

# THE MANAGEMENT OF ATYPICAL RELATIONSHIP BETWEEN DAY LABORERS AND BENEFICIARIES

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## **Abstract:**

*This paper aims at presenting the particularities of the day laborers on behalf of a beneficiary who works in certain fields and requires the provision of unskilled and occasional labor.*

*The paper is proposing to identify the evolution of the number of day laborers and beneficiaries of areas of activity where there have been most day laborers between 2011 (when it came into force the framework law) and by 2015, and to highlight the impact that the regulation of this type of work has on the occupied population in general.*

**Key words:** employment relationships, day laborers, beneficiaries, rights and obligations

**JEL classification:** J20, J21, J22, J23, J24, J.41, J53, J62

## **1. ATYPICAL WORK– THE NECESSARY MEASURE FOR FLEXIBLE LABOR AND LABOR RELATIONSHIPS IN ROMANIA**

Atypical work refers to employment relationships that do not follow the standard model or "typical" model of full-time work, performed regularly, under a contract of indefinite duration, with one employer. The concept of atypical work covers both fixed-term employment contracts or part-time work and temporary work through employment agency or some work forms on their own [2]. The work is atypical because its source is not the individual labor contract but the express consent of parties derived from the special law. [3]

Amendments and supplements of legislation that followed Romania's accession to the European Union had as a priority the flexibility of labor relations and regulation of new forms of employment through fixed-term employment contracts, part-time employment contracts, temporary work through employment agency, work at home.

Thus, in the context of the flexibility of working relationships, special attention was given and granted to **combat the phenomenon of undeclared employment.**

In 2010, it was developed for this purpose, the **National Action Plan** for implementing the **National Strategy on reducing the incidence of undeclared work for 2010-2012.**

The strategy materialized also through the adoption in 2011 of Law no. 52/2011 on activities carried out occasionally by day laborers. This law leads to the flexibility and simplifies the employment of day laborers, but also reduces the incidence of illegal employment currently not taxed, given that in practice it turned out that undeclared work is also manifested by using day workers unlawfully.

The law mentioned above aims to a flexible and simplified employment for day laborers for certain activities exclusively unskilled in limited areas stipulated by law, and also reducing the incidence of illegal employment currently not taxed. So work as a day worker represents a derogatory regime of Law no. 53/2003 of the Labor Code, forms of employment for workers day laborers are simplified with no need for a contract of employment and formal registration procedures at the labor territorial inspectorates. [1]

## **2. IDENTIFICATION OF AREAS OF ACTIVITY IN WHICH UNQUALIFIED ACTIVITIES ARE CARRIED OUT OCCASIONALLY**

Occasional activities are explained by the legislator as those activities carried out randomly, sporadically or accidentally, activities that are not permanent.

Therefore occasional activities might be provided in the following areas: agriculture; hunting and fishing; forestry, logging only; fisheries and aquaculture, horticulture and viticulture; beekeeping; livestock; performances, films and audio-visual advertising, cultural activities; cargo handling; maintenance and cleaning activities.

## **3. CHARACTERISTICS OF THE EMPLOYMENT RELATIONSHIP BETWEEN THE DAY LABORER AND THE BENEFICIARY OF THE WORK**

### **3.1. The concrete way of setting the employment relationship between the parties. The procedure of implementation of activities by day laborers**

The employment relationship between the day laborers and the beneficiary is settled without an employment contract, the law establishing only the need for an agreement of the two parties [1].

The day laborer is a natural person, Romanian or foreign citizen, who is capable of working and carrying out unskilled, occasional activities for a beneficiary remuneration, the latter may be a legal person, an authorized physical person, a family enterprise or individual enterprise for which day laborer runs the occasional activities.

The day laborer can only be the person who is 16 years old and, exceptionally aged 15 for whom the prior consent of parents or legal representatives is required as a protection measure of the rights to health and safety at work, the activities performed by day laborers aged up to 18 years must be suitable to their physical development[3].

Under the law, the duration of the occasional activity that can be exercised is of minimum one day corresponding to 8 hours of work. A daily work of a day laborer shall not exceed 12 hours and for underage workers that are able to work 6 hours per day. If the parties agree fewer hours of work, work payment for day laborers will be the equivalent of at least 8 hours of work.

It notices that the activity of the day laborer for the same beneficiary was limited in the sense that 'the day laborer's activity cannot be performed for a period longer than 90 days cumulated during a calendar year'[5].

We believe that unless the legislature had established this limit, many beneficiaries would not have been tempted to engage workforce under a typical contract of employment and might have abused of their right to use the activities provided by day laborers.

The day laborer cannot be used by the beneficiary for an activity to a third party's benefit.

### **3.2. Enumeration of rights and obligations of the beneficiary and of the day laborer**

The beneficiary has **the right** to determine the activities to be undertaken by the day laborer, the place of performance and the duration of the activity. The beneficiary will also exercise control over the way in which the work is performed.

**The obligations of the beneficiary** are [5]:

a) To set up and complete a Registry record of day laborers and keep it at his headquarters, its model being regulated in the framework law;

b) To present the Registry to the competent bodies of control;

d) To inform the day laborer on the activity he carries out daily, the risks and dangers he is exposed to, his rights and obligations;

- e) To pay the day laborer the remuneration at the end of each work day;
- f) To provide at own expense protective work equipment that is necessary due to the nature and the specific of the activity carried out by the day laborer;
- g) To pay the income tax due for the work done, the amount of the tax is the one of 16% calculated on the gross remuneration;
- h) To record in the Registry, in a chronological order, all day laborers that work. The Registry shall be completed daily, while using day laborers. The beneficiary shall submit monthly, no later than the 5<sup>th</sup> of each month to the Territorial Labor Inspectorate from the place of his headquarters, an extract from the record Registry comprising records from the previous month and the Labor inspection will centralize the data submitted at the national level.

Day laborers' activity does not confer quality of insured person in the public pension system, unemployment insurance system and any system of health insurance. This could conclude the optional health insurance and / or retirement. For incomes obtained from work performed by day laborers are not due social security contributions or by the day laborer or the beneficiary.

Day laborer's activity does not confer the one in question the right to insurance in the public pension system, in the unemployment insurance system or in the system of health insurance. The day laborer could conclude optionally a health and / or retirement insurance. Neither the day worker nor the beneficiary has to pay social contribution for the income obtained from the activity performed.

As for **the right of the day laborer**, he is entitled to a remuneration determined by direct negotiation between the parties and the amount of gross remuneration scheduled per hour established by the parties 'cannot be lower than the hourly wage of minimum gross payment guaranteed and shall be made at the end of each working day or weekend before signing the register by the day laborer and the beneficiary [5].

Currently, considering that the gross minimum wage in Romania increased from February 1, 2017 to 1,450 lei, day laborers are paid at least 8.735 lei per hour. For example, if day laborers work 8 hours their gross remuneration at the end of the day will be 69.88 lei. The proof of payment of the remuneration is made by day laborer's signature in the Registry record.

#### 4. STATISTICAL OVERVIEW ON THE ACTIVITY OF THE DAY LABORERS AT NATIONAL LEVEL OVER THE PERIOD 2011-2015

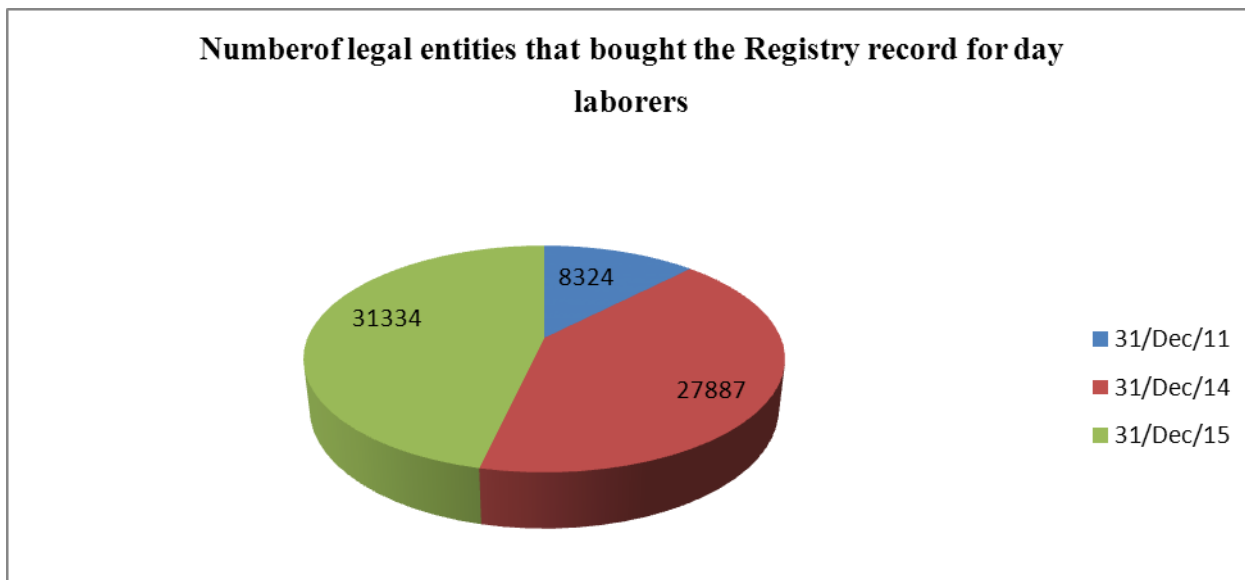
We have to mention that we do not find much statistical information on the work day laborers or the number of beneficiaries using their labor force. But Labor Inspection centralizes summary information sent from the territory on these aspects following the publication each year of the Labor Inspection Activity Report.

The institution has the obligation to prepare and publish this annual report under the provisions of article 5 of Law no.108 / 1999.

**Table no. 1. Number of legal entities that bought/sent the Registry record for day laborers and number of recorded positions**

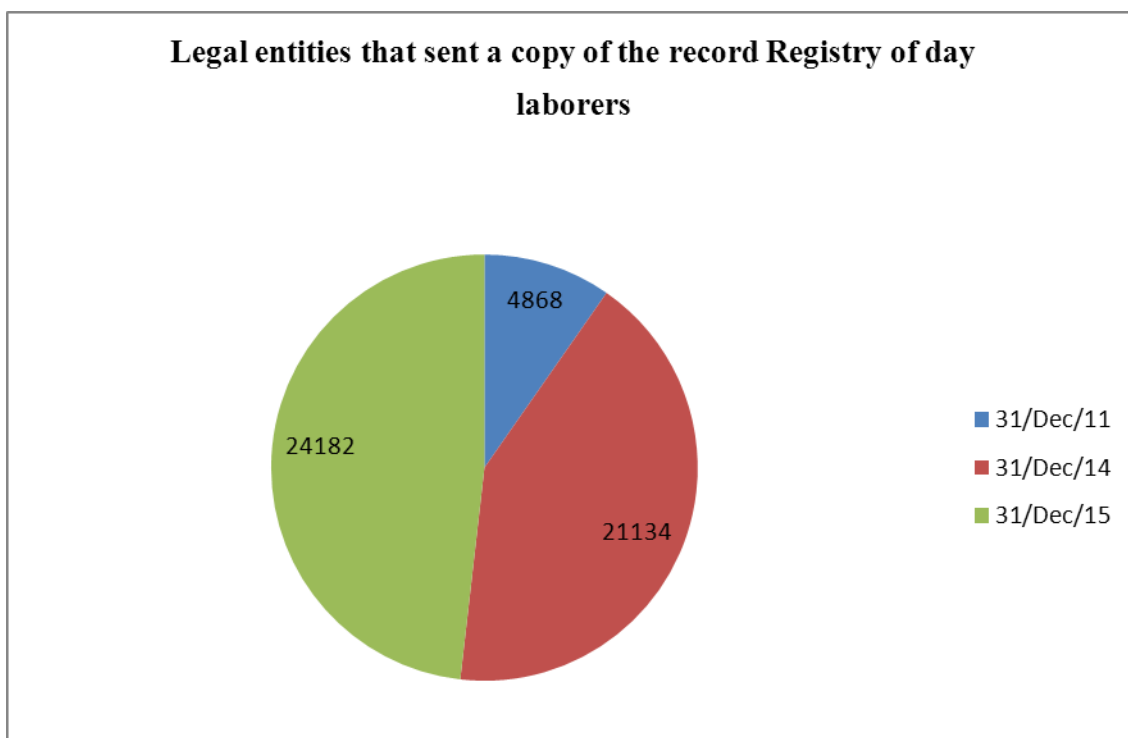
Date and year	No. of legal entities that bought the Registry record	Legal entities that sent a copy of the Registry record	Number of recorded positions
31.dec.11	8324	4868	2342010
31.dec.14	27887	21134	19.891.662
31.dec.15	31334	24182	18984693

Source: processed data from Labor Inspection



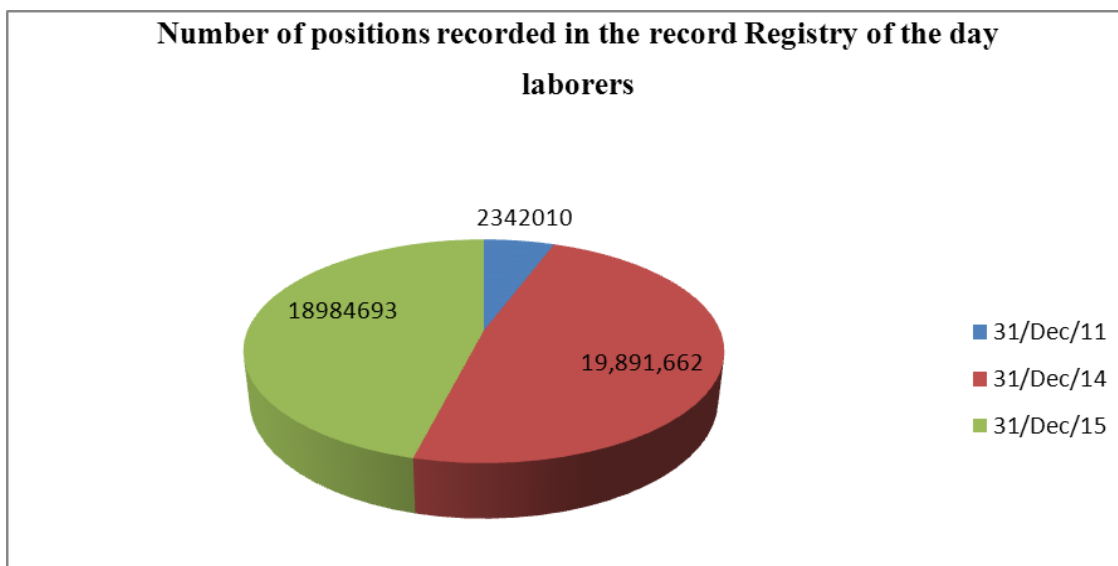
**Figure no. 1. Number of legal entities that bought the Registry record for day laborers (2011-2015)**

We notice from Figures no.1 - 2 that from 2011 to 2015, the number of people who have purchased and sent to labor inspectorates the Registry record for day laborers witnessed a downtrend, meaning that the beneficiaries call more often this form of performance despite undeclared work.



**Figure no. 2. Legal entities that sent a copy of the record Registry of day laborers (2011-2015)**

As for the number of positions recorded in the register of daily workers, 2015 saw a downward trend compared to the years 2011 and 2014, which may show that day laborers were used by beneficiaries for longer periods to a maximum of 90 days.



**Figure no. 3. Number of positions recorded in the record Registry of the day laborers (2011-2015)**

We mention that the number of 18,984,693 positions is not equivalent to the total number of laborers for the five years (2011-2015) as a day laborer may be evidenced in several positions in the register, taking into account that a person can carry out unqualified occasional work for the same beneficiary during a period of no more than 90 cumulative days during a calendar year. Such a day laborer may be registered in the record Registry of the same beneficiary at several positions.

**Table no. 1. Distribution by activity of the day laborers recorded at the national level (2011-2014)**

Area of activity	December 31,2011	December 31, 2014
Agriculture	891.967	4.615.555
Hunting and fishing	4.942	60.191
Forestry	305.681	2.654.123
Fisheries and aquaculture	8.776	40.182
Horticulture and viticulture	473.225	2.641.624
Beekeeping	4.574	11.623
Livestock	59.515	319.272
Performances	96.847	696.021
Cargo handling		700.564
Maintenance and cleaning	132.235	911.892
Undefined	269.558	-
<b>Total recorders</b>	<b>2.342.010</b>	<b>12.651.047</b>

Source: processed data from Labor Inspection

When referring to the distribution by activity of day laborers registered at the national level over the period 2011-2014, it is found that in 2014 compared with 2011, the number of day laborers increased for all fields of activity (Table 2).

We note that the Agriculture ranks first in the number of day laborers, followed by Forestry and Horticulture and Viticulture is the third area of activity.

## CONCLUSIONS

The management of the undeclared work has become a priority for the European Union countries and therefore for Romania. Thus, Law no. 52/2011 was adopted to regulate the types of

work and for keeping good records of day laborers by fields of activity. We noticed that not all areas of the national economy can resort day laborers, but analyzing the data above, we can conclude that the current legal framework governing the work of the day laborers led to a significant increase in the number of staff employed in the labor market, but raised a number of issues of implementing that address health and safety of the day laborers, protection of minors engaged in work laborer, areas in which unskilled occasional work could be used.

We also found that the type of Register set by the legislature and the methodological norms allow registration in several positions of the same day laborer, so it is impossible to identify the exact number of laborers recorded because this register allows the same person to appear in the beneficiary's Register several times in a month or a year. We consider appropriate to amend the methodology for recording and transmission of data on day laborers, precisely to identify easier the total number of employed population in Romania for a reference period.

However, we note that the legislation of such labor by day laborers increases the employment rate among the unqualified population; it facilitates personal income and also incomes to the state budget, exempts from contravention those people who would use illegal labor in the absence of such regulation.

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