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Occupational Therapy Stays in Healthcare Institutions in the Slovak Republic - best practice or not?

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Abstract. The legislation establishes a general principle for the employer with respect to prevention and assurance of health and safety at work, including the elimination of risks and factors that may lead to accidents at work, occupational diseases and other damage to health at work. The employer should prevent possible damage to the employee's health by taking various technical and organizational measures to protect the health of employees. In the conditions of the Slovak Republic, measures of this type include stays in institutions providing occupational healthcare. The scientific paper summarizes the substantive conditions of the employee's right to receive occupational therapy in institutional care, it points out the application shortcomings of the current legislation and, at the same time, criticizes the legislation adopted in connection with measures to prevent the spread of corona virus, which complicates the process of granting the employee their right to receive occupational therapy in institutional care. The aim is to provide scrutiny of this institute in the area of employee health and safety at work as a specific feature of the Slovak legislation. From the experience of the Slovak application practice, the authors are inclined to believe that occupational therapy provided in institutional care is a socialist relic in a market economy rather than an inspiring best practice for European legislators.

Keywords. Occupational therapy in institutional care, protection of health and safety at work, employer, employee, COVID-19

1. Introduction - occupational therapy in institutional care as a part of safety and health protection at work

The occupational therapy provided in institutional care is a purposefully managed, preventive health enhancing program. The employee is provided with services and therapies under an individually prepared plan to enhance their health, to prevent, eliminate or mitigate possible negative effects of occupational exposures to various factors of work and the work environment. The conditions for providing an occupational therapy stay are regulated by § 11 of Act no. 124/2006 Statutes on safety and health protection at work, as amended (hereinafter referred to as the OHS Act). The intended purpose of the occupational therapy stay is to compensate for the expected damage to health caused by the work performed, to enhance the employee's overall physical and mental wellbeing, to increase their overall resilience, to increase their awareness in the area of health, to adopt the right attitudes to health at work, to acquire proper eating habits and to reduce smoking. The content of an occupational therapy stay includes rehabilitation exercises, professional instruction, hydrotherapy and heat treatment procedures, swimming, a suitable type of sport and a stay in nature. Framework programs for occupational therapy stays for employees exposed to increased risk factors at work and in the work environment are listed

in the annex to the Decree of the Ministry of Health of the Slovak Republic no. 148/2010 Statutes on the details, the purpose, the content and the framework programs of the occupational therapy stay (hereinafter referred to as Decree No. 148/2010 Statutes).

The usual form of an occupational therapy stay is a form of a stay usually lasting several days (at least 7 calendar days). An alternative is then rehabilitation in connection with work provided continuously during the performance of work (§ 11 par. 1 of the OHS Act). The length of work-related rehabilitation is at least 80 hours in course of two years. The occupational therapy stay should usually follow the employee's vacation and cannot be interrupted without serious reasons. Rehabilitation in connection with work does not have to happen subsequently to the employee's vacation. In application practice, there is a possibility of a mutual combination of both methods, by which an occupational therapy stay can be provided in accordance with § 11 par. 1 of the OHS Act, i.e. by combining the occupational therapy stay of a certain length in natura, shorter in extent than the 7 calendar days mentioned above, and subsequently by supplementing it with a rehabilitation lasting e.g. a few dozen hours. Employers are trying to opt for that combination, especially with regard to a high cost of providing these stays in natura, when they have to provide the employees with a compensation while, of course, bearing the costs of the actual stay of employees in the designated facility. However, the cumulation of both methods of providing the occupational therapy stay is not, in our opinion, permissible or expedient. Either the employer provides the employee with a residential form of the occupational therapy stay lasting at least 7 days, or no less than 80 hours of rehabilitation over two years. In both cases, setting the duration of the occupational therapy stay and the nature of such stay is justified by the medical expediency of such form of the occupational therapy stay and their bundling in the form of shortening both forms of occupational therapy stay fails to translate into the desired effectiveness of the occupational therapy stay provided.

The employee must be provided with a program-controlled health plan, accommodation and full board throughout their occupational therapy stay. Accommodation and full board are not provided during rehabilitation in connection with work, which saves the employer these costs it would have otherwise been obliged to spend on the residential form of the occupational therapy stay. The employer may not pass on the costs related to the provision and implementation of occupational therapy stays to the employee. The economic burden of the occupational therapy stays motivates employers to speculate on how to avoid the obligation to provide such stay. Due to its imperfections, the Slovak legislation does not significantly impede such conduct. On the other hand, it is necessary to say that employers' doubts about the effectiveness of occupational therapy stays as a preventive tool to ensure the safety and health of employees at work are justified. Raison d'être of all the employer's responsibilities in the area of health and safety at work is prevention. Even a layman's understanding is sufficient for drawing a conclusion that occupational therapy stays for employees exposed to certain selected factors of work and work environment do not fulfil such function. If we look at the framework program of an occupational therapy stay for employees exposed to noise according to the annex to Decree no. 148/2010 Statutes, which includes fitness and relaxation exercises, hydrotherapy procedures or swimming with a relaxing character, stay in nature, professional instruction focused on rational nutrition or smoking reduction, probably none of these activities will have preventive effects on the employee with injured hearing. Rather, they might have a health enhancing effect at best. The practice of occupational therapy stays is mainly aimed at correcting the situation that has already occurred, when the employee's health is probably or with a high probability already affected as a result of performing work in the presence of negative factors of the working environment. Thus, in a deteriorating economic situation, employers demand abolition of those stays as an integral part of protection of employees' lives

and health and they demand these stays be reclassified to become a part of the employer's corporate social policy, which, in contrast to the mandatory nature of occupational safety and health, is "only" optional and is provided according to financial capabilities of the employer. The costs of occupational therapy stays could then be transformed to strengthen the employer's preventive measures in order to better protect the life and health of employees.

2. The research objectives, methodology and tools

In addition to the continuing criticism of the inefficiency of occupational therapy stays by employers, the discussion on occupational therapy stays in the Slovak Republic has resumed in connection with other legislative changes that have been implemented in this area in connection with measures to prevent the spread of corona virus. The legislator unconceptually suspended the running of certain time limits for the creation of the right to an occupational therapy stay, while, however, the employees continue to perform work in a risky work environment.

The aim of the present scientific paper is to summarize the substantive conditions for granting the occupational therapy stays to employees in the conditions of the Slovak Republic, so that we can present this institute in the area of safety and health protection of employees at work as a specific feature of Slovak legislation. Further, we point out the application shortcomings of the current legislation on occupational therapy stays and, at the same time, criticize the legislation adopted in connection with measures to prevent the spread of coronavirus, which will further complicate the recognition of employees' entitlement to occupational therapy stays.

The basic material for scrutiny and interpretation was the OHA Act and the related legal regulations and the measures published online by the Government of the Slovak Republic to prevent the spread of coronavirus. An equally important source of the presented body of knowledge is the authors' own application experience. The problematic application aspects of occupational therapy stays are not addressed by the Slovak scientific literature. Professional literature is limited only to summarizing the legal conditions necessary for the origin of entitlement to the occupational therapy stay and foreign literature is of no use, as such legal institute does not exist in other European countries.

Qualitative scientific methods have been used for discussion of the above-mentioned issues: critical in-depth analysis of the current legal framework, descriptive method and scientific cognitive methods.

3. Conditions for the employee 's entitlement to an occupational therapy stay

The employer's obligation to provide an employee with an occupational therapy stay is linked to the satisfaction of two conditions. Firstly, the employee performs work in a selected profession and, secondly, they have worked in such selected profession for a period specified by law.

With respect to condition 1: For the purpose of provision of an occupational therapy stay, the selected profession is a profession in which work, classified by the state public health administration body in the third or fourth category, is performed and the occupational therapy stay meets the condition of effectiveness in terms of prevention of occupational damage to health (§ 11 par. 2 of the OHS Act). The employer is, therefore, obliged to provide the employees with an occupational therapy stay and to reimburse all related costs, if they perform the so-called hazardous work (work classified in category 3 or 4) and are exposed to one factor or a combination of several work or work environment factors, namely solid aerosol (dust), noise, vibration, chemical factors, carcinogenic and mutagenic factors, ionizing radiation, increased air pressure, physical activity, including long-term excessive and unilateral strain,

mental workload and heat or cold stress. In § 11 par. 3, the OHS Act enumerates the working environment factors, for the exposure to which an occupational therapy stay or a rehabilitation in connection with work is not provided to employees performing risky work, because the purpose of providing them with an occupational therapy stay has not been fulfilled. Such factors are those causing occupational skin allergy, biological factors, electromagnetic radiation, ultraviolet radiation, infrared radiation and lasers for which the occupational therapy stay is of no significance for the effective prevention of occupational damage to health by these factors.

On recommendation of an occupational health service physician, and in agreement with the employee representatives, including employee safety representatives, the employer may (optionally, voluntarily) provide an occupational therapy stay to an employee performing work in the second category, if the occupational therapy stay meets the condition of effectiveness in preventing professional damage to health. The second category includes work in which, due to the risk involved, there is no presumption of damage to health, but an adverse response of the organism to the burden in the form of factors of work and the working environment cannot be ruled out. This is work in which the factors of work and the working environment do not exceed the limits set by special regulations and work in which the risk factor of work is ionizing radiation, if structural, technical and organizational measures guarantee that exposure of workers does not exceed the worker exposure limits stipulated in the binding legislation, even in case of long-term exposure.

With respect to condition 2) The employer is obliged to provide an occupational therapy stay or a rehabilitation in connection with work to all those employees who have performed work in the selected professions for a certain period of time stipulated by law and in the periodicity stipulated by law. The employee is obliged to take part in the occupational therapy stay or to undergo rehabilitation in connection with work (according to § 12 par. 2 (n) of the OHS Act). The employee is not obliged to participate in the occupational therapy stay or may not take part in it if they suffer from symptoms of an acute illness or from a contagious disease. The employee's current satisfactory state of health is required for the employee's participation in the occupational therapy stay or in rehabilitation in connection with work. The first occupational therapy stay is required of an employee who has been continuously performing work classified in the third category for at least five years or who has been continuously performing work classified in the fourth category for at least four years (§ 11 par. 11 of the OHS Act). The definition of continuous work is still satisfied in case the work is interrupted for less than eight weeks. The employee is obliged to take part in the subsequent (repeated) occupational therapy stay:

- once every three years, if they have completed at least 600 work shifts in the selected profession over this period (§ 11 par. 12 of the OHS Act);
- once every three years, if they have completed at least 400 work shifts in the selected profession over this period and the employee works with a proven chemical carcinogen (§ 11 par. 12 of the OHS Act);
- once every two years, if the employee works underground in the extraction of minerals or in the excavation tunnels and shafts and has completed at least 275 work shifts in the selected profession over this period (§ 11 par. 13 of the OHS Act).

For the purposes of an occupational therapy stay, a completed work shift is understood to be a work shift in which the employee has worked in the selected profession for most of the shift's time. In case of an employee with unevenly distributed working hours, the condition of the number of completed shifts is fulfilled if, upon recalculation, the number of these shifts corresponds to the specified number of work shifts of an employee with evenly distributed working hours (§ 11 par. 14 of the OHS Act).

It is the establishment of the completed period of work required to grant the right to an occupational therapy stay that brings about several application problems in practice.

4. Establishing the completed period of work for the entitlement to an occupational therapy stay

As we have pointed out above, entitlement to an occupational therapy stay belongs to an employee who has been continuously performing work classified in the third category for at least five years or who has been continuously performing work included in the fourth category for at least four years, while the definition of continuous performance of work is still satisfied in case of an interruption for less than eight weeks (§ 11 par. 11 of the OHS Act). We consider the completed period of continuous work (five or four years, respectively) in the selected profession to be a substantive condition for the employee's right to an occupational therapy stay. In practice, it happens that the employee is transferred from the work classified in the third category to another job position, which is already classified in the fourth risk category, or vice versa. Objectively, there is an interruption in the passage of the period, the completion of which is necessary for entitlement to an occupational therapy stay, and this interruption is usually longer than 8 weeks. It is debatable and unclear whether or not periods of work completed in individual risk categories can be taken into account for the purposes of granting the right to an occupational therapy stay. In application practice, several legal opinions can be encountered, while in principle none is legally binding and there is a lack of guidance from the legislator or the competent supervisory authority. The first legal opinion is based on a formal interpretation of § 11 par. 11 of the OHS Act, according to which the time required for entitlement to an occupational therapy stay starts running from the beginning of the employee's work in a new job position, classified in the third or fourth risk category, whenever they are transferred. Arguably, this view is supported by the lack of a legal link for adding these periods up. However, it is necessary to be aware of the risk of this interpretation, which may lead to obstructive action by the employer, when the employer keeps reassigning the employee from one risk category to another, so that the employee never satisfies the condition of the minimum length of hazardous work period necessary for the entitlement to the occupational therapy stay. Thus, during their employment with the same employer, the employee completes a certain period of risky work first in the third, then in the fourth category, but due to failure to achieve continuous absolute duration of work in one risk category, they will not be entitled to the occupational therapy stay, even if, upon calculating the cumulative length of time worked in individual categories, the duration stipulated by law would have been significantly exceeded. The effectiveness of the provision of an occupational therapy stay is realized in relation to the actual performance of work in the risk category, but the administrative period specified without determining the possibility of cumulation of periods of work in individual risk categories creates a legal barrier to the provision of the occupational therapy stay. We believe that the above formal interpretation is contrary to § 11 par. 1 of the OHS Act, which introduces the obligation of employers to provide the occupational therapy stay as a prevention of an occupational disease. We are inclined to believe that the individual time periods specified in § 11 par. 11 of the OHS Act, which the employee completed in the job positions classified in the third or fourth category, should be added up or the completion of a period in one risk category should be counted in some proportion to the time required to be completed performing work in the other risk category. Given that there are no rules for determining the ratio, the pro rata calculation should probably draw on the assumption that the performance of work in the third category is counted for the purpose of performing work in the fourth category in a smaller proportion than the opposite case of work in the fourth category for third category work. In this

context, there is also a mathematical approach in the form of providing the employee with an occupational therapy stay of proportional length due to the fact that they have not met the condition for being granted the full length of the occupational therapy stay due to lack of the minimum period for granting the full stay working on the job in the third or the fourth risk category. If we take into account that completing a continuous period or adding up several periods of risky work is a substantive condition for entitlement to an occupational therapy stay, the provision of the occupational therapy stay of only proportional length seems incorrect and, moreover, the effectiveness of providing the occupational therapy stay of shorter than the standard length is also controversial.

In connection with the calculation of the time completed in a certain risk category as a condition necessary for entitlement to an occupational therapy stay, we would also like to draw attention to the confusion that occurred when legislation in the case of the noise risk factor has changed. Act no. 470/2011 Statutes, by which the OHS Act was amended and which entered into force on 1 January 2012, § 11 para. 3 of the OHS Act, added clause (g). As a result, the employee's exposure to the physical noise factor ceased to be assessed for the purpose of meeting the effectiveness condition of the occupational therapy stay (the occupational therapy stay effectiveness condition was not met by law). As of the date on which the Act no. 470/2011 Statutes entered into force, work in which the employee is exposed to noise is no longer considered to be a domain of a selected profession. Another amendment to the Act, namely the Act no. 154/2013 Statutes on OHS repealed clause (g) § 11 par. 3 of the OHS Act as of 1 July 2013, which defined the noise risk factor as a risk factor which does not satisfy the occupational therapy stay's effectiveness condition. With this amendment, effective as of July 1, 2013, risk work in categories 3 and 4 involving the risk factor of noise became again the type of work in connection with which the employer is obliged to provide an occupational therapy stay for an employee performing this selected profession in order to prevent occupational diseases. Change of legislation, as a result of which the risk factor of noise was excluded for a short time from the so-called selected professions, caused the interruption in the five-year or the four-year period required for the entitlement to the occupational therapy stay. The period from 1 January 2012 to 30 June 2013, but also the period before the adoption of Act no. 470/2011 Statutes, is not included in the period of work in the selected occupation (in this case, work with a noise risk factor) for the purposes of entitlement to the occupational therapy stay. The required four-year or five-year period, respectively, started running anew as of 1 July 2013, because with regard to § 11 par. 11 second sentence of the OHS Act, the condition of continuity of work is not met in this case, as the period from 1 January 2012 to 30 June 2013 exceeds eight weeks in duration.

Finally, a temporary but fundamental change in the time limit required for entitlement to the occupational therapy stay was brought by a measure of the Government of the Slovak Republic to prevent the spread of COVID-19 disease caused by the coronavirus SARS-CoV-2. On 27 March 2020, the Government of the Slovak Republic adopted a Resolution no. 174 to the measures resulting from the meeting of the Central Crisis Management Team to tackle this disease in the territory of the Slovak Republic. Following the resolution and the need to implement the measures adopted therein, the Government has passed several laws. One of these laws is the Act no. 66/2020 Statutes, supplementing Act no. 311/2001 Statutes, the Labor Code, as amended, which supplements certain laws effective from 4 April 2020 (hereinafter referred to as the amendment to the Labor Code and other legal regulations). The cited legal regulation added a new provision of § 39i to the OHS Act titled "*Transitional provisions for duration of an emergency situation, state of crisis or state of emergency declared in connection with COVID-19*". With the objective to meet the purpose of anti-epidemiological measures to

minimize the need for gathering during an emergency situation, state of crisis or state of emergency (hereinafter referred to as a state of crisis), the provision of § 38i of the OHS Act introduces cumulation of selected periods of time and their suspension during the state of crisis and throughout a month thereafter. Pursuant to the transitional provision of § 39i of the OHS Act, the time limits pursuant to § 11 par. 12 and 13 of the OHS Act, the end of which falls on the end of the state of crisis are suspended during the state of crisis, and the deadlines according to § 11 par. 12 and 13 of the OHS Act, the end of which falls at the end of a one-month period from the date of revocation of the state of crisis, are considered to be maintained if the relevant act is performed no later than one month from the date of revocation of the state of crisis. It follows from the above that the time limits for the employee entitlement to the so-called another occupational therapy stay in accordance with § 11 par. 12 and 13 of the OHS Act are suspended, i.e. they do not run during the state of crisis. When the state of crisis comes to a close, these periods will resume to run from the point in their duration that was interrupted by the declaration of crisis. Thus, if an employee with an imminent entitlement to an occupational therapy stay had completed 300 shifts in the selected profession in three years up to the declaration of the state of crisis and "freezing" of time limits, the period needed for their entitlement will resume running when the state of crisis comes to a close, i.e. with the next shift counted as the 301st shift. Alternatively, if the period of another occupational therapy stay falls on the period of one month from the date of revocation of the state of crisis, such occupational therapy stay must be completed no later than within one month from the date of the end of the crisis, if the generally binding legal regulations are not to be violated. The absurdity of this legal regulation lies in the fact that the employees perform work in a risky environment even during the situation of crisis, in shifts that would have been, in the absence of the situation of crisis, duly included in their entitlement to an occupational therapy stay.

At the same time, however, this extension of time limits applies only to the entitlement to another (repeated) occupational therapy stay (according to § 11 par. 12 and 13 of the OHS Act). The Slovak legislator failed to introduce such cumulation of periods for the entitlement to the so-called first occupational therapy stay (according to § 11 par. 11 of the OHS Act). This means that, even during the crisis, the employer is obliged to provide an occupational therapy stay for an employee who has been continuously working in the third category for at least five years and an employee who has been continuously working in the fourth category for at least four years, and this employee is obliged to take part in such stay. However, for the time being of the crisis, the employer cannot provide those employees who have met the conditions of entitlement with an occupational therapy stay, because another measure of the Government of the Slovak Republic closed the facilities intended for occupational therapy stays. The time limits for the employee's entitlement to the first occupational therapy stay continue to run even during the period of crisis, although upon their coming to completion, the employees do not have the opportunity to take part in an occupational therapy stay anyway. The postponement of these first occupational therapy stays subsequently creates a volume of work shifts, the inclusion of which in a certain period of time will be questionable, as according to the current wording of the legislation they should be included in the new period for entitlement to another occupational therapy stay. However, as the employees have not yet taken part in their first occupational therapy stay but have entered a new period for entitlement to another occupational therapy stay, it is questionable whether this period will be included in the first period on the basis of which they became entitled to their first occupational therapy stay (having already met the condition therefor) or the completed shifts after the condition has been met will be included in the period for the right to another occupational therapy stay when the state of crisis comes to a close. From the application point of view, the above-mentioned legal situation thus creates a situation when,

upon the state of crisis coming to a close, a chaotic state of assessing the fulfilment of material legal conditions of employees for the right to their first occupational therapy stay and another occupational therapy stay will emerge, resulting in direct reduction of employee protection.

5. Conclusion

In the conditions of the Slovak Republic, the employer has the obligation to provide employees in selected professions posing a risk with an occupational therapy stay under the framework of health and safety at work. This is subject to a number of years or work shifts completed in the selected profession as stipulated by law. Employees must take part in an occupational therapy stay if they perform work continuously for four or five years, depending on the risk category of the work they perform. Subsequently, they must participate in occupational therapy stays at two or three-year intervals, depending, again, on the type of work they perform. The shortcoming of the Slovak legislation is that it does not address whether the period of work completed in one risk category can be included in the period of work completed in the other risk category. It is enough for the employer to purposefully reassign the employee from one risk category to another to prevent the employee from meeting the conditions for their entitlement to the occupational therapy stay. Application problems related to granting of entitlements to occupational therapy stays of employees can be expected also when the state of crisis, brought about by the corona virus pandemics, comes to a close. The Slovak legislator unconceptually suspended the running of certain time limits for the creation of the right to an occupational therapy stay, while, however, the employees continue to perform work in a risky work environment.

The shortcomings of the legal regulation of occupational therapy stays do not contribute to this form of preventive protection of employees' health, declared by law, to be perceived positively by Slovak employers. The existence of occupational therapy stays as an employees' statutory entitlement in case they work in an environment with the presence of negative factors represents a certain rarity in the European legal framework. Based on experience from the application practice and the European legislation, the area of protection of life and health of employees is focused mainly on the preventive activities of the employer, which is required to implement and have in effect such measures and control mechanisms that aim to immediately protect the life and health of employees. A regular part of these measures is granting of various wage benefits to employees for work in a specific work environment with the occurrence of various adverse factors, but not the emergence of a statutory employee entitlement to a certain form of stay with organized schedule, as is the case in the Slovak Republic. We must realize that the existence of occupational therapy stays does not represent the desired contribution to enhancing the employee health (especially in case of some specific factors of the working environment), but is rather of a socialist relic in a market economy in nature, which fulfils a representative function of a social democracy practice rather than being an effective tool for protection of employees' life and health. On the other hand, employee representatives were relatively unequivocally in favour of maintaining occupational therapy stays as yet another employment right of employees. They point to the low pay of employees and they understand the provision of occupational therapy stays, although it should be especially important in the area of health and safety at work, as part of the basic working conditions of employees, regardless of its ultimate effectiveness in relation to improving employees' health. Given this legal interpretation, but also real experience, which shows that for employees, the occupational therapy stay is rather a vacation paid for by the employer, the authors are inclined to believe that this institute is not exactly a best practice that could inspire a European legislator.

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