

Application of legal provisions in terms of health and safety at work for farmer's helpers

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Abstract

The sphere of health and safety at work is one of the most important aspects related to employment, and not only for employees. Its object of protection, i.e. the protection of human life and health at work, is universal. Without any doubt, it applies to every employed person. It should also be taken into account that the basis for the introduction of occupational health and safety regulations is the protection of life and health of every person performing work on any legal basis. In doctrine it is pointed out that it is about legal guarantees to secure life and health in the process of work, not only subordinate work within the employment relationship. Therefore, the article presents the issues related to the protection of the work capacity of farmer's helpers by observing the rules of occupational safety and health when they provide assistance on the basis of a harvest help agreement referred to in the Act of 20 December 1990 on social insurance of farmers¹.

Keywords: health and safety at work, farmer's helper.

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Introduction

On 18 May 2018, the Act of 13 April 2018 amending the Act on social insurance for farmers and certain other acts entered into force¹. This act mainly regulates the issues related to the provision of assistance by a new category of insured persons – farmer's helpers and the type of contract between the farmer and the helper, and matters related to the social insurance of farmers and health insurance of the farmer's helpers.

According to the justification to the draft act introducing the harvest help agreement into the Polish legal system, the rationality of its application was motivated in particular by the fact that fruit farming and horticulture are the branches of agriculture where the greatest amount of work is carried out during the harvest period – from May to November. Therefore, these jobs are seasonal, which makes it impossible to apply permanent employment rules. In the justification to the draft act, it was also indicated that fruit and vegetable growers need a significant number of people during the ripening of fruit and vegetables to help with harvesting, and the argument in favour of the preparation of regulations on the harvest help agreement was to be the frequent use of contracts in agricultural work for a work that does not fit the nature of the work of the people employed in the harvest. Thus, the purpose of this structure was to meet the main assumptions: (1) facilitating harvesting in fruit farming and horticulture by creating a legal structure enabling the conclusion of contracts with people to perform these works, (2) improving the legal situation of people performing specific assistance during seasonal work on farms agricultural, (3) and, additionally, the adoption of a flat-rate low form of contributions was supposed to allow, above all, to reduce labour costs and significantly reduce the administrative obligations of the farmer, in the period of accumulation of work related to the harvest.

Pursuant to Art. 6 point 2a of the Act of 20 December 1990 on farmers' social insurance, a farmer's helper is an adult with whom the farmer concluded an agreement on help with harvesting. The provisions regarding this agreement are included in the newly created chapter 7a – Harvest Help Agreements. Pursuant to Art. 91a paragraph 1 of this Act, by concluding a harvest help agreement, the farmer's helper undertakes to provide aid for the harvesting of agricultural products belonging to the sector referred to in Art. 1 clause 2 lit. f, i, and n Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organization of the 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, as well as other herbs

1. Journal of Laws 2018, item 858.

and herbal plants (hereinafter referred to as “hops, fruit, vegetables, tobacco, herbs and herbal plants”), in a specific place on the farm the farmer and for a specified period, and the farmer to pay the agreed remuneration for the help provided.

Assistance in the harvesting of agricultural products, as defined above, also includes, *inter alia*, harvesting, sorting, removing useless parts of plants and activities related to securing and preparing these products for sale (Article 91a(2) of the said Farmers' Social Insurance Act).

Further, the provisions of the act on farmers' social insurance stipulate that the harvest help agreement should be concluded in writing and should specify both the scope of activities and the date of commencement of the provision of assistance, if it is different from the date of conclusion of the contract. Performing the activities referred to in Art. 91a paragraph 2, on the basis of the harvest help agreement, does not constitute employment within the meaning of the Labour Code. However, according to Art. 91f of the Farmers' Social Insurance Act, the provisions of the Civil Code shall apply to this agreement to the extent not regulated in the chapter on harvest help.

The total duration of the provision of help with harvesting under the harvest help agreement concluded by one farmer's helper may not exceed 180 days in a calendar year (Article 91c (1) of the Farmers' Social Insurance Act). When concluding a contract, the farmer's helper is therefore obliged to submit a declaration on the number of days in a given calendar year – through which he/she provided help in harvesting hops, fruit, vegetables, tobacco, herbs and herbal plants – on the basis of harvest help agreements concluded with other farmers.

Farmer's helpers who have Polish citizenship or are entitled to work in the territory of the Republic of Poland pursuant to art. 87 of the Act of April 20, 2004 on employment promotion and labour market institutions², or are exempt on the basis of special provisions from the obligation to have a work permit, it is covered by farmers' social insurance. Covering the farmer's assistant with insurance takes place from the date specified in the harvest help agreement as the day of commencement of the provision of help with harvest, and if the contract does not specify that date – from the date of concluding this contract. Accident, sickness and maternity insurance is subject to, by virtue of the Act, the farmer's helper only to the extent limited to the benefits specified in Art. 9 point 1 of the above-mentioned the act on social insurance for farmers (one-off compensation for permanent or long-term health impairment or death as a result of an accident at work in agriculture or an agricultural occupational disease). The farmer's helper must apply for insurance within 7 days from the date of concluding the harvest help agreement, but not later than before the end of the period for which the agreement was concluded.

2. Journal of Laws 2020, item 1409 with amendments.

Description and analysis of the problem

The purpose of these regulations is to regulate the provision of assistance by persons helping farmers. Pursuant to the legislator's intentions, the performance of activities by a person who is a party to such an agreement does not constitute employment within the meaning of the provisions of the Labour Code. However, the provisions of the Civil Code will apply to the extent not regulated in the Act on social insurance for farmers. However, attention should be paid to one more aspect, namely the limited catalogue of rights in the field of social insurance for farmers and labour protection. As previously mentioned, among the guarantees available to farmers' helpers in the above-mentioned areas, the coverage of accident, sickness and maternity insurance should be mentioned only in the scope entitling to one-off compensation for permanent or long-term health impairment or death as a result of an accident at work in agriculture or an occupational disease in agriculture. Thus, the farmer's helper is not entitled to sickness benefits and long-term benefits from the old-age and disability pension insurance. In terms of the most important issues from the point of view of the protective function of labour law, it is worth pointing out that the farmer's helper is also deprived of guarantees regarding the right to a minimum wage, the right to vacation, the right to breaks, including a minimum rest. In addition, controversy could arise from the lack of direct provision in the applicable provisions of a guarantee for the farmer's helpers for safe and hygienic working conditions. It should be borne in mind that work performed in agriculture is characterized by a significant risk related to the negative effects of failure to ensure safe and hygienic working conditions. Therefore, this right should be guaranteed all the more for people who provide this type of assistance on a temporary basis for farmers.

On August 1, 2018, NSZZ "Solidarność" submitted a complaint to the European Commission (EC) against the Polish Government regarding non-compliance with Community law³. In the opinion of the union, the violation took place through the introduction of a new type of civil law contract into the Polish legal system – the harvest help agreement – and the lack of regulations on occupational health and safety in the context of actions taken by the harvest helper. Therefore, according to the National Committee of NSZZ Solidarność, there has been a serious breach of the Member State's obligation to comply with the Council Directive of June 12, 1989 to introduce measures to improve the safety and health of workers at work.

3. NSZZ Solidarność Komisja Krajowa, www.solidarnosc.org.pl.

As a result of this complaint, on April 14, 2020, the Ministry of Family, Labour and Social Policy received a letter from the European Commission (DG EMPL), in which, in connection with the complaint submitted to the European Commission, the European Commission asked to refer to the allegation of failure to ensure safe and hygienic work conditions for people employed under civil contracts to help with harvesting, known as “farmer’s helpers”.

The European Commission waited for the presentation of Poland’s position on the following questions: (1) whether the Polish provisions on occupational health and safety are consistent with EU law in terms of ensuring safe working conditions for “farmer’s helpers” and (2) what is the legal status of a farmer (who is a party to the harvest help agreement), and especially whether he can be considered an entrepreneur.

The European Commission accused Poland that “farmer’s helpers” are excluded from the scope of application of the national provisions transposing the Council Directive (89/391 / EEC) of June 12, 1989 on the introduction of measures to improve the safety and health of workers at work. In its letter, the European Commission expressed the opinion that the term “employee” for the purposes of this directive should be understood as any person employed by an employer, which certainly refers to the concept of “farmer’s helper”, as it is a person who performs services for and under the direction of another person for a certain period of time, for which he or she receives remuneration. Accordingly, Art. 304 of the Labour Code on ensuring – to a certain extent – safe and hygienic working conditions for natural persons performing work on a basis other than an employment relationship.

The provision of art. 304 of the Labour Code states that the obligations set out therein apply to employers and entrepreneurs who are not employers. Meanwhile, not all farmers concluding harvest help agreements are employers under the provisions of the Labour Code or entrepreneurs under the provisions of the Act – Entrepreneurs Law. A large part of farmers are natural persons conducting agricultural activity, i.e. activity consisting in plant or animal production (such activity is excluded from the scope of the Act – Entrepreneurs’ Rights). For this reason, some of the farmer’s helpers are not provided with safe and hygienic working conditions, which are enjoyed by other employed persons.

The Ministry of Agriculture and Rural Development stated in its analysis that it should be agreed that not all farmers concluding harvest help agreements are employers in the light of the provisions of the Labour Code. On the other hand, the answers to the question whether the farmer is an entrepreneur pursuant to Art. 304 § 3 of the Labour Code, one should search in the area of private law, i.e. in accordance with Art. 43¹ of the Civil Code, from which it follows that the entrepreneur is, inter alia, a natural person running a business or professional activity on their own

behalf. Although the Civil Code does not contain a definition of economic activity, which may cause difficulties in interpreting the commented provision, and thus it is necessary to use the definition of Art. 3 of the Act of 6 March 2018, Entrepreneurs' Law⁴. However, nothing in this qualification is changed by Art. 6 sec. 1 point 1 of the Entrepreneurs' Law Act, an exclusion according to which the provisions of the Entrepreneurs' Law do not apply to agricultural production in the field of agricultural crops and animal husbandry, horticulture, vegetable farming, forestry and inland fishing. The exclusion provided for in this provision operates only under the Entrepreneurs' Law, i.e. in the field of public law and thus does not take away from agricultural activity the characteristics of economic activity, this activity remains an economic activity (Article 3 of the Entrepreneurs' Law), and only does not apply to it further regulations of this act. Undoubtedly, the features of economic activity can be attributed to the activities conducted in an organized and continuous manner in the form of plantation of agricultural products referred to in Art. 91a of the Act of December 20, 1990 on farmers' social insurance. It is all the more justified that this type of activity is also associated with participation in economic transactions, because a farmer using the help of other people (in this case, the farmer's helpers – under a harvest help agreement), certainly does not do it solely on the basis of own needs or only for the needs of family members.

Thus, not all farmers planting agricultural products referred to in Art. 91a of the act on social insurance for farmers are employers, but it should be assumed that this type of activity and its size requiring the help of other persons to perform activities specified in the provisions on farmers' social insurance means that they should all be classified as entrepreneurs pursuant to Art. 431 of the Civil Code. Therefore, Art. 304 § 3 of the Labour Code, according to which the Labour Code imposes on them the obligations specified in Art. 207 § 2 of the Labour Code, and therefore they are obliged to protect the health and life of the farmer's helpers by ensuring safe and hygienic working conditions with appropriate use of the achievements of science and technology. In particular, a farmer-entrepreneur is obliged to:

- 1) organise work in a manner ensuring healthy and safe working conditions;
- 2) ensure compliance with the provisions and rules of health and safety on the farm, issue orders to remedy deficiencies in this respect and control the implementation of these instructions;
- 3) respond to the needs in terms of ensuring health and safety at work and adapt measures taken to improve the existing level of health and life protection of helpers, taking into account the changing conditions of work performance;

4. Journal of Laws 2021, item 162.

- 4) ensure the development of a coherent policy to prevent accidents at work and occupational diseases, taking into account technical issues, work organization, working conditions, social relations and the influence of working environment factors;
- 5) take into account the health protection of adolescents, pregnant or breastfeeding workers and disabled workers as part of the preventive measures taken;
- 6) ensure the execution of orders, statements, decisions and orders issued by supervisory authorities over working conditions.

Summary

It follows from the above that farmers benefiting from help or contract work, due to the fact that they are entrepreneurs, are also obliged to ensure safe and hygienic working conditions not only for employees, but also for persons defined in the Act as farmer's helpers who provide assistance in their farms under a harvest help agreement.

Therefore, the state authorities face a new challenge, which boils down to carrying out an information campaign to make farmers, for whom helpers provide assistance on their farms, aware that they are obliged to provide helpers with safe and hygienic working conditions. It is the farmers' responsibility to manage safety in their farms where aid and other contract work is provided. On the other hand, errors in safety management translate into measurable losses that can be measured, for example, by the number of days lost per year due to diseases or accidents, or specific amounts of money⁵. The literature on the subject emphasizes that occupational health and safety management should rely on the ability to anticipate and prevent problems, and not to solve them only when they have occurred and caused adverse effects. This approach is the most effective way to ensure a high level of work safety⁶.

It will be necessary for the National Labour Inspectorate to undertake appropriate control activities in this respect, which will allow to verify the correct approach of farmers to these obligations. The tasks related to the provision of appropriate information to farmers about their obligations in the field of occupational health and safety are mainly on the part of the National Labour Inspectorate, however, the important role of Agricultural Advisory Centres, which are already involved in training

5. J. Lewandowski, *Zarządzanie jakością. Jakość, ergonomia, bezpieczeństwo pracy, ochrona środowiska*, Łódź, Wydawnictwo MARCUS, 1998.

6. A. Idzikowski, W.M. Bajdur, *Działania na rzecz bezpieczeństwa środowiska pracy w przedsiębiorstwie dystrybucji gazu* [in:] *Innowacje w zarządzaniu i inżynierii produkcji*, red. R. Knosala, Opole, Oficyna Wydawnicza PTZP, 2013, P. 1070–1084.

on accident prevention, should not be overlooked, as well as the Agricultural Social Insurance Fund – KRUS (in Polish: *Kasa Rolniczego Ubezpieczenia Społecznego*). Social, which conducts preventive actions in the agricultural environment aimed at preventing accidents among individual farmers. However, this does not prevent KRUS from making its experience in preventing accidents in agriculture available to farmers using contract work. Because the essence of OSH is the information and didactic influence for the improvement of occupational safety, health and labour protection in agriculture. This impact is aimed at making the public aware that in order to conduct agricultural activity, apart from the skills in the field of agriculture and farming, mechanical and technological, it is necessary to have sufficient knowledge about the hazards occurring during the performance of a specific type of work and knowledge about the basic principles of safe work.

Perhaps, therefore, it would be justified to develop an analogous system with regard to the aid with harvesting performed by farmers' helpers, as the occupational health and safety management system in enterprises. The essence of the OSH management⁷ system is the improvement of OSH results, i.e. reducing the number of accidents at work and related material losses. The importance of the system as a means of implementing health and safety policies and objectives is also emphasized. In addition, its implementation should support the modification of dangerous behaviour of employees and preventing other problems in the work environment. The construction of the system consists in the selection and appropriate shaping of elements, i.e. processes, in such a way that – by interacting – they support the achievement of the intended goal, i.e. in this case the implementation and enforcement of health and safety rules on farms, especially where farmers use hired power .

Systemic management of safety would make it possible to organize and systematize all activities carried out on the farm related to occupational health and safety, and its idea is the full and documented involvement of both the farmer conducting agricultural activity, as well as every employee and assistant in actual activities for work safety on the farm where they work or provide assistance.

By identifying the problem, the article may be an introduction to a deeper discussion in order to develop appropriate mechanisms to protect the ability to work not only of farm helpers.

7. A. Skład, *Procesy zarządcze w systemie zarządzania BHP a poziom bezpieczeństwa w przedsiębiorstwie*, Prace Naukowe Akademii im. Jana Długosza w Częstochowie, 2018, t. VI, P. 311.

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NSZZ Solidarność Komisja Krajowa, www.solidarność.org.pl.

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