracy, tom X: Międzynarodowe publiczne prawo pracy. Standardy europejskie, red. K.W. Baran, Warszawa 2020.

¹⁹ CZERNIAK-SWĘDZIOL, J., KUMOR-JEZIERSKA, E. Rozważania o równowadze między życiem zawodowym a prywatnym rodziców i opiekunów w świetle Dyrektywy Parlamentu Europejskiego i Rady UE 2019/1158. *Roczniki Administracji i Prawa*. 2021, No. 21, p. 194.

²⁰ Poland is one of the countries with the longest parental leave – see LATOS-MIŁKOWSKA, M. Urlop rodzicielski. *Monitor Prawa Pracy*. 2013, No. 8, p. 398.

²¹ KUROWSKA, A. Substantive opinion on the draft act amending the Labour Code and certain other acts presented by the President of the Republic of Poland, p. 15. In: *Sejm Rzeczypospolitej Polskiej* [online]. [2025-04-10]. Available at: <<https://orka.sejm.gov.pl/RexDomk7.nsf/0/819D58FE9B>>.

The aim of these changes is to facilitate the reconciliation of professional and personal life, share parental rights among parents, equalize opportunities for both sexes on the labor market, but also to ensure the possibility of providing personal care for the child. Therefore, several solutions can be distinguished:

- the possibility of combining parental leave and parental leave with work through part-time employment, although there is no such limitation during parental leave,
- sharing parental rights between the child's parents (mother and father), not only those who have the status of an employee, but also between persons insured under another title,
- the use of flexible work organization in order to increase the employee's rights to adapt his work organization to individual needs (remote work, individual working time schedule, weekend working time system, flexible working time, shortened working week system and intermittent working time, part-time work working time.

One year after the entry into force of changes to the Polish Labor Code following the implementation of the work-life balance directive, the number of fathers taking parental leave is increasing. In 2023, it was 19,000 fathers, a year earlier it was 3,700 fathers. However, only 7% of eligible fathers still use this child care. In 2023, the average daily amount of maternity benefit for the mother during maternity leave was PLN 11,52 and for the father during paternity leave – PLN 204,38. The average daily amount of maternity benefit during the mother's parental leave was PLN 107.10 and of the father was PLN 152.72. Employment indicators clearly indicate that the professional activity of childless women and men is at a similar level and amounts to 73% and 75%. However, after the birth of the first child, the professional activity of women drops to 69% and that of men increases to 85%. These differences deepen with the advent of subsequent children. The presented situation may be improved – according to ZUS (social security) – as a result of an educational campaign called “Equal at home – equal at work. It pays off for everyone” to build parents' awareness and the benefits of sharing parental leave.²²

²² In: *zus.pl* [online]. [2025-04-10]. Available at: <<https://www.zus.pl/-/mama-i-tata-na-urlopie-rodzicielskim.-zus-i-fundacja-share-the-care-%C5%82%C4%85cz%C4%85-si%C5%82y-aby-budowa%C4%87-%C5%9Bwiado-mo%C5%9B%C4%87-prawn%C4%85-rodzic%C3%B3w?redirect=%2Fo-zus%2Faktualnosci%2Finne>>; in: *Polska Agencja Prasowa* [online]. [2025-04-10]. Available at: <<https://www.pap.pl/aktualnosci/raport-coraz-wiecej-ojcow-korzysta-z-urlopow-rodzicielskich-ale-nadal-za-malo>>.