THE JOB DESCRIPTION AND ITS IMPACT ON THE EMPLOYMENT RELATIONSHIP

Lecturer Dana VOLOSEVICI, PhD.
Petroleum-Gas University Ploiesti, Romania
dana.volosevici@vplaw.ro

Abstract
This paper aims to provide an overview on the provisions regulating the job description as the main document which describes the type of work performed by the employee and to discuss the impact of the job description on the employment relationship.
Keywords: job description, employment, employment agreement

According to the legal definition, the individual employment contract is the contract under which a natural person, called an employee, undertakes to perform work for and under the authority of an employer, natural or legal person, in exchange for a remuneration called salary. In order to determine the content of the notion of “work”, the person selected for employment must be informed about the position or occupation he will hold, according to the specification of the Romanian Classification of Occupations or other normative acts, as well as about the job description, specifying the duties of the position. At European Level, the Directive 2019/1152 on transparent and predictable working conditions in the European Union [1] states that Member States shall ensure that employers are required to inform workers of the essential aspects of the employment relationship, including either: (i) the title, grade, nature or category of work for which the worker is employed or (ii) a brief specification or description of the work.

Therefore, the main role of the job description is to clarify the limits and content of the employee's obligation, as it establishes which are the duties that the employee undertakes to perform and for which he will be entitled to receive the salary. In the absence of the job description, the parties to the employment contract will, of course, refer

to the position held by the employee, but there is no official repertoire to establish, in general and for all positions, what are their specific responsibilities.

The Labor Code does not define the job description, nor does it establish its minimum content. In fact, the job description is the result of a job analysis process, which requires the systematic collection of data to describe the tasks, activities and responsibilities related to the job analysed, as well as the knowledge, skills, abilities that the job holder must have [2]. Therefore, two main axes of analysis can be identified, job-oriented analysis or job description, and employee-oriented analysis or job specifications.

The result of the job analysis process is the job description, which will mainly include the job title, position into the organizational structure, a chapter on job-specific responsibilities, tasks, activities and actions, job skills, job context and the necessary training for the job. From the simple enumeration of the content of the job description, it results that it establishes not only the technical context of the job, but also the framework in which it will be possible to establish the professional obligations of the employee.
We shall enumerate in the following the importance of the existence of the job description in the development of some important aspects of the labor relation.

First, according to the provisions of Article 27, paragraphs 1 and 2 of the Labor Code, a person may be employed only on the basis of a medical certificate, which must state that the person concerned is fit to perform that specific job. Failure to comply with these provisions the individual employment contract shall be null and void. Ability to work is the worker's medical ability to work in the profession or position for which the medical examination is requested [3]. Therefore, the aptitude for work must be assessed both in relation to the effective tasks' incumbent on the employee and in relation to the working conditions in which they are to be exercised. The medical analysis must therefore be based on a job description that completely presents the effective "work" that the employee will have.

Also, during the execution of the employment contract, the periodic verifications of the aptitude in work must be done on the basis of the updated job description. In relation to the concrete tasks that the employee has, it will be possible to establish, in case of a medical conditioning, if the employee can continue performing the work, respecting the conditions imposed by the medical doctor or if the conditions for dismissing the employee

for being infit for performing the job are met. Thus, Article 61 letter c) of the Labor Code provides the right of the employer to order the dismissal if, by decision of the competent bodies of medical expertise, the physical and / or mental incapacity of the employee is found, which does not allow him to fulfill duties corresponding to the job held.

"In interpreting the provisions of Article 61 letter c) of Law no. 53/2003 - Labor Code, republished, with subsequent amendments and completions, by decision of the medical expertise bodies is understood the result of the evaluation of the occupational medicine specialist regarding the work aptitude, consisting in the aptitude file, uncontested or become final after contestation, by the issuance of the decision by the entity with competence in this respect" [4].

Secondly, the job description is the basis for establishing the individual performance objectives and the criteria for evaluating the professional activity of the employee. „Task performance is defined as produce materials or providing services, such as expertise in job-related tasks. Task performance also involves activities that support the technical part and service of a firm or an organization, such as coordinating and planning" [5]. In a functional approach, task performance involves performing the tasks and duties that are specified in a job description [6].

Moreover, the professional job fit will also be analyzed in connection with the level of performance with which employees perform their work, understood as a set of activities to be performed. The jurisprudence has established that " not being professional fit is that circumstance of an objective or subjective nature which leads or is capable of leading to lower professional performance than that which the employer is reasonably entitled to expect from the employee" [7]. The professional fit is analyzed, as it results from the provisions of article 61 letter d) of the Labor Code by referring to the "job in which the employee is employed", which requires an analysis of the actual tasks and duties held by the employee. The dismissal of the employee due to lack of professional fir may be ordered only after the prior evaluation of the employee, according to the evaluation procedure established by the applicable collective labor agreement or, in its absence, by the internal regulations. The evaluation procedure is therefore the result of negotiations between the employer and the employees' representatives and only if the parties have not concluded a collective agreement is it possible for the procedure to be established by

the employer by internal regulations, in consultation with the employees' representatives. Although the parties are free to determine the characteristics of the evaluation procedure, the object of the evaluation may not exceed the characteristics of the actual work performed by the employee. Hence the importance of fully regulating job-specific duties, tasks, job competencies, work context and job training.

A third aspect to consider is the management of work discipline. The disciplinary violation constitutes, according to the legal definition, an act related to work and which consists in an action or inaction committed with guilt by the employee, by which he violated the legal norms, the internal regulation, the individual employment contract or the contract applicable collective bargaining agreement, orders and legal provisions of hierarchical leaders. The employer has a disciplinary prerogative, having the right to apply, according to law, disciplinary sanctions to his employees whenever he finds that they have committed a disciplinary offense, but at the same time must ensure compliance with the employee's right to defense. Hence, during the preliminary investigation procedure, the employer must present to the employee the description of the violation, including, when there are facts related to the non-fulfillment or incorrect fulfillment of the work tasks, by referring to the task that the employee had in relation to his work.

The employee has the right to formulate and support all defenses in his favor and to provide the commission or the person empowered to carry out the investigation with all the evidence and motivations he deems necessary, which may also require references and analysis of his task and duties. As some of the disciplinary violations are in direct and causal connection with the professional tasks and duties, any task not specified or specified in general terms may lead to the impossibility of substantiating the accusation. In the same sense, in order to substantiate the patrimonial liability, the employer must be able to prove that the employee has not fulfilled or failed to fulfill his tasks and duties, since the liability may be incurred only for material damages caused by employees to the employer in connection with their work.

Another situation that must be analyzed in connection with the proper establishment of the content of the job description is that of dismissal for reasons not related to the person of the employee. This dismissal represents the termination of the individual employment contract caused by the termination of the employee's employment,

for one or more reasons unrelated to his person. When the employer eliminates a smaller number of jobs, having the same denomination, as those in the organizational chart of the company, the choice of a certain job could also be made according to its specific task and duties, as they are mentioned in the job description. Thus, for example, a company that provides accounting consulting services, with 20 economist positions, might be interested in eliminating a much smaller number. The selection of eliminated jobs should be made in such a way as to preserve the jobs whose actual duties correspond as closely as possible to the reality of the activity of the company concerned.

Finally, the correct and complete establishment of the duties of the position may have an impact on the efficient establishment of the type of professional training of the employee. Thus, according to Article 192 of the Labor Code, vocational training has among its objectives those of adapting the employee to the requirements of the job (letter a), updating knowledge and skills specific to the job and the job and improving vocational training for employment. basic (letter c), the acquisition of advanced knowledge, of some modern methods and procedures, necessary for the accomplishment of the professional tasks (letter e), the promotion in work and the development of the professional career (letter g). The employer legal entity that has more than 20 employees, shall elaborate annually and apply professional training plans, in consultation with the union or, as the case may be, the employees' representatives. These plans must be adapted to the specifics of the jobs as far as possible, to the tasks and duties of the jobs.

From all the above aspects it results that the job description is an essential element in the development of the employment relationship and that it is necessary that its drafting is done after analyzing the work, so that the job description expresses as accurately as possible the reality of that job. During the execution of the employment contract, it may be necessary to modify the job description in order to correspond to the job changes. In this case, the jurisprudence established that “if the nature of the work performed does not change, the change of job tasks by changing the job description does not constitute a change of the employment contract. However, retaining the name of the position, accompanied by the addition of new duties to those initially established by the job description, which have a different nature and in fact correspond to another function, has the significance of modifying an essential element of the employment contract, namely

the type of work. In this case, it is necessary to conclude an addendum to the individual employment contract under the conditions of Article 41 (1) and (3) of the Labor Code" [8]. However, "the change of duties in the job description does not have the meaning of a change in the individual employment contract according to Article 41 of the Labor Code (...), if it did not reach another specific function of the employee" [9].

On another level, which is more related to organizational psychology, the characteristics of jobs can be analyzed from the perspective of their psychological impact on employee performance. Hackman & Oldham's model [10] has established, since the 1980s, that five main characteristics must be analyzed in order to ensure employee motivation and performance, all these characteristics being related to the analysis of work. The first feature is the skills variety and refers to the degree the position requires the employee to use a wide range of skills and skill sets. The task identity refers to the degree to which the position implies the accomplishment of a complete, identifiable activity, which would allow the employee to identify with the finished object. The task significance is the characteristic related to the degree to which the job has an impact on the lives of colleagues in the organization or on society in general. The degree to which the job offers the job holder the opportunity to choose how and when to perform the various activities characterizes the job autonomy, and the ability to assess the correctness of their work and assess the impact of their work depends on the fifth characteristic, respectively job feedback.

Therefore, an employer who creates a job description should consider all these characteristics as their role in achieving performance has been scientifically proven. The employee and the way he relates to the position occupied are therefore fundamental elements in the architecture of work and job.

In conclusion, the job description, an element that constitutes a simple annex to the individual employment contract and whose legal regime is regulated only generally by the Labor Code has an important role in the development of the employment relationship. As we have shown briefly above, a number of important elements of the employment contract and of the employment relationship can be correctly implemented or managed only if the employee's tasks and duties are established correctly and adapted to the reality of the position held.

References

[1] Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019, on transparent and predictable working conditions in the European Union, published in the Official Journal of the European Union, L 186/105/ 11.7.2019.
[2] Pitariu, H.D., *Proiectarea fișelor de post, evaluarea posturilor de muncă și a personalului,* 2nd edition, Irecson Publishing House, 2006.
[3] Government Decision no. 355 of April 11, 2007 on surveillance of workers' health, published in the Official Gazette no. 332 of May 17, 2007, as subsequently amended.
[4] High Court of Cassation and Justice, Decision nr.7/2016, published in the Official Gazette no. 399 of May 26, 2016.
[5] Borman, W.C., and Motowidlo, S.J. Expanding the criterion domain to include elements of contextual performance. In N. Schmitt and W.C. Borman (eds.), *Personnel Selection in Organizations* (pp. 71±98). San Francisco, CA: Jossey Bass, 1993.
[6] Murphy, K. R. (1989). Dimensions of job performance. In R. F. Dillon & J. W. Pellegrino (Eds.), *Testing: Theoretical and applied perspectives* (pp. 218–247), Praeger Publishers, 1989.
[7] Craiova Court of Appel, Employment Litigation Section, Civil Decision no. 4101/R/2010, http://portal.just.ro.
[8] Bucharest Court of Appel, Section VII for civil and employment conflicts, Decision no. 1709/R/2009, in R.G. Cristescu, C. Cristescu, *Labor Code amended and republished in 2011. Analyzes and solutions*, Hamangiu Publishing House, Bucureşti, 2011, p. 47.
[9] Constanța Court of Appel, Section VII for civil and employment conflicts, Decision no nr. 214/CM/2008, in R.G. Cristescu, C. Cristescu, *Labor Code amended and republished in 2011. Analyzes and solutions*, Hamangiu Publishing House, Bucureşti, 2011, p. 47.
[10] Hackman, J.R. & Oldham, G.R., *The job diagnostic survey: An instrument for the diagnosis of jobs and the evaluation of job redesign projects,* Department of Administrative Sciences: Yale University, 1974.

.