

CDSSES 2020**IV International Scientific Conference "Competitiveness and the development of socio-economic systems" dedicated to the memory of Alexander Tatarkin****MODERN LEGAL REGULATION AND PERSPECTIVES OF DEVELOPMENT OF DISTANT LABOUR**

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Abstract

The research aims to analyze the Labor Code norms of the Russian Federation about the labor of distant workers and the development of points designed to improve and attract labor in distant conditions. The methods of research include the method of legal analysis and the formal law method. Results: on the one hand, the employer's control function of the employee's distant labor process is mainly limited, so most employers consider this fact as the infringement of their power. It is one of the principal reasons for distant labor unattractiveness for employers. Despite the pandemic and necessary temporary distant work of an enormous number of employees, stationary labor is still a priority for both sides of labor relations. The complexity is reinforced because they don't have a particular place during distant work and lead their activity distantly using the Internet. On the other hand, the law needs to prevent the priority of a combination of distant and stationary work (it is called combined in the project of the law, television work-in the foreign literature). This is the most effective and perspective kind of work for both sides. Third, it's necessary to define the absence or the presence of e-signatures in the process of labor relations. Finally, the detailed regulation of distant worker's labor time may increase the degree of protection of his right for rest, excluding the excess charge and professional exhausting.

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1. Introduction

Nowadays, the Labor Code of the Russian Federation (RF) suffers from significant changes, explained by the introduction of digital technology in the national and global economy. The pandemic with the negative influence on the world economy development has become the active catalyst of the passing to the digital form of legal relations in the sphere of labor. The urgent transmission of the employees to the distant work in spring 2020 has shown the incapability of the labor legislation and the Labor Code of RF to react promptly on the forming “digital “ public relations, which must be regulated by the norms of labor law. Unfortunately, the Labor Code of RF wasn’t adopted to similar changes. The matter is that labor of the employees without their working place, excluding the workers on mission is regulated by the chapter 49.1 of the Labor Code of RF and it is pointed as “the particularities of distant workers’ labor regulation”. However, these norms are insufficient to embrace all the differences of distant workers' labor from one of the other workers 'categories.

The scientists have analyzed the norms regulating the distant workers' labor. The thoughts of lawyers were limited by the scientific articles, in which the main conclusions included only the urgent necessity to complete the Labor Code of RF by the new norms, capable of filling in the gaps of legal regulation of labor in the new conditions of the digital economy, including the labor of workers in the studied category (Bezbakh et al., 2018; Deltsova & Kot, 2019; Izbienova & Chuprakova, 2017; Lutov, 2018; Ofman, 2018; Sapirova et al., 2019; Sapirova et al., 2020; Vasilyeva & Shuraleva, 2015; Valitova & Starkova, 2018; Vartanyantsz & Starokogeva, 2019; Zakalugnaya, 2019). There are monographies dedicated to this question of some authors (for ex. works of Belitskaya et al. (2018). The new forms of employment have also been analyzed by the foreign authors (Blanpain & Hendrick, 2016).

The representatives of other sciences also study this question. Economists are worried by the prior stationary daily routine and the absence of motivation in the distant labor (Tagarov, 2019).

It is important to mention that although this scientific work contributed to the minor changes of the Labor Code of RF¹, the global situation with pandemic has played the decisive role in revision of this question. If in 2018 the amount of the distant workers composed less than 5 % of Russian citizens (by the way, the amount has been planned to increase by 2020 to 20 %), in the middle of 2020 the amount of such workers has been increased till 10 % of employable population in Russia. The federal law for the future changing of separate provisions in the Labor Code of RF.

The distant labor and its particularities present interest for us in the conditions of the 4th industrial revolution primarily from necessity in the improvement of distant workers' labor legal regulation as well as in the revision of the main norms in the Labor Code of RF to regulate the legal relation in the labor sphere flexibly.

¹ State Duma of the Russian Federation (2001). "Трудовой кодекс Российской Федерации" от 30.12.2001 N 197-ФЗ [Federal Law «Labor Code of the Russian Federation» (December 30, 2001 No.197)]. http://www.consultant.ru/document/cons_doc_LAW_34683/

2. Problem Statement

2.1. Absence of Necessary Legal Regulation

Improper distant workers' labor regulation by the labor right has led to a decrease of interest in this form of labor organization from employees and employers' side.

The regulation of distant workers' labor norms needs to be improved for employers as these are norms that move forward the economics. If it is profitable to make agreements about distant labor, distant workers' amount will be increased and probably, it will probably affect the revision of all the norms in the Labor Code of RF, reinforcing their digitization.

In the account of increased need of distant labor and digital direction of economic country development, these workers' labor must be regulated properly if it is possible.

2.2. Absence of Norms about Part-time Distant Work

The Labor Code of RF doesn't contain norms about part-time employment, preventing only 100 % distant work or 100 % "present" employment in the employer's working place. Certainly, this combination of both labor forms presents interest for the employee and the employer, but the absence of norms, which permit to fix a similar routine in the labor contract, complicates the further development of the distant labor.

3. Research Questions

In Russia, the distant workers' labor has been exposed to the legal regulation relatively recently, when the correspondent article of the Labor Code of RF was put in action, e.g. in April 2013.

Particularities of labor relations in the conditions of distant labor are not studied enough because of different reasons, at first, due to unpopularity of distant labor earlier), at second, without presence of sufficient experience and practice of its introduction. Modern digitization of economics shows the necessity of reviewing norms, regulating therein a distant labor. At the same time, changing of traditional labor relations in the distant ones reveals the problem of legal regulation of this form of labor activity by the norms of labor law (for example, employer's control function, salary ,e-signatures ,e-personnel document management ,revision of working hours etc.).

4. Purpose of the Study

The analysis of norms in the Labor Code RF about distant labor and the formulation of propositions about improvement with the showing the perspectives of distant workers' labor legal regulation.

5. Research Methods

Two research methods are used: the method of legal analysis and the formal judicial method. With the help of the legal analysis method, the author analyses the norms of the Labor Code RF about the

distant workers' labor, showing their modern legal regulation. The formal judicial method permits to formulate of new norms of the Labor Code RF, which may regulate the distant workers' labor more in detail.

6. Findings

6.1. Signs of Labor Relations during the Distant Labor: Modern Legal Regulation

The distant worker is the employee in labor relations with the employer and concluded the employment contract about distant work (art. 312.1 of the Labor Code of RF). The distant work is characterized by the number of signs which differ it from the ordinary traditional work. First of all it is performed outside of employer's location and outside of the working place of employee which is usually under the control of the first one. Secondly, this working function is realized with the help of the informational communication nets, including the Internet.

But if the distant work is characterized only by the first sign, it does not have differences from mission which is obligatory for the worker, and he performs it outside of stationary working place. There is the presence of the second feature, which permits to state about distant work.

There are some signs of labor relations: the personal character of labor, presence of labor function, long-term character of labor relations, organizational subordination of employee to the employer, salary payment, providing of the safe labor conditions by the employer.

We must analyze these features with account of distant work. The first three signs are evident as well as salary payment. The other signs cause the interest to consider.

So, the organizational subordination is the realization of the employer's control function that means not only the subordination to the rules of internal daily routine with installation of working time: the beginning and the ending of working day, breaks, days off etc., but also the employer's control means of the employee's working function.

This sign of labor relations partly disappears in the distant labor conditions because the employer isn't able to control the distant work in the whole volume when the employee begins his work, makes breaks. Moreover, the art. 312.4 of the Labor Code of RF gives the worker the possibility to install his daily routine of work and rest according to his discretion. As a result, the employer's control function's performance causes the employee's legal for the missing, being late, alcoholic condition, etc. However, the performance of the employer's control function is possible, for example, through the employer's demand to present reports describing the performance of tasks. In this case the calling to the disciplinary responsibility will be legal.

Different scientists study these questions of the employer's control function of distant work. So, Chernych (2019) notices that the employer executes the control of the result (sign of civil legal relations), but not of the labor process, which is normal for labor relations.

The last sign of labor relations, providing the employer's safe labor conditions, is impossible for the employer, using the employee's distant work. If the worker performs the labor function on the exact territory, the last one doesn't have the possibility to provide the employee's safe labor conditions, especially during the beginning stage of work, without the arrival to Krasnodar.

The arrival to another city is theoretically possible if there is only one distant worker, but it's not economically profitable, the sense of the distant work is absent in these conditions. But if there are 10, 20, 30 employees, is it profitable for the employer to arrive to every employee?

We must notice that the employee has the right to perform the labor function outside of his location, e.g. in any place where there is the possibility to connect to the informational communication nets, including the Internet. But how will the employer provide safe labor conditions to his employee? It is the simplest way to exclude this employer's responsibility, and the legislation has performed it in the art. 312.3 of the Labor Code of RF, remaining only the employer's responsibilities to get acquainted the employee with labor protection demands, instructions on the labor protection, obligatory social insurance against manufacturing injuries, and professional diseases. In other words, this condition is also partly excluded in the conditions of distant labor.

6.2. The Conditions of the Employment Contract about Distant Labor: Modern Legal Legislation

The particularities of distant worker's labor regulation are mainly connected with his labor function performance. It concerns the work in the Internet. According to the standard rule the distant workers communicate to their employer and his officials through the Internet (e-mail, the employer's software, portals " State Services", "Work in Russia" etc.)

All the papers are signed by the employer and the employee with the reinforced qualified e-signature. The possibility to use the e-signature in the document flow is one of the principal particularities of distant labor. Making the employment contract, agreement about total material responsibility etc. is accompanied by the employer's reinforced qualified e-signature and the same one of the employee. The Labor Code of RF never empowers other workers by similar rights. When the written acquaintance of the employee with the document is demanded or the employee must draw up a document, for ex. a statement, the Labor Code of RF doesn't admit any e-signature, except distant workers' signatures. Only in separate cases the electronic form (changing of electronic samples) of different papers, such as time sheets, vacation schedules, pay slips, etc. is possible.

However, such documents must be delivered to the employer only in scripts even by the distant workers. First, according to the parties' agreement, the employment history cannot be filled in, but if it is filled, it is presented by the distant worker personally or it may be sent by mail with registered notification.

With the appeared possibility to get data about labor activity from the employer, in Multifunctional Centre (MC), in Pension Fund of Russia or using the single portal of state and municipal services the need to deliver paper employment history (during 2020 distant worker must apply statement) has disappeared that must influence positively on the relations between employers and employees.

Secondly, temporary disability sheets for accrual of temporary disability benefits are sent by mail with registered notification.

The conditions provided for distant workers in the employment contract about distant labor are the same for stationary workers (Call them like that conventionally to differentiate this category from distant workers).

The working place in the employment contract is equal to the employer's location. The scientists mention that the working place in this case, is narrowed to the employee's residence at best. So, this fact may equal distant workers with home workers (Vasilyeva and Shuraleva, 2015). It is important to mark that home workers are equal to the distant workers in the legal regulation in the project of federal law which will be studied by us and the line between them is erased if the labor function is performed on the Internet.

The employment contract, concluded distantly, must be directed to the employee by mail in the paper form with registered notification. The condition about the use of equipment, software hardware, means of informational protection, provided or recommended by the employer, or the compensation for their use (art.312.2, 312.3 Labor Code RF) may be included as additional employment condition contract about distant work. Additional bases for termination of distant worker's employment may be also fixed in the employment contract (art.312.5 of Labor Code RF).

These are all the particularities of distant workers' legal labor regulation. Let's consider those aspects of distant workers' labor activity that demand additional regulation for distant labor efficiency.

6.3. Perspectives of the Legal Regulation of Distant Labor

The implementation of particularities of distant workers' labor causes the range of the questions, which demand the appropriate resolution. These issues find their resolution in the developed projects of federal laws and other normative legal acts. We will begin with those, which are planned to introduce changes and additions in the Labor Code RF.

In particular, the first project of the Federal law.

"About the alteration in the Labor Code RF for the regulation of distant and remote work" provides three kinds of distant work: constant work, temporary work, combined work². Such kinds are the consequences of the spring pandemic 2020. However, the question about the difference between distant and remote work is still incomprehensible. We think that these kinds of work are identical, and there is no sense to fix them simultaneously in the Labor Code RF, confusing law enforcement. It is sufficient to fix one of them, more habitual, it is distant work.

The local normative acts that provide the particularities of definite employers' distant work have an enormous significance in the project. If the worker is not acquainted with these acts, it is impossible to prosecute them for non-compliance. There are plans to cancel the employer's right to fix the different employment termination bases with distant workers. Modern scientists consider this provision as the sign of discrimination to the other workers.

The project also proposes to demarcate the working time and the time of rest and fix the distant worker's right for the time« off line». Conversely, working hours over the working time will be considered overtime and subject to the additional payment.

It is important to remember that foreign researchers call distant workers as "TV workers". This untypical activity has been known for them since the beginning of the century. The particularities of TV

² State Duma of the Russian Federation (2020). Законопроект № 973264-7 О внесении изменений в Трудовой кодекс Российской Федерации в части регулирования дистанционной и удаленной работы [ProjectN 973264-7 of FederalLaw. «About Changes in the Labor Code RF in the Part of Regulation Distant and Remote Work»]. <https://sozd.duma.gov.ru/bill/973264-7>

workers' labor have reflected in the Frame agreement about television work between the European commission and European associations of trade unions and employers (Gabaglio, 2002). The main problem that all the world employers coincide with is maintaining a commercial secret by a distant worker. It's almost impossible to control him in this question. Lutov (2018) proposes to provide the employer's right to install the software, which is capable to block distribution of these data by the distant worker.

In the same project, the legislator tries to escape using the employee's e-signature, replacing it by e-messages, e-images, legally significant messages, e. g. by any ways, permitting to identify a sender.

The another federal law "About conducting the experience on using e-papers, connected with work", by which the conducting of legal experience about introduction of electronic document flow is provided³. According to this law the responsibility to use the e-signatures is given to the employer. He uses only reinforced qualified signature, and the degree of protection depends on the portal, which the employer uses, who participates in the experience. If the interaction with worker is implemented with the help of informational analytical system "All-Russian base of vacations "Work in Russia", the presence of a simple worker's e-signature is sufficient. If this interaction is implemented through a local informational employer's system, the use of reinforced qualified or reinforced unqualified e-signatures.

Let's return to the absence of e-signature as a means of sender's identification in the federal law project, which is planned to introduce changes and additions in the Labor Code RF about distant labor. For the employer's expenses minimization who must acquire e-signature for his employee this way is right, but we present that the protection of the worker's labor rights (employees, working as regularly as temporarily distantly) decreased. We think that it is necessary to hold the demand about the presence of e-signature according to the principle, fixed in the federal law "About the conducting experience on using electronic documents, connected with work". The kind of e-signature is used in dependence of the informational analytical system: local, belonging to the employer, or state system "Work in Russia". Another way is also possible: it is obligatory to use the simple e-signature. If the worker desires to use the other kind of signature, he should pay for its acquisition. These two ways of this issue resolution will permit to increase the security of the employee's rights, including the distant workers who must use only reinforced qualified e-signature

Thus, we briefly formulate the following conclusions.

In the Labour Code of RF the labor relations in the conditions of distant labor are characterized by the following signs: the personal character of labor, presence of labor function, long-term character of labor relations, salary payment. Organizational subordination of employee to the employer and providing of the employer's safe labor conditions are visible partly and formally. The legal nature of labor relations supposes the employer's control of the employee's labor function implementation. By the way, both implementation and labor functions are the keywords. The employer's control function may seriously suffer in distant labor, which reflects negatively on the quantity indicator of concluded employment

³ State Duma of the Russian Federation (2020). Федеральный закон от 24 апреля 2020 г. N 122-ФЗ "О проведении эксперимента по использованию электронных документов, связанных с работой" [Federal Law «About conducting experience on using electronic documents, connected with work» (April 24, 2020 No.122)]. <http://www.garant.ru/hotlaw/federal/1363058/#ixzz6aGnBD1T4>

contracts about distant work. The employers do not have the desire to conclude them because of the impossibility of the most critical function's performance or implementation.

The particularities of labour regulation of distant workers do not entirely reflect the specification of their labor activity. In our opinion, it is necessary to provide the advantage of the combined distant work (the combination of stationary and distant work) and to introduce it in the Labor Code of RF as operating mode to increase the interest to the distant labor and actual registration of established social relations. We may suppose that it will be the most demanded kind of distant labor because it allows not only to perform to the employee his labor function during the convenient time of work for him but also to the employer to implement his control function distant labor completely.

The planned absence of an indication to the use of e-signature by the distant worker is presented to us not entirely appropriate because the unscrupulous employer will have the possibility not to identify the sender. In this case the worker is not protected from the employer's unscrupulous actions. It is not correct to refuse entirely from e-signature and it is possible to hold simple e-signature or reinforced unqualified e-signature in terms of labor relations.

The strict designation of working time and time for rest in the employment contract with distant workers (constant, temporary, combined) will contribute to protecting labor rights from the excessive employer's control to the employee from professional tiredness, worker's exhaustion etc.

7. Conclusion

The labor of distant workers certainly needs to be revised because of unexpected increased demand. Those norms of labor law that regulate the employer's labor relations and his distant employee need to be revised as nowadays they mostly slow down their practical application. Digital Economics commands the importance of using of different ways of distant work. If to stop the distant work application, the digitization of labor relations is still utopic idea. Those perspectives, which are considered in the actual article, and our conclusions and propositions about the development of legal regulation of distant workers' labor will undoubtedly increase the number of people working in distant work conditions and the formation of digital economics.

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