

WAYS TO IMPROVE LABOR LEGISLATION, THE NORMS OF WHICH ARE AIMED AT REGULATING ATYPICAL FORMS OF EMPLOYMENT

FORMAS DE MELHORAR A LEGISLAÇÃO TRABALHISTA, CUJAS NORMAS VISAM REGULAMENTAR FORMAS ATÍPICAS DE EMPREGO

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Abstract: Based on the analysis of scientific works, the article reveals theoretical problems in the field of legal regulation of atypical forms of employment. The analysis of the norms of the current legislation, the norms of which are aimed at regulating atypical forms of employment, is carried out, which made it possible to identify the existing problems in the legal regulation of atypical forms of employment. It is concluded that today, despite the important steps taken by the legislator to improve the current labor legislation in terms of regulating atypical forms of employment, there are still a number of gaps and other shortcomings in this area, without elimination of which it is impossible to talk about the proper level of social security of employees who realize their abilities and abilities to work in the specified forms. The author's vision is offered regarding promising directions for improving labor legislation, the norms of which are aimed at regulating atypical forms of employment.

Keywords: Improvement. Labor legislation. Legal regulation. Atypical employment.

Resumo: Com base na análise dos trabalhos científicos, o artigo revela problemas teóricos no campo da regulamentação jurídica de formas atípicas de emprego. A análise das normas da legislação atual, cujas normas visam regulamentar formas atípicas de emprego, é realizada, o que permitiu identificar os problemas existentes na regulamentação legal das formas atípicas de emprego. Conclui-se que hoje, apesar dos importantes passos dados pelo legislador para melhorar a legislação trabalhista atual em termos de regulamentação das formas atípicas de emprego, ainda há uma série de lacunas e outras deficiências nesta área, sem eliminação das quais é impossível falar sobre o nível adequado de seguridade social dos empregados que percebem suas habilidades e habilidades para trabalhar nas formas especificadas. A visão do autor é oferecida a respeito de

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direções promissoras para melhorar a legislação trabalhista, cujas normas visam regular formas atípicas de emprego.

Palavras-chave: Melhoria. Legislação trabalhista. Regulamentação legal. Emprego atípico.

INTRODUCTION

Social processes affecting the spread of atypical forms of employment cover most of the developed countries of the world, including Ukraine. Moreover, in our country, atypical forms of employment are developing somewhat more slowly compared to EU countries, which is due to certain differences in socio-economic development. At the same time, the legal regulation of atypical forms of employment in Ukraine significantly lags behind the modern needs of society in this area. The emergence and development of atypical forms of employment revealed a significant number of problems and shortcomings, the causes, consequences and ways of overcoming which became the object of research of scientific developments of domestic scientists. In our opinion, it is necessary to solve these problems, first of all, by improving the labor legislation, the norms of which are aimed at regulating atypical forms of employment.

The main features of labor relations are as follows: 1) personal nature. Personal performance of work by an employee on a specific qualification, profession, position; 2) paid nature. Systematic payment of the salary for the performed works by an employer to an employee; 3) the nature of subordination to an employer. Work is performed by an employee on behalf of, under the guidance and control of an employer (Venediktov, Melnyk, 2021).

The national legislation in the field of labor protection today is characterized by certain obsolescence and inconsistency with the normative documents of the European Union in the relevant field. The analysis of the structure and content of the norms of draft laws shows that the work on the selection and placement of normative material has been properly carried out. The norms of the draft laws correspond to the norms of the Council Directive No. 89/391/EEC and other documents of the European Union in the field of safety and health protection of workers at work (Klymenko, 2021; Melnyk, 2022).

METHODS

When preparing the article, both general and special methods of scientific knowledge were used. Thus, for example, the analytical method was used in order to summarize the scientific opinions of scientists who considered theoretical and practical problems in the field of regulation of atypical forms of employment. The method of documentary analysis was used in order to generalize the problems that exist in the current legislation, the norms of which are aimed at regulating atypical forms of employment. Modeling and forecasting methods were used to work out ways to improve labor legislation, the norms of which are aimed at regulating atypical forms of employment.

FINDINGS AND DISCUSSIONS

One of the significant problems of socio-economic development is a number of shortcomings in the field of accumulation and use of labor resources, formation, strengthening and improvement of the labor potential of the country. Representatives of various branches of science, in particular legal scholars, emphasized this issue earlier and continue to emphasize it today. Thus, O. V. Cherkasov and I. O. Mamaiev (2019) note that the basis of successful economic development is the effective use of labor potential. Labor potential is the total number of citizens of working age who, based on certain characteristics (health, psychophysiological features, educational, professional and intellectual levels, socio-ethnic mentality) are able and intend to work. In modern legal science in Ukraine, the researchers emphasize, the problem of legal regulation of the preservation and development of labor potential remains understudied. Separate works on this topic, unfortunately, do not provide a holistic view of the legal mechanisms for ensuring the sustainable development of labor potential in Ukraine. Science has not developed a unified theoretical approach in formulating the definition of labor potential, since this category is considered in many aspects - economic, social, managerial, resource, etc. This indicates that the concept of labor potential is multifaceted. Labor potential, lawyers conclude, is the total amount of reserves and resources of living labor in combination with their quantitative and qualitative characteristics that society has at the present stage of its development and which it may have in the foreseeable future. O.V. Cherkasov and I. O. Mamaiev (2019) are convinced that today it is extremely necessary to

improve the legal mechanisms for employment in Ukraine, the preservation and development of the labor potential of Ukraine. It is necessary, they rightly emphasize, to minimize the impact of destructive factors and strengthen the maintenance of socio-economic factors and benefits that affect it positively. Scientists note that at this time Ukraine qualitatively differs from other countries due to the developed education system with good training of qualified personnel, the availability of unused labor resources, soil fertility, high resource potential, advantageous geographical location and other advantages of our country, which should be used for of her progressive movement. At the same time, the development and preservation of the labor potential in Ukraine must be ensured by the introduction of stable and clear legal mechanisms for ensuring the employment of the population.

Ya. V. Klymenko (2010), analyzing the problems of reproduction and effective use of the labor potential of Ukraine, note that world experience shows that the progressive economic development of any country depends on health, education, development of knowledge, labor activity, professional mobility of the population involved in labor processes. It is the state of the labor potential of the population that is of great importance and affects the competitive advantages of the economy. In this context, when clarifying economic problems, the state and prospects of economic growth, the analysis of labor potential is of particular importance, which, although attracting the attention of an increasing number of economists, requires a deeper study. The formation of the labor potential and the prospects for its development, the researchers emphasize, are decisive for the future of Ukraine and for the creation of conditions for the transition to an innovative development model. At the same time, the level and quality of labor potential are the foundation of life support and stability in society, play a leading role in ensuring the competitiveness of the Ukrainian economy. The aggravation of the problems of reproduction of the labor potential in the period of transformation of the economy requires a rethinking of scientific work on the issues of its development, regulation of population employment, and taking into account in studies those contradictions, conditions and factors that determine the prospects of the economic growth of the state and the establishment of a new economic model of employment.

K. M. Didur (2018) claims that ensuring the continuity of the process of social production of goods and services requires a systematic restoration of labor potential. Processes of depopulation, migration, problems of socio-economic infrastructure, which

are characteristic of most rural areas, cause the need for scientific substantiation and the development of practical recommendations for the reproduction and rational use of rural labor potential. Effective reproduction and use of rural labor potential, notes K.M. Didur (2018), requires a systematic connection of regulatory, social, organizational, economic, demographic support measures from society and state. O.I. Pikulyk (2020, p.77), studying the problems of the use of labor resources, notes that the labor resource is a rather complex structural element of the economic resources of a market economy, the use of which is influenced by various socio-economic processes taking place in the state, namely: scientific and technical progress, structural restructuring economy, in particular the dominant development of the service sector; informatization of society; predominance of knowledge-intensive production; increased competition; development of the knowledge economy; accelerated economic growth; increasing production potential. Human resources must meet new production requirements. That is why the problems of effective and rational use of the labor resource in order to ensure full employment of the population, create a developed labor market, prevent mass unemployment and migration are gaining special relevance. These problems cannot be solved by the market mechanism of self-regulation and require state intervention.

Having analyzed the functioning of the national labor market in recent years, O.I. Pikulyk (2020), claims about inefficient and irrational use of labor resources in Ukraine. This is evidenced by the demographic crisis, negative natural population growth, the presence of a disproportion between the demand for labor and its supply, the mismatch between the labor market and the market of educational services, a decrease in economic activity and the level of employment of the working population, labor poverty and a decrease in real wages, stratification population into socially vulnerable groups, intensification of labor migration, reduction in the quality of labor potential and motivation for productive activity. Thus, the author concludes, the current crisis situation in the sphere of the use of labor resources in Ukraine can be corrected thanks to a balanced state policy aimed at implementing a number of measures aimed at increasing the level of employment in the country.

O.V. Koshchii (2020, pp. 141, 146), like the researchers mentioned above, emphasizes that labor resources are one of the main assets of the national economy. It is the labor resources and investments according to the basic macroeconomic laws that underlie the country's economic growth. Knowledge, skills, creative abilities of people are

the main prerequisite for the successful development of the national economy, determine the ability to effectively use all other types of resources. Therefore, the governments of all countries now pay a lot of attention to improving the quantitative and qualitative characteristics of labor resources, finding ways of their effective use. The scientist notes that Ukraine is characterized by a number of acute problems in the field of labor management. Among the existing problems, in our opinion, the following are particularly acute: the decrease in the population of Ukraine, the aging of the nation, high labor migration of Ukrainians, low wages at Ukrainian enterprises, low labor productivity, the loss of talented specialists by the national economy, etc. All these issues require an immediate solution, because now it is labor resources that have a decisive influence on the development of the national economy, determine its ability to develop in the future and remain competitive on the world market. To increase and improve the efficiency of the use of labor resources in Ukraine, attention should be paid to the following: increasing wages, creating an effective system of motivating domestic workers to work, creating favorable working conditions, promoting an increase in the birth rate, creating favorable conditions for the development and self-realization of talented workers, attracting talented workers from other countries.

It can be seen from the above that the relevance of the problems of formation, strengthening and development of Ukraine's labor potential, accumulation and use of labor resources was and remains particularly relevant, and in recent years it has become especially acute against the background of growing labor migration, threats that have arisen in connection with the spread corona virus infection (COVID-19), the military invasion of the Russian Federation. It would be fair to note that the emphasis on problems in the field of labor is made not only in scientific research and discussions, but also in some official documents. Thus, for example, in the Concept of the National Targeted Social Program for the Preservation and Development of the Labor Potential of Ukraine for the period until 2017, it is noted that the main causes of the problem associated with the maintenance, restoration and development of the labor potential, which is especially acute during the period of the financial crisis, are: a demographic crisis, in particular, a high level of premature mortality of the population and a critically low birth rate; mismatch of the quality of the labor force with the needs of the modern labor market; undervalued labor force, which formed a low level of income of the population; disparity in the amount of wages, which caused excessive differentiation of the incomes of the working population

and reduced the motivation for highly productive work; labor migration of skilled labor force abroad; violation of the labor rights of employees, deficiencies in the labor protection system; presence of unregulated population employment; insufficient development of social dialogue (Order of the Cabinet of Ministers of Ukraine No. 851, 2009). To solve these problems, preserve and develop the labor potential in this concept, the following ways are proposed: improving the demographic characteristics of the labor potential, decrease in the mortality rate and increase in the life expectancy of the population, decrease in the risk of accidents at work; increasing the educational and qualification potential, creating conditions for continuous education, acquiring knowledge and improving qualifications during work, improving the quality of personnel training by higher and vocational educational institutions; reducing the impact of labor migration of the able-bodied population abroad on the development of labor potential, promoting the return of long-term migrant workers to Ukraine; improvement of the payment system and labor regulation; stabilization of population employment in conditions of financial crisis; increasing the economic activity of the population, strengthening the motivation of the population to conclude labor contracts, promoting productive employment of the population with an orientation to the innovative model of production development; support for the entrepreneurial initiative of citizens and the development of small and medium-sized enterprises, self-employment of the population; implementation of international standards regarding conditions and labor protection in production; monitoring the development of labor potential in the short, medium and long term; improvement of labor legislation; increasing the role of social dialogue in the formation of state policy and ensuring the implementation of the principles of equality of its participants (Order of the Cabinet of Ministers of Ukraine No. 851, 2009).

In general, sharing the points of view of the above-mentioned researchers, as well as the position of the official authorities regarding the existing problems and shortcomings in the field of work, which negatively affect the socio-economic stability and development of our state, we must note that among a number of possible directions, ways and means of solving the existing problems in the specified area, insufficient attention is paid to the issue of development and legislative regulation of atypical forms of employment, the relevance of which today is difficult to exaggerate. M.M. Toporkova (2019, p. 122) quite rightly emphasizes that in modern conditions the phenomenon of atypical types of employment has become widespread and has become a common phenomenon in the labor market. A

number of factors contributed to this state of affairs, all of which can be reduced to fundamental changes taking place in the main spheres of life in modern society. The need for effective management of the country's economic development during the use of new forms of labor relations is enhanced by the fact that participants in economic relations must meet the new requirements of the market with constant variability, focus on meeting the needs of consumers, search for ways to optimize activity, etc. However, as the researcher emphasizes, until now in Ukraine atypical types of employment are not regulated by law, which causes uncertainty for employees, employers and society as a whole, since the relations that arise in these types of employment do not fit into the traditional model of labor law, and therefore can generate its violation. The reasons for the appearance of such violations are the uncontrolled development of small businesses, the existence of a shadow economy and employment, when it is difficult to establish the fact of labor relations.

In view of the above, we offer our own vision of possible and expedient ways to improve the labor law regulation of atypical forms of employment. First of all, in our opinion, it is necessary to clearly define the conceptual and categorical apparatus. A. V. Barovska (2011) rightly notes that among a number of qualitative and quantitative indicators, which can be used to determine the level of development of a certain sphere, the conceptual-categorical apparatus occupies a leading place. This is due to the absence of industry restrictions for application and the availability of established methodological approaches. The conceptual-categorical apparatus is a set of concepts, categories and terms that allow to reflect in a generalized form the phenomena of a certain field of knowledge, as well as the connections between them by fixing essential features and regularities. As the theoretical concepts are refined, the concepts acquire semantic certainty and are subsequently fixed in terms (the most rigid forms determined by the developed theory), arranged in the form of a term system. Therefore, terms - words/phrases denoting concepts, were given the role of a kind of bridge between science and commonly used vocabulary. Functional tasks of terminology are concentration, fixation, preservation and transmission of professional information. From the point of view of users, terminology is a set of practically-oriented communicative units that meet the criteria of economy, accuracy (or necessity and sufficiency) and suitability. Terminology is referred to intangible assets. In favor of recognizing the effectiveness of the conceptual-categorical apparatus as a tool of practical policy, the researcher emphasizes, the creation of a terminology committee in the International Organization for Standardization (ISO) shows that it has developed more

than 30 regulatory documents, a number of which are in the format of the State Standard of Ukraine became part of Ukrainian legislation.

Thus, a concept is a way of understanding and abstract representation of the results of knowledge of a certain subject area through awareness of the essential characteristics of its objects. A concept is one of the primary forms of thinking, characterized by the reflection of regular relations and properties of objects in the form of thoughts about their general and specific features. The formation of concepts is a complex process in which such means of cognition as comparison, analysis and synthesis, abstraction, idealization, generalization, and conclusions are used. A word or phrase that denotes a concept used in a certain field of knowledge with the most precise semantic definition is a term. In turn, the category represents the most general concepts of this or that field of knowledge, philosophy of science, which serve to "reduce" experience, find subject relations, dismemberment and synthesis of reality (Shinkaruk, 2002, p. 497). To define key concepts and categories means to clearly and succinctly outline the content and most important features of the main subjects and phenomena that are in the sphere of human cognition or activity. Accordingly, by formulating the necessary concepts and categories, defining the main terms in the field of application of atypical forms of employment, we thereby establish and specify the boundaries, content and most important properties of those social relations and institutions that make up the dubiousness of such a phenomenon as atypical forms of employment. In particular, it is necessary to provide an official definition of the concepts: "atypical (or non-standard) employment", "remote work" (or "distance work"), "outsourcing", "crowdsourcing", "outtasking", "outstaffing", "loan work" in the legislation etc.

The next important and, in our opinion, indispensable direction for improving the legislative basis for the use of non-typical forms of employment in Ukraine is the development of conceptual foundations for the introduction and functioning of this institute on the national labor market. Here, it should immediately be noted the implementation of the Flexicurity Concept when using atypical forms of employment, but we will consider this issue in more detail separately in the next part of the presented research. In this case, it is about what needs to be determined at the legislative level: firstly, the use and development of atypical forms of employment as one of the priority directions for strengthening and developing the labor potential of Ukraine; secondly, to formulate the key, fundamental ideas on which the political and legal mechanism for the use of atypical

employment in our country should be based. Forming a general state course to ensure the necessary conditions for the proper functioning of atypical employment institute, one should:

- *to single out the most significant and critical problems that exist today in this area, one of which is undoubtedly the lack of meaningful legislative regulation of the use of forms and types of atypical employment;*
- *to determine the motives, goals and tasks of the state policy regarding the promotion and development of atypical forms of employment in the country;*
- *outline the main directions and forms of state policy to ensure the practical implementation of atypical employment.*

An extremely important issue of improving the labor legislation regulating atypical employment is the consolidation of guarantees of the rights, freedoms and legitimate interests of employees involved in labor activity through atypical forms. Current labor legislation is mainly focused on classical or traditional forms of employment, but today's realities determine, even more so, require the introduction and use of atypical forms of realization by individuals of their ability to work. In view of this, we believe that the following should be regulated: the grounds and order of occurrence, as well as the registration of labor relations on the terms of atypical employment; the legal position of employees who exercise their right to work in a non-standard way; terms and conditions of payment of such employees; mechanisms for the protection of labor rights and legal interests of certain categories of employees, as well as the application of legal liability measures to them. It would be fair to note the fact that in July 2022 the Verkhovna Rada of Ukraine adopted Law No. 2421-IX, which introduced some important and much-needed changes to labor legislation. Thus, the Law of Ukraine "On Amending Some Legislative Acts of Ukraine to Regulate Some Non-standard Forms of Employment", which entered into force on August 10, 2022, is aimed at regulating non-standard forms of employment for persons who perform work on a non-permanent basis. This Law added Article 21 "Employment contract with unfixed working hours" to the Labor Code of Ukraine. This article stipulates that the specifics of an employment contract with non-fixed working hours are that the employee does not have a specific time for performing work, the employer only agrees with the employee on the mode of work and the duration of the working hours necessary to perform already specifically ordered work in compliance with the requirements of the law on duration of working time and rest time, as well as the

obligation to perform the work provided for in the terms of this employment contract, arises only in the case of its provision by the employer. At the same time, according to these innovations, the employer is not obliged to guarantee the employee that such work will be provided permanently, that is, he independently determines the necessity and time of engaging the employee to work, the scope of work. However, he (employer) is obliged to comply with the conditions of remuneration, including those defined by legislation. The lawmaker limited the number of employment contracts with non-fixed working hours at one employer, which cannot exceed 10 percent of the total number of employment contracts to which this employer is a party. An employer (an individual) who uses the labor of less than 10 employees can conclude no more than one employment contract with unfixed working hours. In addition, significant and expedient innovations in labor legislation introduced by the Law of Ukraine No. 2421-X of 18.07.2022 were the regulation of requirements regarding the essential terms of the contract, such as: the method and minimum period of notification to the employee about the start of work; method and maximum period of notifying the employee about readiness to start work or to refuse to perform it; intervals in which the employee may be required to work (basic hours and days); the minimum duration of working hours of an employee who performs work on the basis of an employment contract with non-fixed working hours. In addition, the innovations guarantee the employee the right to refuse to perform work if the employer requires the performance of work beyond of the basic days and hours or if he was notified of the availability of work in violation of the minimum terms specified in the employment contract with non-fixed working hours. However, the employee's refusal to perform work on the basic days and hours is grounds for bringing him to disciplinary responsibility, except for cases of refusal due to illness and some other circumstances; the impossibility of prohibitions or obstacles on the part of the employer in relation to the employee in terms of the latter's performance of work under other employment contracts. Performance of work under the conditions of non-fixed working hours does not entail any restrictions on the scope of labor rights of employees. Undoubtedly, the amendments to the labor legislation regarding the regulation of labor relations under the conditions of non-fixed working hours are a significant step in the direction of improving the legal framework for the use of atypical forms of employment. This approach creates the necessary conditions: firstly, to bring out of the "shadow" a significant number of workers who today realize their ability to work under the conditions of informal employment; secondly, to transfer

part of the employees from the civil law plane (performance of work and (or) provision of services on the basis of civil law contracts) to the sphere of labor law regulation, which is generally more favorable for employees.

CONCLUSIONS

In conclusion, we cannot fail to draw attention to the fact that the mentioned legislative changes do not solve all issues in terms of legal status and guarantees, in particular: whether and how the testing can be applied to workers employed on the basis of an employment contract with non-fixed working hours; can such an employee count on sick leave and related benefits; whether the specified employees are covered by the guarantees provided by the labor legislation for regular employees in the event of their reduction (in particular, in terms of the payment of severance pay); how the statutory provisions on vacation are implemented for employees who work under the terms of an employment contract with non-fixed working hours. It is obvious that these and other issues require more careful attention of the legislator. We also cannot fail to note that the establishment of legal restrictions on the employer's ability to conclude employment contracts with unfixed working hours at the level of 10% of the total number of employment contracts to which this employer is a party adds a significant amount of work to the relevant supervisory bodies and services, which raises questions about their ability to really ensure high-quality and effective control over the employers' implementation of these restrictions.

Thus, summarizing the above, we can confidently state that today, despite the timely, expedient and important steps taken by the legislator to improve the current labor legislation in terms of regulating atypical forms of employment, there are still a number of gaps and other shortcomings in this area, without eliminating which it is impossible to talk about the proper level of social protection of employees who realize their abilities to work in these forms.

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