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PRACTICAL AND FINANCIAL ASPECTS OF CONCLUDING HARVEST HELP CONTRACTS BY FARMERS

Key words: farmers' social insurance, farm worker, harvest help contract

ABSTRACT. The purpose of this paper is to identify the practical and financial issues that may arise from the application of the recently introduced provisions regulating a new type of contract - the harvest help contract. It can be concluded between a farmer and a farm worker providing help in agricultural activities during seasonal work. Attention was paid to new statutory definitions, with particular reference to the concept of a farm worker. The basic elements of the contract, the rights and obligations of the parties, including the financial duties imposed on the farmer regarding the performance of the contract and the obligation to insure the worker at KRUS were presented. The analyzed regulation raises many doubts, especially when determining the worker's status. A farm worker may be a person providing help only to statutory limited specific harvest crops. Insurance protection is available only to some persons performing some specific activities and is limited to accident and health insurance only. It generates high costs for farmers who conclude short-term contracts with workers. The contract does not give the assistants any guarantee of minimum wage protection. This could lead to the risk of economic exploitation of assistants in the future.

INTRODUCTION

Labour shortages are a particularly common phenomenon in farms in the period of intensified fieldwork. During harvest, there is a need to seek an extra pair of hands in the surrounding neighbourhood and even conclude civil law contracts with complete strangers to the farmer.

The subject of analysis in this article is a new contract [Katner 2018] – a farmer's harvest help contract effective as of 18 May 2018 in the Act on the Social Insurance of Farmers [Journal of Laws, 2018.858]. It can be concluded between a farmer and his workers who provide assistance during harvest. These are people who are not related to the farmer and help in return for financial reward during harvest. The new legal regulation in Poland introduces this type of contract, whereby workers receive obligatory accident, sickness and maternity insurance. Lack of studies in this matter is a sufficient enough reason to conduct an analysis of the newly regulated contract.

THE PURPOSE OF THE ARTICLE AND METHODS

The aim of this elaboration was to identify the practical and financial issues that may arise from the application of recently introduced provisions regulating a new type of contract - the harvest help contract. Attention was paid to the new statutory definitions with particular reference to the concept of a farm worker. The author presented the basic elements of the contract and the rights and obligations of the parties, including the financial duties imposed on the farmer in connection to the implementation of the analyzed contract. In order to implement the aim, it was necessary to define the principles of social insurance for the workers subject to it at the Farmer's Social Insurance Fund. The subject of analysis is primarily the Act of 20 December 1990 on the Farmers' Social Insurance [i.e. Journal of Laws, 2017.2336 as amended], hereinafter referred to as 'the Insurance Act'. The basic methods adopted in the study are the descriptive method and dogmatic analysis of legal acts.

THE LEGAL DEFINITION AND PARTIES TO THE CONTRACT

A new civil law contract was introduced by legislators under the Insurance Act. The harvest help contract is not an agreement performed as part of an employment relationship [Florek 2017], contract of mandate [Article 734 of the Polish Civil Code] or contract for the provision of services. In accordance with the statutory definition, under a harvest help contract, the farm worker shall assist in the harvest of agricultural products falling within the sector referred to in Article 1, Par. 2, letters f, i and n of the Regulation (EU) No. 1308/2013 of the European Parliament and Council of December 17, 2013, establishing the common organization of markets in agricultural products and repealing Council Regulations (EEC) No. 922/72, (EEC) No. 234/79, (EC) No. 1037/2001 and (EC) No. 1234/2007 [OJ EU L 347 of December 20, 2014, p. 671, as amended] and of other herbs and plants, hereinafter referred to as "hops, fruits, vegetables, tobacco and herbs," at a specific location at the farm, for a definite period of time; while the farmer must pay the agreed remuneration for the help provided, as stated in the contract (Art. 91 a Par. 1 of the Act of December 20, 1990 on the Farmers' Social Insurance [i.e. Journal of Laws, 2017.2336 as amended], hereinafter referred to as "the Insurance Act").

The only parties to the contract can be a farmer who is engaged in agricultural activity and a worker, who receives this status after fulfilling the formal requirements provided for in the Act. It was the first time in Poland that the term farm worker was introduced as an insured subject. According to Article 6 Par. 2a of the Insurance Act, a farm worker is an adult who enters into a harvest help contract with the farmer. This person must be a Polish citizen or have the right to work on the territory of the Republic of Poland on the basis of Art. 87 of the Act of 20 April 2004 on the Promotion of Employment and Labour Market Institutions [Journal of Laws, 2017.1065], as amended, or be exempt from the obligation to have a work permit under specific regulations.

SUBJECT OF THE CONTRACT

It would seem that the subject of the agreement on harvesting help is the performance of agricultural work on the farm. The Act, other than defining an accident at work of a farm worker, fails to specify the definition of agricultural work or agricultural activities, instead, it uses the term „harvest help”. This is undoubtedly a narrower concept than those previously indicated and the framework of farm help is determined by statutory regulations. Help is generally a broader concept than work, but it has a narrowed statutory framework, which in effect reduces it to only certain activities that make up agricultural activity.

The contract specifies help during the harvest of a specific farmer's agricultural activity. According to the legal definition, the helper is obliged to personally provide assistance to the farmer when harvesting hops, fruit, vegetables, tobacco, herbs and herbal plants, at a specific location and for a defined period, and the farmer is obliged to pay the agreed remuneration for the provided assistance. Therefore, the agreement should specify the scope of activities performed by the farm worker and the day the help for harvest begins, if it differs from the date of contract conclusion.

It should be noted that the above-mentioned definition, through a significant extension of the *definiendum*, is not synthetic and still does not include any help in the performance of activities constituting agricultural activities.

The service delivered under the contract is help [Article 91e of the insurance act] (“auxiliary work”) in harvesting hops, fruits, vegetables, tobacco and herbs. Therefore, under a help contract, the farmer acts as the manager, while the farm worker provides assistance in a particular location at the farm, for a defined period of time. Help is to be provided personally. Although the Act does not use the term “performance of farm work” in this context, it actually means this very kind of work. As provided for in the Act, help does not mean employment as understood under the Labour Code. However, one cannot help but get the impression that a much stronger relationship exists between the farmer and the farm worker than in the case of other civil law contracts. The reasons are the nature of the entity (farm worker), the type of work performed (auxiliary work) and the managerial role of the farmer.

Help with the harvesting of hops, fruits, vegetables, tobacco, herbs and herbal plants includes the following activities:

- 1) collecting hops, fruits, vegetables, tobacco, herbs or herbal plants;
- 2) removal of unnecessary parts of plants;
- 3) classifying or sorting broken or harvested hops, fruits, vegetables, tobacco, herbs or herbal plants, or performing other activities aimed at preparing hops, fruits, vegetables, tobacco, herbs or herbal plants for transport, storage or sale or related to nurturing and improving the quality of crops.

It should be noticed that the provisions on help during harvest mentioned in the definition of Regulation (EU) No. 1308/2013 of the European Parliament and Council dated December 17, 2013, establishing the common organization of markets in agricultural products set limits specified in the Act. Although the law uses the term help in the collection of hops, fruits, vegetables, tobacco, herbs and herbal plants, this Regulation specifies what agricultural crops are concerned. Only with the harvesting of legally defined agricultural

products, is it possible to conclude the analyzed contract. This is a serious difficulty in applying these provisions in practice. Indeed, the term indicated in the Insurance Act is not sufficient in this case. In order to show the scale of the problem, it is worth pointing out that the Regulation lists, for example salsify, parsnip, purgatory, chervil, edible ketmania, trichosanthes, Ethiopian eggplant, cress, purslane, plantain, guava, mango and mangosteen or pineapple.

The Act limits the activities of the helper by indicating them in a closed catalogue, which does not seem to be an appropriate solution. It is surprising that the Polish legislator does not use the concept of arable crops known from botany [Szweykowska 2003] and only narrows agricultural activities related to the cultivation of plants down to vegetables, fruits, herbs and hops.

OBLIGATIONS OF THE PARTIES TO THE CONTRACT

The legislator specified that the contract should be concluded in written form. However, the legal consequences of failure to enter into a written contract are not specified. If not concluded in writing, the contract shall remain valid but exposes the insured farm worker to major risk. A written contract does more than just protect against the circumvention of law; it specifies the activities which set the limits of liability of KRUS in the event of an accident. Since the existing solution does not ensure adequate protection of the farm worker, it seems that the legislator should require the contract to be concluded in writing in order to be valid.

The farm worker shall be covered by insurance from the day he/she started to provide help, as specified in the harvest help contract, or (if that date is not specified in the contract) from the contract date. The farmer is required to register the assistant with KRUS within 7 days upon entering into the harvest help contract, but no later than upon expiry of the contract term.

The scope of compulsory insurance of the farm worker with KRUS includes accident, sickness and maternity insurance (to the extent limited to benefits with respect to accidents at farm work) and health insurance. The farmer is the party required to pay the contributions (the payer of social insurance contributions). The contributions related to a particular month shall be paid by the farmer without prior request no later than on the 15th day of the following month. However, no sanctions are provided for in the Act for the failure to comply with the above obligation.

The Act defines the obligations of the parties. On the part of the farm worker, before the conclusion of the contract, the most important seems to be a statement made to the farmer with whom he concludes the contract, concerning the number of days he/she worked in cooperation with another farmer based on a similar contract. The total time of providing help with harvests on the basis of contracts concluded by one farm worker cannot exceed 180 days in a calendar year.

The obligation of the farmer is to provide the farm worker with the appropriate tools necessary to provide help. The Act imposes an obligation on the farmer, though not directly, to care for the proper condition of these tools. This is important from the point of view of farm worker protection. However the Act does not indicate, who is responsible for safety in the performance of agricultural activities.

The basic obligation of the farmer is to pay the agreed remuneration. This means the harvest help contract involves a payment which makes it similar to a mandate contract, though no direct reference thereto is made in the Act. Therefore, voluntary services and the 'labour in exchange for labour' scheme (neighbourhood help often practiced in rural areas) are not covered.

FINANCIAL OBLIGATIONS

As indicated above, the most important duty of the farmer is to pay out the remuneration. However, the legislator does not specify the rules of payment - whether remuneration should be disbursed in cash as a one-off payment or should be paid per hour or per month. The minimum rates of remuneration are also unspecified because the help contract is not governed by the provisions of the Minimum Wage Act of October 10, 2002 [Journal of Laws, 2017. 847]. The legislator leaves it to the parties' discretion. The analyzed statutory solutions do not provide for any institutions to protect the worker's salary. This is a serious practical problem [Wiktorowska 2018]. Farmers are not obliged to submit such contracts in KRUS and the contribution does not depend on the amount of remuneration. The lack of tools to protect wages may lead to the economic exploitation of such farm workers in the future.

The amount of social security contribution is not precisely specified in the Act. The legislator therefore adopted a construction in which the contribution for the first group of insurance (accident, sickness, maternity) is paid to the full amount while only providing benefits from accident insurance – the farm worker is only subject to insurance and only to the extent limited to the benefits specified in Article 9 point 1. The amount of accident contribution is, therefore, three times higher than in the case of other insured persons. Although it is possible to find an increased risk of accidents in the case of farm workers, for example, lack of experience, intensification of work, haste and time pressure, the very structure of collecting the premium may raise serious doubts.

Farmers are also obliged to pay a health insurance contribution for farm workers in the amount that is provided for household members of farmers only operating in the area of special departments of agriculture production. The applicable legal regulations do not allow the members of the farm worker's family to be covered by health insurance.

It should be noted that the accident insurance contribution is currently PLN 42 monthly, and for health insurance equals 9% of the amount of the assessment base constituting 33.4% of the average monthly salary in the enterprise sector – currently PLN 152 per month. If the insurance period lasts less than a month, the accident insurance contribution may be reduced accordingly because – in accordance with the farmers' social insurance legislation - the obligation to pay the contribution arises from the day the insurance was incurred and ceases on the day the insurance ceases. In turn, the contribution to health insurance in accordance with the provisions on health care services financed from public funds is monthly and indivisible, which means that farmers will pay it in full regardless of the number of days in a given month through which assistance is provided. According to this solution, farm workers are provided with the opportunity to benefit from healthcare services. On the other hand, such a construction causes fairly high costs for the farmer

in the case of a contract lasting only a few days. Due to the obligation to insure a farm worker, there is a serious threat to the amount of remuneration paid for the assistance provided. In fact, farmers, analogously to the solutions known to other civil law treaties, may be willing to deduct contributions from the envisaged remuneration.

It should be noted that due to the implementation of the mentioned regulations, the farmer is not obliged to collect income tax prepayments from the help contract. He only has to prepare and send the PIT-11 form, showing the amount of paid remuneration in pos. 74 to the farm worker and the tax office appropriate to the place of residence of the farm worker.

The legislator did not introduce solutions preventing the occurrence of the double insurance phenomenon. If, therefore, the farm worker was covered by insurance at the Social Security Institution or even at the Agricultural Social Insurance Fund, there is still an obligation for the farmer to submit such insurance to KRUS and pay the statutory contributions due for the provided contract.

The payer of contributions for each helper per month in the amount of PLN 194 is the farmer concluding the analyzed contract. He is not only obliged to pay contributions by the 15th of each month but is also responsible for making own calculations. Therefore, the farmer bears the responsibility for incorrect calculations of the amount of paid contributions, which may occur in the case of a divisional contribution for the first group of insurance in KRUS. However, the Act does not provide for any sanctions for failure of this obligation.

THE SCOPE OF INSURANCE AT KRUS

A farm worker is the new legal subject of insurance and is covered by accident, sickness and maternity insurance at KRUS. The scope of protection of the helper is, however, limited to the following benefits: a one-off compensation for permanent or long-lasting damage to health or death due to a farm work accident or a farmer's occupational disease.

For the worker's protection, the Insurance Act introduces a new definition of "accident at work" in Art. 11 Par. 1a. As shown above, in the context of farm workers, the Act uses the term "help" rather than "work." The only exception is the definition set out in Article 11, Par. 1a. An accident at work suffered by the farm worker shall mean a sudden event caused by external circumstances which took place in the course of the farm worker's duties set forth in the harvest help contract referred to in Article 91a, Section 2 of the Act on the Farmers' Social Security Scheme of December 20, 1990 [i.e. Journal of Laws, 2017.2336, as amended].

The presented definition of an accident at the worker's workplace is connected with activities enumerated by the legislator and indicated in the contract by the parties. It follows directly from Art. 11 Par. 1a. of the Insurance Act. It is worth pointing out that not all of the activities constituting agricultural activity have been covered. What is worth emphasizing is that in the case of an absence, erroneous or imprecise definition of activities in the contract, the injured person may be deprived of insurance protection

CONCLUSIONS

Introducing the farmer help contract was supposed to counteract the illegal employment of workers in agriculture and concluding contracts with them for work that resulted in lack of health and social insurance. Nevertheless, the assessment of whether these assumptions will be achieved is difficult today. According to the data of the Ministry of Agriculture and Rural Development, only over 4.5 thousand such contracts were concluded within one month of the application of these regulations. According to the estimates of this Ministry, about 500,000 people work seasonally in agriculture during the year, mainly citizens of the Ukraine [MRiRW 2017]. Certainly, the contributory reliefs it offers, compared to the obligations arising from employment contracts or orders, are a sufficient enough incentive to apply the contract in practice. However, it seems that too little attention has been paid by the legislator of the occurrence of the grey zone in agricultural activity. The farmer is not obliged to conclude the analyzed contract. He/She can choose a different legal relationship.

Lack of studies in the literature causes that in various press publications false claims are made that the farmer help contract for harvest is a contract used to employ workers in agriculture. Some information is provided that “from May 2018 we have a new profession in Poland: a farm worker” and even that contract may be concluded by a person other than a farmer [Szałaj 2018]. The problem was also indicated by the National Labor Inspectorate.

The definition of the contract specified in the Insurance Act is very imprecise. This regulation is of a framework nature. The legislator laconically defines the rights and obligations of the parties. It fails to satisfy the obligation to maintain a proper form, it fails to cover all activities carried out in agricultural activity and fails to indicate the amount of remuneration paid. Near to its solutions to the contract for the provision of services, the legislator did not decide to refer directly to these provisions of the Civil Code. It should be emphasized, that the farmer and farm worker are characterized in the contract by a stronger relationship than in a work contract, which is a result of farmer management, so characteristic of the employment contract specified in the Labor Code.

The Act introduces the notion of a farm worker, however obtaining this status is extremely difficult. This construction is too wide but also does not cover all activities in agricultural activity. It seems that a more accurate solution would be to use the term “farm worker at harvest” instead of “farm worker”. The specification of the worker’s activity in the Act does not contain all activities or all agricultural produce obtained in agricultural activity. It introduces the uncertainty of the contracting parties as to the possibility of concluding the contract before the harvesting of specific agricultural products.

The contract does not give farm workers any protection guarantees of the payment of the appropriate remuneration. This can lead directly to the economic exploitation of such workers. The legislator did not justify why these entities were not protected with minimum remuneration. Contribution duties may cause a reduction of such low wages in agriculture. This is a serious practical problem. The insurance obligation is a serious cost for the farmer who is willing to deduct the number of benefits paid to the worker.

Undoubtedly, the inclusion of the farm worker in health and social insurance should be positively assessed. However, it should be highlighted however that the premium is three times higher than in the case of other insured persons in KRUS and does not give entitle-

ment to sickness or maternity insurance benefits as well as other post-accident benefits. The analyzed construction of insurance obligations may mislead interested persons of the insurance protection granted. Also, what is important is the lack of protection of the assistant in the field of health and safety in one of the most dangerous professional activities.

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PRAKTYCZNE I FINANSOWE ASPEKTY ZAWIERANIA PRZEZ ROLNIKÓW UMÓW O POMOCY PRZY ZBIORACH

Słowa kluczowe: ubezpieczenie społeczne rolników, pomocnik rolnika,
umowa o pomocy przy zbiorach

ABSTRAKT

Celem opracowania jest określenie kwestii praktycznych i finansowych, mogących wyniknąć ze stosowania wprowadzonych przepisów regulujących nowy typ umowy – tzw. umowę o pomocy przy zbiorach. Może być ona zawarta pomiędzy rolnikiem i pomocnikiem świadczącym pomoc w działalności rolniczej przy pracach sezonowych. Zwrócono uwagę na nowe definicje ustawowe, w tym przede wszystkim na pojęcie pomocnika rolnika. Ukazano podstawowe elementy analizowanej umowy, prawa i obowiązki stron, obowiązki finansowe ciążące na rolniku w związku z zawarciem i wykonaniem zobowiązania ze szczególnym uwzględnieniem obowiązku ubezpieczenia pomocnika w KRUS. Analizowana regulacja budzi wiele wątpliwości, a najwięcej z nich występuje przy ustalaniu statusu pomocnika. Pomocnikiem rolnika może być osoba świadcząca pomoc tylko przy ustawowo wskazanych zbiorach produktów rolnych. Obowiązkowe ubezpieczenie tych podmiotów sprowadza się do ochrony w zakresie ubezpieczenia wypadkowego i zdrowotnego. Generuje to wysokie koszty dla rolników zawierających z pomocnikami krótkoterminowe umowy. Umowa o pomocy przy zbiorach nie przyznaje pomocnikom gwarancji ochrony wypłaty minimalnego wynagrodzenia. Może to prowadzić w przyszłości do wyzysku ekonomicznego pomocników.

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