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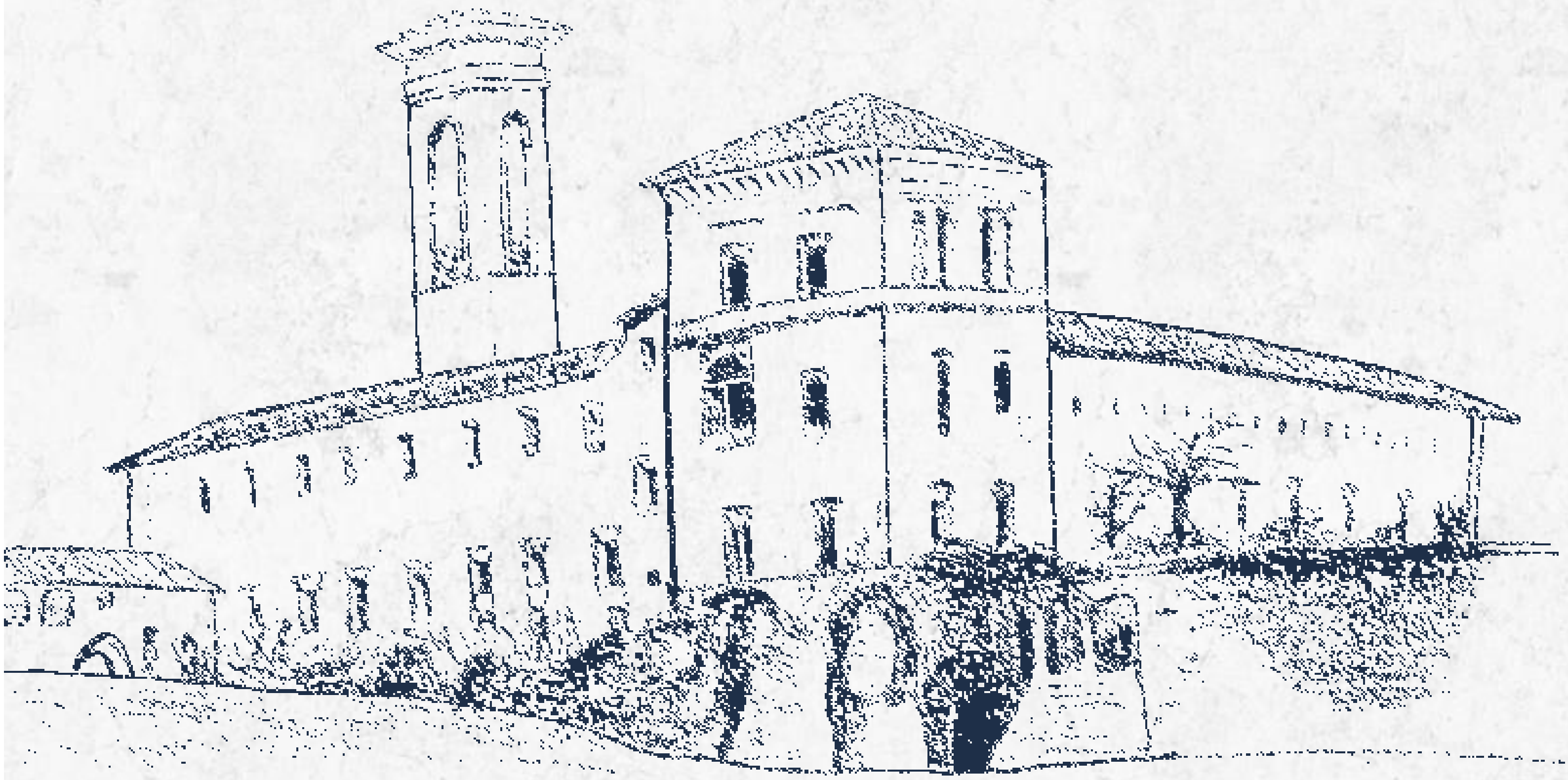

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The Evolving Transition: Youth Integration in an Era of Technological Disruption and Labor Scarcity

Valentina Franca [*]

The integration of young people into the labour market represents one of the most pressing socio-economic challenges of contemporary societies. However, this transition is no longer occurring in a static environment; it is unfolding against a macroeconomic backdrop defined by pervasive workforce shortages and the rapid deployment of artificial intelligence. Consequently, the mechanisms through which young adults transition from formal education into professional life are fundamentally evolving. The traditional, linear pathway—moving directly from the classroom into a standard, permanent employment contract—has increasingly given way to a complex spectrum of atypical employment forms, including student work, apprenticeships, and various models of traineeships. This special section of the E-Journal of International and Comparative LABOUR STUDIES brings together four insightful contributions that critically examine the legal, economic, and practical realities of these transitional labour models across Europe.

A central theme that reverberates throughout this thematic section is the generational shift in attitudes toward employment; a shift deeply intertwined with new technological modes of work organization. Current labour market trends are shaped by Generation Z's entrance into the workforce—a demographic demonstrating a marked preference for flexibility, worker autonomy, and work-life balance, often prioritizing these elements alongside traditional employment security. The digitalization of the economy has accelerated this trend, making it easier for young workers to engage in atypical or remote work that accommodates their academic schedules. However, as this flexibility is increasingly mediated by the platform economy, a structural paradox emerges, because while these digital platforms offer the appeal of

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autonomy and self-directed scheduling, they simultaneously introduce novel complexities regarding genuine worker independence and the boundaries of traditional subordination.

Crucially, this demand for flexibility is no longer a temporary phase confined to the university years. Having become accustomed to a high degree of autonomy and project-based engagement during their formative student working experiences, young adults are bringing these non-traditional expectations with them into the broader labour market. Importantly, structural workforce shortages across multiple sectors have shifted the balance of power, granting young workers unprecedented leverage to negotiate these terms. They increasingly view structural flexibility not as a conditional perk of student life, but as a non-negotiable, fundamental requirement for their long-term careers.

Accommodating this deeply ingrained expectation inevitably creates profound friction with classic labour law frameworks. Traditional labour law is historically predicated on predictability, permanence, and strict, observable hierarchical subordination—a binary system designed to protect standard "workers" under human management. Youth transitional work, by contrast, occupies a structurally unstable, hybrid zone, which is now further complicated by the disembodied control of algorithms. It balances precariously on the boundary between civil law and labour law, and between educational skill formation and economically valuable labour. When young people operate within these digitally mediated, highly productive environments, yet remain formally classified outside of standard employment, they are exposed to significant regulatory blind spots.

The challenge for modern policymakers and legal scholars is acute: how can national and supranational systems strike a delicate balance that maintains the highly desired market flexibility, validates the educational component of these roles, and simultaneously ensures robust labour protections for a demographic vulnerable to both traditional exploitation and new algorithmic controls? The four articles in this special section tackle this intricate trilemma from diverse national and European perspectives, offering critical insights into how different legal architectures succeed—and sometimes fail—in protecting young workers without stifling the transitional mechanisms they rely upon.

The section opens with Sipka's exploration of the Hungarian student cooperative model, a fascinating case study in the trade-off between strict legal protection and market agility. The author details how Hungary utilizes a unique, sui generis legal institution where student work is mediated through cooperatives via civil law agency rules rather than traditional employment contracts. While this tripartite structure arguably diminishes classic labour law guarantees and shifts liability, Sipka demonstrates that both the market and young workers explicitly prefer this model. The extraordinary flexibility it offers, combined with significant social security and tax exemptions, provides comparative advantages that Generation Z values over traditional, rigid employment security. The paper critically evaluates the doctrinal tensions this creates, particularly when viewed against EU temporary agency work directives.

Following this, Franca and Miloševič Zupančič provide a comprehensive analysis of the Slovenian context, arguing that student work must be conceptualized as more than a temporary income stream; it is a critical "laboratory" for human capital development. Their empirical insights reveal how student work actively fosters both transversal soft skills (like communication and adaptability) and job-specific competencies vital for modern employability. However, the authors also highlight the pronounced normative ambiguity in Slovenia's legal framework. They critically examine emerging legislative proposals, such as the introduction of a specific "student self-employed status," analysing the delicate tightrope between formally fostering dynamic youth entrepreneurship and inadvertently creating a new avenue for labour market exploitation through bogus self-employment.

Broadening the scope to the supranational level, Impellizzieri critically examines the European Union's ambitious 2024 traineeships package. The article unpacks the conceptually fragile legal status of traineeships—arrangements that cannot be fully assimilated into standard employment without losing their formative, educational rationale, yet are constantly at risk of being exploited as low-cost labour. Impellizzieri analyses the structural mismatch at the heart of EU labour law, specifically the tension between regulating working conditions under Article 153 TFEU and vocational training under Article 166. The paper serves as a vital warning against an uncritical "laborization" of traineeships, suggesting that poorly calibrated reforms aimed at protecting trainees might perversely normalize their use as a permanent tier of cheap, quasi-employment.

Finally, the special edition turns to Portugal, where Ribeiro explores several legal mechanisms that aim at facilitating the entry of young workers in the labour market. Among other things, this contribution assesses the practical outcomes of recent regulatory attempts to ensure decent work for young graduates entering highly regulated professions (such as law, architecture, and engineering). Driven by commitments in the Portuguese Recovery and Resilience Plan, new legislation requires mandatory remuneration for these essential professional traineeships. However, the paper explores the paradoxical consequences of this protective measure. Faced with the financial and operational costs of mandatory pay, many professional mentors are opting out of offering traineeships altogether. The author provides a sobering look at how well-intentioned legal changes aimed at ensuring dignity in work might inadvertently create invisible barriers to entry, effectively hindering a new generation from accessing their chosen professions.

Together, these contributions underscore a critical imperative for modern labour law: as the nature of work transitions from rigid to fluid, our legal frameworks must adapt. We invite our readers to engage with these comparative perspectives, which collectively demonstrate that while the law must evolve to embrace the flexible realities of the modern school-to-work transition, it must do so without sacrificing the fundamental rights, fair compensation, and genuine skill development of the next generation of workers.

Balancing Flexibility and Protection: Legal and Regulatory Aspects of Student Cooperative Work in Hungary

Péter Sipka [*]

Abstract. Current labour market trends are fundamentally shaped by a structural shift in Generation Z's attitudes toward employment, favouring flexibility and autonomy over traditional relationships. This paper examines the legal and regulatory aspects of student cooperative work in Hungary, a prime example of an atypical legal construct designed to reconcile market efficiency with the protection of vulnerable young workers. Utilising a methodological basis of legal-dogmatic and statistical analysis, the research explores the tension between the classic labour law framework and the flexibility inherent in student work.

The analysis details the unique triangular legal relationship among the student, the cooperative, and the service recipient, noting that while this model functionally mirrors temporary agency work, it is governed by civil-law membership rather than by traditional employment contracts. The paper highlights the significant impact of Hungarian policy interventions, such as the personal income tax exemption for those under 25, which provides a competitive financial advantage that often outweighs the deficit in legal protection. Furthermore, the study addresses academic critiques and potential conflicts with EU law, specifically the Temporary Agency Work Directive, regarding equal treatment and fundamental rights. Ultimately, it concludes that while the cooperative model facilitates successful school-to-work transitions, it requires a balanced regulatory approach to ensure that flexibility does not compromise long-term career stability and employee protections.

Keywords: *student cooperatives; atypical employment; Hungarian Labour Code; legal protection for young workers.*

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1. Introduction

Current labour market trends are fundamentally shaped by a structural shift in Generation Z's attitudes towards employment, which, compared to previous generations, favours greater flexibility, employee autonomy and work-life balance over traditional employment relationships[1]. The spread of digitalisation and technological innovations has greatly facilitated the rise of atypical forms of employment, making it easier for young workers to find jobs via online platforms and to arrange flexible working hours that fit around their study commitments.[2]

Working alongside studies, as a form of atypical employment, is inherently characterised by flexibility and seasonality, which inevitably creates a tension with the classic labour law framework based on predictability, permanence and strict hierarchical relationships. Consequently, a marked market and regulatory need for the development of atypical legal constructs can be observed that simultaneously guarantees employers rapid, transaction-cost-free access to the labour supply and adequate labour law protection for vulnerable groups of workers – particularly young people.[3]

In Hungary, student cooperative work serves as a prime example of this trend, providing a highly flexible workforce for the market. However, this flexibility creates a profound tension with traditional labour law guarantees, leading to an ongoing struggle to balance market efficiency with adequate legal protection for vulnerable young workers. [4]

This paper aims to demonstrate that while traditional temporary agency work offers a higher level of protection for young people, the cooperative model is also common since both the market and the students themselves prefer its exceptional flexibility, lower administrative burdens, and tax exemptions, which offer a competitive advantage that outweighs the deficit in legal protection.

The methodological basis of the research consists of a detailed legal and legal-dogmatic analysis, supplemented by an analysis of statistical data, thereby empirically verifying the prevalence of the legal institutions under examination

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[1] ZS. PÁLFFY, *Motivating and Retaining Generation Z in the Workplace,* Győr: Széchenyi István University, Published in: ‚A World Out of Joint, Unusual and extraordinary life situations: the era of unconventional, non-‚normal, and unpredictable phenomena, Proceedings of the 24th Apáczai Days Scientific Conference, 2021, p. 118

[2] A. TARI, *Generations Y and Z Online*," Tericum Publishing , vol. 1, no. 1, 2015, pp. 1–100

[3] Z. PÁLFFY,*Motivating and Retaining Generation Z in the Workplace*, Selected papers of the 24th Apáczai Days Academic Conference, vol. 1, no. 1, 2021, pp. 1–20

[4] P. SIPKA – M.L. ZACCARIA, *The legal risks of employment relationships for cooperative members, with particular regard to fundamental employee rights,* Munkajog (Labour Law), 2017/1, pp. 23–30

in the labour market and the limits to the practical enforcement of employee protection mechanisms.
The paper is structured as follows: Chapter 2 introduces the legal framework and defines who qualifies as a student worker under Hungarian law. Chapter 3 details the specific structure of the employment relationship, including contract termination, health and safety regulations, and termination rules. Chapter 4 examines the theoretical background and the European legal context, while Chapter 5 concludes with policy recommendations.

2. The Background of Student's Work in Hungary

The labour market is not organised solely around traditional employment relationships; numerous forms of employment differ from the classic models[5]. A prominent example of such a category is student work, a collective term for work activities – typically temporary and not requiring specialist qualifications – carried out alongside formal studies. This form of employment provides young people with an opportunity to familiarise themselves with the professional world while gaining practical experience. Under Hungarian law, students can engage in work through various legal forms: traditional employment contracts (often part-time), simplified employment for casual or seasonal work, civil law contracts, and, uniquely, through student cooperatives.
Generally speaking, Act I of 2012 on the Labour Code (LC) sets out explicit safeguards to enhance protection for young workers by limiting daily working hours and prohibiting overtime and night work.
At the same time, Act X of 2006 on Cooperatives (Sztv.) also provides a sui generis legal institution: the employment of young people with full-time student status through student cooperatives. This special form of employment means that the student does not perform work under an employment contract; rather, by joining a special cooperative (a school cooperative), the student's work is based on their membership in the cooperative. The cooperative enters into a civil-law contract with a third party (the service recipient), and the member (student) performs the work there.
However, there is a strong dogmatic connection between temporary agency work and the cooperative model, both based on the same structure: a triangular legal relationship involving the worker, the cooperative, and the service recipient. Functionally, it serves the same purpose as agency work, yet it

[5] Z. BANKÓ, *Telework in Hungary – Legislative, Juridical and Labour Market Policy Experiences*, Hungarian Labour Law E-Journal 2016/2, pp 91-103.

is regulated differently[6]. Within the framework of cooperative employment, a specific membership relationship is established between the member and the cooperative – one that incorporates the Civil Code's rules on agency rather than a formal, traditional employment relationship – raising the issue of the equivalence of labour law protection and the enforcement of fundamental employee rights.

These theoretical risks must be evaluated against the backdrop of the broader labour market, where young people are increasingly present but often in vulnerable positions. In terms of general statistics, the overall employment rate for the 15–64 age group reached 74.8% in 2023, showing continued growth despite economic headwinds[7]. However, among youth (ages 15–24), the employment rate stood at 27.4% in 2023, remaining below the EU average[8]. Based on the research by Koltai and Bördős (2024), the labour market situation of Hungarian youth is characterised by a high degree of early engagement coupled with structural vulnerabilities. Their analysis reveals that approximately 62% of the 15–29 age group have already entered the workforce, while a striking 82% of those aged 20–24 possess at least 3 months of professional experience. Despite these high participation rates, the study identifies a significant trend toward precarious employment, noting that younger workers are disproportionately represented in fixed-term and temporary positions compared to older generations. This vulnerability stems from a combination of professional inexperience and the flexibility of entry-level roles. Ultimately, Koltai and Bördős emphasise that while early work experience—often gained through the specific legal framework of student work—is a vital catalyst for a successful school-to-work transition, it necessitates a balanced regulatory approach to ensure that flexibility does not come at the expense of fundamental employee protections and long-term career stability.[9]

The legal regulation of student work, therefore, plays a key role in ensuring that employment for young people is not merely an opportunity to earn an income but also provides a safe environment. The question of how well the current legal framework meets this expectation is significant not only from the perspective of protecting young people's rights and interests, but also for the

[6] G. KÁRTYÁS, *The Place of Employment in School Cooperatives Among Forms of Employment*, Pázmány Péter Catholic University, vol. 1, no. 1, 2013, pp. 1–20.

[7] T. BAKÓ – J. LAKATOS, *Labour Market in Hungary 2023* (Magyarországi munkapiac) (link: https://real.mtak.hu/219663/1/Munkapiac.pdf)

[8] https://eures.europa.eu/living-and-working/labour-market-information/labour-market-information-hungary_en

[9] L. KOLTAI – K. BÖRDŐS, *The labour market situation of Hungarian youth (A magyar fiatalok munkaerőpiaci helyzete),* Új Munkaügyi Szemle, (2024) 5(1), 53–68. https://doi.org/10.58269/umsz.2024.1.5

long-term sustainability of the labour market. In the following, the specific features of this comprehensive system will be examined.

3. Provisions relating to Young Workers

To ensure the physical and professional development of young people entering the workforce, Hungarian law provides a multi-layered system of protection. This chapter outlines these safeguards, examining the foundational rules of the Labour Code before exploring the specific tripartite legal relationship inherent in the student cooperative model.

Main provisions of the Labour Code

Atypical forms of employment, particularly the employment of young people and students enrolled in full-time education, pose specific legal challenges for those applying the law, necessitating a differentiated system of safeguards. These restrictions – which, as previously noted, apply regardless of the contract's legal nature – mainly concern occupational health and safety and working-time provisions.

Beyond the general OHS requirements, jurisprudence holds that the rules for safe working conditions must be enforced with greater diligence for young employees than for adult employees[10]. Consequently, employers bear stricter obligations to provide detailed instructions and supervision, especially for work processes considered hazardous. Additionally, in the realm of social security, statutory provisions grant preferential entitlements to the youth. Individuals who become incapacitated for work before reaching 18 years of age are entitled to sick pay without regard to the duration of their prior insurance period.[11]

The daily working hours of a young employee may not exceed eight hours[12], while for employees under the age of 16, this limit may not exceed six hours[13]. Where there are several concurrent employment relationships, the daily working hours for each position must be considered collectively. There is no possibility of overtime or night work for young employees, and, in the case of irregular working hours, a maximum of 1 week of working time is allowed[14]. To ensure adequate rest, a break of at least thirty minutes must be granted for a daily working time of more than four and a half hours, and a break of at least

[10] Kúria (Supreme Court of Hungary), Decision No. EBH2011. 2426
[11] Section 44/A of the Statutory Health Insurance Act
[12] Section 114 (1)
[13] Section 114 (2)
[14] Section 126(5)(a) to (d)

forty-five minutes for a daily working time of more than six hours, whilst the mandatory minimum daily rest period is twelve hours[15].
In addition, young workers are entitled to five working days of additional annual leave in the year in which they reach the age of eighteen.[16]

The framework of Student Cooperatives

As mentioned above, student cooperatives play a specific intermediary role in the labour market, as students are not in a direct employment relationship with the employer through the cooperatives. These special entities are registered organisations with legal personality, in which the involvement of a public educational institution is also essential to their establishment and operation.[17]
Regarding the working conditions of members, the Act on Cooperatives incorporates labour law guarantees into its own system by stipulating that the protective provisions of the Labour Code relating to young employees must be applied in full to the personal contributions of student cooperative members who have not yet reached the age of 18. A further restrictive condition is that, in the absence of an employment relationship or a civil-law relationship, a member under the age of 16 may perform only activities related to the school's educational programme or the proper functioning of the institution[18].
With these protective elements, working through a student cooperative has a special regulatory framework for pupils and students, specifically those in full-time education, to promote flexibility and reduce administrative burdens. An inherent condition of this structure is participation in full-time education; thus, membership of a student cooperative automatically ceases upon the termination of student status. The key element of this form is that a pupil or student member of the student cooperative fulfils their personal contribution through so-called external services provided to a third party[19].
It must be emphasised that this situation does not constitute a classic employment relationship; the work is based on a special legal status governed by the Civil Code and includes the specified guarantee provisions of the

[15] Section 126(5) points (e) and (f)
[16] Section 119
[17]G. KÁRTYÁS, R. RÉPÁCZKI, G. TAKÁCS, *The role of temporary agency work and school cooperative work in youth employment. Final research report,* (2012) Budapest, p. 54. Available at: https://www.researchgate.net/profile/Gabor-Kartyas-2/publication/339386782_A_munkaero-kolcsonzes_es_az_iskolaszovetkezeti_munka_szerepe_a_fiatalok_foglalkoztatasaban/links/5e4eb7e5299bf1cdb9390d1c/The-role-of-labour-market-integration-and-school-cooperative-work-in-youth-employment.pdf
[18] Section 11(1) – (2)
[19] Section 10/B(1)

Labour Code. A valid commencement of work is subject to a written agreement between the parties, which sets out the external recipient of the service, the specific task, the remuneration and the time of payment, as well as the place and duration of performance[20]. A distinctive feature of this tripartite legal relationship is that the recipient of the external service may give direct instructions to the student. This right extends to determining the manner, time and schedule of task performance.

Although the legal relationship is fundamentally civil-law in nature, the legislator considered it essential to incorporate labour law rules designed to protect students' health. If the student is under 18, the strict provisions of the Labour Code automatically apply (including the protective elements described above). However, for adult students (over 18) working through cooperatives, the Cooperative Act sets its own, slightly more flexible health and safety standards, such as a minimum of 11 hours of daily rest.[21] The principle of fair remuneration is also ensured, as the law stipulates that the remuneration for the duration of the work may not be lower than the mandatory minimum wage (minimum wage).

A specific asymmetry can also be observed in the area of liability for damages: for any damage caused or infringement of personal rights by the student (member) during the provision of external services, the student cooperative and the recipient of the service are jointly and severally liable to the third party in accordance with the general rules of civil law on compensation for damages, and the student cooperative and the recipient of the service are also jointly and severally liable for any damage or infringement of personal rights caused by the student whilst performing their duties[22]. This rule essentially means that, in the context of cooperative work, the legislature seeks to maintain a liability regime similar to that of an employment relationship: if a student causes damage to a third party, the cooperative and the service recipient are primarily liable; however, if the student suffers damage, both the cooperative and the service recipient are responsible.

Some case law has also shaped the framework for student work, as evidenced by two landmark decisions that set precedents. In the case of Decision No. Mfv. 10151/2012/6, the labour authority fined a student cooperative, arguing that it had engaged in unlawful labour hire without a licence and in a disguised manner by assigning its students to work at a limited liability company.

[20] Section 10/B(8)(a)-(e)

[21] M. BÁLES, *An Overview of Regulations Governing Full-Time Students Under the Age of 18 Who Are Members of the School Cooperative*, *(Az iskolaszövetkezet 18 év alatti nappali tagozatos tanuló, hallgató tagjaira vonatkozó szabályozás áttekintése)* Pécs Labor Law Bulletin, vol. 16, no. 1–2, 2023, pp. 78–100.

[22] Section 10/B(9) – (10)

However, the Supreme Court ruled, on a point of principle, that the Act on Cooperatives expressly permits a student cooperative to enter into an employment contract (or a contract under civil law) with its members as a form of personal contribution, and to provide services to external clients within the framework of this commercial economic activity. According to the court's reasoning in principle, the authority cannot arbitrarily reclassify the parties' civil law contract of mandate as labour hire if the legislation expressly legitimises this specific form of operation for student cooperatives. The legal consequence of this decision was that it clearly distinguished student cooperative services from traditional labour hire, both in legal theory and in practice, thereby protecting the cooperatives from administrative sanctions for unauthorised hiring and ensuring the continued existence of this atypical market model.
Another precedent-setting decision, No. Kfv. 45044/2025/5 addressed a different critical area: the issue of responsibility for ensuring rest periods. According to the facts of the case, the labour inspectorate had found a student cooperative at fault because its students, whilst working in a restaurant, had not been granted the mandatory 11-hour daily rest period between working days. The Supreme Court stated that, during an employment inspection, the authority must examine on a case-by-case basis who the actual 'employer' is, i.e. for whom and under whose direction the substantive work is carried out. Since the Labour Code grants the recipient of external services the right to issue direct instructions regarding the timing and scheduling of task performance, the Supreme Court noted that the student cooperative has no substantive influence over these matters and, therefore, cannot be classified as an employer in this respect. A crucial legal consequence of the decision is that, in future, objective liability for breaches of the rules guaranteeing working and rest periods will lie not with the formal contracting party (the student cooperative), but with the actual employer, i.e. the recipient of the external service, thereby requiring the authorities to take action against the company exercising the right to give instructions at the actual place of work.

4. The Characteristics and Criticism of Hungarian Legislation

Hungarian legal literature has closely scrutinised student work, and in particular employment through student cooperatives, which, whilst ensuring flexibility, raises numerous theoretical and practical problems. Kenderes and Prugberger note that one aspect of student cooperative employment is rooted in civil law, while the other is rooted in labour law. In their view, the legislator, through

this legal institution, coyly glosses over the fact that the arrangement is essentially a 'temporary agency work' contract.[23]
Other authors view with concern the asymmetry arising from the tripartite legal relationship, in which the recipient of the external service has the right to issue direct instructions regarding the timing, scheduling and manner of task performance, whilst the cooperative with which the student has a legal relationship is completely sidelined. They also level sharp criticism at the rules on liability for damages: if a student suffers harm during work, the general rules of civil law apply instead of the stricter, employer-guaranteed liability rules under the Labour Code, which clearly sacrifices the safety of the young person carrying out the work on the altar of economic flexibility. According to the authors, this under-regulated system may also violate the provisions of the Charter of Fundamental Rights of the European Union, in particular the protection against unjustified dismissal (Article 30 of the Charter) and the right to working conditions that respect human dignity (Article 31 of the Charter).[24]
Kártyás voices his criticism from the perspective of EU legal harmonisation. In his view, employment through student cooperatives is, in essence, structurally and functionally identical to temporary agency work. In his analysis, he refers to the judgment of the Court of Justice of the European Union in the Ruhrlandklinik case, which held that Member States cannot evade the scope of the Temporary Agency Work Directive (2008/104/EC) merely by defining the person performing the work under national law not as an employee but as a member of a specific cooperative, provided that they enjoy protection under national law in respect of the work performed. According to Kártyás's doctrinal conclusion, members of student cooperatives should also be entitled to the equal treatment enshrined in the Directive – for example, in terms of pay and working hours – and the general exclusion of students from this protective umbrella of labour law raises serious concerns under EU law.[25]
Despite academic doubts, it is clear that work through the student cooperative has become an integral part of student employment. Although legal literature has criticised the introduction of the regulation on a few points[26], the statistical

[23] GY. KENDERES, T. PRUGBERGER, *An assessment of the regulation of temporary agency work and work carried out by school cooperatives under the new Labour Code*, Gazdaság és Jog (Economy and Law) 2012/2, p. 21
[24] P. SIPKA – M.L. ZACCARIA, 2017
[25] G. KÁRTYÁS, *Interpretation of the Temporary Agency Work Directive in the case law of the Court of Justice of the European Union and its implications for Hungarian labour law,* Part I, Magyar Jog, 2023/9, p. 528
[26] I. HORVÁTH,*Temporary Employment: The Obligation to Harmonise Laws - Problematic Implementation*, (Munkaerő-kölcsönzés: jogharmonizációs kötelezettség - aggályos teljesítés), Magyar Jog, 2012/3, pp. 171–176

data shows that the market has vindicated the legislator's position, as working within this framework is significantly simpler, faster and more flexible, which is an absolute priority for students, even over higher levels of legal protection. Additionally, despite student wages generally hovering around the statutory or guaranteed minimum wage, it is still worth being a student worker. The reason for this fact is an essential financial incentive: young people under the age of 25 are exempt from the 15% personal income tax; furthermore, cooperative work is exempt from social security contributions. As a result, for these students, the gross wage effectively equals the net wage, making this form of work highly lucrative.[27]

5. The Advantages of Student Work in the Labour Market

As mentioned above, the constant evolution of the labour market has not only created new forms of employment but has also slightly transformed existing ones. This is particularly true of student work, which has received increasing attention among atypical forms of employment, as the main characteristic of student work is that it differs from traditional, permanent, full-time employment, which is considered the classic form of labour law.

One of the most significant differences is the duration of employment, as the majority of student jobs are temporary; for example, students take them on during the summer holidays or outside of exam periods. Furthermore, student work is often part-time or casual, so it can be adapted to students' timetables and other academic commitments, as well as the specific characteristics of their age group. Another key difference is the flexible working hours, which allow students to take on work by prior arrangement, tailored to their free time. This kind of flexibility is typically not available in standard employment relationships, where working hours are much more rigid.

One of the greatest attractions of student jobs for young workers lies in their flexibility. Working alongside studies can only be sustainable in the long term if working hours and duties are tailored to school commitments. However, flexibility is crucial not only for balancing work and studies, but also because leisure activities – such as sport, socialising or family outings – play a significant role in young people's lives.

According to an online survey conducted in Hungary in May 2022, 89.2% of students considered flexible working hours to be the most important factor when choosing a job, whilst nearly three-quarters highlighted the opportunity

[27] L. GÁL, *Student Work: How Hourly Wages and Tax Credits Will Change in 2025*, (Diákmunka: így változnak az órabérek és az adókedvezmények 2025-ben) Eduline, vol. 1, no. 1, 2025, pp. 1–2; A. POMPER, *Smart Student Wage Survey* 2025, Tudatos Diák, vol. 1, no. 1, 2025, pp 1–5

to earn money. This indicates that when taking up employment, young people do not consider solely financial factors; the freedom to manage their own time carries at least as much weight. Another 2025 wage survey shows similar results, indicating that flexibility is the most important factor for students when taking up employment.[28]

In practice, flexibility takes many different forms. Many student cooperatives allow students to cancel or change shifts they have already taken on, either without a reason or, if the shift is scheduled for the near future, with a valid excuse. In addition, there are increasing opportunities for students to select times that suit them best through online systems, allowing them to shape their own schedules. Furthermore, in many places, there is no required minimum number of working hours per month or week, or the requirement is not nearly as strict as for a regular employee.

However, the degree of flexibility varies across jobs. Office or digital roles, such as administration and customer service, often allow students to work flexible hours or even from home, while working hours in the hospitality, retail, or manual labour sectors are, in many cases, strictly predetermined. Young workers in these sectors must not only be present at the workplace but also adhere to specific shifts, leaving them with fewer opportunities to accommodate their school commitments. Here, working hours are often inflexible, making it more difficult to balance work and leisure time. On the other hand, a high degree of flexibility is also found in these industries. This is particularly true for those employed through student cooperatives, as their popularity stems not only from the availability of easily accessible job vacancies (usually advertised via various online platforms) for students, but also from the fact that, as employers, they pay greater attention to their rights and studies.[29]

This kind of flexibility has become increasingly significant in recent years, particularly as remote working and home-office arrangements have opened up new opportunities for students. Whereas in the past students typically held the traditional, location-bound roles listed above, nowadays they have access to an increasing number of opportunities that can be carried out from home. The rise of remote working and the emergence of online work environments provide students with the opportunity to better align their working hours with their school commitments.[30] Jobs such as – among others – online customer

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[28] A. POMPER ,*Smart Student Wage Survey,* 2025, Ed.: P. Balogh; (Published: 10 March 2025). Available at: https://tudatosdiak.hu/tudatos-diak-berfelmeres-2025, produced by the Job Force School Cooperative, part of the Work Force HR service provider

[29] *Salary Survey for 2026*, Tudatos Diák Bérfelmérés 2026; Tudatos Diák, Available at: https://tudatosdiak.hu/berfelmeres-2026#letoltes

[30] A. SZŐCS, *Young People and the World of Work: Characteristics of Part-Time Employment While Studying in the Years Following the Expansion of Higher Education*, (Fiatalok és a munka világa: A

service, telemarketing, programming or social media management do not require travel, so young people can save time and money, and university students can easily take on even short shifts of up to two hours. The opportunities offered by the digital space help students to adapt flexibly to their own schedules.
In the present labour market, flexibility is therefore not only an advantage for students, but also an expectation. Thanks to the digital transformation and the growing prevalence of remote working, student work is increasingly adapting to the lifestyles of young workers, enabling them to effectively manage the challenges of both work and school life. Sociological and HR research indicates that this early socialisation into flexible working conditions deeply influences their future expectations. When Generation Z enters traditional, full-time employment, they continue to demand similar flexibility, autonomy, and atypical arrangements from their primary employers.[31]

6. The Risks of Vulnerability: The Downsides of Student Jobs

Although student jobs offer numerous benefits – particularly in terms of flexibility and the opportunity to gain experience – the risks that young workers may face in practice should not be overlooked. Specifically, these challenges encompass the financial limitations of entry-level remuneration, the precarious nature of atypical employment, and the potential gaps in social security coverage.

Low pay

One of the most characteristic features of student jobs is low pay, which, whilst remaining within legal limits, is in many cases not commensurate with the work involved or the responsibilities of the role.[32] With hourly rates close to the minimum wage, students often have very little financial leeway, and working alongside their studies frequently places a significant burden on them.
Hungarian labour market statistics highlight a structural dichotomy in the earnings patterns of young workers: while those under 20 show a nearly 39% increase in average gross earnings, and those aged 20–29 show a negative deviation of more than 13% compared to the national average, their net

tanulás melletti munkavállalás jellemzői a felsőoktatási expanziót követő években), Belvedere Meridionale Publishing, vol. 1, no. 1, 2024, pp. 1–150

31 S. BÖHLICH; R. AXMANN, *Generation Z: A comparative study of the expectations of Gen Z and the perception of employers*, IUBH Discussion Papers - Human Resources, 2020, No. 1/2020, IUBH Internationale Hochschule, Erfurt, pp. 1-16

32 https://www.ksh.hu/stadat_files/mun/hu/mun0208.html

income position is significantly adjusted by targeted policy interventions[33]. The gross wage disadvantage arising from a lack of experiential capital and the dominance of entry-level positions is substantially mitigated by the personal income tax exemption for those under 25, which provides a relatively competitive advantage and greater consumption capacity through higher disposable income for career starters during the initial phase of labour market integration.

However, this situation appears to have improved slightly in recent years: the steady rise in Hungary's minimum wage – with annual increases averaging between 9% and 15% in the recent 2024–2026 period – is also affecting student pay, so the wage increase may provide some relief for young people. It is important to note, however, that wage increases do not always keep pace with inflation, so alongside rising living costs, students' financial leeway often remains limited. Wage growth, therefore, does not in itself necessarily provide a meaningful solution to the financial difficulties faced by young workers.

In this context, the personal income tax exemption plays an important role: those under 25 can earn income of up to 656,785 HUF (approx. 1,640 EUR) in 2025 and 715,765 HUF (approx. 1,790 EUR) in 2026 (approx. 2,000 EUR), which could represent significant tax savings for them.[34] However, if this limit is exceeded, a 15 per cent personal income tax must be paid on the excess amount. It is important to note that the tax relief is only available until the month of one's 25th birthday, not until the end of the year. [35]

The Issue of Gender Distribution

Gender inequalities are also present in the student job market. According to data from the Central Statistical Office, the general pay gap between women and men also varies by age. For workers under 20 years, the gender pay gap in gross salaries is only 5,1%, rising to 12,8% among workers under 30 years.[36] However, the personal income tax exemption for those under 25 and the

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[33] https://www.ksh.hu/stadat_files/mun/hu/mun0208.html

[34] L. GÁL, *Student work: how hourly rates and tax allowances will change in 2025,* (Published: 1 February 2025). Eduline.hu, Available at: https://eduline.hu/felsooktatas/20250131_diakmunka_oraber_minimalberemeles_2025_szja

[35] Section 29/F of the Personal Income Tax Act

[36] KSH STADAT – 2.1.2.8. Average monthly gross earnings of full-time employees by age group and sex (mun0208). Reference link: https://www.ksh.hu/stadat_files/mun/hu/mun0208.html

extension of the tax credit for mothers under 30 form a fiscal safety net that largely offsets the market-based gross-wage disadvantage at the net-pay level.[37]

The research findings reflect that the gender pay gap is also present in the student job market, not just among those in full-time employment.[38] Depending on the type of work, certain preferences regarding the gender of student workers can also be observed. Physical jobs – such as stocking shelves, warehousing, site management at events, or deliveries involving larger parcels – are primarily available to male students. This can be attributed to stamina and physical strength; however, there are still positions that do not require these to the extent that employers assume, and which female students could perform just as well. Female students are more likely to be offered administrative tasks, hostess work, cashier roles, customer service activities or lighter physical work, such as packing or gift wrapping, which often involve less physical strain but frequently come with lower hourly wages.[39]

Unfortunately, this gender-based division of labour reinforces social stereotypes in the world of student work, whilst limiting students' opportunities to gain both experience and income. This may also impact career choices and planning in the longer term. All this is particularly contradictory in light of Generation Z's values, as equal opportunities and social justice are key priorities for them. The reinforcement of gender roles associated with specific jobs prevents students from freely exploring their abilities in different fields, thereby also reducing labour market mobility.[40]

Legal Protection, Subordinate Status

As atypical workers, students are in a particularly vulnerable position in the world of work. Although labour law provides them with basic protection, these regulations are often insufficient due to the specific nature of student work.[41]

Although students are, in theory, protected by the law in the same way as any other employee, the practical enforcement of these protections can face obstacles. Particularly in the case of work carried out within the framework of

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[37] KSH STADAT – 20.2.1.49. Average gross earnings of full-time employees by major demographic characteristics of employees, quarterly cumulative. Reference table: https://www.ksh.hu/stadat_files/mun/hu/mun0199.htm

[38] A. Pomper *Salary Survey for 2025* (Tudatos Diák Bérfelmérés 2025); (Published: 10 March 2025): Tudatos Diák, Available at: https://tudatosdiak.hu/tudatos-diak-berfelmeres-2025

[39] *Salary Survey for 2026*, Tudatos Diák Bérfelmérés 2026; Tudatos Diák, Available at: https://tudatosdiak.hu/berfelmeres-2026#letoltes

[40] *Salary Survey for 2026*, TudatosDiák

[41] J. KÁRPÁTI, K. BOGNÁR, *Alternative Forms of Employment in the Hungarian and European Labor Markets*, (Alternatív foglalkoztatási jogviszonyok a magyar és az európai munkaerőpiacon), Economy and Law (Gazdaság és Jog), 2020, pp. 32–39.

student cooperatives, the specific nature of the legal relationship (a contractual, rather than a traditional employment, relationship) reduces the effectiveness of traditional labour law protections.[42] During short-term, flexible work arrangements, breaches of the law are difficult to document, and these very young workers often do not dare to take action against abuses, fearing they will lose their job opportunities. Consequently, although legal remedies are theoretically available, redress of students' legal grievances through the courts remains rare.[43]

7. Summary

The Hungarian legal environment supports employment through cooperatives in two ways: first, by incorporating most of the protective provisions (working hours, occupational safety) from labour law, thereby creating de facto identical regulatory conditions. On the other hand, by introducing financial incentives (personal income tax exemption, tax breaks for employees under 30), it seeks to reduce the disadvantages young workers face due to inexperience and a limited ability to assert their rights.
Of course, criticism can always be directed at the regulations. Still, based on the statistical data, it can be concluded that this is a beneficial form of employment for the labour market. The questionnaire-based studies presented confirmed that for young workers, potential labour law protections (e.g., protection against dismissal) carry significantly less weight, so they perceive this as a step backwards to a lesser extent. In contrast, starting work at a relatively early age not only offers financial benefits but also constitutes a socialisation process that provides multiple advantages throughout one's career, thereby having an overall positive impact on the employee's subsequent life.

[42] SIPKA – ZACCARIA, 2017
[43] M. BÁLES, 2023

From Classroom to Career: Skills Formation Insights from Slovenian Student Work

Valentina Franca, Vesna Miloševič Zupančič *

Abstract. This paper provides a comprehensive evaluation of student work in Slovenia, a unique sui generis form of flexible employment that facilitates the transition from formal education to the labor market. The study employs a multidisciplinary approach, combining a detailed analysis of the fragmented legal framework with empirical findings from a 2025 national survey of 7,523 students. Legally, the research highlights a significant shift from a deregulated system to one integrated into social insurance, featuring a statutory minimum gross hourly rate of 8.98 euros. Despite these protections, the authors argue that the absence of a unified "Act on Student Work" and clear temporal definitions of "occasional work" maintains a state of normative ambiguity that risks disguised employment relationships. From a human resource perspective, the empirical data underscores student work as a critical hybrid learning environment. The findings reveal that primary motivations for student engagement include financial necessity—with 37% of respondents stating they would struggle to afford education without it—and the acquisition of work experience. Thematic analysis identifies significant development in transversal competencies, notably communication, teamwork, and personal autonomy, which align with global labour market demands for resilience and agility. Ultimately, the paper advocates for a centralized legislative instrument to secure legal clarity and optimize the role of student work as a laboratory for sustainable skill formation.

Keywords: *student work, occasional work, learning environment, competence developments.*

1. Introduction

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The integration of young people into the labour market represents one of the most significant socio-economic challenges of contemporary societies[1], with the institution of student work in Slovenia playing a unique, deeply rooted, and multifaceted role. As a specific form of temporary and occasional work available to individuals during their formal education, student work in Slovenia goes beyond merely serving as a social corrective and a means of ensuring financial autonomy. It functions as a key structural mechanism that facilitates and directs the transition from the education system to the sphere of regular employment.

The legal regulation of this field within the Slovenian system continuously faces the challenge of striking a delicate balance between maintaining a high degree of flexibility—driven by the economy's need for the dynamic adjustment of the workforce—and ensuring adequate labour-law and social protection for young workers. In recent years, the legislative framework has undergone significant transformation through the inclusion of student work in the social insurance system and the introduction of a minimum hourly wage. These reforms have contributed to reducing unfair competition and precariousness, while also opening discussions on the need for a more comprehensive and unified systemic regulation that would more effectively prevent abuses and strengthen the legal position of students.

Beyond its complex legal dimension, the fundamental importance of student work is reflected primarily in its exceptional contribution to skills enhancement and the development of human capital.[2] As formal educational programmes often struggle to fully meet the rapidly changing demands of the modern labour market, early practical experience is invaluable. Engaging in student work enables young people to gain early exposure to real working environments, where, alongside specific professional knowledge, they intensively develop and consolidate key soft skills such as communication, adaptability, complex problem-solving, and teamwork[3]. This process of learning through work directly shapes professional identity and helps build early social networks that are often decisive in securing first-time employment.

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1 Broschinski, S. & Assmann, M-L. (2021). The relevance of public employment services for the labour market integration of low-qualified young people – a cross-European perspective. *European Societies 23* (1): pp. 46–70.

2 Ruperčič, M., Hren, J in Kohont, A. (2018). Razvoj kompetenc, pridobljenih s študentskim delom. *Teorija in praksa 55*(2), pp. 263–280.

3 Kohont, A., Ruperčič, M., & Hren Topole, J. (2025). Razvoj kompetenc s študentskim delom. In P. Domadenik Muren & V. Franca (Eds.), *Vloga študentskega dela na trgu dela v Sloveniji* (pp. 63–88). Ljubljana: FDV.

Empirical findings consistently confirm that student work acts as an important catalyst in the transition to the labour market. Graduates who acquire relevant work experience during their studies demonstrate a statistically significant higher likelihood of obtaining employment more quickly and successfully within the first year after completing their education. Despite its undeniable advantages, however, this transition requires a balanced approach, as excessive involvement in work may negatively affect academic performance and prolong the duration of studies[4]. This suggests that optimal outcomes are achieved when student work is substantively complementary to an individual's field of study. And the number of hours of work is not too high[5].

Labour market in Slovenia is faced by demographic challenges. The annual number of retirements exceeds the annual number of first job entrants.[6] The number of people in employment is at the highest levels in the last years. There are 996,000 employed persons by LFS (Labour Force Survey) methodology in the 4th quarter of 2025 or 938,412 persons in employment by registered data in February 2026.[7] The unemployment rates in Slovenia are among the lowest in EU, the same goes for unemployment rates among the population of young people. EU unemployment rate is at 5,9 % in February 2026, whereas Euro area unemployment rate is at 6,2 %.[8] In Slovenia, general unemployment rate – Labour Force Survey is at 4.1 % in the 4th quarter 2025[9], which is significantly lower than in EU. In February 2026, the youth unemployment rate was 15.3% in the EU for youth under 25.[10] The data of Employment Service of Slovenia

[4] King, J. E. (2002). *Crucial choices: How students' financial decisions affect their academic success*. Washington DC: Center for Policy Analysis at the American Council on Education.; Dundes, L., & Marx, J. (2006). Balancing work and academics in college: Why do students working 10 to 19 hours per week excel? *Journal of College Student Retention: Research, Theory &Practice, 8*(1), pp. 107–120.

[5] Kosi, T., Nastav, B., & Šušteršič, J. (2013). Does student employment deteriorate academic performance? The case of Slovenia. *Revija za socijalnu politiku 20* (3): 253-274. Leveson, L., McNeil, N., & Joiner, T. (2013). Persist or withdraw: The importance of external factors in students' departure intentions. *Higher Education Research & Development, 32*(6), 932–945.; Quintini, G., & Martin, S. (2014). *Same Same but Different: School-to-Work Transitions in Emerging and Advanced Economies.* OECD Social, Employment and Migration Working Papers, No. 154.; Neyt, B., Omey, E., Verhaest, D., & Baert, S. (2019). Does student work really affect educational outcomes? A review of the literature. *Journal of Economic Surveys, 33*(3), 896–921.

[6] Ministry of Labour, Family, Social Affairs and Equal Opportunities. *Analiza razmer na trgu dela in rezultati srednje in dolgoročnih napovedi potreb trga dela do leta 2039*. Ljubljana.

[7] SURS - Republic of Slovenia Statistical Office. (2026). *Labour market.*

[8] Eurostat. (2026). *Unemployment statistics: February 2026*.

[9] SURS - Republic of Slovenia Statistical Office. (2026). *Labour market.*

[10] Eurostat. (2026). *Unemployment statistics: February 2026*.

shows the rate of registered youth unemployment is at 7.8 % for youth between 15 and 29 in January 2026.[11]
This contribution therefore offers an in-depth scholarly analysis of the Slovenian model of student work, critically focusing on the intersection of its legal regulation and its actual human-resource and economic effects on youth employability. Its central aim is to enrich academic discourse and provide professional support in shaping evidence-based employment and education policies.

2. Legal framework

The legal regulation of student work within the Slovenian legal architecture represents an exceptionally complex, multilayered, and frequently debated socio-legal phenomenon. This specific segment of labor law provokes diverse, often diametrically opposed, and interest-driven viewpoints among social partners, legal scholars, and policymakers.[12] In its fundamental legal essence, student work in the Slovenian framework is treated as a highly specific, sui generis form of employment. Special, derogative rules exist exclusively for this strictly defined demographic of workers, justified entirely by their unique status characteristics—namely, their active, formalized participation in the national educational system (as detailed below). This regulatory approach differs significantly from classical labor law institutes and standard employment contracts recognized across comparative European labor jurisdictions.[13] The original legislative intention was primarily aimed at providing flexible, short-term assistance to economic and non-economic organizations, particularly during summer holidays, and facilitating occasional integration into the labor market during periods when formal educational processes were suspended. However, in the historical evolution of this institute, the structural and financial advantages of this type of work manifested in such a profound way that its utilization expanded disproportionately. In numerous segments of the labor market, student labor began to seriously undermine and functionally

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[11] ZRSZ - Employment Service of Slovenia. (2026). *Trg dela v številkah - Stopnja registrirane brezposelnosti*.

[12] Ignjatović, M. (2006). Položaj mladih na trgu delovne sile. *IB Revija* 40(4): 66 – 69; Senčur Peček, D. (2013). Zakonite oblike opravljanja dela. *Podjetje in delo* 39(6-7): 921 – 943; Scortegagna Kavčnik, N. (2017). Plačilo in drugi vidiki študentskega dela. *Delavci in delodajalci* 17(2/3): 243 – 262; Tičar, L. (2014). Delovnopravna problematika zaposlovanja in dela mladih. *Delavci in delodajalci* 14(2/3): 147 – 164.

[13] Franca, V. (2020). Študentsko delo. In Kresal Šoltes, K., Strban, G. in Domadenik, P. (Eds), *Prekarno delo: multidisciplinarna analiza* (pp. 129 – 144). Ljubljana: Pravna fakulteta in Ekonomska fakulteta, Univerza v Ljubljani.

replace standard employment relationships. Judicial and inspection practices from this era recorded extensive cases where students worked continuously for the exact same employer for several years, effectively performing their duties in identical ways as regularly employed workers.[14] This widespread misclassification prompted justified accusations of creating unfair competition in the labor market and operating as a systemic mechanism for social dumping.[15] Today, the macroeconomic situation is substantially different. A pervasive, structural shortage of labor across almost all economic sectors has created conditions wherein the demand for student work vastly exceeds the available supply, compelling employers to proactively improve working conditions and raise hourly rates.[16] While this mitigates immediate pressure for sweeping regulatory changes, it does not resolve the fundamental dogmatic problem regarding the systemic fragmentation and conceptual ambiguity of the legal framework governing this work.

The particularity of the labor law regulation of student work is most evidently manifested in the conspicuous absence of a single, unifying umbrella act that would comprehensively regulate this area. Instead, the normative framework is heavily fragmented, dispersed across numerous legal acts from vastly different domains of law. The cornerstone of this regulatory edifice is the Employment and Insurance Against Unemployment Act,[17] which precisely defines the personal substrate of beneficiaries legally entitled to perform student work. The law strictly stipulates that this type of work may be performed by high school students who have reached the age of 15, university students, and adult education participants under the age of 26, provided they are actively enrolled in publicly valid educational programs, are not registered as unemployed, and do not hold a concurrent standard employment contract. The subsequent and perhaps most distinct structural feature of the Slovenian regulatory system is the mechanism of labor brokering itself. Unlike standard employment, the legal relationship is not established directly between the worker and the employer, but exclusively through authorized intermediaries, the concessionary

[14] Franca, V. (2025). Temeljni vidiki pravne ureditve študentskega dela. In Domadenik Muren, P. and Miloševič Zupančič, V. (2025). Mladi na trgu dela v Sloveniji. In P. Domadenik Muren & V. Franca (Eds.), *Vloga študentskega dela na trgu dela v Sloveniji* (pp. 5–22). Ljubljana: EF.

[15] Ignjatović, M. (2006). Položaj mladih na trgu delovne sile. *IB Revija* 40(4): 66 – 69; Senčur Peček, D. (2013). Zakonite oblike opravljanja dela. *Podjetje in delo* 39(6-7): 921 – 943; Scortegagna Kavčnik, N. (2017). Plačilo in drugi vidiki študentskega dela. *Delavci in delodajalci* 17(2/3): 243 – 262; Tičar, L. (2014). Delovnopravna problematika zaposlovanja in dela mladih. *Delavci in delodajalci* 14(2/3): 147 – 164.

[16] Domadenik Muren, P. and Miloševič Zupančič, V. (2025). Mladi na trgu dela v Sloveniji. In P. Domadenik Muren & V. Franca (Eds.), *Vloga študentskega dela na trgu dela v Sloveniji* (pp. 18–37). Ljubljana: EF.

[17] Official Gazette of the Republic of Slovenia, Nos. 107/06 – UPB do 95/14.

employment agencies known as student services.[18] This regulatory architecture establishes a specific, legally complex tripartite relationship. It also gives rise to a highly specific system of financing and taxation. The Fiscal Balance Act[19] mandates the payment of a concession fee amounting to 16 percent of the total receipts, specifically allocated for state scholarships (6 %), the operational funding of the Student Organization of Slovenia (2,7 %),[20] and covering the infrastructural costs of the student services themselves (2,7 %). Because an intermediary stands directly between the student and the actual user of their labour, a classic civil law contract is not concluded directly between the performing parties; rather, the legal basis for the performance of work is constituted entirely by the student service referral form.

Even though the Employment Relationships Act, serving as the central codification of Slovenian labor law, does not regulate student work as an independent form of employment contract, it explicitly stipulates that certain fundamental protective provisions of labor law apply directly to students and pupils. These provisions primarily concern the absolute prohibition of discrimination in the workplace, adherence to provisions concerning maximum working time, mandatory breaks during the working day, and statutory daily and weekly rest periods, alongside a pronounced emphasis on the special protection of younger workers who have not yet reached eighteen years of age.21 The issue of disguised employment relationships remains one of the most pressing and conceptually challenging issues in this field.22 By legislative design, student work is strictly occasional and temporary; however, the legislation conspicuously fails to quantify these concepts temporally, leaving a regulatory vacuum. In practice, this ambiguity sometimes leads to situations where students perform continuous work with the identical degree of personal subordination as regularly employed staff. According to established jurisprudence, if the labor inspectorate or a competent labor court determines the material existence of all constitutive elements of an employment

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18 As regulated in Labour Market Regulation Act, Official Gazette of the Republic of Slovenia, Nos. 80/10 – 83/25.

19 Official Gazette of the Republic of Slovenia, Nos. 40/12 – 100/25.

20 The Student Organization of Slovenia (ŠOS; https://www.studentska-org.si/) is a statutory umbrella institution uniting university and local student organizations to uniformly represent and safeguard the interests of Slovenian students, with a core mission to comprehensively improve their academic, social, and living conditions through proactive engagement in national policymaking and strategic cooperation with governmental and international bodies.

21 Articles 6, 27, 142-146, 154-156, 190-193, 177-180 and 211 of the Employment Relationship Act, Official Gazette of the Republic of Slovenia, Nos. 21/13 – 70/25.

22 Franca, V. (2020). Študentsko delo. In Kresal Šoltes, K., Strban, G. in Domadenik, P. (Eds), *Prekarno delo: multidisciplinarna analiza* (pp. 129 – 144). Ljubljana: Pravna fakulteta in Ekonomska fakulteta, Univerza v Ljubljani.

relationship, a legal fiction is established dictating that a standard employment relationship for an indefinite period has been implicitly concluded.23 Notwithstanding these crucial safeguards, student work remains an exceptionally flexible form of socio-economic cooperation. It provides employers with an unparalleled mechanism for immediate adaptation to sudden fluctuations in the business process, exempting them from the complex employment procedures mandated for standard hiring and students and pupils with the same flexibility when then need work or when they want to stop working..24 Crucially, both parties may terminate the cooperation at any given time without observing statutory notice periods or paying severance, though this flexibility does not absolve the employer of their inherent responsibilities regarding appropriate management, daily supervision, and the provision of adequate mentorship within the work process.

A definitive turning point in the historical development of the socio-economic status of students is represented by the adoption of the Act Amending the Fiscal Balance Act in 2014, which radically intervened in the previously deregulated framework by introducing the mandatory payment of social security contributions. For the first time, student work became subject to proportionate contributions for pension and disability insurance, insurance against injury at work, and health insurance. Building upon this foundation of social solidarity, recent legislation has further expanded this array of mandatory levies. Currently, student work is explicitly subject to the newly implemented mandatory contribution for long-term care,[25] thereby ensuring that the system of taxation and contributions for student work is further equated with the comprehensive financial burdens arising from regular employment. An even more significant structural instrument that directly mitigates social dumping is the statutory minimum gross hourly rate. Reflecting the most recent and substantial statutory adjustments, the applicable minimum hourly rate stands definitively at 8.98 euros gross, which translates to an effective 7.73 euros net for the performing student and 12.60 euros total cost for employer.[26] Such an

[23] Articles 4, 13 and 180 of the Employment Relationship Act, Official Gazette of the Republic of Slovenia, Nos. 21/13 – 70/25.

Employment Relationship Act Articles 4, 13, 18.

[24] Franca, V. (2020). Študentsko delo. In Kresal Šoltes, K., Strban, G. in Domadenik, P. (Eds), *Prekarno delo: multidisciplinarna analiza* (pp. 129 – 144). Ljubljana: Pravna fakulteta in Ekonomska fakulteta, Univerza v Ljubljani.

[25] Long-Term Care Act, Official Gazette of the Republic of Slovenia, Nos. 84/23, 112/24 and 44/25

[26] The minimum hourly rate for student work is legally determined on the basis of Article 130c of the Public Finance Balance Act, Official Gazette of the Republic of Slovenia, Nos. 40/12 – 100/25.

amount represents a highly pronounced, 23 percent increase compared to the previous reference period. This dramatic upward adjustment is a direct, legally mandated consequence of the statutory harmonization processes stipulated under the Minimum Wage Act,[27] utilizing a calculation methodology based on a standardized monthly working obligation of exactly 165 hours. With the implementation of these robust financial measures, minimum wage floors, and comprehensive social contributions, student work demonstrably no longer represents a purely cost-saving alternative for employers seeking to minimize labor expenses.

From the critical perspective of occupational safety and health, it is imperative to emphasize the overarching role of the Health and Safety at Work Act,[28] which explicitly equates the student with a standard worker, mandating employers to proactively guarantee the exact same high level of physical safety and ergonomic protection. While the obligation for comprehensive preliminary preventive medical examinations frequently arises, general preventive medical examinations completed within the public education system usually suffice unless the student performs specialized, high-risk tasks. Furthermore, employers are strictly obligated under the Labor and Social Security Registers Act[29] to meticulously record the utilization of working time, which is vital for ensuring fair payment and constituting the evidentiary foundation for potential inspection oversight. In the effort to prevent systemic abuses, the Labor Inspection Act of 2017[30] granted labor inspectors enhanced enforcement powers to identify disguised employment relationships, though proving such violations remains exceptionally demanding due to high evidentiary standards and a frequent lack of interest among students in formalizing their employment.[31] Consequently, a paramount step toward establishing greater systemic transparency was the establishment of the central student work register maintained by the Student Organization of Slovenia.[32] Functioning as a verified personal electronic portfolio for students and a crucial investigative tool for state supervisory authorities, the register is extensively utilized by the Financial Administration to verify the authenticity and timeliness of issued referrals during rigorous field inspections targeting undeclared work. Statistical

[27] Official Gazette of the Republic of Slovenia, Nos. 13/10, 92/15 and 83/18.
[28] Official Gazzette of the Republic of Slovenia, No. 43/11.
[29] Official Gazzette of the Republic of Slovenia, Nos. 40/06, 50/23 and 24/25.
[30] Official Gazzette of the Republic of Slovenia, Nos. 19/14 and 55/17.
[31] Reports on the Work of the Labour Inspectorate of the Republic of Slovenia for the Years 2017–2024, accessible: https://www.gov.si/assets/organi-v-sestavi/IRSD/LETNA-POROCILA-IRSD
[32] Determined in the Article 123.a of the Labour Market Regulation Act, Official Gazette of the Republic of Slovenia, Nos. 80/10 – 83/25

data unequivocally indicates that the Financial Administration exploits this digital tool significantly more intensively and successfully than the Labor Inspectorate, resulting in a limited number of formal sanctions and fines.[33]

Inextricably linked to the holistic legal treatment of student work is the underlying sectoral educational legislation, as systemic abuses of the labor market in the past were largely facilitated by excessively lax academic conditions regarding the maintenance of student status. The widespread phenomenon of fictitious or phantom students—individuals who formally enrolled exclusively to obtain status for work or social rights—caused profound anomalies and distorted labor market statistics. Confronted with this crisis, the legislator intervened decisively across multiple statutes, including the Gimnazija Act,[34] the Vocational and Technical Education Act,[35] and the Higher Education Act,[36] to restrictively define academic duties. Strict limitations were introduced regarding the possibility of repeating academic years and transferring between programs. For example, the amended Higher Vocational Education Act explicitly limited the utilization of rights arising from student status to an absolute maximum of three years. The technological linchpin crucial for implementing these restrictions was the establishment of a unified national enrolment register, which allows authorities a real-time overview of an individual's academic history, effectively neutralizing systemic loopholes. Furthermore, socio-economic rights derived from student work are closely intertwined with national tax legislation and the system of social transfers. The Personal Income Tax Act[37] establishes a complex, tiered system of taxation depending on whether parents claim the working student as a financially dependent family member. Students are consequently incentivized to retain this status, given that it remains more beneficial for the family unit compared to surpassing the specified amount and becoming independent subjects liable for income tax. Acknowledging the specific nature of this revenue, relevant legislation consistently excludes student work income up to the annual minimum wage from being classified as standard income when assessing a family's material status for various social transfers and other financial obligations.

[33] Franca, V. (2025). Temeljni vidiki pravne ureditve študentskega dela. In Domadenik Muren, P. and Miloševič Zupančič, V. (2025). Mladi na trgu dela v Sloveniji. In P. Domadenik Muren & V. Franca (Eds.), *Vloga študentskega dela na trgu dela v Sloveniji* (pp. 5–22). Ljubljana: EF.

[34] Official Gazzette of the Republic of Slovenia, Nos. 1/07, 68/17, 6/18 – ZIO-1, 46/19 and 53/24.

[35] Official Gazzette of the Republic of Slovenia, Nos. 79/06, 68/17, 46/19 and 53/24.

[36] Official Gazzette of the Republic of Slovenia, No. 56/25.

[37] Official Gazzette of the Republic of Slovenia, Nos. 13/11 – 40/25.

Despite various legislative advancements, a critical issue remains unresolved at the statutory level: the formal recognition of student work as qualifying work experience for employment conditions. Although many job advertisements require a specific duration of prior experience, which is conventionally interpreted strictly as standard employment or self-employment, students who possess *de facto* practical experience are unable to leverage it *de jure* due to the absence of a clear legal basis. Consequently, since this area is not explicitly regulated for the private sector, the decision to acknowledge student work experience remains entirely within the discretionary domain of individual employers. Conversely, in the highly formalized public sector, the situation is different. The Civil Servants Act[38] strictly mandates that only verified time spent in a systematized workplace requiring the exact same, or at most one level lower, formal educational qualification can be legally counted as valid work experience. For student work to be formally recognized as relevant experience in public sector employment, a mere administrative printout of accumulated hours categorically does not suffice; the candidate must meticulously submit authentic, verifiable documents unambiguously proving they performed demanding professional work at the appropriate level of complexity. A critical evaluation of the current legal regulation of student work in Slovenia leads to the definitive conclusion that, despite numerous well-intentioned improvements over the last decade, the current framework still does not represent an optimal model of comparative labor law regulation. Its pronounced fragmentation causes a severe lack of normative coherence and overall legal clarity. The fundamental problem remains the glaring absence of a clear, temporally quantified statutory definition of the temporary and occasional nature of the work. Although successive legislative changes—particularly the mandatory payment of social security contributions, the integration of long-term care funding, the robust indexing of the minimum hourly rate, and stricter supervision of academic statuses—have significantly improved the baseline economic and social position of students, complacency is unwarranted. The establishment of a unified, comprehensive legal framework—specifically, the drafting and adoption of a new, standalone Act on Student Work that would comprehensively regulate all interconnected rights, obligations, and administrative procedures in one centralized legislative instrument—appears to be one of the most sensible, legally sound, and pressing national priorities.

3. Competence Development and Youth Employability: The Role of Early Work Experience by Student Work

[38] Official Gazzette of the Republic of Slovenia, No. 32/25.

In addition to the legal framework analysis in the first part, the second part of the article focuses on the dimension of competence development. Competencies can be understood as a multidimensional construct that includes an individual's skills and abilities, knowledge, motives, personality traits, values and attitudes, as well as aspects of self-image and social roles. In this article, the term competencies is understood in its broadest sense.[39] What is also crucial in not only the competencies that are developed by young people, but the competencies required by the employers. The competencies that are perceived as the most important for young people's transition to labour market, defined by HEGESCO, are mastery of one's own field or discipline, the ability to perform well under pressure, the ability to use time efficiently, the ability to work productively with others, and the ability to use computers and the internet effectively.[40] Because of all the recent technological changes, demographical challenges, geopolitical instabilities etc., some of the competencies needed by future workers must be changed too. World Economic Forum data shows that employers expect 39 % of core skills of workers will change by 2030 and 61 % of core skills will remain the same.[41] First ten needed core skills in 2025 listed by employers are: Analytical thinking; Resilience, flexibility and agility; Leadership and social influence; Creative thinking; Motivation and self-awareness; Technological literacy; Empathy and active listening; Curiosity and lifelong learning; Talent management and Service orientation and customer service.[42] On the other hand, the skills that are on the rise from 2025 to 2030 are AI and big data (87 % net increase), Networks and cybersecurity (70 %net increase), Technological literacy (68 % net increase), Creative thinking (66 % net increase) and Resilience, flexibility and agility (66

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[39] Boyatzis, R. E. (1982). *The competent manager: A model for effective performance.* Wiley.; Spencer, L. M. in Spencer, S. M. (1993). Definition of a »competency«. V L. M. Spencer in S. M. Spencer (ur.), *Competence at Work: Models for Superior Performance* (pp. 9–15). Wiley.; Dubois, D. D. & Rothwell, W. J. (2004). *Competency-based human resource management.* Davies-Black Publishing.; Svetlik, I. (2005). O kompetencah. V M. S. Pezdirc (ur.), *Kompetence v kadrovski praksi* (pp. 11–28). GV Izobraževanje.; Svetlik, I. in Zupan, N. (ur). (2009). *Menedžment človeških virov.* FDV.; Svetlik, I. in Kohont, A. (2021). Analiza dela in določanje pričakovanih kompetenc sodelavcev. V A. Kohont in I. Svetlik (ur.), *Menedžment človeških virov* (pp. 121–153). FDV, Založba FDV.

[40] Allen, J., Coenen, J., & Humburg, M. (2011). The role of higher education in producing relevant competences. In J. Allen, S. Pavlin, & R. van der Velden (Eds.), *Competencies and early labour market careers of higher education graduates in Europe* (pp. 56–57, 62–63). Ljubljana: University of Ljubljana, Faculty of Social Sciences.

[41] World Economic Forum. (2025). *Future of Jobs Report 2025.* https://www.weforum.org/publications/the-future-of-jobs-report-2025/ (p. 33).

[42] World Economic Forum. (2025). *Future of Jobs Report 2025.* (p. 36).

% net increase).[43] Therefore, competencies will have to be developed quickly and early, already in the time education and early labour market entry.

The hybrid space between work and education increasingly challenges traditional understandings of skill formation. In Slovenia, student work represents a significant institutionalized form of youth labour market participation and is not merely a temporary employment mechanism but a structured pathway influencing the acquisition of competencies and easing the transition into regular employment. Student work is seen as a mechanism of skills formation and as a bridge between education and employment. Although student work is prevalent in Slovenia, its role in skills formation has often been under-recognised in policy debates. Conventional VET frameworks primarily focus on formal or school-based training, overlooking the structured learning potential embedded in temporary youth employment – student work.

a)

First part of skills analysis is based on the qualitative content analysis of the comprehensive monograph The Role of Student Work in the Slovenian Labour Market: A Legal, Economic, and Human Resource Analysis.[44] Open-ended answers were processed through semantic qualitative coding, complemented by quantitative aggregation. The research problem addressed in this part centres on a key question: "To what extent does Slovenian student work function as a structured space for developing competencies relevant for employability and labour market integration?" Furthermore, two research questions guide the analysis: 1. Which competencies — transversal and job-specific — are developed through student work, according to empirical evidence from the monograph? 2. How does student work contribute to employability and the transition to regular employment?

Empirical findings indicate that student work in Slovenia represents an important context for competence development.[45] The most consistently reported outcomes are *transversal competencies*, particularly oral communication, teamwork and collaboration, responsibility and reliability, adaptability and flexibility, and problem-solving in everyday work situations. These skills are highlighted across student surveys, employer perspectives, and HR analyses presented in the monograph.

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[43] World Economic Forum. (2025). *Future of Jobs Report 2025*. (p. 37).

[44] Domadenik Muren, P. & Franca, V. (Eds.), *Vloga študentskega dela na trgu dela v Sloveniji "The Role of Student Work in the Slovenian Labour Market: A Legal, Economic, and Human Resource Analysis"* (pp. 63–88). Ljubljana: EF.

[45] Kohont, A., Ruperčič, M., & Hren Topole, J. (2025). Razvoj kompetenc s študentskim delom. In P. Domadenik Muren & V. Franca (Eds.), *Vloga študentskega dela na trgu dela v Sloveniji* (pp. 63–88). Ljubljana: FDV.

In addition to transversal skills, which are dominating, student work also facilitates the acquisition of *job-specific competencies*, which vary by occupational context and depend heavily on occupational category. Technical skills tend to emerge in ICT, engineering and laboratory environments, customer-service competencies in retail, logistics and hospitality, administrative and organisational competencies in office-based work, and manual skills in production-related jobs. All recognized acquired competencies by students on the Slovenian labour market through student work are enlisted in the Table 1.

Table 1: Acquired competencies in student work (Kohont et al. 2025)

Transversal competencies	Job-specific competencies
Oral communication	Technical skills
Teamwork and collaboration	Customer-service competencies
Responsibility and reliability	Administrative and organisational competencies
Adaptability and flexibility	Manual skills
Problem-solving	

Source: (Kohont at al., 2025).[46]

Beyond specific competencies, student work contributes to *broader aspects of professional development, including increased self-confidence, independence, and clearer career orientation.* Exposure to workplace practices and interactions with supervisors and colleagues enables students to develop an early understanding of organisational expectations. Accordingly, student work can be understood as a hybrid learning environment in which non-formal learning processes support both transversal and occupation-specific skill formation.[47]
Furthermore, findings from Farčnik and Redek[48] and Miloševič Zupančič[49] demonstrate the role of student work in employability and transition to regular employment. As for employability mechanisms student work *improves employability* through accumulation of relevant work experience, which employers perceive as valuable; signalling effects in recruitment processes; enhanced social capital (contacts, references) and the development of soft skills

[46] Kohont, A., Ruperčič, M., & Hren Topole, J. (2025). Razvoj kompetenc s študentskim delom. In P. Domadenik Muren & V. Franca (Eds.), *Vloga študentskega dela na trgu dela v Sloveniji* (pp. 63–88). Ljubljana: FDV.
[47] Kohont, A., Ruperčič, M., & Hren Topole, J. (2025).
[48] Farčnik, D. and Redek, T. (2025). Študentsko delo in zaposljivost diplomantov. In P. Domadenik Muren & V. Franca (Eds.), *Vloga študentskega dela na trgu dela v Sloveniji* (pp. 87–102). Ljubljana: FDV.
[49] Miloševič Zupančič, V. (2025). Karierni razvoj s študentskim delom in prehod na trg dela. In P. Domadenik Muren & V. Franca (Eds.), *Vloga študentskega dela na trgu dela v Sloveniji* (pp. 59–86). Ljubljana: FDV.

that align with employer expectations. Employers particularly emphasise reliability, communication, teamwork, and initiative.
As for the transition outcomes empirical findings show that students with relevant work experience have higher employment probability after graduation, they experience faster transition into regular employment and those in domain-related student jobs demonstrate greater job–education match upon labour market entry. Thus, student work supports both career exploration and career consolidation.
To sum up, student work fosters the development of both transversal and job-specific skills, enhancing employability and personal growth. Additionally, student work contributes to career development and eases the transition to regular employment. Relevant work experience during studies positively influences graduate employability and employment outcomes. Student work thus functions as a hybrid form of learning and working. It fosters not only professional competencies but also personal maturity and career orientation, bridging the gap between formal education and the dynamic needs of the labour market.

b)
The second skills formation part is based on the analysis of responses collected in the *national survey "Youth and the Labour Market 2025"*.[50] The survey consisted of 20 questions, including both closed-ended and open-ended questions, and mandatory and optional questions. The survey was conducted in April 2025 among pupils and students performing student work in Slovenia. They are neither regularly employed nor unemployed, but all enrolled into secondary or tertiary education, complemented by temporary student work. The survey conducted among 7,523 young people in Slovenia indicates that the core group of respondents is aged between 18 and 24 (70%). The majority are Slovenian citizens (90,1 %), remaining youth are of different nationalities enrolled into Slovenian schools and faculties (9,9 %). The largest share resides in Ljubljana (18%), followed by Maribor and other medium-sized cities. The sample is predominantly female (63%), which also reflects the higher representation of women in secondary and tertiary education.

The first aim of the analysis was to understand why do pupils and student consider student work important. The results show that primary motivations for engaging in student work are the ability to afford covering personal expenses (79%) and gaining work experience (78%). Over one third young respondents also

[50] e-Študentski Servis. (2025*). National survey Youth and the Labour Market 2025.*

highlight greater independence and the opportunity to explore different professions. All responses are presented in the Table 2.

Table 2: Why Do You Consider Student Work Important? (Multiple Answers Possible)

Responses	Frequency	Percentage (%)
Financial reasons: It allows me to afford additional things (e.g., driving licence, phone, trips).	5,370	79.2
Work experience: Gaining work experience during education.	5,298	78.1
Quick and reliable income (advance payments).	4,681	69.0
It provides independence and autonomy.	4,287	63.2
Opportunity to try different jobs and employers.	3,844	56.7
Helps me better understand myself (what I like and what I am good at).	3,833	56.5
Learning how to build relationships and communicate.	3,682	54.3
Work can be adjusted to school or study obligations.	3,660	54.0
Learning how to manage money.	3,183	46.9
Work counts in pension contribution period and corresponding pension contributions are paid.	3,024	44.6
Financial security and support for the family.	3,020	44.5
Opportunity to meet an employer with whom I may later be employed.	2,645	39.0
Expanding my (professional) social network.	2,443	36.0

Source: National Youth and Labour Market Survey (e-Študentski Servis, 2025).[51]

The second aim was to assess the extent to which student work functions as a financial support mechanism for pupils' and students' education. The survey question being the assessment of the following statement "Without student work, I would find it more difficult to financially afford my studies or education.", response options being: Strongly agree, Agree, Neither agree nor disagree, Disagree, Strongly disagree. The data show that student work represents financial necessity as nearly two out of five respondents (37%) report that they would find it difficult to finance their secondary or tertiary education without working, whereas

[51] e-Študentski Servis. (2025*). National survey Youth and the Labour Market 2025.*

approximately one quarter do not perceive such financial pressure. The results are presented in the Table 3.

Table 3: Without student work, I would find it more difficult to financially afford my studies or education.

Responses	Frequency	Percentage (%)
Strongly agree	1,294	19
Agree	1,246	18.3
Neither agree nor disagree	1,588	23.4
Disagree	1,661	24.5
Strongly disagree	1,004	14.8

Source: National Youth and Labour Market Survey (e-Študentski Servis, 2025).[52]

In European perspective the results of Eurostudent research show that nearly 80% of students in Eurostudent countries combine their studies with one or more paid jobs, while around 60% of all students work during their study period.[53] The financial dimension adds an important social-policy layer. Respondents did not describe student work only as a pathway to experience, but also as a mechanism for financing education and everyday life. The finding that 2 out of 5 respondents would have greater difficulty affording education without student work suggests that student employment plays a dual role: it supports both economic participation in education and competence accumulation. This duality complicates simplistic normative judgments. For many pupils and students, working is not merely a strategic employability investment but also a practical condition for remaining in education. In such cases, the challenge for policy is not whether student work should exist, but how it can be organised in ways that maximise developmental gains while minimising academic risks.

The third aim was to understand what key knowledge or experiences young people acquire through student work. We analysed responses to the open-ended, non-mandatory question: "What key knowledge or experience have you gained through student work?". The competence analysis is based on 4,602 valid responses of secondary school pupils and tertiary education students. For the analysis, we

[52] e-Študentski Servis. (2025*). National survey Youth and the Labour Market 2025.*

[53] Hauschildt, K., Gwosć, C., Schirmer, H., & Wartenbergh-Cras, F. (2021). *EUROSTUDENT VII: Synopsis of Indicators 2018–2021*. Wbv. (pp. 146–167).; Nidogon Višnjić, S., Pažur Aničić, K., & Divjak, B. (2024). A systematic review of the literature on student work and academic performance. *Industry and Higher Education, 0*(0), 1–12.

employed reflexive thematic analysis as outlined by Braun and Clarke, which comprises five stages: (1) familiarisation with the data, (2) coding, (3) generating themes, (4) reviewing themes, and (5) reporting the results.[54]
Quantitative overview of the frequency of key terms: An analysis of the most frequently occurring words in the responses indicates that the most prominent terms include communication, work with people, responsibility, independence, patience, organisation, cooperation, knowledge, experience, self-confidence, skills, relationships, and adaptability. This suggests that most respondents identified soft skills, personal effectiveness, professional competencies, and adaptability as the key forms of knowledge gained through student work.
Thematic analysis of responses: Using thematic analysis according to the model proposed by Braun and Clarke[55], the responses clearly reveal the main themes. From 4,602 open-ended responses, we applied inductive coding and grouped similar codes to identify five main themes, presented in Table 4.

Table 4: Thematic analysis of responses: Key knowledge and skills enlisted by students and pupils

Theme	Examples of Subthemes from Responses
Development of Soft Skills	Communication ("communication, working with people"), teamwork ("teamwork, collaboration within a team"), patience, conflict resolution
Personal Effectiveness and Autonomy	Independence, responsibility, self-confidence, assertiveness ("standing up for oneself"), time management
Professional and Organisational Competencies	Work organisation, business communication, project management, work habits, administrative knowledge
Technical and Digital Skills	IT skills (e.g., Excel, programming, use of CRM systems), digital literacy
(Contextual) Understanding of the Work Environment	Understanding organisational culture, insight into company processes, understanding hierarchy, ethical aspects

Source: National Youth and Labour Market Survey (e-Študentski Servis, 2025).[56]

[54] Braun, V. & Clarke, V. (2006) *Using thematic analysis in psychology, Qualitative Research in Psychology, 3*(2), pp. 77-101.
[55] Braun, V. & Clarke, V. (2006) *Using thematic analysis in psychology, Qualitative Research in Psychology, 3*(2), pp. 77-101.
[56] e-Študentski Servis. (2025*). National survey Youth and the Labour Market 2025.*

The most prevalent theme is the *development of soft skills*, with communication emerging as the most prominent competency acquired through student work. Communication is mentioned in more than one third of the responses, often in connection with working with people, conflict resolution, negotiation, and expressing oneself in different situations. Respondents emphasise that effective communication is fundamental for workplace success and for building positive professional relationships. In addition to communication, teamwork and the ability to adapt to different groups represent an important component of soft skills, which respondents associate with greater flexibility and learning in real work environments.

A second major theme is *personal effectiveness and autonomy*, where respondents highlight the development of self-confidence, assertiveness, responsibility, and time management skills. These aspects are frequently linked to increased independence at work and broader personal development. Within the category of *professional and organisational competencie*s, respondents mention work organisation, business communication, project management, and the development of work habits, indicating the acquisition of practical professional knowledge and skills necessary for the effective performance of job tasks. *Technical and digital skills* are also frequently emphasised. Respondents report gaining competencies such as working with computer software (e.g., Excel), using digital tools (e.g., CRM systems), and basic digital literacy, which enhance their competitiveness in the labour market. Finally, the theme of (*contextual) understanding of the work environment* includes insights into organisational culture, work processes, organisational hierarchy, and ethical considerations, enabling respondents to better understand the broader workplace context and employers' expectations.

Examples of respondents' statements on competencies gained through student work:

"Communication. I now have a better understanding of the real situation in companies—there is theory, and then there is reality, which is often quite different."
"Communication, responsibility, and working under pressure."
"Time management, writing emails, and business communication."
"Adapting to different teams."
"Understanding how corporate culture functions and becoming familiar with HR systems."
"How work is organised in offices and larger companies, and how to deal with demanding people."
"Digital literacy and advanced work in Excel."
"I improved my level of business communication (both oral and written), enhanced my Excel skills, learned how to respond in stressful situations, how to work in a team, and how to stand up for myself."

In addition to positive experiences, some responses also contain *critical reflections*, in which respondents highlight negative aspects of student work, such as exploitation, stress, and a perceived lack of meaning in certain jobs. These responses indicate an awareness of labour market realities and the challenges young people encounter in early work experiences.
The analysis of open-ended responses confirms that young people most frequently report acquiring soft skills during student work—particularly communication and teamwork—as well as personal effectiveness (independence, responsibility), professional competencies (organisation, business communication), technical skills, and a better understanding of the work environment. *Communication and teamwork emerge as the most prominent themes*, suggesting that respondents perceive social skills as fundamental for successful integration into the workplace and for their future career development. The responses also indicate that young people's experiences vary considerably depending on the type of student job, employer, and work environment. While some respondents report opportunities for more independent work and competence development, others highlight challenges such as limited support or the repetitive nature of certain tasks.
Based on the analysis of open-ended responses, it can be concluded that student work does not only involve the acquisition of professional knowledge and skills, but also represents an important process of personal development. Respondents report increased self-confidence, independence, and a greater capacity to take responsibility, which supports their further personal and professional development. Student work therefore contributes significantly to employability, personal growth, and preparation for future career challenges.
Prevailing reasons for engaging in student work for pupils and students are the ability to afford covering personal and gaining work experience. Student work functions as a financial support mechanism for pupils' and students' education, as 2 out of 5 respondents claim they would find it more difficult to financially afford their education without it. Key knowledge and skills acquired by student work, enlisted by students in pupils, includes: Development of soft skills (with communication being the most frequent answer), personal effectiveness and autonomy, professional and organisational competencies, technical and digital skills and (contextual) understanding of the work environment.

3. Discussion and Conclusion

The findings from the analysed sources indicate that the competencies developed through student work correspond closely to several key competencies identified in the HEGESCO project as particularly important for graduates' transition to the labour market. These include mastery of one's own field or discipline, the ability to perform well under pressure, the ability to use time efficiently, the ability to work productively with others, and the ability to use computers and the internet effectively.[57] The alignment between competencies reported by respondents and those identified in the HEGESCO framework suggests that student work may represent an important complementary environment for the development of skills relevant to early career integration. These studies support the argument that employability is built on a combination of field-specific knowledge and transversal competencies rather than on disciplinary knowledge alone.

The respondents' emphasis on soft skills (communication), personal effectiveness and autonomy, organisational competencies, and technical and digital skills indicates indicates that student work functions as a hybrid learning environment, combining elements of formal education, learning from experience and early socialisation into workplace norms. In this respect, the results reinforce the view that employability is not determined only by formal qualifications, but also by the extent to which students are able to develop transferable and job-relevant competencies before graduation. This interpretation is consistent with OECD research showing that part-time work alongside education can help young people build technical and soft skills, build social networks, strengthen career confidence and planning, thus improving later labour-market transitions, while excessive work may undermine educational attainment and can have negative effects on academic achievement.[58]

The results also fit well with current labour-market expectations. The World Economic Forum's Future of Jobs Report 2025, based on responses from more than 1,000 employers representing over 14 million workers across 55 economies, identifies analytical thinking as the most sought-after core skill, followed by resilience, flexibility and agility, and leadership and social influence.[59] At the same time, the fastest-growing skills include AI and big data, networks and cybersecurity, and technological literacy, while curiosity and lifelong learning continue to rise in importance.[60] The present findings correspond to this broader trend: student work appears to strengthen precisely

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[57] Allen, J., Coenen, J., & Humburg, M. (2011). The role of higher education in producing relevant competences. In J. Allen, S. Pavlin, & R. van der Velden (Eds.), *Competencies and early labour market careers of higher education graduates in Europe* (pp. 56–57, 62–63). Ljubljana: University of Ljubljana, Faculty of Social Sciences.Allen et al., 2011.

[58] OECD (2025), *"Teenage part-time working: How schools can optimise benefits and reduce risks for secondary school students",* OECD Education Policy Perspectives, No. 116, OECD Publishing, Paris. https://doi.org/10.1787/0dd35152-en.

[59] World Economic Forum. (2025). *Future of Jobs Report 2025*.

[60] World Economic Forum. (2025). *Future of Jobs Report 2025*.

those human-centred and adaptive capabilities that employers increasingly value in volatile labour markets. Even where student jobs are not highly specialised, they may still create value by fostering communication, responsibility, self-organisation, and contextual understanding of work settings—competencies that are increasingly central in labour-market resilience. Competencies that are developed in student work strengthen young people's human capital. That is why student work facilitates the development of human capital, and in relation to academic performance it can be interpreted through several theoretical perspectives.[61] Also, other relevant literature shows that part-time work during education also builds social, cultural and human capital.[62]

An additional contribution of the present study is the finding that student work supports not only competence development, but also career orientation and the transition into regular employment.[63] This is in line with comparative European evidence showing that work experience acquired during higher education can improve post-graduation occupational outcomes. Passaretta and Triventi, comparing graduates across four European countries, found that work experience during tertiary education was associated with better labour-market positions after graduation, especially where such experience reduced unemployment risk and skill mismatch.[64] Student work is beneficial not simply because students work, but because work can provide signalling value, skill acquisition, networks and career information.[65]

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[61] Becker, G. S. (1993). *Human capital: A theoretical and empirical analysis, with special reference to education.* The University of Chicago Press.; Becker, G. S. (2006). The age of human capital. V H. Lauder, P. Brown, J.-A. Dillabough in A. H. Halsey (ur.). *Education, Globalization and Social Change* (pp. 292–294). Oxford University Press.; Nidogon Višnjić, S., Pažur Aničić, K., & Divjak, B. (2024). A systematic review of the literature on student work and academic performance. *Industry and Higher Education, 0*(0), 1–12. (pp. 2–3).

[62] OECD (2021), "Experiencing the workplace: The importance and benefits for teenagers". *OECD Education Policy Perspectives, No. 45*, OECD Publishing, Paris.

[63] Farčnik, D. and Redek, T. (2025). Študentsko delo in zaposljivost diplomantov. In P. Domadenik Muren & V. Franca (Eds.), *Vloga študentskega dela na trgu dela v Sloveniji* (pp. 87–102). Ljubljana: FDV.; Kohont, A., Ruperčič, M., & Hren Topole, J. (2025). Razvoj kompetenc s študentskim delom. In P. Domadenik Muren & V. Franca (Eds.), *Vloga študentskega dela na trgu dela v Sloveniji* (pp. 63–88). Ljubljana: FDV.; Miloševič Zupančič, V. (2025). Karierni razvoj s študentskim delom in prehod na trg dela. In P. Domadenik Muren & V. Franca (Eds.), *Vloga študentskega dela na trgu dela v Sloveniji* (pp. 59–86). Ljubljana: FDV.

[64] Passaretta, G. & Triventi, M. (2015). Work experience during higher education and post-graduation occupational outcomes: A comparative study on four European countries. *International Journal of Comparative Sociology 56*(3-4).

[65] Becker, G. S. (1993). *Human capital: A theoretical and empirical analysis, with special reference to education.* The University of Chicago Press; Becker, G. S. (2006). The age of human capital. V H. Lauder, P. Brown, J.-A. Dillabough in A. H. Halsey (ur.). *Education, Globalization and Social*

Overall, the present findings support the argument that student work can serve as an important bridge between education and employment by fostering transversal skills, practical know-how, personal maturity and clearer career orientation. They also align with the broader European and global literature indicating that employability increasingly depends on a combination of generic, adaptive and work-contextual competencies. However, the findings also point to an important nuance: the developmental value of student work is not guaranteed. It is highest when work is moderate in intensity, offers meaningful learning opportunities, and—ideally—has at least some connection to students' educational or career trajectories. Future research should therefore move beyond the binary question of whether student work is beneficial and examine more precisely under what conditions, for whom, and through which mechanisms student work contributes to employability and social mobility.
The insights extracted from this analysis illustrate that student work in Slovenia should not be understood merely as an income-generating activity, but as a critical developmental context in which young people acquire competencies highly relevant for later labor-market participation. However, capitalizing on these human-resource benefits is inextricably linked to the underlying legal architecture, which currently suffers from pronounced fragmentation and normative ambiguity. While recent legislative reforms have improved the socio-economic position of students through minimum wage guarantees and social security contributions, the fundamental absence of a clear statutory definition regarding the temporary and occasional nature of student work continues to blur the line between educational support and disguised employment. To truly optimize the systemic role of student work as a laboratory for skill development, adopting a unified and comprehensive legal framework remains a pressing national priority to secure legal clarity and protect young workers from systemic abuse.
Within this evolving legal landscape, new legislative proposals are emerging that seek to redefine the boundaries of student economic participation, most notably the recent initiative by the New Slovenia (NSi) party to introduce a specific student self-employed status (študentski s.p.).[66] Under the current regulatory framework, students who wish to formalize their entrepreneurial ventures by opening a sole proprietorship immediately forfeit their student status benefits, including health insurance through parents, scholarships, and subsidized living and transport. The proposed legislation aims to eliminate this

Change (pp. 292–294). Oxford University Press; Spence, M. (1973). Job market signaling. *The Quarterly Journal of Economics, 87*(3): pp. 355–374.
[66] RTVSLO. (2026). V NSi-ju predlagajo poseben zakon za podjetne študente, accessible: https://www.rtvslo.si/slovenija/v-nsi-ju-predlagajo-poseben-zakon-za-podjetne-studente/760142

barrier by allowing young people to operate a business up to a certain income threshold while retaining their vital socio-economic student rights, utilizing a reduced contribution model akin to supplementary or "afternoon" sole proprietorships. This introduces a paradigm shift in how student labour is conceptualized, prompting a critical debate on whether such a measure would ultimately foster youth entrepreneurship or inadvertently harm the established institution of student work.

From an economic and human capital perspective, the introduction of a student self-employed status possesses substantial potential to foster genuine entrepreneurship. It would provide a secure incubator for innovative students to test business ideas, commercialize digital or specialized skills, and seamlessly transition into the regular economy without facing punitive tax burdens or the abrupt loss of their social safety net. By directly rewarding initiative, this status aligns seamlessly with the growing labour market demand for resilience, adaptability, and self-organization. Conversely, from a strict labour-law perspective, this proposal carries significant risks of exacerbating precariousness and undermining the protective mechanisms of traditional student work. Just as standard student labour has historically been exploited to bypass regular employment contracts, a student self-employed status could be weaponized by employers to enforce bogus self-employment. Companies might pressure students to open their own business entity to shift the burden of social security and operational risks entirely onto the young worker, thereby deteriorating their social security and distorting fair competition. Therefore, while legally formalizing student entrepreneurship is a progressive step toward dynamic skills formation, it must be accompanied by stringent regulatory safeguards and rigorous labour inspection oversight to ensure it serves as a launchpad for young innovators rather than a new avenue for labour market exploitation.

Towards a European Regulation of Traineeships? The EU Proposal for a Directive on Working Conditions and Fictitious Traineeships

Giorgio Impellizzieri [*]

Abstract. This article examines the 2024 EU traineeships package against the broader problem of the legal status of traineeships in European labour law. It argues that the package is significant not only because it seeks to improve the protection of trainees, but because it brings to the surface a more fundamental issue that many national systems have long left underdefined: whether, and under which conditions, a traineeship can remain legally distinct from employment while taking place within a productive organisation and involving activities of clear economic value. The article first reconstructs the fragmented legal status of traineeships in EU law and in the Member States, showing how traineeships occupy a structurally unstable position between work and training. It then analyses the Commission proposal of 20 March 2024, with particular attention to its legal basis under Article 153 TFEU, its scope, and its attempt to combine an equal-treatment logic for trainees who are already workers with an enforcement strategy against fictitious traineeships. The article next examines the subsequent positions of the Council and the Parliament, showing that the legislative process has made explicit a deeper tension already present in the original package: the Council seeks to clarify that the directive targets fictitious traineeships and employment-related protections, while the Parliament seeks to extend the directive toward the positive regulation of traineeship quality as such. The article concludes that the main difficulty of the reform lies in the mismatch between the Union's competence to regulate working conditions and the hybrid legal nature of many traineeships.

Keywords: *traineeships; internships; EU labour law; equal treatment; enforcement*

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1. Introduction

EU labour-law initiatives do not attract the same degree of attention among labour scholars. In recent years, proposals touching issues that were already central to the domestic political and trade-union agenda – such as adequate minimum wages or platform work – generated immediate and dense commentary. By contrast, the traineeships package presented by the Commission on 20 March 2024 moved for a long time below the radar, notwithstanding its potential importance. That package combined two different instruments: a proposal for a directive on improving and enforcing the working conditions of trainees and combating regular employment relationships disguised as traineeships ([1]), and a parallel proposal for a Council recommendation on a reinforced Quality Framework for Traineeships[2]. The first was conceived as a binding intervention on working conditions; the second as a soft-law intervention on the broader educational and formative dimension of traineeships.

This initial relative indifference is surprising. Traineeships are not a residual phenomenon, but a structural feature of contemporary school-to-work transitions. At EU level, the most widely cited estimates suggest that every year there are more than three million traineeships and that traineeships are likely to keep growing as an entry route into the labour market[3]. The quantitative relevance of the phenomenon is therefore beyond doubt.

The growth of traineeships has been closely intertwined with European activation policies. Their spread has been strongly supported by the Youth Guarantee framework, financed by the European Social Fund, which made it possible in many cases for host organisations to receive public support covering the trainee allowance[4]. This mechanism undoubtedly facilitated access to work experience for many young people. At the same time, it also amplified the incentives to use traineeships as a cheap, flexible, and weakly contested

[1] Proposal for a Directive of the European Parliament and of the Council on improving and enforcing working conditions of trainees and combating regular employment relationships disguised as traineeships ('Traineeships Directive') – COM/2024/132 final/2.

[2] Proposal for a Council Recommendation on a reinforced Quality Framework for Traineeships – COM/2024/133 final.

[3] C. ALCIDI, C. ASTARITA, H. CRICHTON-MILLER, T. KISS-GALFAVI, A. OUNNAS, L. WESTHOFF, L. LECHARDOY, G. STAZI, *Study exploring the context challenges and possible solutions in relation to the quality of traineeships in the EU*, Pubblications Office of the European Union, 2024, p. 11.

[4] A. ELEVELD, T. BAZZANI, A. DE LE COUR, E. STASZEWSKA, *Implementation of the European Youth Guarantee and the Right to Work: A Comparative Analysis of Trianeeship Programmes Under the Eu Active Labour Market Policy*, in *International Journal of Comparative Labour Law and Industrial Relations*, Volume 38, Issue 3, 2022, pp. 269-298.

source of labour. The risk, well documented in the literature, is that the traineeship may cease to function as a transitional learning device and become instead a low-cost substitute for regular labour. This risk has been reinforced by the specific way in which extracurricular traineeships have been regulated in many countries: formally classified as non-employment relationships, but at the same time inserted into labour-market policies and embedded in productive organisations in ways that can make them functionally close to work[5].

The issue, therefore, is not merely whether trainees should be paid more or protected better. The more fundamental issue is the legal status of the traineeship itself[6]. The traineeship occupies a blurred area between work and training. It ordinarily takes place within the productive environment of the host organisation, not in a simulated setting. The trainee may perform tasks that are organisationally useful and economically valuable. Yet the normative exchange at the core of the arrangement is not, at least in principle, the exchange of labour for wages. It is rather the exchange between the activities carried out by the trainee and the learning opportunities, supervision, and gradual professional socialisation that the host organisation is expected to provide[7]. This is precisely why traineeships cannot be fully assimilated to employment without conceptual loss; but it is also why they are constantly at risk of being converted into employment-like arrangements stripped of employment protections.

From this perspective, the present article has a double aim:

- *(i)* First, it seeks to reconstruct the legal status of traineeships in EU law and to show why that status remains conceptually fragile, oscillating between work and training and resisting full assimilation to either field.
- *(ii)* Secondly, it analyses the 2024 traineeships package, and in particular the proposed directive, in order to assess whether the Union can strengthen the protection of trainees without either exceeding the limits of Article 153 TFEU or emptying the traineeship of its specific formative rationale.

On that basis, the article also examines the subsequent positions of the Council and the Parliament and argues that the legislative process has progressively

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[5] A. PAZ-FUCHS, *Trainees – the new army of cheap labour: Lessons form workfare?*, in A. STEWART, R. OWENS, N. O'HIGGINS, A. HEWITT (a cura di), *Internships, Employability and the Search for Decent Work Experience*, Edward Elgar, 2021., pp. 255-268.

[6] J. HELME, *The Problems and Paradoxes with the EU's Regulation of Traineeships: a Way Forward*, in *Industrial Law Journal*, 2024.

[7] In A. STEWART, *The nature and prevalence of internships*, in A. STEWART, R. OWENS, N. O'HIGGINS, A. HEWITT (a cura di), *Internships, Employability and the Search for Decent Work Experience*, cit., pp. 17-34.

transformed a proposal on trainees' protection into a broader controversy over the legal construction of traineeships themselves.

2. In Search of the Legal Status of Traineeships in EU Law

At present there is no fully fledged, uniform legal definition of "traineeship" in EU hard law. The main reference point long remained the 2014 Council Recommendation on a Quality Framework for Traineeships[8], where a traineeship was described as «a limited period of work practice, whether paid or not, which includes a learning and training component, undertaken in order to gain practical and professional experience with a view to improving employability and facilitating transition to regular employment»[9]. That definition was deliberately broad. It was designed to accommodate the diversity of national regimes rather than to resolve it. As a consequence, the label "traineeship" covers very heterogeneous factual and legal situations, whose meaning depends heavily on national legislation, institutional settings, educational traditions, and labour-market policies.

Comparative work commonly distinguishes at least four broad categories[10]. First, there are open-market traineeships, typically activated through a bilateral arrangement between the host organisation and the trainee in order to provide initial work experience and on-the-job learning. Secondly, there are active labour market policy traineeships, usually embedded in triangular schemes involving public employment services and designed as activation tools for unemployed or inactive persons. Thirdly, there are education curricula traineeships, traineeships that are part of formal education and training curricula. Fourthly, there are mandatory professional traineeships required for access to regulated professions. Each type is characterised by different aims, different institutional sponsors, different beneficiary profiles, and different regulatory expectations. Even more importantly, the relationship between those types and labour law is highly uneven across Member States[11].

Some national systems treat traineeships, or at least some forms of traineeship, as employment relationships (e.g. in Belgium, Slovenia). Others reserve worker status to particular sub-types, such as mandatory professional training (e.g.

[8] Council Recommendation of 10 March 2014 on a Quality Framework for Traineeships (2014/C 88/01).

[9] Recital 27 of Council Recommendation 2014/C 88/01.

[10] C. ALCIDI, C. ASTARITA, H. CRICHTON-MILLER, T. KISS-GALFAVI, A. OUNNAS, L. WESTHOFF, L. LECHARDOY, G. STAZI, *Study exploring the context challenges*, cit., p. 1.

[11] A. STEWART, R. OWENS, A. HEWITT, I. NIKOLOUDAKIS, *The regulation of internships. A comparative study*, Working Paper No. 240 (Employment), Employment Policy Department, Ilo, 2018.

Netherlands, Hungary, Poland), or recognise worker status only when classic indicators of employment are present, such as subordination, the exercise of managerial and disciplinary powers, integration into the undertaking, and remuneration (e.g. Germany, Denmark, Lithuania)[12]. The result is a highly fragmented map. What counts as a traineeship in one legal order may be an employment contract in another; what is regulated as a public activation measure in one country may be left largely to private ordering in another.
The picture is further complicated by the relationship between traineeships and the broader set of youth-oriented legal schemes that combine employability objectives with different forms of work-based learning. Suffice it to consider apprenticeship, which likewise lacks a homogeneous definitional framework at the international level[13]. At EU policy level, apprenticeships are generally understood as a more formal, institutionally structured segment of education and training, in which work-based learning is embedded in recognised curricula, while traineeships, by contrast, are often portrayed as looser arrangements, with a less formalised and more indeterminate training content[14]. In some countries (e.g. Italy), however, the relationship is largely reversed. Apprenticeship is primarily conceived as a contract of employment, whereas the curricular traineeship is the main instrument through which work-based learning is welcomed into the education and higher-education system.
Precisely because of this heterogeneity, several scholars have described the legal status of traineeships as empty, unstable, or even paradoxical[15]. Domestic lawmakers often define traineeships negatively, by stating what they are not: they are not ordinary employment, they do not create an employment relationship, and they may not be used to replace workers. Yet these negative definitions coexist with a practical reality in which trainees frequently operate inside productive environments, perform useful tasks, and may depend economically on the continuation of their placement. In many systems, therefore, the trainee's status is "emptied out" twice over: first by excluding the application of ordinary labour protections, and secondly by failing to

[12] C. ALCIDI, C. ASTARITA, H. CRICHTON-MILLER, T. KISS-GALFAVI, A. OUNNAS, L. WESTHOFF, L. LECHARDOY, G. STAZI, *Study exploring the context challenges and possible solutions in relation to the quality of traineeships in the EU*, cit., spec. pp. 125-126.
[13] D. MCCANN, A. STEWART, *Quality, Formality and the Evolution of International Labour Law: The New ILO Quality Apprenticeships Standard*, in *Industrial Law Journal*, 2024.
[14] J. J. VOTINIUS, M. RÖNNMAR, *Internships and apprenticeships in Sweden, collective bargaining and social partner involvement*, in A. STEWART, R. OWENS, N. O'HIGGINS, A. HEWITT (a cura di), *Internships, Employability and the Search for Decent Work Experience*, The Ilo Future of Work Series, no. 2, Edward Elgar, 2021, pp. 145-162, qui p. 145.
[15] J. HELME, *The Problems and Paradoxes with the EU's Regulation of Traineeships*, cit.

guarantee, with equal seriousness, the formative guarantees that are supposed to justify that exclusion[16].

This is also why a purely labour-law or purely education-law approach is insufficient. If one looks only at the production side, traineeships risk being assimilated too quickly to employment. If one looks only at the formal learning narrative, the analysis risks obscuring the material reality of productive contribution and power asymmetry. A credible legal account must instead hold together both dimensions. Traineeships are structured learning experiences that take place in productive settings; their specificity lies precisely in the attempt to allow a limited, supervised, and educationally meaningful integration into work without collapsing entirely into the employment contract. That specificity, however, is conceptually fragile and practically easy to abuse.

This difficulty also emerged clearly from the incomplete implementation of the 2014 Quality Framework for Traineeships. In its 2023 evaluation, the Commission found that progress in the uptake of the Framework's principles had been only moderate: since 2014, 14 Member States had introduced changes integrating its quality principles into their legislative or policy frameworks, while open-market traineeships remained much less regulated than ALMP traineeships[17]. The same evaluation also stressed that the actual application, monitoring, and enforcement of the Framework still left considerable room for improvement, and that stronger stakeholder involvement could be usefully encouraged, especially in light of the more structured governance often associated with apprenticeship frameworks.

It is against this background that the Commission's 2024 package should be understood. The package can be read as an attempt to address the dual nature of traineeships through a differentiated legal strategy: the proposed Directive focuses on working conditions and on combating regular employment relationships disguised as traineeships, while the proposed reinforced Recommendation addresses the broader quality and training dimension and extends its reach to all traineeships, including those forming part of formal education and training and those required for access to regulated professions.

For that very reason, however, the effectiveness of the 2024 initiative depends on the capacity of these two instruments to remain conceptually and

[16] G. IMPELLIZZIERI, *La disciplina dei tirocini extracurriculari in Italia tra finalità formative e torsione lavoristica*, in *RGL*, 2024, n. 2, pp. 242-260.

[17] Commission Staff Working Document "Applyning the Quality Framework for Traineeships Accompaying the document Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions, The Youth Guarantee and the Youth Employment initiative three years on" (SWD/2016/0324 final).

institutionally connected. Whether that split is stable, however, is precisely one of the central issues examined below.

3. The Commission Proposal of 20 March 2024: Legal Basis, Definitions and Scope

The Commission proposal for a Traineeships Directive was presented against the broader background of the European Pillar of Social Rights and of the political objective of improving labour-market transitions for young people[18]. The explanatory documents place considerable emphasis on youth unemployment, on the persistence of NEET rates, and on the role that traineeships may play as gateways into standard employment—provided they are of adequate quality and do not degenerate into disguised jobs[19].
Yet the most delicate legal question was not the policy objective, but the legal basis through which that objective could be pursued.
The Commission chose Article 153(2)(b) TFEU, read together with Article 153(1)(b), which allows the Union to adopt directives laying down minimum requirements concerning working conditions. This choice was not merely political, but it was also a matter of legal technique. Had the Commission relied on Article 166 TFEU, which concerns vocational training, the Union would have remained confined to non-binding recommendations. Article 153, by contrast, makes it possible to legislate through minimum harmonisation. The difficulty is obvious: if the Union legislates on working conditions, it must stay within the field of work. It cannot simply use the directive to regulate all aspects of traineeships as though they were a homogeneous labour-law category.
This is why the directive was paired with a proposal for a reinforced Quality Framework for Traineeships based on Article 166 TFEU. The recommendation was intended to carry the broader educational and quality-related ambition of the package—covering issues such as written agreements, learning content, mentoring, fair remuneration, social protection, equal access, and incentives to convert traineeships into jobs. The directive, instead, was formally constrained to address working conditions and the fight against disguised employment relationships. The package thus rests on a deliberate division of labour between hard law and soft law, and between the labour-law and training-law sides of the phenomenon.
The controversial point is the Directive's scope. Recital 16 of the Commission text states that the directive applies to «Union trainees who have an

[18] COM (2021) 102, final, § 2.
[19] See § 1 of the *Explanatory Memorandum* of the proposal of directive COM (2024) 132 final/2.

employment contract or employment relationship as defined by national law, collective agreements, or practice, taking into account the case law of the Court of Justice». Article 2 reinforces that structure by distinguishing between "traineeship" and "trainee." A traineeship is defined broadly as «a limited period of work practice with a significant learning and training component aimed at improving employability and facilitating transition to regular employment or access to a profession» (Art. 2, lett. A). A trainee, however, is only «any person undertaking such a traineeship any person undertaking a traineeship who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in every Member State with consideration to the case law of the Court of Justice» (Art. 2, lett. B). That distinction is crucial. Properly read, it means that the Commission did not intend to classify all trainees as workers by legislative fiat. Rather, it sought to ensure that where national law already treats a trainee as a worker, the person concerned should not receive lower protection merely because the arrangement is called a traineeship. At the same time, the proposal aimed to combat fictitious traineeships even when the employer labels as a traineeship an arrangement that, in substance, is regular work. The directive therefore contains two layers: an equal-treatment layer for trainees already in employment, and an enforcement layer aimed at detecting and reclassifying abusive situations across the wider universe of traineeships.

This interpretation is supported by the internal architecture of the proposal. Chapter II on equal treatment is directed at "trainees" and not at "traineeships" in general. Chapter III on enforcement, by contrast, speaks more broadly of the misuse of traineeships to disguise regular employment relationships. Read together with Recital 18, the structure suggests that the Commission accepted the coexistence of genuine non-employment traineeships and traineeships that fall within labour law. The directive does not, at least in its original version, abolish that distinction; it works through it.

That said, the 2024 Directive has also been read in a different way. In particular, the Italian Government, in the report transmitted to European Commission[20], argued that the proposal «seems to pull traineeships into the realm of salaried employment» and, in so doing, fails to take sufficient account of legal systems such as the Italian one, in which traineeships, while sharing some features with employment contracts, remain training pathways rather than forms of subordinate work. On that view, the proposal would risk

[20] See Document (Doc. XVIII-bis, No. 38), approved on 12 June 2024 by the 14th Committee (European Union Policies) of the Chamber of Deputies in the context of the subsidiarity scrutiny under Article 6 of Protocol No. 2 annexed to the Treaty of Lisbon.

constraining the autonomy of Member States in classifying traineeships under legal categories other than employment.

That concern cannot simply be dismissed, since the delimitation of the Directive's scope is not entirely free from ambiguity. The EESC itself recommended that the definitions in Article 2 should not entail any obligation for Member States to classify traineeships as employment relationships where national law does not do so[21]. Yet, on a systematic reading, the overall architecture of the 2024 package points in a different direction. Recital 18 expressly states that Chapter III applies both where employers label a regular employment relationship as a traineeship that is not an employment relationship and where they label it as a traineeship that does constitute an employment relationship, but on inferior terms. This suggests that the Directive presupposes the coexistence of traineeships carried out within an employment relationship and traineeships carried out outside it, while still seeking to combat fictitious traineeships in either form. The same logic is reflected in Article 2: as the EESC noted, the definition of "traineeship" is drafted broadly and refers to a period of work practice with a significant training component, without being tied to any specific contractual form, whereas the definition of "trainee" is linked to the employment-law notion used by the Directive. In turn, the proposed reinforced Recommendation confirms that broader approach, since it applies to all trainees regardless of their employment status, and to trainees who are workers only insofar as Union law does not already provide equivalent or more favourable rules.

Read together, the two instruments therefore seem designed to cover the whole field of traineeships without imposing their general subsumption under subordinate employment: the Recommendation addresses traineeships as such, while the Directive addresses, on the one hand, equal-treatment issues where the trainee already falls within employment law and, on the other, reclassification where a purported traineeship, whatever its formal label, amounts in substance to a regular employment relationship[22].

[21] See Parere del Comitato economico e sociale europeo "Direttiva sui tirocini e quadro di qualità rafforzato per i tirocini", SOC/805, adottato l'11 luglio 2024.

[22] See also the speech delivered by the European Commissioner for Jobs and Social Rights, Nicolas Schmit, before the European Economic and Social Committee on 11 July 2024 (speech/24/3748), where he stated that «the directive applies only to trainees who are workers. This means that it does not seek to alter the employment status of traineeships as defined by national laws».

4. The Principle of Equal Treatment and The Enforcement Strategy in the Commission Proposal

Once the scope issue is understood, the logic of the Commission proposal becomes clearer. Chapter II is built around a principle of non-discrimination: covered trainees should not be treated less favourably than comparable employees in the same establishment as regards working conditions, including pay, unless different treatment is justified on objective grounds. The proposal thus extends to trainees a familiar pattern from EU social law, already visible in the acquis on fixed-term work[23] and temporary agency work[24]. The underlying intuition is straightforward: if two persons contribute work under comparable conditions, the mere contractual label should not automatically justify lower protection.

The directive does not, however, formulate equal treatment as an absolute rule. It allows different treatments when justified on «objective grounds, such as different task, lower responsibilities, work intensity or the weight of the learning and training component» (Article 3, par. 1).

On this regard, a more explicit comparison with the existing EU acquis on equal treatment is useful here. Indeed, EU labour law already knows models of equal treatment that operate in a more calibrated way[25]. In the field of fixed-term work, Directive 1999/70/EC lays down a prohibition of less favourable treatment vis-à-vis comparable permanent workers, while at the same time allowing Member States, after consultation with the social partners, and/or the social partners themselves, to exclude from its scope «initial vocational training relationships and apprenticeship schemes» as well as employment contracts and relationships concluded within the framework of a specific public or publicly-supported training, integration or vocational retraining programme. Seen against that background, the novelty of Article 3 lies elsewhere. First, it extends the equal-treatment discussion to traineeships carried out within employment relationships that need not be fixed-term in form, thereby also

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[23] Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP. See, in particular, clause 4, which provides that «fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds».

[24] Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work. See, in particular, Article 5(1), which provides that «the basic working and employment conditions of temporary agency workers shall, for the duration of their assignment at a user undertaking, be at least those that would apply if they had been recruited directly by that undertaking to occupy the same job».

[25] G. KÁRTYÁS, *Recent case law on equal treatment of agency workers: broad interpretation of a limited concept?*, ERA Forum, vol. 24, 2023, pp. 397-417

potentially covering legal arrangements in which a training phase is embedded in an open-ended employment contract, as in the case of apprenticeship in some national systems. Secondly, the proposal expressly identifies the factors that may justify differentiated treatment, namely the tasks performed, the level of responsibility, the intensity of work, and the weight of the learning and training component. This is an important clarification, because it acknowledges at the legislative level that the distinctiveness of traineeships may justify adjustments, rather than simple assimilation, within the broader framework of equal treatment[26].

At the same time, the drafting of Article 3 is not entirely convincing. The reference to the learning and training component appears in a disjunctive series, as if it were only one possible factor among others, rather than a necessary element in justifying less favourable treatment. Read literally, the provision could therefore allow Member States to validate lower remuneration or weaker conditions for trainees on the basis of generic lower productivity or lighter responsibilities, even where no sufficiently robust training counterpart is ensured. From that perspective, the formula used in the proposed reinforced Recommendation seems preferable, since it recommends fair remuneration while requiring account to be taken cumulatively of the trainee's tasks and responsibilities, the intensity of work, *and* the weight of the learning and training component (point n. 6).

5. The Legislative Process after March 2024: From the Commission Text to the Council and Parliament Positions

Under the ordinary EU legislative procedure, the Commission's proposal for a directive of 20 March 2024 was subsequently examined by both the Council and the Parliament. As will become clear, the two institutions developed markedly different positions, thereby setting the stage for an interinstitutional negotiation that remains open – the main disputed issues included the scope of the instrument, the possible requirement of a written agreement, and the principle of non-discrimination[27].

Scope is, in fact, the most difficult and persistent issue. That issue is closely connected to the legal basis of the directive, grounded in Article 153 TFEU. The legal basis determines the regulatory technique available to the Union and, with it, the internal architecture of the whole package. As already noted in the

[26] J. HELME, *The Problems and Paradoxes with the EU's Regulation of Traineeship*, cit., p. 690.

[27] See the intervention of on. Alicia Homs Ginel, member of the Committee on Employment and Social Affairs, at the ordinary meeting of Committee on Culture and Education of European Parliament of the 15th April 2026, available on the web.

reactions of several Member States and of the EESC, the Commission text retained a residual ambiguity. It relied on the counterintuitive distinction between "traineeship" and "trainee" and left some uncertainty as to whether its ultimate purpose was to bring every form of traineeship within the orbit of employment law.

The Council's general approach of 19 June 2025 is best understood as an effort to dispel precisely that ambiguity and to align the Directive more clearly with its legal basis. In that respect, the Council does not so much depart from the Commission's regulatory logic as restate it in more definite and restrictive terms. The key move is the insertion of a separate Article 1a on scope. That provision makes clear that Chapters II and IV apply only to trainees "who have an employment contract or who are in an employment relationship as defined by the law, collective agreements or practice in force in the Member State", whereas Chapter III applies to "any person engaged in a fictitious traineeship". In parallel, the Council excludes from the directive traineeships carried out within national education and training frameworks and those carried out as part of active labour market policies. The same clarifying function is served by the replacement of the Commission formula "regular employment relationships disguised as traineeships" with the narrower concept of "fictitious traineeships", defined as "a disguised employment relationship that is claimed by the employer to be a traineeship but in fact is not a traineeship in the meaning of this Directive". This shift matters because it presents the directive more clearly as an anti-abuse instrument directed at deceptive uses of the traineeship label, rather than as a measure concerned with the general legal nature of traineeships.

The same logic emerges from the detailed provisions. Article 3 retains the principle of equal treatment for trainees who already qualify as workers, while placing that principle within a more stable and expressly delimited scope. Article 4 requires Member States to provide effective measures, including controls and inspections where appropriate, to identify and combat fictitious traineeships. Article 5 then limits the assessment of abuse to a relatively short list of factual indicators: the absence of a significant learning or training component, excessive duration or repeated placements with the same employer, and equivalence of tasks, responsibilities and work intensity with comparable employees. The enforcement chapter follows the same pattern. The Council keeps duties of information, guidance, inspections, complaint channels, redress, representative action, protection against retaliation, and penalties, yet removes several elements that could have supported a broader reclassification machinery.

Taken as a whole, the Council text reconstructs the proposal around a more controlled conception of Union intervention: equal treatment where employment status already exists, and repression of fictitious traineeships where the placement lacks the essential features of a genuine traineeship.

The parliamentary position moves in a different direction because it gives greater weight to the view that abuse in the traineeship field cannot be addressed adequately through a directive limited to non-discrimination and misclassification. The EMPL report therefore seeks to broaden both the object and the internal content of the directive. This is already visible in the amended title, which refers to "detecting and combating practices that circumvent the purpose of traineeships". That move shifts the focus from the binary question whether a purported traineeship is in truth a work relationship to the broader question whether a traineeship, while formally remaining a traineeship, has lost the formative features that justify its legal distinctiveness.

The same reorientation appears in the operative provisions. Parliament broadens Article 1 so that the directive aims not only to improve working conditions and combat disguised employment, but also to promote quality, transparency and accessibility. More importantly, it removes the worker-status filter from the definition of "trainee", thereby extending the personal scope of the directive beyond persons who already fall within national notions of employment.

Parliament also reshapes the substantive core of the instrument. Chapter II becomes a chapter on traineeship agreements and decent working conditions. Within that chapter, Parliament introduces a written traineeship agreement before the start of the placement, containing at least information on duration, tasks, working conditions, remuneration, and the learning and training component. It adds provisions on mentorship and supervision, access to social protection, a broader non-discrimination framework, inclusion of persons in vulnerable situations, reasonable accommodation for persons with disabilities, and access to information on available vacancies. In Chapter III, Parliament expands the anti-abuse logic as well. The relevant indicators extend beyond the classic signs of disguised employment and include the absence of a real training programme, lack of mentorship or evaluation, prior-experience requirements inconsistent with the entry-level function of traineeships, opaque vacancy notices, and structural patterns suggesting that traineeships are being used as a recurrent substitute for ordinary recruitment. Parliament also supports a more determinate temporal discipline by framing traineeships, in principle, within a one-to-six-month duration.

The overall effect is clear. Parliament seeks to transform the Directive from a targeted labour-law instrument into a denser normative framework governing the lawful use of traineeships themselves.

It is precisely at this point that the issue of legal basis returns with greater force. Once the worker-status filter disappears, and once the Directive starts to prescribe in binding form both anti-discrimination and enforcement guarantees and positive quality requirements for traineeships as such, the question is no longer simply how Article 153 TFEU should be interpreted, but whether it can sustain this type of intervention at all. The Parliament's position is analytically powerful because it captures something that a narrower labour-law approach may miss: many abuses take shape not only through formal misclassification, but through the legally tolerated existence of traineeships emptied of meaningful training content and used as cheap, weakly protected labour[28]. Yet that same insight pushes the directive toward a field that the Commission had tried, at least in part, to keep on the side of soft law. The real divergence between Council and Parliament therefore concerns the legal construction of the traineeship itself. The Council treats the Directive as an instrument whose legitimacy depends on remaining within the field of employment-related protection and the repression of fictitious traineeships. Parliament treats that solution as insufficient because the line between genuine and abusive traineeships requires binding ex-ante conditions concerning the formative structure of the placement.

6. Conclusions: Regulating Traineeships Without Collapsing Them into Work

In conclusion, the main difficulty of the entire legislative process lies in a structural mismatch between the policy object and the Treaty basis chosen to regulate it. Article 153 TFEU allows the Union to legislate on "working conditions"; yet working conditions presuppose, in principle, workers or at least relationships that can be brought within the orbit of labour law. For that reason, a directive that seeks to reform traineeships irrespective of worker status runs a real risk of exceeding the Union's competence, especially once it starts prescribing in binding form the positive content, duration, supervision and quality requirements of placements that national law may continue to classify outside employment. From this angle, the Council's position appears legally more cautious, because it ties the directive to trainees who already have an employment contract or employment relationship and to the repression of "fictitious traineeships", whereas the parliamentary position is normatively more ambitious but also more exposed on the level of legal basis. At the same time, the opposite solution also carries its own danger. Pulling traineeships too quickly toward the logic of work may generate forms of regulatory heterogenesis. For example, the Italian experience is instructive. The 2013 State-Regions guidelines, adopted in implementation of the 2012 labour-

[28] A. PAZ-FUCHS, *Trainees – the new army of cheap labour: Lessons form workfare?*, cit.

market reform, made the participation allowance a central element of the national framework for extracurricular traineeships; yet the available Ministry of Labour data show that extracurricular traineeships expanded markedly over the following decade rather than receding. That trajectory does not prove a simple causal mechanism, but it strongly suggests a cautionary point: once the placement carries a monetary allowance, host organisations may more easily treat that allowance as the practical counterpart of productive activity and may therefore feel more entitled to demand output from the trainee, without any genuine transition to standard employment. A reform designed to protect trainees may thus, if poorly calibrated, end up legitimising a more work-intensive and more normalised use of traineeships. The core challenge, therefore, is not only to prevent traineeships from functioning as disguised labour, but also to avoid transforming them into quasi-employment relationships whose formal distinctiveness survives only on paper.

Forever Young? The Access of Younger Workers to the Portuguese Labour Market

Ana Teresa Ribeiro *

Abstract. Despite the current low rates of unemployment displayed in the Portuguese labour market, youth unemployment still presents concerning figures. Having this in mind, this contribution delves into the array of instruments whose purpose is to facilitate the entry of younger workers into the labour market, such as work by minors, traineeships (namely, student or extracurricular (professional) traineeships), and even economic incentives directed both at workers and employers. This Article explores the main features of these several mechanisms with the intention of ascertaining their adequacy towards that goal.

Keywords: Work by minors; student traineeships; extracurricular traineeships; mandatory traineeships; economic incentives.

Introduction

The access of younger people to the labour market is cause for concern in the Portuguese panorama. In fact, while the country has been, for a while now, displaying low rates of unemployment (between 2020 and 2025, the general unemployment rate has lowered from 7 % to 6 %),[1] the youth (under 25 years of age) unemployment rate, in March 2026, stood at 18,1% (against the average rate of 14,9% for the Eurozone).[2] In addition, between 2020 and 2025, the

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[1] Data provided by Pordata (accessed on 4 May 2026). In March 2026, the general unemployment rate amounted to 5,8 %, according to Statistics Portugal (accessed on 4 May 2026).

[2] Data provided by Eurostat (accessed on 4 May 2026).

youth unemployment rate was consistently above 20 % (during this period, the highest rate was 23,1 %, in 2024).[3] Also troubling is the number of young people (between 15 and 29) in a NEET (Not in Education, Employment or Training) situation, which, in 2024, consisted of around 140.000 young people.[4] This scenario, which has already been described as unacceptable by political stakeholders,[5] leads to obvious negative repercussions, both at the individual and social levels. In fact, the lack of access to decent jobs and to sufficient income hinders the possibilities of young people achieving their independence, transitioning to adulthood, and starting a family. Furthermore, this scenario also gives rise to reduced access to social security protection, which in turn increases young people's dependence on their family and other local support networks.[6]

Given the current scenario and its harmful consequences, this Article intends to examine the main legal measures designed specifically to facilitate young people's entry into the labour market, in order to assess their suitability for this purpose. To this end, it will begin by analyzing the main features of "work by minors" – a legal regime that allows, within certain parameters, minors to engage in employment contracts (often as a way to complement their family's income), providing them, in these instances, with their first employment experience. This will be followed by an overview of several training options (done on a voluntary or mandatory basis, according to the situation), which enable young people to acquire a relevant work experience and to develop important professional skills. And, finally, it will analyse State provided economic incentives towards the celebration of employment contracts with younger workers.

1. Work by Minors

Portuguese legislation allows, under certain conditions, minors – that is, children under the age of 18[7] – to be engaged in employment contracts,[8] with

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[3] According to data provided by Pordata (accessed on 4 May 2026).

[4] See https://sicnoticias.pt/economia/2025-05-28-video-nao-estudam-nem-trabalham-ha-140-mil-jovens-nem-nem-em-portugal-3d80fe3b (accessed on 20 April 2026).

[5] See https://eco.sapo.pt/2025/05/08/desemprego-jovem-em-niveis-inadmissiveis-estas-sao-as-solucoes-defendidas-pelos-partidos/ (accessed on 4 May 2026).

[6] See FÁTIMA SULEMAN/RICARDO BARRADAS, *Mercado de trabalho e bem-estar após a Grande Recessão: Dificuldades e desafios dos jovens* in Renato Miguel do Carmo *et al.*, *Jovens e o Trabalho em Portugal – Desigualdades, (Des)Proteção e Futuro*, Coimbra, Almedina, 2024, p. 16.

[7] Article 1 of the UN Convention on the Rights of the Child.

[8] Most statistics focus the broader 15-24 years of age group, making it difficult to ascertain the specific impact of this phenomenon. Nevertheless, most workers (70,4 %, as of March 2026, are over 25 years of age) – see Statistics Portugal (accessed 5 May 2026). Furthermore, it

two distinct sets of rules depending on the minor's age (distinguishing, as will be explained below, between minors that are either under or of 16 years of age and above).[9]

In any case, it should be underscored that, unlike the other mechanisms that will also be addressed in this contribution, the main goal of this regulation is not so much to facilitate the access of young people to the labour market, but rather to ensure that, where this is necessary – for instance, because such income is needed for the household budget or to provide youngsters with some extra pocket money –, there is a proper balance between the work undertaken by the minor (who is still, for all intents and purposes, a child)[10] and their physical and mental development, as well as their academic performance.[11]

As previously noted, the general framework[12] on this matter distinguishes two main sets of situations: minors that have completed the minimum age of employment (that is, 16 years),[13] and those have not yet reached that age.

In the first scenario, minors will be able to celebrate an employment contract when, in addition, they also possess the compulsory level of education (or are

should be stressed that, naturally, national regulation does not allow for child labour, which is strictly prohibited and considered a crime – see Article 82.º of the Portuguese Labour Code (PLC), which enshrines the crime of "unduly use of work by minor".

[9] In addition, regarding the 16 years of age and above segment, there are also different regimes, depending on the minor's level of schooling, as will be explained below.

[10] The Portuguese Constitution enshrines the value of childhood and the right of children to being protected by society and the State, to ensure their full development (Article 69.º, No. 1, of the Portuguese Constitution). It also bans child labour (Article 69.º, No. 3, of the Portuguese Constitution).

[11] Pursuant to Article 66.º, No. 1, of the PLC, this regime intends to ensure that the working conditions match the minor's age and stage of development, and to protect their heath, mental, and moral development, as well as their education and training.

[12] Enshrined in Articles 66.º and ff. of the PLC. There are, however, specific regulations for special cases, such as the participation of minors in the performing arts or the provision of autonomous work by minors, respectively Articles 2.º and ff. of Act No. 105/2009 and Article 3.º of Act No. 7/2009.

[13] Article 68.º, No. 2, of the PLC.

enrolled in and attending secondary school),[14] as well as the physical and mental abilities appropriate for the job.[15]

Whereas in the second situation – that is, minors who have not yet reached 16 years of age – they may also celebrate an employment contract, as long as they have completed compulsory education (or are enrolled in and attending secondary school), and if the contract only entails the performance of light work consisting of simple, well-defined tasks.[16] Since the Portuguese legislation does not clarify the minimum age limit for this second category, one must take into account the relevant international standards in this setting, according to which children should not, in principle, provide work before reaching the age of 15.[17] Therefore, that limit must also apply in this case.[18]

Irrespective of the specific scenario, the employment contract is always concluded by the minors, along with, depending on the circumstances, an eventual "assistance" by their legal guardians.[19] More precisely, minors who have reached the age of 16 and have completed compulsory education or are enrolled in and attending secondary school, may enter into an employment contract, unless their legal guardians object in writing.[20] Whereas minors who

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[14] The compulsory level of education is the conclusion of the 12th grade (i.e., of the secondary education), pursuant to Article 2.º, Nos. 1 and 4, a), of Act No. 85/2009. This circumstance makes it unlikely (albeit not impossible) that minors will reach the age of 16 and have already concluded compulsory education. The alternative category ("enrolled in and attending secondary school") is the most likely. When minors do not fulfil this requirement, they are still allowed to conclude employment contracts, provided that they observe the conditions mentioned in Article 69.º, No. 1, of the PLC (see fn. 16).

[15] Article 68.º, Nos. 1 and 2, of the PLC. The minor's physical and mental abilities shall be attested by a health exam – Article 72.º of the PLC.

[16] Article 68.º, No. 3, of the PLC. In addition, according to Article 69.º, No. 1, of the PLC, minors under the age of 16 who have completed compulsory education or are enrolled in and attending secondary school but do not hold a vocational qualification, or minors who are at least 16 years of age but have not completed compulsory education, are not enrolled in and attending secondary education, or do not possess a professional qualification, may only be admitted to work provided they are enrolled in a form of education or training that provides, as the case may be, compulsory schooling, a professional qualification, or both. This demand does not apply to work merely performed during school holidays (Article 69.º, No. 2, of the PLC).

[17] See Article 2, No. 3, of ILO Convention No. 138; Article 7, No. 1, of the Community Charter of the Fundamental Social Rights of Workers; and Article 1, No. 1, of Directive 94/33/EC, on the protection of young people at work.

[18] See JOANA VICENTE, *Formação do contrato de trabalho* in Leal Amado *et al.*, *Direito do Trabalho. Relação Individual*, 2nd ed., Coimbra, Almedina, p. 382, fn. 10.

[19] See JOANA VICENTE, *Formação do contrato de trabalho*, cit., p. 384. As noted by the Author, the legal regime requires the minor to celebrate the contract directly and without representation since this is a contract that requires their direct and active involvement.

[20] Article 70.º, No. 1, of the PLC.

have not yet reached the age of 16, or those who are of 16 years of age but have not completed compulsory education (or are not enrolled in and attending secondary school) may do so only with the written authorization of legal guardians.[21]

Finally, although, in principle, remuneration should be directly paid to the working minors, it is possible for their legal guardians to object, demanding instead to receive these amounts themselves.[22] Such a possibility draws criticism from scholarship,[23] since while it might have the understandable aim of preventing minors from putting their remuneration towards unsavory ends, it does create the risk of misappropriation by the minors' legal guardians (aside from configurating a deviation from civil law rules).[24] In addition, as noted by JÚLIO GOMES, it is rather conservative to consider that the minor is mature enough to work, but not to enjoy the fruits of their labour.[25] The legal regime should, therefore, be amended, and legal guardians should, instead, intervene pedagogically, helping the minor manage their income and advising them on the best way to spend/invest it.[26]

2. Traineeships

Aside from the celebration of an employment contract – which might occur, as previously explained while they are youngsters, or, naturally, already as adults –, the first steps of younger people in the labour market may take place through traineeships.

Traineeships can be taken at different stages of the trainee's educational and professional paths, and with distinct purposes, such as making up for their youth or lack of experience;[27] ensuring a hands-on experience and the practical

[21] Article 70.º, No. 2, of the PLC. It is possible for the minor's legal guardians to, at any time, present an objection to the conclusion of the contract, or to withdraw the previously given authorization (depending on the case), without having to pay any compensation to the employer for their change of heart on the subject (which is quite important to ensure that the minor's wellbeing is being prioritized at all times) – Article 70.º, No. 3, of the PLC.

[22] Article 70.º, No. 2, of the PLC.

[23] LEAL AMADO, *Contrato de trabalho – noções básicas*, Coimbra, Almedina, 2019, p. 143; MENEZES CORDEIRO, *Direito do trabalho, II, Direito Individual*, Coimbra, Almedina, 2019, p. 229.

[24] JOANA VICENTE, *Formação do contrato de trabalho*, cit., p. 386.

[25] JÚLIO GOMES, *Direito do trabalho*, *Volume I – Relações individuais de trabalho*, Coimbra, Coimbra Editora, 2007, p. 460.

[26] MARTA ROSAS, *Capacidade negocial dos menores e exercício de atividade profissional*, in Lourdes Mella Mendes and Francisco Tapia (dir.), *La protección del trabajo frente a las crisis y transiciones actuales: perspectives internacionales e internacionales (Brasil, Chile, Cuba, Espanã, Italia, México, Portugal, Uruguay)*, Aranzadi, Madrid, 2024, p. 711.

[27] ANA LAMBELHO, *O contrato de aprendizagem e o(s) contrato(s) de estágio*, in *Questões laborais*, 2013, Special Number 42, p. 322 and DIOGO MARECOS, *Uma nova ferramenta de gestão: o contrato de*

knowledge that will deepen their theoretical knowledge; retraining of currently unemployed people, increasing their employability; or they might even be a legally mandatory step in order to access a certain regulated profession. And as will be explained below, since traineeships can take place at different contexts and instances, their regulation is not unified.

2.1. Student Traineeships

Student traineeships intend to ensure that the trainee acquires the practical skills that are required by the academic degree at stake and may occur when such a knowledge is considered necessary or convenient. These traineeships usually take the shape of a curricular unit of the course and, when mandatory,[28] the trainee must achieve a positive evaluation to conclude the cycle of studies.[29] Conversely, in this context, when voluntary, traineeships may replace one of the elective subjects of the course or be credited as an extracurricular subject (and, in this instance, a positive evaluation will not be required for the conclusion of the degree). Even when not compulsory, such traineeships are often very sought out by students, since they will allow them the opportunity not only to experience a professional setting (getting an anticipated preview of what awaits them after the conclusion of their degree), but also to do some networking, and to get a first assessment of the skills most valued by future employers.

2.2. Extracurricular (Professional) Traineeships

Extracurricular (professional) traineeships can be either privately offered or through the Public Employment Service ("Instituto do Emprego e Formação Professional").

In the first scenario, such traineeships are regulated by Decree-Law No. 66/2011 and consist of practical training in a work context intended to

estágio. Entre particulares e sem recurso a financiamento público, Coimbra, Coimbra Editora, 2013, p. 7-8.

28 Usually, mandatory traineeships take place at Master's level or within vocational higher education courses ("cursos técnicos superiores professionais"), according to Articles 18.º, 40.º-J, and 40.º-M of Decree-Law No. 74/2006.

29 ANA LAMBELHO, *O contrato de aprendizagem e o(s) contrato(s) de estágio*, cit., p. 330.

complement and improve the trainees' skills, aiming at their insertion or retraining into working life in a quicker and easier way, or at obtaining a technical, professional, and deontological training legally required to access a specific profession.[30]

In addition, they require the signing of a written contract between both parties (the trainee and the promotor)[31] and their duration cannot exceed 12 months.[32] During this period, the trainee enjoys from the legal regime applicable to the promoter's workers, regarding matters such as the normal working period, the daily and weekly resting periods, public holidays, absences, and safety and health at work.[33] Trainees shall also benefit from the same social security regime applicable to employees and the promoter must provide insurance against accidents at work.[34] These traineeships shall also be remunerated (except for very short traineeships, whose duration does not exceed three months),[35] in an amount of at least 80 % of the national minimum wage (in addition to meal allowance).[36]

In turn, the traineeships organized by the Public Employment Service are not regulated by the aforementioned Decree-Law No. 66/2011, but rather by specific legal instruments. They benefit from public funding and there are currently three programs in place: "Estágios INICIAR",[37] "Estágios +Talento"[38] and "Estágios de inserção".[39]

Although all these programs are aimed at unemployed people, their targeted audience varies. In fact, "Estágios INICIAR" is designed particularly, but not exclusively, for young unemployed adults and it intends to promote their professional integration, through the development of a practical experience in the workplace; to better the transition from school to jobs; and to promote their employability.[40] In turn, "Estágios +Talento" is aimed at unemployed

[30] Article 2.º, No. 2, of Decree-Law No. 66/2011.
[31] Article 3.º, No. 2, of Decree-Law No. 66/2011.
[32] Article and 4.º, No. 1, of Decree-Law No. 66/2011.
[33] See Article 6.º of Decree-Law No. 66/2011.
[34] See Articles 10.º and 9.º, No. 4, of Decree-Law No. 66/2011.
[35] See Article 5.º, Nos. 1 and 5, of Decree-Law No. 66/2011.
[36] See Articles 8.º, No. 1, and 9.º, No. 1, of Decree-Law No. 66/2011. Currently, the minimum wage in Portugal, in the private sector, stands at 920 euros, according to Decree-Law No. 139/2025.
[37] For further information, see https://iefponline.iefp.pt/IEFP/medida/estagios-iniciar/overview.jsp (accessed on 4 May 2026).
[38] For further information, see https://iefponline.iefp.pt/IEFP/medida/estagios-mais-talento/overview.jsp (accessed on 4 May 2026).
[39] For further information, see https://iefponline.iefp.pt/IEFP/medida/estagioemprego/descEstagiosInsercao.jsp (accessed on 4 May 2026).
[40] See Article 2.º of Ordinance No. 219/2024/1.

young people aged 35 or under, with, at least, a bachelor's degree.[41]. And, finally, "Estágios de inserção" intends to support the integration or reintegration into the labour market of unemployed or first-time job seekers with disabilities, through practical training in a work context, which complements and improves their skills, in order to facilitate their recruitment and integration and enhance their professional performance.[42]

Irrespective of the program, the traineeship contract shall be put in writing and have a duration of six months, except in the case of persons with disabilities, where it goes up to 12 months.[43] During this period, trainees shall benefit from the regime applicable to promoter's employees regarding normal working hours, daily and weekly rest periods, public holidays, absences, and occupational health and safety.[44]

The trainee shall also receive a monthly stipend (whose amount varies according to the trainee's qualifications)[45], meal allowance, insurance for accidents at work, and, in the case of trainees with disabilities, transportation or transportation allowance.[46]

Public funding covers between 65 % and 80 % of the monthly stipend, depending on the situation[47] – for instance, 80 % of the monthly stipend shall be covered when a permanent, full-time employment contract is signed with the trainee within 20 working days after the end of the traineeship.[48]

2.3. Mandatory Traineeships to Access a Profession

Finally, there are instances where traineeships are a previous and mandatory step to access certain regulated professions, as is the case with attorneys, architects, psychologists, among others.

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[41] See Article 2.º, No. 2, of Ordinance No. 221/2024/1.

[42] See Article 40.º of Decree-Law No. 290/2009.

[43] See Article 8.º, Nos. 1 and 2, of Ordinance No. 219/2024/1; Article 9.º, Nos. 1 and 2, of Ordinance No. 221/2024/1; and Article 41.º, No. 1, of Decree-Law No. 290/2009.

[44] See Article 6.º, Nos. 1 and 2, of Ordinance No. 219/2024/1; Article 7.º, Nos. 1 and 2, of Ordinance No. 221/2024/1; and Article 41.º, No. 1, of Decree-Law No. 290/2009.

[45] See Article 11.º of Ordinance No. 219/2024/1; Article 12.º of Ordinance No. 221/2024/1; and Article 41.º, No. 1, of Decree-Law No. 290/2009.

[46] See Article 10.º, No. 1, of Ordinance No. 219/2024/1; Article 11.º, No. 1, of Ordinance No. 221/2024/1; and Article 41.º, No. 1, of Decree-Law No. 290/2009.

[47] See Article 14.º of Ordinance No. 219/2024/1; Article 15.º of Ordinance No. 221/2024/1; and Article 41.º, No. 1, of Decree-Law No. 290/2009. The meal allowance, the insurance for accidents at work, and the transportation/transportation allowance, when due, are also covered by public funding – see Article 14.º, No. 4, of Ordinance No. 219/2024/1; Article 15.º, No. 5. of Ordinance No. 221/2024/1; and Article 41.º, No. 1, of Decree-Law No. 290/2009.

[48] See Article 14.º, No. 2, subp. d), of Ordinance No. 219/2024/1; Article 15.º, No. 2, subp. d), of Ordinance No. 221/2024/1; and Article 41.º, No. 1, of Decree-Law No. 290/2009.

For quite a while there was controversy as to whether these traineeships had to remunerated, namely concerning attorneys in training. In fact, even though the previously mentioned Decree-Law No. 66/2011 states that it is applicable to traineeships mandatory to access a profession[49], it adds that it is not applicable to those involving autonomous work.[50] Following this, some associations (notably the Portuguese Bar Association – "Ordem dos Advogados"), invoking not only the autonomous nature of the work provided by trainees, but also the fact that professional associations had not been heard during the process of approval of this legal instrument, denied its applicability to their traineeships[51]. Consequently, the latter were to be merely ruled by bylaws and regulations of these associations,[52] which did not require, in many instances, their remuneration. For this reason, many trainees were not entitled to payment.

This state of affairs changed in 2023, due to the commitments made by Portugal in its National Plan of Recovery and Resilience,[53] where it pledged to reduce restrictions in the access to highly regulated professions.[54] Subsequently, Act No. 2/2013 (the legal instrument that contains the framework for the creation, organization, and functioning of public professional associations) was amended. Following this change, the duration of traineeships required to access professions subject to these associations shall now not go beyond 12 months[55] and, in addition, trainees shall be remunerated under the terms defined in the bylaws of each professional association.[56] Among others, and pursuant to this amendment, the bylaws of the Portuguese Bar Association were modified to ensure that, whenever the traineeship involves the

[49] See Article 1.º, No. 1, of Decree-Law No. 66/2011.

[50] See Article 1.º, No. 2, subp. e), of Decree-Law No. 66/2011.

[51] For further developments, see LEAL AMADO and MARGARIDA PORTO, *Primeiras notas sobre o regime jurídico dos estágios profissionais*, in *Revista de Legislação e Jurisprudência*, 2012, No. 3975, p. 350-353 and ANA LAMBELHO, *O contrato de aprendizagem e o(s) contrato(s) de estágio*, cit., p. 331-334.

[52] See Parecer da OA sobre a aplicação do Decreto-Lei n.º 66/2011, de 1 de Junho - Ordem dos Advogados (accessed on 19 April 2026).

[53] Available at PRR - Recovery and Resilience Plan - Recovering Portugal (accessed on 19 April 2026).

[54] See C6 – Qualifications and competences, of the Portuguese NPRR.

[55] Before this reform, the traineeship of attorneys in training used to have a duration of 18 months. For further elements, see Novo Estatuto: o que muda no Estágio - CRLisboa - Pod Informar (accessed on 19 April 2026). This reform also introduced new rules regarding the beginning period of traineeships, the subjects under evaluation, the final evaluation jury, among others.

[56] See Article 8.º, No. 2, subp. a), and the newly added Article 8.º-A of Act No. 2/2013. According to the latter, insofar the traineeship implies the provision of work, the trainee shall be guaranteed remuneration corresponding to the performed tasks, which shall be determined in accordance with constitutional and legal criteria, such as the principle of equal working conditions.

performance of work, the trainee is guaranteed a remuneration corresponding to the duties performed (in an amount that shall be of at least the minimum wage plus 25% of that amount).[57]

This change has, however, sparked some uneasiness.[58] Despite its clear aim at improving the dignity of this work and a more democratic and ample access to these professions (namely for young people whose economic and family background does not allow them to work for an extended period without income), there are concerns that the mandatory payment of trainees will instead become an added obstacle to these professions. In fact, the payment of trainees may be an unwelcome and unsustainable burden to mentors with lesser means and prevent them from providing such traineeships. In addition, the monitoring and availability required by mentoring might be perceived by some as a cost that will benefit future competitors. And while there might be additional factors explaining this phenomenon, since this amendment, the available data displays a low number of law firms available to provide traineeships, as well as a decrease in the number of attorneys in training,[59] which is rather concerning since, without taking this step, prospective trainees are effectively barred from this profession.[60]

3. Economic Incentives towards the Celebration of Employment Contracts

As previously noted, the celebration of permanent, full-time employment contracts within 20 working days after the end of traineeships offered through the Public Employment Service leads to an increase in the public funding of the monthly stipend due to the trainee.

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[57] See Article 195.º, No. 7, of Act No. 145/2015.

[58] Despite acknowledging the fairness in paying trainees, some lawyers attest to the fact that the imposed stipend amounts may deter the establishment of these traineeships and, therefore, become hurdles in the access to the profession – see Entre a intenção de democratização e a realidade de elitização - reformas no estágio para advogado - CNN Portugal and Os insuportáveis paradoxos dos novos estágios na advocacia – ECO (both accessed on 22 December 2025). The same apprehension was already present in previous Literature – see LEAL AMADO and MARGARIDA PORTO, *Primeiras notas sobre o regime jurídico dos estágios profissionais*, cit., p. 352-353 and ANA LAMBELHO, *O contrato de aprendizagem e o(s) contrato(s) de estágio*, cit., p. 333.

[59] See Para já, apenas 42 advogados aceitam receber estagiários nos escritórios - Ordem dos Advogados and Número de advogados em Portugal desce em 2024 para 38.581 - Ordem dos Advogados (accessed on 19 April 2026).

[60] LEAL AMADO and MARGARIDA PORTO, *Primeiras notas sobre o regime jurídico dos estágios profissionais*, cit., p. 352-353.

However, there are other instances where either the young worker or the employer also receive economic incentives towards the celebration of an employment contract.
In October 2025, the Government enacted Ordinance No. 336/2025/1, creating an "exceptional measure of incentive towards the return to work of young unemployed people".[61] This measure targets unemployed workers under 30 years of age, currently receiving unemployment benefits and registered in the Public Employment Service. If they celebrate an employment contract to work full-time, these workers will be entitled to receive 35 % of the monthly amount of unemployment benefits, in the case of an open-ended employment contract; or 25 % of the amount of the unemployment benefits, in the case of a fixed-term employment contract.[62] This payment will take place until the end of the period during which the worker would have been otherwise entitled to receive unemployment benefits (or until the end of the contract, if it ends before that time).[63]
In addition, there is also the program "Emprego + Talento".[64] It aims at supporting employers in hiring unemployed, permanently and full time, people aged 35 or younger who are registered with the Public Employment Service and hold, at least, a bachelor's degree.[65] In 2026, the base amount of this public grant is € 9.668,34, but it may be increased in certain situations.[66]
While the first (and exceptional) measure intends to encourage the active search for a new job and a faster return to the labour market, the second aims mostly at attracting and retaining qualified young talent; supporting the transition between the qualifications system and the labour market; promoting the entry into the workforce of young people with adequate levels of qualification; fighting youth unemployment, among others.

Conclusions

Statistics show that there is still room for improvement in the Portuguese panorama in what concerns the integration of younger people in the labour market.
While most legal tools explored in this Article contribute (some more than others) positively towards this end – particularly, the ones anchored on public

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[61] Applicable until 30 June 2026, pursuant to Article 13.º, No. 2, of Ordinance No. 336/2025/1.
[62] Articles 3.º, No. 1, and 4.º, No. 1, subps. a) and b) of Ordinance No. 336/2025/1.
[63] Article 4.º, No. 2, subps. a) and b), of Ordinance No. 336/2025/1.
[64] Created by the aforementioned Ordinance No. 221/2024/1.
[65] Article 1.º, No. 5, of Ordinance No. 221/2024/1.
[66] Article 25.º, Nos. 1 and 2, of Ordinance No. 221/2024/1.

funding might provide an important push towards the right direction, but it is still too early to tell –, some tuning and further reflection is nevertheless required.
In fact, since it is important not only to tackle youth unemployment, but also the segmentation of the Portuguese labour market, which is also especially harmful towards young workers,[67] the previously mentioned "Exceptional measure of incentive towards the return to work of young unemployed people" should not be extended to fixed-term employment contracts, in order to discourage the celebration of this kind of agreement (which, aside from placing workers in a precarious situation, in many cases, may, later on, lead to a new situation of unemployment).
On the other hand, it is also necessary to ensure that the payment of mandatory traineeships does not become an added obstacle to the access to regulated professions. In fact, even though it should be ensured that these traineeships operate under decent conditions, the access to these professions should not be hindered. For this reason, there should be specific public incentives to guarantee a sufficient offer of these traineeships (such as fiscal benefits, grants, among others).
Finally, as stressed RENATO DO CARMO,[68] in the last fifty years, there has been significant public investment in social, educational, and health structures, which has been crucial in bringing about a notable and widespread improvement in the living conditions and opportunities of young people. Nevertheless, this has not been enough to completely counteract the effects of structural factors that contribute to the perpetuation of inequalities. In effect, studies show that social background is still a determining factor in the life trajectories and labour market participation of a substantial amount of young people. And the same is true concerning workers' qualifications (those with

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[67] According to Pordata, in 2025, 15,2 % of workers had temporary contracts (i.e. fixed-term contracts of employment or jobs that will end when certain objective criteria are met), against the EU 12,6 % average rate. And currently, Portugal stands as the fourth country in the EU with the highest level of precarious employment among young people, with four out of every ten workers under the age of 30 on temporary contracts – see https://www.publico.pt/2026/05/01/sociedade/noticia/portugal-4-pais-uniao-europeia-trabalho-precario-jovens-2173152 (accessed on 4 May 2026). Furthermore, in 2022, 75,7 % of workers between 15 and 29 that had non-permanent employment contracts were in that situation involuntarily (against 36,6 %, in the EU) – see Jovens no Mercado de Trabalho em Portuga_1__02__2022.pdf (accessed on 4 May 2026).
[68] RENATO MIGUEL DO CARMO, *Jovens e os persistentes dualismos da sociedade portuguesa*, in Renato Miguel do Carmo *et al*, *Jovens e o Trabalho em Portugal – Desigualdades, (Des)Proteção e Futuro*, Coimbra, Almedina, 2024, p. 179-180.

fewer ones tend to earn lower salaries and are usually in more precarious employment situations).[69]

The permanent (and increased) investment in the public school system and the creation of incentives towards the achievement of higher education degrees is, therefore, vital, since this is the privileged ground to fight social inequality and disparity and it will, in the long run, provide younger people with a more favourable position in the labour market.[70] Therefore, youth unemployment is a problem that requires a multifaceted answer, with contributions from several areas, of which labour law is only one.

[69] RENATO MIGUEL DO CARMO, *Jovens e os persistentes dualismos da sociedade portuguesa*, cit., p. 181. As noted by the Author (*ibidem*), the divide between young people with higher education qualifications and those without is particularly striking, with the former not only finding themselves in slightly more stable contractual situations, but also tending to earn relatively higher wages and to live and work in more central and dynamic areas in socio-economic and socio-cultural terms.

[70] PAULO MARQUES, MARIA DO CARMO BOTELHO, MARIA DA CONCEIÇÃO FIGUEIREDO and RITA GUIMARÃES (*Quem são os jovens desempregados? Diagnóstico e recomendações*, 2023, p. 52-53, available at: https://obsempregojovem.com/p/6603195627aac956d53d0f3a#-recomendacoes), given the low levels of formal education of many young workers (in 2022, 29,6 % of young unemployed workers, between 15 and 29 years of age had only concluded the 9th year of education – *ibidem*, p. 2), suggest several measures both to increase the qualifications, as well as the reskilling of younger workers, such as the promotion of paid training and apprenticeship schemes, under which participating companies would also receive financial support, particularly aiming at workers with no more than the 9th grade; the creation of incentives towards the achievement of a higher education degree (regarding workers who have already finished secondary education); the increase of the attractiveness of vocational courses; the increase in the investment in workers' reskilling, particularly regarding those who possess higher education degrees in low employability areas; the creation of incentives for part-time work of student-workers, to allow them a better conciliation of work and studies, among others.

Protection from Violence and Harassment at the Workplace: An Intersectional Approach from a Labour Law Perspective

Maria Giovannone, Fabiola Lamberti *

Abstract: The essay aims to analyse the phenomenon of violence and harassment at work through an intersectional lens, integrating the prevention of this discriminatory phenomenon into general OHS measures. Proposing a discussion to guide research and legal practice through an integrated, intersectional and multidimensional regulatory model, it aims at overcoming the limitations of single-axis approaches and enhancing the synergy between anti-discrimination legislation, OSH protection, privacy law, and social policies. Particular consideration is given to the recent Italian regulatory framework, in the light of the ILO C. n. 190/2019, defining new strategies for the protection of workers in complex and diverse organisational contexts.

Keywords: *Violence and harassment; Discrimination at the workplace; Occupational psychosocial risks; OHS prevention strategies; Gender Equality Certification.*

1. An Intersectional Approach to Violence and Harassment at the Workplace: the Research Rationale

The evolution of the regulatory framework on violence and harassment in the workplace shows a progressive search for consistency between Occupational Health and Safety (OSH) regulations and anti-discrimination regulations, highlighting the phenomenological and conceptual complexities of phenomena

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beyond the traditional one-dimensional categories of discrimination. Over time, Italian labour law has recognised the need to integrate multiple levels of regulation - from civil law to OSH measures, from the European framework to international conventions - in order to address the overlapping forms of vulnerability that characterise contemporary workers[1].
Intersectional approaches pose a methodological and regulatory challenge to traditional EDI models, as they require us to move beyond single-axis approaches, historically focused on individual dimensions such as gender or race, to embrace a complex view of multi-level and articulated vulnerabilities. This enriches existing EDI models by making them more relevant to socio-organisational reality, but at the same time highlights the structural limitations of norms and policies that often only address part of the phenomenon of discrimination[2].
For this reason, within the disciplinary domain of labour law, an interdisciplinary approach that integrates elements of OSH law, anti-discrimination law and welfare policies efficiently can propose a structured discussion towards an integrated, intersectional and multidimensional model of prevention and protection from violence and harassment in the workplace, overcoming the limitations of single-axis approaches.
Indeed, labour law research highlights how adopting an intersectional approach to vulnerability is a prerequisite for the concrete extension and effective strengthening of protections, capable of avoiding fragmented and partial approaches and promoting work environments characterised by effective inclusion. Intersectionality is particularly evident in the protection against the risks of violence and harassment in the workplace, phenomena that often occur in contexts where discrimination overlaps, generating situations of accentuated marginalisation that escape traditional patterns of analysis and contrast.
The limitations of single-axis approaches become clear when considering real situations of intersectional discrimination.
An approach focused solely on gender risks obscuring complex realities where gender, ethnicity, disability, nationality and other factors intersect, excluding individuals exposed to multiple considerations from effective protection

1 For a comparison within the EU 27 Member States, see European network of legal experts in gender equality and non-discrimination, *A comparative analysis of gender equality law in Europe 2025*, European Commission, Brussels, 2026.
2 For a more extended reflection on this approach, see also M. Giovannone, F. Lamberti, *Prevention and Remedial Strategies to Tackle Violence and Harassment at Work: An Intersectional Perspective*, in D. Vujadinović, E. Kristoffersson, M. Evola (eds.), *Perspective Law and Gender from an Intersectionality and Diversity Perspective*, Spinger Nature, 2026, p. 259 ff.

mechanisms. Intersectional discrimination amplifies vulnerability in multiple dimensions: it can exacerbate power imbalances, hindering victims from reporting harassment for fear of occupational retaliation; it promotes complex forms of discrimination that combine multiple prejudices, such as gender-based violence intertwined with racial or homophobic epithets. Victims of intersectional discrimination frequently face barriers in reporting and accessing support, exacerbating the psychological and physical impact of harassment.

This contribution aims to analyse, from a systematic perspective and in terms of labour law, how the phenomenon of violence and harassment at work can be understood and managed through an intersectional lens, highlighting recent regulatory interventions, in particular ILO Convention No. 190/2019 ratified by Italy (Law 4/2021), gender equality certification (Law 162/2021 and UNI PdR 125/2022), and Decree Law 159/2025, which expressly integrated the prevention of violence and harassment into general measures for the protection of occupational health and safety.

The concept of harassment, as is well known, has undergone a significant conceptual evolution starting from anti-discrimination legislation. Legislative Decrees No. 215 and No. 216 of 2003, implementing European directives on equal treatment, initially limited the phenomenon to gender discrimination, identifying as harassment any unwanted conduct based on sex with the purpose or effect of violating the dignity of the worker and creating an intimidating, hostile, degrading, humiliating or offensive environment. This definition, combining objective and subjective factors, made it possible to intercept conduct that was formally neutral but determined by organisational dysfunctions. However, the objective scope remained limited to explicitly typified discriminatory factors, thus excluding a multitude of situations in which intersectional vulnerabilities could generate more complex and multidimensional forms of violence.

ILO Convention No. 190/2019 marked a significant conceptual break, providing for the first time at international level a definition of violence and harassment recognised as universally applicable, defining them as "a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment". This intentionally broad notion transcends the gender-centred perspective of Italian national legislation and opens up the conceptual space to recognise the complex interactions between multiple discriminatory factors, allowing us to understand how discrimination overlaps and amplifies, generating situations of heightened marginalisation that would otherwise be obscured by single-axis analysis.

Harassment and violence, in their many forms, are psychosocial risk factors that have a direct and indirect impact on workers' physical and mental health, affecting their overall well-being and representing a prejudicial condition of harm that the legal system must recognise and prevent with integrated measures[3].

The employer's obligation to protect health and safety of workers, as provided for in Article 2087 of the Civil Code, historically oriented towards the protection of physical integrity, has gradually evolved towards a comprehensive concept that encompasses physical, mental and social health, in accordance with the definition of the World Health Organisation. Occupational health and safety legislation (Legislative Decree 81/2008) requires employers to assess all risks to the health and safety of workers, including psychosocial risks, and to adopt both named and unnamed prevention and protection measures. From this perspective, violence and harassment are not merely a matter of discrimination, but phenomena that directly affect health and well-being at work and need to be managed through organised primary OSH systems.

Decree Law 159/2025 reinforces this obligation by including in Article 15, paragraph 1, letter z-bis, an express provision concerning the planning of measures to prevent violent or harassing behaviour towards workers in the workplace. This regulatory innovation supplements general protection measures with specific programmes addressing the risk of violence and harassment, recognising the multidimensional nature of these phenomena.

ILO Convention No. 190/2019 and subsequent technical standardisation instruments (UNI ISO 45003:2021, UNI ISO 30415:2022, UNI PdR 125/2022) promote an integrated and multi-sectoral approach that values risk assessment as a dynamic and circular tool, designed to identify and intervene on all factors that expose workers to discrimination, harassment, violence or abuse, including intersectional components.

The most current risk management methodologies leverage tools such as Organisational Management Models (MOG), Occupational Safety Management Systems (SGSL), codes of conduct and protected reporting procedures. These are essential tools for effectively implementing the intersectional dimension of protection. Risk assessment thus moves away from a reductive model to become a holistic system that considers the combination of vulnerability factors, power relations, organisational conditions and individual characteristics, promoting respectful and inclusive work

3 For a comprehensive analysis of the ILO Convention n. 190/2019 and the integration between anti-discrimination and OHS law, see E. Ales, *Violence and Harassment Convention (No. 190)*, in E. Ales, M. Bell, O. Deinert, S. Robin Olivier (eds.), *International and European Labour Law. A Commentary*, Beck – Mart – NOMOS publishing, forthcoming, 2026.

environments. The inclusion of systematic training on unconscious bias and anonymous and protected reporting mechanisms allows for the creation of an organisational culture based on respect and participation, which are fundamental to the success of EDI policies.

Gender equality certification, introduced on 1 January 2022, is a tool aimed at promoting, among other things, concrete and effective policies for the prevention of violence and harassment through inclusive organisational models and specific performance indicators. UNI PdR 125/2022, for example, requires organisations to carry out an extensive assessment of the risk of harassment throughout the entire working career, from recruitment to retirement, to adopt specific prevention and management plans, to provide training on zero tolerance at all levels and to establish protected reporting channels. However, the Italian gender equality certification system still has substantial gaps in the integration of intersectional discrimination within its regulatory framework, continuing to focus primarily on binary gender issues and marginalising other forms of discrimination.

An innovative approach therefore requires the reformulation of assessment criteria and certification procedures in an intersectional manner, through the introduction of indicators and methodologies capable of addressing complex situations where multiple vulnerabilities intersect. The collection and analysis of company data should necessarily consider other risk factors for discrimination such as age, disability, nationality and others; inclusion indicators should be structured to highlight multiple and intersectional forms of discrimination; training should focus not only on zero tolerance but also on awareness of intersectionality; reporting mechanisms should also ensure protection for those facing multiple forms of discrimination.

The prospective evolution appears to be hopefully oriented towards an expansion of both the objective and subjective scope of the discipline through the introduction of indicators and procedures that take into account multiple and intersectional discrimination, in line with the most recent European directives and international best practices. Updating Key Performance Indicators, assessment and audit procedures, together with specific training on unconscious bias and intersectional discrimination at all organisational levels, could be a strategic lever for increasing the effectiveness of inclusion policies and ensuring comprehensive and effective protection for workers against all forms of discrimination, violence and harassment.

Anti-discrimination provisions are essential but insufficient tools, which must be supplemented by regulatory frameworks concerning privacy, occupational health and safety, immigration and welfare, combined with technical regulatory tools, including voluntary ones, to build a cohesive network of protections that responds to new forms of overlapping vulnerability.

In conclusion, the paper proposes a structured discussion to guide research and legal practice towards an integrated, intersectional and multidimensional model of prevention and protection from violence and harassment in the workplace, overcoming the limitations of single-axis approaches and enhancing the synergy between anti-discrimination legislation, OSH protection, privacy law, and migration and social policies, with particular consideration given to recent Italian legislation, with the aim of defining new effective strategies for the protection of workers in complex and diverse organisational contexts.
Harassment and violence, in their many forms, constitute psychosocial risk factors with direct and indirect impacts on workers' physical and mental health, affecting their overall well-being and creating a harmful situation that the legal system must recognise and prevent through integrated measures[4].

2. An Overview on the Italian Regulatory Framework

Management of gender mainstreaming has become increasingly important for fulfilment of the employer's Occupational Health and Safety (OSH) obligation, as well as within the framework of anti-discrimination legislation[5].
This trend is reflected in the development of legislation on violence and harassment in the workplace. However, anti-discrimination legislation refers to gender-based violence and harassment and does not support adoption of an intersectional approach to identifying and combating this phenomenon. In contrast, ILO Convention No. 190 promotes the adoption of a cross-sectoral and multi-factor approach. In Italy, as will be explained, there are several risk

4 On the integration between OHS and gender equality within institutional and company policies see Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Gender Equality Strategy 2026-2030*, COM(2026) 113 final, Brussels, 05.03.2026.
5 On discrimination and equal opportunities in the private as in the public sector see M. Barbera, *Discriminazione e pari opportunità (diritto del lavoro)*, Enciclopedia del Diritto. VII, 2014, pp. 377-395; M. V. Ballestrero, S. Borelli, R. Santagata de Castro, I. Daniela, *Sesso, genere, discriminazioni: riflessioni a più voci (Parte I)*, in *LD*, 2022, 3, pp. 497-518; A. Zilli, *Che genere di autonomia?*, in *LDE*, 2021, 3, pp. 1-13 V. Filì, *Brevi riflessioni su differenziale di genere e discriminazioni indirette nel sistema italiano di sicurezza sociale*, in *Equal - Rivista di diritto antidiscriminatorio*, 2024, 1, pp. 45-60; M. Peruzzi, *La discriminazione algoritmica*, in *Equal - Rivista di diritto antidiscriminatorio*, 2024, 1, pp. 7-24; L. Valente, *Il lavoro delle donne, ieri ed oggi. Dall'accesso al mercato del lavoro alla direttiva Ue sulla trasparenza salariale,* in Equal - Rivista di diritto antidiscriminatorio, 2024, 1, pp. 61-70; S. Ciucciovino, *Il gender pay gap nella pubblica amministrazione, dalle regole all'innovazione organizzativa*, in *Equal - Rivista di Diritto Antidiscriminatorio*, 2024, 5, pp. 405-420; E. Ales, *Discriminazioni (di genere e lavoro)*, in T. Addabbo, T. Casadei, T. Fabbri, C. Mussi, C. Robustelli, C. Serra (eds.), *Promuovere la parità di genere nelle istituzioni pubbliche e private*, Mucchi Editore, 2024, pp. 27-55; E. Ales, *Parità di genere e lavoro*, in T. Addabbo, T. Casadei, T. Fabbri, C. Mussi, C. Robustelli, C. Serra (eds.), cit., pp. 55-63.

assessment tools that lead companies to adopt an intersectional approach because they focus on a procedurally-based management of multifactorial risk.
In Italy, there are strong links between occupational OSH regulations and the promotion of gender equality,[6] also in the field of violence and harassment in the workplace[7]. This matter was originally introduced by the 2003 anti-discrimination regulation[8] and the "Equal Opportunities Code"[9] and further fine-tuned by the European Framework Agreement of April 26, 2007.[10] Important signs of integration can also come from the Gender Equality Certification process[11].
Furthermore, the obligation to assess and manage harassment derives from the protection of the worker's "moral personality" referred to in Article 2087 of the Civil Code. This Article defines the primary obligation of the employer in matters of health and safety at work[12]. Harassment is a psycho-social risk related to working conditions, work organisation and discriminatory phenomena[13].

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6 An historical sectoral function has been flanked by the corporate compliance function dictated by the technical standards applicable in voluntary certification paths relating to the protection of health and safety at work (UNI 45.000:2018) and gender equality (UNI/PdR Guidelines 125:2022).

7 For a comparison of the relevant legislative development in national legal systems, J. Heymann, G. Moreno, A. Raub, A. Sprague, *Progress Towards Ending Sexual Harassment at Work? A Comparison of Sexual Harassment Policy in 192 Countries*, in *Journal of Comparative Policy Analysis: Research and Practice*, 2023, 25, pp. 172-193.

8 Legislative Decrees No. 215/2003 and No. 216/2003.

9 Legislative Decree No. 198/2006.

10 Transposed into Italian law by the "Framework Agreement on Harassment and Violence in the Workplace" signed by Confindustria, CGIL, CISL and UIL, 25 January 2016.

11 UNI/PdR Guidelines 125:2022, point 6.3.2.6. See Art. 46-bis of Legislative Decree No. 198/2006 implementing Law No. 162/2021. On the instrument of gender equality certification, L. Casano, *Certificazione della parità di genere e trasparenza: riflessioni a margine della prima attuazione del sistema*, in *EQUAL - Rivista di Diritto Antidiscriminatorio*, 2024, 2, pp. 161-177; F. Lamberti, *I Key Performance Indicators della certificazione della parità di genere. Una lettura critica*, in *Federalismi - Focus LPT*, 2023, 9, pp. 212-241.

12 It is important to highlight that the moral personality of the employee includes the dignity of the employee that may have been injured by the vexatious conduct. See M. Nicolosi, *Molestie e molestie sessuali sul lavoro: strumenti e tecniche di tutela e di prevenzione*, in *EQUAL – Rivista di Diritto Antidiscriminatorio*, 2024, 3-4, pp. 279-297; M. Giaconi, *Le molestie nei confronti delle lavoratrici*, in *Questione Giustizia*, 2022, 4, pp. 119-133; G. Santoro Passarelli, *Il diritto del lavoro a cinquanta anni dallo Statuto dei lavoratori*, in *RIDL*, 2020, 2, pp. 101-133; G. Santoro Passarelli, *Civiltà giuridica e trasformazioni sociali nel diritto del lavoro*, in *DRI*, 2019, 2, pp. 417-467. On the protection of personal dignity under Article 2087 of the Civil Code, P. Albi, *Adempimento dell'obbligo di sicurezza e tutela della persona*, Giuffrè, 2008.

13 As Recommendation No. 206, para. 8 points out. By contrast, work-related stress is often caused by psychological harassment. On this point, European Parliament Resolution of 15 December 2011 on the mid-term review of the European strategy 2007-2012 on health and

Completing the picture is Law No. 4 of January 15, 2021 ratifying ILO Convention No. 190 concerning the Elimination of Violence and Harassment in the World of Work.[14] Recently, we are seeing the first steps towards incorporating the Convention into national law within the 2025 State-Regions Agreement,[15] which regulates OSH training in Italy. The Agreement provides for a training obligation for employers and managers on the prevention of violence and harassment, as regulated by Convention No. 190. It therefore appears that the new international standards are becoming more operational, at least in the OSH field[16].

Harassment at work is a deep-rooted social phenomenon[17]. Consequently, it needs to be delimited on a substantive and remedial level. Furthermore, violence and harassment at work must be viewed not only as a gender issue. Other types of discrimination (race, ethnicity, disability, etc.) and non-typical discrimination (hierarchical position at work, maternity, etc.) may also play a role. These are factors that can contribute to altering power relations and leading to forms of abuse in the workplace[18].

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safety at work (2011/2147 (INI)). Also, among the ten psychosocial risks, EU-OSHA lists violence, both physical and psychological, also qualified by phenomena such as bullying and harassment. On this point, M. Peruzzi, *La valutazione del rischio da stress lavoro-correlato*, in *I Working Papers di Olympus*, 2011, 2, pp. 1-46. Harassment is a clear risk factor for workers' mental health. See K. J. Blindow, E. Cedstrand, D.L. Elling, M. Hagland, T. Bodin, *Gender-based violence and harassment at work and health and occupational outcomes. A systematic review of prospective studies*, in *BMC Public Health*, 2024, 24, p. 1788.

14 On this see M. Giovannone, F. Lamberti, *Il rischio violenza e molestie nella disciplina prevenzionistica e nella certificazione della parità di genere*, in *DSL*, 2023, 2, pp. 1-35; G. Pistore G, *La considerazione del genere nella prospettiva prevenzionale*, in E. D'Avino, D. de Gennaro, L. Inno, G. Vicentini (eds.), *Worklife balance e gender equality tra diritto e prassi. Quadro normativo, profili organizzativi e sfide applicative*, Caucci Editore, 2025, pp. 211-221.

15 Official Gazette of the Italian Republic No. 199 of May 24, 2025.

16 M. Giovannone, *Violenza e molestie sul lavoro nella regolazione multilivello: tra disciplina antidiscriminatoria e tutela prevenzionistica*, in S. Ciucciovino, M. Giovannone (eds.), *Dimensioni e questioni della diseguaglianza di genere. Studi multidisciplinari*, Roma Tre Press, 2025, pp 309-332.

17 ILO, *Experiences of violence and harassment at work: A global first survey*, Geneva, 2022. At national level, Istat, *Le molestie e i ricatti sessuali sul lavoro. Anni 2015-2016*, 13 February 2018; Istat, *Le molestie: vittime e contesto. Anno 2022-2023*, 1 July 2024. See also C. Pagano, F. Deriu, *Analisi preliminare sulle molestie e la violenza di genere nel mondo del lavoro in Italia*, ILO, Ufficio per l'Italia e San Marino, 2018.

18 K. Crenshaw, *Demarginalizing the Intersection of Race and Sex. A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, in *University of Chicago Legal Forum*, 1989, 1, pp. 139-167. N. Y. Davis, *Intersectionality and Feminist Politics*, in *European Journal of Women Studies*, 2006, 13, 3, pp. 193-209. L. McCall, *The Complexity of Intersectionality*, in *Journal of Women in Culture and Society*, 2005, 3, pp. 1771-1800; A. Loretoni, *Un femminismo intersezionale e multidisciplinare*, in *Iride*, 2018, 2, pp. 307-317.

Actually, legislative intervention has been called for to concretely implement the ILO Convention[19]. This is also functional to introducing a delimitation of employer obligations in the face of phenomenologically "fluid" risks. In fact, psychosocial risks arise from poor design, organisation and management, as well as from an inadequate social work environment. For this reason, they are considered more challenging to manage than "traditional" OSH risks[20]. This "fluidity" may condition exact fulfilment of the OSH obligations, which in Italy hinges on Article 2087 of the Civil Code and is precariously balanced between "named" and "unnamed" safety measures[21]. As mentioned before, the OSH provisions reinforce the employer's obligation to assess and manage the risks of violence and harassment[22]. However, it is specified that the violence and harassment are considered by virtue of the concrete possibility of manifesting themselves in correlation with work[23] and by virtue of a necessary criterion of reasonableness[24].
It is important to highlight that OSH risk assessment must also take into account other factors of "vulnerability" that intersect with factors of discrimination: not only gender, but also disability and age, without neglecting the preventive measures provided for foreign workers[25]. Therefore, it can be said that the OSH management system adopts an intersectional perspective that is familiar to anti-discrimination law[26]. In turn, regulatory incorporation of the obligation to assess the risk of violence and harassment in the Risk

19 Opposed to the introduction of special offences, C. Alessi, *La Convenzione Ilo sulla violenza e le molestie sul lavoro*, in *LD*, 2023, 3, pp. 577-593. S. Scarponi, *La nozione di molestie nel diritto del lavoro: uno strumento di qualificazione anche nei confronti del mobbing*, in S. Scarponi (ed), *Il mobbing: analisi giuridica interdisciplinare*, Cedam, 2009, p. 29 ff., had already pointed out that the notion of "harassment", contained in the anti-discrimination regulation, can be considered a specification of the prevention obligation under Article 2087 of the Civil Code.
20 As shown by the results of the European Survey of Enterprises on New and Emerging Risks - ESENER (EU-OSHA). Link: https://osha.europa.eu/en/facts-and-figures/esener.
21 On the distinction between named and unnamed measures, Civil Cass., 21 July 2023, Order No. 21955.
22 Articles 17(1)(a) and 28(1) of Legislative Decree No 81/2008.
23 Italian jurisprudence is consolidated on this point, with reference to the subject of risks from third-party activities. *Ex plurimis* Cass., 20 April 1998, No. 4012; Cass., 6 September 1988, No. 5048; Cass., 17 July 1999, No. 7768; Cass., 8 April 2013, No. 8486; Cass., 11 April 2013, No. 8855. In this sense, also the definition of "aggravated generic risks". See Interpello 11/2016, Ministry of Labour - Interpelli Commission.
24 On the subject A. Pizzoferrato, *Molestie sessuali sul lavoro. Fattispecie giuridica e tecniche di tutela*, Cedam, 2006.
25 See Article 1 of Legislative Decree No 81/2008.
26 On the importance of both subjects, D. Collier, *Protection from Sexual Harassment*, in G. Davidov, B. Langille, G. Lester (eds.), *The Oxford Handbook of the Law of Work*, Oxford University Press, 2024, pp. 575-588.

Assessment Document (DVR) can support the company in fully implementing the prohibition of discrimination. The document must contain an assessment of risk factors linked to subjective vulnerabilities, which are also factors of discrimination, as well as a set of measures aimed at preventing them.

3. Harassment at Work: a Conceptual Evolutionary Perspective

Under the Italian legal framework, harrassment at the workplace is an evolutionary concept first taking its cue from European anti-discrimination law[27]. More specifically, Legislative Decrees No. 215 and No. 216 of 2003 equated harassment with discrimination[28]. Moreover, a useful reference can be found in Article 26 of the Equal Opportunities Code[29].
According to Article 26, harassment is considered discrimination, i.e. unwanted conduct, carried out for reasons related to sex, with the purpose or effect of violating the dignity of a female or male worker and of creating an intimidating, hostile, degrading, humiliating or offensive climate[30]. This definition encompasses unintentional conduct that has a discriminatory effect, combining objective and subjective factors that intercept even apparently neutral conduct in organisational contexts[31]. This notion places alongside the injury to dignity a

27 Anti-discrimination law has often filled the gaps in sectoral disciplines, as F. Pollicino, *Maltrattamenti, mobbing o molestie? Il risarcimento del danno nel diritto antidiscriminatorio*, in *LDE*, 2022, 2, pp. 1-13 points out. Also, in ILO practice on gender equality see J. Aeberhard-Hodges, *Workplace gender equality as a human right: the ILO approach*, in J. R. Bellace, B. ter Haar (eds.), *Research Handbook on Labour, Business and Human Rights Law*, Edward Elgar, 2019, pp 274-293.
28 On the notions of harassment and sexual harassment, L. Lazzeroni, *Molestie e molestie sessuali: nozioni, regole, confini*, in M. Barera (ed) *Il nuovo diritto antidiscriminatorio. Il quadro comunitario e nazionale*, Giuffrè, 2007, p. 379 ff.
29 Legislative Decree No. 198 of April 11, 2006. The Equal Opportunities Code has transposed Directive 2002/73/EC, later replaced by Directive 2006/54/EC.
30 The same article of the law, in paragraph section? 2, indicates the sub-species of "sexual harassment", which refers to unwanted conduct with sexual connotations in physical, verbal or non-verbal form. On the equation between harassment and discrimination, see G. De Simone, *La nozione di discriminazione diretta e indiretta*, in M. Barbera (ed.), *La riforma delle istituzioni e degli strumenti delle politiche di pari opportunità (D.Lgs. 23 maggio 2000, n. 196). Commentario sistematico al decreto legislativo 23 maggio 2000*, n. 196, Leggi civ. comm., 2003, 3, p. 711.
31 S. Scarponi, *La nozione di molestie nel diritto del lavoro: uno strumento di qualificazione anche nei confronti del mobbing*, in S. Scarponi (ed.), *Il mobbing: analisi giuridica interdisciplinare*, Cedam, 2009, pp. 29 ff.; S. Scarponi, *La convenzione oil 190/2019 su violenza e molestie nel lavoro e i riflessi sul diritto interno*, in *Rivista giuridica del lavoro e della previdenza sociale*, 2021, 1, pp. 23-39.

concept of "environmental harassment"[32] that takes into account the physical and psychological risks caused by the hostile and degrading working climate[33]. It is important to highlight that the legislation has an explicit limitation, namely that harassment and violence are identified solely as gender discrimination linked to sex. As such, it does not support the adoption of an intersectional approach.

In addition, it should be noted that the definition generates uncertain interpretative and applicative implications arising from the effort to assess such "undesirable" behaviour, which is conditioned by individual perception of the facts. This is a subjective element which is not always clearly weighed by means of measurable evaluative parameters[34]. Therefore, the judgment could focus to a lesser extent on the multiple factors of discrimination that have caused the conduct in question.

Italian jurisprudence has attempted to fill this gap by introducing symptomatic indices of an organisational nature to support the judgement on the existence of harassment in work contexts[35]. In fact, apparently neutral organisational

32 L. Calafà, *Le violenze e le molestie nei luoghi di lavoro: il poliedrico approccio del diritto del lavoro* gender oriented, in M. Tremolada, A. Topo (eds.), *Le tutele del lavoro nelle trasformazioni dell'impresa*, Cacucci, 2019, pp 477-491.

33 On the organisational dimension of the risk of violence and harassment, L. F. Fitzgerald, L. M. Cortina, *Sexual Harassment in Work Organizations: A View from the 21st Century*, in B. T. Cheryl, W. Jacquelyn (eds), *APA Handbook of the Psychology of Women: Perspectives on Women's Private and Public Lives*, APA Handbooks in Psychology, 2018, pp 215-234.

34 This critical issue risks increasing the burden of proof on the plaintiff, who must express their disappointment with the behaviour of others. At the same time, the defendant must also provide an objective reconstruction of the facts, which is not always sufficient to assess whether the behaviour was "undesirable". On this subject, L. Lazzeroni, *Molestie e molestie sessuali: nozioni, regole, confini*, cit., p. 379 ff. Some authors have pointed out that the establishment of unlawful conduct is independent of the subjective conditions and the victim's ability to react or succumb. See F. Amato, M. V. Casciano, L. Lazzeroni, A. Loffredo, *Il mobbing*., Giuffrè, 2002. Similarly, on the case of mobbing, the Supreme Court has highlighted the irrelevance of the existence of reciprocal conflict or of an attitude of succumbing to the vexatious behaviour. Cf. Civil cassation, sec. VI, October 6, 2022, No. 29059. L. Corazza, *Mobbing e discriminazioni*, in M. Pedrazzoli (ed.) *Vessazioni e angherie sul lavoro. Tutele, responsabilità e danni nel mobbing*, Zanichelli, 2007, p. 91 highlights the need to identify company-wide standards of behaviour to facilitate objective assessment of undesirable conduct.

35 Consider, for example, the high turnover of female staff in a company (Cass. civ., 15 November 2016, No. 23286). On the easing of the burden of proof in anti-discrimination law, see S. Scarponi, *La parità di genere nel lavoro e le nuove frontiere dell'antidiscriminazione*, in Scarponi S. (ed.), *Diritto e genere. Temi e questioni*, Università degli Studi di Trento, 2020, pp 74 ff. This jurisprudential practice anticipated the organisational circumstances specified by the recent paragraph 2 *bis*, Article 25 of the Equal Opportunities Code, introduced by Law No. 162/2021. Under this provision, discrimination constitutes any treatment or change in the organisation of working conditions and times that determines a condition of disadvantage or limitation to working life.

decisions may place a worker at a particular disadvantage compared to other workers. Not only for reasons related to gender but also in relation to other factors of discrimination.
For its part, the 2007 Framework Agreement broadened the scope of the subject beyond anti-discrimination law. However, it refers to situations where "one or more workers or managers are repeatedly and deliberately abused, threatened and/or humiliated in circumstances relating to work."[36] Thus, two elements are relevant: the intention to cause harm and the repetitive nature of the conduct.
The conceptual evolution of harassment at work found new life in the ILO Convention No. 190/2019[37]. Therefore, the definition contained in the Convention is trans-typical because it encompasses both violence and harassment. This includes all cases of jurisprudential matrix scattered in the Italian legal system[38]. In fact, over time Italian case law has identified several very similar types of offences (harassment, mobbing, bossing, straining, etc.) which are subject to different elements of proof[39].
According to the Convention, violence and harassment are "a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment"[40]. The notion expands the objective and subjective scope as much as possible[41]. It covers occasional and systemic conduct, but also the mere threat of such conduct, and not only in (physical and digital) workplaces but also on the occasion of work, in connection with work and in relation to

36 European Framework Agreement on Harassment and Violence at Work, BUSINESSEUROPE, UEAPME, CEEP, ETUC, 2007. The Framework Agreement was transposed in Italy by Confindustria, CGIL, CISL and UIL on January 25, 2016.
37 On the subject, G. Casale, *Il diritto ad un mondo del lavoro libero da violenze e molestie*, in *LDE*, 2023, 1, pp. 1-11.
38 On the breadth of the notion, S. Scarponi, *Dopo la ratifica della Convenzione OIL n. 190/2019 su violenza e molestie nei luoghi di lavoro: un cantiere normativo ancora aperto*, in *Labour Law Community*, 2022. The Convention states that the conceptual distinction between violence and harassment is left to the discretion of national jurisdictions (Art. 1(2)).
39 D. Tambasco, *Violenza e molestie nel mondo del lavoro. Un'analisi della giurisprudenza del lavoro italiana*, ILO, Ufficio per l'Italia e San Marino, 2022.
40 Art. 1(1)(a). The introduction of a unifying notion of violence and harassment is positive.
41 M. Sahan, *The First International Standard on Violence and Harassment in the World of Work*, in *Business and Human Rights Journal*, 2020, 5, pp. 289-295; J. Pillinger, R. R. Runge, C. King, *Stopping Gender-Based Violence and Harassment at Work: Campaign for an ILO Convention*, Agenda Publishing Limited, 2022.

harassment arising from work[42]. This concept opens up an intersectional perspective. It does not only cover phenomena linked to gender, as in Italian anti-discrimination law, but refers to all violence and harassment that may arise from multiple factors of discrimination.

The definition enjoys neutrality *ratione materiae*. The Convention and its Recommendation No. 206/2019 require Member States to address violence and harassment in the world of work in all relevant policies and legislation, in the fields of labour, employment, OSH, equality and non-discrimination at work, immigration and, where appropriate, in criminal law[43].

However, it is worth noting that this definition is not without its critical aspects. First of all, on the one hand, the description of conduct as "unacceptable" – instead of "undesirable" – does not resolve, the problems relating to assessment of the subjective disliking of others' conduct[44]. In fact, the definition relies on a kind of social appreciation of conduct, which is anything but objective. Furthermore, the absence of any reference to subjective perception could lead national case law to downplay the victims' point of view as a central element on which to base the judgment.

Then, on the other hand, it seems more useful to identify specific unacceptable conduct in advance. To this end, it is necessary to determine (and to the extent possible define) what conduct is or is not acceptable in order to better identify the conduct to be prevented and prosecuted in working contexts. In this regard, a prominent role could be played by collective agreements and codes of conduct, especially if negotiated[45]. Not coincidentally, the Convention states that employers must identify risks in consultation with workers and their representatives[46]. Involvement of workers and their representatives could

42 Art. 3. Moreover, protection standards have a strong universal vocation because they cover everyone who comes into contact with a business for work purposes in the formal and informal economy (Art. 2).

43 Art. 11(1), Convention No. 190; "Fundamental Principles", section 2, Recommendation No. 206.

44 On the objectionable prevalence of subjective factors over organisational ones that give rise to overall discriminatory patterns, V. Schultz, *The Sanitized Workplace Revisited*, in M. Albertson Fineman, J. E. Jackson, A.P. Romero (eds), *Feminism and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations*, Ashgate, 2009, pp 65-90.

45 On this topic, E. Ales, in his speech entitled "Il quadro di sintesi sulla convenzione ILO su violenza e aggressioni", in the seminar "Rischi psicosociali, innovazione digitale e aggressioni", Festival Internazionale della Salute e Sicurezza sul Lavoro, June 22, 2023; Id., "L'attuazione della Convenzione ILO 190 in Italia dopo la legge di ratifica", during the initiative "Violenza e molestie nel mondo del lavoro. Convenzione ILO 190, ruolo del sindacato e strategie di prevenzione", UIL, Rome, July 19, 2023.

46 Artt. 8(b)-9(a). On trade union initiatives in this regard, most recently ILO, *Violence and harassment in the world of work. Trade union initiatives, strategies and negotiations since the adoption of the Convention on Violence and Harassment (No. 190) and its Recommendation (No. 206), 2019*, Geneva,

effectively remedy the "information gap" on critical relational and organisational issues that can lead to discriminatory behaviour.
Also, an excessively person-centred approach emerges, since personal damages of a different nature are taken into account without any explicit reference to the environmental factors provided for by anti-discrimination law[47]. This aspect is critical because assessment of organisational elements contributes to the emergence of multiple factors of discrimination, regardless of the actual damage caused.
In the national legal system, the Convention does not add much to the provisions of the OSH discipline, which already cover any type of risk, including those of an organisational and psycho-social nature[48]. Therefore, the employer is obligated to assess and prepare the appointed and unnamed prevention and protection measures[49]. Likewise, the concept of violence and harassment contained in the Convention could positively influence anti-discrimination protection, because it is more open to a "multifactorial"

2024. In doctrine, M. Sahan, *The First International Standard on Violence and Harassment in the World of Work*, cit., pp. 289-295.

47 These factors go back to the preamble, where it is recognised that violence and harassment "impacts negatively on the organization of work, workplace relations, worker engagement, enterprise reputation, and productivity."

48 Art. 2(1)(q), Legislative Decree No 81/2008. See also Art. 15, Legislative Decree No 81/2008 and Art. 6, Directive 89/391/EEC. The extension of protections to a broad spatial and temporal dimension of work performance and to unlawful conduct perpetrated through the use of digital tools is also not new. S. Renzi, *Digitalizzazione del lavoro e rischi psicosociali*, in R. Del Punta, D. Gottardi, R. Nunin, M. Tiraboschi (eds), *Salute e benessere dei lavoratori: profili giuslavoristici e di relazioni industriali*, ADAPT University Press, 2020, pp 119-136.

49 Article 2087 of the Civil Code and Article 28 of Legislative Decree No. 81/2008 (Occupational Health and Safety Consolidation Act). The Italian legal system embraces an integral notion of health that derives from the unitary concept of physical, mental and social well-being drawn up by the WHO. Cf. Article 2(o) of Legislative Decree No 81/2008. On this subject, B. Caruso, *L'Europa, il diritto alla salute e l'ambiente di lavoro*, in *DLRI*, 1997, 75, pp. 435-478. Recently, the European Parliament Resolution of July 5, 2022 on Mental Health in the Digital World of Work highlighted the need to adopt "a fresh and broader definition of health and safety at the workplace, which can no longer be separated from mental health" (lett. G).
The OSH obligation is dynamic, because it evolves according to the progressive development of working conditions and scientific research on occupational hazards. On this point, ECJ, Commission v. Italian Republic (C-49-00, November 15, 2010). The obligation to assess all risks to the safety and health of workers operates in implementation of the principle of universal health protection under Article 32 of the Constitution, in line with the objective scope promoted by international (e.g. ILO Convention No. 155/1981) and European (Directive 89/391/EEC) regulatory acts. On this point, O. Bonardi, *Oltre lo stress: i nuovi rischi e la loro valutazione globale*, in *LD*, 2012, 2, pp. 291-317. On the subject, see also P. Pascucci, *Dopo la legge n. 123 del 2007.Titolo I del d.lgs. 9 aprile 2008, n. 81 in materia di tutela della salute e della sicurezza nei luoghi di lavoro*, in *WP CS CSDLE "Massimo D'Antona"*, 2008, 73, 1-165.

assessment of the phenomenon, whereas European (and Italian) anti-discrimination law relegates violence and harassment to a gender issue.

4. Developing a Preventional Approach and Improving Remedial Strategies

The Convention clearly goes beyond anti-discrimination tools in favour of preventional ones. Indeed it urges people to work out protections starting from the employer's duty to adopt an integrated primary prevention organisational strategy for prevention and anti-discrimination purposes[50]. States must ensure that employers take preventive measures that are appropriate and proportionate to their level of control[51]. Furthermore, employers must include violence and harassment in their OSH management[52].

Moreover, the Italian anti-discrimination regulations recall the employer's duty to protect the health and safety of workers from the phenomena of (sexual) harassment at work[53]. Along the same lines, the recent Directive (EU) 2024/1385 also imposes an employer's obligation to inform supervisory staff "how to recognise, prevent and address sexual harassment at work"[54].

We are faced with hard-won multidisciplinary regulatory fragments that need an effort at rationalisation[55]. In any case, their reconstruction shows that the

50 Indeed, violence and harassment are not a purely individual but a collective issue. Cf. L. Corazza, *Diritto antidiscriminatorio e oltre: il lavoro delle donne come questione redistributiva*, Relazione al XXI Congresso nazionale Aidlass, 2024, p. 30.

51 Also, Member States are called upon to adopt laws and regulations prohibiting violence and harassment at work and to introduce appropriate measures to prevent such unlawful conduct (Arts. 7 and 8.)

52 Art. 9.

53 Art. 1, par. sec.? 218, letter b), l. 27 December 2017, No. 205, amending art. 26, par. 3b, Equal Opportunities Code.

54 Art. 36(6), Directive (EU) 2024/1385 of the European Parliament and of the Council of May 14, 2024 on combating violence against women and domestic violence (OJEU, 24.5.2024). However, while in the original proposal this information was also to cover specific risk assessment, this reference was removed in the final text. See Art. 37(3), Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence (COM(2022) 105 final, Strasbourg, 8.3.2022). Evidently, the inclusion of harassment in an enterprise risk assessment still meets with many diverging opinions. This is because, as already highlighted, these risks are difficult to identify in occupational health and safety management, since they are greatly influenced by organisational, relational and subjective factors that can lead to discriminatory behaviour and/or decisions that are harmful to workers' health and safety.

55 V. Pasquarella, *La violenza di genere attraverso la lente del giuslavorista. Azioni di tutela e strumenti a supporto della vittima*, in *VTDL*, 2020, pp. 1485-1511; D. Izzi, *La discriminazione di genere rivisitata e il puzzle da ricomporre*, in *LD*, 2022, 36, pp. 512-518.

OSH discipline is becoming an instrument of anti-discrimination law, especially from a gender perspective[56].

Looking at remedial perspectives, the Convention does not alter the competition between the respective instruments of protection[57]. The ILO Convention takes a more open view of the recognition of so-called "non-pecuniary damage" than the Equal Opportunities Code[58]. However, the demonstration of the correlation between socially "unacceptable" behaviour and the potential harmful effect on the victim is important, whereas the anti-discrimination discipline emphasises environmental factors.

In the discriminatory logic, the victim of harassment can ask the judge for compensation for damages, including non-pecuniary damages linked to the injury suffered and, if the conduct has had repercussions on his or her state of health, it is also possible to compensate biological damage. Moreover, the victim benefits from partial reversal of the burden of proof[59].

In the OSH field, there is a broadening of the items of damage that can be compensated. The employer is held liable for failing to take all measures – named and unnamed – that are reasonably possible to prevent harassment[60].

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56 C. Lazzari, *Salute e lavoro: questioni di genere*, in *RGL*, 2021, 2, pp. 226-235.

57 These instruments are grounded in the sectoral civil law provisions, alongside the (more widely used) criminal law instruments. On this trend, S. Capellari, M.D. Ferrera, *Contrasto alla violenza di genere e diritto ad un ambiente di lavoro salubre: riflessioni introduttive*, in S. Capellari, M.D. Ferrera (eds.), *Tutela della salute e contrasto alla violenza nei confronti delle donne: problemi aperti e strategie di intervento*, EUT, 2022, pp. 9-17. In Italy, reference is made, on the one hand, to civil law regulations on the subject of the employer's contractual and extra-contractual liability (Articles 2087, 2043 and 2049 of the Civil Code). On employer's liability and psychosocial risks see M. Giovannone, *Responsabilità datoriale e prospettive regolative della sicurezza sul lavoro. Una proposta di ricomposizione*, Giappichelli, 2024; M. Giovannone, *Safety at work, new risks, and employer liability: prospects for post-Covid-19 regulation in Italy*, in *Italian Labour Law e-Journal*, 2021, 1, pp. 123-146; M. Giovannone, *La responsabilità datoriale in materia prevenzionistica: emergenza Covid-19 e nuovi rischi*, in *RDSS*, 2021, 3, pp. 577-600. On the other hand, reference is made to the complex of injunctive, restorative (including extrajudicial) and compensatory actions that can be brought against discriminatory conduct (Articles 26, 36, 38, 40 and 41-bis, Equal Opportunities Code).
The criminal relevance of harassment will not be explored here. On the subject, M. Solinas, *Mobbing e maltrattamenti. Quali limiti ai possibili riverberi penalistici di un illecito civile multiforme*, in *Responsabilità civile e previdenza*, 2019, 84, pp. 528-555. In Italy, in most cases, harassment at work integrates the crime of sexual violence (Cass., March 27, 2014, No. 36704; Cass., September 26, 2013, No. 42871) or private violence (Cass., February 24, 2017, No. 29261).

58 Chapter V.

59 Art. 40, Equal Opportunities Code.

60 Following an accident at work or occupational disease, in the case of omission of the named measures, the employee has the burden of proving the fact constituting a breach and the causal link between the breach and the damage. However, the employee does not have to prove the fault of the other party, against which the legal presumption of culpability operates (Art. 1218 of the Civil Code). Conversely, in the case of failure to adopt innominate measures, the

Nevertheless, practice shows that the prevention instrument prevails over the anti-discrimination one, because it enjoys a broader capacity to satisfy the injured party[61]. The compensatory function of Article 2087 of the Civil Code has been reinforced by case law[62].
Thus, the notion of violence and harassment developed by the Convention is intended to prevent the burden of proof on the employee from becoming too heavy. In addition to the objective element, the employee will not be required to prove any persecutory or harassing intent. Instead, unlawfulness is based on the employer's duty to take positive action to protect the employee's psychological and physical integrity[63]. Therefore, the international notion seems to admit the attenuation of the ordinary evidentiary regime as laid down in anti-discrimination law, under which the plaintiff must provide the court with precise and concordant factual elements capable of founding the presumption of conduct constituting harassment (or, more generally, discrimination), and not also the subjective element[64].

liberating proof is more onerous: the employer is required to prove the adoption of specific conduct suggested by experimental and technical knowledge. The burden is on the employee to prove the existence of the work injury, the harmfulness of the working environment, and the link between the two (Most recently, Cass. Civ., Sec. Lav, Order No. 21955 of July 21, 2023). Compensation for biological damage is therefore also possible in this area (Art. 10, Presidential Decree No. 1124/1965). On the scope of this primary obligation and the resulting employer liability issues, M. Giovannone, *Responsabilità datoriale e prospettive regolative della sicurezza sul lavoro. Una proposta di ricomposizione*, cit.

61 For a jurisprudential reconstruction, R. Guariniello, *Molestie e violenza anche di tipo sessuale nei luoghi di lavoro*, Wolters Kluwer Italia, 2018. On mobbing, C. Lazzari, *Le disfunzioni dell'organizzazione del lavoro: mobbing e dintorni*, in *DSL*, 2018, 2, pp. 1-14. See also L. Montuschi, *Diritto alla salute e organizzazione del lavoro*, Franco Angeli, 1989. Conversely, the a priori preventive function of Art. 2087 of the Civil Code is little valorised. On the subject, M. Giovannone, *Safety at work, new risks, and employer liability: prospects for post-Covid-19 regulation in Italy*, cit., pp. 123-146.

62 Case law has provided an extensive interpretation of Article 2087 of the Civil Code, constitutionally oriented to safeguarding essential and primary goods, such as health, human dignity and the inviolable rights of the individual (Articles 32, 42 and 2 of the Constitution). *Ex multis*, Cass. November 14, 2016, No. 3291; Cass. February 19, 2018, No. 3977; Cass. February 7, 2023, No. 3692. See N. De Marinis, *Rischio psichico e sicurezza del lavoro nel diritto vivente*, in *Ambientediritto*, 2023, 4, pp. 1-7.

63 L. Paolucci, *Ancora sul mobbing. La volontà lesiva quale elemento costitutivo dell'illiceità datoriale: una corretta applicazione dell'art. 2087 c.c.?*, in *RIDL*, 2012, 2, pp. 58-63. On the subjective element, R. Nunin, *Configurabilità del mobbing e prova dell'intento persecutorio*, in *LG*, 2019, 4, pp. 380-385.

64 In Italy, Article 40, Equal Opportunities Code.

This is because harassment consists of unlawful conduct that must be prosecuted irrespective of the establishment of a mobbing situation with vexatious or persecutory intent and of the systematic nature of the conduct[65].

5. Bridging OHS and Anti-discrimination Law through Work Organization and Preventive Procedures

The ILO Convention aims at developing an integrated primary prevention between OSH and anti-discrimination protection. This also means shifting the main focus from compensation to prevention[66].

The Convention thus intersects with the need to orient the prevention obligation towards being more precisely and realistically applied, within the (open) catalogue of measures that can be concretely implemented[67].

This way of understanding the subject has promoted the development of tools to proceduralise the prevention obligation. These are typified tools (risk assessment, health surveillance, Organisation and Management Models - MOG, Safety at Work Management System - SGSL, etc.) or self-standardised tools (codes of conduct, ethical code, etc.). These operational tools accurately identify the multiple objective and subjective risk factors for purposes of assessment and adoption of preventive measures. These factors must be correlated with each other, assessing possible interactions and overlaps that generate "multifactorial" risks, such as psycho-social risks. These tools can lead corporate risk management towards an intersectional approach, because their implementation requires a holistic approach based on the multidimensional well-being of the individual, determined by a combination of subjective and objective risk factors.

Particularly important are codes of conduct or ethical codes. These are voluntary acts of self-regulation provided among the general measures for planning OSH measures[68]. With regard to operational aspects, the ILO's

65 On this aspects, M. Brollo, *Ancora sulle proposte di legge sul mobbing in discussione alla Commissione Lavoro della Camera dei Deputati*, in *DSL*, 2019, 2, pp. 1-21.

66 See sections IV and V of the Convention.

67 G. Natullo, *Il quadro normativo dal Codice civile al Codice della sicurezza sul lavoro. Dalla Massima sicurezza (astrattamente) possibile alla Massima sicurezza ragionevolmente (concretamente) applicata?*. in *I Working Papers di Olympus*, 2014, 39, pp. 1-33; G. Natullo, *Principi generali della prevenzione e "confini" dell'obbligo di sicurezza*, in M. Rusciano, G. Natullo (eds.), *Ambiente e sicurezza del lavoro, Commentario di Diritto del lavoro*, vol. VIII, Utet, 2007. On the risk of indefinite extension of employer liability, M. Biasi, *Dalla prevenzione del mobbing alla promozione del benessere sul luogo di lavoro? Ragionando attorno ai "nuovi" perimetri degli obblighi e delle responsabilità datoriali in materia di sicurezza*, in *AmbienteDiritto*, 2024, 2, pp. 1-23.

68 Art. 15(1)(t). They are atypical measures with which companies have attempted to make up for the absence of regulatory prescriptions on procedures for assessing the risk of violence

recommendation to disseminate codes of conduct that take into account vulnerable groups of people is to be welcomed[69]. Secondly, the ILO recommends risk assessment with regard to third parties (customers, users, patients, etc.)[70]: this places violence and harassment among the "aggravated generic risks" to be identified in the risk assessment document, where the potential exposure is high and related to the task[71]. Finally, codes of conduct often provide for remedial action through workplace dispute resolution mechanisms, provided for by the Convention itself[72]. If a violation is established, support measures for victims and the prompt adoption of sanctioning measures should be ensured[73].

Risk assessment and codes of conduct are therefore the main management tools for incorporating the intersectional perspective. On the one hand, risk assessment must take into account vulnerability factors, arising from discrimination factors, which compromise the mental and physical health of workers. On the other hand, codes of conduct should clearly identify discrimination factors, and their possible intersection, which underlie prohibited and sanctioned behaviour in the company.

Similarly, relevant are some tools provided for by Italian law: the Organisation and Management Model - MOG[74] and the Safety at Work Management System

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and harassment, by introducing "organisational health" into the company strategy. See V. Pasquarella, *La disciplina dello stress lavoro correlato fra fonti europee e nazionali: limiti e criticità*, in *I Working Papers di Olympus*, 2012, 6, pp. 1-21, according to which organisational health is not merely a legal obligation, but a primary requirement of the company closely related to corporate strategy.

On the operational level, Inail (National Institute for Insurance against Accidents at Work) pointed out that company codes are effective when they include moral and psychological harassment and mobbing. Furthermore, they are more effective if they regulate positive actions to improve the working environment. See Inail, *Ri-conoscere per prevenire i fenomeni di molestia e violenza sul luogo di lavoro*, 2021.

69 Recommendation No. 206, para. 23.

70 *Ibid*, para. 8.

71In Italian case law, Cass. 5 January 2016, No. 34; Cass. 13 April 2015, No. 7405. On the point, M. Giovannone, *Attività criminosa di terzi e obblighi prevenzionistici: i profili di responsabilità datoriale e il ruolo della security aziendale*, in *DRI*, 2013, 4, pp. 1150-1156.

72 Art. 10(i).

73 The 2007 Framework Agreement states that support and assistance should be provided to victims. Furthermore, appropriate disciplinary measures, including dismissal, must be taken against those who have engaged in proven misconduct (para. 4).

74 Art. 30, Legislative Decree No 81/2008. Cf. M. Giovannone, *Modelli organizzativi e sicurezza sui luoghi di lavoro alla prova del Covid-19 e a vent'anni dall'entrata in vigore del d.lgs. n. 231/2001*, in *DSL*, 2022, 1, pp. 94-113. On supplementary control of the asseveration, A. Delogu, *L'asseverazione dei modelli di organizzazione e di gestione della sicurezza sul lavoro di cui all'art. 30 del d.lgs. n. 81/2008: analisi e prospettive*, in *DSL*, 2018, 1, pp. 7-51; C. Lazzari, *Gli organismi paritetici nel decreto legislativo 9 aprile 2008, n. 81*, in *I Working Papers di Olympus*, 2013, 21, pp. 1-17.

– SGSL[75]. These tools are important for improving the management of prevention risks. Also, they corroborate the proof of fulfilment of the OSH obligation with an exempting effect from criminal liability.
Finally, of significant impact is the establishment of internal informal advice channels, suggested by the 2007 Framework Agreement, and the creation of the formal channels envisaged by the specific whistleblowing discipline[76]. Again, in Italy, corporate OSH protocols can be a valuable support for the path to the certification of gender equality, as will be discussed below.

6. From Procedural Compliance to Technical Standardisation in Equality Governance

In recent years, occupational health and safety governance has undergone a significant transformation, shifting from a purely procedural logic towards one that increasingly relies on technical standardisation and performance-based tools. This normative and organisational evolution reflects the consolidation of governance instruments that not only reinforce occupational health and safety frameworks but also embed gender equality and inclusion within organisational structures, thereby bridging regulatory compliance and broader corporate social responsibility.
Voluntary instruments developed by ISO and through Italian national practice serve to complement existing managerial models by integrating occupational health and safety with the promotion of gender equality and workplace inclusion, viewed also from an organizational and structural perspective.
Examining the phenomena from a labour law perspective is, as we have seen, very complex because it involves not only knowledge of legal issues of a preventive nature in the strict sense, but also organizational and management

75 SGSLs are adopted (and certified) in application of the technical standard UNI ISO 45001-2018.
76 Legislative Decree No. 24 of March 10, 2023, in implementation of Directive (EU) 2019/1937. On the topic, S.M. Corso, *L'obbligo di segnalare deficit della sicurezza in azienda a dieci anni dal d. lgs. 9 aprile 2008 n. 81*, in *DSL*, 2018, 2, pp. 15-36; P. Pizzuti, *Whistleblowing e rapporto di lavoro*, Giappichelli, 2019; A. Boscati, *La disciplina del whistleblowing nel settore privato nella prospettiva dell'attuazione della direttiva comunitaria*, in *ADL*, 2020, 5, pp. 1056-1081; M. Vitaletti, *La disciplina europea in materia di whistleblowing. Effetti e ricadute sulla tutela della persona nel diritto del lavoro*, in *MGL*, 2020, 2, pp. 447-465. It is no coincidence that, in Italy, these channels must be mandatorily set up in companies adopting the MOG (Art. 24, Legislative Decree No. 24 of March 10, 2023).

aspects[77]. The risk of harassment and violence in the workplace intensifies when individuals face multiple vulnerabilities, as different aspects of identity intersect and amplify these risks. Intersectional discrimination complicates the experience, influencing the types of harassment, barriers to reporting and the overall impact on vulnerable workers. The provisions contained in Legislative Decree No. 198/2006, Legislative Decree No. 81/2008, in Law No. 4/2021 and in Law No. 162/2021 have been supported, indeed, by several other interventions. The reference is to the ISO International Standards[78], such as UNI ISO 45003:2021, concerning management of psycho-social risks and promotion of well-being at work, UNI ISO 30415:2022, regarding diversity and inclusion and, lastly, UNI ISO 53800:2024, aimed at promoting gender equality and women's empowerment and the creation of an inclusive work environment that respects gender diversity.

ISO 53800 aligns with existing national frameworks, most notably with UNI/PdR 125:2022, published on March 16th, 2022, based on clearly defined Key Performance Indicators (KPIs).

Although these instruments are formally soft-law and non-binding, voluntary adherence amounts to a self-imposed commitment to detailed behavioural standards and highly structured procedural systems, often driven by reputational considerations and access to incentives.

Recognizing the correlation between harassment, violence, and discrimination, especially intersectional discrimination, necessitates a re-evaluation of prevention and intervention strategies under labour law. In fact, analyzing the contents of the aforementioned technical provisions, it is clear that, at a global level, we are moving towards a new regulatory season of the methods of human resources management, with the support of principles of transparency, monitoring and verification (and this constitutes the most innovative aspect)[79].

This technical standardization innovates through two core paradigms: structural-organizational design and rigorous quantitative measurement. Measurement, as a systematic approach to gathering objective data, enhances transparency and awareness and reduces information gaps in relationships

77 L. Calafà, *Le violenze e le molestie nei luoghi di lavoro: il poliedrico approccio del diritto del lavoro* gender oriented, cit., pp 477-491; C. Alessi, *Lavoro e conciliazione nella legislazione recente*, in *DRI*, 2018, 3, pp. 804-821.

78 The ISO *International Organisation of Standardisation* is an independent international organisation with 165 national standardisation bodies. It brings together experts and technicians with the aim of developing voluntary, consensus-based, market-relevant international standards that are instrumental in innovation and uniform solutions to global challenges.

79 S. Ciucciovino, La *certificazione di parità di genere*, in *Annuario del lavoro*, 2023, pp. 243-248.

with power dynamics. It supports ongoing progress with monitoring against set benchmarks, evaluating the impact of organizational decisions dynamically. This culture of measurement includes evaluation, self-assessment of decision efficacy and objective performance reporting.
It is noteworthy that, despite UNI/PdR 125:2022 being a voluntary measure linked to relatively modest incentives[80] and entailing a considerable commitment in terms of both human and financial resources, three years after its introduction (at the time of writing this contribution) no fewer than 7,960 companies have obtained Gender Equality Certification, as reported by the website[81] of the Italian Government's Department for Equal Opportunities. These quantitative data signal not only the rapid institutionalisation of gender equality certification within Italian industrial relations, but also the growing centrality of gender-sensitive governance in corporate strategies.

7. The Italian "Gender Equality Certification"

Within this emerging landscape of technical and organisational regulation, the Italian "gender equality certification" represents a particularly innovative instrument, situated at the intersection of labour law, public policy and corporate governance.
Certification of gender equality is a new instrument in the international landscape, linked to the Italian National Strategy on Gender Equality 2021-2025[82] and referred to in Mission 5 of the PNRR.

80 It should be noted that private companies obtaining Gender Equality Certification are entitled to a reduction of 1% in employer social security contributions, up to a maximum of €50,000 per year for each beneficiary enterprise, pursuant to Article 5 of Law No. 162/2021, as confirmed by subsequent INPS circulars (Circular No. 137/2022 and INPS message No. 4479 of 30 December 2024). Furthermore, the new Public Contracts Code (Legislative Decree No. 36/2023, Article 108, paragraph 7) provides that contracting authorities shall award additional points to companies that demonstrate, through certification, the adoption of gender equality policies. In addition to this preferential scoring, possession of certification may also result in a reduction of the surety guarantees required for participation in public tenders. The certification may also constitute a preferential element in the allocation of National Recovery and Resilience Plan (PNRR) funds and European funds, where so provided by the relevant calls for proposals. Finally, it should be underlined that certification also generates reputational advantages and enhances the attractiveness of companies among stakeholders who are sensitive to issues of sustainability and inclusion.
81 The data are publicly available online on the official website of the Italian Department for Equal Opportunities (www.pariopportunita.gov.it), specifically at the section *Certificazione della parità di genere*.
82 Inspired by the *Gender Equality Strategy 2020-2025*.

The "gender equality certification" was established in Italy as of January 1st, 2022, by Article 4 of Law No. 162/2021 and can be requested on a voluntary basis by any type of organization, public or private, of any size and legal form. The tool of "equality certification" – which attests to the concrete policies and measures taken by employers to reduce the gender gap in relation to growth opportunities in the company, equal pay for equal tasks[83], gender diversity management policies and maternity protection[84] – is to bridge the gaps existing in the company between resources of different genders, combat harassment and gender stereotypes and incorporate the gender equality paradigm into the DNA of organizations[85]. In this sense, equality certification operates both as an incentive-based regulatory technique and as a lever for cultural change within enterprises. The tool of gender equality certification is of great interest because it approaches the issue of the risk of harassment and violence at work as a *condicio sine qua non* for obtaining the certificate[86].
The ministerial decree of April 29th, 2022 which established the "Minimum parameters for achievement of gender equality certification for enterprises" implemented the UNI/PdR 125:2022 Reference Practice[87] containing "Guidelines on the management system for gender equality". In particular, the Uni/PdR 125:2022 provides for the adoption of specific *KPIs* relating to gender equality policies in organizations and identifies the bodies competent to issue the certification, also establishing the onus on employers to provide

83 O. Bonardi, *Dal principio di "eguale salario per lavoro di eguale valore" alla "discriminazione come moving target". Il contributo dell'OIL alla lotta contro le discriminazioni*, in *VTDL*, 2019, 3, pp. 799-822.
84 T. Treu, *La legge sulla parità di genere*, in *Guida al lavoro*, 2021, 49, pp. 38-44; R. Nunin, *Contrasto al gender gap e sostegno all'occupazione femminile: le novità della legge n. 162/ 2021*, in *Famiglia e diritto*, 2022, 2, pp. 203-210.
85 M. Scofferi, A. *Consiglio, Parità di genere: i nuovi strumenti contro il* gender pay gap, in *Guida al lavoro*, 2022, 27, pp. 31- 37.
86 L. Zappalà, *La parità di genere al tempo del PNRR: tra trasparenza, certificazione e misure premiali*, in *LDE*, 2022, 3, pp. 1-14; M.C. Cataudella, *La parità di genere: una priorità "trasversale" del Piano Nazionale di Ripresa e Resilienza*, in *LPO*, 2022, 1-2, pp. 1-18; P. Cerullo, *Recovery Plan, PNRR e Gender Gap*, in *LDE*, 2021, 2, pp. 1-7.
87 The UNI/PdR 125:2022 is a document published by UNI - Ente Italiano di Normazione, created in order to define criteria, technical prescriptions and functional elements for certification of gender equality in enterprises. It is the result of an institutional working table, composed of the Department for Equal Opportunities, the Department for Family Policies, the Ministry of Economy and Finance, the Ministry of Labour and Social Policies, the Ministry of Economic Development and the National Equality Advisor, and provides for the measurement, reporting and evaluation of data on gender in organisations.

an annual company report on gender equality to the Company Trade Union Representatives and the territorially competent Councilors[88].

The *leitmotif* of UNI/PdR 125:2022 – and thus of the entire equality certification system – is the explicit conviction that, in order to achieve a real paradigm shift on *gender equality,* it is essential that the principles of gender equality, respect for diversity and the fight against violence and harassment at work are integrated into the corporate objectives[89].

Organizations must equip themselves with tools to establish specific objectives for each phase of work for the least represented gender, measure progress in a standardized way and certify results through qualified, transparent processes. To achieve gender equality certification, organizations commit to principles of gender equality and combat harassment and violence across every stage of employees' careers from recruitment to retirement. This includes equal career opportunities, economic treatment, work-life balance tailored to various life stages and a discrimination-free environment. A robust labour law approach must integrate intersectional awareness into corporate policies, regulations and practices to ensure inclusivity and uphold the dignity and rights of all workers. By addressing power dynamics and vulnerabilities, organizations can foster safe, respectful and inclusive workplaces.

Gender equality certification hinges on addressing workplace harassment and violence as integral to achieving gender equality.

Consequently, the certification mechanism functions as a form of ex ante screening of corporate conduct, inasmuch as the emergence of serious episodes of harassment, violence or systemic discrimination may prevent certification or its renewal.

It is quite clear, even from these preliminary observations, that if past incidents of harassment or violence or discriminatory practices – whether related to remuneration or organizational aspects – were to emerge in an employment context, equality certification could never be achieved by that specific company.

The employer has an increased responsibility to prevent and address harassment and violence, taking into account the complexities of intersectional dynamics. This requires proactive measures, fostering a culture of respect and inclusion and implementing effective complaint management procedures.

88 Certification, which is valid for three years and subject to annual monitoring, is issued and monitored by certification bodies accredited by ACCREDIA, pursuant to EC Regulation 765/2008.

89 L. Calafà, *Il dito, la luna e altri fraintendimenti in materia di parità tra donne e uomini*, Italianequalitynetwork, 2022, 1, pp. 1-5.

However, initial considerations suggest that the Italian Gender Equality Certification system, while innovative and ambitious, lacks a sufficient approach to addressing intersectional discrimination.
The current framework remains predominantly anchored to a binary conception of gender, thereby risking an underestimation of compounded vulnerabilities linked, inter alia, to race, ethnicity, disability, age or migration status.

8. Risk Assessment and Prevention of Workplace Violence and Harassment within the Certification Framework

A distinctive feature of the Italian gender equality certification scheme lies in the explicit and systematic connection it establishes between equality objectives and the assessment and management of the risk of violence and harassment at work.
UNI/PdR 125:2022 establishes a clear link between "gender equality certification" and prevention of workplace harassment. It mandates organizations to identify and mitigate all forms of harassment through comprehensive measures including risk assessment, prevention plans, regular training and workplace environment evaluations.
The assessment must be extended to the entire career path of female (or male) workers, from the moment of *recruiting* to retirement and aims to guarantee equal career opportunities up to the most important senior roles, equal pay, suitable *work-life balance* conditions[90] adapted to the different life stages and a working environment[91]_that rejects stereotypes and proposes a culture of diversity and inclusion, as already noted.
From a methodological perspective, this implies that risk assessment cannot be confined to isolated events, but must instead capture structural patterns in recruitment, career progression, pay structures and the organisational climate.
Data on workplace harassment and violence should be disaggregated by categories like gender, race, ethnicity, sexual orientation and disability for detailed analysis. Without a harassment risk assessment in the company's DVR (Risk Assessment Document) and pending litigation related to gender and moral or sexual harassment (e.g., discriminatory dismissals or transfers), gender equality certification cannot be obtained.

90 A.R. Tinti, *Il lavoro agile e gli equivoci della conciliazione virtuale.*, in *Working Papers Massimo D'Antona*, 2020, 419, pp. 1- 58.
91 D. Gottardi, *"Vuoti" e "pieni": la retribuzione e la parità di trattamento nell'ordinamento dell'Unione europea (Gender pay gap and minimum pay in EU)*, in *LD*, 2011, 4, pp. 615-633.

The first step is to assess existing risks, including work conditions, diversity management, incidents of harassment or violence and relational dynamics. This assessment should integrate a gender perspective to address the specific characteristics of male and female workers. Following the risk assessment, prevention measures should be outlined in an operational plan covering organizational adjustments, training and communication. Ongoing analysis of reported incidents is crucial for updating risk assessments and intervention plans.

This adopts a circular process perspective, which begins with an initial assessment of the risk of harassment, allowing for the preparation of an operational plan and subsequent monitoring of adverse events that, if not evaluated during the initial phase, necessitate an update of the initial risk assessment document. The DVR thus becomes a living instrument, subject to continuous revision in light of new information, judicial decisions or organisational changes, rather than a merely formal compliance document. This approach establishes a system that contains a precise and always up-to-date evaluation of the risk of workplace harassment, indicating which actions should be taken to mitigate it[92].

9. The 'Zero Tolerance' Paradigm and the Implementation of ILO Convention No. 190

The operationalisation of ILO Convention No. 190/2019 within the Italian context has found one of its most tangible expressions in the so-called "zero tolerance" policy, which is progressively embedded in both regulatory frameworks and technical standards such as UNI/PdR 125:2022.

Reading the provisions of the Procedural Norm in conjunction with ILO Convention No. 190/2019, it is clear that the assessment aimed at evaluating the risk of harassment should be extended to every person working in the business environment regardless of contractual status, thus also including candidates for selection, or workers whose relationship has ended, including all subjects who exercise authority, duties or responsibilities typically associated with the employer's role[93].

Furthermore, the directive and the ratifying law – also in the wake of established case law – have allowed for an expansion of the concept of the

92 P. Lambertucci, *Sicurezza sul lavoro e rischi psicosociali: profili giuridici*, in *DLM*, 2010, 2, pp. 347-362; L. Calafà, *Il diritto del lavoro e il rischio psico-sociale (e organizzativo) in Italia*, in *LD*, 2012, 2, pp. 257-290.

93 C. Alessi, *La Convenzione Ilo sulla violenza e le molestie sul lavoro*, cit., pp. 577-593.

"workplace"[94] clarifying that violence can occur not only in the "traditional" workplace, but also in places used for breaks or lunch breaks, or in places where toilets or changing rooms are used, during business trips or journeys, training courses, events or work-related social activities, during journeys to and from work and during business communications, including technological ones[95]. This extensive spatial-temporal perimeter reflects the recognition that contemporary work is increasingly delocalised and mediated by digital tools, which can themselves become vectors of harassment and abuse.
Moreover, the unwanted nature of harassing conduct[96], even if it does not result in actual physical aggression with a sexual content, is nevertheless capable of integrating the notion of harassment[97], since this and the consequent protection accorded are based on the objectivity of the conduct engaged in and the effect produced, with no relevance to the actual intention to cause offence[98]. In this regard, the convergence between anti-discrimination case law and OSH principles reinforces an objective approach to unlawful conduct, thereby reducing the emphasis on subjective intent and focusing on the material impact on the worker's dignity and health.
UNI/PdR 125:2022 expands on established legal principles with clear definitions.
For example, it defines "discrimination" as unequal treatment due to judgment or classification (cf. para. 3.11), "harassment (including sexual harassment)" as behaviour creating an offensive work environment (cf. para. 3.19), and 'gender stereotypes' as rigid beliefs about behaviour based on gender affiliation (cf. para. 3.29).

10. Training, Awareness-Raising and Protected Reporting in Equality Governance

A central pillar of the "zero tolerance" architecture is the systematic investment in training and awareness-raising, particularly with regard to

94 S. Scarponi, *Dopo la ratifica della Convenzione OIL n. 190/2019 su violenza e molestie nei luoghi di lavoro: un cantiere normativo ancora aperto*, cit.
95 See Articles 2 and 3, ILO Convention No. 190/2019.
96 V. Pasquarella, *La violenza di genere attraverso la lente del giuslavorista. Azioni di tutela e strumenti a supporto della vittima*, cit., pp. 1485-1511
97 Cass. 31 July 2023, No. 23295.
98 On the breadth of the notion see A. Pizzoferrato, *Violenza sessuale sui luoghi di lavoro: la Cassazione consolida la fattispecie ed apre nuovi scenari in ordine al danno risarcibile*, in *LG*, 2008, 10, pp. 1014-1018; A. Scarcella, *Violenza sessuale sul luogo di lavoro e legittimazione iure proprio del sindacato dell'iscritto a costituirsi parte civile*, in *Cassazione penale*, 2009, 4, pp. 1603-1617.

unconscious bias and the establishment of dedicated contact persons for reporting abuse.

The UNI/PdR 125:2022 also outlines specific actions to reduce the risk of harassment and violence in the workplace by focusing, on the one hand, on the training actions indicated as preparatory to the issuing of certification, to be organized at all levels, with defined frequency, on "zero tolerance" and, on the other hand, on how to report any abuse or discriminatory practices suffered because of gender. The action side is clearly the corporate side where the value dimension and hence responsible ethics must also be strengthened[99]. Workers, when informed, trained and sensitised, can effectively contribute to creating a more inclusive and safer work environment, one that is founded on serenity and the absence of any form of violence. In this light, cooperation transforms workers from mere recipients of safety (and, therefore, beneficiaries of protection) into mutual debtors of anti-harassment and anti-violence safety. Training, therefore, performs a dual function: it disseminates knowledge of rights and procedures, and at the same time reshapes workplace cultures by challenging normalised forms of discriminatory behaviour and micro-aggressions.

In the certification checklist for assessing compliance, certifiers require companies to conduct specific training on "zero tolerance" for all forms of employee violence, including sexual harassment. The guidelines mandate training courses on ethical principles and organizational methods to ensure the effectiveness of gender equality policies. These courses are mandatory for all employees, with tailored sessions for managers focusing on their specific responsibilities.

Moreover, the practice, starting from the assumption that language alone can betray the presence of prejudice and discrimination[100], provides (par. 6.3.2.6) that action should be taken on the linguistic terrain by suggesting the use of a language free of prejudicial components[101], by emphasizing, for example, the use of the neutral gender, also in advertisements published for the selection of resources[102].

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99 M. D'Onghia, M. Mc Britton, *La contrattazione decentrata in un'ottica di genere. Spunti di riflessione*, in V. Bavaro (ed.), *Indagine sulle Relazioni Industriali in Puglia*, Cacucci, 2016, pp. 101-119.

100 S. Baldin, *Eguaglianza di genere e principio antisubordinazione. Il linguaggio non discriminatorio come caso di studio*, in *GenIUS*, 2016, 1, pp. 74-88.

101 N. Cardinale, *Troppi stereotipi di genere nella motivazione di una sentenza assolutoria per violenza sessuale di gruppo: la Corte EDU condanna l'Italia per violazione dell'art. 8. Sistemapenale.it, nota a Corte EDU, J.L. c. Italia*, in *Sistema penale*, 2021.

102 The Istanbul Convention on Preventing and Combating Violence (2011), ratified in Italy by Law No. 77/2013 designates gender-based violence as "any violence directed against women as such, or which disproportionately affects women".

The aim is to drive cultural and organizational change, enhancing the skills of all workers, particularly managers, in preventing and managing workplace incidents. The guidelines stress fostering a gender-equal, violence-free environment where reporting aggression is supported.

This involves designated contact persons and practices to protect against harassment and bullying, expanding beyond basic risk prevention to include roles like RSPP, Competent Doctor, and RLS, beyond those mandated by Act No. 81/2008.

This provision should then be read in conjunction with the one contained in the section devoted to the mandated activities for obtaining equality certification (par. 6.3.1.) where it imposes on the organization seeking the certification the obligation to provide a methodology for *anonymous reporting* of this type of occurrence[103]. Anonymous and protected reporting channels, in turn, contribute to overcoming under-reporting, particularly in contexts where hierarchical asymmetries or precarious employment discourage open complaints.

The connection between this latter provision and the *whistleblowing* discipline is also evident[104].

11. Violence and Harassment Risks within the Gender Equality Certification Paradigm

Within this regulatory architecture, the Italian gender equality certification system can be read as both an opportunity and a critical testing ground for the integration of anti-discrimination and OSH logic into a coherent "equality governance" paradigm.

The Italian system of gender equality certification marks a new regulatory phase emphasizing equality and opportunities, driven by active corporate participation. Prevention of violence and harassment risks is now integral to "equality certification", offering cultural and organizational growth opportunities.

However, the Italian regulation has yet to fully integrate intersectional discrimination into its framework or provide specific indicators capturing complex situations where multiple vulnerabilities intersect. While EU

103 C. Zoli, *Il mobbing: brevi osservazioni in tema di fattispecie ed effetti*, in *LG*, 2003, 4, pp. 337-340.

104 On this topic see G. Proia, *La relazione "offuscata" tra diritti e doveri (nel "diritto del lavoro per una ripresa sostenibile", ma non solo)*, in *MGL*, 2021, 4, pp. 923-943; M. Vitaletti, *La disciplina europea in materia di whistleblowing. Effetti e ricadute sulla tutela della persona nel diritto del lavoro*, cit., pp. 447-465; M. Vitaletti, *Il lavoratore "segnalante" nell'impresa privata. Il perimetro della tutela del "whistleblower"*, in *DRI*, 2019, 2, pp. 492-512; M. Martone, *La repressione della corruzione e la tutela del whistleblower alla luce della l. 30 novembre 2017, n. 179*, in *ADL*, 2018, 1, pp. 61-78.

Directive 2023/970 recognizes intersectional discrimination, it remains unaddressed in Italian law, which primarily focuses on gender binary issues, sidelining other forms of discrimination.
The Italian Gender Equality Certification system has made strides in anti-discrimination and prevention frameworks, yet it lacks integration of intersectional discrimination. This gap results in a disconnect between certification objectives and comprehensive protection.
Intersectional discrimination amplifies vulnerability in multiple dimensions. It can exacerbate power imbalances, hindering victims from reporting harassment or violence due to fear of job loss or retaliation. Moreover, it fosters complex forms of discrimination that combine prejudices, such as gender-based violence intertwined with racial or homophobic slurs.
Victims facing intersectional discrimination often encounter barriers in reporting and accessing support, compounding the psychophysical impact of harassment. Current regulations focus on binary gender issues, overlooking the nuanced dynamics of compound discrimination.
Contemporary anti-discrimination law acknowledges that intersectional discrimination creates unique challenges not addressed by traditional frameworks. While the Italian system addresses sexual harassment prevention, it falls short in addressing compound and intersectional discrimination effectively.
From this angle, gender equality certification risks crystallising a partial view of equality, in which the gender dimension is isolated from other protected grounds, thereby limiting the transformative potential of the instrument.
A different approach to values and an innovative industrial relations system must be developed, aimed at achieving truly sustainable and inclusive economic, social and cultural growth.

12. Concluding Remarks: Integrating OSH, Anti-Discrimination Law and Certification

The analysis conducted so far shows that the Italian legal system has progressively constructed a multi-layered framework for the prevention and combating of violence and harassment at work, situated at the crossroads of anti-discrimination law, occupational health and safety regulation and technical standardisation.
In the Italian legal system, prevention and combating of violence and harassment at work are governed by several sectoral regulations, in particular anti-discrimination laws and OSH discipline.
The Equal Opportunities Code has the merit of having introduced anti-discrimination protection against violence and harassment, but exclusively

from a gender perspective. On this point, OSH legislation requires employers to adopt a holistic approach that is essential for preventing multifactorial risks such as psycho-social risks, which include violence and harassment.

From this standpoint, the progressive interaction between anti-discrimination provisions, occupational safety obligations and technical standardisation reveals an emerging model of integrated regulatory governance, in which protection is no longer confined to ex post remedies but is increasingly centred on ex ante organisational prevention.

Particularly emblematic are OSH operational tools for establishing a risk management system based on assessment and organisational procedures that enable systematic identification of all factors that lead to discriminatory consequences (including harassment and violence) that compromise the physical and mental integrity of workers.

This methodological approach is in line with ILO Convention No. 190, which requires states to combat such phenomena through the contribution of multiple disciplines, including anti-discrimination law and OSH.

At the crossroads between these sectoral disciplines, Gender Equality Certification was introduced in Italy a few years ago. However, this tool's primary objective is to promote equality exclusively from a gender perspective. Its regulatory significance nevertheless extends beyond its formal remit, since the certification framework operates as a mechanism for systematising prevention through measurable objectives, documentary verification and periodic monitoring.

It seems necessary to move beyond the binary male/female logic by means of an intersectional evaluation approach.

In this perspective, the evolution of anti-discrimination law and workplace inclusion policies requires a reconsideration of certification frameworks and their associated KPIs, so as to ensure their capacity to detect and prevent forms of discrimination arising from the intersection of multiple protected characteristics, in accordance with European legal developments and international best practices.

More specifically, an updated certification architecture should include indicators capable of capturing compound vulnerabilities by correlating gender with other relevant factors, such as age, disability, nationality, migration status, sexual orientation or contractual precariousness. In parallel, the audit function should not be limited to formal verification of policy adoption, but should also examine the consistency between declared organisational commitments, actual workplace practices and the lived experience of workers.

The adoption of an intersectional approach, one that acknowledges the specificity of disadvantage and the irreducibility of individual experiences to rigid, predefined categories, appears indispensable to promote genuinely

inclusive working environments, free from all forms of violence, harassment, and discrimination.
Collection and analysis of company data should take into account other risk factors for discrimination (age, disability, nationality, etc.). Inclusion indicators should also be structured to highlight multiple forms of discrimination.
In technical terms, this implies the refinement of both assessment and audit procedures through mixed methodologies, combining quantitative indicators, qualitative surveys, internal reporting data, organisational climate analysis and periodic review of the Risk Assessment Document (DVR). Such a methodological expansion would make it possible to verify not only whether preventive measures formally exist, but also whether they are materially effective in intercepting latent or under-reported forms of harassment and violence.
These "corrective measures" are essential to promote comprehensive equality practices in companies that can dismantle structural discrimination that is invisible to a gender-only perspective.
From an evolutionary perspective, it appears desirable to broaden both the objective and subjective scope of Gender Equality Certification through the introduction of indicators and procedures that take account of multiple and intersectional discrimination, in line with the most recent European directives and international best practices.
Updating KPIs and assessment procedures, together with the provision of specific training at all organizational levels, could represent a strategic lever for enhancing the effectiveness of inclusion policies and ensuring comprehensive and effective protection of workers against all forms of discrimination, violence and harassment.
Equally, greater integration should be encouraged between certification mechanisms, organisational and management models (MOG), occupational safety management systems (SGSL), codes of conduct and protected reporting channels, so that equality governance may develop as a coherent compliance ecosystem rather than as a set of fragmented obligations. In this broader perspective, certification could evolve into a laboratory for testing advanced forms of preventive governance, capable of aligning Article 2087 of the Civil Code, anti-discrimination law and technical standards within a genuinely intersectional framework of labour protection.
Integration of the intersectional dimension into Gender Equality Certification systems thus represents a challenge for contemporary labour law, which is increasingly called upon to respond to the growing complexity of social and occupational dynamics.
Accordingly, the future effectiveness of the Italian model will depend not only on the formal expansion of protected grounds, but also on the capacity of

institutions, certifying bodies and employers to translate intersectionality into measurable criteria, verifiable procedures and organisational accountability mechanisms.

Where Law Meets Corporate Culture: Whistleblower Protection in the US and the UK

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Abstract: The article examines whistleblowing as a vital mechanism for corporate accountability and transparency, focusing on the interplay between law and corporate culture in the United States and the United Kingdom. It argues that, while legal protection against retaliation is essential, it is insufficient without a supportive ethical environment within corporations. The study compares the US's externally oriented, incentive-based framework with the UK's internally focused, public-interest model, assessing their effectiveness across three dimensions: legal protection, encouragement to report wrongdoing, and promotion of an ethical corporate culture. It finds that, despite substantial statutory safeguards, both systems continue to foster a culture of fear and silence, discouraging potential whistleblowers. The article concludes that meaningful reform requires shifting from a compliance-based to a more culture-based approach, where ethical leadership, internal reporting systems, and trust replace financial incentives and punitive deterrence. Ultimately, whistleblowing should be embedded within corporate governance as an ethical practice that strengthens transparency, prevents misconduct, and sustains public trust in business integrity.

Keywords: *whistleblowing, culture, accountability, compliance, transparency.*

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1. Introduction

High-profile corporate scandals that burst in the early years of this century have shaken and disturbed the business community and financial markets. Calls for greater corporate transparency and accountability have emerged.[1] Considerable attention has been given to the need of companies to 'remain vigilant in detecting fraud and other forms of misconduct'.[2] As the pressure for greater transparency and disclosure increases, the need for alternative methods to combat fraud has become evident. Whistleblowing can serve as an effective means to detect and reduce wrongdoing, disclosing and reducing the risks of fraudulent activities, thus building a more accountable and transparent corporate governance framework.

Given the importance of strengthening whistleblowing procedures in companies, governments around the world have designed various legislative provisions to protect whistleblowers and ensure that the procedures are in place to respond to whistleblowers' claims. However, there are reasons to doubt the effectiveness of the existing whistleblower protection, as whistleblowers are reluctant to come forward due to the fear of retaliation, stigmatisation or marginalisation. Whistleblowers do not receive sufficient protection, leading to a culture of silence rather than openness. It is high time that companies guaranteed adequate protection for whistleblowers. This will be achieved not only by strengthening legal protections against retaliation but, more importantly, by instilling a corporate culture that promotes whistleblowing.

The aim of this article is to analyse whistleblowing from a corporate culture perspective in the US and the UK. In addition, it examines the effectiveness of the existing legal framework for the protection and encouragement of whistleblowing in the context of the US and UK corporate sectors. The examination of the effectiveness of the respective legal frameworks will be based on four distinct factors: adequacy of protection, encouragement, effective investigation, and corporate culture. Judicial interpretation has also played a central role in defining the practical scope of whistleblower protection in both jurisdictions. In particular, courts in the UK and the US have significantly influenced the

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[1] B. Fung, *The Demand and Need for Transparency and Disclosure in Corporate Governance*, in *Universal Journal of Management*, 2014 vol. 2, No. 2, 72. See also D. Kafteranis, *Confused and Not Protected: The Case of Whistle-blowers in the EU Banking and Financial Sector,* in *Capital Markets Law Journal* 2023, vol. 18, No. 3, 426-451.

[2] J. Pascoe and M. Welsh, *Whistleblowing, Ethics and Corporate Culture: Theory and Practice in Australia*, in *Common Law World Review*, 2011, vol. 40, n. 2, 144, 144.

boundaries of protected disclosures, the meaning of public interest, and the conditions under which employees may rely on statutory safeguards. A comparative analysis, therefore, requires consideration not only of legislative design but also of the case law that shapes the operation of these protections in practice.

2. The Importance of Whistleblowing in Modern Corporate Governance

The aftermath of corporate scandals has drawn significant attention to the shortcomings of corporate governance systems and the role of gatekeepers in preventing company collapse. Gatekeepers, both internal and external to corporations, play a crucial role in monitoring company performance and behaviour to enhance accountability and protect shareholders and society's interests.[3] However, the failure of external gatekeepers, such as auditors and regulators, to detect corporate wrongdoing has been widely criticised. Various factors contribute to this failure, including corporate culture, complexity of modern corporations, and information asymmetry.[4] Corporate scandals have highlighted the limitations of relying solely on external gatekeepers for oversight. While gatekeepers share some responsibility for corporate failures, they are not solely to blame. Dysfunctional corporate culture also plays a significant role. Addressing future corporate failures requires rectifying corporate corruption and mismanagement, strengthening corporate governance, and enhancing corporate accountability.

One way to achieve corporate accountability and strengthen corporate governance is to focus more on the most important asset any corporation has — its employees. Arguably, the debate on effective corporate governance needs to be expanded and shift its emphasis from external gatekeepers to internal gatekeepers. The focus should be on encouraging employees and insiders to detect and report fraudulent conduct within the company. This will be achieved by establishing a well-supported whistleblower programme to address the disclosure of wrongdoing and misconduct within the company.

Whistleblowing is defined as 'the disclosure by organisation members (former or current, such as corporate employees, directors and members

[3] J. Coffee, *Gatekeeper Failure and Reform: The Challenge of Fashioning Relevant Reforms*, in *Boston University Law Review*, 2004, Vol. 84, 301, 303.

[4] J. Coffee, *Understanding Enron: "It's About the Gatekeepers, Stupid"* (2002) in *Business Lawyer*, 2002, Vol 57, No. 4, 1403, 1404.

of a company) of illegal, immoral or illegitimate organisational practices under the control of their employers, to persons or organisations that may be able to effect action'.[5] In essence, effectively encouraging employees to disclose their knowledge of wrongdoing is a critical step in discovering fraud and other corporate misconduct. Due to the complexity of uncovering financial misconduct, internal information from low- or mid-level employees within a company would be valuable assistance. Indeed, employees have an information advantage over external gatekeepers because they have more extensive knowledge of a large corporation's inner workings. Their position as 'insiders' could be instrumental in solving the inherent information problems of external corporate monitors mentioned above.[6]

As a result, whistleblowers can be considered as an effective source of feedback about managerial malpractices,[7] which can bypass obstacles to communication that often exist in large organisations and effectively provide important information to those with the power to act.[8] Most of the time, blowing the whistle allows external monitors to request and get access to information about alleged misconduct and subsequently involve the authorities.[9] Furthermore, wrongdoing reported by a whistleblower is often revealed and thus corrected more quickly than if discovered by an external monitor. The Securities and Exchange Commission (SEC) described the whistleblower program as one of 'the most powerful weapons in [its]…enforcement arsenal', as it supports 'identify possible fraud and other violations much earlier than might otherwise have been possible'.[10] Internal reports also facilitate the correction of misconduct and wrongdoing without the financial and reputational risks associated with external exposure. At best, whistleblowers can prevent avoidable

[5] J.P. Near, M.T. Rehg, J.R. Van Scotter and M.P. Miceli, *Does the type of wrongdoing affect the whistleblowing process?*, in *Business Ethics Quarterly*, 2004, Vol 14, No. 2, 219, 220

[6] K.F. Brickey, *From Enron to Worldcom and Beyond: Life and Crime After Sarbanes-Oxley*, in *Washington University Law Quarterly*, 2003, vol. 81, No. 2, 357, 374.

[7] E.S. Callahan and T.M. Dworkin, *Do Good and Get Rich: Financial Incentives for Whistleblowing and The False Claims Act*, in *Villanova Law Review*, 1992, vol. 37, 273, 299; J.P. Near, *Whistle-Blowing: Encourage It!*, in *Business Horizons*, 1989, Vol. 32, No. 1, 2, 5.

[8] M. H. Malin, *Protecting the Whistleblower from Retaliatory Discharge*, in *University of Michigan Journal of Law Reform*, 1983, Vol. 16, No. 2, 277, 313.

[9] Callahan and Dworkin, *op. cit.* 300.

[10] U.S. Securities and Exchange Commission, SEC Awards More Than $14 Million To Whistle-Blower, Washington, SEC, October 2013, https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539854258 (accessed October 13, 2025).

misconduct from leading to indefensible consequences.[11] It is therefore arguable that the focus should be on those with accurate insider knowledge of corporations' inner workings, who can detect and identify misconduct more effectively.

Despite all the above, the actual importance of whistleblowers, namely employees who act as internal monitors within a company, is that they serve not only as a preventive mechanism against fraudulent activities but also as a trustworthy internal accountability mechanism in modern corporate governance. Overall, the combination of whistleblowing as an accountability mechanism and the role of external gatekeepers in financial reporting would help companies detect early warnings and act immediately, thus preventing the long-term disastrous consequences experienced in previous years.[12] For all these reasons, it is concluded that whistleblowers should be encouraged and protected by law, as they could play a significant role in upholding corporate accountability for the public good and promoting effective corporate governance.

The effectiveness of whistleblowing, however, depends on the level of protection and encouragement provided to whistleblowers by law. Effective whistleblowing is also attained when 'the questionable or wrongful practice (or omission) is terminated at least partly because of whistleblowing and within a reasonable time frame'[13] and when corporations encourage and embrace such internal reporting behaviour in their culture.[14] Even though there are various legislative provisions designed to protect whistleblowers, it is doubtful that the existing whistleblower protection is sufficiently effective to encourage whistleblowers to use reporting mechanisms to combat fraudulent activity. The existing legal protections most whistleblowers enjoy do not mitigate the fact that most people would rather not blow the whistle.

The decision to step up and to blow the whistle is not a straightforward one. Although one might assume that corporations appreciate such disclosures and respond positively, the experience of most whistleblowers suggests otherwise. Sometimes, misconduct goes unreported because whistleblowers are discouraged by different sociocultural and inter-

[11] N.D. Bishara, E.S. Callahan and T.M. Dworkin, *The Mouth of Truth*, in *New York University Journal of Law and Business*, 2013, Vol. 10, No. 1, 37, 43.
[12] S. Andreadakis and S. Morrison, *Whistleblowers under the Spotlight: The cases of Japan and the UK*, in *European Journal of Comparative Law and Governance*, 2016, Vol. 3, No. 4, 353, 354.
[13] J.P. Near and M.P. Miceli, *Effective Whistle-Blowing* in *Academy of Management Review*, 1995, Vol. 20, No. 4, 679, 681.
[14] M. P. Miceli and J.P. Near, *What Makes Whistle-Blowers Effective? Three Field Studies* in *Human Relations*, 2002, Vol. 55, No. 4, 455, 457-8.

organisational reasons. The following section discusses the various reasons people are reluctant to report wrongdoing, including a possible negative attitude towards whistleblowers due to their disloyalty to their company, fear of retaliation, rationalisation that nothing will be done anyway, and the time it takes for wrongdoing to be investigated.

To begin with, a significant reason why whistleblowers are reluctant to report wrongdoing is the negative attitudes they face when they decide to blow the whistle. Too often, corporations view whistleblowers defensively and negatively, which is a major disincentive for whistleblowers to come forward. Prior to the 1960s, organisational culture allowed little room for employee rights. Loyalty to the firm was the expected norm. The duty of loyalty is usually expressed as 'acting in good faith' and 'acting in the best interests of the corporation'.[15] This is particularly important for maintaining corporate information confidential and for considering what arises from the organisation's activities to be 'the property of the employer'. In fact, there was commonly an unspoken rule that 'no matter what an employee saw inside an organisation, he would never make it public, even if the activity was unlawful or unethical'.[16] For that reason, whistleblowers were considered persons whose actions were assumed to violate loyalty to their former company, and thus they faced immediate retaliation.

Within such a penal environment, support for whistleblowers was nonexistent, and wrongdoing went unrevealed, as corporations revealed only what they perceived to be in their best interests. James M. Roche, then Chairman of the General Motors Corporation, in a 1971 speech, condemned the process of whistleblowing by stating that 'some of the enemies of business now encourage an employee to be disloyal to the enterprise. They want to create suspicion and disharmony, and pry into the proprietary interests of the business. However, this is labelled - industrial espionage, whistleblowing or professional responsibility – it is another tactic for 'spreading disunity and creating conflict'.[17] Given the negative sentiment towards whistleblowers, it is not surprising that they have often been harshly dealt with by their employers, and thus, whistleblowers are reluctant to blow the whistle.

[15] T. Uys and A. Senekal, *Morality of Principle Versus Morality of Loyalty: The Case of Whistleblowing*, in *African Journal of Business Ethics*, 2008, Vol. 3, No. 1, 38, 40.

[16] E. Rocha and B. Kleiner, *To Blow or Not to Blow the Whistle? That Is the Question*, in *Management Research News*, 2005, vol. 28, No. 11/12, 80, 85

[17] M. Davis, *Some Paradoxes of Whistleblowing,* in *Business and Professional Ethics Journal*, 1996, Vol. 15, No. 1, 3, 6.

Positively, the prevalence of whistleblowing has increased dramatically since the 1970s, and organisations' attitudes towards whistleblowing have begun to change.[18] The expected company loyalty has been changed by loyalty to society, namely, environmental respect, public health, or safety issues.[19] As social loyalty increases, it was expected that whistleblowers would be inclined to speak out and companies would appreciate a disclosure of wrongdoing; however, despite the fact that there was a changing attitude towards whistleblowing, numerous cases of whistleblowing demonstrate that the act is not appreciated and that whistleblowers are severely victimised by their employers. Still, negative attitudes and conflicting perceptions toward whistleblowers persist; as Rothschild and Miethe note, 'some see [whistleblowers] as traitorous violators of organisational loyalty norms; others see them as heroic defenders of values considered to be more important than company loyalty'.[20] The following comments by Ben-Yahuda vividly illustrate this strain: 'the organisation sees whistleblowing as betraying the interests of the organisation, violating the rules of hierarchy, bypassing authority, squealing, damaging the reputation of the organisation, poisoning the atmosphere, and supplanting cooperation with suspicion. Whistleblowers, on the other hand, tend to justify their activities in such terms as doing one's job, being faithful to the community, revealing the truth, and doing something that is in the best interests of the organisation.[21]

As the statements above illustrate, conflicting perceptions of whistleblowers persist because corporations tend to regard whistleblowing as illegitimate. They consider whistleblowing a 'deviant act' that threatens the corporation's profitability and damages its reputation. Corporations 'consider whistleblowing to be a form of betrayal and therefore tend to deal with whistleblowers as traitors by punishing those who engage in this kind of activity'.[22] Consequently, employees who become aware of misconduct face a serious moral dilemma, which might discourage them from blowing the whistle. This dilemma concerns the choice between

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[18] S.A. Zeff, *The Rise of Economic Consequences*, in *Journal of Accountancy*, 1978, Vol. 146, No. 6, 56-63.

[19] J.G. Caillier, *Agency Retaliation Against Whistle-Blowers*, in *Public Integrity* 2012, vol. 15, No. 1, 29, 32

[20] J. Rothschild and T. Miethe, *Whistle-Blower Disclosures and Management Retaliation: The Battle to Control Information About Organization Corruption*, in *Work and Occupations*, 1999, Vol. 26, No.1, 107, 111.

[21] N. Ben-Yehuda, *Betrayals and Treason: Violations of Trust and Loyalty*, Westview Press, Boulder, Colo., 2001, 79

[22] Uys and Senekal op. cit. 40

their obligation to care for the public good and their duty of loyalty to their employer. That is, when considering the choices whistleblowers face, they are confronted with a dilemma between morality and loyalty. In other words, whistleblowers must deal with the conflicting expectations of being loyal to the organisation and putting its interests first, while at the same time complying with the expectation that they should act in the best interest of the public, act in the service of fairness and justice and follow their conscience. As companies expect the principle of loyalty to be the prevailing allegiance,[23] whistleblowers are reluctant to go against those expectations and thus constitute a disloyal act. Especially when negative perceptions of whistleblowing exist, whistleblowers are increasingly discouraged from reporting wrongdoing in their workplaces.

Another major disincentive which discourages employees from blowing the whistle is the fear of retaliation. Although whistleblowing may be morally justified, whistleblowers often face retaliation from employers when they attempt to stop inappropriate actions. Retaliation may be defined as an 'undesirable action taken against a whistleblower—and in direct response to the whistleblowing—who reported wrongdoing internally (i.e., within the organisation) or externally (i.e., outside the organisation)'.[24] Ostracism is one type of undesirable action reported by whistleblowers.[25] Indeed, whistleblowers have frequently found their career prospects to decline steeply. Unfortunately, whistleblowing is often seen as being synonymous with professional or career suicide.[26] Whistleblowers may also be exposed to other reprisals, such as black listing, selective downsizing, unfavourable job evaluations, dismissal, demotion, verbal harassment, shunning, poor appraisals, job transfer,

[23] R. Duska, *Whistleblowing and Employee Loyalty* in N. Bowie and P. Werhane (eds) *Contemporary Reflections on Business Ethics*, Springer, Cham, 2022, 216.

[24] J.P. Near, M. T. Rehg, J.R. V. Scotter and M.P. Miceli, *Antecedents and Outcomes of Retaliation Against Whistleblowers: Gender Differences and Power Relations*, in *Organization Science*, 2008, Vol. 19, No. 2, 221, 267.

[25] K. Williams, J. Forgas and W. Von Hippel, *The Social Outcast: Ostracism, Social Exclusion, Rejection, and Bullying*, Psychology Press, New York, 2005, 98. See also F. C. Alford, *Whistleblowers: Broken Lives and Organizational Power*, Cornell University Press, Ithaca, New York, 2001, 45.

[26] M. Fotaki, K. Kenny, S. Scriver and S Galway, *Whistleblowing and mental health: A new weapon for retaliation* in D. Lewis and W. Vandekerchove (eds.), *Developments in Whistleblowing Research*, International Whistleblowing Research Network, Oslo 2015, 106-107.

pressure to keep silent, browbeating over unrelated past offences, and denial of training or educational opportunities.[27]

Overall, whistleblowers have frequently faced severe retaliation from their own companies. Perceptions about reprisals may influence whether employees report problems; that is, employees may be less inclined to blow the whistle when they fear retaliation. Retaliatory acts may be motivated by an organisation's desire to silence the whistleblower completely or prevent the complaint from being made public.[28] Some even imply that corporations use retaliation to discourage whistleblowing, thereby deterring other potential whistleblowers from reporting in the future.[29] In this way, it is apparent that a culture of silence is emerging.

However, the abovementioned reasons are not the only disincentives to whistleblowing. The following are some other reasons identified in various studies. There is a perception that nothing can or will be done about misconduct, so there is no need to report it.[30] Moreover, it is assumed that the process of reporting wrongdoing is long and drawn-out.[31] When employees decide to blow the whistle, they should be aware that the process can take months or years to complete. Various variables encompass the time it takes to process a claim, such as the whistleblower as an individual, corporate culture, allegations of reprisals, and the evidence, or lack thereof. The realisation that it may take a long time to process and investigate a claim could make a whistleblower reluctant to forward accusations, no matter how important and valuable the claim would be.

From the discussion above, it is evident that whistleblowers do not feel confident in relying on the existing system. However, there is an

27 D. Lewis, *Retaliation for whistleblowing: some case studies on the experience of re employment/redeployment*, in *International Journal of Law and Management*, 2022, Vol. 64, No. 3, 292, 299; J. Boles, L. Eisenstadt and J. M. Pacella, *Whistleblowing in the Compliance Era*, in *Georgia Law Review* 2020, Vol. 55, No. 1, 147, 161-2; K. J. Lennane, *Whistleblowing—A Health Issue*, in *British Medical Journal*, 1993, Vol. 307, 667, 669.

28 J. Mesmer-Magnus and C. Viswesvaran, W*histleblowing in Organizations: An Examination of Correlates of Whistleblowing Intentions, Actions, And Retaliation*, in *Journal of Business Ethics*, No. 62, 2005, 266, 271; M. J. Gundlach, S. C. Douglas and M. J. Martinko, *The Decision to Blow the Whistle: A Social Information Processing Framework*, in *Academy of Management Review*, Vol. 28, No. 1, 2003, 107, 111.

29 E. Henik, *Mad as Hell or Scared Stiff? The Effects of Value Conflict and Emotions on Potential Whistle-Blowers*, in *Journal of Business Ethics*, 2008, Vol. 80, 111, 113.

30 W. Vandekerckhove and A. Phillips, *Whistleblowing as a protracted process: A study of UK whistleblower journeys*, *Journal of Business* Ethics, 2019, Vol. 159, 201, 213.

31 O. Lobel, *Citizenship, Organizational Citizenship, and the Laws of Overlapping Obligations*, in *California Law Review*, 2009, Vol. 97, No. 2, 433.

immediate need to protect these people under the law and encourage them to disclose wrongdoing without fear of retaliation or stigmatisation. In order to encourage whistleblowers to be more willing to blow the whistle, critical attention should focus on two key factors. Firstly, the effectiveness of the legal protection, which will be addressed in the next part and secondly, the corporate culture. Even if there is a regulation in place and a legal framework designed to protect whistleblowers, it is not enough if there is no ethical corporate culture to support it.

With a view to achieving effective whistleblowing policies, corporations need to cultivate a culture in which reporting fraudulent misconduct is considered welcome and necessary. The quality of corporate governance depends highly on the corporate culture. Corporate culture is a popular but elusive concept that has been the subject of considerable academic debate for many years and has been defined in various ways by scholars and practitioners.[32]

Corporate culture is defined as a system of publicly and collectively accepted 'meanings' which operate for a group/organisation at a particular time, as a pattern of 'basic assumptions' developed by a given group or organisation as it learns to cope with its environment and more simply as 'the way we do things around here'.[33] In the last decades, corporate culture has been referred to as the 'climate and practices that organisations develop around their handling of people, or to the espoused values and credo of an organisation'[34], or 'the shared values and beliefs of corporate members about what works within an organisation'.[35] As these definitions imply, values are considered the most fundamental aspect of culture. To understand a culture thoroughly, it is essential to understand its cultural values. Values form attitudes, which, in turn, shape people's behaviour. Indeed, cultural values shape the behaviour of all individuals in society and within the social environment.[36]

As it can be seen in the management literature, there is often the implication that a corporation's culture can influence ethical or unethical

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32 L. Sagiv and S.H. Schwartz, *Personal values across cultures*, in *Annual Review of Psychology*, 2022, Vol. 73, 517, 545.

33 E. H. Schein, *The Role of The CEO In the Management of Change*, in T. A. Kochan and M. Useem (eds.), *Transforming Organizations*, Oxford University Press, Oxford, 1992, 111. See also H.M. Trice and J.M. Beyer, *Studying Organizational Cultures Through Rites and Ceremonials*, in *Academy of Management Review*, 1984, Vol. 9, No. 4, 653–669.

34 J. M. Shafritz, J.S. Ott, Y. Suk Jang, *Classics of Organization Theory*, 8th edn, Cengage Learning, Boston, MA, 2015, 302.

35 E.R. Reidenbach and D.P. Robin, *A Conceptual Model of Corporate Moral Development*, in *Journal of Business Ethics*, 1991, Vol. 10, No. 4, 273, 273.

36 W. Griswold, *Cultures and societies in a changing world*, Sage, London, 2012, 290.

behaviours.[37] Corporations create cultures that can influence a company in a positive or negative way, depending on their aims and objectives, course of action, and tactics. For instance, when unethical behaviours are protected by the culture, members tend to reveal more unethical behaviour.[38] Unethical behaviour can be considered an indicator of a company's culture, and consequently, such behaviour might be associated more with characteristics of the business itself than with those of the individual employee.[39] For instance, when a company allows unethical behaviour to go unpunished and expects individuals to remain silent, it is clear that it instils a culture of silence. A culture, which does not promote ethical behaviour and makes it hard (or even impossible) for ethical oppositions to be heard, undermines truth and transparency.
Conversely, when ethical behaviours are strengthened by the corporate culture, these behaviours increase. Behaving ethically depends on the individual's capacity to identify ethical issues and to see things from an ethical perspective. Endeavours to enhance ethical standards and diminish pressure for unethical behaviours should, as a result, focus on the corporation and its culture. If a situation is not acknowledged as including ethical components, ethical reasoning will not be used to address it. A strong, ethical culture is necessary for openness and transparency in corporate governance.[40] In fact, the stronger the culture, the more effective the corporation. Researchers have supported some of these views by reporting findings that cultural 'strength' or certain kinds of cultures correlate with economic performance.[41] In the 1980s, corporate culture was recognised as a key factor for the success of the corporation. Trevino et.al have also established that more democratic cultures are linked with an increase in ethical conduct, including greater eagerness to

[37] S. Key, *Organizational Ethical Culture: Real or Imagined?*, in *Journal of Business Ethics*, 1999, Vol. 20, No. 3, 217, 218. See also A.Y.S. Chen, R. B. Sawyers and P. F. Williams, *Reinforcing Ethical Decision Making Through Corporate Culture*, in *Journal of Business Ethics*, 1997, Vol. 16, No. 8, 855, 856.
[38] L.K. Treviño, K.D. Butterfield and D.L. McCabe, *The Ethical Context in Organizations: Influences on Employee Attitudes and Behaviors*, in *Business Ethics Quarterly*, 1998, Vol. 8, No. 3, 447, 455.
[39] M. Mccuddy, K. Reichardt and D. Schroeder, *Ethical Pressures: Fact or Fiction?*, in *Strategic Finance*, 1993, Vol. 74, No. 10, 57, 58.
[40] D. Salvioni, S. Franzoni, F. Gennari and R. Cassano, *Convergence in corporate governance systems and sustainability culture*, in *International Journal of Business Performance Management*, 2018, Vol. 19, No. 1, 7, 14.
[41] J.B. Sorensen, *The Strength of Corporate Culture and The Reliability of Firm Performance*, in *Administrative Studies Quarterly*, 2002, Vol. 47, No. 1, 70, 87.

take individual responsibility for behaviour.[42] It is arguable, therefore, that an ethical corporate culture explicitly promotes and encourages ethical decision-making and behaviour. In addition, a company which promotes an ethical corporate culture will make whistleblowers' voices heard without fear of stigmatisation or retaliation. Especially when the leadership of a corporation promotes positive perceptions surrounding the idea of blowing the whistle, whistleblowers will be increasingly encouraged to come forward and expose unethical practices or report wrongdoing in their workplace.

Unfortunately, the existing corporate culture in modern corporate governance cultivates a culture of silence rather than openness. It does not promote ethical behaviour and makes it hard (or even impossible) for ethical oppositions to be heard. Even when they are heard, it fails to take them seriously. Actually, various corporate scandals at the beginning of the millennium showed that many people were aware of the company's questionable financial practices and unethical behaviours. However, they preferred to remain silent due to the corporate culture's expectations.[43]

In essence, the failure of gatekeepers and dysfunctional corporate culture significantly contribute to corporate collapses, amplifying broader governance issues. External gatekeepers struggle to monitor effectively, while whistleblowing emerges as crucial for transparency. However, whistleblowers often face risks due to inadequate protections. Addressing corporate culture is essential. Moving forward, we will analyse whistleblowing protections in the UK and the US, considering their integration into corporate culture.

3. Assessment of the Effectiveness of the Current Whistleblower Legal Framework in the US and the UK

The evaluation and assessment of the US and UK legal frameworks will focus on three key factors. Firstly, the adequacy of legal protection against retaliation for whistleblowers will be assessed. Secondly, the level of encouragement for employees to report wrongdoing will be examined.

[42]Treviño, Butterfield and McCabe, op. cit., 471.

[43] On this topic, see T. Devine and T.F. Maassarani. *The corporate whistleblower's survival guide: A handbook for committing the truth*. Berrett-Koehler Publishers, San Francisco, CA, 2011.

Lastly, the promotion of an ethical corporate culture, fostering openness and transparency, will be analysed.[44]

3.1 Protection afforded to whistleblowers in the US and the UK

Commencing with the US system, it is worth mentioning that the framework of protection for whistleblowers can be characterised as 'patchwork'[45]. This is mainly because there are numerous, often complicated and hard-to-find provisions designed to protect whistleblowers in both the private and public sectors. These include anti-retaliation provisions, which are encompassed in federal statutes regulating terms and conditions of employment, such as anti-discrimination laws, health and safety laws, minimum wage and maximum hours laws, and pension laws.[46]

The primary specialised federal statute, which provides general whistleblower protection to most federal public employees, is the Whistleblower Protection Act of 1989. More recent additions in the US legislative framework encompass the Sarbanes-Oxley Act of 2002 (SoX), the Tax Relief and Health Care Act of 2006 (TRHCA), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), which aim to further reinforce the efforts of the government to protect and support whistleblowers. For instance, section 806 of SoX bans retaliation against employees of publicly traded and private companies or employees of nationally recognised statistical rating organisations who disclose 'questionable accounting or auditing matters.' Section 922 of the Dodd-Frank Act amended the Securities Exchange Act of 1934 to add a new Section 21F, which prohibits employers from discharging or otherwise discriminating against an employee for providing information related to wrongdoing. Dodd-Frank also provides protections for whistleblowers' anonymity when they decide to file a claim. The interpretation of these protections has also been shaped by US courts. In *Lawson v. FMR LLC,*[47] the Supreme Court extended protection under Sarbanes–Oxley to employees of private contractors serving public companies, significantly broadening the statute's reach. By contrast, *Asadi*

[44] For broader comparative analysis of whistleblower protection frameworks, see D. Lewis and W. Vandekerckhove (eds), *Developments in Whistleblowing Research*, International Whistleblowing Research Network, Oslo, 2015.
[45] B.H. Earle and G.A. Madekn, *The Mirage of Whistleblower Protection Under Sarbanes-Oxley: A Proposal for Change*, in *American Business Law Journal*, 2007, Vol. 44, No. 1, 1, 17.
[46] See National Labor Relations Act 1935 and Fair Labor Standards Act 1938.
[47] 571 U.S. 429 (2014)

v. G.E. Energy (USA), LLC adopted a narrower interpretation of Dodd-Frank's anti-retaliation provisions, highlighting tensions that the Supreme Court later addressed.[48]

Although there is a plethora of legislative protections for whistleblowers, a notable weakness undermines their protection. The whistleblower provisions of federal statutes provide protection only to employees of publicly traded companies who report unlawful accounting and other financial practices.[49] Both public and private employees may be protected under topic-specific federal laws, but such laws apply only to a narrow set of unlawful activities.[50] Private-sector employees are not protected by federal whistleblower protection statutes if they report violations of federal laws that lack whistleblower protection provisions or of state laws.[51] Thus, in many situations, employees of private companies or state and local governments cannot seek federal whistleblower protection.

In contrast to the US 'patchwork' of protection, in the UK, whistleblower protection is primarily governed by Part IVA of the Employment Rights Act 1996 (ss 43A–43L), as amended by the Public Interest Disclosure Act 1998 (PIDA). This framework adopts a more unified legislative approach, seeking to balance organisational confidentiality with employees' ability to disclose wrongdoing in the public interest.[52] In its effort to promote and protect open whistleblowing, regulatory oversight, and broader accountability, PIDA has established a tiered disclosure system that focuses on internal reporting. Interestingly, PIDA has been considered as a 'forward-looking legislation' and as one of the most 'far-reaching whistleblower protection laws in the world'[53]. Thus, it has set a benchmark for regulatory whistleblowing across many countries.[54]

[48] No. 12-20522 (5th Cir. 2013). The court ruled that the Dodd-Frank Act (15 U.S.C. § 78u-6(a)(6)) defines a whistleblower specifically as someone who provides information to the SEC. Consequently, an employee who makes only internal reports of wrongdoing is not protected under the Act's anti-retaliation provisions.

[49] G. Sinzdak, *An Analysis of Current Whistleblower Laws: Defending A More Flexible Approach to Reporting Requirements*, in *California Law Review,*2008, Vol. 96, No. 6, 1633, 1645.

[50] For example, Occupational Safety and Health Act 1970. See P. Yeoh, *Whistleblowing laws: Before and after Sarbanes–Oxley*, in *International Journal of Disclosure and Governance*, 2015, Vol. 12, No. 3, 254, 261.

[51] W. Dorsey, *An Overview of Whistleblower Protection Claims at The United States Department of Labor*, in *Journal of National Association of Administrative Law Judiciary*, 2006, Vol. 26, No. 1, 43, 51.

[52] J. Mendelsohn, *Calling the Boss or Calling the Press: A Comparison of British and American Responses to Internal and External Whistleblowing*, in *Washington University Global Studies Law Review*, 2009, Vol. 8, No. 4, 723.

[53] E. Oakley and A. Myers, *The UK: Public Concern at Work*, in R. Calland and G. Dehn (eds), *Whistleblowing Around the World: Law, Culture & Practice*, PCAW, London, 2004, 173.

However, PIDA also has its flaws. Concerns and criticism have arisen as to the insufficiency of the protection offered to whistleblowers. Firstly, the protection under the Act is limited as it only deals with specific disclosures relating to: (1) criminal offenses, (2) failure by a person to comply with a legal obligation, (3) miscarriages of justice, (4) dangers to health and safety, (5) dangers to the environment, or (6) concerns that information about one of these matters is being deliberately concealed. Accordingly, PIDA might not protect disclosures for everything which is in the public interest.[55]

The major criticism, however, is that whistleblowers are given protection only if they have already suffered detriment as a result of the disclosure they have made.[56] In essence, PIDA aims to protect those who raise a specific type of concern in a specified way, and it does so only indirectly by encouraging employers to have effective whistleblowing arrangements in place and to treat whistleblowers well. It does not protect employees, who have just raised their concerns about the company's malpractices. Apparently, the PIDA's protection of whistleblowers raised uncertainties about its effectiveness. As a consequence, whistleblowers prefer to remain silent even if they are aware of malpractices in their workplace.

The doctrinal development of PIDA has been heavily influenced by judicial interpretation. In *Parkins v Sodexho Ltd*, the broad interpretation of "legal obligation" significantly expanded the scope of protected disclosures, prompting concern that led to legislative reforms a decade later.[57] Subsequently, *in Chesterton Global Ltd v Nurmohamed,* the Court of Appeal clarified the meaning of the public interest requirement introduced by the Enterprise and Regulatory Reform Act 2013 (ERRA), confirming that disclosures affecting a section of the workforce may satisfy the statutory threshold.[58] Further clarification was provided in *Kilraine v London Borough of Wandsworth*, which refined the distinction between

See also A. Myers, *Whistleblowing—The UK Experience*, in R. Calland and G. Dehn (Eds), *Whistleblowing Around the World: Law, Culture and Practice*, PCAW, London, 2004, 132.

[54] W. Vanderkerchove, *Whistleblowing and Organizational Social Responsibility: A Global Assessment*, Ashgate, Aldershot, 2006, 293-4.

[55] ERA 1996 § 43b; L. Vickers, *Whistling in The Wind*, in *Legal Studies*, 2000, Vol 20, No. 3, 428, 434.

[56] J. Ashton, *15 years of whistleblowing protection under the Public Interest Disclosure Act 1998: Are we still shooting the messenger?*, in *Industrial Law* Journal, 2015, Vol. 44, No. 1, 29, 38.

[57] *Parkins v Sodexho Ltd* (2002) IRLR 109

[58] [2017] EWCA Civ 979. In this case, a disclosure affecting around 100 senior managers was sufficient to constitute the public interest.

allegations and disclosures of information.[59]
As the UK's whistleblower framework needed improvement, the ERRA was a welcome addition. Still, however, it did not fill all of the previous gaps.[60] The EERA includes a requirement that whistleblowers act in the public interest, but removes the need for disclosure to be in 'good faith' as PIDA required. This leaves public interest as the primary test for any disclosure made in relation to protections under PIDA without examining 'bad faith' disclosures made by people with no ethical intentions. The UK has been a pioneer in public disclosures and whistleblower protection, with a track record of government initiatives to improve accountability, raise awareness of reporting mechanisms, and ultimately drive cultural change.[61]
Nowadays, whistleblowers in both the US and the UK have more protection against retaliation, but the law varies significantly from theory to practice. The reality is very different as the application and enforcement of certain provisions fail to ensure adequate protection and to serve justice. Many reports and studies from both the US and the UK have revealed that retaliation and reprisals against whistleblowers are frequent phenomena.[62] The published percentages are often shocking and indicate a culture of victimisation and silence rather than one of openness.[63] Other studies also reported how severely retaliation may affect whistleblowers' mental health, finances, and their relationship with family and friends.[64] Whistleblowers may also feel haunted, unable to control or avoid the situation and its consequences.
It is still early to make conclusive evaluations, but there has still been growing concern that neither PIDA nor federal law in the US is working

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[59] See also *Babula v Waltham Forest College* [2007] EWCA Civ 174, confirming that a reasonable belief in wrongdoing may suffice even where the underlying allegation is ultimately mistaken.
[60] D. Lewis, *Ten Years of Public Disclosure Act 1998 Claims: What Can We Learn from The Statistics and Recent Research?*, in *Industrial Law Journal*, 2010, Vol. 39, No. 3, 325, 328; K. Bouloy, *The Public Interest Disclosure Act 1998: Nothing More Than A "Cardboard Shield"*, in *Manchester Review of Law, Crime &* Ethics, 2012, Vol. 1, No. 1, 1-18.
[61] C. Hodges, *Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics*, Hart Publishing, Oxford, 2015, 524.
[62] I. Macneil, *Enforcement and Sanctioning*, in E. Ferran, N. Moloney and J. Payne (eds), *The Oxford Handbook of Financial Regulation*, OUP, Oxford, 2015, 287.
[63] Devine and Maassarani, op. cit., 187.
[64] J. S. Lubalin and J. L. Matheson, *The Fallout: What Happens to Whistleblowers and Those Accused but Exonerated of Scientific Misconduct?*, in *Science of Engineering Ethics*, 1999, Vol. 5, No. 2, 229, 237; B. Bjørkelo, S. Einarsen, M. Birkeland Nielsen and S. Berge Matthiesen, *Silence Is Golden? Characteristics And Experiences of Self-Reported Whistleblowers*, in *European Journal of Work and Organisational Psychology*, 2011, Vol. 20, No. 2, 206.

as it should. The fact that too many whistleblowers faced employer retaliation and that others believed speaking up may be risky, not only increased concerns about ineffective protection but also created a wall of corporate silence. With the success rate being considerably low and with whistleblowing scandals increasingly emerging on a regular basis, more reforms need to be initiated in both countries.

3.2 Provision of Adequate Channels for Reporting Wrongdoing

Both the US and the UK provide internal and external compliance programmes that allow employees to report malpractice within the company. However, the main difference between them is that the US system favours external reporting by giving greater protection to external reporting, while the UK seems to favour more internal reporting and the idea of 'doing the right thing'. Such a distinction should not be treated as a sign of concern because at least there is a framework of protection, and there should not be pressure, at least at the present moment, to have in place a kind of universal pathway to blow the whistle.[65]
US federal statutes mostly support external reporting as they aim to protect employees who report wrongdoing to a government agency. However, when a statute does not specify whether it prefers disclosure to be reported internally or externally, it is up to the discretion of the US courts to decide whether employees will be protected. Although courts have consistently held that the federal anti-retaliation statutes should be interpreted broadly to protect both internal and external reports, it is uncertain whether employees who make internal reports will be protected by the law.[66] For instance, the US Whistleblower Protection Act of 1989 allows both internal and external reporting, but some courts have inherently limited the protection afforded to many internal reports.[67] Additionally, Dodd-Frank requires whistleblowers to report possible

[65] M. Brivot, M. Roussy and Y. Gendron, *The riskification of internal auditors' ethical deliberation: An emerging third logic between norms and values?*, in *Journal of Business* Ethics, 2023, Vol. 19, 1-22, 14. See also R. Mannion, J. Blenkinsopp, M. Powell, J. McHale, R. Millar, N. Snowden, and H. Davies, *Understanding the knowledge gaps in whistleblowing and speaking up in health care: narrative reviews of the research literature and formal inquiries, a legal analysis and stakeholder interviews*, in *Health Services and Delivery Research*, 2018, Vol. 6, No. 30, 1, 14-15.
[66] I. Kampourakis, *Whistleblowers as regulatory intermediaries: Instrumental and reflexive considerations in decentralizing regulation*, in *Regulation & Governance*, 2021, Vol.15, No. 3, 745, 750.
[67] S. Andreadakis and D. Kafteranis, *Internal vs. External Whistleblowing: Doing the Right Thing … in the Right Way*, in M. Van Portfliet and A. Phillips (eds) *Whistleblowing Policy and Practice, Volume II: External Aspects*, Palgrave, Cham, 2025, 79-95.

wrongdoings directly to the SEC, as only then can they benefit from the incentives and awards offered for their disclosures. Although there is a provision that allows whistleblowers to first report the violation internally within 120 days, the SEC made it clear that reporting through the internal compliance system is not a requirement for an award.[68]

Moreover, Dodd-Frank requires the Commodity Futures Trading Commission (CFTC) and the SEC to establish whistleblower offices that provide a formal venue for whistleblowers to raise their concerns and submit evidence to the relevant agencies. The fact that there are offices where claims can be filed and evidence presented can significantly change public perceptions of whistleblowing. Whistleblowers are encouraged not just to step up and fight against a company, but to do it through official channels. In this way, they receive support, advice, and expertise from competent authorities, and can be assured that their claim will be processed.[69] This restrictive interpretation was confirmed in *Digital Realty Trust, Inc. v. Somers*[70], where the Supreme Court held that Dodd-Frank's anti-retaliation protection applies only to individuals who report directly to the SEC. The decision reinforced the external orientation of the US model and arguably weakened incentives for internal reporting.[71]

However, these provisions can be criticised for encouraging a preference for external reporting. Specifically, they leave the impression that internal reporting mechanisms would be neither useful nor effective. As a result, the message that most employees will get is that if they want to blow the whistle, they should directly provide information to the SEC instead of giving time to the company to investigate the information themselves. Additionally, critics of this system have contended that a 120-day period would be insufficient for companies to fully investigate and resolve such

[68] M.H. Hurwitz and J. Kovacs, *An overview of the SEC's Whistleblower Award Program*, in *Journal of Corporate & Financial Law*, 2016, Vol. 21, No. 3, 531, 543.

[69] R. Wortley, P. Cassematis and M. Donkin, *Who Blows the Whistle, Who Doesn't and Why*, in A. Brown (ed), *Whistleblowing in The Australian Public Sector: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations*, Australian National University, Canberra, 2008, 89-90.

[70] *Digital Realty Trust, inc v. Somers*, n° 16-1276, 583 U.S.

[71] Under the Dodd-Frank Act, the US Supreme Court made it clear that whistleblowers can have financial rewards only if they report to the SEC. They can report internally but should report to the SEC to be eligible for a reward. For a detailed analysis, see S. Andreadakis and D. Kafteranis, *Internal Whistleblowing in the US after Digital Realty Trust v Somers: Any Lessons to be Learnt from Europe?,* in Industrial Law Journal, 2025, Vol. 54, No. 2, 357-388.

matters internally.[72] It is therefore arguable that the US model is clearly oriented towards external reporting, leaving little opportunity for companies to correct their wrongdoings internally.
In contrast, in the UK, there is discouragement of wider disclosures and external reporting, as employees are more encouraged to blow the whistle internally through the internal mechanisms and channels in place for handling such disclosures.[73] The focus is based on the idea that internal reporting will enhance the development of an ethical culture within the companies.[74] In accordance with the above, it is assumed that, if companies want to detect, combat, and eliminate fraudulent practices, they should focus on increasing transparency and accountability in their internal procedures and on fostering a more ethical culture. This will be achieved by changing companies from the inside. The support of external reporting undermines internal procedures and does not encourage companies to change their culture and mindset. Furthermore, companies should support internal reporting because otherwise, when whistleblowers make disclosures externally first, or they prefer not to raise their concerns at all, then unjustified harm can be done to the reputation of the corporation when the news reaches the public domain.[75] It is wiser for companies to take internal whistleblowing seriously by adopting a long-term perspective and showing sufficient commitment to the reconstruction of their internal culture. In that way, employees will be more confident in relying on the system and in exposing malpractices for the benefit of the company and the public in general.

3.3 Provision of Financial Incentives

The encouragement of whistleblowers through financial incentives is a very controversial area of law. This is illustrated by the different perspectives held by the UK and the US. The US provides incentives to whistleblowers to encourage them to come forward with information about wrongdoing and misconduct, whereas the UK does not.

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[72] F.D. Lipman, *Whistleblowers Incentives, Disincentives and Protection Strategies*, Wiley Corporate F&A, New Jersey, 2012, 34-6.
[73] K. Kenny, W. Vandekerckhove and M. Fotaki, *The Whistleblowing Guide: Speak-up Arrangements, Challenges and Best Practices*, John Wiley & Sons, London, 2019, 23.
[74] N. Smaili and P. Arroyo, *Categorization of whistleblowers using the whistleblowing triangle*, in *Journal of Business Ethics*, 2019, Vol. 157, No. 1, 95, 99
[75] H. Stolowy, Y. Gendron, J. Moll, and L. Paugam, *Building the legitimacy of whistleblowers: A multi-case discourse analysis*, in *Contemporary Accounting Research*, 2019, vol. 36, No.1, 7, 34.

The False Claims Act provides a bounty of usually 15-25% to prospective whistleblowers, but it can reach as high as 30% of any recovered damages of the total proceeds as long as the amounts identified through the involvement of the whistleblower (taxes, penalties, and interest) exceed the amount of $2 million. The scope for financial sanctions has been further extended by the Dodd-Frank Act. Whilst the False Claims Act applies only to financial fraud committed against the government, the Dodd-Frank Act applies to a much broader range of financial fraud committed by a business. Section 922 of Dodd-Frank authorised the whistleblower program to reward individuals who offer high-quality original information that leads to a successful court action. For a whistleblower to be eligible for an award, the SEC must obtain monetary sanctions in an action or related actions totalling more than $1 million. The incentives range from 10% to 30% of the monetary sanctions.[76]

By contrast, UK legislation denies protection to whistleblowers who provide information for gain. The Financial Conduct Authority has expressed concerns over the impact of incentivising whistleblowers.[77] Reports have illustrated that a rewards system is not suitable for the UK's regulatory framework, as it 'undermines the moral stance of a genuine whistleblower and it will inevitably result in the negative portrayal of whistleblowers'.[78]

Despite the fact that in the US the reward system seems to be working based on the amounts of the rewards paid, bounty awards and financial incentives have been heavily criticised for various reasons. Concerns have been raised regarding the effectiveness of such a strategy, the payment of whistleblower rewards, or the incurring of unnecessary administrative costs on courts and agencies.[79] Indeed, there is a financial hurdle for the

[76] J. Bowers Qc, M. Fodder, J. Lewis and J. Mitchell, *Whistleblowing: Law and Practice*, 2nd ed., OUP, Oxford, 2012, 368.

[77] Financial Conduct Authority, *The FCA's response to the Parliamentary Commission on Banking Standards*, FCA, October 2013, London, https://www.fca.org.uk/publication/corporate/pcbs-response.pdf last accessed 12 October 2025

[78] Public Concern at Work, *The Whistle-Blowing Committee: Report on The Effectiveness of Existing Arrangements for Workplace Whistle-Blowing in the UK*, November 2013, London, 14, https://www.tuc.org.uk/sites/default/files/Whistleblowing%20Commission%20Report%20Final.pdf last accessed 12 October 2025. See also S. Lombard, V. Brand and J. Austin, *Corporate Whistleblowing Regulation*, Springer, Singapore, 2020, 45-48.

[79] Y. Feldman and O. Lobel, *The incentives matrix: the comparative effectiveness of rewards, liabilities, duties and protections for reporting illegality*, in *Texas Law Review*, 2010, Vol. 88, No. 6, 1151, 1161 and U. Desai, *Crying Foul: Whistleblower Provisions of The Dodd-Frank Act of 2010*, in *Loyola University Chicago Law Journal*, 2012, Vol. 43, No. 2, 427.

federal government to spend substantial sums to effectively implement the goals of the Dodd-Frank Act's whistleblower provisions. Although the pay-outs will eventually come from the offending corporations, the SEC is responsible for conducting the necessary investigations before it can collect fines and make payments to whistleblowers.[80]

The biggest concern, however, is that such systems may negatively influence the behaviour and the moral decisions that whistleblowers may take. Offering financial incentives to whistleblowers poses a major risk: they may make opportunistic decisions about disclosing wrongdoing and become more self-interested than socially interested. Someone who is self-interested and opportunistic usually needs only the prospect of a minimal personal benefit (weighed against any prospect of personal risk) to be induced to disclose information to external agencies. However, when the prospect of a significant personal benefit is huge, then even loyal employees might consider bypassing internal reporting procedures and report possible wrongdoings directly to external agencies instead.

Furthermore, employees may be less inclined to report malpractice internally if they believe they could recover much larger bounties. Equally, there is always the jeopardy that whistleblowers will not report anything, as they will choose to wait until the wrongdoing intensifies to 1 million and reaches a point where they will be eligible for a financial reward.[81] Lastly, employees may be false accusers who turn into informants against their employers, with inadequate safeguards regarding the quality of their information and without moral motivation.[82] Thus, disclosures could be made for malicious rather than altruistic reasons.

In general, even if we accept that this system of financial incentives is the most suitable for the US, as it brings the expected results, we cannot accept the negative impact that such a method has on the corporate culture and on the decision-making of future whistleblowers. In fact, whistleblowing will become an endless pursuit of financial rewards

[80] M. Davis, *Rewarding whistleblowers: a conceptual problem*, in *International Journal of Applied Philosophy*, 2012, Vol. 26, No. 1, 269, 272.

[81] M. Baer, *Reconceptualizing the Whistleblower's Dilemma*, in *University of California Davis Law Review*, 2016, Vol. 50, No. 5, 2215, 2219. See also S. Andreadakis and D. Kafteranis, *A New Perspective on the Protection of Whistleblowers Under ECHR: Halet v Luxembourg*, in *Studies in Logic, Grammar and Rhetoric*, 2023, Vol. 68, No. 1, 611-627.

[82] Y. Givati, *Of snitches and riches: Optimal IRS and SEC whistleblower rewards*, in *Harvard Journal on Legisation*, 2018, Vol. 55, No. 1, 105, 111.

disconnected from its principal intention: eliminating misconduct and thus establishing transparent corporate governance.[83]

3.4 Enhancing an Ethical Corporate Culture

The comparative legal frameworks reveal that statutory protection alone cannot generate organisational trust. Legal rules may prohibit retaliation ex post, but they cannot, by themselves, cultivate the internal conditions necessary for employees to perceive disclosure as both safe and institutionally valued. The most important criterion which the existing legal framework failed to support is the promotion of an ethical corporate culture. Not only the US statutes but also the PIDA seem to have had little effect on corporate culture. Both failed to achieve openness, transparency and accountability.

Especially in the US, the failure of its legal framework to promote a corporate culture is related to the external reporting system. As mentioned before, requiring external reporting to authorities and obliging whistleblowers to report to the SEC for a chance at financial reward undermines internal procedures and prevents companies from changing their structures or mindset. Change always comes from the inside, and companies should be left to try to correct their wrongdoings on their own.[84] For this reason, internal reporting should be supported and implemented in the company's culture.

In addition, the US system of monetary reward does not encourage the enhancement of a corporate culture that encourages employees to act ethically in the interests of their company and society in general. Specifically, offering financial incentives to encourage whistleblowing could cause 'market norms of self-interest to govern whistleblowing decisions rather than ethical norms, thereby decreasing the perceived moral obligation employees feel to blow the whistle'.[85] Therefore, it is better to rely on the UK's approach, which promotes individual initiative and sensibility rather than reliance on a bounty. The problem, however, is that the UK provides no meaningful reward or recognition for legitimate whistleblowers. The lack of meaningful reward or other recognition for

[83] For a comparative evaluation of reward-based systems, see Y. Feldman and O. Lobel, *The Incentives Matrix* in *Texas Law Review*, 2010, Vol. 88, No. 6, 1151.
[84] Lewis op.cit
[85] M. Fullan, *Leading in a culture of change*, John Wiley & Sons, London, 2007, 77-78; D. Kafteranis, *The question of one million dollars: financial rewards or not for the whistle-blowers*, in *International Journal of Banking Law and Regulation*, 2021, Vol. 36, No. 4, 160.

whistleblowing reflects a corporate culture that is not conducive to whistleblowing.[86]

Furthermore, ignoring complaints or delaying action on the investigation of wrongdoing is also an indication that the legal framework fails to foster a good corporate culture. Such inaction gives the green light for illegal activities to be permitted and go undetected. In contrast, when a corporate culture is established in companies where employees feel their contributions and concerns are taken seriously, they have more incentive to report wrongdoing, thereby eliminating potential future risks. Regarding hotlines, unfortunately, companies often go no further than implementing an anonymous hotline that 'is not felt to be the right answer when attempting to promote and encourage a culture of openness, transparency and accountability'.[87] It is not clear how a hotline, without any other supporting mechanisms and active initiatives, can ensure that people will start behaving ethically. While many corporations and state institutions are keen to endorse transparency and to protect whistleblowers, what really matters is how much trust there is in these mechanisms and whether there is indeed an intention to hear what the hotlines reveal, rather than just shooting the messenger, as is so often the case nowadays.[88]

In conclusion, the analysis reveals that the current legal frameworks for whistleblower protection in both countries fall short of their intended effectiveness. While no significant gaps exist in the letter of the law, shortcomings are evident in its spirit. Bridging these gaps requires an emphasis on fostering an ethical corporate culture. Corporate culture serves as an essential "gap filler" by promoting socially desirable behaviours beyond legal requirements. Effective protection, encouragement, and enforcement under the law can only be realised in an environment where whistleblowers feel safe from retaliation, stigma, and marginalisation.

Encouraging whistleblowing effectively necessitates a shift from the prevailing culture of silence and fear to one characterised by transparency and ethics. The crucial challenge is cultivating and managing an ethical corporate culture. The next section will offer recommendations to enhance legal protections for whistleblowers and promote employee engagement by instilling a culture of openness and transparency.

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86 Lipman op.cit.,10

87 D. Lewis and T. Uys, *Protecting Whistleblowers at Work: A Comparison of The Impact of British and South African Legislation*, in *Managerial Law*, 2007, Vol. 49, No. 3, 76, 82.

88 Ashton, op. cit., 29-30

4. Recommendations for Changing the Existing Corporate Culture

The existing corporate culture fosters fear and silence, as whistleblowers feel they cannot be protected solely by the law. The 'key to protection for whistleblowers is to be found within the company itself, in its corporate culture and inner commitment to setting up effective compliance programmes'.[89] It is crucial that the existing 'culture of silence' be replaced by a culture that promotes ethical behaviour, transparency, and accountability. Creating an ethical culture is the only way companies can position themselves to meet the requirements of transparency and accountability.

An important first step in changing the existing corporate culture and thus providing whistleblower protection is developing an internal code of ethics. Such a code requires companies to create compliance systems which internalise sound moral and ethical values.[90] Disclosure of wrongdoing should be valued positively and promoted by codes of ethics to instil sound internal systems and encourage whistleblowers to speak up. Ethical codes of conduct should be considered the benchmark that companies should seek to align with in their compliance programmes and corporate culture.[91] However, a lot more must be done to cultivate ethical practices within companies. For instance, it would be wiser to place greater emphasis on promoting a values-based code that fosters moral attitudes and practices between employees and management, rather than creating a detailed list of rules and principles to regulate conduct. It is important that such codes be more deeply embedded in the companies' culture and modus operandi. If a code of ethics aims to encourage ethically accountable behaviour within a company, such behaviour is only feasible when the company's cultural framework enables it. As Schneider rightly stated, 'No management idea, no matter how good, will work in practice if it does not fit the culture. An organisation can have the most superb strategy, but if its culture is not aligned with and supportive of that strategy, the strategy will either stall or fail'.[92] Therefore, it is important that the code of ethics includes the requirement for ethically accountable

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[89] Pascoe and Welsh, op.cit., 157

[90] V. D. Lachman, *Whistleblowing: Role of Organizational Culture in Prevention and Management*, in *Ethics, Law and Policy*, 2008, Vol. 17, No. 4, 265, 266.

[91] P.M. Erwin, *Corporate codes of conduct: The effects of code content and quality on ethical performance*, in *Journal of Business Ethics*, 2011, Vol. 99, No. 4, 535-548.

[92] W. E. Schneider, *The reengineering alternative: A plan for making your current culture work*, Professional Publishing, Burr Ridge IL., 1994.

behaviour on both the individual and corporate levels. Attaining this is not an easy task, but it is a worthy aim because if attained, it can activate employees' and managers' normative and social desires to comply with the ethical standards, values and policies that have been set.[93]

However, a code of ethics alone is insufficient. Its effectiveness depends on proper implementation, distribution, and communication. It is essential to reflect on how the code of ethics should be 'distributed, the intensity and frequency with which it is communicated, or the way in which it has been developed'.[94] In order to achieve the formation of an ethical corporate culture which stimulates ethical behaviour within corporations, an important first step would be the introduction of an extra statutory duty. Such a duty will require employees to raise concerns and provide evidence if they become aware of potential wrongdoing. In this way, whistleblowing will be vigorously promoted within the companies. Employees, who become aware of misconduct, will not be confronted with the dilemma between morality versus loyalty, as the duty of disclosure will be the prevailing allegiance within companies.[95] Companies will expect employees to follow their duty, without being considered disloyal. Furthermore, negative perceptions surrounding the idea of blowing the whistle will be eliminated, and, thus whistleblowers will be increasingly encouraged to report wrongdoing in their workplaces.

The endorsement from top management is a critical factor in changing the corporate culture. This is because a company's culture likely reflects the personality and attitudes of its leaders. The behaviour demonstrated by the leader and the management team reflects and impacts the overall development of culture and the attitudes adopted within companies. Leadership is a key determinant of employee perceptions and thus of their actions. If leaders do not consistently uphold or follow the standards stated in the code, then the standards will be considered as ineffective and not trustworthy. Thus, employees will not feel obliged to follow the code, thereby changing the corporate culture.

Furthermore, leadership and high-positioned managers must understand the value of whistleblowing not only as a mechanism for addressing a

[93] M. Kaptein and M.S. Schwartz, *The Effectiveness of Business Codes: A Critical Examination of Existing Studies and the Development of an Integrated Research Model*, in *Journal of Business Ethics*, 2008, Vol. 77, No. 2, 111, 116.

[94] M. Kaptein, *Ethics Programs and Ethical Culture: A Next Step in Unravelling Their Multi-Faceted Relationship*, in *Journal of Business Ethics*, 2009, Vol. 89, 261, 277.

[95] T. Uys, *Professional Ethics Versus Corporate Loyalty: Whistleblowing in The Financial Sector*, in C.V. Krishna Rao (ed). *Whistleblowing: An Introduction*, Lemag Books, Hyderabad, India, 2006, 15.

specific instance of fraud, but also as a means of detecting internal inaccuracies that enable fraud. The common view, therefore, is that corporations should foster an environment in which employees can disclose violations without fear of reprisal or retaliation.[96] Punishing employees, who report misconduct or unethical practices, by denying them advancement opportunities, promotes a culture of silence instead of openness. Similarly, when employees face retaliation or other forms of reprisals by their employers, it is very likely that employees would feel discouraged from reporting wrongdoing internally. Consequently, a recommendation would be to introduce criminal sanctions for employers who retaliate against their employees.

Even though such sanctions already exist in certain jurisdictions, it is believed they should be included in all legal frameworks.[97] Immunity or more lenient standards for leaders who commit misconduct, as opposed to every other employee, will weaken the corporation's credibility. Knowing that leaders are held to very different standards is a major disincentive for those who want to blow the whistle and for creating a new corporate culture. Ensuring the consistent application of disciplinary action is critical to employee perceptions of fairness, integrity and credibility of the corporation.[98] It is also important to ensure that the leaders and management are timely and adequately informed of material compliance concerns and are actively engaged in assessing and managing associated risks.

Companies should actively publicise their commitment by publicly recognising the value of dissent and monitoring how employees are rewarded through internal reporting. Rewarding is always a major incentive for coming forward. However, an incentive, such as a monetary reward, may lead to opportunistic behaviours that are not aligned with what an ethical culture aims to establish. Therefore, leadership must consider awarding employees who report misconduct internally, such as recognition or promotions. In addition, leadership should publicly acknowledge such reports and counsel other employees to do the same. After all, when a company publicly acknowledges that it is rewarding employees who raise concerns about ethical issues, it is basically sending the message that management is serious about addressing issues before

96 M. Knoll and R. Van Dick, *Do I hear the whistle…? A first attempt to measure four forms of employee silence and their correlates*, in *Journal of Business Ethics*, 2013, Vol. 113, No. 2, 349-362.

97 B. Berry, *Organizational Culture: A Framework and Strategies for Facilitating Employee Whistleblowing*, in *Employee Responsibilities and Rights Journal*, Vol. 16, No. 1, 2004, 1, 25.

98 B. Culiberg and K. Mihelič, *The evolution of whistleblowing studies: A critical review and research agenda*, in *Journal of Business Ethics*, 2017, Vol. 146, No. 4, 787, 791.

they become endemic.[99] The perpetuation of negative attitudes towards employee whistleblowers, such as being considered disloyal or 'snitches', will be prevented.[100] In addition, the negative consequences for the employees, such as retaliation and stigmatisation, will also not be an issue for them because, instead of losing their jobs, they will be promoted by their companies.

An additional policy should require the establishment of formal processes, such as confidential and/or anonymous reporting, for disclosures.[101] In addition to anonymous and confidential helplines, options include open-door policies, joint management/employee committees that consider allegations of wrongdoing, audit committees, non-union and union-sponsored grievance procedures, ombudspersons, and impartial arbitration.[102] In order to encourage whistleblowers to voice their concerns, it is important that the mechanisms provided by the company are clearly communicated to them. Leadership should promote a culture of compliance throughout the organisation by ensuring effective, sufficiently regular communication from the top of the organisation that reinforces that culture. It is important to ensure that employees understand how to use available mechanisms and the importance and value of internal reporting.[103] Furthermore, companies should regularly assess the efficacy of their reporting systems and implement necessary modifications. Ultimately, the perceived availability and feasibility of options for communicating concerns will determine whether an employee decides to act.

Another way to promote an ethical culture is to raise awareness through employee training. Ongoing employee training and clear communication are essential to embed ethical norms and support whistleblower mechanisms. Training and awareness levels should be maintained consistently, which implies a regular, ongoing program of education and training to support the code of conduct. A culture of awareness will be

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[99] L. Ravishankar, *Encouraging Internal Whistleblowing in Organizations*, 2003, Santa Clara Markkula Centre for Applied Ethics, https://www.scu.edu/ethics/focus-areas/business-ethics/resources/encouraging-internal-whistleblowing/ last accessed 12 October 2025

[100] S. Andreadakis, *Enhancing Whistleblower Protection: It's All about the Culture*, in *European Business Law Review*, 2019, Vol. 30, No. 6, 859, 879

[101] D. Lewis, *Stigma and whistleblowing: Should punitive damages be available in retaliation cases*?, in *Industrial Law Journal*, 2022, Vol. 51, No. 1, 62-83. See also Miceli and Near 2002, op. cit.

[102] J.P. Near and T.M. Dworkin, *Responses to legislative changes: Corporate whistleblowing policies*, in *Journal of Business Ethics*, 1998, Vol. 17, No. 14, 1551-1561.

[103] S. Stubben and K. Welch, *Evidence on the use and efficacy of internal whistleblowing systems*, in *Journal of Accounting Research*, 2020, Vol. 58, No. 2, 473, 498.

supported by informal discussions, coaching, newsletters, e-mail alerts, in-service training, meetings, e-learning, and formal training programmes.[104] Establishing such strategies encourages interpretation, models application, and requires continuous employee dialogue to bring transparency. Awareness should also be raised about the importance and desirability of whistleblowing within companies. In essence, enabling an employee to report wrongdoing requires the company to clarify that such disclosure will not affect the employee personally. If employees are convinced that they will not face retaliation, stigmatisation or marginalisation, such realisation can facilitate the requisite reflection process that leads to disclosure behaviours desired by the company.[105] In essence, if a company wants to change the existing corporate culture of silence, it should not only support and protect employees who raise concerns but also identify employees who elevate them. This should be made clear to all members of a company.

The most crucial incentive to encourage whistleblowers and foster an ethical corporate culture is ensuring that whistleblower complaints are taken seriously and addressed promptly. Successful whistleblowing mechanisms depend on swift investigation of reported wrongdoing and clear communication of investigation outcomes within the company. Quality investigations, protection of rights for all parties involved, and consistent resolution build trust among company members.[106] Therefore, companies should establish procedures for promptly responding to reports of potential law violations, seek advice from experienced counsel in compliance and investigations, and assess the validity of reports through internal investigations. Offering multiple timely, responsive reporting channels enhances employees' perception of viable options for raising concerns.

It is important to recognise that whistleblowing laws or codes of ethics alone cannot solve all ethical dilemmas. Real change requires more than just written policies; it demands genuine commitment from companies to deter retaliation against whistleblowers, encourage internal reporting of ethical concerns, and create an atmosphere where employees feel empowered to act ethically. Ultimately, effecting desirable change hinges on transforming corporate culture. Only by fostering a culture of ethics

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[104] S. Valentine and L. Godkin, *Moral intensity, ethical decision making, and whistleblowing intention*, in *Journal of Business Research* 2019, Vol. 98, 277, 281

[105] Smaili, Vandekerckhove and Arroyo Pardo, op. cit., 287.

[106] M. Van Portfliet, *Resistance will be futile? The stigmatization (or not) of whistleblowers*, in *Journal of Business* Ethics, 2022, Vol. 175, No. 3, 451, 463.

and responsibility can whistleblowing serve its purpose as an effective accountability mechanism.

5. Conclusion

Whistleblowers serve as both a deterrent against fraudulent activities and a reliable accountability mechanism, leveraging their insider knowledge to uncover and address wrongdoing within companies. However, despite legal protections in the US and UK, whistleblowers often face fear of retaliation, marginalisation, and stigma, indicating inadequacies in their protection and a reluctance to speak up. This article concludes that effective whistleblowing protection hinges more on corporate culture than solely on legal frameworks. The comparative analysis also demonstrates that legislative architecture alone is insufficient without coherent judicial interpretation and predictable doctrinal standards.

Specifically, replacing the existing culture of silence with one of openness and transparency is crucial for effective protection. This can be achieved by implementing systems within companies that not only encourage whistleblowing but also make it desirable. Treating whistleblowing as an ethical issue and institutionalising it within internal governance frameworks is recommended. Genuine leadership and consistent support for internal compliance systems contribute to a culture that encourages internal whistleblowing, fostering openness and transparency within companies. While altering a company's mindset is challenging and requires time and willingness for change, it is a worthwhile goal to pursue.

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Invisible Labour, Visible Struggles: The Plight of Domestic Workers in Post-COVID 19 Pandemic India

Camilla Cavarape *

Abstract: This article examines the evolution of care work within the urban context of Bogotá, interpreting the *Sistema Distrital de Cuidado* (SIDICU) as a paradigmatic innovation in social security policy. By repositioning caregiving as an essential component of public welfare rather than a private domestic burden, the model renders invisible labour explicit. Through an analysis of the *Manzanas del Cuidado* (*Care Blocks*), this study investigates how the municipality has transitioned care work from an isolated household responsibility into a foundational pillar of the Social State, effectively bridging the divide between the private and public spheres. This contribution explores the mitigation of women's "time poverty" not merely as a social objective, but as a commitment to the principles of substantive equality and non-discrimination mandated by the 1991 Constitution and international human rights standards. Ultimately, the study advocates for a framework of shared responsibility among the State, families, and civil society, emphasising the necessity of a collaborative paradigm to ensure that the burden of care is equitably distributed.

Keywords: *Colombia; Care Work; Time Poverty; Public Policy; Gender Perspective*

Introduction

As a general structural feature of contemporary welfare systems, the invisible foundations of social security rest upon a disproportionate

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volume of unpaid care work[1] that falls, with overwhelming structural weight, on the female population, rendering prevailing welfare paradigms profoundly familistic and feminised. Faced with the delays and inadequacies of public systems in meeting the substantial demand arising from dependent individuals it is families, and women in particular, who must bear responsibility for satisfying the needs of their relatives. This occurs through what may be described as a self-reliant welfare practice[2]: households either turn to the professional care market and absorb the associated costs if they can afford to do so, or resort to informal and family-based care arrangements if they cannot — a situation that characterises the vast majority of Colombian families. Beyond the sphere of formal salaried employment, women continue to bear primary responsibility for childcare, assistance for the elderly, domestic maintenance, and the emotional sustenance of the family nucleus, frequently forfeiting their personal temporal autonomy — a resource that could otherwise be channelled into professional trajectories or self-actualisation. This deeply inequitable distribution of care work engenders a persistent condition of time poverty that directly compromises the effective exercise of civil and political rights, creating a systemic barrier to substantive citizenship.

According to global metrics provided by the International Labour Organisation, the vast majority of those dedicated to full-time caregiving (caregivers[3]) are women, a reality corroborated by UN Women's findings, which indicate that the female population invests a significantly higher portion of their daily existence into domestic and care activities compared

[1] Care work encompasses activities aimed at ensuring the daily well-being of individuals across multiple dimensions: material, economic, moral, and emotional. https://www.cepal.org/es/cuidado-politicas-cuidado

[2] M. Russo, *Caregiver familiari e anziani. Profili giuslavoristici delle relazioni di cura*, Istituto di Ricerche sulla Popolazione e le Politiche Sociali (IRPPS Monografie), 2025, p.36.

[3] The term "caregiver" generally refers to a family member who provides unpaid care for a relative, either by living with them or by assisting them daily with everyday tasks. The term "care provider" by contrast, refers to a paid professional who offers assistance with daily activities. In the Colombian institutional context, the Ministry of Health defines a *cuidador* as an individual who assists a person with functional dependency, distinguishing between three specific roles: the *cuidador familiar*, a family member who provides unpaid care within the household; the *cuidador informal*, a person from the social network of the dependent individual who offers support without formal remuneration or professional training; and the *cuidador formal*, a trained professional who delivers care services within an institutional or contractual framework. This tripartite classification serves to structure administrative interventions and social protection policies. The present article focuses, however, on women caregivers in their familial and informal roles, as they represent the majority of care providers in the Colombian context.

to their male counterparts[4]. On average, women dedicate 2.5 times more hours daily to unpaid care work than their male counterparts, a systemic imbalance that translates into an aggregate of 160 million additional hours provided by the female population every single day[5]. This temporal disparity is rooted in early childhood, as girls are socialised into these roles far earlier than boys, creating a gendered labour gap from the outset of life. Such an asymmetry reaches a dramatic zenith within the Latin American context, where the care-related workload for women frequently triples that of men, thereby functioning as a definitive structural impediment to substantive equality and the realisation of female autonomy.

In this context, Bogotá, the Colombian capital and the focal point of the present analysis, serves as an emblematic illustration of how female care responsibilities structure the very fabric of urban life, where approximately 1.2 million women in the capital provide full-time assistance for an average of ten hours daily. This contribution, if monetised, would represent roughly 13% of the city's Gross Domestic Product, illuminating the extent to which the national economy relies upon the informal and unremunerated labour of women, without whose contribution daily social and economic continuity would inevitably collapse[6]. As recent Colombian scholarship emphasises, the productive system extracts value from a reservoir of domestic labour that the State has historically failed to integrate into its formal circuits of social security and protection[7]. Nevertheless, significant signals of institutional and normative transformation are emerging through a care-centred approach that pursues the recognition and redistribution of these tasks, distinguishing Bogotá through its *Sistema Distrital de Cuidado* and, specifically, the *Manzanas del Cuidado,* which, since 2020, have enabled

[4] T. Hanna, C. Meisel, J. Moyer, G. Azcona, A. Bhatt, S. Duerto Valero, *Forecasting time spent in unpaid care and domestic work,* UN Women and Frederick S. Pardee Center for International Futures, 2022, p.2.

[5] International Bank for Reconstruction and Development / World Bank, *Prosperity and poverty reduction in the Colombian territory*, World Bank, 2024, p.64.

[6] DANE, *Cuidado no remunerado en Colombia: brechas de género*, in *Dane.Gov.Co*, 2022, p.2.

[7] In Colombia, the analysis of the relationship between gender and care work has found solid theoretical development through the contributions of key figures in the national scholarly landscape. In particular, the research of Luz Gabriela Arango Gaviria has explored the dimension of emotional care work. In parallel, the work of Javier Pineda has focused on the informality associated with care activities and their complex gender dimension, extending the analysis to urban infrastructures. See M. Acevedo-Estrada, J. Pineda, *Planificación urbana y redes de servicios en las manzanas de cuidado de Bogotá*, in *EURE - Revista Latinoamericana de Estudios Urbano Regionales*, 2026, 156(1), pp. 45-62; L.G. Arango, *Beauty care: Emotional work and customer service*, Association Multitudes, 2013.

over 600,000 caregivers to access vocational training, enhance their mobility, and reclaim spaces of autonomy. The urgency of these reforms is further intensified by demographic projections indicating that by 2030, the elderly population in Colombia will increase significantly, constituting nearly one-fifth of the total population, which necessitates an escalating demand for qualified labour and a shift from informal care to professionalised and protected systems[8]. In response to this looming challenge, Colombia established a National Care Policy in 2025, aimed at institutionalizing the right to care as a fundamental pillar of the new Welfare State asserting that while the social security of most Latin American nations currently rests upon the unpaid labour of women, such a reliance is no longer legally defensible; consequently, institutions must reciprocate this contribution through coordinated policies, addressing the persistent exclusion of men from care work and facilitating the dismantling of obsolete gender hierarchies.

1. The Juridical Recognition of Unpaid Care Work

Unpaid care work constitutes the ontological, albeit historically obscured, pillar of contemporary urban economies, representing the material prerequisite without which social reproduction and the stability of labour markets would be fundamentally compromised.

In global metropolises such as Bogotá, where structural inequalities and asymmetrical access to welfare services intersect, the burden of assistance — the *trabajo de cuidado* — disproportionately shapes the lived experience of women, upon whom almost the entirety of assistive functions falls. This labour, characterised by a profound feminisation, encompasses a broad spectrum of activities essential for daily subsistence, ranging from the supervision of minors and the elderly to the management of domestic environments and the relational support that serves as the cohesion for family units and urban communities. Despite the centrality of these tasks to the sustainability of life, care work persists in a state of social devaluation and political marginalization, creating a palpable tension with the principles of recognition and redistribution enshrined in the United Nations' 2030 Agenda, specifically Sustainable Development Goal 5, which compels States to implement adequate public policies and social security systems designed to reduce and redistribute the care burden, transforming it from an isolated individual grievance into a collective and state-driven responsibility.

[8] G. García, V. Haldane, J. Veillard, A. Vega, *Invertir en una longevidad saludable: Una prioridad para Colombia*, Grupo Banco Mundial, 2024, p.5.

Within this landscape of policy implementation, Colombia achieved a decisive milestone toward the institutionalisation of care with the enactment of *Ley 2297*, widely recognised as the *Ley del Cuidador*, which represents a significant advancement in the juridical recognition of care by defining it as an essential activity for the stability of the social order and formalising protections for those who perform it. The law envisions multidimensional accompaniment for families, promoting professional formation, facilitated access to employment, and support for entrepreneurship to mitigate the loss of income and opportunity that structurally plagues caregivers. It is imperative to underscore that these provisions apply equally to both professional and informal caregivers, thereby narrowing the normative gap between salaried labour and domestic activities performed gratuitously within the household: a transition that is fundamental for achieving a genuine distribution among all social actors[9]. The necessity for such incisive legislative intervention is rooted in a reality of profound gender segregation, supported by recent demographic data from the National Administrative Department of Statistics (DANE) in 2024, which indicates that 90% of the Colombian female population is engaged in unpaid care work, compared to a male involvement rate that does not exceed 65%[10]. From a strictly legal perspective, this inequitable distribution of time and energy collides directly with the principle of substantive equality enshrined in Article 13 of the 1991 Colombian Constitution, which imposes a positive obligation upon the State to adopt measures in favour of discriminated or marginalised groups[11]. Nonetheless, the historical absence of structured assistance and the lack of commitment to a universal and integrated care system have forced the family unit to function as an improper social buffer, a dynamic wherein individual action is summoned to compensate for systemic state deficiencies, standing in open contradiction to non-discrimination mandates and the positive obligations of protection established by international human rights law.

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[9] Congreso de la República de Colombia, *Ley 2297 de 2023***,** Régimen Legal de Bogotá D.C, 2023.

[10] UNDP Strategic Innovation Unit, *How a citywide social system relieves women from unpaid care work*, Unstuck by UNDP, https://unstuck.systems/how-a-citywide-social-system-relieves-women-from-unpaid- care-work/

[11] Republic of Colombia, *Political Constitution of Colombia*: Article 13, 1991, https://www.constitucioncolombia.com/titulo-2/capitulo-1/articulo-13

2. The Impact of Covid-19 and the Structural Fragilities of the Informal Labour Market

The analysis of the efficacy of care-related norms cannot bypass an evaluation of the economic contingencies that have defined the last five years, most notably the profound impact of the Covid-19 pandemic. Although Colombia had demonstrated appreciable economic growth in previous decades, this expansion remained geographically polarised and structurally fragile, leaving vast segments of the population in a state of labour informality that exceeds 50% at the national level[12]. The health crisis triggered what economic and sociological doctrine defines as a *she-recession*[13], a downturn with a predominantly female impact characterised by massive job losses and a simultaneous exponential increase in domestic responsibilities. In the absence of adequate social security protections and paid leave, many women were forcibly drawn back into the sphere of the domestic economy, seeing years of progress toward financial autonomy effectively neutralised. This phenomenon exacerbated pre-existing vulnerabilities, hitting indigenous populations, migrants, and victims of forced displacement with particular severity, for whom the right to a dignified life and access to essential services remains, in many instances, a distant objective.

The pandemic laid bare the reality that the Colombian Welfare State functioned as a fragmented entity, where the lack of a universal safety net meant that the domestic sphere became the ultimate insurer of last resort. For women in Bogotá's informal sectors, the closure of schools and community centres did not merely represent a logistical hurdle but a total collapse of their ability to participate in the productive economy. This retrenchment into the private space signifies more than a temporary setback; it represents a structural violation of the right to social security, as the State's reliance on unpaid female labour became the primary mechanism for managing the public health emergency. Consequently, the pandemic acted as a catalyst for a renewed legal and political discourse regarding the necessity of a systemic intervention that would decouple

[12] OECD, *OECD Economic Surveys: Colombia 2024*, in *OECD Publishing*, 2024, https://doi.org/10.1787/a1a22cd6-en

[13] Since the onset of the COVID-19 pandemic, women have experienced disproportionate repercussions due to the global recession. This phenomenon was coined by economist and researcher C. Nicole Mason as a *"she-cession",* a neologism derived from the fusion of the terms "she" and "recession". M. Thoreau, *The she-cession: How the pandemic forced women from the workplace and how employers can respond*, Ohio State University Extension, 2022, https://ohioline.osu.edu/factsheet/cdfs- 4110

social protection from formal employment status, recognising care as a public good rather than a private obligation[14].

3. The *Sistema Distrital de Cuidado* of Bogotá: A Laboratory for Urban Social Security Innovation

In order to provide a structural response to these critical issues, the municipality of Bogotá introduced the *Sistema Distrital de Cuidado* (SIDICU) in 2020, an institutional innovation of international significance originally founded on Decree 237 of 2020.

This model has assumed a paradigmatic scope at the national level, serving as the logical-juridical premise for the drafting of the *Documento CONPES 4143*, approved on February 14, 2025, which formally established the National Care Policy with the ambitious goal of reconfiguring the social organisation of care across the entire Colombian territory and currently serves as the bedrock for Colombian social security[15]. Within this framework, the SIDICU operates through urban planning that elevates care to the centre of public policy, explicitly aiming for the reduction and redistribution of the unpaid workload through a territorial management of welfare services. The hallmark of this model resides in the *Manzanas del Cuidado*, territorialised infrastructures that concentrate educational, health, legal, and psychological support services within a single urban perimeter. By centralising these provisions, the Bogotá district administration actively intervenes in the phenomenon of temporal poverty. This structural framework permits caregivers to reallocate their time toward professional training or restorative rest, while dependents are integrated into public care support systems.

In practice, this infrastructure facilitates a crucial decoupling of the caregiver from constant domestic obligations. Within these *Care Blocks*, a caregiver may attend a medical consultation, enrol in a yoga session, or pursue entrepreneurial training, all while children are accommodated in specialised childcare facilities. Furthermore, the provision of communal laundry services exemplifies a systemic reduction of manual labour; by offloading these tasks to public facilities, women gain the time necessary for civic engagement or simple leisure. Beyond merely alleviating the "double burden", this model fosters the conditions for economic and social autonomy. This practical manifestation of social security rights

[14] M. E. Dávalos et al, *Prosperity and poverty reduction in the Colombian territory*, World Bank Group, 2024, p.25.

[15] Consejo Nacional de Política Económica y Social (CONPES), *Política nacional de cuidado*, *Documento CONPES 4143*, República de Colombia, 2025, p.3.

represents a significant shift from a passive welfare model to an enabling state. It reconfigures the caregiver as an autonomous subject of rights, rather than an instrument solely defined by her service to others[16].

The *Sistema Distrital de Cuidado* operates as an integrated ecosystem composed of several complementary, legally coordinated elements designed to maximise accessibility and effectiveness.

Beyond the stable *Manzanas del Cuidado*, there exist mobile care units, the *Buses del Cuidado*, which extend services to peripheral and rural areas lacking permanent infrastructure, while home-based interventions reach women who, due to particularly intensive care responsibilities, cannot leave their homes. These actions are constructed based on individualised assessments that identify the specific needs of both the caregivers and the care recipients, allowing for a more efficient allocation of resources and greater adherence to the principles of proportionality and reasonableness in the delivery of public services[17]. Beyond the direct provision of services, Bogotá's care system operates as a tool for promoting social citizenship through the formal recognition of skills acquired within the assistive sphere. The activation of professional certification pathways allows women to transform informal experience into a credential marketable in the formal labour market, thereby favouring the transition toward regulated economic sectors and guaranteeing access to social security protection. This approach is consistent with the International Labour Organisation recommendations on domestic work and aims to break the cycle of intergenerational poverty that afflicts women engaged in care[18].

Empirical evidence indicates that the mitigation of barriers to service access is positively correlated with a reduction in multidimensional poverty. This suggests that institutionalised care policies do not represent a mere fiscal expenditure, but rather a strategic investment in urban resilience and long-term, inclusive growth. Consequently, care provision must be understood as the foundational pillar of social security. Despite the centrality of this labour to societal reproduction, its economic value remains largely invisible within conventional national accounting, as these contributions are frequently excluded from Gross Domestic Product (GDP) metrics. Unlike traditional welfare paradigms that prioritise the recipient, the Bogotá model adopts a holistic framework that centres the

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[16] E. Morales, A. M. Vargas, *Manzanas de cuidado de Bogotá,* Secretaría de la Mujer de Bogotá and ICLD, 2024, p.7

[17] UNDP SDG Local Action, *Lessons learnt from Bogota Caring City project*, SDG Local Action, 2025, https://sdglocalaction.org/bogota-guidelines-presentation/

[18] UNDP, *Guía práctica para convertirte en una ciudad cuidadora. La experiencia de la ciudad de Bogotá, Colombia*, UNDP, 2025, p.11.

subjectivity and well-being of the caregiver. By publicly acknowledging the caregiver's role as the primary engine of both social reproduction and economic sustenance, this model challenges the historical marginalisation of care labour and advocates for its formal integration into the economic agenda[19].
Considered as a whole, Bogotá's experience shows that unpaid care work cannot be conceived as a private matter but must be interpreted as a structural dimension of gender inequalities and economic organisation, regarding which the State has intervention obligations. The transition of care from a dimension confined to the private sphere to an object of public relevance requires a strategic coordination of state investments, together with incisive institutional innovation and a radical reconfiguration of gender responsibilities. Treating care as a public good, rather than a burdensome individual task for women, the *Sistema Distrital de Cuidado* offers a concrete example of how cities, through the implementation of social security policies, can counteract time poverty and promote more just forms of urban development.

4. Critical Profiles and Innovation in the Bogotá Model

Part of the legal doctrine and several international observers have raised the suspicion that the centrality of the female figure in these interventions could, in the final analysis, crystallise rather than dismantle the traditional role of women within the social fabric. Specifically, the concern emerges that establishing infrastructures dedicated exclusively to the female universe might paradoxically fuel the very problem it seeks to resolve, since the necessary redistribution of care work must involve a plurality of social and institutional actors. At the heart of this critique lies the persistent social presumption that female gender identity inherently coincides with the function of a caregiver; an assumption derived from centuries-old cultural customs that have modelled a deeply asymmetrical social architecture. This premise constitutes one of the most limiting and pervasive gender norms, whose discriminatory effects are easily framed within the legal categories of indirect discrimination and gender stereotyping — concepts that the CEDAW Committee has repeatedly urged States to eradicate through positive actions and structural reforms[20].

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[19] I. Sánchez De Madariaga, C. Arvizu Machado, *Putting care on the map: Gender mainstreaming, a policy approach to reduce inequalities in Latin American cities*, in *Frontiers in Sustainable Cities*, , 2025, Vol.7, p.14, https://doi.org/10.3389/frsc.2025.1556795

[20] The Committee on the Elimination of Discrimination against Women (CEDAW) is a body of independent experts responsible for monitoring the implementation of the

Even within the design of public policies, care is often and erroneously traced back to an ontological dimension of the feminine, being interpreted as an intrinsic attribute of gender identity rather than a learned social practice of a potentially universal nature, which would necessitate an active deconstruction of this logic since care is not biologically predetermined nor specific to one gender.

Every individual possesses the capacity to assist, and the male gender not only has the faculty to learn these skills but holds the ethical and civic duty to do so, so that gender equality may translate from a mere formal statement into a legally and socially viable horizon. The redistribution of unpaid care work must therefore originate within the family unit, through the definition of equitable arrangements among members that find a punctual reflection in welfare policies, parental leave regulations, and measures for reconciling professional and private life. Only through this paradigm shift can care be effectively redistributed between families and the public sector, realising that a multi-level system of co-responsibility between the State, the market, and civil society that reflects the most advanced standards of human rights protection is fundamental to ensuring true social security. In this direction moves the aforementioned Colombian National Care Policy, approved in February 2025[21], which aims to protect the right to provide and receive care under dignified conditions, valuing the collective and community forms typical of rural and ethnic realities as a fundamental pillar for the sustenance of life.

While a robust national legal framework is a prerequisite for establishing such security, it remains insufficient in isolation; consequently, a fundamental cultural shift is required. Acknowledging the urgency of redistributing care responsibilities, the Municipality of Bogotá launched the complementary initiative *A Cuidar se Aprende* (*Learning to Care*) in 2021[22]. This program is specifically designed to engage the male population, aiming to critically deconstruct entrenched gender stereotypes while fostering technical proficiency in domestic support and emotional regulation. This intervention carries primary political and symbolic significance, as it redefines care as a shared social responsibility in perfect

Convention on the Elimination of All Forms of Discrimination against Women. The Committee consists of 23 experts in women's rights from across the globe. https://www.ohchr.org/en/treaty-bodies/cedaw

[21] Consejo Nacional de Política Económica y Social (CONPES), *Política nacional de cuidado*, *Documento CONPES 4143*, cit., p.3.

[22] Secretaría de Cultura Ciudadana, *Escuela "A Cuidar Se Aprende",* Cultura Ciudadana, GOV.CO https://culturaciudadana.gov.co/acciones/genero-y-diversidad/escuela-a-cuidar-se-aprende

adherence to the deconstructed gender models promoted by international legal orders. Nevertheless, significant challenges remain regarding the cultural resistance of many men who perceive care as a dimension incompatible with dominant models of masculinity, ignoring the ongoing normative evolutions and thus continuing to perpetuate models of "toxic" and "machista" masculinity.

The municipal institutions of Bogotá have fulfilled their mandate by developing comprehensive legal and administrative frameworks, facilitating accessible training programs, and providing targeted incentives. These efforts have been characterised by a participatory approach — integrating grassroots perspectives into the establishment of *Manzanas del Cuidado* — as extensively documented by researchers examining the Bogotá model. However, the burden of sustained progress now shifts to civil society and the male population, who must transition from the role of sporadic, auxiliary contributors to that of fully co-responsible agents within the care ecosystem. Parallelly, a mutation of collective representations is indispensable so that male involvement in the domestic sphere is socially valued, leading to a redefinition of male respectability that distances itself from ideals of authority founded on separation from the private sphere and aligns with modern public policies of equity. Beyond purely cultural resistances, the implementation of care policies in the district of Bogotá has had to contend with a series of structural and institutional constraints that have tested its substantive effectiveness. Specifically, a problematic misalignment has emerged in the coordination between the various entities involved, whose non-coinciding opening hours and logistical and bureaucratic difficulties have generated delays in service delivery, highlighting the complexities inherent in translating social rights into effective benefits within an articulated bureaucratic machine.

This dynamic fits into the broader debate on the judicialization of social rights in Colombia, where the distance between the normative statement and its material execution often requires supplementary intervention to guarantee the effectiveness of protection. Simultaneously, the scarcity of financial and human resources has led to certain gaps in service coverage, especially regarding the home-based component of the system, which is essential for women unable to move due to particularly heavy care loads. Added to this are territorial inequalities, which complicate implementation in peripheral and rural areas where the infrastructure deficit and the lack of transport links risk configuring a violation of the principle of equality in access to essential public services. Furthermore, despite the activation of competency certification pathways, labour informality remains a widespread phenomenon in the assistance sector, with wage levels that continue to undermine the full economic and legal recognition of this activity, placing it in a state of evident tension with the international standards on decent work promoted by the ILO[23].

Despite the obstacles outlined above, the results derived from the application of the care system are tangible and manifest through a plurality of dimensions that go far beyond mere material assistance. Many caregivers have reported a significant decrease in the phenomenon of burnout, a direct effect of sharing responsibilities and the institutional recognition of their work, which favourably impacts the constitutionally protected right to psycho-physical health. The integrated provision of legal and psychological support has further facilitated the inclusion of women in therapeutic pathways and social protection frameworks, illustrating how the care infrastructure functions as a critical mechanism for the realisation of fundamental rights[24]. Empirical research has underscored the positive impact of this initiative on women's well-being, noting significant improvements in self-esteem, motivation, and self-care capacity. Furthermore, participants have demonstrated enhanced emotional regulation and technical skill acquisition, both of which are instrumental in strengthening their long-term life projects. From the perspective of individual autonomy, the certification of skills has allowed numerous operators to transition toward forms of formal employment, while the public recognition of the social value of their work has reinforced their perception of self and their own worth within the community. Unexpected but highly significant outcomes for the stability of the social fabric have also emerged, such as the improvement of family relationships, an increase in empathy among household members, and a more balanced distribution of gender roles, factors that collectively reduce social isolation and promote the acquisition of new skills. These transformations suggest that, albeit with difficulty, care policies, when rooted in a solid normative framework, possess the capacity to produce deep relational and cultural changes, contributing to the construction of a truly inclusive and egalitarian social citizenship[25].

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[23] UNDP, *Guía práctica para convertirte en una ciudad cuidadora. La experiencia de la ciudad de Bogotá, Colombia*, cit., pp.19-22.

[24] Y.C. Galvis Ramírez, *Aportes de la Manzana del Cuidado Bosa Porvenir a la Salud Mental de las Mujeres,* Universidad Nacional Abierta y a Distancia- UNAD, 2022, p.18.

[25] UNDP SDG Local Action, *Lessons learnt from Bogota Caring City project*, SDG Local Action, 2025, https://sdglocalaction.org/bogota-guidelines-presentation/

5. Toward an Urban Agenda of Shared Responsibility

The experience of Bogotá demonstrates unequivocally how cities can ascend to the role of central protagonists in the construction of care infrastructures capable of mitigating gender inequalities and urban poverty, in full coherence with the obligations of substantive equality and the commitments undertaken within the framework of the 2030 Agenda, specifically regarding Goals 5 and 11.

In this perspective, the SIDICU does not configure itself exclusively as an innovative social policy but represents an advanced laboratory for the implementation of the right to care, while simultaneously becoming a point of reference for other metropolises. Looking at the Latin American regional scenario, cities such as Monterrey and Montevideo have already begun to integrate models inspired by the Bogotá experience, confirming that municipal action can institutionalise care as a matter of preeminent public interest in the realm of social security, rather than a mere private responsibility of families. This evolution is situated within the conceptual trajectory of the so-called "city of care", a paradigm developed by feminist urbanism aimed at overcoming the dichotomy between the productive and reproductive spheres, interpreting care as a right that the urban space must enable both materially and symbolically[26].

These developments highlight that local governments, while operating within the limits of the constitutional distribution of competences, possess significant margins to give territorial effect to international obligations regarding gender parity and non-discrimination. The recognition of care as a public good and as a social right implicitly connected to human dignity allows for a re-reading of municipal powers regarding planning, mobility, and health as necessary instruments for the removal of indirect discrimination. Concurrently, it is necessary to address the economic argument that often tends to devalue the scope of such interventions, because although cities are engines of development, comparative research shows that in contexts like the Colombian one, urbanisation has predominantly impacted the poverty of services without proportionally reducing monetary poverty. It follows that there is a juridical and political necessity to distinguish between poverty defined in terms of income and that understood as a deprivation of access to services and opportunities, in line with United Nations approaches.

[26] I. Sánchez De Madariaga, C. Arvizu Machado, *Putting care on the map: Gender mainstreaming, a policy approach to reduce inequalities in Latin American cities*, cit., p.14, https://doi.org/10.3389/frsc.2025.1556795

The *Manzanas del Cuidado* represent a paradigmatic example of wealth in services, since, although they do not provide direct monetary transfers, they produce well-being through temporal relief and psychosocial support, creating the structural conditions for access to education and formal employment. Nonetheless, it is important to emphasise that Colombian cities today find themselves managing complex phenomena that can be defined as sterile agglomerations, where urban growth is not always accompanied by inclusive productive transformations, but by high costs of living and persistent discrimination in the labour market. This combination ensures that urban centres offer proximity to opportunities but simultaneously multiply vulnerability, contradicting the assumption that simple demographic density is sufficient to produce equality[27].
Feminist urbanism has shown that the governance of the city is never neutral; rather, it incorporates social hierarchies that modulate access to security and time; however, the urban context remains the privileged space for the experimentation of scalable social policies. The experience of Bogotá confirms that integrated care services can liberate time for training and work, tracing realistic paths toward substantive equality and giving body to an urban welfare that constitutional frameworks often evoke but rarely detail with precision. Within the broader reformist framework of Colombia, the fight against inequalities remains an inescapable priority that requires the closing of gender gaps and the expansion of social protections. Therefore, it is fundamental to combine the expansion of care services with normative interventions aimed at occupational de-segregation and the economic valorisation of assistive work, ensuring that the strengthening of this sector does not translate care into a new form of gendered sectoral segregation, but becomes the springboard for an authentic and lasting social equity, guaranteeing a fundamental protection network especially toward the most vulnerable persons.

Conclusion

The reflections delineated thus far converge toward an inescapable synthesis under the profile of social security theory: care work can no longer be degraded to a private burden or a gendered obligation, but must be recognised as a shared social responsibility, necessary for the stability of economic systems and the democratic cohesion of contemporary orders. Because political and economic agendas have historically placed

[27] M. E. Dávalos et al, *Prosperity and poverty reduction in the Colombian territory*, cit., p.25.

male needs and perspectives at the centre, the implementation of policies that explicitly prioritise the requirements of women does not configure itself as a form of favouritism, but as a necessary and legitimate intervention for the purposes of respecting the principle of substantive equality and the prohibition of indirect discrimination. Placing the female population at the centre of care policies means, in fact, challenging the androcentric norms deeply embedded in the language of law and institutional practices, opening normative spaces for alternative models of social organisation and for forms of citizenship that finally recognise the plurality and complexity of gender experiences.

In this perspective, contributions from non-Western contexts, which value collective responsibility and intergenerational care, offer precious conceptual tools to rethink care as a global "common good", fundamental to social stability. However, for such a paradigm to be effective, it is indispensable that any prospective framework remains inclusive, recognises the diversity of family forms, and fully incorporates people of all genders into visions of care and social support, avoiding a relapse into biological essentialism. On the level of public policies, the implications of such an approach are clear: guaranteeing emotional and economic security to people dedicated to care is the prerequisite of any credible project of equality, all the more in an era in which such activity remains largely unpaid and heavily feminised.

Facilitating the combination of care work and salaried labour through accessible public services, robust social protections, and a widespread offer of educational services for childhood is equally vital in societies where participation in the labour market has intensified without a corresponding redistribution of domestic responsibilities. To this is added the urgency of preparing income redistribution instruments that correct the systemic devaluation of care work and other feminised and racialised employments, in accordance with the principles of redistributive justice sanctioned by constitutional sources and international labour conventions.

By recognising care as a socially indispensable and politically central activity, vanguard initiatives like the *Sistema Distrital de Cuidado* of Bogotá show how cities can evolve toward more just, relational, and inclusive futures. As physical and symbolic spaces where rights, services, and infrastructures intertwine, metropolises today have the possibility to take charge of care not as a residual or emergency intervention, but as the keystone of a new social citizenship founded on interdependence.

Ultimately, the Colombian experience offers a fundamental interpretative paradigm for the stability of social security systems, demonstrating that care work can no longer be relegated to individual negotiation within the family. On the contrary, it must be understood as a structural dimension of economic organisation regarding which the State holds precise positive obligations of intervention. Through the creation of a solid normative framework and dedicated infrastructures, the legal system can operate a real transformation of power relations, translating constitutional principles into concrete practices of care. Treating care as an essential public good means, in the final analysis, recognising the dignity of millions of caregivers and giving full effect to the mandate of progressive effectiveness of social rights, ensuring that urban development is authentically sustainable and oriented toward the protection of human life in all its phases of vulnerability.

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