2019 CCEEL 1(133), 118-131
ISSN 0070-7325
DOI 10.37232/cceel.2019.10

Contemporary Central & East European Law

Polish Employment Law in the Face of Digitization and New Technologies

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Abstract

The digital revolution, also called the fourth industrial revolution, constitutes another era of change, caused by the development of computerisation and modern technologies. It is characterised by rapid technological progress, widespread digitisation and an impact on all areas of life, including the provision of work. The changes affecting this area are so significant that there are proposals to remodel the definition of the employment relationship in the Labour Code. New forms of employment, which do not fit the conventional definition of an employment relationship, are emerging and gaining importance. An example could be employment via digital platforms. At the same time, there are also employment forms that do fit that definition, but deviate from the conventional understanding of the terms and conditions for performing work, which have undergone modification due to the use of new technologies. Teleworking, or working outside the employer's premises, are examples of that. Employers get further opportunities to organise and control work, which often raises concerns due to the employee's right to privacy, the protection of personal rights and personal data.

Keywords

employment relationship, digitisation, new technologies, employment via the digital platform, right to disconnect, teleworking

Introduction

The sources of Polish labour law are: the Labour Code, its accompanying acts and executive acts, as well as the so-called particular sources of labour law that only exist and function in labour law: collective labour agreements, collective agreements, work regulations, remuneration, the company social protection fund and others, as well as the statute specifying the rights and obligations of the parties to the employment relationship (Art. 9 § 1 Labour Code[1]). The specificity of these sources lies in the fact that they can make the situation of the employee more favourable than the applicable labour law provisions (i.e. bills and implementing acts) and can introduce provisions regulating the order in the work process in a given workplace.

The Polish Labour Code dates from the 1970s. Its numerous amendments, and other acts in the field of labour law, starting from the 1990s, were aimed at adapting the regulations to changes in the economic system, the new image of the Polish employer, which ceased to be state-owned, and then to EU law. Unfortunately, existing regulations require further changes to face the challenges of globalisation and the development of new technologies that change the way work is performed. At the same time, these factors significantly affect the development and content of specific sources of labour law. Employers try to combine general regulations with the obligations and rights of employees whose work is based on new technologies in their work regulations. The limits for introducing new internal regulations are, firstly, the prohibition on shaping internal regulations regarding employee rights and obligations less favourably than is the case in acts and executive acts, and, secondly, the principle of equal treatment of employees.

The progress of digitisation means that it will be necessary for the legislator to intervene to adapt universally applicable labour law to the changing conditions of work performance. Currently, the applicable legal provisions often prove to be completely useless when it comes to regulating new phenomena in employment.

1. Worker and Employee, Work Relationship or Employment Relationship

1.1. Work Relationship

A work relationship is a particular type of relationship between an employer and an employed person. The basis of this relationship is the subordination of the person performing the work to the employing entity, i.e. the employer. The provision of Art. 22 § 1 of the Labour Code stipulates that by entering into an employment relationship, the employee undertakes to perform work of a specific type for the employer and under his leadership, at the place and time designated by the employer, and the employer agrees to

1 Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 16 maja 2019 r. w sprawie ogłoszenia jednolitego tekstu ustawy – Kodeks pracy [Proclamation of the Marshal of the Polish Sejm on 16 May 2019 on the announcement of the uniform text of the Act – the Labor Code] [2019] JoL 1040.

employ the employee for remuneration. The absence of any element of this definition means that the work is not performed under a work relationship, and the provisions of labour law do not apply to it. As a result, a whole new group of contractors appears, namely people performing work, but not within an employment relationship, and thus deprived of employee rights.

The development of techniques and technology, and ongoing digitisation, provoke the question concerning the current definition of subordination or the possible necessity to redefine this notion. The definition of an employment relationship implies subordination at the place, and time designated by the employer, while at present, concerning many employee orders, determining the location and time ceases to be relevant, or becomes challenging to decide on and capture. Work can be performed at any place and time. The changing model of subordination and the increasingly common rendering of work without subordination also require research on the correctness of the definition of an employment relationship based on subordination, and the consideration of the desirability of replacing this with a definition based on the criterion of economic dependence of the employee on the employer.

1.2. Employer and Employee definitions

Currently, the question concerning the employer's model in Polish labour law is still to be answered. Under Art. 3 the Labour Code, an employer is defined as an organisational unit, even if it does not have legal personality, as well as a natural person if they employ employees. At the same time, some of the employees perform work, often in conditions of full compliance, obtaining orders after registration on a digital platform. The role of the work platform is to enable or facilitate access to competent contractors with the potential and willingness to execute specific contracts in return for remuneration or payment for individuals and entities seeking such contractors for specific services related to the provision of work.[2] Work is allocated via a digital platform or application and managed algorithmically. The computer program continuously monitors work performance and continually evaluates performance. The employee interacts with the system, instead of with people; also, decision about the employee's position are made by a computer system based on an algorithm. The owner of the digital platform does not perform activities traditionally considered to belong to an employer; they only derive profits from a platform that algorithmically manages provision of work.

In Poland, there are platforms operating under crowdwork principles and that offer work on demand via apps. Crowdwork is work through online platforms that allow individuals or enterprises to access other users via the Internet to remotely solve specific problems, e.g. providing legal services, programming, graphics work, and voice transcription. Examples of the use of crowdwork in Poland are the Legal Up (Tu Prawnik),

2 A Świątkowski, 'Elektroniczne platformy zatrudnienia' [Electronic Employment Platforms] (2019) MPP 7, 18.

Oferia, and Freelancer platforms. The second category, work on demand as part of digital applications, is considered to be work in which tasks traditionally require the physical presence of the service provider in a specific place, i.e. transport, cleaning or delivery. These tasks are performed through entities such as Uber, Taxify, Pozamiatane, Pomocedomowe, UberEats, and Deliveroo.[3]

Taking up a job through a digital platform is in most cases similar to concluding an adhesive contract, the autonomy of the will of the employee is limited only to choosing whether he joins the platform or not, which is contrary to Art. 11 the Labour Code, according to which a consistent declaration of will of the employer and employee should include not only the establishment of an employment relationship but also the determination of working conditions and pay.

Taking the Uber application as an example, among the EU Member States there are some where its business activity has been banned (e.g. Italy), partly restricted (e.g. France), partially regulated (e.g. Great Britain), or remains completely unregulated (e.g. Poland). Interestingly, Uber's main markets, where the most significant number of application users are registered, are Great Britain, France and Poland, respectively.[4]

Work based on digital systems is also provided as virtual collective work in many countries, including Poland. It is defined as a form of work based on the distribution of tasks within an indefinite set of potential operators, who are then connected via an internet platform with the client requesting the execution of the tasks. The main feature of virtual collective work is the far-reaching fragmentation of services rendered. Orders typically include simple, tedious tasks that require meticulousness, such as browsing and tagging photos, collecting data, completing surveys, transcribing, etc., and, importantly, are divided into smaller parts, so-called gigs or micro-tasks. Such an operation enables effective separation of the primary tasks, usually large, among a broad group of virtual collective employees to accelerate the time of completing the job and, above all, to reduce the final cost.

2. Atypical Forms of Employment

Digitisation, globalisation and new technologies result in the emergence of so-called atypical forms of employment.[5] Definitions of atypical employment are usually constructed by

3 M Kozak, 'Zatrudnienie w gig economy na podstawie Ubera' [Employment in the Gig Economy Based on Uber] (2019) MPP 6, 19.

4 B Bednarowicz, 'Uberyzacja zatrudnienia – praca w gospodarce współdziałania w świetle prawa UE' [Uberisation of Employment – Work in the Collaborative Economy in Light of EU Law] (2018) MPP 2, 12–18.

5 R Blanpain, 'The World of Work and Industrial Relations in Developed Market Economies of the XXIst Century: The Age of Creative Portfolio Worker' in R Blanpain (ed), *Non-Standard Work and Industrial Relations* (Kluwer Law International 1999) 4; conf. AK Ghose, 'Trade Liberalization, Employment and Global Inequality' (2000) Int'l Lab Rev 139(3), 281; R Blanpain, 'The World of Work in the XXI Century: From Globalization to Flexicurity' in F Hendrickx (ed), *Flexicurity and the Lisbon Agenda: A Cross-Disciplinary Reflection* (Intersentia 2008) 3-4; I Boruta, 'Transformacja

comparison with the employment model referred to as traditional, typical or classical. This typical model describes employment for an indefinite period, based on an employment contract, in which the employee has an employment relationship only with his employer, providing full-time work at the employer's premises and enjoying protection against dismissal. The requirements for such employment must be combined, the absence of any of them gives rise to an atypical employment relationship.[6]

Atypical forms of employment can basically be divided into two groups: those under an employment relationship, and those outside an employment relationship, i.e. provided under civil law contracts or by persons running their own business, i.e. self-employed. Forms of employment using advanced technology are found in both groups.[7]

2.1. Atypical Forms of Employment under an Employment Relationship

In Poland, due to the development of technology, the most popular are atypical forms of employment consisting of providing work outside the employer's premises using electronic devices.[8] However, the provisions on telework contained in the Labour Code impose several restrictions and obligations on the parties to the teleworking contract, which in practice prevent the provision of work in this form. As a result, the employer and employee shape their mutual rights and obligations in such a way that they do not apply the code regulations on teleworking, and the employee is not called a teleworker, but a mobile employee. Therefore, the unsuccessful regulation of telework included in the Labour Code results in the fact that the rights and obligations related to the performance of work using electronic devices are determined only by internal labour law provisions, such as labour regulations or the employment contract.

prawa pracy i przyszłość prawa pracy w Europie (synteza raportu Supiot)' [Transformation of Labour Law and the Future of Labor Law in Europe (Synthesis of the Supiot Report)] (2003) PiZP 9, 2 et seq; J Wratny, 'Elastyczne formy zatrudnienia w perspektywie polskiego prawa pracy' [Flexible Forms of Employment in the Perspective of Polish Labour Law] in C Sadowska-Snarska (ed), *Elastyczne formy pracy. Szanse i zagrożenia* [Flexible Forms of Employment. Opportunities and Risks] (Wydawnictwo WSE 2008) 32.

6 Among others A Chobot, *Nowe formy zatrudnienia. Kierunki rozwoju i nowelizacji* [New Forms of Employment. Directions of Development and Amending of Regulations] (Wydawnictwa Prawnicze PWN 1997) 139–167; J Wratny, 'Nietypowe formy zatrudnienia w perspektywie polskiego prawa pracy' [Atypical Forms of Employment in the Perspective od Polish Labour Law] in K Frieske (ed), *Deregulacja polskiego rynku pracy* [Deregulation of the Polish Labour Market] (Instytut Pracy i Spraw Socjalnych 2003) 117.

7 A Świątkowski (2019) 18-24.

8 M Gersdorf, 'Zatrudnianie pracowników w formie telepracy' [Teleworking Employment] (2008) PiZS 5, 9–14; A Świątkowski, 'Telepraca – specyfika zatrudnienia na odległość' [Teleworking – Specificity of Distance Employment] (2006) MPP 7; M Goroszkiewicz, 'Etapy wdrażania telepracy' [Stages of Implementing Teleworking] (2008) MPP 1; E Suknarowska-Drzewiecka, 'Warunki świadczenia pracy w systemie telepracy' [Conditions of Supplying Services in Teleworking] (2019) MPP 3, 26–29.

Performing work is not then teleworking, but is referred to as homeworking or working outside the office. The employer determines the place of work in accordance with the definition of employment relationship in the Labour Code. Alternatively, the workplace may remain up to the employee. Very often in the case of homeworking, the employer no longer determines nor controls the working hours, either, while in the case of a conventional employment relationship, work is provided at the place and time determined by the employer. At the same time, it should be noted that technological development and digitization made available a large number of ways for employee subordination. The supervisor can track every move of the employee through an electronic monitoring system and very often, this control is also extended to rest time or vacation time, not necessarily in the form of immediate orders to perform certain jobs, but in the form of requests to provide information related to the work process. Constant contact between the employee and the employer on the one hand prevents the employee from fully exercising their right to rest, but also often leads to digital addiction. Therefore, there is a demand for digital disconnection as an employee's right or even the employee's obligation. The constant tension caused by the need to respond to e-mails can build up stress, often leading to burnout or cognitive impairment. There are countries that have already adopted such regulations (e.g. France), countries which are actively discussing the need for such regulations (e.g. Canada), and countries where much is happening in this area in terms of collective bargaining (e.g. Germany).[9] In Poland, this problem is just starting to be addressed.

Another important problem related to homeworking can be mobbing, understood in this context as digital harassment. The employee becomes a victim of mobbing solely on the basis of digital or telephone contact, without any personal contact with the mobber. Homeworking can also be accompanied by other negative phenomena, such as the fading boundary between professional and private life, a sense of social isolation or difficulties in implementation of the employee's right to privacy when working at home.

Working away from the office also raises doubts as to safety and hygienic conditions of work for employees working in the teleworking or homeworking system. The employer's compliance with the health and safety at work standards involves observation of the employee's behaviour at work, which in the case of working at home, entails finding a balance between the employee's right to privacy on the one hand and on the other, observation and control in order to ensure safe and hygienic working conditions.

It is also worth addressing the issue of the need to define a model for the so-called diligent teleworker / homeworker. The employee is obliged to perform his work with diligence and proper care. The former is judged taking into account the personal relationship of the employee to his duties, while the latter is essentially objective. In the employment relationship, proper care is understood as performance of work in a manner consistent with all legal (e.g. health and safety regulations, traffic regulations on public roads, sanitary

9 B Surdykowska, 'Prawo «do odłączenia» – coraz większe wyzwanie we współczesnym świecie pracy' [The Right to «Disconnect» – a Growing Challenge in the Modern World of Labour] (2019) MPP 12, 6–7.

and fire safety regulations, etc.), technical (e.g. work methodology, proper use of tools), technological (e.g. operational instructions), organisational regulations (e.g. supervisor's instructions, cooperation in the work process), which the employee should follow when performing given work. Inherently, due diligence cannot therefore be a uniform model for all employees, but differs for different professions. Each profession has its typical pattern of proper employee behaviour, which a diligent employee should respect. Performing work with proper care, as a certain objective condition, depends not only on the employee, but also on the employer and on the extent to which he enabled the proper performance of the work (organized the work process – Art. 94^2 of the Labour Code[10]). The employer evaluates the work of a given employee relative to the diligent employee model and makes key decisions on that basis, such as whether to conclude another employment contract, increase his salary or, conversely terminate the employment contract.

Usually, people who are interested in homeworking are highly qualified individuals, who value independence in terms of organising their work, or who are trying to balance their professional and family duties. This form of work also creates employment opportunities for people with disabilities, or those living in economically weak regions with a high unemployment rate.

Another developing way of doing work is to provide it in a mobile way to sales representatives or service technicians.[11] They perform work outside the premises of the employer, and the requirements of the Labour Code regarding working time are in many situations impossible to meet for employers. The issue of such employees' business travel is also disputed – accounting for the employee's business travel raises concerns.[12]

2.2. Atypical Forms of Employment outside the Employment Relationship

Based on Polish regulations, employment does not have to be work-related, and work can also be provided under provisions of civil law contracts, in the absence of the subordination characteristic of the employment relationship. A particular form of civil law employment is entrusting work to a person who, in relation to the employing entity, appears not as a natural person, but as an entity conducting economic activity under the Act on the Freedom of Economic Activity (self-employment). Works entrusted based on civil law contracts are of various types, from simple services such as cleaning to highly specialised tasks. Very often the nature of civil law employment is attributed to work provided through digital platforms and as part of virtual collective work, although employees are also employed

10 Judgment of PSC I PKN 627/00 [2001] (2003) OSNAPiUS 17, 413.

11 A Jefimow-Czerwonka, 'Zadaniowy czas pracy pracowników mobilnych' [Task Time of Mobile Employees] (2018) MPP 2, 20–27; P Prusinowski, 'Dodatkowe aspekty związane z zatrudnianiem pracowników mobilnych' [Additional Aspects Related to the Employment of Mobile Employees] (2011) MPP 10, 509–513.

12 Ł Prasołek, 'Podróże służbowe pracowników mobilnych' [Mobile Employees' Business Travel] (2010) MPP 7, 335–342.

in this way. The status of those employed through a digital platform often also depends on the platform model. Persons employed through platforms where the organizers direct people to work for entities reporting the need for work are often considered employees. However, in a situation where the contractor chooses the entity for which they will provide work, the contractors are persons outside an employment relationship. At the same time, there is the concept of a new hybrid form of employment, which requires not only an appropriate regulation and but also the act of granting certain employee rights to employees who work via platforms and applications similar to Uber drivers, i.e. the right to rest, paid leave, protection against termination in special situations etc.[13]

Civil law contracts are used in Poland to commission work that can be done anywhere, the results of which can be sent using electronic means of communication. This form of employment is similar to teleworking or homeworking performed under an employment relationship. The main difference, however, is that in the case of civil law contracts there is no subordination of the contractor. Due to the fact that, in contrast to the conventional employment relationship, in the case of digital work there is no determination of the place and time of work by the supervisor, it is necessary to identify the elements of subordination for teleworking and homeworking. However, the lack of subordination in this regard is not intended as a complete lack of any supervision or interference by the ordering party. The relationship between the ordering party and the contractor undoubtedly includes some kind of management that should be understood in accordance with the science of organisation and management. Problems that accompany these civil law contracts are, just as in the case of teleworking and homeworking under an employment relationship, the right to disconnect, maintain the right to privacy and ensure safe and hygienic working conditions. Employers and entrepreneurs who are not employers (i.e. those who do not employ people on the basis of employment contracts) are required to provide safe and hygienic working conditions for persons performing work on a basis other than an employment relationship (Art. 304 of the Labour Code).

3. Safe and Hygienic Working Conditions

3.1. The Problem of Being Available to the Employer

One of the essential elements of hygienic working conditions is the employee's right to rest, implemented based on the provisions of the Labour Code regarding working time and vacation leave. Technological development and digitisation results in offering services and work to competing enterprises at the recipient's request, while the regulations on working time do not provide for on-call work. Work on demand raises doubts because it assumes the full availability of the employee, which conflicts with the right to daily and weekly rest. Daily and weekly rest is guaranteed by Directive 2003/88 of the European

13 M Kozak 18–23.

Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time[14].

The opportunity to work outside the workplace resulting from digitisation is associated with a new model for defining, accounting for, and controlling working time. The current regulations of the Labour Code are insufficient. The correction of these regulations through the provisions of company labour law is impossible due to the prohibition of regulating employees' rights and obligations in a less favourable way than the provisions of laws and implementing acts do.

New technologies allow contact with employees from almost anywhere on earth. An employee on vacation or absent from work for justified reasons (e.g. due to illness or due to a day off), from a technical point of view, can always be in contact with the employer. The question then arises or the definition of rest and leave in connection with the employee's duty to care for the good of the workplace, and about the possibility of defining the limit of the permissible contact between the employer and the employee at a time when the employer is not available. Currently, it should be analysed whether it is advisable to introduce an employee's right to digital disconnection from work, understood as turning off a business phone, or even a ban on using a business phone, a ban on answering e-mail, or text messages sent to a private phone number.

3.2. The Identification of New Factors Harmful to Health

As a result of the development of techniques and technology, new ways of protection against harmful working conditions appear, new adverse factors are diagnosed, and some threats become outdated.

One of the most significant threats is the loss of the opportunity to exercise the right to rest by disconnecting from communication with the employer. This increasing lack of rest results in the appearance of stress at work, and in turn, long-term stress at work is associated with the emergence of diseases. The provision of digital work from an employee's home is often associated with a violation of work-life balance, which translates into an increase in the level of depression.

Another problem of people providing work in the teleworking system, or through digital platforms or the like, is the feeling of isolation resulting from building interpersonal relationships in the work environment solely using electronic means, and sometimes even operating without interpersonal relationships, in the case of algorithmic work management. Often this way of providing work favours the emergence of addiction to electronics.

Other observed negative phenomena associated with digital work are musculoskeletal disorders, worsening spinal disorders, and carpal tunnel syndrome.

14 Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2013] OJ L 299, 9–19.

4. The Control of Quantity and Quality of Work

Undoubtedly, the development of techniques and technology provides employers with great opportunities to control the quantity and quality of work. The control may include both the content of the employee's electronic devices, the content of e-mail correspondence or the employee's behaviour in rooms where video monitoring is installed. Electronic work time readers can accurately record the time during which the employee remains at the employer's disposal in the monitored place. The expansion of technical control options is accompanied by doubts about the legal control options, related to the employee's right to privacy, respect for personal rights, the right to protect his personal data, and the right to the confidentiality of correspondence.

5. Employee Data Protection

5.1. Employee Monitoring

One of the latest amendments to the Labour Code was the introduction of provisions regarding the possibility of employers using video monitoring and e-mail monitoring. The amendment was the result of a complete remodelling of the structure of the law on the protection of personal data, resulting from the introduction by the EU legislator Regulation of the European Parliament and of the Council 2016/679 of 27 April 2016 on the protection of individuals concerning the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC1.[15] The GDPR Regulation has led to the introduction of uniform rules for the processing and protection of personal data throughout the EU. At the same time, the European legislator left Member States some freedom to clarify the rules for the processing of personal data concerning specific situations. The possibility for the employer to introduce video monitoring in the workplace and to monitor e-mail has been made conditional on meeting particular conditions specified in the Act. The solutions presented raise many doubts, and the premises for introducing monitoring provided for in the Labour Code do not fully meet the needs of either employees or employers.[16] Outside of the regulation in the Code, there is

15 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L 119, 1–88.

16 M Gorbunow, 'Interes państwa a wykonywanie obowiązków pracodawcy związanych z wprowadzeniem monitoringu na gruncie Kodeksu pracy' [State Interest and Performing Duties by the Employer in Regard to Implementation of Video Surveillance Based on Labor Code] (2020) MPP 2, 6–10; M Gorbunow, 'Monitoring w świetle nowelizacji Kodeksu pracy z 10.5.2018 r.' [Video Surveillance in the Light of Amendment of Labor Code of 10.05.2018] (2019) MPP 10, 7–11; K Kowalska, 'Monitoring wizyjny w zakładzie pracy w kontekście ogólnego rozporządzenia o ochronie danych (RODO)' [Workplace Video Monitoring in the Context of the GDPR] (2019) MP 6, 316–324; O Dąbrowska, 'Kryteria dopuszczalności stosowania monitoringu w miejscu pracy oraz związane z tym obowiązki pracodawcy w świetle reformy ochrony danych osobowych' [Acceptance Criteria for

monitoring in the broad sense, including the use of video equipment, telephone cameras, sound cameras, other means of communication and the use of methods to determine location and identity.

5.2. Social Media as a Source of Knowledge about an Employee

Viewing candidate profiles in the recruitment process and employee profiles constitute the processing of personal data within the scope of the GDPR. Because of the very fact of applying the recruitment process, it cannot be presumed that the candidate has agreed to viewing, and thus processing, of their personal data published on the Internet on private social networking sites (as opposed to on portals informing about education, employment, internships, internships and the skills of the candidate or employee). Employers cannot think that they are entitled to view the profiles of candidates on social media because these profiles are publicly available. A legal basis, such as a legitimate interest, is necessary for such processing.[17]

Information obtained as a result of reviewing the profiles of candidates or employees may be used by the employer to discriminate against the employee, or as cause not to hire the candidate due to discriminatory factors, e.g. due to political views. However, the ability to check whether your employer respects the principles of personal data protection posted on publicly available portals is effectively nonexistent.

6. Digitisation and Application of New Technologies as Factors for the Professional Development of Employees

Despite the adverse effects of digitisation, its undoubted advantages cannot be questioned, which is the possibility of providing work to people for whom access to traditional employment is difficult. These are people for whom the obstacle to taking up work is commuting to the workplace, or even leaving their apartment, or providing work at designated times.

the Use of Monitoring in the Workplace and Related Obligations of the Employer in the Light of the Reform of Personal Data Protection] (2019) PME 1, 12–19; M Kuba, 'Monitoring poczty elektronicznej pracownika – refleksje na tle nowych regulacji prawnych' [Employee Email Monitoring – Reflections on the New Regulations] (2019) PiZS 11, 29–35; G Orłowski, 'Nielegalny legalny monitoring' [Illegal Legal Monitoring] (2018) MPP 7, 7; K Syska, 'Obowiązki pracodawcy związane z monitoringiem pracowników na gruncie RODO i znowelizowanego Kodeksu pracy' [Obligations of the Employer Related to Employee Monitoring under the GDPR and the Amended Labour Code] (2018) MP 22, 25–32; M Frąckowiak, T Świeboda, 'Ochrona danych osobowych pracownika w perspektywie RODO i przepisów dotyczących monitoringu wizyjnego stosowanego przez pracodawcę' [Protection of Personal Data in the Context of GDPR and Regulations in Regard to Video Surveillance Used by Employer] (2018) MPP 7, 8–15.

17 P Nowak, 'Sprawdzanie kandydatów do pracy pod kątem zawartości ich profili na portalach społecznościowych – analiza w świetle RODO i Kodeksu pracy' [Verification of Candidates for Work Regarding Content in Their Profiles in Social Media – Analysis in the Light of GDPR and the Labour Code] (2018) MPP 8, 15–19.

Performing work at home, in the hours chosen by the employee, is an employment opportunity for disabled people, people caring for small children or disabled family members, and people from regions affected by unemployment. It is worth noting that the directive of the European Parliament and of the Council on the balance between the professional and private lives of parents and guardians grants employees returning from parental leave the right to request their employer to work remotely.[18]

Conclusions

The digital revolution, also called the fourth industrial revolution, is another era of change, caused by the development of computerisation and modern technologies. It is characterised by rapid technological progress, widespread digitisation and an impact on all areas of life, including the provision of work. The changes in this area are so significant that there are proposals to remodel the definition of the employment relationship in the Labour Code. Both teleworking and homeworking fit the current definition of an employment relationship, but the way in which they are performed differs significantly from the conventional employment relationship.

Digitisation, technology development and globalisation affect every aspect of the provision of work, from the conclusion of the contract, through its performance, up to the rights and obligations of employees.

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18 A Ślęzak-Gąsiorowska, 'Dyrektywa w sprawie równowagi między życiem zawodowym a prywatnym rodziców i opiekunów – perspektywa polska' [Directive regarding work-life balance of parents and caretakers – Polish perspective], (2019) MPP 7, 13–17.

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Judgement

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