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REFORM OF THE BRIDGING PENSION SYSTEM – NEW RIGHTS AND THEIR ECONOMIC CONSEQUENCES

REFORMA SYSTEMU EMERYTUR POMOSTOWYCH – NOWE UPRAWNIENIA I ICH EKONOMICZNE KONSEKWENCJE

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Abstract

Subject and purpose of work: This research aims to determine the economic consequences of making bridging pensions permanent. We predict that this will increase the number of beneficiaries and the overall cost of the program.

Materials and methods: The presented study is the result of research in which the author used both quantitative methods (analysis of statistical data) and analysis of legal acts together with analysis of the legislative process.

Results: The change in the regulations on bridging pensions will improve the situation of people working in difficult conditions, but is associated with a significant increase in budget expenditure and loss of revenue from contributions.

Conclusions: The expiring nature of bridging pensions was the result of regulations, not case law. Although the change is in line with the recommendations of the ILO and the EC, its removal is more political and short-term in nature, burdened with long-term consequences for the state.

Keywords: bridging pensions, work in special conditions, work of a special nature, arduous work, hazardous work

Streszczenie

Przedmiot i cel pracy: Celem niniejszego opracowania jest wskazanie aktualnych zmian w systemie emerytur pomostowych oraz ich ekonomiczne konsekwencje. Hipotezą badawczą jest stwierdzenie, że usunięcie wygasającego charakteru emerytur pomostowych spowoduje wzrost liczby uprawnionych do emerytury pomostowej oraz zwiększy koszty wypłacanych świadczeń. Zastosowana w pracy metoda badawcza pozwala na ocenę ekonomicznych konsekwencji.

Materiały i metody: Przedstawione opracowanie jest wynikiem badań, w których autor wykorzystał zarówno metody ilościowe (analiza danych statystycznych), jak analizę aktów prawnych wraz z analizą procesu legislacyjnego. Pozwoliło to na szczegółowe omówienie tematu emerytur pomostowych, zarówno pod kątem prawnym, jak i ekonomicznym.

Wyniki: Zmiana przepisów dotycząca emerytur pomostowych poprawi sytuację osób pracujących w trudnych warunkach, ale wiąże się z istotnym wzrostem wydatków budżetowych i utratą wpływów ze składek.

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Wnioski: Wygasający charakter emerytur pomostowych był efektem przepisów, a nie orzecznictwa. Choć zmiana jest zgodna z zaleceniami MOP i KE, jej usunięcie ma charakter bardziej polityczny i krótkoterminowy, obarczony długofalowymi konsekwencjami dla państwa.

Słowa kluczowe: emerytury pomostowe, praca w szczególnych warunkach, praca w szczególnym charakterze, praca uciążliwa, praca niebezpieczna

Introduction

The performance of work in special conditions or of a special nature has become the subject of much research work. The issues of special pension arrangements aimed at those who perform the work have been pondered by scholars representing various research streams. The financing of the bridging pension system was the subject of the work of M. Olszewska, who analyzed the sources of financing and financial sustainability of the Bridging Pension Fund (Olszewska, 2012). Regulatory aspects were analyzed by P. Makarzec, who pointed out the peculiarities of acquiring the right to benefits (Makarzec, 2014), as well as by T. Lasocki, who analyzed, among other things, the expiring nature of bridging pensions (Lasocki, 2022). In turn, M. Szczepanska pointed out the consequences of the proposed changes aimed at expanding the group of eligible persons (Szczepanska, 2020). However, it is worth emphasizing that the bridge pension is a benefit granted for work in special conditions, or of a special nature. The regulations specify the types of work whose performance entitles one to early retirement. However, the new regulations significantly expand the group of those entitled to the benefit, which in principle would be extinguished. In the regulations of various countries, some professional groups, due to the specifics of their work, enjoy the right to benefits at an earlier age than the commonly established one. Of the 27 EU member states, only five have no differentiated regulations for these workers (Denmark, Ireland, Malta, the Netherlands, and Sweden) (Natali, Spasova, Vanhercke, 2016). Most countries have chosen to recognize arduous and hazardous work as worthy of special consideration in the pension system. To this end, lists of occupations considered arduous or hazardous have been developed, e.g. work performed by miners, steelworkers, flight attendants and aircraft pilots, dancers, sailors, assembly line workers, heavy vehicle drivers (Mittlaender, 2023).

The purpose of this study is to identify current changes in the bridge pension system and their economic consequences. The research hypothesis is that the removal of the expiring nature of bridge pensions will result in an increase in the number of those eligible for a bridge pension and increase the cost of benefits paid. The research method used in the study makes it possible to assess the economic consequences.

The first part of the study presents the systemic basis of social security and the place of bridge pensions in the social security system. The second part indicates the specificity of work in special conditions and of a special nature, as well as selected groups of work for which the legislator has presented special conditions for acquiring the right to benefits. The third part characterizes bridge pensions and presents their financing. Finally, the fourth part of the study presents the conclusions of the cost-benefit analysis of the removal of the expiring nature of bridge pensions.

The constitutional basis of social security

According to Article 67 of the Constitution of the Republic of Poland, everyone has the right to social security in case of inability to work due to illness or disability and upon reaching retirement age. This article establishes the fundamental right of every Polish citizen to social security, which addresses the risk of inability to work, illness, disability, and old age. Article 67 of the Constitution constitutes an important safeguard of citizens' rights by ensuring that citizens are protected in the event of unforeseen life events that may prevent them from supporting themselves (Constitution of the Republic of Poland, 1997, Article 67). In order to realize the statutory right to social security, the so-called "new" system based on the insurance principle has been in place since January 1, 1999 (although a number of provision and assistance solutions have been in operation in parallel). Introduced since January 1, 1999, the new pension system, in which the insured were divided into two groups:

- those born before January 1, 1949, who retained the previous rules for acquiring the right to an old-age pension according to the defined benefit concept,
- those born after December 31, 1948, for whom new rules based on the defined contribution concept were introduced.

The entitlement to acquire the right to retirement at an earlier retirement age for work in special conditions or of a special nature was left only for the defined benefit system (Pension Act, 1998, Article 32). On the other hand, in the case of persons born after December 31, 1948 working in special conditions or of a special nature if they have reached the age provided for in:

- Article 32 (employment in special conditions or special nature) dependent on the work performed,
- Article 33 (insurance for creative or artistic activity), i.e. for women 55 years, men 60 years,
- Article 39 (mining work), i.e., retirement age, is reduced by 6 months for each year of such work, but by no more than 15 years,
- Article 40 (railroad pension) i.e. for women 55 years, men 60 years.

if on the date of entry into force of the law they have reached the period of employment in special conditions or in a special nature required by the current regulations to acquire the right to an old-age pension at an age lower than 60 years – for women and 65 years – for men, and have a contribution and non-contribution period of at least 20 years for women and 25 years for men, they were entitled to the so-called early pension (Pensions Act, 1998, Article 184).

It should be noted, however, that the provisions contained in Article 184 of the Pensions Act were of a transitional nature and applied to people who already had both general length of service and length of service in special conditions or of a special nature and had not yet reached the earlier retirement age provided for in the existing regulations. At the same time, the regulations left without the possibility of acquiring the right to early retirement, those who were in the process of acquiring periods entitling them to early retirement – which, however, required an appropriate regulation. To this end, it was necessary to further expand the right to earlier benefits than the general retirement age, which was accomplished by the entry into force of the provisions of the Act of December 19, 2008 on bridging pensions.

The solutions developed at the time were intended to be expiring in nature and to be a form of fulfillment of the state's previous commitments to certain professional groups. At the time, the drafters pointed out that, along with the establishment of the bridging pension system, it was necessary to carry out activities aimed at improving the situation of working people and striving to retrain and change jobs (Sejm IX, Sejm Print 1070). At the time, it was pointed out that those employed in special conditions or of a special nature, who cannot continue working for health reasons in their current positions, should look for another job, and much earlier than five years before reaching retirement age. The drafters stressed that the most rational solution would be to create mechanisms to facilitate the process of retraining and looking for another job. A similar position can be found in the achievements of the International Labor Organization, as it is unacceptable to use lowering the retirement age instead of prevention aimed at ensuring safe working conditions (ILO, 2006). This position was also shared by the European Commission, which back in 2001 recommended that EU member states promote policies aimed at:

- abolish early retirement programs,
- establish more flexible working hours,
- increase access to lifelong training (European Commission, 2001).

The directions indicated by the European Commission should therefore be taken into account when creating policies for people working in special conditions or of a special nature and defining such work. Hence the original establishment of the expiring nature of bridge pensions.

However, the demands appearing in the public debate to remove the expiring nature of bridge pensions by removing the condition of performing work in special conditions or of a special nature before January 1, 1999 have also lived to see the Constitutional Court's decision. The Constitutional Court, in its judgment of March 16, 2010, however, found no contradiction in this regard with the principle of citizens' trust in the state and the laws made by it, and with the principle of protection of acquired rights arising from Article 2 of the Constitution of the Republic of Poland, and with the principle of equality before the law from Article 32(1) of the Constitution of the Republic of Poland, stating that persons starting work in special conditions or of a special nature since 1999 could not reasonably expect to be granted bridge pensions, while the

legislator had freedom in this regard (TK 2010, ref. K 17/09). Therefore, it is not legitimate to conclude that those who began working after January 1, 1999 should be treated in the same way as those who worked in special conditions or of a special nature before that date. Thus, the changes introduced as of January 1, 2024 to repeal the expiring nature of bridge pensions were not based on legal grounds, but were political in nature.

Work under special conditions or of a special character

According to Art. 3(1) of the Bridge Pensions Law, work related to risk factors that, with age, are likely to cause permanent damage to health, performed in special conditions of the working environment, determined by forces of nature or technological processes, which, despite the application of technical, organizational and medical preventive measures, place demands on employees that exceed the level of their capabilities, limited as a result of the aging process even before they reach retirement age, to an extent that makes it difficult for them to work in their current positions (Bridge Pensions Law, 2008, Art. 3(1)). The legislator identifies risk factors that are associated with work such as:

1) in special conditions determined by forces of nature:

- a) work underground,
- b) work on water,
- c) work under water,
- d) work in the air.

2) in special conditions determined by technological processes:

- a) work under hot microclimate conditions – work performed indoors, where the value of the WBGT thermal load index is 28°C and above, with the value of the worker's metabolic rate above 130 W/m²,
- b) cold microclimate work – work performed in rooms with an air temperature below 0°C,
- c) very heavy physical work – work that results in an effective energy expenditure of more than 8400 kJ for men and more than 4600 kJ for women during a work shift,
- d) work under conditions of increased atmospheric pressure,
- e) heavy physical work involving a very high static load resulting from the need to work in a forced, unchanging body position; whereby heavy physical work is work resulting in an effective energy expenditure of more than 6,300 kJ for men and more than 4,200 kJ for women during a work shift, and work in a forced body position is work requiring significant bending and/or twisting of the back while exerting a force of more than 10 kG for men and 5 kG for women (according to the OWAS method, category 4 item) for at least 50% of a work shift.

In turn, Article 3(3) of the Act indicates that work of a special nature is work requiring special responsibility and special psychophysical fitness, the ability to perform properly in a manner that does not endanger public safety, including the health or life of others, decreases before reaching retirement age due to deterioration of psychophysical fitness associated with the aging process (Bridge Pensions Act, 2008, Article 3(3)).

According to the regulations, it is the employer (payer) who is obliged to keep a list of jobs where work in special conditions or of a special nature is performed, and to keep records of employees performing work in special conditions or of a special nature. Consequently, it is the payer who is responsible for reporting the designated employees to the Social Security Administration on the Social Insurance Institution (SII) ZSWA form. According to SII data, the number of people performing work in special conditions or of a special nature is just over 300,000 per year.

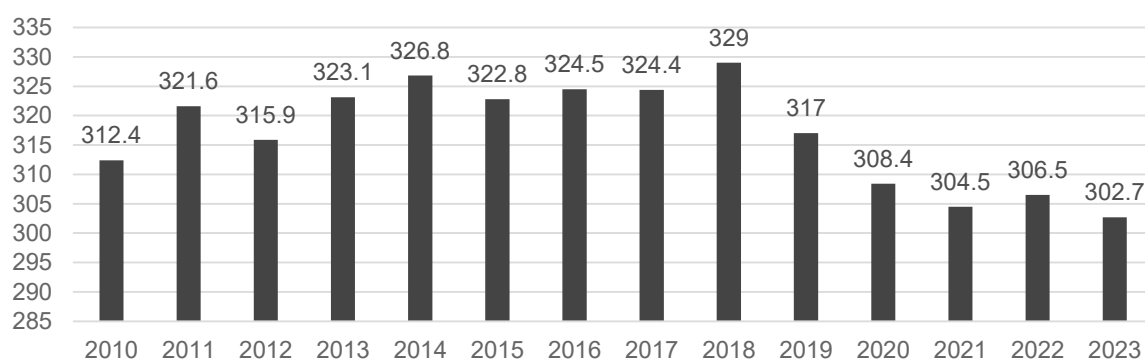


Figure 1. Number of people reported by SII ZSWA form (in thousands) from 2010 to 2023

Source: Own compilation based on: SII, Information on insured persons performing work in special conditions or of a special nature (2010-2023).

According to the provisions of the Bridge Pension Act, special solutions regarding the conditions for acquiring the right to the benefit were directed to:

- those working on aircraft – the right to a bridge pension is granted at a lower age, i.e. at least 50 years for women and at least 55 years for men, in the case of an insured person who:
 - 1) was an aircraft pilot or performed work as cabin crew in the air on aircraft (including as a steward or stewardess).
 - 2) was employed in seaports and auxiliary enterprises operating on behalf of these ports as: a dockworker directly handling cargo in the ship's holds, operator of tower cranes for the operation of which category IŻ or equivalent licenses are required, or operator of port or shipyard cranes;
- working in commercial seaports, when the insured has reached the age of at least 55 and has a period of work in seaports in special conditions or of a special nature of at least 15 years.
- performing work in metallurgy in special conditions – when the insured has reached an age of at least 55 years, has a period of work in special conditions in metallurgy of at least 15 years, and has been certified by an occupational physician as unfit to perform work in special conditions.
- performing work as traction vehicle drivers, when the insured has reached an age of at least 50 years for women and at least 55 years for men, who has a period of work as a traction vehicle driver of at least 15 years, and when an occupational physician has issued a certificate of inability to perform work as a traction vehicle driver.
- members of professional mountain rescue teams who have reached an age of at least 50 years for women and at least 55 years for men and have a period of work as a member of professional mountain rescue teams of at least 10 years.

Performing mining work, if they have reached an age of at least 55 years for women and at least 60 years for men and have a period of mining work of at least 15 years (Bridge Pensions Act, 2008, Articles 5-11).

It should be noted that the separation of these groups from among work in special conditions or of a special nature allows for independent treatment of insured persons who perform this work. It should therefore be recognized that even in a special bridge pension system, different groups are characterized by special regulations.

Bridging pensions and their financing

According to Article 4 of the Law of December 19, 2008 on bridging pensions, the right to a bridging pension, is granted to a person who meets all of the following conditions:

- was born after December 31, 1948;
- has a period of work in special conditions or of a special nature of at least 15 years;
- has attained an age of at least 55 years for women and at least 60 years for men;

- has a contributory and non-contributory period, determined in accordance with the principles set forth in Articles 5-9 and 11 of the Law on Pensions from the Social Insurance Fund, of at least 20 years for women and at least 25 years for men;
- after December 31, 2008, performed work in special conditions or of a special nature, as defined in Article 3, paragraphs 1 and 3.

Importantly, according to the regulations, the right to a bridge pension arises from the date of fulfillment of the conditions required for the acquisition of this right, and in the case of drawing sickness benefit or rehabilitation benefit, the right to a bridge pension arises from the date of cessation of drawing this benefit or benefit (Bridge Pensions Law, 2008, Article 15). This means that the emergence of the right to a bridge pension arises by operation of law, and the decision issued by the Social Insurance Institution in this regard is of a nature stating that the insured has met the statutorily defined prerequisites for acquiring the benefit. However, in practice, for many years benefit recipients receiving a negative decision from the Social Insurance Institution did not receive information as to which of the prerequisites had not been met. The applied practice of the SII led to the issuance of negative decisions because, according to Article 15 of this law, the right to a bridge pension arises from the date of fulfillment of all the conditions required for the acquisition of this right, including the termination of the employment contract. This position was confirmed in the jurisprudence of the Supreme Court, which held that the granting of the right to a bridge pension can only occur from the day after the date of termination of employment (Supreme Court 2019 ref. UK 3/18, LEX No. 2638105). However, it should be emphasized that as of April 20, 2022, for the acquisition of the right to a bridge pension, the termination of employment is no longer required, although it is only after the termination of employment that the bridge pension can be started.

The amount of bridge pensions is determined on the basis of the provisions of Article 14 of the Law. The value of the bridge pension is equivalent to the amount resulting from dividing the basis for calculating the pension by the average life expectancy for persons aged 60, determined according to the life expectancy tables in effect on the date of application for a bridge pension. If the insured person is a member of an open-ended pension fund, in determining the basis for calculating the bridge pension, the pension insurance premiums deposited in his account with SII shall be increased by multiplying with a corrective ratio of 19.52/12.22, which is the ratio of the full amount of the pension insurance premium to the amount deposited in the insured person's account (Bridge Pensions Law, 2008, art.14(2)).

It should also be noted that the amount of the bridge pension cannot be lower than the amount of the lowest pension referred to in Article 85 of the Law on Pensions from the Social Insurance Fund, i.e. PLN 1780.96 in 2024.

Importantly, the bridge pension is subject to valorization under analogous rules and on dates provided for benefits from the general system. The bridge pension also entitles pensioners to an additional annual cash benefit for pensioners (Bridge Pensions Law, 2008, Article 14(5)) and, upon meeting additional criteria, to another additional annual cash benefit for pensioners (Law on Another Additional Annual Cash Benefit for Pensioners, 2023).

The benefits of the bridge pension system are financed by the Bridge Pension Fund (BPF). The Fund is created from contributions financed by employers (payers) and from a budget subsidy. The payer is obliged to finance contributions for each employee performing the work indicated in the regulations, regardless of the possibility of a particular employee becoming eligible for a bridge pension (Bridge Pensions Law, 2008, Article 14(5)). The contribution to the BPF is 1.5% of the contribution assessment base for pension and disability insurance (Bridge Pensions Law, 2008, Article 36). The assessment base for the BPF contribution is the same as the assessment base for pension and disability insurance contributions. The limitation to an amount equivalent to 30 times the projected average monthly salary in the national economy for the calendar year also applies. The obligation to pay contributions to the Bridging Pension Fund for an employee arises from the date the employee begins performing work in special conditions or of a special nature, and ceases on the date the employee ceases performing such work. The period from the date of commencement of work in special conditions or of a special nature to the date of cessation of such work should be understood as the period from the date of employment of an employee in a position where work in special conditions or of a special nature is performed until the date of cessation of employment in that position. According to the BPF's financial plan for 2023, revenues from contributions amount to PLN 392 million, while the subsidy

from the state budget is to amount to PLN 1.8 billion. This means that receipts from contributions were to account for only 17% of bridging pension expenses (PLN 2.3 billion) (SII, 2024).

It should also be emphasized that until now there was another condition in place that made bridge pensions expiring. Well, the applicant for a bridge pension had to have performed work in special conditions or work of a special nature before January 1, 1999 (Bridge Pensions Act, 2008, Article 4, paragraph 5). It should also be borne in mind that bridging pension is a form of early retirement, and the right to bridging pension itself ceases on the day before the date of reaching the general retirement age. What's more, an application for a bridge pension can be submitted: in person or by proxy at any organizational unit of the Social Insurance Institution, through: a postal operator, a Polish consular office, as well as in the form of an electronic document through the Electronic Service Platform SII.

Removing the expiring nature of bridge pensions – cost-benefit analysis

The study of socio-economic reality in a scientific manner requires the maintenance of a methodological regime. The precursors of the study of legal regulations and their economic consequences are considered to be R. Coase (1961), G. Calabresi (1961), or A. Alchiana (1965), who in the 1960s in their analyses used procedures that allowed the study of the economic consequences of established laws. These authors, dealing with the regulation of various social phenomena, laid the foundation for the study of the consequences of established law. In this trend, significant methodological achievements were made by R. Posner, who, in his approach to the study of law, used economic methods and tools to understand and evaluate legal regulations (Posner, 1972). R. Posner believed that law can be viewed as a system of market regulation that aims to increase social welfare. Economic analysis of law uses a wide range of economic methods and tools, including, among others:

- cost-benefit analysis,
- game theory,
- contract theory,
- property theory (Cooter, Ulen, 2023).

Cost-benefit analysis is a tool for evaluating the consequences of introduced legislation, which allows one to determine the ratio of benefits to costs (Weimer, Aidan, Vining 2005). Therefore, it is possible to use cost-benefit analysis to evaluate the introduction of changes to the bridge pension system and indicate from the perspective of a rational legislator what the costs and benefits of the changes may be. Applied to the study of changes in the bridging pension system, cost-benefit analysis makes it possible to use data on the legislation created and its financial consequences.

Among the benefits of removing the expiring nature of bridge pensions are:

- provision of income to those who, due to the performance of work in special conditions or of a special nature,
- an increase in the benefits of performing work in special conditions or of a special nature, thanks to the possibility of earlier professional deactivation,
- positive perception of the introduced change among those performing work in special conditions or of a special nature,

In turn, among the costs of the introduced changes, it should be pointed out:

- an increase in expenditures on bridging pensions by PLN 220 million in 2024 and a systematic increase in relation to the projected expenditures according to the status quo (due to the current extinction mechanism) in subsequent years,
- due to the fact that the Bridging Pensions Fund, from which bridging pensions are financed, already requires significant support in the form of a subsidy from the state budget (about 80% of BPF revenues), these expenses will be financed from the state budget,
- the loss of contributions from people who will leave the labor market due to the granting of bridging pensions.

The introduction of changes to the bridge pension system, which remove the expiring nature of this benefit, has both benefits and costs. The benefits of the change primarily affect those who perform work in

special conditions or of a special nature. The change is intended to provide them with income when they can no longer work due to their health.

However, in assessing the impact of the changes introduced in 2023 on the subjective scope of the right to a bridge pension, it is necessary to point out the significance of the premise set forth in Article 4(6) of the Act (Bridge Pensions Act, 2008, Art.4(6)). This provision, still provides for the requirement of performing work in special conditions or of a special nature after December 31, 2008, playing a selective role. This means that despite the introduction of new regulations, there is still a restriction on access to this benefit for those whose careers changed after 2008. Consequently, the change introduced in 2023 has a limited impact on the scope of subjects translating also into the economic impact of the reform in question.

The costs of the changes are also significant and mainly concern the increase in spending from the state budget. The increase in spending on bridging pensions will be systematic and will increase as the number of eligible persons increases. In addition, the change will result in a loss of contributions from those who will leave the labor market after the bridge pension is granted.

Therefore, it should be pointed out that the expiring nature of the bridge pension system did not result from case law and the need to change the regulations due to the omission of the rights of a certain group. Moreover, it should be emphasized that, in accordance with the *acquis* of the International Labor Organization and the European Commission, countries should create mechanisms to facilitate the process of retraining and seeking other work, as well as establishing more flexible working hours and increasing access to continuing training. In view of this, removing the expiring nature of bridge pensions should be considered in political and short-term terms, the consequences of which, however, will be felt by the state for many years to come.

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