



# Work-Life Balance

Prof. Raluca Dimitriu PhD  
Academy for Economic Studies, Bucharest

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**The starting point**

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# Originally



- Labor law was born as a patriarchal right
- Beginning of 20<sup>th</sup> Century: man works on labor market, engages in paid activity and thereby supports his family
- Woman is housewife

 distorted perception:

- Man = resource provider
- Woman = rather a resource consumer

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# Later



Woman joins the labor market ...

... but in a format of labor law that was already male-centered: the assumption is that the worker will devote himself entirely to his work, while someone else takes care of household and family for him.



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# Women's access to labor market



- Double the working hours: at the workplace and in the private space
- “Women are much more likely than men to take on the role of unofficial caregivers for the elderly or dependent persons” (European Commission, 2017).

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# Hence the stereotypes



“Women take care of children, so are less available at the workplace”

“Men support their family so they need higher wages”

“Women are more vulnerable so they need protecting”

“A real man's priority is his career. A real woman's priority is her family”

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| Today

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## Relevant Directives



- Directive (EU) 2019/1158 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU
- European framework agreement on telework (2002)
- Directive 2003/88/EC concerning certain aspects of the organisation of working time
- Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union
- Directive 97/81/EC concerning the Framework Agreement on part-time work

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# The European pillar of social rights



## Work-life balance:

“Parents and persons with caregiving responsibilities are entitled to proper vacation time, flexible forms of work and access to care services. Women and men are equally entitled to access to special leave so as to perform their caregiving responsibilities and must be encouraged to use such leave in a balanced manner.”



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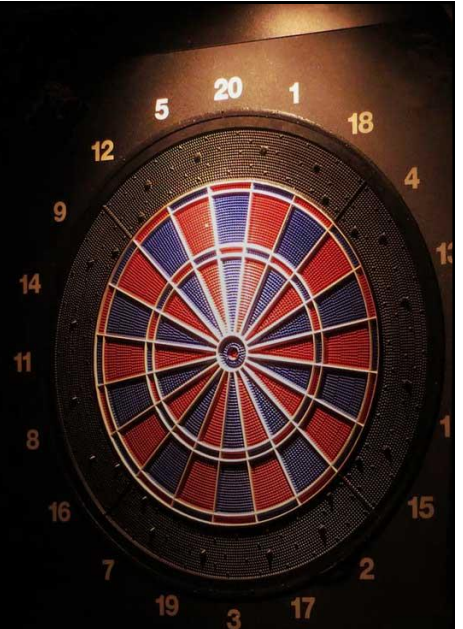
## Some options:

Fractional contracts **01**

Remote work **02**

Special leave **03**

Flexible working hours **04**




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# 1. Fractional contracts

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## Difference:

- Voluntary fractional time work as an expression of a personal option. In this case the fractional contract can be a way to reconcile professional and family life, a manifestation of free will;
- Involuntary fractional time work  underemployment



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## Involuntary part-time work



- Fractional-time workers rarely hold managerial positions, their chances at promotion are minimal
- They carry out work that is below their actual qualification
- They are frequently women, young persons, disabled persons, other persons on the fringes of the labor market



Economic and identity vulnerability of fractional-time workers

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## Part-time worker training



CJEU case C-909/19: “the period during which a worker attends vocational training required by his or her employer, which takes place away from his or her usual place of work, at the premises of the training services provider, during which he or she does not perform his or her normal duties, constitutes working time”.

**One of the consequences:** in some states, the part-time employee can no longer be professionally trained at the employer's disposal, after working hours, because she cannot work overtime.

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## 2. Remote work

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### Positive effects



- Provided social distancing in the context of the COVID 19 crisis
- Harmonizes professional and family life
- Flexibility of working hours to match personal biorhythm
- Makes it possible to keep the job even if the facility relocates
- Less time needed to travel to workplace
- Persons with disabilities can be included on the labor market

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# Other effects



- Subordination relationship – apparently lessened (employer no longer oversees work)
- But risk of self-exploitation (internalization of subordination relationship)
- New types of labor accidents (burnout)
- Problems with confidentiality of information
- Right to log off?
- Blurred demarcation between working time and resting time



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# Telework

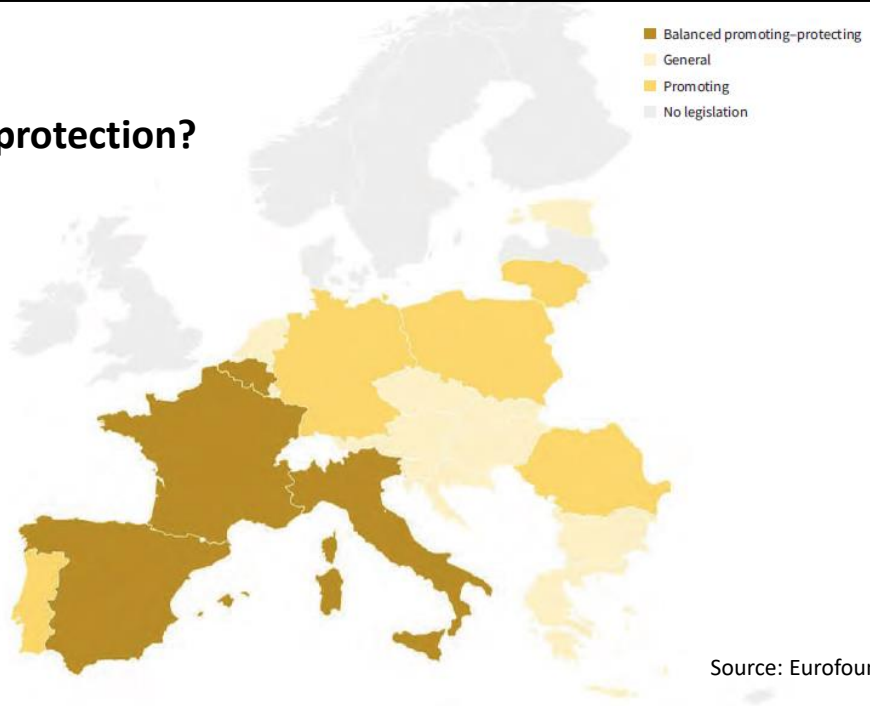


- By contract or ordered unilaterally
- Monitoring of working time (CJEU: case C-55/18 CCOO)
- Recording
- Subsidies
- Possibility to combine work at company and from home: hybrid work
- The place of work is no longer stipulated in the employment contract
- Possibility to work in other countries
- Expenses with arranging workspace
- Use of teleworker's own equipment



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## Telework: Promotion or protection?



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# Leaves - examples



- Maternity leave;
- Child-raising leave;
- Leave for the other parent (who did not take the child-raising leave);
- Paternity leave;
- Caregiver leave;
- Medical leave for the care of the sick child;
- Maternal risk leave;
- Child-care leave for disabled child;
- Adoption/Surrogacy Leave;
- Days-off for parents, etc.

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# Maternity leave



## **CJEU: C-463/19, Syndicat CFTC/CPAM de Moselle and others**

“After completion of the legal maternity leave a Member State can reserve additional leave to the child’s mother in case such leave is not about her being a parent but about the consequences of the pregnancy, and her maternity condition. Such additional leave should thus be intended to ensure protection for the woman’s biological condition and for the special relationship she has with her child subsequently to birth.”

“In this context a different treatment of men and women is compatible with the principle of equality.”

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# Paternity leave



## European Directive 2019/1158

- 10 working days, to be taken on the birth of the worker's child.
- The right to paternity leave is not conditional on a requirement concerning working period or seniority.
- To be granted irrespective of the worker's marital status or family status, as defined in domestic law.

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# Child-raising leave



## European Directive 2019/1158

- A minimum of four months
- Right of workers to ask to use the child-raising leave in flexible formats.
- Employer's obligation to provide written justification for any refusal to grant such request within a reasonable time after request.

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# Leave for the other parent



## European Directive 2019/1158

The minimum duration of child-raising leave is extended from one to two months when it cannot be transferred from one parent to the other.



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# Caregiver leave



## European Directive 2019/1158

Member States are to take the necessary steps to ensure that each worker is entitled to a caregiver's leave of **five working days a year**.

Member States can grant caregiver's leave for a reference period other than one year, for every person who requires caregiving or support or for every case.

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## 4. Flexible working hours

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## Flexible working hours



- Versions: customized, compressed, uneven, delayed working hours
- Directive 2003/88 – 48 hours/week
- CJEU: there is no gray area – between working hours and resting hours
- On call time (at home) ≠ stand by time (at the employer's). Difficult distinction in the case of teleworkers
- Work/life balance and the trap of flexible hours
- Unpredictability of free time

Spare time?!



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# Overtime



Women's reduced availability for working overtime  $\Rightarrow$  possibility they may earn less income than men, even in the circumstances of compliance with the principle "equal pay for equal work."

A lack of availability for working overtime may not even be real, but will continue to be presumed by the employer because it matches the patriarchal pattern of division of tasks in a family. Consequently it does not even matter what the reality is in each case: the employer already has a representation of the woman's unavailability for working overtime.

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# Reduced control



- does not entail reduced authority of the employer
- is sometimes replaced by control from clients
- does not entail absence of ways to monitor, which are themselves products of digitalization. The new technologies allow a practically constant monitoring of employees (video, GPS, etc.), and often have an intrusive character and affect the balance between private and professional life.

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## Conclusions?

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## In case of indirect discrimination



### These are NOT an objective justification:

- “Women’s need for protection”, except for the pregnancy period. Any phrasing involving “protection of the woman” will amplify the stereotypes about her vulnerability. Example: the Convention of the International Labor Organization no. 89/1948 on the prohibition of night work for women.
- traditions, cultural patterns, religious customs. These often create a context conducive to discrimination (e.g. gender discrimination or sexual orientation discrimination); so they are even farther from something that could be raised as justification.

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The work/life balance can arise from balancing tasks in the family, between parents.

Payment to compensating for the uneven distribution of tasks in the family can perpetuate such uneven distribution.

Career vs. family is a false option. The meaning here is not that a career is more important than one's family and children, but that both are equally important for both sexes.

Role of the law: *poiesis* or *praxis*?



