

PECULIARITIES OF PRACTICING EMPLOYMENT CONTRACTS IN AGRICULTURE: A LITHUANIAN CASE

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Abstract. When signing an employment contract between an employer and employee, the definition of rights and obligations of the signing parties within the employment contract is still a crucial problem both scientifically and practically. Changing economic and social environment also influences the employment relationships in the agriculture. Agricultural holdings, cooperative holdings, and farmers who employ workers for agricultural or other work are obliged to follow the legislation in force. The conclusion of the contract, the form of the contract, the types of contracts and their conclusion peculiarities are pretty well regulated in Lithuania. However, agricultural activities are specific regarding their nature, as well as duration, complexity and natural conditions of the work should be taken into concern.

Legal employment relationships in Lithuania are analyzed by many scientists in various scientific publications but there is a lack of scientific articles that analyze peculiarities of legal employment relationships in agriculture.

The aim of the study is to determine specific characteristics of employment contracts in agriculture, after having analyzed the regulation of employment relationships in Lithuania. The methodology covers legislation, analysis of the content of Lithuanian case-law practice and scientific articles, comparative analysis and generalization.

Key words: employment contract, types of employment contracts

INTRODUCTION

Regulation of legal employment relationships is a crucial problem both scientifically and practically. Changing economic and social environment also influences the employment relationships. Therefore, taking into concern the realia nowadays, there is a need for such legal norms that would ensure flexible employment relationships. As Davulis [2008] states, the modernity of employment law should be related to its compliance with economic, social and other changes that influence the relationships of employment, employee and employer. Jarulaitis [2008] points out that the start of

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transformation of labour market and work nature at the end of 20th century essentially changed not only the work conditions, but also the means for work, work organization methods and principles, the content of work and other.

In order to enhance flexibility of employment relationships and creation of new jobs, decrease unemployment, as well as combine the regulation of employment relationship with the legal expectations of employees, in 2012–2013 the laws on the supplement and amendments of the Labour Code came into force.

The major subjects of legal employment relationships consist of employers, employees and staff. Employment relationships among these subjects are regulated by laws, subordinate acts and collective agreements.

Legal employment relationships include the obligations and rights of an employee and employers with regard to the implementation of individuals' constitutional law.

In Lithuania legal employment relationships are analyzed by T. Davulis, V. Petrylaitė, G. Bužinskas, J. Usonis, T. Bagdanskis, R. Macijauskienė, M. Jarulaitis et al. Legal labour relations in agriculture was analyzed by Vilkevičiūtė, Štareikė [2012]. However, there is a lack of scientific articles that would analyze the peculiarities of legal employment relationships in agriculture.

The purpose of this study is to determine specific characteristics of conclusion of employment contracts in agriculture, after having analyzed the regulation of employment relationships in Lithuania.

The methodology of the study includes the analysis of the content of legislation, analysis of content of Lithuanian case-law practice and scientific articles, comparative analysis, systematic analysis and generalization.

RESULTS

Agriculture in Lithuania has long traditions and still continued to play a crucial role in the economy of the country. By The statistical yearbook of Lithuania [2013, p. 605] “In 2012, agricultural production at current prices totaled LTL 9.4 billion. Compared to 2011, the volume of total agricultural production increased by 15 per cent”. So as we see the agriculture is one of the main economic activities of Lithuania.

If we will look down, at the table 1, we will saw, that more than half of total land area 6530 thousand hectares is agricultural land – 3946.1 thousand hectares.

Table 1. Total land area and land use in Lithuania, 2013 [thousand ha]

Indicators	Total land area	Of which			
		agricultural land	arable land	orchards and berry plantations	meadows and natural pastures
Total land area	6530.0	3462.2	2927.8	58.9	475.5
Agricultural land	3946.1	3358.7	2877.0	41.3	440.4
Land for forestry	1975.9	24.1	7.6	0.2	16.3
Land for other purposes	608.0	79.4	43.2	17.4	18.8

Source: The Statistical Yearbook of Lithuania 2013, p. 606.

Agricultural land included private land, land of natural and legal persons, land owned by members of horticultural societies, state land, land of households, land of agricultural companies, state-owned enterprises and other legal persons, land of natural persons leased from the state, land used by horticultural societies, land not granted for use or leased.

This land cultivates farmer farms, agricultural companies and land householders. In 2012 registered farmer farms in Lithuania was – 113.8 thousand, agricultural enterprises and companies – 796 thousand, households – 85.5 thousand [Agricultural and food... 2012, p. 31].

The agricultural sector in Lithuania provided a large number of jobs. According to the Statistical yearbook of Lithuania [2013, p. 144] “In 2012, the number of employed persons in the country totaled 1275.7 thousand, that of the unemployed – 196.8 thousand, economically inactive persons aged 15 and older – 1078.2 thousand. Over the year, the labour force decreased by 9.1 thousand persons. In 2012, there were 1275.7 thousand persons employed in the country, which is by 22.1 thousand more than in 2011. Over the year, the largest growth in the number of employed persons was observed in industry (7.7 thousand) and agriculture, forestry and fishing (5.8 thousand)” .

Table 2. Employed persons by economic activity in 2010–2012 years [thousand]

Economic activity	2010	2011	2012
Total	1247.7	1253.6	1275.7
Agriculture, forestry and fishing	110.2	106.4	112.2
Mining and quarrying	3.1	2.7	2.4
Manufacturing	191.8	194.9	200.3
Electricity, gas, steam and air conditioning supply	14.2	13.1	12.8
Water supply, sewerage, waste management and remediation activities	10.3	12.0	15.0
Construction	86.9	85.1	89.5

Source: The statistical yearbook of Lithuania 2013, p.149.

Individual employment relationships occur when an employee retains the right to choose the job that is determined by the Constitution of the Republic of Lithuania (article 48). Employment relationships are bilateral and the subjects involved are individual: an employee, on the one hand, and an employer on the other.

Within 2012–2013, the amendments of individual articles in the Labour Code of Lithuanian rejected service contracts (supply of services can be performed as an individual activity or an employment contract can be signed (upon the agreement of the parties). Furthermore, the introduction of new provisions ensured that a person can be hired according to a fixed-term employment contract if the duties are included into the competitive position list until the competition, but the contract shall not exceed a one-year period. It was determined that when a business or part of it is taken over, employment relationships remain under the same conditions, along with supplemented

provisions on the information of staff in this particular case. The opportunity to draw fixed-term contracts for new jobs has been extended until 31 July 2015, setting appropriate safeguards to prevent the abuse of such contracts [Social Report of 2012–2013. 2013, p. 14].

According to Article 117 of the Labour Code of the Republic of Lithuania, specific characteristics of employment contracts with employees in farms and other agricultural entities are set out by collective agreements and regulatory legal acts of such agreements by the operation of the Labour Code and other laws.

Employment contracts with the employees in agriculture are in line with the requirements set out in article 93–96, article 98–100 of the Labour Code of the Republic of Lithuania. According to Article 93 of the Labour Code, an employment contract is an employment agreement with an employee, where the employee undertakes to work in a particular profession, specialty, qualification or to perform certain duties in obedience to the rules of procedure in the workplace and the employer undertakes to provide the employee with a job, pay employee wages and ensure working conditions upon the established labour laws and other normative legal acts of the collective agreement and the agreement of the parties. “The essential characteristics of an employment contract determined in article 93 of the Labour Code of the Republic of Lithuania by the Supreme Administrative Court of Lithuania are as follows:

1) work must to be performed upon the agreement of an employer and a natural person;

2) the person shall perform the work of certain profession, specialty, qualification or hold a certain position [...], the employee shall perform a certain work function defined by typical characteristics. [...];

3) the person shall obey the rules in the workplace [...], the person shall not be fully independent when performing the task, he/she shall be managed by the employer. This characteristic may occur differently, i.e. the employee can work following instructions on work time, work organization and work discipline, type of performance, technology, and etc.;

4) the person shall be paid” [The Supreme Administrative Court of Lithuania. 2010].

When analyzing the concept of the employment contract, it is important to note that after having signed the contract both the employer and employee acquire the corresponding rights and obligations. In accordance with the principle of legitimate expectations, since having signed the contract the employee has reasonable expectations to receive the agreed work and wages, as well as safe and healthy working conditions will be ensured. Although the Law specifies that the contract is the agreement between an employer and an employee, however in practice, this agreement is governed by legislation in very detail.

“Thus, according to Articles 93 and 94 of the Labour Code of the Republic of Lithuania, the content of the employment contract shall be the agreement of contract conditions, i.e. an employee and an employer agree upon terms of the contract defining the rights and duties” [The Supreme Court of Lithuania... 2006].

The Labour Code of the Republic of Lithuania consolidates that in every employment contract, the parties must agree upon the essential terms of the contract:

the employee's workplace (company, institution, organization, business unit, etc.) and job functions, i.e. upon a particular profession, specialty, qualification, or certain duties. The employment contract shall have the essential characteristics which distinguish it from other types of civil contracts. In 2013, the Law on providing agricultural and forestry services with service vouchers came into force in Lithuania. Before this law came into effect, an employment contract should have been drawn and the requirements subject to the Labour Code of the Republic of Lithuania should have been satisfied when hiring staff for short-term or one-off work in agriculture and forestry. Presently, the Law on providing agricultural and forestry services with service vouchers [2012] has come into force which determines that temporary or one-off services which do not require any special skills, qualifications, licenses, certificates, or training courses can be provided by the service voucher without an employment contract. It should be noted that the law defines the contracts upon recoverable agricultural and forestry services, which are temporary or one-off contracts. Thus, in this case, the service contract is concluded, where one party is the provider of the service and the other party is the recipient of the service. As can be seen, civil relationships rather than legal labour relationships between the parties are formed. The provider and the recipient of services are the equal parties of the service contract, while the conclusion of the employment contract between the employer and the employee establishes hierarchical labour relationships.

Hence, having concluded the employment contract, the employee working for the farmer's farm or agricultural holding must perform a certain continuous function which is inseparable from the received results. Another feature of the employment contract is that, when performing work functions, the employee must follow the procedure of work (e.g., defined by the corresponding agricultural holding) and obey the instructions set by the employer, i.e. the employer and the employee establish hierarchical relationships [Bagdanskis 2011, p. 1108]. Other necessary conditions upon which the parties agree when signing the employment contract (duration of the contract, nature of seasonal work, etc.) can be determined for individual employment contracts in the labour laws and collective agreements. In every employment contract the parties are required to agree on the terms of payment (wages system, amount of salary, payment procedure, etc.). The minimum wages are determined by the Government of the Republic of Lithuania and the employer has no right to pay an employee less than the minimum monthly salary.

When signing employment contracts in agriculture with the managing staff, the provisions established by article 101 (Competition), section 1 and 3, article 102 (Selected Duties), article 103 (Qualifying Exams) of the Labour Code of the Republic of Lithuania are applied. For instance, in article 21, section 1, 5 and 6 of the Law on Agricultural Holdings of the Republic of Lithuania [2001] it is determined that the meeting of company members has the right to elect and dismiss the company's Chief Executive (Chairperson) and identify the salary for the company's Chairman of the Board, the Head of the Administration. Article 16, section 1, paragraph 3 of the Law of Co-operative Holdings (Co-operatives) of the Republic of Lithuania [1993] provides that the meeting of cooperative company's members shall elect and call off the Board members

and the Chairman or when the Board is not set up, it shall elect and call off the Head of Administration, shall approve the labour regulations upon the Board, the Head of Administration and inspection commission (inspector) (section 1, paragraph 8) and shall approve the remuneration procedure for the members of the Board and its Chairman, in case when the Board has not been composed – the Head of Administration, as well as the inspection commission (inspector) (section 1, paragraph 9).

When hiring the specialists for the job in agriculture, the provisions established in article 101 (Competition), section 1 and 3 and article 103 (Qualifying Exams) of the Labour Code of the Republic of Lithuania may be applicable.

The list of documents that may be required by an employer upon hiring an employee is provided in article 104 of the Labour Code.

Employment contracts with employees in agriculture must be drawn in writing in accordance with a model form. The model form of employment contract was approved by Government Resolution no 115 [Government Resolution of the Republic of Lithuania. 2003] of 28 January 2003. A written employment contract is drawn in duplicate. It is signed by the employer or his/ her representative and the employee. One of the signed copies is given to the employee; the other is retained by the employer. The employment contract is registered on the same day in the register of employment contracts. This register is optional, provided that the employer is a natural person, hiring three employees or less [Labour Code of the Republic of Lithuania. 2002, article 99].

The employer provides the employee with an identity card (work permit) along with the second copy of the employment contract not later than before the beginning of work. The rules and regulations on issuing the employee's identity card and the register of employment contracts were adopted by Government Resolution no 503 of 24 April 2003 on the rules for the registration of employment contracts, the issuing, carrying and submission of the employee's identity card to the monitoring bodies for approval. Companies working in agriculture and employing workers under employment contracts must comply with these legislative requirements.

Lithuanian Labour Code, article 108, distinguishes the following types of employment contracts: 1) indefinite duration; 2) fixed term, short term, seasonal; 3) secondary position; 4) teleworking; 5) other.

Given the specificity of agricultural activities, the most common types of employment contracts are those of indefinite duration, fixed term, short term, and seasonal. Contractual procedures and conditions for these employment contracts in agriculture are regulated not only by the Labour Code of the Republic of Lithuania (article 17), but also by Government Resolution no. 154 on Seasonal Employment (with subsequent amendments), adopted on 7 March 1994, and Government Resolution no. 1043 on Approval of Individual Contracts, adopted on 19 August 2003. In order to increase the flexibility of employment relationships in Lithuania and encourage new job creation, the possibility to conclude fixed-term employment contracts in newly established jobs has been extended to 31 July 2015, including specific rules (“safeguards”) to prevent the abuse of such contracts. This ensures the implementation of the EU Council recommendation of 12 July 2011 to increase labour market flexibility and provide opportunities for the better use of fixed-term contracts [Social Report of 2012–2013, 2013 b, p.14].

Since the Law on Employment through Temporary Employment Agencies entered into force on 1 December 2011, both farmers and agricultural businesses have had an opportunity to hire workers under this law, because article 2 defines the user undertaking as a natural, legal person or other organizational structure that has temporary employees working for their benefit, under their supervision and management. Hence, the concept of user undertaking includes both agricultural holdings and farmers. Temporary employment contracts (their concept, procedures of contract conclusion) are examined in detail in a scientific publication by Bagdanskis and Macijauskienė [2012]. They draw a conclusion that with this legislation on temporary employment solves the crucial problems of labour market liberalization. For example, the Law on Employment through Temporary Employment Agencies provides that temporary contracts can be fixed or indefinite [Bagdanskis and Macijauskienė 2012]. This also suggests flexibility in employment relationships and agriculture.

According to the State Labour Inspectorate, over the first half of 2012, 17 temporary employment agencies reported hiring 947 temporary employees, and through the second half of 2012, 18 temporary employment agencies informed about hiring 2475 temporary employees. However, even though the number of temporary workers in Lithuania is growing, it makes 0.16 percent of all employees in Lithuania working under employment contracts, while in Europe the number of temporary workers at an average makes 1.6 percent of total employment [Social Report of 2012–2013. 2013 c, p.15]. Yet, given the specificity of work in agriculture (the area, the specific nature of work, the lack of temporary employment agencies in rural areas), it is likely that the practice of temporary employment contracts in agricultural holdings and farms is used on a limited basis.

Article 16 of the Labour Code of the Republic of Lithuania provides an employer's conception, according to which, any natural person can be an employer. An employer may also be each individual. Employer's legal personality as a natural person is regulated by the Civil Code of the Republic of Lithuania. In agriculture, an employer is usually an agricultural holding, agricultural cooperative holdings (legal persons) and farmers.

According to the Law on the Farmer's Farm [1999], a farmer is a natural person who, alone or with partners, engages in agricultural activities and forestry and his/ her farm is registered in the Farmer's Farm Register. Farmer's farm is not considered a legal person [The Law on the Farmer's Farm. 1999, article 3]. Thus, farmers hiring workers and paying them wages are considered to be employers. If a farmer or a company engaged in agricultural activities does not officially register legal employment relationships properly, i.e. under the characteristics of employment contract set out in article 93 of the Labour Code, when working without a contract or failing to report on the hired persons to the territorial division of the State Social Insurance Fund Board, it is considered illegal employment. According to the State Labour Inspectorate data [2013] on the elucidation of illegally employed persons in different sectors of economic activity, it was established that most of the illegal employment cases in 2012 were found in the following sectors of economic activity: construction – 35.85%, other service activities – 12.46%, wholesale/retail trade – 10.53%, agriculture – 7.84%. The riskiest sectors of economy activity remain the same: construction, wholesale and retail trade, agriculture [State Labour Inspectorate. 2012 a, p. 2].

It should be noted that according to article 41⁽³⁾ of the Lithuanian Administrative Law Infringement Code, illegal employment incurs a fine on employers or their authorised persons for each illegally employed person from LTL 3,000 to LTL 10,000. The same actions, committed by a person who has already been convicted for the infringement laid out in the first part of Article 41⁽³⁾, are punishable by a fine for employers or their authorised persons for each illegally employed person from LTL 10,000 to LTL 20,000 [Administrative Law Infringement Code of the Republic of Lithuania. 1985, article 41⁽³⁾]. In 2012, according to the protocols of administrative law violations laid out by the State Labour Inspectorate officials, Article 41⁽³⁾ of the Lithuanian Administrative Law Infringement Code, Lithuanian courts examined 369 (91.3%) cases of administrative law violations. In 188 cases (50.9%), for 275 illegally employed persons, employers were fined from LTL 3,000 and LTL 10,000 – an average of LTL 3,364 for each illegally employed person – a sanction provided in article 41(3), Section 1 of the Lithuanian Administrative Law Infringement Code. In 2012, in 145 cases of administrative law violations (39.3%) for 281 persons a smaller sanction was granted than that provided in article 41(3) of the Lithuanian Administrative Law Infringement Code – an average of LTL 986.1 for each person who had worked illegally. 36 cases (9.8 percent) for 74 individuals were terminated [the State Labour Inspectorate. 2012 b, p. 4].

Those employing workers in agriculture need to know about the organization of voluntary help work. The State Labour Inspectorate provides information in which voluntary work is described as voluntary help. Volunteers must neither be paid a salary agreed in advance, nor given any material goods, with some exceptions for food and accommodation. Any other contractual remuneration for the work performed is considered to be a factor of employment relationship [The State Labour Inspectorate. 2012].

According to article 15 of the Labour Code of the Republic of Lithuania, an employee is considered to be a natural person who, in accordance with article 13 of the Labour Code, has a working legal personality – legal capacity, employed for wages.

An employer hiring an employee ensures that the worker is allowed to work only after signing an employment contract. Employer is responsible for a proper conclusion of employment contract [The Labour Code. 2002, article 99].

Farmers or agricultural holdings that want to hire underage persons must comply with the Law on Safety and Health of Employees and subordinate legislation requirements.

CONCLUSIONS

1. Employment relationships in agriculture are governed by general legislation – the Labour Code of the Republic of Lithuania, Laws, Government Resolutions and other subordinate legislation.

2. Given the specificity of agricultural activities, indefinite, fixed-term, short-term, and seasonal employment contracts are the most common.

3. In 2013, the Law on providing agricultural and forestry services with service vouchers came into force in Lithuania. This law is one of the preventive measure for reduction of illegal work in the agriculture.

4. If a farmer or a company that engages in agricultural activities does not officially register legal employment relationships properly, the work is considered to be illegal. Employers hiring workers in agriculture need to know about the organization of voluntary help work. It should be noted that there is no law on governing the voluntary unpaid work.

5. Having carried out the analysis of the procedure for concluding employment contracts in agriculture, it can be noted that the current legislation to a great extent formalizes the procedure and conditions for concluding employment contracts in agriculture, and the legislator, the Government, should adopt appropriate legislation that would allow to simplify the official registration of legal employment relationships.

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PRAKTYKA ZAWIERANIA UMÓW O PRACĘ W ROLNICTWIE NA PRZYKŁADZIE USTAWODAWSTWA LITEWSKIEGO

Streszczenie. Przy podpisywaniu umowy o pracę bardzo ważnym zagadnieniem jest określenie stosunków między pracodawcą a pracownikiem. Definicja praw i obowiązków obu stron umowy jest kluczowym problemem zarówno z punktu widzenia naukowego, jak i praktycznego. Zmieniające się otoczenie gospodarcze i społeczne wpływa na stosunki pracy także w rolnictwie. Gospodarstwa rolne, gospodarstwa spółdzielcze oraz rolnicy, którzy zatrudniają pracowników do pracy, są zobowiązani do przestrzegania obowiązujących przepisów. Na Litwie warunki zawarcia umowy, podobnie jak i inne kwestie związane z tym tematem (forma umowy, rodzaje umów, możliwości ich zawarcia i rozwiązania) są uregulowane ustawowo. Stosunki prawa pracy na Litwie są analizowane przez wielu naukowców, natomiast brakuje artykułów naukowych, których tematem byłyby szczególne przypadki stosunków prawa pracy w rolnictwie. Celem artykułu jest określenie szczegółowych cech umów o pracę w rolnictwie na podstawie regulacji stosunków pracy na Litwie. Metodologia obejmuje analizę treści ustaw litewskich, sytuacji praktycznych i publikacji naukowych, analizę porównawczą oraz uogólnienie. Autorzy artykułu, z uwagi na zróżnicowanie działalności rolniczej, proponują uwzględnienie charakteru prac, czasu ich trwania, stopnia złożoności oraz warunków pracy.

Słowa kluczowe: umowa o pracę, rodzaje umów o pracę, ustawodawstwo litewskie

Accepted for print – Zaakceptowano do druku: 13.05.2014