



New forms of employment

Employee sharing, Hungary

Case study 15: Policy analysis

Hungarian labour law has been built on the idea of the typical employment relationship involving two parties where an employee works full time for a sole employer. However, during the past 15 years, new concepts and forms of employment have been introduced in labour legislation. One of the newest ideas is employee sharing.

Introduction

Recent decades have seen the proliferation of various forms of employment defined in Hungary's labour law.

In addition to the subordinated employment relationship where an employee is working full-time for an indefinite duration for one sole employer – which is often referred as the standard, traditional or typical form of employment – workers and employers may find many other legal frameworks of employment. The employment contract might be concluded for a fixed term – even for a couple of days – or part-time. The parties can stipulate that the work can be performed from home or through an intermediary (an agency), or without any personal subordination to the employer.

Cornerstones such as the employment relationship between one employee and one employer are also changing. Job-sharing contracts can be signed with several employees who work together on the basis of one legal relationship, while temporary agency work may divide the employer's rights and obligations between two parties. Employee sharing is a new phenomenon fitting this tendency.

Hungarian labour law has been built on the idea of the typical employment relationship involving two parties. However, during the past 15 years new concepts and institutions were introduced in the labour law. One of the newest elements is employee sharing.

Despite the fact that it gained legal recognition only in 2012, the term 'new forms of employment' is somewhat misleading as some forms of shared employment have been existing for a long time. Before the Second World War, the Supreme Court of Hungary, called the [Kúria](#), placed joint and several liability for wages on all organisations where the employer could not be clearly identified, for instance when several companies were based in one apartment and an employee worked for all of them. The Supreme Court argued that an employee should not be required to prove which company was the real employer (Bernhard et al, 1938).

Interestingly, 70 years later, the new Labour Code regulates the employers' responsibility under the same principles.

Background and objectives

The ability to conclude an employment contract involving one employee and several employers was introduced into Hungarian labour law by the new Labour Code (Act I of 2012), which came into effect on 1 July 2012. It is clear from the policy documents, early drafts and the ministerial reasoning on the act that the legislator intended to broaden the range of atypical employment forms and for that reason decided to design a regulatory framework for employee sharing.

The first published thesis – written by six leading labour law scholars – devoted to the new Labour Code stated that ‘It is definitely necessary to encourage the spread of atypical forms of employment in the interest of flexible business administration and employment’. The authors argued that there was no need for detailed legislation on atypical employment; instead, agreements between the respective parties should play the major role in defining the character of the new forms. The legislator should only use cogent (or imperative) rules when it is necessary for public policy reasons (Berke et al, 2009).

After the general election in 2010 the new conservative government expressed its willingness to conduct an overarching labour law reform and to create the most competitive labour market in Europe. The details were set out in the Hungarian Work Plan. The document contained three interesting observations on atypical employment (Magyar Munka Terv, 2010):

Firstly, it acknowledged that the flexible forms of work contributed to the general flexibility of the labour market and could help some disadvantaged job seekers to find employment. In other words, the document assumed that atypical employment may act as a stepping stone and might help those people who could not find work in the traditional setting to (re-)enter the labour market. Even though atypical jobs are less protected they could serve as a stepping stone towards more stable employment.

Secondly, the document agreed with the thesis’s regulatory approach by stating that the employers and employees should be allowed to design most of the details of the shared employment relationship instead of detailed regulation in the law.

Lastly, in order to improve labour market flexibility, it emphasised that in the cases of atypical employment that are regulated by the European Union law, the new Labour Code should use all the derogations that are legally possible (this aim was later followed specifically in the field of agency work).

In the summer of 2011, the first official draft of the new Labour Code that included the proposed rules of employee sharing was published for open discussion. It is clear that the experts who worked on the proposal strictly followed the principle of flexible regulation. The text contained only a handful of imperative rules for employee sharing while all the other details were left for the parties to agree on when discussing the employment contract. What is missing in the proposal and the section explaining its rationale is any reference to the likely positive labour market effect of employee sharing.

The interviewed expert who took part in the preparation of the new Labour Code confirmed that the regulation of employee sharing aimed solely to resolve practical issues and was not expected to contribute to employment growth. Such practical issues included:

- cases where the work is physically performed in one place but for several organisations – for example, a receptionist works in an office tower where over a dozen employers are located;

- a group of companies connected by ownership or close business relationship wants to exchange workforce for various reasons, such as unexpected need or surplus in personnel, or a temporary need for specialists in one of the organisations;
- micro enterprises that could not afford to employ a worker (even on a part-time basis), but could use a part-time or full-time position if an employee worked for several of them.

There were attempts to resolve these cases within the existing regulatory framework. While none of them were forbidden in the Labour Code, they were inconvenient, complicated and could be abused by the employers.

The first option was to conclude separate employment contracts with all employers. While this was feasible if only two or three employing entities were involved, it was impossible to use in more complex scenarios. Simultaneous full-time contracts with the same employee would certainly attract attention from the labour inspectorate and therefore the parties had used part-time employment, dividing the daily working time of eight hours equally among them (for instance, four employers would conclude a two-hour contract with the same employee).

Nevertheless, using part-time contracts has certain drawbacks. Firstly, it increases the administrative burden because all the necessary documents have to be signed with all the employers, including the contract, job profile description, working time schedule and payroll account. Occupational health examinations of the employee should be arranged by all employers. If an employee's service is not required any more, all the employers have to prepare the termination documents. Finally, this arrangement made it difficult to change the division of working time. For instance, if one employer discovers that it needs an employee for only half of the original working time, the remaining working hours could not be redistributed to the other employers without amending all the contracts. The employer would have to pay for employee hours as set in the contract even if these hours are only partly used, or amend the employment contract with the consent of the employee to reduce working time and wages.

A second option was to temporarily assign the employee to another employer. The 1992 Labour Code stipulated that an employee may be ordered to perform work on a temporary basis at another employer based on an agreement between the employers concerned but only in the case when the employer is not paid by the other party for assigning its employee (so, this arrangement could not be used to lease workforce for profit) and the employers are related by ownership (Act XXII of 1992 Article 106). Temporary assignment was not an atypical employment relationship but rather a rearrangement of work-related tasks for a given period. It needed no consent of the employee and could only be used due to economic reasons (not to discipline an employee). When this period expired, the employment relationship would return to the original conditions. The time spent in employment at other entities could not exceed 44 working days per worker per year.

The two employers could agree on how to divide their rights and obligations with regard to the employee.

However, the Labour Code stipulated that unless agreed otherwise, the receiving employer was entitled to take advantage of the rights, yet also had to fulfil the obligations as set in the original employment contract. The right of termination of the employment relationship could only be exercised by the sending employer. The Labour Code guaranteed that the assigned employee would receive remuneration that was not lower than stipulated in the original

employment contract. During the assignment, the collective agreement of the receiving employer was applicable, for example, with regard to working time, rest periods and remuneration – if it favoured the employee and was higher than under the original contract.

The third technique was the most ambitious. Some lawyers argued that the 1992 Labour Code actually does not exclude the possibility of several employers concluding a job contract with one employee. However, in practice it was impossible to apply labour regulations for such a contract. For example, fulfilling tax and social security obligations was virtually impossible because the authorities would not accept any forms such as notifications or reports signed by two employers. Clearly the Labour Code was designed for a relationship between one employer and one employee.

These three arrangements had their own shortcomings and were difficult to apply in practice. The situation changed in 2012 with the adoption of the new Labour Code, which not only introduced the new concept of employee sharing but also amended the rules applying to the other forms such as temporary assignment.

Employee sharing was designed to answer an employer's demands. No empirical evidence was found that it could be an employee's preference over the traditional employment relationship. Nonetheless, being bound to several employers could mean more possibilities for gaining experience or to build professional relations.

A recent study shows that in 2014, even after two years the novelties of the new Labour Code are almost unknown to most employers (LIGA, 2015). Thus the general awareness of employee sharing is relatively low. The presented results show the need for a coordinated dissemination of information on the new labour law institutions, including employee sharing. However, the interviewees were not aware of any such initiations, nor private (for example by social partners), neither public (for example by the Ministry for National Economy). The existing trade unions, employers' organisations or commerce chambers do not show interest in propagating employee sharing, basically because it is not an issue in social dialogue. Although the media addressed several questions of the changing labour law regulations when the new Labour Code was introduced in 2012, employee sharing was not specifically discussed.

Characteristics of employee sharing

The concept of employee sharing is based on an employment contract signed by one employee and two or more employers. Hence there is one employment relationship between the parties concerned and the employee works for all the employers. The explanatory note (ministerial reasoning) that came with the new Labour Code characterises employee sharing as a special form of part-time work, where an employee performs the same job to all the employers – as set down in Labour Code, Article 195. More specifically, this means that only one job profile is provided in the employment contract, and all employers can give orders that fit in the framework of that specific job, but not beyond it. The parties might specify for which employer the employee should work during specific hours of the working day. Such a setting is considered part-time work from the employers' point of view as none of them may claim a single employee's working time in full.

Unlike agency work, employee sharing is not about transferring employer's rights to an outside party for profit but involves more employing entities right from the beginning. Any employer may give orders to the shared employees, but cannot take all of their time. The

employers may conclude an agreement among themselves specifying their respective rights and obligations with regard to the shared employees (Kozma, 2012).

Some authors argued that employee sharing should not be understood as a legal umbrella composed of several employment relationships but rather a single employment relationship that parties have with each other. In contrast, job sharing, when several employees share the same job for a single employer, is usually based on contracts between individual employees and the employer (Berke, Kiss, 2012). Meanwhile, while agency workers do not necessarily know the next company they will be working for, shared employees know all their employers. The new law has defined only the most important elements of the new institution of employee sharing leaving the parties concerned to negotiate and agree on all the remaining details. In the view of the interviewed employers' organisation, the lack of detailed regulation has both advantages and disadvantages.

The parties are able to design the legal relationship in accordance with their own needs. The more employers are involved, the more important this advantage could get.

However, designing an employment relationship that works well requires time, expertise and – if outside advice is needed – money.

The labour expert from the employers' organisation felt the new concept of employee sharing was useful, yet she was also worried that lack of creativity may slow down the adoption of this new form of working. The trade union interviewee was more sceptical. She pointed to the practice of collective bargaining in Hungary. She argued that the new Labour Code left a lot of leeway concerning regulation of the collective agreements. For example, the new law allowed collective agreements to deviate from the code's provisions in favour of employees – but also to their detriment. However, trade unions have not noticed that employers became more willing to start negotiations with them. While this may have a number of reasons, one reason is that Hungarian social partners feel more comfortable with applying statutory regulations rather than setting the rules by themselves.

Employee sharing needs a lot of creativity from the parties involved as the statutory rules alone are not specific enough to be useful. The trade union official expressed doubts as to whether parties could use it in practice.

There is no specific public control over employee sharing, and no certificate or registration is needed. There is no centralised organisation around this employment form, be it in the form of an umbrella organisation, resource centre, or any other form of support to employer groups. None of the interview partners expressed a need for such organisations. No public funding is available, and social partners do not finance employee sharing. By contrast, there are temporary work agencies funded by social partners – they use long-term unemployed people and operate on a non-profit basis. However, these agencies have only a handful of employees.

Both the union official and the labour expert from the employers' organisation had some knowledge on how this form of employment is used in small and medium-sized enterprises. The social partners agreed that employee sharing required the participating employers to share common goals. This assumes a personal connection among them, which is more likely in the case of SMEs. Mutual trust is the cornerstone of employee sharing, which is also reflected in the joint and several liability of the employers. According to the labour expert, a common theoretical example where some kind of a joint employment is feasible is the receptionist. While it sounds reasonable for the tenant companies in the building to employ a receptionist together, no company would enter into a contract with joint and several liabilities without knowing the other employers with whom the responsibility would be shared well.

The current research revealed a few examples of different driving forces behind employee sharing, summarised below.

- A parent company had to find ways to bail out one of its subsidiaries and decided to employ the top executive jointly, which meant that all costs of employment could be financed by the parent company. The employee worked for both companies as general manager, but this way the subsidiary could built on his expertise free of charge.
- Two IT firms launched cooperation for the fulfilment of an EU-funded project. One of them won a tender but found it needed more people to do the work thus it approached the other firm for help. The two companies shared 21 highly-trained and experienced IT professionals for the implementation of the EU project (for nearly one and a half years).
- A labour law consulting firm used employee sharing right after its introduction in 2012. It was a pilot project to test employee sharing in practice and to reveal its strengths and weaknesses so that the firm could advise on its use for its clients.
- As a first step towards a liberalized market of public road transport, from 2015 the structure of national bus companies changed. Previously all counties had had their own – state owned – bus companies which were merged into seven regional companies. In the case of one region, the three predecessor companies decided to launch a pilot project for the merger. For that matter they had set up a common joint-stock company in 2014 (hereinafter: ‘pilot company’) to manage all preparatory tasks before the new regional level operation would start. This firm was active only for one year and also merged into the new regional level company. Within this short period the pilot company had to design and test how the public transport service would be organized on the regional level. This needed the cooperation of all three county-level firms’ management. For that matter the county level companies’ delegated some of their executive employees and highest trained professionals to the pilot company by means of employee sharing. Altogether 20 employees were affected, including one company’s chief-executive. The project was described for the study by the legal coordinator of the new regional firm.
- A company provides special healthcare services for women. The firm was established in the beginning of the nineties and operated ever since in almost the same structure with around hundred employees. Due to a new law on social security, the firm had to separate its social security financed services from those that are paid by the clients. From 2016 the National Health Insurance Agency obliged the company to outsource all of its private funded services to a subsidiary. The company had to allocate some of its personnel to this newly established firm. They chose to share the employment of 15 persons from the original staff of the parent company: doctors, assistants and some administrative personnel (accountants, HR specialists). The project was described for the study by the business unit leader of the parent company.
- A multinational HR service provider company outsourced some of its activities to a subsidiary. The legal and payroll advisor of the parent company became a shared employee of the two companies, so that she could act on behalf of both employers.

Remuneration

According to law, the employment contract should indicate clearly the wage of the shared employee. All employers should pay the same rate proportionally to the time the employee works for them. They may also agree that one employer will pay the wage and should be reimbursed by the others through a civil law contract.

The interviewed employer argued that flexibility concerning the wages scheme is one of the most attractive elements of employee sharing. It is often used to allocate costs within a group of companies. For example, organisations may jointly employ a part of the workforce with one organisation bearing all the wage costs. Usually this is the organisation which has the necessary resources or the organisation falling under the most favourable tax and social security regime. However, this solution comes with an inherent risk as there are no clear rules concerning the internal accounting among employers for the costs of the shared employees. Many tax law experts agree that such transactions need no invoicing and do not fall under the scope of the value added tax.

The employers may also select which one of them will be paying the employee taxes and social security obligations. Tax regulations stipulate that the employers shall inform the tax authority on the designated employer in charge of paying tax and social security obligations. If they fail to report who is the selected employer, the authorities may select any of them as responsible for fulfilling the obligations. Employers that do not meet their tax and social security obligations can be fined up to HUF 500,000 (€1,612 as at 14 March 2016) each (Act XCII of 2003 Article 16 and 172, Act LXXX of 1997 Article 4).

The designated employer may be changed by the parties whenever they decide. However, the social security expert indicated that such changes may cause problems with regard to the social security benefits of the employee – benefits like sickness and maternity allowance. The social security benefits are primarily calculated on the basis of the contributions paid during the actual employment relationship. From the perspective of social security regulation, the change of the designated employer has to be considered as the start of a new employment relationship which frequently has a negative effect on the level of employee's benefits. This is an example of a clear contradiction between the labour and social security law which could be overcome by legislative means.

There is also a third question that needs to be considered by all the parties before signing an employment contract. The Labour Code stipulates the shared employee will be subject to the collective agreement that is in operation in the company paying the wages (unless agreed otherwise; Article 279 subsection 4). This Article is important given that collective agreements define the rules of remuneration. Again, employers have a lot of discretion. The employers may want to apply the collective agreement of another company that offers less generous benefits. However, such a deviation from the statutory rule requires the agreement of all employers and the employee. Therefore unlike the other two options, this decision cannot be taken only by the employers. In practice, most probably this will depend on the employee's labour market situation: highly skilled professionals that are high on demand will not accept the application of unfavourable collective agreements.

To sum up, there are three aspects allowing for a lot of flexibility in terms of remuneration because the employers may decide:

- which employer is responsible for paying the wages;
- which employer will be responsible for paying taxes and social security obligations;

- which collective agreement should apply (this decision needs to involve the employee).

It is worth mentioning that in all the three cases the parties involved may select different employers. For example, if three companies are signing a contract with an employee, one company can be responsible for paying the net wage, another acts as the designated employer with regard to the tax and social security authorities, and the parties may decide to apply the collective agreement operating in the third company. The interviewed employer pointed out that separating the net wage and tax/social security obligations would not make much sense; nevertheless, the parties may decide to do so.

An important guarantee is that the employers' liability does not depend on their respective agreement on paying the wages. The Labour Code stipulates that the liability of employers in respect of the employee's labour-related claims shall be joint and several. This covers a broad scale of possible claims like unpaid wages, other benefits or damages. Thus, the employee may enforce his or her claim against any of the employers, disregarding which company was responsible for remuneration.

The interviewees from national authorities mentioned that employers' liability is also a complex issue from the perspective of the social security law. In theory, the regulation is simple, because the designated employer should take the responsibility for social security obligations. However, if something goes wrong the parties involved will need to find a way to identify the company with an ultimate responsibility. For instance, if the designated employer is fined because it did not submit an obligatory report to the authority, this could have happened because the designated employer did not receive necessary information from another employer. Similarly, if the shared employee is injured at work, the designated employer is responsible for reimbursing the authorities all public benefits that were paid to the injured worker. However, the employers should then decide which company was ultimately responsible for the incident. This can be difficult if the working time of the shared employee was not allocated clearly. These issues, however, can be agreed on in the civil law contract between the employing parties.

Article 12 of the Labour Code specifies that in connection with employment relationships, such as the remuneration of work, the principle of equal treatment must be strictly observed. Here wage shall mean any remuneration provided directly or indirectly in cash or in kind, based on the employment relationship. No clear guidance is given in the legislation whether employers may set the wage levels based solely on the agreement with the employee or they have to respect the already existing wage systems in the companies. It is also possible that the parties agree to apply different wages for the time worked for the different employers. Nonetheless, the difference in wages cannot be based on personal characteristics of the employee which are irrelevant for the employment relationship (for example sex, religion, age). Such form of discrimination is strictly prohibited by Article 12 of the Labour Code. If the participating employers have different regimes a given working condition, the parties (meaning the employers and the employee) can freely choose which one to apply to the shared employee.

Termination of employment

The termination of an employment relationship is a particularly complex issue considering the multiplicity of employers. The Labour Code stipulates that the employment relationship is no longer valid when the number of employers is reduced to one. The rule is cogent (imperative)

hence the remaining parties cannot decide to continue their relationship under the same contract.

This situation is considered similar to the dissolution of the employer without succession as in both cases the employment ceases automatically because of the employer's circumstances. Thus, as a guarantee, the employee shall be entitled to an absentee pay due for the notice period of at least 30 days when exempted from work duty, and also severance pay.

The interviewed labour law expert argued that this rule was highly debated during the legislative process. It is obvious that an employment relationship involving more employers cannot be maintained if there is only one employer remaining because this changes the essence of the employment relationship. The problem is that employers might artificially create circumstances that lead to such cases. For instance, say, an employer establishes a subsidiary with the lowest possible registered capital. If there is a need for an additional workforce the new personnel is contracted by both companies under the employee sharing contract. As soon as the new employees are not needed any more, the employer terminates the activity of the subsidiary and ends it without succession.

This approach may help to sidestep a lot of social security obligations and duties, like all the protection against dismissal or requirement to give an adequate reasoning in the case of a dismissal. Similarly the employer may use an existing but almost insolvent company as the other employer.

However, labour market regulation does not leave the employees without any protection in the situations as outlined above. Such conduct of the employer seems to clearly violate the prohibition of wrongful exercise of rights as it is intended for the injury of the legitimate interests of the employee (Labour Code Article 7). Hence, the employee might claim wrongful termination of the employment contract. In such a case, however, the burden of proof would be on the employee and proving that the employers' conduct was in fact abusive is rather complicated.

In addition, the employee is entitled to all benefits he would receive in the case of the dismissal by the employer. Thus, there is no real financial motivation for the employers to circumvent the ordinary dismissal procedure.

The labour law expert argued that these measures guarantee adequate protection for the employee and therefore the codification committee which drafted the law approved the rule.

The labour law expert also emphasised that termination of an employee sharing contract needed careful planning. There are two key questions. Firstly, in some instances the employment relationship does not end, but one of the employers leaves. Secondly, the employers should decide which of them is entitled to terminate the relationship.

In the first instance, in most cases ceasing the employment relationship affects all the employers, and thus means the end of the employment in respect to all the parties. However, if one employer ceases to exist without succession, the employment relationship remains intact provided there remain at least two employers.

Another example could be the termination of the employment relationship based on the mutual agreement of the parties. The experts interviewed found no legal problems if the parties agreed that only one employer leaves the employment relationship while at least two other employers agree to continue it together with the employee.

Turning to the second issue, according to the Labour Code the employment relationship may be terminated by either of the employers, unless agreed otherwise. Thus as a general rule, employee sharing may be terminated by any employer and the termination statement affects

all the other parties. Nevertheless parties are free to agree, for example, that only the employer who pays the wages shall have the right to terminate the employment relationship, or termination needs the prior consent of the other employers, or at least the others shall be informed of the plan of termination in due time. It is also possible to explicitly deny this right for certain employers. If it is the employee who terminates the employment, it affects all the employers and thus it is not possible to exclude only one employer while continuing to work for the others. If the employee initiates the termination by mutual agreement, he or she has to obtain the consent of all the employers.

Labour lawyers disagree whether a simple amendment of the employment contract is enough to introduce employee sharing instead of typical employment and vice versa.

The interviewee specialising in labour law disagreed with this option and argued that it constitutes such a fundamental change of the legal relationship that the transition can only be arranged by terminating the previous contract and starting a new one. By contrast, the employer interviewee, who is also a labour lawyer, argued that nothing in the Labour Code prohibits such amendments and according to the Hungarian private law, parties may freely add or release an additional party to the legal relationship. The future court practice may settle this debate.

Outcomes

Macro level

The commencement and termination of all employment relationships regardless of their form have to be declared to the National Tax and Customs Authority¹. For employee sharing, the authority issued a separate form for the compulsory declaration instead of the one generally used for employment relationships. Nonetheless it is not more difficult to fill the special form compared to the general one. The interviewed department leader shared data on the number and occupation of shared employees using this database. Although the authority also collects information on the employees' place of work and on the characteristics of the employers, these were not processed at the time of preparing this case study in March 2016 and thus could not be provided here. Even though there is no data about the number of active employer groups, the data on employees hired through this form presented below provides a good idea about the spread of employers using this employment form as well.

The employee classification in the below table follows the Hungarian Standard Classification of Occupations (HSCO 2008).² In HSCO the jobs and activities are classified in 10 major occupational groups, 42 sub-major groups and further minor-groups. The following chart contains data on the number of shared employees from July 2012 (the entry into force of this employment form in the Labour Code) until 30 September 2015, the latest date for which data is available. The data show the number of registered employees yearly. If an employee had more employment relationships in employee sharing during the year (with the same or different employers), he/she is counted only once.

Table 1: The number of shared employees and their occupation July 2012- September 2015 (National Tax and Customs Authority)

¹ Act 92 of 2003 on the order of taxation, Article 16 (4).

² https://www.ksh.hu/feor_eng_menu

Category	Number of employees				
	2012	2013	2014	2015	TOTAL
Managers					
Chief executives, managing directors of business organisations and budgetary institutions	1	41	21	21	84
Production and specialized service managers, heads of units	1	546	316	251	1,114
Professionals					
Technology, IT and science related professions		160	277	115	552
Healthcare, education and business type professionals		168	154	102	424
Other highly qualified professionals		120	114	69	303
Technicians and associate professionals					
Technicians and other related technical professionals	1	176	202	141	520
Healthcare and education		165	56	38	259
Business related service assistants	2	452	371	241	1,066
Other administrators	1	83	69	86	239
Office and management occupations					
Office clerks and customer services	2	368	398	355	1,123
Commercial and service occupations					
Commerce and catering	20	1,198	1,207	988	3,413
Service workers	20	101	124	417	662
Agricultural and forestry occupations					
Agriculture and food industry		85	97	33	215
Industry and construction industry occupations					
Light industry and handcraft		7	34	13	54
Metal industry and energy sector		77	181	86	344
Construction and other industry		52	106	73	231
Machine operators, assemblers, drivers					
Manufacturing operators and assemblers		134	24	102	260
Drivers and machine operators	3	125	312	187	627
Elementary occupations (not requiring qualifications)					
Cleaners, simple service, transport	1	376	644	1,291	2,312
Not specified					
Not specified	2	3	2		7
TOTAL	54	4,437	4,709	4,609	13,809

In 2012, when employee sharing was introduced, parties made use of this new possibility only in a handful of cases (54 employees). In 2013, the number of affected employees increased to about 4,500 and increased only marginally in the next years. Shared employees form a 0.1% part of the total Hungarian labour market which comprises around 4,385,000 economically active persons.³ Compared to the number of employees (3,747,000 persons), shared employees' proportion is a little bit higher (0.12%).⁴ Consequently, employers still seem to be reluctant to open towards this new employment form or at least unaware of this institution.

It seems early to draw conclusions about the spread of employee sharing in Hungary from the above data as employment sharing is so sporadic that even a couple of employer groups ceasing or starting activity can cause significant changes in the overall picture. In most occupation categories the number of shared employees changed radically during 2012-2015, without any clear tendencies (even though the biggest groups, namely commerce/catering, production managers, office clerks, cleaners, are more or less the same over the years). The labour law expert feels that employee sharing is used as an ad hoc tool to manage certain employment situations rather than being a strategic element of HR.

It is quite surprising that – unlike most atypical employment forms – highly trained professionals and executives are overrepresented among shared employees. The three highest trained HSCO categories had a 6-13% share between 2013 and 2015. This well reflects that employee sharing was introduced – among other reasons – to help companies to exchange 'gold-collar' workforce, especially when a specialist is needed temporarily in one of the organisations or if SMEs cannot afford to hire a professional on their own account. As a comparison, the share of agriculture and industry among employee sharing overall is rather low (5-9%). The interviewed department leader of the tax authority and the labour law expert agreed that one possible reason for these differences might be that employers in the service sector with highly trained personnel (for example accounting and finance service providers, legal offices) are more open towards innovative employment forms and are also more aware of the novelties of the legal environment.

Each year the biggest proportion of shared employees (around one third) worked in the commercial and catering occupation category (for example shop keepers, restaurant staff). A striking growth can be witnessed in the case of elementary jobs, not requiring any qualifications (from 8.4% to 28%). A possible explanation is that employers in this sector began to discover the advantages of employee sharing. Nonetheless, the labour law expert warned that from 2013 a new tax reduction was introduced for workers in this HSCO category for which many workers were reclassified to this group.⁵ This change could also lead to the reclassification of many shared employees.

To sum up, employee sharing is almost invisible in the Hungarian labour market. The distribution of shared employees according to qualification seems to be balanced (one third for professionals, for secondary level qualifications and for elementary jobs each). This might also suggest that employee sharing is compatible with various forms of jobs in great many sectors.

³ See the data of the Central Statistical Office at:
https://www.ksh.hu/docs/eng/xstadat/xstadat_long/h_qli001.html

⁴ https://www.ksh.hu/docs/hun/xstadat/xstadat_hosszu/mpal9807_02_04a.html

⁵ Act 156 of 2011 Article 461, came into force 1st January 2013. The number of workers in this category increased by 17% from 2012 to 2014.

https://www.ksh.hu/docs/hun/xstadat/xstadat_hosszu/mpal9807_02_03_02b.html).

The interviewed healthcare authority could provide data on the gender, age and geographical distribution of shared employees. There is no significant difference by gender and the data suggest that younger employees are quite open towards this new employment form. One out of five shared employees is younger than 30 years. Note that also in general, workers under 30 form 20% of the overall workforce.⁶

Table 2: Gender and age of shared employees 2012-2015 (National Health Insurance Agency)

Year	Male (%)	Female (%)	Below 30 years (%)	Above 30 years (%)
2012	49	51	26	74
2013	41	59	21	79
2014	45	55	21	79
2015	48	52	22	78

The geographical distribution is much less balanced. The vast majority of shared employees work in Budapest which is the most developed part of the country. Apart from the capital only three counties reached a significant proportion (Borsod-Abaúj Zemplén: Northern-Hungary region, Bács-Kiskun in 2012 and Csongrád: Southern Great Plain region). However, these counties have no special characteristics (like specific industry or dominant occupation group) that could explain these high values. The extent of employee sharing in other counties ranges between just 1-3%.

⁶ https://www.ksh.hu/docs/hun/xstadat/xstadat_hosszu/mpal9807_02_09a.html?down=1007

Table 3: Geographical distribution of shared employees 2012-2015 (National Health Insurance Agency)

The capital and the 19 counties	2012	2013	2014	2015
Budapest (capital)	70.7%	54.0%	59.5%	64.3%
Baranya county	1.6%	2.7%	2.3%	2.2%
Bács-Kiskun county	22.6%	2.3%	2.0%	2.0%
Békés county	1.9%	0.4%	0.8%	0.7%
Borsod-Abaúj-Zemplén county	10.1%	7.9%	7.1%	5.1%
Csongrád county	8.8%	11.0%	7.5%	6.7%
Fejér county	0.9%	2.9%	3.0%	3.3%
Győr-Moson-Sopron county	3.1%	2.6%	2.1%	1.2%
Hajdú-Bihar county	1.8%	2.4%	2.0%	2.2%
Heves county	1.8%	2.4%	1.4%	1.5%
Komárom-Esztergom county	0.6%	0.4%	0.5%	0.5%
Nógrád county	0.5%	0.3%	0.2%	0.2%
Somogy county	1.3%	1.5%	1.3%	1.4%
Szabolcs-Szatmár-Bereg county	2.0%	1.3%	1.4%	1.0%
Jász-Nagykun-Szolnok	0.6%	1.2%	0.9%	0.6%
Tolna county	0.4%	1.0%	1.0%	1.5%
Vas county	2.5%	0.4%	1.5%	1.0%
Veszprém county	0.6%	5.0%	5.1%	3.8%
Zala county	0.0%	0.4%	0.6%	0.9%
Total	100.0%	100.0%	100.0%	100.0%

The unionist interviewees – seeing employers’ unawareness of new institutions – were rather pessimistic on the possible spread of employee sharing to more sectors. Nonetheless, the interviewed union official shared that there is some anecdotal evidence on small or medium sized employers which regularly use innovative HR solutions. For instance, financing, accounting or legal service providers often operate as boundless workplaces with teleworkers and flexible working time arrangements. However, the highly trained personnel of such employers’ are usually not organised and such employers in most cases do not join employers’ associations. Thus such experiences remain non-existent (or at least invisible) for the social partners. The union economist, on the other hand, also shared that the new labour regulation makes the typical employment flexible enough that employers do not need to turn to the new forms. Moreover, the ‘traditional’ way to flexibility is still disguised employment. If employers want to reduce employment costs, they turn to illegal practices instead of adapting innovative models.

The union economics expert mentioned that the raising labour shortage might turn more employers towards employee sharing. In underpaid occupations – like healthcare or tourism – many Hungarians assume jobs in other EU countries. The number of Hungarian migrant workers working in other Member States is estimated to be around 600,000 persons (circa 15% of the total workforce). This tendency calls for careful management of human resources where employee sharing could be a reasonable option.

Micro level

Employee sharing could help micro and small enterprises to employ highly qualified employees, in cases where separate companies could not afford the cost of the employment. It is also possible that companies may share one employee for basic tasks like administration. The employer interviewee added that employee sharing could also be useful for hiring lawyers because an employee can fully represent its employer in any civil court procedure. In this way, one shared legal expert could work on behalf of several companies. He also found that cost sharing is a huge advantage of employee sharing but also argued that the rules on how the employer in charge of paying wages should be reimbursed by the other employers need an urgent clarification.

The strict joint and several liability motivates employers to choose only absolutely trusted partners for employee sharing. The identified employer groups operate closely, it is not possible for outside employers to join in.

Some interviewees also highlighted the first examples of abusive practices.

The labour law expert outlined the case of a language teacher who worked for a public primary school. Public employees fall under a separate law (Act XXXIII of 1992 on public employees) and their wages are paid by the Hungarian State Treasury. One day the language teacher came to the university's labour law department asking advice on a new and unfamiliar work relationship she was offered by her employer: a shared employment contract involving her original employer – the primary school – and a privately owned language school. Neither the Labour Code nor the Act prohibits the use of employee sharing for public employees. Nonetheless, employee sharing between a public entity and a private for-profit organisation may be questionable on moral grounds. It is likely the parties looked for ways to use public funding in order to decrease the wage costs of the language school. Formally, such a situation is not prohibited by the law.

The union official presented another example of abuse. Nearly all white-collar workers in a small enterprise – such as bookkeepers, accountants and PR specialists – were offered a new employee sharing contract. One other employer was owned by the boss of the first employer. Everyone agreed yet it turned out that the workload of the employees significantly increased as they started receiving requests from the new employer.

A couple of months later another contract was proposed adding the third company owned by the boss to the list of the employers. The employees felt that the employer simply wanted to use his workforce in three companies for the same wage. Unpaid overtime was common even before the employee sharing project had started. Due to the opposition from the employees, the third company was not added to the employee sharing.

Strengths and weaknesses

Based on the first experiences, the strengths of the new institution of employee sharing are that:

- flexible regulation enables the parties to design the employee sharing scheme according to their own needs – it may be used for ad-hoc common employment (for completion of a joint project) as well as for creating a permanent employee-sharing structure;
- the legal framework seems suitable for the practical needs of the parties involved in employee sharing. The problems mentioned below could be easily corrected by some minor amendments to the legislation in force;
- obligations concerning remuneration, taxes and social security can be shared by the employers who can discuss and find the most convenient arrangement;
- the arrangement significantly decreases the administrative burden compared to other legal options used for common employment such as parallel part-time employment;
- no change in the working conditions of affected workers;
- for employees, it is quite common to have separate employment contracts with different employers, usually one stipulated for full-time and the other for part-time; this setting is less convenient for the employee than employee sharing as employees might have serious difficulties if the two work time schedules overlap.

The key weaknesses are that:

- the law sets only the main cornerstones of the employee sharing – an employee sharing scheme may not be designed only by following the statutory requirements as set in the law, which means the parties involved have to show a lot of creativity;
- the tax authority's template to declare the employment of shared employees can only be used for new employment relationships. Technically it is impossible to fill out the declaration if an employment contract is amended to employee sharing (meaning employees who were previously regular employees but subsequently hired as shared workers by the same employer). Nonetheless, such an amendment is not only lawful, but also a common occurrence. In each case study analysed in this research the shared employees were employed in traditional employment by one employer before the other stepped into the relationship. This necessitated the termination of the employees' prior employment. The termination contract contained that the employees were offered a new employee sharing contract the next day with intact conditions. Second, the parties concluded the new employee sharing contract. In practice the termination agreement and the new contract were signed on the same day. The new contract also contained that the employees preserve their previously accumulated employment rights and entitlements (like severance pay or notice periods). Without this expressly stipulated, the employees would have lost such entitlements with the commencement of the new employment relationship.⁷

⁷ As regards entitlements to public benefits (such as unemployment benefits or pension), in Hungary this is related to the overall work history of the worker, but not tenure with a specific employer. For example, if 365 days spent in work in the last two years is required for a childcare allowance, this might be accumulated from more employment relationships following each other. Consequently, the

- employee sharing is a new concept with a lot of uncertainties (for instance, the financial relations between the employers or the division of employer's rights and obligations are not clearly regulated), and as a result, employers are reluctant to use this form of employment;
- due to the newness of the concept and the legislation just providing basic regulations, it requires a high level of labour law expertise or money to acquire that knowledge from the market from the companies;
- even large employers are often reluctant to change their long standing practices; even three years after the entry into force of the new Labour Code it is common to find employers who still follow rules from the previous regulation except where the provisions changed in favour of the employer (for example wage premiums); this shows a high level of unawareness of the new rules;
- even the relevant authorities do not have a completely clear picture of how employee sharing should work in practice;
- some regulatory gaps were noticed and have not been addressed yet – for example a change of employer responsible for paying the social security and tax obligations may have a negative effect on the level of employee benefits. In the labour law literature many authors also raised concerns about the following rule. The Labour Code stipulates that an employee sharing employment relationship ceases when the number of employers is reduced to one. For example, if one of the two participating employers becomes bankrupt and ceases its activities, the employment relationship also ends. If there are at least three employers, the bankruptcy of one will not end the employment relationship as there are more than one employers remaining. The rule is compulsory hence the remaining parties cannot decide to continue their relationship under the same contract. As a guarantee, the employee shall be entitled to an absentee pay due for the notice period of at least 30 days when exempted from work duty, and also severance pay. Absentee pay embraces the employee's basic wage and certain wage supplements for a given period. Severance pay is also determined in absentee pay (for example, after three years spent in the employment relationship it means one month absentee pay). Employers might artificially create circumstances that lead to such cases. For instance, the employer may use an almost insolvent company as the other employer and after it ceases its activity, the employment of all shared staff ends automatically, irrespective of dismissal protections and without reasoning. The employee will only receive the financial compensation mentioned above (absentee pay and severance pay). Nonetheless this problem seems rather theoretical as none of the interviewees witnessed any such conduct;
- no specific interest representation of shared employees (however, in the analysed cases, if there was a trade union in the original employer, it continued to represent the interests of those who had become shared staff).

establishment of a new employment relationship did not have any respective consequences for the workers.

Transferability

The relevant regulations came to effect only recently – on July 2012 – and therefore the implementation experience is still very limited. It is too early to assess whether there are any models and best practices that would be transferable to other companies or countries.

Commentary

Employee sharing is still at the early phase of its history in Hungary. Although the first experiences show that it could be successfully implemented in various situations for different employers and jobs, it is still considered a novelty in Hungarian labour law which is unknown to many employers. There is no evidence to suggest that the social partners or the government plan to support its use on the macro level as an employment policy tool. Nonetheless, employers' organisations or trade unions could help to disseminate information on the best practices of employee sharing.

There is a huge variety of cases when it makes a lot of sense for organisations to jointly employ a person. The new Labour Code made an essential step towards satisfying this need by introducing the concept of employee sharing. In essence the legislation responded to demands coming from the enterprises.

There are also other employment forms that might provide a legal basis for common employment. While employee sharing seems by far the most convenient form, many employers will still use temporary assignments, (sham) agency work disguising as direct or traditional employment, and other models. Clear distinctions between such instruments are quite hard to make as the new Labour Code eliminated some important divides.

The trade union official interviewed and the social security expert shared the idea that employer organisations should play an important role in enhancing wider adoption of employee sharing. They could act as intermediaries between the companies in need of new employees and other companies with surplus workforce. These organisations could help to set up real employee sharing instead using it as an ad hoc form of common employment.

However, the interviewee from the employers' organisation expressed doubts about such a model. The labour expert pointed out that the intermediary organisations would have to be closely connected to the companies in order to get the information that is necessary to operate the employee sharing. This could only work at a regional or local level.

The interviewees have also argued that larger companies have their own recruiting procedures and models and would be reluctant to use the shared employment option.

The legislator left a lot of leeway to the employers and employees to design the shared employment contract in a most appropriate way. Such flexibility may bring a wide range of practices, from project work to permanent employee sharing. Although the current regulations may have gaps, they all can be resolved through an agreement by the relevant parties.

Once employers start disseminating their experiences of actually using shared employment, it is likely the use of this type of arrangement will spread fast.

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