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# Poland: Act of 9 May 1991 on Employment and Vocational Rehabilitation of the Disabled

## **Keywords**

act, employment, vocational, rehabilitation, disabled, person, provision, work, health, social, welfare, economic, labour, policy, board, state

## **Comments**

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## **ACT of 9 May 1991**

### **On Employment and Vocational rehabilitation of the Disabled**

Taking into account the necessity to implement the principle of equal opportunities for the disabled in a society and the employment policy aiming at vocational and rehabilitation of those persons it is provided what follows:

#### **Chapter 1**

##### **General Provisions**

###### **Article 1**

The Act refers to the disabled persons with significant degree of physical and psychic or mental impairment limiting their capacity to work, hereafter referred to as "the disabled".

2. On the significant degree of impairment, referred to in paragraph 1, and on the degree of capacity to work of the disabled, a competent organ decides.

3. The Minister of Labour and Social Policy, in co-operation with the Minister of Health and Social Welfare defines - by order - the adequate organs to decide on matters mentioned in paragraph 2 as well as the principles and procedures.

###### **Article 2**

The disabled who is not recognised as completely incapable of working according to article 1 paragraphs 2 and 3, further referred to as "the disabled capable of work", is covered by the labour placement services subject to the following conditions:

1. is over 15 years of age and below 60 - for women, or 65 for men
2. does not attend any stationary schools,
3. is not running any agricultural farm exceeding the area of 1 hectare, or a special agricultural production farm in the understanding of tax provisions unless the amount of a tax for this farm does not exceed the amount of a tax for 1 hectare.
4. is not dealing with non-agricultural economic activity,
5. has not acquired the right to an old-age pension

###### **Article 3**

Whenever the Act refers to:

- 1) an establishment - it means an establishment in the understanding of the Labour Code and an individual persons employing workers,
- 2) sheltered work establishment - it means an establishment fulfilling conditions defined in article 19,
- 3) rehabilitation of the disabled - it means the complex of organisational, medical, psychological, technical and social activities aimed at achieving possibly the highest level of functioning, quality of life and social integration of these persons with their active participation.
- 4) a workshop of active therapy - it means posts, organised in an enterprise and enabling to carry out rehabilitation through active therapy for the disabled with impairment incapacitating them for work, constituting a separate organisational unit,
- 5) rate of employment of the disabled - it means an average monthly proportion of the disabled in total employment, in terms of full-time posts,
- 6) minimum wage - it means the minimum wage determined by the Minister of Labour and Social Policy, on the basis of the Labour Code,
- 7) average wage - it means an average wage without pay from the profit and balance surplus in co-operatives, in six basic sectors of the national economy, announced by the President of the Main Statistical Office, on the basis of separate legal provisions.

## **Chapter 2**

### **Obligations and particular rights of establishments in connection with employment of the disabled**

#### **Article 4**

1. The establishment employing at least 50 workers is obliged, with reservation of paragraphs 2-4 and article 5, to monthly payments to the State Rehabilitation Fund for the Disabled at the amount of the product of half an average wage and the number of posts corresponding to the difference between employment ensuring the rate, of employment of the disabled of 6 per cent and an actual employment of the disabled.
2. The establishments with the rate of employment of the disabled reaching 6 per cent are released of those payments.
3. The rate, referred to in paragraph 1, may be decreased in the event of employment of the disabled with impairments, which make the work particularly

difficult to perform. Kinds of impairments justifying decrease of the rate as well as principles and procedure of decrease of this rate are determined, by order, by the Minister of Labour and Social Policy in co-operation with the Minister of Health and Social Welfare.

4. Obligation referred to in paragraph 1, does not concern: 1) diplomatic agencies, 2) foreign representatives and missions.

#### **Article 5**

1. Payments, referred to in article 4, are decreased by amounts of remuneration paid to workers in a sheltered work establishment which makes the specified production or renders services for an establishment obliged to payments.

2. The Minister of Finance, by order, determines the detailed principles of the payments' decrease, mentioned in paragraph 1.

#### **Article 6**

1. The establishment is obliged to separate or organise the work posts with the basic social facilities, enabling employment of its workers who due to accident at work or occupational disease have the impaired capacity to work at their previous post and have been recognised as the disabled.

2. If the establishment does not separate nor organise work posts for persons, referred to in paragraph 1, it is obliged to payments to the State Rehabilitation Fund for the Disabled, on the day of terminating their relationships, at the amount of 40 times an average wage for each of these persons.

#### **Article 7**

The establishment elaborating the balance and effects account, makes the payments mentioned in article 4 paragraph 1 and article 6 paragraph 2 from an income after taxation.

#### **Article 8**

To payments mentioned in article 4 and article 6 paragraph 2 there are applied provisions of the Act of 19 December 1980 on the tax, obligations (Dziennik Ustaw No.27 Text. 111, of 1982 No.45 Text 289, of 1984 No.52 Text 268, of 1985 No.12 Text 50, of 1988 No.41 Text 325 and of 1989 No.4 Text 23, No.33 Text 176, No.35 Text 192 and No.74 Text 443) with the exception that actions resulting from article 5 paragraph 3, article 8 paragraph 1, article 5 paragraph 1 and article 31 paragraphs 1 and 2 of this Act belong to the competence of the President of the Board of the State Rehabilitation Fund for the Disabled.

2. The dates of payments, referred to in article 4 and article 6 paragraph 2, are set for the twentieth day of each month after the month in which such an obligation arose.

### **Article 9**

1. Hours of work of workers being the disabled cannot exceed eight a day and forty a week.
2. The disabled may not be employed at night.

### **Article 10**

1. Hours of work of workers included to disability group I and II cannot exceed 7 a day and 35 a week. In weeks, in which there is a day off from work as specified in legal provisions, hours of work amount to 26 a week.
2. The rate of hours of work determined in accordance with paragraph 1 remains in force since the day of submitting to an establishment of the decision on including of a worker to disability group 1 or II.

### **Article 11**

Provisions of article 9 and article 10 paragraph 1 are not applied:

- 1) to workers employed in guarding,
- 2) if at the request of a worker a medical practitioner the establishment or - in his absence - a medical practitioner taking care of the worker, expresses his agreement.

### **Article 12**

To hours of work, referred to in articles 9, 10 and 11, there are included breaks for the gymnastics or recreation at the rate of up to 230 minutes a day.

### **Article 13**

1. Application of the norms of hours of work, referred to in articles 9 and 10, does not result in decreasing the amount of remuneration of workers paid on the monthly basis.
2. Hourly rates of workers' basic wage, corresponding to their personal grading or grading of their work, in change into the shortened norms of hours of work, referred to in articles 9 and 10, are increased proportionally to the relation of the earlier length of hours of work to the shortened one.

## **Article 14**

Provisions of article 9 paragraph 1 and articles 11-13 are applied respectively to all the workers of sheltered work establishment.

## **Article 15**

1. A worker included to disability group I or II is entitled to additional vacation leave at the rate of 10 working days in the calendar year. The right to first additional leave is acquired by the worker after one year's employment from the date of including him in one of these groups.
2. A worker entitled to vacation leave at the rate exceeding 2 working days in a calendar year or to an additional leave on the basis of separate provisions, is not entitled to the leave mentioned in paragraph 1.
3. If the rate of an additional leave, mentioned in paragraph 2, is lower than 10 days, a worker is entitled - instead of this leave - to the additional leave specified in paragraph 1.

## **Article 16**

1. The establishment is obliged to:
  - 1) release a disabled person - not more often than once a year - with the retained right to remuneration, at the request of the physician for participation in the organised rehabilitation course,
  - 2) release a disabled person, with the retained right to remuneration, for special medical examination, medical or rehabilitation intervention as well as the purchase of orthopaedic appliances or their repair, if these actions cannot be done outside hours of work.
2. Remuneration for the period of release from work, referred to in paragraph 1, is calculated as for the vacation leave.

## **Article 17**

The establishment referred to in article 4 paragraph 1, employing the disabled, with the exception of sheltered work establishment, is entitled to reductions in the income tax, tax on wages at the amount equal to the reached employment rate of these persons, if this rate amounts at least to 7 per cent. If the rate of employment of the disabled exceeds 50 per cent, the establishment is exempt from these taxes.

2. Rates, referred to in paragraph 1, are rounded off to full percentage and it is done in the following way: endings not exceeding half per cent are omitted and endings exceeding half per cent are raised to full percentage.

3. The establishment transfers 50 per cent of financial means resulting from tax reductions, referred to in paragraph 1, to the State Rehabilitation Fund for the Disabled.

### **Article 18**

Remuneration of the disabled is not subject to tax on increase in wages.

### **Article 19**

1. The establishment employing not less than 20 workers is the sheltered work establishment if:

1. the rate of employment of the disabled amounts to:

- a. at least 40 per cent, including at least 10 per cent of the disabled of groups I or II,
- b. at least 30 per cent of the blind being the disabled of groups 1 or 11,

2) buildings and premises of the establishment comply with standards prescribed in the legal provisions and take into account the needs of the disabled as regards the access; to them, as well as have additional equipment in the sanitary and hygienic premises and traffic: arteries,

3) it ensures the basic and special medical care, guidance and rehabilitation services.

2. At the request of the establishment, the Plenipotentiary for the Disabled, in cooperation with the State Labour Inspection, ascertains fulfilling by the establishment of conditions specified in paragraph 1.

### **Article 20**

1. The sheltered work establishment is exempt, with reservation of paragraph 2, from taxes, budgetary dues not being taxes and payments to the Labour Fund, referred to in article 35 paragraph 1 item 1 of the Act of 29 December 1989 on Employment (Dziennik Ustaw No.75, Text 446, of 1990 No.9, Text 75 and No.56, Text 323).

2. Exemption, referred to in paragraph 1, does not concern:

1) the turnover tax on:

- a. imported goods,
- b. spirit and its products,
- c. wine products and beer,
- d. tobacco products,



- e. jeweller's products,
- f. fuels and motor oils,

2) taxes on games and pools.

3. The sheltered work establishment transfers means obtained by virtue of tax exemption, with exception of means obtained by virtue of exemption from the turnover tax and tax on increase in wages, to:

1) State Rehabilitation Fund for the Disabled to the extent of 10 per cent,

2) in-plant rehabilitation fund for the disabled to the extent of 90 per cent.

4. A contribution for the social insurance of the disabled employed in the sheltered work establishment amounts to 5 per cent of the basis of its calculation.

#### **Article 21**

Interest on the bank credits, taken up by the sheltered work establishment, may be financed to the extent of 50 per cent from the State Rehabilitation Fund for the Disabled.

#### **Article 22**

1. The sheltered work establishment creates the in-plant rehabilitation fund for the disabled, further referred to as "the rehabilitation fund".

2. Incomes of the rehabilitation fund in particular come from:

- 1. means obtained by virtue of exemptions, referred to in article 20,
- 2. subsidies and subventions,
- 3. incomes from legacies and grants.

3. The means from the rehabilitation fund cover vocational, social and medical rehabilitation of the disabled.

4. Minister of Labour and Social Policy, in co-operation with the Ministry of Health and Social Welfare, determines - by the order - general principles of utilisation of means of the rehabilitation fund as well as the procedures of setting the implant rules of utilisation of these means.

5. The rehabilitation fund is at the disposal of the manager of the establishment.

## **Article 23**

1. The sheltered work establishment creates, and another organisational unit may create in co-operation with the voivodship centre for employment and rehabilitation of the disabled, the workshop of active therapy, further referred to as "the workshop".
2. Workshops are, created for the disabled completely incapacitated for work, for whom the active therapy is the form of social rehabilitation.
3. The disabled are qualified for the workshop by the voivodship centre for employment and rehabilitation of the disabled, in co-operation with special health service centres and vocational guidance centres.
4. Costs of establishment and activity of the workshop are financed from the means of the State. Rehabilitation Fund for the Disabled.
5. The Minister of Labour and Social Policy, in co-operation with the Minister of Health and Social Welfare, determines - by order principles of creation, activity and financing of the workshops.

## **Chapter 3**

### **Placement services and benefits for disabled looking for job**

## **Article 24**

1. Placement and vocational guidance for the disabled as well as training and retraining are run, in accordance with the principles determined in the Employment Act, by the specialised services of regional labour offices and voivodship centres for employment and rehabilitation of the disabled created in the framework of the voivodship labour offices, further referred to as "the voivodship centres".

The tasks of the voivodship centres comprise:

- 1) elaboration of the voivodship employment programme for the disabled who are capable of work,
- 2) organisation of training and retraining for the disabled and determination of type or period of training or retraining,
- 3) co-operation with the regional labour offices and organs of the local self-government in the field of activities in favour of the vocational activation of the disabled,
- 4) organisational, legal and economic counselling for the disabled in the field of economic activity,

- 5) counselling in the field of vocational and social rehabilitation.
- 6) recognition of needs of the disabled at the voivodship level as regards equipment with personal aids, orthopaedic appliances, prostheses, as well as means of communication adjusted in construction to the needs resulting from the disability as well as recommendations in this field to be implemented by the competent units,
- 7) elaboration the programme of elimination of architectonic barriers,
- 8) analysing of needs of the disabled and informing the Plenipotentiary for the disabled on problems requiring system solution,
- 9) proposals for the financial plan of the State Rehabilitation Fund for the Disabled of annual reports on utilisation of these means.
- 10) management of financial means being at the disposal of the voivodship centre and submitting to the Director of the Board of the State Rehabilitation Fund for the Disabled of annual reports on utilisation of these means.

## **Article 25**

1. Benefits in the event of unemployment are acquired by the disabled in accordance with principles determined in the Employment Act.
2. Benefits, referred to in paragraph 1, are financed from the Labour Fund.

## **Article 26**

1. The establishment employing the disabled, placed by regional labour office, may receive from the means of the State Rehabilitation Fund for the Disabled reimbursement of costs:
  - 1) borne in connection with organisation of new work posts for the disabled capable of work or in connection with equipping of the existing work posts according to the needs of the disabled to the extent of 30 average wages for each work post,
  - 2) of remuneration paid to the disabled who - as the unemployed - are employed at the newly established work posts, up to the amount not exceeding an average wage and a contribution to social insurance scheme from this wage for the period of 19 months starting from the day of starting employment
2. The establishment is obliged to employ the disabled, placed by the regional labour office, at the newly created work posts for the period of at least 3 years. If - for the reasons concerning the establishment - the period of employment of the disabled at the newly created work post was shorter, the establishment reimburses means received for the organisation of this work post at the amount

equal to 1/36 part of these means for each calendar month lacking to 3 years, not less than for 6 months. Reimbursement should be made during 3 months after dismissal of the disabled.

### **Article 27**

1. The disabled taking up the economic activity may receive the loan for starting of this activity.
2. Loans, referred to in paragraph 1, are granted by the voivodship centre from the means of the State Rehabilitation Fund for the Disabled to the extent of 25 average wages, in accordance with principles specified in the contract.
3. The loan, granted in accordance with paragraph 2, may be remitted in 50 per cent at the most if the disabled carries out economic activity for the period of at least 24 months.

### **Article 28**

The sheltered work establishment, in which the change of the profile of production is necessary, may acquire means from the State Rehabilitation Fund for the Disabled for the disabled for the retraining of the disabled who are employed in it.

## **Chapter 4**

### **Plenipotentiary for the disabled**

#### **Article 28**

1. The Council of Ministers will create at the Ministry of Labour and Social Policy the post of the Secretary of State Plenipotentiary for the Disabled, further referred to as "the Plenipotentiary".
2. Tasks of the Plenipotentiary particularly comprise:
  - 1) elaboration of the premises of the policy in the field of employment, rehabilitation and working conditions of the disabled,
  - 2) co-ordination of tasks in the field of conditions of social and professional life of the disabled,
  - 3) pronouncing opinions on the draft legislative acts concerning employment, rehabilitation and conditions of life of the disabled,
  - 4) periodical reviews of the implementation of tasks in the field of employment and rehabilitation of the disabled.

3. The Plenipotentiary is appointed by the President of the Council of Ministers at the proposal of the Minister of Labour and Social Policy.

4. The Council of Ministers determines the detailed scope of tasks and competencies of the Plenipotentiary.

## **Chapter 5**

### **State Rehabilitation Fund for the Disabled**

#### **Article 30**

1. State Rehabilitation Fund for the Disabled, further referred to as "the Fund" is being established.

2. The Fund has the legal status and it is the state objective fund in the meaning of the Act of 5 January 1991 - Budgetary Law (Dziennik Ustaw No.4, Text 18).

#### **Article 31**

1. The following are the incomes of the Fund:

1. payments of establishments, referred to in article 4 paragraph 1, article 6 paragraph 2, article- 17 paragraph 3 and article 20 paragraph 3 item 1,
2. subventions from the State budget,
3. other subsidies and subventions,
4. legacies and grants,
5. voluntary payments of establishments and other payments,
6. incomes from interest on loans and interest on purchased obligations as well as dividends,
7. incomes from economic activity.
8. incomes of the Fund are exempt from the income tax.

#### **Article 32**

1) Means of the Fund are designed for financing of the vocational, medical and social rehabilitation of the disabled, and particularly for:

1. creation of new and adaptation of the existing work posts to the possibilities of the disabled,
2. organisation of training and retraining for the disabled,

3) construction and modernisation of premises serving vocational and social rehabilitation of the disabled,

4) creation and activity of workshops,

5) creation of rehabilitative and social infrastructure,

6) additional financing of interest of bank credits, referred to in article 21,

7) granting of loans, referred to in article 27.

1. The surplus of the Fund means may be designed for:
2. granting of loans,
3. shares in companies
4. purchase of obligations and shares.

### **Article 33**

1. Board of Trustees and Managing Board are the organs of the Fund.

2. The Plenipotentiary is the Chairman of the Board of Trustees. Members of the Board six persons - are appointed and dismissed by the Minister of Labour and Social Policy.

3. The tasks of the Board of Trustees comprise:

- 1) adoption of the plans of activity and draft financial plan of the Fund,
- 2) determining of criteria of selection of actions financed from the means of the Fund,
- 3) approval of proposals of the Managing Board as regards taking of loans,
- 4) control and appraisal of activity of the Managing Board,
- 5) approval of annual reports of the Managing Board on the activity of the Fund.

4. The Minister of Labour and Social Policy determines the detailed tasks of tile Board of Trustees and decides on the wages of its members.

### **Article 34**

1. The Managing Board is composed of the President and his deputy. The President of the Board is appointed and dismissed at the proposal of the Plenipotentiary - by the Minister of Labour and Social Policy.

2. The deputy of the President is appointed and dismissed - at the proposal of the President -by the Minister of Labour and Social Policy.

3. The tasks of the Managing Board comprise:

- 1) elaboration of plans of activity of the Fund and draft financial plan,
- 2) selection of activities to be financed from the means of the Fund,

3) management of the means of the Fund, with reservation rights of the Board of Trustees,

4) control of utilisation of loans granted from the means of the Fund,

5) reports on activity for the Board of Trustees,

6) admitting to employment of workers of the Office of the Fund and specifying conditions of their work and pay.

4. The Managing Board submits at the demand of the Board of Trustees documents and materials concerning activity of the Fund.

5. The office of the Fund renders technical and organisational services for the Board of Trustees

### **Article 35**

1. The President of the Managing Board may appoint agents, specifying the limits of their agency.

2. The President of the Managing Board may appoint agents, specifying the limits of their agency.

3. The following persons are authorised to make declarations as regards financial rights and obligations of the Fund:

1. President of the Managing Board or his deputy -independently,
2. two agents acting together.

### **Article 36**

Expenditures for the activity of the Fund are covered by its incomes.

### **Article 37**

The Minister of Labour and Social Policy submits to the Council of Ministers annual information on the activity of the Fund.

## **Chapter 6**

### **Special provisions**

### **Article 38**

1. Sale of orthopaedic and prosthetic appliances, rehabilitation equipment and services in this field are exempt from the turnover tax.

2. The establishment starting production of orthopaedic and prosthetic appliances and rehabilitation equipment and services in this field may receive the grants of the Fund for starting of these activities.

## **Chapter 7**

### **Transitory and concluding provisions**

#### **Article 39**

1. Co-operatives of the disabled and the blind are the sheltered work establishments in the meaning of this Act, up to June 1992, if they fulfil conditions determined in article 19 paragraph 1 item 1 and 3.

2. In justified cases the Plenipotentiary may release the co-operatives, referred to in paragraph 1, or conditions mentioned in article 19 paragraph 1 item 1.

#### **Article 40**

1. Persons included to one of the disability groups, prior to the date of coming into force of the Act, are the disabled in the meaning of the Act.

2. Persons with the limited capacity for work confirmed by the statement of a physician, issued prior to the date of coming into force of the Act, on the basis of paragraphs 1-5 of the Regulation of the Minister of Health and Social Welfare of 20 July 1987 (Monitor Polski No.24, Text 198) are considered as the disabled in the meaning of this Act up to 31 December 1991.

#### **Article 41**

State and local units of the budgetary sphere make payments, referred to in article 4, starting from the payment due as on January 1992.

#### **Article 42**

1 . The following changes are introduced to the Employment Act of 29 December 1989 Dziennik Ustaw No.75, Text 446, of 1990 No.9, Text 75 and No.56, Text 323:

1) in article 2 paragraph 1:

a) in item 8 at the end the following sentence is added:

"As a person ready to take up the work, the disabled is also considered if he may take up at least half-time work and if it is justified by his health or family situation."



b) in item 12 letters c and d are added in the following reading:

"c) graduates of special primacy schools in the period of 12 months from graduation,

d) the disabled in the period of 12 months from the date of acquiring the right to perform a given occupation, looking for the job for the first time";

2) articles 23-25 are being deleted.

2. Obligations resulting from the deleted article 24 of the Act referred to in paragraph 1, concerning activities which have been started and are pending, are carried out on the basis of this provision up to the time of their expiration.

### **Article 43**

The Act comes into force as from 1 July 1991.