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**CONDITIONS OF BENEFITING FROM THE HUMAN
POTENTIAL OF PERSONS WITH DISABILITIES
(ANALYSIS OF LEGAL TOOLS OF THE EMPLOYMENT
SUPPORT SYSTEM)**

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The number of disabled persons in Poland currently amounts to 5 mln and it has one of the lowest indicators of employment on the European scale, which does not exceed 23%. From the 483 thousand professionally active persons, 33% work outside of the sheltered labor market (GUS, 2011). In reference to the above, the author has chosen as a subject of research the efficient and attractive tools to support the employment of persons with disabilities from the perspective of enterprises on the open labor market.

Keywords: management, employment support systems, disabilities, labor market

**1. THE TOOLS OF STRATEGIES OF BENEFITING
FROM THE HUMAN CAPITAL OF THE PEOPLE
WITH DISABILITIES ON THE OPEN MARKET**

Reviewing and analyzing the instruments regulating the issues of disabled persons and bearing in mind the problematics of the undertaken subject, there is a need to formerly depict the core of functioning of the “open” and the “sheltered labor market.” Although the fact is that the European Commission is attempting to regulate the matter of wording especially in the scope of rendering financial aid, at present in the EU law system there is no cohesive definition of either the sheltered or the open labor market. Although in the documents of the EU Commission (Article 2(21) of Commission Regulation (EC) No 800/2008), the term “sheltered employment” is used, and it is understood as enterprises in which at least 50% of

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employees are persons with disabilities, this very term is not a common definition of sheltered employment in the lawmaking of the Union (Union Law, 2014).

Currently, in Poland the sheltered labor market is created by two common groups of enterprises: sheltered workshops and occupational workshops (Vocational and Social Rehabilitation and Employment of Persons with Disabilities, 1997). They function like specific organizational and legal constructions within the framework of the Polish system of vocational rehabilitation of people with disabilities. The goal of the first group of enterprises is to create proper working conditions for persons with disabilities as well as to prepare them (in accordance with their abilities) to enter the open labor market (Czyrka, 2013). It should be mentioned that sheltered enterprises are business entities which generate profit and also, since they employ persons with disabilities, benefit from a wide range of forms of financial support and from support other than funds. However, occupational workshops are created mainly for the people with a considerable degree of disability and who, via either vocational or social rehabilitation, are prepared to lead an independent and active life in the social milieu. These enterprises are part of the social economy which means that they do not operate in order to make a profit, and any profits made are dedicated to actions connected with the rehabilitation of their disabled employees.

As in the case of the “sheltered labor market,” at the Union level and also in Polish legislation, there is no proper unanimous understanding of the “open labor market.” However, stating that the sheltered labor market in Poland is created by the sheltered workshops and occupational workshops, analogously, one needs to assume that employers not possessing the above-mentioned status operate on the open labor market and are its creators.

1.1. Sanctions for not employing a person with disabilities

Referring to the statement above, the first tool for enhancing the use of the human capital of disabled persons, from the group of tools utilized on the marketplace, are sanctions for not employing persons with disabilities.

The sanction mechanism is realized via the obligatory system of financial penalties for not achieving a proper level of employment of people with disabilities. As a result, entrepreneurs employing at least 25 workers full-time and not attaining a 6% rate of employment of disabled persons are obliged to pay monthly to the State Fund for the Rehabilitation of People with Disabilities (PFRON) (The Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, 1997; 2008). An identical indicator has been valid since 2008 and refers to state and local government institutions as well as cultural organizations. For institutions such as state and private universities, higher vocational schools, state and private schools, associations educating teachers, residential care facilities and daycares,

a lower limit was defined and attaining even a 2% rate of employment of persons with disabilities results in the lack of the obligation to pay to PFRON.

Another group of tools to motivate employers to utilize the potential of persons with disabilities are financial incentives awarded in return for certain behavior. The leading tool is currently a system of subsidies to salaries paid to people with disabilities. The wage subsidies have replaced the system of a partial or total tax exemption from the goods and services tax for sheltered workshops (since January 1, 2004, Article 14 of the Act of 8 January 1993 on the tax on goods and services and on excise duty, which outlines the rules of tax exemptions for sheltered workshops, was repealed).

However, subsidies are not granted for workers assigned a mild or moderate level of disability if they have a set right to a pension and concerns exclusively the salaries of people on a (temporary or permanent) employment contract (excluding civil law contracts) and in the part which is not financed by other public means.

The conditions to apply for wage subsidies (in practice a partial return of expenses on the salary of a person with a disability) are as follows:

- prior payment of remuneration to an employee's bank or credit union account or by money order to a provided address,
- timely payment of total employment costs (remuneration and others, e.g. social security/ZUS) or with a delay not exceeding 14 days.

A further condition to be granted subsidies is to have an 'effect of increasing employment' happen. It means in practice that employing such a worker must increase employment of people with disabilities in general (in relation to the average employment from the previous 12 months) unless a person is being employed for a vacant place which occurred independently of the employer (The Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, 1997).

The awarded sum, basically since 2004, depends on the scope of the work of a disabled employee and:

- the extent of disability of an employee,
- the particularity of the ailments of an employee,
- the kind of employer at whose place a disabled employee is to be given a job.

The subsidy is paid in the form of a monthly refund and is available for every single disabled worker in:

- enterprises employing less than 25 full-time workers,
- enterprises employing at least 25 full-time workers in which at least 6% of the workforce consists of persons with disabilities.

1.2. Refund of cost expenditures connected with the workplace

Another vital tool of support of employment of persons with disabilities on the open labor market, especially in the prism of the very persons, is the possibility to obtain a refund for expenditures connected with equipping the workplace (The Act

on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, 2011). The proper ergonomics of the workplace, adapted to the conditions of performing work and utilizing devices and equipment in the framework of the activities previewed by the very position, has a crucial impact on the effectiveness of work. This category is especially true in the context of work of persons with disabilities. Such a refund enables the financing of the creation of a new work position for a person with disabilities or reorganizing the current one in a company in which he or she has been employed. The condition to be met to obtain a refund is to employ a disabled person registered in the labor office as unemployed or looking for a job and guaranteeing continuation of employment for this person for the period of at least 36 months (Czyrka, Nedyalkowa, 2014). The refund encompasses recording the costs borne on the purchase or creation of a work position at which a disabled person will perform, including the amount of money which is not pertaining for setting off against tax on goods and services and the excise duty.

Refund of the training costs

A truly helpful tool of support for the entrepreneurs of the open labor market employing disabled persons, may turn out to be the refund of the training costs of employees. As it is commonly known, professional development, including the training of workers with disabilities, is the primary means to raise the efficiency of the labor of these persons since they usually have spent a long time outside the labor market. Through updating (renewing) their knowledge and skills and enriching these two areas, the process of augmenting workers' qualifications and competence takes place, which benefits either the worker or the employer. The indicated refund may be dedicated for two types of groups of training:

- specialized training – about conveying mainly knowledge and directly connected with the current or future work position of an employee in an enterprise and about transferring skills whose use in some other enterprise or area of employment is possible only in a limited extent or implausible completely,
- general training – about conveying knowledge which is not directly or mainly connected with the current or future job position of a person in an enterprise but which teaches skills that can be used in some other company or area of employment.

The legislator within the framework of the reimbursement includes the following costs of training:

- fees of the persons running the training,
- fees of an interpreter of a sign language or a lecturer for sight impaired persons or a caretaker of an employed agility-impaired person or a person with a considerable degree of disability,
- costs of the trip of the people conducting the training and the participants of the training,
- costs of the trip of the guide or caretaker of the employed person with a considerable degree of disability,

- costs of the accommodation and food of the persons conducting the training and its participants,
- consulting costs connected with the training itself,
- service costs of administration and office representing current expenditures connected with conducting the training,
- costs of renting the premises connected with conducting the training,
- costs of amortization of tools and equipment to be used for training purposes (excluding tools and equipment purchased with the support of public means in the period of 7 years before the training),
- costs of the training materials.

The amount of the refund of costs is dependent on the size of the enterprise and the type of the training. For general training, a small and medium company will get back 80% of the costs it bore while a large company will get 70%. However, in case of specialist training, the level of the refund goes as follows: 55% of the costs borne by small companies, 45% for medium and 35% for large ones.

1.3. The return of additional costs of employment of workers with disabilities

Connecting all the tools above from the category of incentives via fulfilling un-predicted needs, is the implementation of a tool named in the following way: so called return of the additional costs of employment of the disabled persons. The additional costs of employment of persons with disabilities are ones that an employer would not bear when employing exclusively able-bodied workers. The reimbursement of additional costs of employing disabled persons covers:

- the adaptation of the premises to disabled peoples' needs, especially the costs borne due to the adaptation of the created or already existing positions for these persons, convenient for the needs stemming from their disability (the reimbursement of costs includes: the purchase of materials and performance of construction works in the light of the construction regulations referring to the adaptation of facilities aptly to the needs of persons with disabilities; the purchase of tangible assets such as the equipment of the rooms of the facility in accordance with the adaptation of the work position),
- the adaptation or purchase of devices which will facilitate the work performance of a disabled person or his or her functioning in the facility,
- the purchase of programming and devices for the use of the disabled workers as well as technologies reinforcing their work or adapted to the needs arising from their disabilities (the reimbursement of costs includes the purchase and authorization of the programming or the purchase of devices and technologies supporting them or adapted to the needs resulting from the disability of employees. Both the programming and the devices should be designed and produced in ac-

cordance with the specific needs of disabled users in order to enable them to perform or to facilitate their work).

1.4. Employment of the workers helping a disabled employee

The last but not least of the tools from the category of incentives available on the labor market and intending to reinforce the potential of workers with disabilities in work positions is to employ workers who are to aid a disabled person. The employer in this case may be reimbursed for the salary of the able-bodied employee or the disabled one, helping disabled workers to communicate with their environment or to perform some activities at their job position. The reimbursement amount is a multiple of the sum of the lowest salary and a quotient of the number of hours monthly devoted to aid a disabled person and the monthly number of hours of work of a disabled person. One, however, has to point out that the number of hours devoted exclusively to the aid of a disabled worker cannot exceed the number of hours corresponding to 20% of the number of working hours of a worker in a month.

The third group of tools originating from the recommendations (persuasions) is launching the benefits of the human capital of persons with disabilities via the implementation of flexibility of employment of those workers. The employers providing a job or intending to employ disabled persons are to consider making their employment rules less rigid through eschewing standard employment rules (for the undefined time and for full-time). Flexibility concerns: the form of employment, the working hours, the place of work or the salary. The matters which are promoted among the employers who are to provide work and employ persons with disabilities are especially:

- telecommuting,
- task based working time,
- job-sharing – two or more workers not employed full-time share the duties assigned to one full-time post among each other,
- ‘on call job’ – a worker renders work depending on the employer's needs, in such periods when the employer will be able to preview it earlier.

1.5. Analysis of legal tools of the system of support of the employed persons with disabilities

In the research project “The specificity of management of the human capital of the persons with disabilities in Poland – the perspective of enterprises of the open labor market,” conducted in 2014, a survey was made of a representative sample of 112 companies. Subsidies to the salaries of disabled workers were assessed at the highest level among the employers who provide jobs (2.8 points) as well as the ones who do not provide them (2.7 points) for the disabled people. It is a tool

which plays a pivotal role in giving work positions to persons with disabilities, especially from the perspective of balancing the sum of financing salaries on the sheltered labor market. In many cases the indispensable condition to provide employment to a disabled person turns out to be the necessity to adapt the workplace. In this context, equally highly assessed was the return of the costs of adjustment and equipment of the workplace (employers providing jobs to disabled persons DP – 2.1 points, and those not doing so – 2.6 points). When appraising the possibility to get a refund of the costs of adaptation and equipping the workplace of an employer they mentioned a few problems which limit the attractiveness of this tool. Their resistance arises from the demand that the employment of a worker whose workplace is adapted with the use of public means lasts for a period of 36 months. Moreover, the hardship is placed in the demand stemming from regulations so that a person for whom the workplace is being prepared was directed there by the Labor Office. One needs to remark that the demand of receiving the subsidy only for the equipment of the workplace in which a new worker is going to be taken on, is in contradiction to the common practice of employment of a new worker for a trial period. Their benefiting from these tools defines (just like in the cases of other instances) in the first place applying and then proceeding to obtain a refund of the costs borne by the employer; which in this case is connected with intensification of the financial means. In order to solve the problem, one needs to recommend the implementation of the form of paying out advances in case of bearing by an entrepreneur the costs connected with adjusting the architecture and the workplace to the needs of disabled persons. In dealing with shortages in the knowledge and skills of disabled workers who generally have worse competence than able-bodied people, the cure may be training sets appropriate for the development of a worker. In relation to the costs of these ventures, it is up to the disposition of employers whether they will take the opportunity to use the tool – in the scope of receiving a partial refund of the costs borne due to the conducted training. The possibility to get a refund of the costs of training a disabled worker was appraised equally high as the rest of the tools (employers providing jobs to DP – 2.2 points, and ones who do not – 2.6 points). However, in the perspective of using this tool, the first problem is placed in the lack of knowledge of the theme of its functioning, next, the procedures of applying for compensation for trainings run in this way constitute an additional burden. Taking into account the above, one waits for a greater accessibility to the data on the possibilities and rules of benefiting from this tool of support. A good solution may be taking into account this matter in the proposed central platform of employment of disabled persons. On the other hand, the instruments which gave the least incentive to benefit from the potential of disabled persons on the open labor market were: the return of the costs of employment of a worker aiding a disabled employee at work and avoiding the fees to PFRON. For the companies who did not employ DP, the reimbursement of the costs of a worker who helps a disabled person at work was appraised at the level of 0.5 points and for the ones who do employ – 0.7 points.

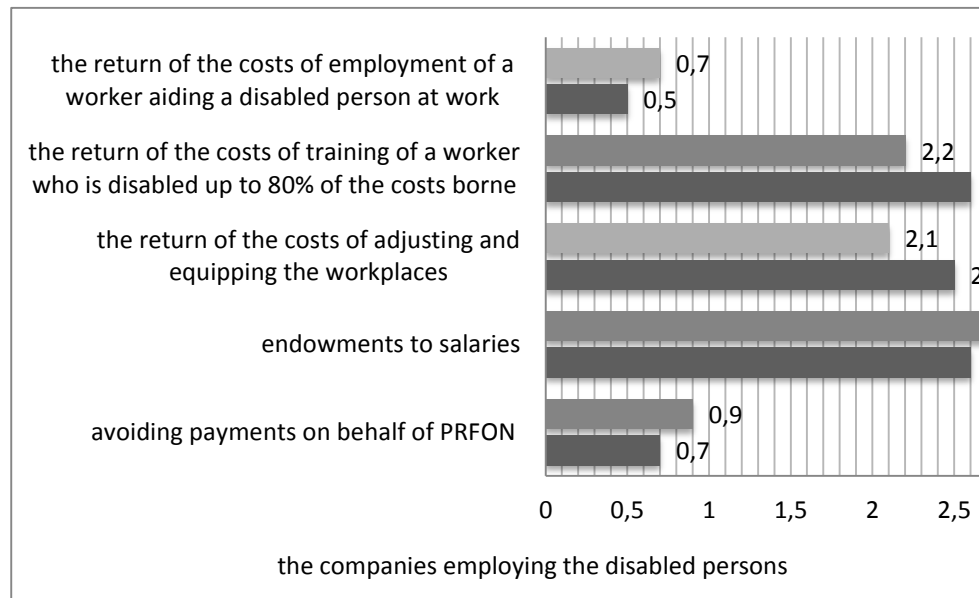


Fig. 1. The appraisal of the attractiveness of support of employment of DP
(The author's own work on the basis of the results of research)

Another tool for enhancing the use of the human capital of disabled persons, from the group of tools utilized on the marketplace, are sanctions for not employing persons with disabilities. The sanction mechanism is realized via the obligatory system of financial penalties for not achieving a proper level of employment of people with disabilities. As a result, entrepreneurs employing at least 25 workers full-time and not attaining a 6% rate of employment of disabled persons are obliged to pay monthly to the State Fund for the Rehabilitation of People with Disabilities (PFRON) (The Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, 1997; 2008). An identical indicator has been valid since 2008 and refers to state and local government institutions as well as cultural organizations. For institutions such as state and private universities, higher vocational schools, state and private schools, associations educating teachers, residential care facilities and daycares, a lower limit was defined and attaining even a 2% rate of employment of persons with disabilities results in the lack of the obligation to pay to PFRON. In accordance with the above, whether companies are obliged to make a payment to PFRON is determined by the achieved by them rate of employment of disabled persons which is indicated by the average monthly percentage share of the persons with disabilities in employment altogether, when calculated as full working time. Avoiding the fees paid to PFRON was assessed at the level of 0.7 points and 0.9 points (Figure 1).

The indicator requiring a 6% rate of employment of disabled persons was never researched or consulted publically (www.Gazeta.pl, 2012). The effect is that the barrier of attaining such a high indicator of employment of the disabled whose derivative is a high financial penalty, paradoxically does not encourage employers to provide work to persons with disabilities but conversely, encourages them to deliberately plan in the company's budget for expenditures on 'sanctions for disability,' what is not acceptable in state budgets. In this way, society month by month covers the costs of an improper, irresponsible system. In the best case scenario, the money for sanctions paid by the companies not employing persons with disabilities will go to the ones who do, but still, it does not encourage the rest of the employers to provide work to the disabled.

2. CONCLUSIONS

Summarizing, one needs to notice that apart from the fact that a wide array of incentives is available for employers of the open labor market, every single tool is highly elaborate and legally rigid and due to that fact is not so easily understood. Such a state of matters demands potential employers devote particular attention to the formal and legal issues which results in the need to spend additional time and more often a high-priced professional legal analysis on the matter. Additionally, one has to deal with the bureaucracy connected with filling out many documents and making contracts to implement the tool itself. Additionally, the mentioned bureaucracy is concurrently connected with taking many notes, making reports and expecting audits. That is why it is recommended to simplify procedures wherever it is possible and most importantly to forgo unnecessary formalities. The issue of complexity of procedures should be solved by enabling free consulting and aid in benefiting from the tools of support, including all the clearances in the traditional, on-line and call-in form if such a need occurs (within the framework of the proposal of activating a central platform of employment of disabled persons). As to the question of alternations to ensure the system's relative stability, a transition period should be introduced which would precede any new change implemented in the legal regulations.

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UWARUNKOWANIA WYKORZYSTYWANIA KAPITAŁU LUDZKIEGO OSÓB Z NIEPEŁNOSPRAWNOŚCIAMI (ANALIZA INSTRUMENTÓW SYSTEMOWYCH ZATRUDNIANIA)

Streszczenie

W Polsce spośród 5 mln osób niepełnosprawnych (gdzie blisko 2,2 mln stanowią osoby znajdujące się w wieku produkcyjnym), uczestniczących w życiu zawodowym jest jedynie 0,5 mln. Co więcej, różnica proporcji osób niepełnosprawnych pracujących na otwartym rynku pracy w stosunku do pracowników niepełnosprawnych pracujących w ZPCh zarejestrowanych w SODiR, w ostatnich latach wynosiła aż 30/70. Państwo polskie wykreowało od lat 90-tych szereg instrumentów w zakresie wsparcia zatrudniania osób z niepełnościami. W zamyśle twórców instrumenty te mają stanowić skuteczne zachęty szczególnie dla otwartego rynku pracy. Autorzy artykułu próbują odpowiedzieć na pytanie: dlaczego pomimo szerokiego wachlarza instrumentów wspierających zatrudnianie ON wciąż mamy do czynienia z niezwykle niskim wskaźnikiem wykorzystywania kapitału ludzkiego tych osób na otwartym rynku pracy.

Słowa kluczowe: kapitał ludzki, niepełnosprawność, rozwiązania systemowe w zatrudnianiu