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GUARANTEES FOR EMPLOYEES APPOINTED TO PERFORM BASIC MILITARY SERVICE, TERRITORIAL MILITARY SERVICE, AND THEIR SPOUSES

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Abstract. The 2022 Homeland Defense Act contains many legal regulations establishing legal solutions aimed at creating conditions for employees to serve their homeland in active service without fear of losing their jobs and, consequently, their livelihoods. The most important guarantees requiring closer analysis include, first and foremost, the protection of the permanence of employment of a soldier called up for basic service and his or her working spouse. The analysis will focus in particular on the subjective and objective scope of protection, as well as the legal measures implementing such protection. An important role should also be attributed to the provisions establishing unpaid leave for the duration of training as part of voluntary basic military service and the related protection against termination of employment during the period of such leave. The provisions providing for the inclusion of the period of active military service in the length of service and the right to re-employment after completion of service will also be analyzed.

Keywords: employment; protection of employment stability; consent; termination of employment; unpaid leave; length of service.

PRELIMINARY REMARKS

Due to the broad scope of the subject matter, this study focuses on issues related to labor law guarantees provided for soldiers called up for basic and territorial military service, in particular on the issue of special protection of the contractual employment relationship of a soldier called up for service and his or her spouse, unpaid leave, and the right to return to work after completing service. The subject of this study is the special protection of the employment relationship based on an employment contract. Therefore, the special protection of soldiers called up for basic military service or territorial military service and their spouses employed based on non-contractual employment relationships is outside the scope of this article.

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1. THE RIGHTS OF EMPLOYEES CALLED UP FOR NON-PROFESSIONAL MILITARY SERVICE

The legislator has linked certain types of non-professional military service to legal mechanisms in the field of labor law, to create guarantees for performing service, including fundamental service, without fear of negative consequences for the employee and their spouse in the sphere of employment relationships. It primarily concerns stabilizing the employment relationship of an employee called up for service and guaranteeing their return to work after completion of service.

In light of the Act of March 23, 2022, on the defense of the homeland.[1] The list of these guarantees includes, above all: a) protection of the continuity of employment of a soldier called up for basic service, b) protection of the continuity of employment of the spouse of a soldier called up for basic military service, c) unpaid leave for the duration of training as part of voluntary basic military service and for the duration of rotational territorial military service, d) counting the period of active military service towards the length of service, e) military service to the length of service, f) exemption from work at the request of an employee called up for active military service, g) right to re-employment after completion of service.

2. GUARANTEES OF PROTECTION OF THE PERMANENCE OF THE EMPLOYMENT RELATIONSHIP OF AN EMPLOYEE CALLED UP FOR BASIC MILITARY SERVICE OR TERRITORIAL MILITARY SERVICE

2.1. Concept, purpose of special employment protection for soldiers, and its subjective scope

The protection of the employment relationship of a person called up for basic military service or territorial military service, established in Article 303 of the 2022 Act on the Defense of the Homeland, should be classified as a special protection of the permanence of the employment relationship.[2] This concept most accurately reflects its special nature, resulting from the employee finding themselves in a unique (exceptional) situation that exposes them to termination of employment, during which standard legal measures of protection against dismissal are insufficient [Kisielewicz 2011, 110]. Special protection of the stability of the employment relationship is usually understood as a set of legal measures and guarantees in the form of prohibitions on

[1] Journal of Laws of 2025, item 825 as amended.

[2] Dral 2017, 704 and the literature and case law cited therein.

terminating, changing, or dissolving the employment relationship, or special restrictions on the employer's ability to perform these actions, such as the employer's obligation to obtain the consent of a specific entity to terminate, change, or dissolve the employment relationship [Gersdorf 2013, 235]. The application of a specific mechanism of special protection of the stability of the employment relationship to an employee depends on the occurrence of the grounds for protection during the term of the employment relationship. Special protection, therefore, applies only to categories of employees strictly defined by law. In the case of soldiers performing basic military service or territorial military service, the purpose of protection is therefore to maintain the employment relationship during the period of service and, consequently, to ensure social security after the end of service.

In general, special protection of the stability of the employment relationship fulfills the protective function of labor law. In this case, the axiology of protection derives from the need to protect important social values [Marciniak 2024, 101-102; Sobczyk 2013, 94]. The social situation of performing non-professional military service for the homeland and in the interest of society does not raise any doubts in labor law doctrine as to the axiological basis of protection [Niedbała 2010, 349].

Pursuant to Article 303 of the Act on the Defense of the Homeland, the employment relationship with a person called up for basic military service or territorial military service may only be terminated with the consent of the employee. The protection prerequisite is conscription for basic military service or territorial military service.

In light of the aforementioned provision, the termination of an employment relationship by an employer therefore requires the consent of the employee. The legal measure of special protection in the form of the requirement to obtain consent is of a decisive nature [Dral 2021, 129; Gołaś 2016, 31-32], as it prohibits the employer from exercising the right to terminate the employment relationship without obtaining the consent of the entity specified by law to perform actions resulting in the termination of the employment relationship.[3] The requirement to obtain consent does not therefore suspend the employer's right to perform these actions, but limits the employer's freedom to make decisions in these matters. The employer may perform these actions provided that they obtain the consent of the entity specified by law [Salwa 1997, 12].

The legal nature of consent is controversial in labor law doctrine [Matey 1975, 173ff]. Given the diverse nature of the entities authorized to give consent [Dral 2017, 746-48], it seems that the most universal solution is to assume that consent is a legal event specific to labor law, taking the

[3] This concept is also used in case law, see Supreme Court judgment of June 6, 201209, ref. no. III PK 72/09, Lex no. 602059.

form of a legal condition. The consent of the relevant entity, in this case the employee themselves, waives the special protection of the permanence of the employment relationship at the stage of decision-making by the employer [Piątkowski 2010, 144].

The mechanism of consent by the interested party to terminate the employment relationship, as applied by the legislator, can be described as "self-protection" of the permanence of the employment relationship. It should be noted that the solution adopted in the Homeland Defense Act has not yet been applied in Polish labor law [Szubert 1980, 126].

To sum up, in practice, we are dealing with relative protection, which can only be waived with the employee's consent to terminate the employment relationship. It means that it is solely up to the will of the employee called up for basic or territorial military service whether the employer will be able to terminate the employment relationship. The provision clearly states that the legislator has left it solely to the employee called up for service to assess whether, in a given situation, consenting to the termination of the employment relationship is in his or her interest. However, it should be noted that in certain situations, e.g., where there is a fundamental objective reason justifying the termination of the employment contract, failure to consent to the termination of the employment relationship may be assessed from the point of view of abuse of subjective rights (Article 8 of the Labor Code).

When defining the scope of protection, the legislator used the general concept of an employment relationship. It raises the question of what types of employment relationships are covered by the protection. Pursuant to Article 2 of the Labor Code, an employee, i.e., a person in an employment relationship, is a person employed based on an employment contract, appointment, nomination, election, or cooperative employment contract. The use of the general concept of an employment relationship, therefore, indicates that the legislator intends to cover persons performing military service who are in all types of employment relationships covered by this concept, i.e., those employed based on an employment contract, appointment, nomination, election, or cooperative employment contract. Contrary to this indication, however, the legislator focuses on the contractual employment relationship in the subsequent provisions of Article 303. According to the provisions of the Labor Code, a contractual employment relationship may be established based on a trial period contract, a fixed-term contract, or an indefinite-term contract. It follows from the analyzed provision that protection is only granted to employees employed based on an indefinite-term contract and a fixed-term contract concluded for a period longer than 12 months. In light of the above, the consent of an employee appointed to basic or territorial service is not required to terminate an employment relationship based on a trial period contract or a fixed-term contract shorter than 12 months. However, if the

employer intends to terminate a fixed-term employment contract concluded for a period longer than 12 months, the employer is obliged to obtain the consent of the employee appointed to service for such termination. As a rule, the permanence of employment relationships established based on fixed-term contracts is protected only during the term of these contracts, i.e., until the expiry of the term for which they were concluded. Therefore, the provision in question does not protect against the termination of a fixed-term employment contract for a period longer than 12 months upon the expiry of the term for which it was concluded. Pursuant to the provisions of Article 30(1)(4), the termination of such a contract takes place upon the expiry of the term for which it was concluded, without the need for the employer to take any legal action [Wagner 1980, 91]. The Supreme Court's case law confirms this position on the special protection of employment relationships of employees hired under fixed-term employment contracts.[4]

Pursuant to Article 22(1) of the Labor Code, the performance of work of a specific type for an employer and under their management, as well as at a place and time designated by the employer, constitutes employment based on an employment relationship, regardless of the name of the contract concluded by the parties. It follows that in some instances, special protection will cover persons with whom a civil law contract was concluded initially, e.g., a contract of mandate or a contract for specific work. It should be added that in the light of the provision in question, protection is independent of the length of time for which the employee is employed and whether he or she remains in one or more employment relationships.

2.2. Scope of protection

The scope of protection specified in Article 303(1) of the Act covers protection against termination of *an* "employment relationship." In light of the views expressed in the literature on the protection of the employment relationship of councilors, deputies, and senators, in the case of provisions establishing protection against the "termination" of a generally defined employment relationship, it should be assumed that the scope of protection includes protection against dismissal and protection against the effects of dismissal in the form of termination of the employment relationship, if the termination would take place after the grounds for protection arose, protection against termination with notice, and protection against termination without notice [Marciniak 2024, 104; Niedbała 2010, 356-57].

In light of Article 303(1), it should therefore be assumed that in the case of protection of a contractual employment relationship, the scope

[4] See resolution of October 30, 1990, ref. no. III PZP 16/90.

of protection covers protection against unilateral legal actions taken by the employer, such as termination, termination before the grounds for protection arise, and termination without notice for reasons not attributable to the employee, as specified in Article 53 of the Labor Code.[5]

Exceptional protection against definitive termination of employment is closely linked to protection against termination of working conditions and pay [Florek 1976, 133]. A guarantee of maintaining the employment relationship is only possible if the guarantees cover both protection against termination of the employment relationship and against unilateral changes to its terms. The purpose of this interpretation is to prevent circumvention of protection against definitive termination. The discussed Article 303(1) does not explicitly establish specific protection against termination of employment conditions and remuneration. However, in light of the above comments and Article 42(1) of the Labor Code, it should be assumed that the scope of protection provided for in Article 303(1) of the Act also includes protection against termination of employment conditions and remuneration. Pursuant to Article 42(1) of the Labor Code, the provisions on termination of an employment contract apply accordingly to the termination of terms and conditions of employment.

The protection in question is not absolute, as it is excluded in the cases specified in the Act.

First of all, apart from the above-mentioned cases of employment under fixed-term contracts, the employee's consent is not required for termination of employment without notice due to the employee's fault. These situations are specified in Article 52(1) of the Labor Code.[6]

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[5] Article 53 of the Labor Code: "§ 2. An employer may terminate an employment contract without notice: 1) if the employee's inability to work due to illness lasts: a) longer than 3 months – if the employee has been employed by the employer for less than 6 months, b) longer than the total period of receiving remuneration and allowance for this reason and receiving rehabilitation benefits for the first 3 months – if the employee has been employed by the employer for at least 6 months or if the inability to work was caused by an accident at work or an occupational disease; 2) in the event of a justified absence from work for reasons other than those listed in point 1, lasting longer than 1 month. § 2. Termination of an employment contract without notice may not take place in the event of an employee's absence from work due to childcare – during the period of receiving benefits for this reason, and in the event of an employee's isolation due to an infectious disease – during the period of receiving remuneration and benefits for this reason."

[6] Art. 52(1) of the Labor Code: "The employer may terminate the employment contract without notice due to the employee's fault in the event of: 1) a serious breach of the employee's basic duties; 2) the employee committing a crime during the term of the employment contract which makes it impossible to continue employing him in his position, if the crime is obvious or has been established by a final judgment; 3) the employee's culpable loss of the qualifications necessary to perform the work in his position."

The employee's consent is also waived in the event of the employer's bankruptcy or liquidation. In light of the Supreme Court's case law, the liquidation of a branch that is not an independent employer does not constitute the liquidation of the employer and therefore does not remove the protection.[7] Similarly, it should be assumed that in the event of the liquidation of an employer, in connection with which all or part of the workplace run by the employer is transferred to another employer who continues the activity or undertakes a similar activity. As emphasized by the Supreme Court in its judgment of April 21, 2025,[8] in such a situation, employees continue to be protected against termination or dissolution of their employment contract under specific provisions. The liquidation of an employer must, in essence, involve the loss of its legal existence. In turn, in its decision of March 5, 2025,[9] the Supreme Court indicated that the liquidation of an employer, as a condition precluding the protection of employees against termination or dissolution of an employment contract, comes into play at the moment the liquidation is ordered, unless such a decision is invalid or apparent. In light of the Supreme Court's judgment of May 11, 2017,[10] the mere removal of a natural person from the business register cannot be equated with the liquidation of the employer. This decision has administrative and legal effects, and notification of the entrepreneur that they have ceased their business activity is sufficient grounds for its issuance. The decision to remove a person from the register is declaratory in nature. It does not constitute the abolition of the legal personality of the person making the notification. It is also possible that the person ceased to conduct business activity, losing the status of an entrepreneur, long before reporting this fact to the business register, or that they actually continue such activity, employing workers for this purpose, despite having previously been removed from the business register.[11] In order to speak of the liquidation of an employer, formal and legal actions aimed at abolishing the legal existence of the employer (e.g., removal from the business register, removal from the National Court Register) must be accompanied by a complete factual cessation of the employer's business activity.

Interpretation problems also concern the grounds for revoking protection in the form of the employer's bankruptcy, which is not defined by the provisions in question or by the provisions of the Labor Code. Guidance in this regard can be found in the Act of February 28, 2003, Bankruptcy

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[7] See Supreme Court judgment of April 27, 2022, ref.no. I PSKP 51/21, Lex no. 3431711.

[8] Judgment of the Supreme Court of April 1, 2025, ref. no. III PSKP 3/25, Lex no. 3851149; judgment of the Supreme Court of March 6, 2024, ref. no. I PSKP 6/23, OSNP 2025, No. 1, item 2.

[9] Ref. no. II PSK 120/24, Lex no. 3844534.

[10] Ref. no. II UK 213/16, Lex no. 2312025.

[11] Judgment of the Court of Appeal in Gdańsk of January 18, 2017, ref. no. III AUa 1489/16, Lex no. 2284901.

and Restructuring Law.[12] According to the Supreme Court judgment of April 4, 2007,[13] the provision of Article 41[1](1) of the Labor Code does not apply to bankruptcy with the possibility of entering into an arrangement.[14] It should be assumed that this interpretation also applies to bankruptcy referred to in Article 303 of the Homeland Defense Act.

2.3. Ineffectiveness of termination of employment before conscription into regular military service or territorial military service

Pursuant to Article 303(3) of the Act, if the period of notice of termination of employment given by the employer or the employee expires after the date of the employee's call-up for basic military service or territorial military service, the notice of termination becomes ineffective. The ineffectiveness of the notice of termination means that it does not produce the legal effect intended by the employer in the form of termination of the employment relationship. In this case, it is automatic ineffectiveness, resulting from the force of law. In this situation, the employment relationship may only be terminated if the employee so requests. The provision does not specify which types of employment contracts are affected by the ineffectiveness of termination. It should be assumed that the ineffectiveness by operation of law covers the termination of any employment contract made before conscription into basic military service or territorial military service.

3. PROTECTION OF THE EMPLOYMENT RELATIONSHIP OF THE SPOUSE OF A SOLDIER PERFORMING COMPULSORY BASIC MILITARY SERVICE

During the period of compulsory basic military service, the employer may terminate the employment relationship with the spouse of a soldier only due to the employee's fault and in the event of the employer's bankruptcy or liquidation.[15]

According to the content of the cited provision, protection is granted to the spouse of a soldier. Determining the subjective scope of protection, therefore, requires establishing who the legislator understands by the term "spouse." According to the Constitution of the Republic of Poland, marriage is a union between a man and a woman. In the light of Article 1(1) of the

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[12] Journal of Laws No. 60, item 535 as amended.

[13] Ref. no. III PK 1/07, OSNP 2008, No. 11-12, item 164.

[14] Article 267 et seq. of the Act of February 28, 2003, the Bankruptcy and Restructuring Law, Journal of Laws No. 60, item 535 as amended.

[15] Article 18, Journal of Laws No. 78, item 483 as amended.

Family and Guardianship Code,[16] marriage occurs when a man and a woman, both present, make a declaration before the registrar that they are entering into marriage.

A marriage is also concluded when a man and a woman, entering into a marriage subject to the internal law of a church or other religious association, declare their intention to simultaneously enter into a marriage subject to Polish law in the presence of a clergyman, and the registrar then draws up a marriage certificate.

In turn, the Family and Guardianship Code, in Section II entitled "Rights and obligations of spouses," in Article 14, refers to husband and wife. In subsequent provisions, including Articles 15, 18, and 22, it defines husband and wife as spouses, i.e., persons in a *formal* marital relationship. Spouses are therefore persons who have entered into marriage: husband (man) or wife (woman).

In light of the above findings, it should be assumed that the protection established in Article 303(3) of the Homeland Defense Act does not apply to persons who are in informal relationships with soldiers performing compulsory basic military service, i.e., in relationships that are not formally registered as marriage, such as cohabitation.

The employment relationship of the spouse of a soldier performing compulsory basic military service is protected by a prohibition on termination of employment. The basic feature identifying the prohibition is that, with a few exceptions strictly defined by law, the employer's right to terminate, dissolve, or change the terms and conditions of employment and pay is suspended [Florek and Zieliński 2004, 104; Kisielewicz 2014, 110]. The protection afforded to the spouse is therefore implemented by means of the strongest legal measure of special protection provided for by Polish labor law.

When defining the scope of protection, concerning the basis for establishing an employment relationship, the legislator, as in the case of soldiers performing basic military service, extended protection to spouses of soldiers in a broadly understood employment relationship, regardless of the basis for its establishment. It means that, formally, the protection covers spouses of soldiers performing work based on all types of employment relationships that may cease as a result of termination by the employer.

In the case of a contractual employment relationship, protection covers employment relationships established based on fixed-term contracts, such as trial periods and fixed-term contracts, as well as indefinite-term contracts. However, it should be assumed that the guarantees of protection do not apply to the termination of an employment relationship upon the expiry of the term for which the fixed-term contract was concluded. The scope

[16] Journal of Laws of 2023, item 2809.

of protection in the case of a contractual employment relationship covers termination, termination before the grounds for protection arise, termination with notice, and termination without notice for reasons not attributable to the employee, as provided for in Article 53 of the Labor Code. Furthermore, in accordance with earlier comments on the protection of soldiers, it should be assumed that the scope of protection also covers termination of working conditions and pay.

The protection of spouses performing basic military service is excluded in cases where the termination is solely due to the fault of the employee, i.e., for reasons specified in Article 52 of the Labor Code, and in the event of the employer's bankruptcy or liquidation.

4. UNPAID LEAVE

4.1. Unpaid leave for training as part of the voluntary basic military service

In order to ensure the smooth running of military service, the Homeland Defense Act provides for unpaid leave granted for the duration of training as part of voluntary basic military service and for the duration of territorial military service on a rotational basis. Pursuant to Article 304 of the Act, an employer is obliged to grant unpaid leave for the duration of training to a person who is in an employment relationship and undergoing basic or specialist training (Article 143(2) of the Act). The granting of leave by the employer is mandatory. The leave is linked to the special protection of the permanence of the employment relationship. Pursuant to the aforementioned provision, from the date of informing the employer about the start date of basic training, until its completion and during the period of specialist training, as well as for a period of 12 months from the date of its completion, the employer may not terminate or give notice of termination of the employment relationship with the person undergoing such training. The provisions of Article 303(1) and (3) of the Act apply accordingly in this case, which means that the employment relationship with a person called up for basic military service or territorial military service may only be terminated with their consent. Furthermore, if the period of notice of termination of the employment relationship given by the employer or the employee expires after the start date of the training, the notice of termination becomes ineffective. In this case, the employment relationship with an employee on unpaid leave may only be terminated at their request.

The protection granted during unpaid leave granted for the duration of training as part of voluntary basic military service and for the duration of territorial military service on a rotational basis does not apply

to employment contracts concluded for a trial period or for a fixed term not exceeding 24 months, as well as in the event of the employer's bankruptcy or liquidation and in the situations specified in Article 52 of the Act of June 26, 1974 – Labor Code. In summary, protection is therefore excluded if the employer may terminate the employment contract without notice due to the employee's fault, and in the event of the employer's bankruptcy or liquidation. In these cases, the employment relationship is terminated on general terms and does not require the consent of the person on leave.

The legislator also excluded protection in the situation referred to in Article 1(1) of the Act of March 13, 2003, on special rules for terminating employment relationships with employees for reasons not related to the employees,[17] i.e., in the case of collective redundancies.

4.2. Unpaid leave for the duration of rotational territorial military service

An employer shall grant an employee called up for rotational territorial military service, except for service performed on a one-off basis during or on a day off from work, unpaid leave for the duration of such service. Leave is granted upon request, and in the case of a call for immediate appearance, based on a notification from the head of the military recruitment center. During unpaid leave, the employee retains all rights arising from the employment relationship, except for the right to remuneration. These provisions apply mutatis mutandis to reserve soldiers

4.3. Leave of absence at the request of an employee called up for active military service

Pursuant to Article 311 of the Homeland Defense Act, at the request of an employee called up for active military service, except for professional military service, and serving in the reserves, the employer is obliged to grant him leave from work without the right to remuneration for 2 days. This right does not apply in the case of an immediate call-up.

At the request of an employee who has performed territorial military service on a rotational basis, on a one-off basis, continuously for a period of at least 30 days, the employer is obliged to grant him/her leave from work for 1 day after completing this service, without the right to remuneration.

In the above cases, however, the employer may, at its own expense, pay the employee remuneration for the period of leave from work. The right to remuneration in such situations could also result from a collective labor agreement or remuneration regulations.

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[17] Journal of Laws of 2025, item 570.

5. RULES FOR COUNTING THE PERIOD OF ACTIVE MILITARY SERVICE TOWARDS THE LENGTH OF SERVICE

Article 312 of the Homeland Defense Act specifies the rules for counting the period of military service towards the length of service on which employee entitlements depend, e.g., the right to vacation, seniority allowance, jubilee award, and severance pay for reasons not attributable to the employee.

Under current law, for the purposes of acquiring the right to employee benefits and entitlements arising from an employment relationship, the provisions of the Labor Code and other acts use two types of seniority, namely company seniority and general seniority.

The concept of company seniority means that only periods of employment with a given employer are included in the period of employment on which the acquisition of a given entitlement arising from the employment relationship depends, e.g., death benefits [Florek 1980, 77ff]. The structure of general length of service, on the other hand, means that all periods of employment with all employers are included in the period of employment, e.g., vacation time [ibid.].

As follows from the aforementioned Article 312, the legislator differentiates the rules for including the period of service in the length of service depending on whether the employee took up employment with the employer who employed him before his call-up for basic military service or whether the employee took up employment with another employer.

An employee who, within 30 days of being discharged from active military service, excluding professional military service and basic military service, took up employment with the employer with whom they were employed on the date of their call-up for such service, the period of military service shall be included in the period of employment with that employer in respect of all rights arising from the employment relationship. In this case, the period of active military service shall be included in both the length of service and the general length of service.

According to Article 313 of the Act, an employee who, within 30 days of being discharged from active military service, excluding professional military service, took up employment for the first time or with an employer other than the one with whom he or she was employed on the date of being called up for such service, the period of military service shall be included in the period of employment required to acquire or retain rights arising from the employment relationship, except for rights exclusively granted to employees of the employer with whom they took up employment. Therefore, if an employee takes up their first job after leaving the service or with another employer, the period of service is, as a rule, included in the

total length of service if this is required to acquire rights arising from the employment relationship. An exception applies to entitlements to so-called company benefits, i.e., those granted by a given employer (such entitlements may result, for example, from a collective labor agreement, remuneration regulations, or a collective agreement), which most often depend solely on the length of service at the company. In this case, the period of service is not included in the length of service at the company.

A necessary condition for counting the period of military service towards seniority is to meet the 30-day deadline for taking up employment. The deadlines for taking up employment are considered to have been met if the employee was unable to take up employment for reasons justifying their absence from work.

An employee who took up employment after 30 days from the date of discharge from active military service, except for professional military service, the period of such service shall be included in the period of employment required to acquire or retain rights arising from the employment relationship, except for rights exclusively granted to employees of the employer with whom they have taken up employment.

The above provisions apply if specific provisions do not provide for more favorable rights. More favorable rules may result from another law or, for example, a collective bargaining agreement.

The application of the above provisions does not result in the loss of unemployment benefits specified in the provisions of the Act of March 20, 2025, on the labor market and employment services.[18]

In the case of Territorial Defense Force soldiers, only the period of rotational territorial military service is included in the period of employment required to acquire or retain rights arising from the employment relationship. As follows from the provision, this period is included in both the general and the company's length of service.

6. OBLIGATION TO RE-EMPLOY AN EMPLOYEE CALLED UP FOR COMPULSORY BASIC MILITARY SERVICE IN THEIR PREVIOUS POSITION OR AN EQUIVALENT POSITION

An employer who employed an employee on the date of conscription for compulsory basic military service is obliged to employ him in his previous position or in an equivalent position in terms of the type of work and remuneration, if, within 30 days of his discharge from service, the employee reports to that establishment in order to take up work. Failure to meet the

[18] Journal of Laws, item 620.

30-day deadline shall result in the termination of the employment relationship, unless there were reasons justifying the absence from work. Suppose an employee has obtained other or higher professional qualifications during basic military service. In that case, the employer is obliged, at the employee's request, to employ him or her, as far as possible, in a position that corresponds to the qualifications acquired in the Armed Forces (Article 315 of the Act).

It follows from the above provision that the legislator prefers to employ an employee returning after completing their service in the position they held before their call-up. An alternative, which provides the employer with some flexibility, is to employ them in a position that is equivalent in terms of work type and remuneration. The provision specifies two conditions for a position to be considered equivalent. First of all, when assessing whether a position is equivalent, the type of work must be taken into account. In light of current views, a position should be considered equivalent if it involves the same type of work and provides the employee with their previous professional status [Wratny 2013, 410-11]. Equal pay, in turn, means that the position guarantees the employee the same level of remuneration and promotion opportunities as before.[19]

If an employee has obtained other or higher professional qualifications during their basic military service. In that case, the employer is obliged, at the employee's request, to employ them, as far as possible, in a position that corresponds to the qualifications acquired in the Armed Forces. As follows from the cited provision, the employer is bound by the employee's request, provided that they can do so. If the employer does not have such a possibility, they may refuse to comply with the request.

After completing basic military service, an employee has the right to return to the employer who employed him at the time of his call-up for service. However, the employee is obliged to report to the workplace within 30 days. Failure by the employee to report to the workplace within the 30-day deadline for reporting to the workplace to resume work will result in the termination of the employment relationship, unless the employee can prove that there were reasons justifying their absence from work, e.g., inability to work due to illness, the need to care for a child, or other family member. Once the reason for the absence has ceased to exist, the employee should immediately report their readiness to start work. The provision in question, therefore, establishes legal readiness to start work. Such readiness occurs when an employee informs the employer of their willingness to resume work, but is actually unable to do so for reasons justifying their absence.[20]

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[19] See Wratny 2013, 410-11 and the literature cited therein.

[20] See Supreme Court Resolution of May 28, 1976, ref. no. V PZP 12/76, OSNCP 1976, No. 9, item 187.

According to Article 315(1), the employee should report to the workplace in order to resume work. It seems that the term "workplace" in this case is synonymous with "employer." It is confirmed, among other things, by the wording of Article 74 of the Labor Code concerning the right of an employee on leave to return to work in order to perform an elected function.

An employee's declaration of reporting for actual work or, in legal terms, when there are grounds justifying its actual commencement, results in the resumption of the employment relationship. It should be assumed that from that moment on, the employee is entitled to benefits under the employment relationship [Wratny 2013, 108].

CONCLUSION

A review of the legal regulations establishing legal solutions aimed at creating conditions for employees to perform basic military service and service in Territorial Defense Forces units for the benefit of their homeland gives grounds to conclude that they are comprehensively capable of fulfilling their role. The provisions discussed have been formulated in a reasonably precise manner, which is a significant advantage and facilitates their application in practice.

However, there are some doubts regarding the employee's consent to the termination of employment, which may lead to a situation where protection is used in a manner contrary to the socio-economic purpose of this right or the principles of social coexistence. The legislator also does not clearly indicate whether the consent is prior and in what form it should be expressed.

The different levels of binding force of the protection measures applied in the case of a soldier (consent) and his or her spouse (prohibition) may also raise concerns.

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