

LEGAL SCIENCES

DRAFT LABOR CODE AS A SOURCE OF LABOR LAW

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Abstract. The draft Labor Code of Ukraine is considered as a source of labor law. The advantages and disadvantages of the project are analyzed.

Keywords: draft Labor Code of Ukraine, labor relations, employees, employers.

At the present stage of development of legislation in the field of labor relations regulation, the problem of place and role in this process of the draft Labor Code is quite relevant. Modernization of labor relations, their approximation in form and essence to the realities of today require from the legislator new approaches to their legal regulation.

It is time to update the labor legislation by adopting the Labor Code of Ukraine.

First of all, it should be noted that the draft Labor Code is a fairly extensive legal act, which consists of 9 books and contains 398 articles. The Code is a codified

source of labor law of Ukraine and defines the legal basis and guarantees for the exercise by citizens of Ukraine of the right to dispose of their abilities to productive and creative work, regulates social relations that are the subject of labor law.

The current code was adopted on December 10, 1971, and entered into force on June 1, 1972. Since then, it has undergone numerous changes and additions on important issues of legal regulation of labor.

The main goal of this project is to regulate the relationship between employers and employees in modern economic conditions to ensure sustainable development of the country.

The draft Labor Code of Ukraine defines the basic principles and mechanisms for the implementation of labor rights and guarantees provided by the Constitution of Ukraine, the creation of appropriate working conditions and ensuring the protection of the interests of employees and employers in a market economy.

A comprehensive approach to addressing social and labor issues, codification and unification of labor legislation and the incorporation of their rules into the draft is a characteristic feature of the bill.

The draft Labor Code of Ukraine is now widely discussed in society. Experts in labor law see it as both disadvantages and advantages. The advantages of the Project include a number of rules that strengthen the legal protection of employees:

1. There is a prohibition of discrimination in the field of labor, including on additional to those that already exist, signs: age, health, disability, suspicion or presence of HIV/AIDS, family responsibilities, participation in a strike, appeal or intention to appeal to a court or other body to protect their rights or to provide support to other employees in defending their rights.

2. In case of refusal of the employer to provide the employee with work in accordance with the concluded employment contract, the employee has the right to recognize the employment relationship as arising from the day specified in the employment contract, with recovery of wages from the tariff rate (salary) to the day of work.

3. Preservation of labor relations is provided in case of liquidation of a legal entity, if on the basis of its property a new enterprise is created, which continues the same activity as the liquidated enterprise.

4. In case of dismissal due to redundancy, the employee must be paid severance pay depending on the length of service - from one to three times the average salary. In addition to the existing norms, severance pay is provided in the amount of the average monthly salary in case of dismissal of an employee due to a long-term (more than four months in a row) illness, as well as in connection with violation of employment rules.

5. The size of the guaranteed increased payment for work at night has been increased from 20 to 30% of the tariff rate (salary) for each hour.

Among the main disadvantages:

1. There is no definition of "small business entity" in the draft TC. Such employers can lay off workers and cut their salaries twice as fast as the general order - in one month. But the document does not specify which company is small. For example, in world practice it may be about 5-10 people, while according to the Ukrainian Commercial Code, small businesses cover up to 50 people.

2. Regulations of the employer. This wording is incomprehensible in the draft, because the "regulations of the employer" do not have the legal force that is laid down in the regulations of public authorities, so the very meaning of the concept is leveled.

3. Total supervision of the employee. Part 1 of Art. 28 of the Project gives the employer the right to control the performance of work duties by employees, including the use of technical means, if it is due to the "peculiarities of production".

The use of technical means means primarily video recording and control of in-office chats, Internet - visits. It is provided that such fixation cannot occur from humiliation of honor and dignity of the person or without its warning. It is stated that non-compliance with the requirements of the employer entails liability under the law.

4. Liability. St. 409 of the Project is entitled "Amount of liability" and provides for a sanction in the amount of the average monthly salary. This, in turn, means that

the employee will not reimburse the direct actual damage, which is limited to the average monthly wage, but will bear the burden of the average monthly wage. Such a norm, according to many scholars, is unconstitutional, because it actually deprives the employee of livelihood.

5. Compensation for non-pecuniary damage. According to Art. 421 of the draft Labor Code of Ukraine, non-pecuniary damage caused to an employee by the employer is reimbursed in accordance with civil law. This provision is unacceptable, because civil relations are completely different in nature from labor. The former is characterized by equality of the parties, and the latter - although indirect, but still - the dependence of the employee on the employer.

Conclusion. If we analyze the draft Labor Code, we can conclude that in some aspects of labor relations, market mechanisms are indeed being introduced, which may lead to certain abuses by employers. This applies to the introduction of irregular working hours, certain grounds for dismissal of an employee at the initiative of the employer and many other controversial issues. Despite the fact that the draft Labor Code is not perfect, it is possible to clearly trace the trend away from outdated Soviet methods and the attempt to create a modern labor market, which is based on the result of labor, rather than the number of hours worked. That is why the draft Labor Code, as a certain concept of changes in labor relations, can be called a "breath of fresh air" in the labor market.

As can be seen, the balance between the rights and interests of the subjects of labor relations has not yet been achieved, and the draft Labor Code can be discussed for years. However, there is no doubt that even in this version, the revised draft of the Labor Code is better than the outdated Soviet version.

Thus, summarizing the above, it is advisable to emphasize the earliest possible adoption of the Labor Code of Ukraine, taking into account the changes and comments proposed by experts in the field of labor law.

LIST OF REFERENCES:

1. Конституція України // Відомості Верховної Ради України. - 1996. - № 30. - Ст. 141.

2. Кодекс законів про працю України з постатейними матеріалами. У 2-х частинах / Укладачі В. С. Ковальський, Л. П. Ляшко. - К : Юрінком Інтер, 2006. - 1168 с.

3. Лукашева Н. М. Способи встановлення відповідальності працівників вимогам, що ставляться до них нормативними актами / Н. М. Лукашева // Трудове право України в контексті європейської інтеграції: Матеріали науково-практичної конференції; м. Харків, 25-27 травня 2006 р. / За ред. проф. В. С. Венедиктова. - Х. : Українська асоціація фахівців трудового права, ХНУВС, 2006. - 506 с.

4. Про прийняття за основу проекту Трудового кодексу України. Постанова Верховної Ради України від 20 травня 2008 року № 283-VI [Електронний ресурс].

5. Про колективні договори й угоди. Закон України від 01.07.1993 р. // Відомості Верховної Ради України. - 1993. - № 36. - Ст. 361.

6. Коляда Т. А. Сучасні підходи до визначення єдності та диференціації правового регулювання суспільних відносин / Т. А. Коляда // Кодифікація трудового законодавства України: стан та перспективи: Матеріали науково-практичної конференції м. Запоріжжя 25-26 червня 2004 р. / За ред. д-ра юрид. наук, проф. В. С. Венедиктова. - Х. : НУВС, 2004. - С. 305-308.