ISSN 2518-1467 (Online),
ISSN 1991-3494 (Print)

ҚАЗАҚСТАН РЕСПУБЛИКАСЫ
ҰЛТТЫҚ ҒЫЛЫМ АКАДЕМИЯСЫНЫҢ

Х А Б А Р Ш Ы С Ы

ВЕСТНИК

НАЦИОНАЛЬНОЙ АКАДЕМИИ НАУК
РЕСПУБЛИКИ КАЗАХСТАН

THE BULLETIN

THE NATIONAL ACADEMY OF SCIENCES
OF THE REPUBLIC OF KAZAKHSTAN

PUBLISHED SINCE 1944

5

SEPTEMBER – OCTOBER 2020

ALMATY, NAS RK

NAS RK is pleased to announce that Bulletin of NAS RK scientific journal has been accepted for indexing in the Emerging Sources Citation Index, a new edition of Web of Science. Content in this index is under consideration by Clarivate Analytics to be accepted in the Science Citation Index Expanded, the Social Sciences Citation Index, and the Arts & Humanities Citation Index. The quality and depth of content Web of Science offers to researchers, authors, publishers, and institutions sets it apart from other research databases. The inclusion of Bulletin of NAS RK in the Emerging Sources Citation Index demonstrates our dedication to providing the most relevant and influential multidiscipline content to our community.

Қазақстан Республикасы Ұлттық ғылым академиясы "ҚР ҰҒА Хабаршысы" ғылыми журналының Web of Science-тің жаңаланған нұсқасы Emerging Sources Citation Index-те индекстелуге қабылданғанын хабарлайды. Бұл индекстелу барысында Clarivate Analytics компаниясы журналды одан әрі the Science Citation Index Expanded, the Social Sciences Citation Index және the Arts & Humanities Citation Index-ке қабылдау мәселесін қарастыруда. Web of Science зерттеушілер, авторлар, баспашылар мен мекемелерге контент тереңдігі мен сапасын ұсынады. ҚР ҰҒА Хабаршысының Emerging Sources Citation Index-ке енуі біздің қоғамдастық үшін ең өзекті және беделді мультидисциплинарлы контентке адалдығымызды білдіреді.

НАН РК сообщает, что научный журнал «Вестник НАН РК» был принят для индексирования в Emerging Sources CitationIndex, обновленной версии Web of Science. Содержание в этом индексировании находится в стадии рассмотрения компанией Clarivate Analytics для дальнейшего принятия журнала в the Science Citation Index Expanded, the Social Sciences Citation Index и the Arts & Humanities Citation Index. Web of Science предлагает качество и глубину контента для исследователей, авторов, издателей и учреждений. Включение Вестника НАН РК в Emerging Sources Citation Index демонстрирует нашу приверженность к наиболее актуальному и влиятельному мультидисциплинарному контенту для нашего сообщества.

«Қазақстан Республикасы Ұлттық ғылым академиясының Хабаршысы».
ISSN 2518-1467 (Online),
ISSN 1991-3494 (Print)
Меншіктенуші: «Қазақстан Республикасының Ұлттық ғылым академиясы»РҚБ (Алматы қ.).
Қазақстан Республикасының Ақпарат және коммуникациялар министрлігінің Ақпарат комитетінде 12.02.2018 ж. берілген **№ 16895-Ж** мерзімдік басылым тіркеуіне қойылу туралы куәлік.

Тақырыптық бағыты: *іргелі ғылымдар саласындағы жаңа жетістіктер нәтижелерін жария ету.*

Мерзімділігі: жылына 6 рет.
Тиражы: 2000 дана.

Редакцияның мекенжайы: 050010, Алматы қ., Шевченко көш., 28, 219 бөл., 220, тел.: 272-13-19, 272-13-18,
http://www.bulletin-science.kz/index.php/en/

Типографияның мекенжайы: «NurNaz GRACE», Алматы қ., Рысқұлов көш., 103.

«Вестник Национальной академии наук Республики Казахстан».
ISSN 2518-1467 (Online),
ISSN 1991-3494 (Print)
Собственник: РОО «Национальная академия наук Республики Казахстан» (г. Алматы).
Свидетельство о постановке на учет периодического печатного издания в Комитете информации Министерства информации и коммуникаций и Республики Казахстан **№ 16895-Ж**, выданное 12.02.2018 г.

Тематическая направленность: *публикация результатов новых достижений в области фундаментальных наук.*

Периодичность: 6 раз в год.
Тираж: 2000 экземпляров.

Адрес редакции: 050010, г. Алматы, ул. Шевченко, 28, ком. 219, 220, тел. 272-13-19, 272-13-18.
http://www.bulletin-science.kz/index.php/en/

Адрес типографии: «NurNazGRACE», г. Алматы, ул. Рыскулова, 103.

Bulletin of the National Academy of Sciences of the Republic of Kazakhstan.
ISSN 2518-1467 (Online),
ISSN 1991-3494 (Print)
Owner: RPA "National Academy of Sciences of the Republic of Kazakhstan" (Almaty).
The certificate of registration of a periodical printed publication in the Committee of information of the Ministry of Information and Communications of the Republic of Kazakhstan No. **16895-Ж**, issued on 12.02.2018.

Thematic focus: *publication of the results of new achievements in the field of basic sciences.*

Periodicity: 6 times a year.
Circulation: 2000 copies.

Editorial address: 28, Shevchenko str., of. 219, 220, Almaty, 050010, tel. 272-13-19, 272-13-18,
http://www.bulletin-science.kz/index.php/en/

Address of printing house: «NurNaz GRACE», 103, Ryskulov str, Almaty.

BULLETIN OF NATIONAL ACADEMY OF SCIENCES
OF THE REPUBLIC OF KAZAKHSTAN
ISSN 1991-3494
Volume 5, Number 387 (2020), 117 – 124 **https://doi.org/10.32014/2020.2518-1467.150**

UDC 341.019

Z. K. Ayupova[1], D. U. Kussainov[2], S. S. Dzhankadyrov[2], Winston Nagan[3], N. L. Seitakhmetova[4]

[1]Kazakh national agrarian university, Almaty, Kazakhstan;
[2]Kazakh national pedagogical university named after Abai, Almaty, Kazakhstan;
[3]University of Michigan, USA;
[4]National Academy of Sciences of the Republic of Kazakhstan, Almaty, Kazakhstan.
E-mail: zaure567@yandex.ru, daur958@mail.ru, sdzhankadyrov@bk.ru, nseytakhmetova@bk.ru

PECULIARITIES OF THE LEGAL REGULATION OF THE LABOR OF SOME CATEGORIES OF EMPLOYEES

Abstract. Research on the specifics of the legal regulation of certain categories of employees is conducted by leading foreign research centers and international organizations. In particular, the work of women, children, disabled people, homeworkers, seasonal workers and migrants is one of the most active research topics within the UN, ILO, OSCE, and CIS. For example, the topics are "Labor Market Trends and Outlook", "Labor, Income and Equity", "Changing World of Work", "Macroeconomic Policies and Jobs", "Globalization and Labor Market", "Policy evaluation", "Youth and Gender Issues" (Special issues of youth and gender are also covered) are recognized as one of the main topics studied by the ILO Research Department in The direction of labor market trends and prospects. The following results were obtained in scientific studies conducted in the field of determining the features of legal regulation of labor of certain categories of workers in foreign countries: proposals were developed and implemented to ensure gender equality in labor relations (University of Sterling, Scotland), eliminate discrimination by introducing rules of differentiation (Rand Afrikaans University, South Africa), and provide additional opportunities in the field of labor for women and persons employed in family responsibilities (University of Essex, UK), increasing the role of contracts in regulating the work of home workers (Middlesex University, UK), providing equal rights in the use of migrant labor (University of Oxford, UK).

Key words: human resources, labor code, personnel reserve, labor migrants, labor law, competitive selection, labor protection, disciplinary responsibility, working hours, labor contract.

The relevance of the topic. All over the world, the issue of decent work and equality for achieving sustainable development is becoming increasingly important. According to the International labour organization, "in 2018, equality in economic security, material well-being and opportunities is not ensured for the majority of the 3.3 billion workforce that make up the workforce. A high level of informal labor relations is maintained, this indicator is 61 percent of the total workforce. There was no positive picture in eliminating gender inequality. In employment, men's employment is 75%, and women's employment – 48 percent. Seven hundred million people who have jobs are in difficult working and living conditions. Some modern business models based on new technologies threaten the success achieved in the field of labor" [1, p.45].

Special attention is paid to the research of scientific directions aimed at legal regulation of labor relations and their differentiation. In particular, studies on research areas concerning gender equality, prevention of job discrimination, prohibition of child labor, regulation of labor relations in the private sector, determine the characteristics of use of hired labor in small businesses, identifying characteristics of legal regulation of labor of employees of non-governmental organizations and civil servants, elimination don't explain by the benefits and safeguards or restrictions.

In our Republic, large-scale work is being carried out in the field of legal regulation in order to ensure a balance in the interests of employees, employers and the state, which are traditional participants in labor relations. Reforms are being implemented to improve the adaptability of labor legislation to the market

economy through its modernization and liberalization. Special attention is paid to development of social sphere, strengthening of social protection of the population and further improving the system of remuneration, as one of the priorities to create the conditions to achieve full and accelerated development of the state and society, the implementation of priority directions of modernization and liberalization in all spheres of life is the development of the social sphere.

Materials and methods of research. The research uses such methods as historical, system-structural, comparative-legal, logical, concrete-sociological, complex research of scientific sources, induction and deduction, and analysis of statistical data.

In scientific research conducted by legal experts S.A. Ishankhodzhaev (International legal aspects of interstate cooperation in the field of migration), A.M. Maksudov (Improvement of the civil legal framework for bankruptcy of an individual entrepreneur), N.M. Teshaev (Principles of legal regulation of labor relations in the Republic of Kazakhstan), M. Mahamatov (International legal bases of cooperation of the Republic of Kazakhstan with the International labor organization), H.M. Kilichev (Improvement of the civil status of self-government bodies of citizens), Zh.A. Rasulov (Issues of implementation of international legal standards for the elimination of forced labor in national legislation), N.N. Askarov (Improvement of the regulatory framework of the state youth policy), B.T. Musaev (Improvement of conflict-of-law regulation of labor relations in Kazakhstan), F.U. Khamdamova (international legal cooperation of Kazakhstan on ensuring and protecting women's rights), D.S. Atajanova (Peculiarities of legal regulation of women's labor and persons engaged in family responsibilities) studied aspects related to determining the specifics of legal regulation of labor of certain categories of workers. It is particularly noteworthy that in recent years, B.T. Musaev and D.S. Atajanova conducted research related to the peculiarities of labor regulation of certain categories of workers [2, p.29]. So, B.T. Musaev, studying the issue of conflict-of-law regulation of labor relations in Kazakhstan, examines the features of legal regulation of labor of foreign citizens and stateless persons, representatives of the diplomatic corps, and D.S. Atazhanova studies the features of legal regulation of labor of women and persons engaged in family duties.

Also in the educational literature and scientific articles published by legal scholars A.A. Inoyatov, M.A. Usmanova, M.Yu. Hasanov, Y.Tursunova, G.D. Sattarova, J.T. Almuminum, M.Rakhimov, B. Rahimbergenova, M. Ibragimova expressed opinions regarding the research topic.

In this regard, it should be noted that in the Commonwealth countries scientific research related to the topic of the research was carried out relatively well. In particular, G.S. Skachkova, F.B. Stulberg, Y.I. Rogalev, I.M. Lovkov, N. And.Yakovenko, V.V. Kuznetsov, M.I. Averyanov, N.R.Mahmadulloev, I.A. Coracina comprehensively explored some aspects related to the peculiarities of regulation of work of separate categories of workers.

Research results. Research results are determined by the provisions, concerning guarantees, benefits, advantages, as well as prohibitions, restrictions and exceptions that constitute the content of the features of labor regulation of certain categories of employees should be determined by legislative acts; since the expansion of differentiation objectively leads to the expansion of the range of individual categories of employees, the definition of the features of legal regulation of these categories of labor will serve to prevent unjustified benefits or restrictions; defining the specifics of regulating the work of civil servants in laws, along with applying the Labor code of the Republic of Kazakhstan in relation to regulating their work, will ensure the protection of their rights and interests in the field of labor.

In this article the comparative legal analysis of the concept of differentiation in labor law, its necessity and significance, the content of the features of labor regulation of certain categories of employees, the grounds and procedure for determining the features of labor legal regulation, international standards, as well as the legislation of foreign countries related to the features of legal regulation of certain categories of employees [3, p.54]. In the article analyzes the concepts of differentiation in labor law and features of labor regulation. In labor law, as in other areas of law, the rules of differentiation in the regulation of public labor relations are applied. Differentiation comes from the Latin word "differentia" (difference, difference), its etymological meaning means the division, differentiation, stratification of parts of one whole into different parts, forms, stages. It should be noted that, despite the use of this concept in various branches of law, legal dictionaries do not contain its description or interpretation. Although "differences" in the legal regulation of labor relations are always characteristic of labor law, in labor law the term "differentiation" is not used by the legislator.

In the science of labor law, there is no consensus on the role of the phenomenon of differentiation in the structure of labor law. Some scientists (M. Hasanov, M. Usmanova) point out differentiation as one of the methods of labor law. There are also opinions about the inclusion of differentiation in the principles of labor law (A.A. Inoyatov). Some scientists (Yu. Tursunov) include differentiation, both in principle and in the methods of labor law. The author does not agree with the opinion that differentiation is a principle of labor law. Since differentiation is not always compatible with the goals of labor law, on the contrary, unification against differentiation may also be the main focus of state labor law policy.

In the science of labor law, differentiation of legal regulation of labor is given many different definitions. In particular, there is a widespread understanding of the differentiation of legal norms based on legally significant factors, in order to clarify the General rules of labor legislation in relation to certain categories of employees. Analyzing this and other definitions, the author suggests understanding differentiation in the field of labor relations as differences arising on an objective basis in connection with specific working conditions and categories that need social support from the state. It is also emphasized that differentiation and special legal regulation are directly related, and it is recognized that in labor law, special legal norms for differentiation are adopted in a centralized manner. Differentiation is also seen as a way to guarantee "equal rights" for employees by setting "correction factors".

In Kazakhstan, the law enforcement practice in cases of discrimination is still underdeveloped. In modern law, we can distinguish 3 groups of norms against discrimination: equality of rights, equality of opportunities, and equality of results. The original rules of law were aimed at ensuring equality of rights. However, by the middle of the twentieth century, it became clear that such legal regulation in the field of labor did not achieve the goal of ensuring equal opportunities for citizens. At present, the legal doctrines of Western Europe and America distinguish two main approaches to ensuring equality in the field of work: the achievement of formal (formal) or actual (substantive) equality. Formal equality is a traditional concept that implies equal treatment of equal citizens. While actual equality determines different attitudes towards different citizens. Formal equality does not take into account one important circumstance, that is, different categories of people, even if they have the same legal rights, are in different positions from the very beginning because of different circumstances (historical features of the development of society, physiological differences, the presence of family responsibilities). Based on the principle of achieving real equality, the anti-discrimination legislation of developed capitalist countries seeks to provide additional rights to the most socially vulnerable subjects of law in order to ensure equal opportunities. Norms of this type are usually referred to in English law as positive or compensatory actions [4].

National law has a different terminology, additional rights are referred to as rules-privileges that provide differentiation in the field of labor. Differentiation, like discrimination, involves different attitudes. The difference between these two concepts lies in the fact that differentiation involves a legitimate distinction, and discrimination – illegal distinction [5].

Differentiation of labor law is close to the categories of unification of labor law norms, individualization of labor legal regulation. Unification of labor law norms means elimination of unjustified differences in labor regulation, equalization of the legal status of certain categories of employees on a more privileged basis without reducing legal guarantees. Individual legal regulation cannot be considered related to the category of differentiation. Differentiation of labor law reflects the labor law policy of the legislator.

And individualization expresses the labor legal policy of the law enforcement agent at the level of labor relations. Also, differentiation should not be unlimited. Its limits should be established by legal acts on objective grounds, this distinguishes it from unlimited personalization like an employment contract.

The relationship between General and special rules in the field of legal regulation, as well as theoretical and legal issues of special legal regulation, has always been studied. It should be noted that the rules of differentiation have always been considered special rules. In particular, B.Ya. Rozin defines the ratio of General and special rules as follows: "a special law cancels the General law". In each particular case, first of all, the rules that were specifically adopted to regulate these relations should be applied. However, opinions that special rules override General rules are controversial. According to the author, special rules may also determine the application of General rules.

The concept of labor regulation features does not exist in national legislation. Therefore, the definitions given to the concept of labor regulation in the labor legislation of some foreign countries (Russia, Moldova, Kyrgyzstan) are studied and analyzed. The author does not quite agree with the

definition of the features of legal regulation of labor in the labor legislation of these States as "rules that restrict the application of General provisions on the same issue or provide additional rights for certain categories of workers". The main reason for disagreement is that this definition emphasizes that the features of legal regulation of labor are norms. According to the researcher, the features of labor regulation should be understood as the establishment of rules that restrict the application of General rules to certain categories of employees or provide additional rights.

If we understand this definition in a broad sense, we can understand the existence of differences in the working conditions of employees and their definition as features of labor regulation. Therefore, the inclusion of this definition in the draft of the new version of the Labor code of the Republic of Kazakhstan is supported. Views on the division of special legal rules into complementary, exclusive and alternative rules are also considered, and the opinion on the possibility of such a classification of differentiation rules is supported.

Objective factors of differentiation appear depending on the place and conditions of work, regardless of who performs a particular type of work. It is revealed that the objective basis of differentiation is related to the production function of labor law. Differentiation by subject occurs due to personality, gender, psychophysiological characteristics of the employee, age, the presence of dependent children or other persons, as well as other factors. In turn, the subjective characteristics of an employee are considered to be related to the social (protective) function of labor law [6].

The sectorial nature of labor is widely recognized in the legal literature as an independent type of differentiation in labor law. Therefore, industry differentiation is considered as an independent type. Of course, most special rules do not apply to all employees of a particular type or branch of economic activity, but rather apply to the most basic, leading professions. It should be noted that when determining the features of labor regulation of employees in certain industries, it can be concluded that working conditions play a leading role here. For example, the definition of work characteristics for workers in education, transport, health, communications, and other areas is based on the specific working conditions in these areas [7].

Today, Kazakhstan has ratified 17 of the 190 ILO conventions. A number of ILO conventions cover the specifics of legal regulation of certain categories of employees. From this point of view, the author supports Uzbekistan's proposal to ratify in 2018-2020 the ILO conventions No. 97 (on migrant workers), No. 156 (on workers with family responsibilities), No. 177 (on home work), and No. 183 (on maternity protection) concerning the work of certain categories of workers. The advantages of implementing into national legislation the Convention of 1978 No. 151 "On labor relations in the public service", 1992 No. 173 "On protection of workers' claims in case of insolvency of an entrepreneur", 2011 No. 189 "On decent work of domestic workers" are also indicated [8, p.64].

The experience of fixing the features of labor regulation of certain categories of employees in special sections or chapters of laws is inherent in the CIS countries. It is also revealed that in developed foreign countries, the features of labor regulation, in particular, the rules of differentiation, are defined in various regulations (Civil code, code of obligations, law on contracts, Law on health and safety, etc.). The author studies the reflection of the issue of differentiation in the Romano-German system of law and the common law system, analyzes the relations formed in them.

Different opinions are expressed regarding the abolition of the "List of jobs with unfavorable working conditions in which the use of women's labor is completely or partially prohibited" (registered by the Ministry of justice of the Republic of Kazakhstan on January 5, 2000. Registration number 865) for gender equality. In particular, the ban on working in adverse conditions for pregnant women and women with children under three years of age is maintained. It is recommended to apply postponement rules to protect pregnant women from termination of the employment contract. It is proved that the "Georgian reform" on payment of payments from the state budget for maternity, childbirth and child care, as well as holidays related to adoption, is a measure against hidden discrimination in hiring women. It is proposed to include in the labor legislation a provision that a woman with children under three years of age can return to her place of work at any time without any obstacles. It is also proposed to fix the specifics of regulating the work of women and persons performing family duties in a separate Chapter of the Labor code of the Republic of Kazakhstan.

Although persons under the age of eighteen have equal rights with other employees in labor relations, they enjoy additional benefits from various labor law institutions. It is proposed to include provisions that employment contracts with minors under the age of fifteen can be concluded in the field of sports, creative and cultural activities, as well as for performing advertising work. It is also justified that it is necessary to establish a ban on the refusal of employment or dismissal of persons under the age of eighteen years. It is indicated that it should be prohibited by law to involve employees under the age of eighteen years in work with a cumulative account of working hours, work on the basis of the shift method, and send them on business trips as an additional guarantee. The necessity of establishing bans for persons under the age of eighteen to work not only on the terms of part-time work, but also to work in several positions and professions, combining work, and engaging in work related to duty is justified. The issue of making proposals for establishing the length of the daily working day and working standards for underage employees is being discussed [9, p.68].

Employers-individuals are divided into individual entrepreneurs and individuals who are not engaged in business activities. Work on these employers is carried out according to the design "individual – individual". It is indicated that the peculiarities of labor regulation of employees working for an individual employer are expressed when concluding an employment contract, registering them, observing internal labor regulations, working time and rest time [10, p.145].

Conclusion. In the conclusion we would like to note, that a migrant worker is defined as a foreign citizen and a stateless person who moved to the Republic of Kazakhstan for the purpose of working and permanently or temporarily resides in the territory recognized by a foreign state. The specifics of regulating the work of foreign citizens and stateless persons are expressed when hiring, obtaining a work permit, having medical insurance, concluding, changing and terminating an employment contract, as well as granting freedom of will when paying for work, vacations and providing pensions.

З. К. Аюпова[1], Д. Ө. Құсайынов [2], С. С. Джанкадыров[2], Уинстон Наган[3], Н. Л. Сейтахметова[4]

[1]Қазақ ұлттық аграрлық университеті, Алматы, Қазақстан;
[2]Абай атындағы Қазақ ұлттық педагогикалық университеті, Алматы, Қазақстан;
[3]Мичиган университеті, АҚШ;
[4]Ұлттық ғылым академиясы, Алматы, Қазақстан

ҚЫЗМЕТКЕРЛЕРДІҢ ЖЕКЕЛЕГЕН САНАТТАРЫНЫҢ ЕҢБЕГІН ҚҰҚЫҚТЫҚ РЕТТЕУ ТЕТІГІ

Аннотация. Қосымша қызмет атқарушылардың еңбегін құқықтық реттеудегі саралаудың негізі қызметкер мен жұмыс беруші арасындағы еңбек қатынастарының сипаты болып саналады. Қосымша қызмет атқарушының еңбек ерекшеліктері негізгі жұмыс орны бойынша шарттан (қос шарт) басқа шарт жасасу, сондай-ақ жұмыстың негізгі уақытынан басқа жұмысты орындау болып саналады. Заңнамада қызметкерге бір мезгілде бірнеше кәсіпорында қоса қызмет атқару негізінде жұмыс істеуге рұқсат беру мәселесінде бірыңғай нұсқау жоқ. Еңбек шартында жұмысты қоса атқару ретінде міндетті шарт ретінде көрсету, негізгі жұмыс орнындағы жұмыс уақытының жартысынан астамын қоса атқарушылардың жұмыс уақытының мүмкін еместігі, негізгі жұмыстан бос уақыттағы толық жұмыс күні, жұмыс уақытының жиынтық есебі сияқты ерекшеліктер қарастырылады. Үйде жұмыс істеу – адам ресурстары мен жұмыс орнын ұтымды пайдалануға мүмкіндік беретін ұйым аумағынан тыс жерде еңбекті ұйымдастырудың бір әдісі. Үйде жұмыс істейтін жұмысшылар үйде жұмыс істейтіндіктен, олар белгілі бір ерекшеліктерге ие. «Еңбек қатынастарының» дәстүрлі ұғымы үйде жұмыс істейтін қызметкерлерге толық қолданылмайды. Біріншіден, жұмысты жеке орындау талабы үй жұмысынан алынып тасталады. Екіншіден, үйде жұмыс істейтін қызметкерлерге жұмыс және демалыс бөлігінде ішкі еңбек режимінің ережелерін сақтау тән емес. Үйде жұмыс істейтін қызметкерлер жұмыс уақыты, үзіліс, мереке мен демалыс күндерінің жалпы ережелерін сақтамай, тапсырмаларды орындау уақытын дербес анықтайды. Сонымен қатар, үй қызметкерлерін жалдау тәртібі мен мақсатына, жұмыс орнына, еңбек шартын жасасуға, жұмыс беруші мен қызметкердің бірлесіп тұруына, құқықтық қатынастардың субъективті құрамына қойылатын қосымша талаптардың болуы осы санаттағы

жұмысшылар еңбегін арнайы реттеу қажеттілігін көрсетеді. Ұлттық заңнамада қашықтан жұмыс ұйымдастыру және қашықтағы қызметкердің жұмысын реттеу ережелері әзірленбеген. ТМД елдерінің еңбек заңнамасында қашықтағы еңбекті құқықтық реттеудің ерекшеліктері атап көрсетілген. Іс жүзінде көптеген кәсібі жоғары мамандар, соның ішінде бухгалтерлер, заңгерлер мен программисттер қашықтан жұмыс істейді. Қашықтан жұмыс істеуге еңбек шартын жасасқан адамдар қашықтықтан жұмыс істейтін жұмысшылар деп танылады. Қашықтағы қызметкерлер мен жұмыс берушілер арасындағы қатынастар электрондық құжат арқылы жүзеге асырылады. Еңбек шартында жабдықты, бағдарламалық және техникалық қамтамасыз етуді пайдалану, ақпаратты қорғау және жұмыс беруші ұсынатын басқа да құралдар бойынша қосымша міндеттемелер көзделуі мүмкін. Еңбекті ұйымдастырудың вахталық әдісін реттеудің ерекшеліктері де анықталды. Вахталық әдіс еңбек үдерісінің ерекше нысаны болып саналатындығы атап өтілді, онда қызметкерлердің тұрғылықты жері бойынша тұрақты жерінен тыс жерге күнделікті оралуын қамтамасыз ету мүмкін емес. Жұмыс және ауысыммен демалу уақытын қоса алғанда, объектідегі жалпы уақыт кезеңі вахта болып есептеледі. Вахталық режимдегі жұмыс ерекшеліктері заңнамада жұмыс берушінің аумағынан тыс жерде жұмыс істейтін қызметкерлердің еңбегін реттеудің ерекшеліктері, вахта кезеңі, еңбекті ұйымдастыру тәртібі көрсетілуін талап етеді. Еңбек заңнамасын саралаудың негізгі факторларының бірі ретінде зияндылық пен қолайсыз еңбек жағдайлары талданады. Бұл жұмыс түрлерінің ерекшеліктері денсаулықтың нашарлауына, жарақат алудың жоғары ықтималдығына және денсаулық пен өмірге зиян келтіруі мүмкін. Зиянды және қауіпті еңбек жағдайларында жұмыс істеу қысқартылған ұзақтықтағы жұмысқа, қосымша еңбек демалысын алуға, жоғары мөлшерде еңбекақы төлеуге әкелуі мүмкін. Сондай-ақ, әлеуметтік серіктестік негізінде зиянды еңбек жағдайлары бар өндірістердің, жұмыс орындарының, кәсіп пен лауазымдар тізімін жасау мүмкіндіктері талданады. Қызметкерлердің жеке санаты ретінде ұйым басшысының еңбегін реттеудің ерекшеліктері еңбек шартын жасасуда, осы шарттың міндетті және қосымша шарттарын белгілеуде, басшының толық емес жұмыс уақытында жұмыс істеу барысында, оның тәртіптік және материалдық жауапкершілігінде, еңбек шартын бұзудың қосымша негіздерінің болуы негізінде көрінеді. Ұйым басшысы, ұйымның алқалы атқарушы органының мүшелері мен меншік иесі арасындағы еңбек қатынастарына әсерін талдайды. Маусымдық жұмыстар климатқа немесе басқа да табиғи жағдайларға байланысты әдетте алты айдан аспайтын кезең ішінде белгілі бір кезең (маусым) ішінде орындалады деп танылады. Маусымдық жұмысты реттеудің ерекшеліктері маусымдық жұмыстардың тізімін жасау, маусымдық жұмыстарға шарт жасасу және тоқтату, сондай-ақ маусымдық қызметкерлерге демалыс беру әдістері мен тәртібінде көрінеді. Уақытша жұмысшылардың ерекшеліктері маусымға байланысты емес қысқамерзімді жұмыстарды орындауға байланысты туындайтыны анықталды.

Түйін сөздер: адам ресурстары, Еңбек кодексі, кадрлық резерв, еңбек мигранттары, еңбек туралы заң, конкурстық іріктеу, еңбекті қорғау, тәртіптік жауапкершілік, жұмыс уақыты, еңбек шарты.

З. К. Аюпова[1], Д. У. Кусаинов[2], С. С. Джанкадыров[2], Уинстон Наган[3], Н. Л. Сейтахметова[4]

[1]Казахский национальный аграрный университет, Алматы, Казахстан;
[2]Казахский национальный педагогический университет им. Абая, Алматы, Казахстан;
[3]Университет Мичиган, США;
[4]Национальная академия наук Республика Казахстан, Алматы, Казахстан

МЕХАНИЗМ ПРАВОВОГО РЕГУЛИРОВАНИЯ ТРУДА ОТДЕЛЬНЫХ КАТЕГОРИЙ РАБОТНИКОВ

Аннотация. Основанием дифференциации в правовом регулировании труда совместителей является характер трудовых отношений между работником и работодателем. Особенности труда совместителя представляет собой заключение договора, кроме договора по основному месту работы (двойной договор), а также выполнение работы помимо основного времени работы. Отмечается, что в законодательстве нет единого указания в вопросе разрешения работнику одновременно работать на нескольких предприятиях на основе совместительства. Рассматриваются такие особенности, как указание в трудовом договоре работы в качестве совместительства как обязательного условия, невозможности рабочего времени совместителей более половины рабочего времени по основному месту работы, работы полный рабочий день в свободное от основной работы время, суммированный учет рабочего времени. Работа на дому является одним из способов организации труда за пределами территории организации, позволяющей рационально использовать

человеческие ресурсы и рабочее место. Поскольку надомные работники выполняют работу на дому, им присущи определенные особенности. Традиционное понятие «трудовых отношений» не в полной мере применимо к надомным работникам. Во-первых, поскольку, требование выполнять работу лично, исключено из надомного труда. Во-вторых, надомным работникам не присуще соблюдение правил внутреннего трудового режима в части работы и отдыха. Надомные работники самостоятельно определяют время выполнения заданий, не соблюдая общих правил рабочего времени, перерывов, праздников и выходных дней. Кроме того, наличие дополнительных требований к порядку и цели найма домашних работников, рабочему месту, заключению трудового договор, совместное проживание работодателя и работника, субъектный состав правовых отношений показывает необходимость специального регулирования труда работников этой категории. В национальном законодательстве не разработаны правила организации удаленной работы и регламентации работы удаленного персонала. Отмечено, что в трудовом законодательстве стран СНГ отмечены особенности правового регулирования удаленного труда. На практике многие профессионалы, в том числе бухгалтеры, юристы и программисты, работают удаленно. Указано, что лица, заключившие трудовой договор на удаленную работу, признаются дистанционными работниками. Отношения между удаленными сотрудниками и работодателями осуществляются посредством электронных документов. Трудовой договор может предусматривать дополнительные обязательства по использованию оборудования, программного и аппаратного обеспечения, защите информации и другим средствам, предоставляемым работодателем. Выявлены также особенности регулирования вахтового метода организации труда. Отмечено, что вахтовый метод представляет собой особую форму трудового процесса, при которой невозможно обеспечить ежедневное возвращение работников по месту жительства за пределы их постоянного места жительства. Общий период времени на объекте, включая время работы и посменного отдыха, считается вахтой. Особенности работы в вахтовом режиме требует, чтобы в законодательстве были указаны особенности регулирования труда работников, работающих за пределами территории работодателя, периода вахты, порядка организации труда. Анализируются вредность и неблагоприятные условия труда как одного из ключевых факторов дифференциации норм трудового права. Особенности этих видов трудовой деятельности могут привести к ухудшению здоровья, высокой вероятности получения травм и повлечь ущерб для здоровья и жизни. Работа во вредных и опасных условиях труда может повлечь работу сокращенной продолжительности, получения дополнительных трудовых отпусков, оплате труда в повышенном размере. Также анализируются возможности составления списка производств, рабочих мест, профессий и должностей с вредными условиями труда на основе социального партнерства. Особенности регулирования труда руководителя организации как отдельной категории работников выражаются в заключении трудового договора, установлении обязательных и дополнительных условий этого договора, работе данного руководителя по совместительству, его дисциплинарной и материальной ответственности, наличии дополнительных оснований для прекращения трудового договора. Анализируется влияние на на трудовые отношения отношений между руководителем организации, членами коллегиального исполнительного органа организации и собственником. Признано, что сезонные работы выполняются в течение определенного периода (сезона), в зависимости от климата или других природных условий, обычно в течение периода, не превышающего шесть месяцев. Особенности регулирования сезонного труда отражаются в методах и порядке составления списков сезонных работ, заключении и прекращении договора на сезонные работы, а также предоставления отпуска сезонным работникам. Установлено, что особенности временных работников возникают в связи с краткосрочным выполнением работ, не связанным с сезоном.

Ключевые слова: человеческие ресурсы, трудовой кодекс, кадровый резерв, трудовые мигранты, закон о труде, конкурсный отбор, охрана труда, дисциплинарная ответственность, рабочее время, трудовой договор.

Information about authors:

Ayupova Z.K., Doctor of Science in Law, Professor of Law, Kazakh National Agrarian University, Almaty, Kazakhstan; zaure567@yandex.ru; https://orcid.org/0000-0002-5925-1619

Kussainov D.U., Doctor of Science in Philosophy, Professor, Kazakh national pedagogical University named after Abai, Almaty, Kazakhstan; daur958@mail.ru; https://orcid.org/0000-0003-4274-5986

Dzankadyrov S.S., Senior Teacher, Kazakh national pedagogical University named after Abai, Almaty, Kazakhstan; sdzhankadyrov@bk.ru; https://orcid.org/0000-0003-0446-4868

Winston Nagan, Doctor of Science in Law, Professor of Law, Michigan University, USA; https://orcid.org/0000-0001-7381-8389

Seitakhmetova N.L., corresponding member of the National Academy of Sciences of the Republic of Kazakhstan, Chief Researcher of the Institute of Philosophy, Politology and Religion of the National Academy of Sciences of the Republic of Kazakhstan, Doctor of Science in Philosophy, Almaty, Kazakhstan; nseytakhmetova@bk.ru; https://orcid.org/0000-0001-7583-5406

REFERENCES

[1] Ismoilov Sh.A. The effect of a new edited Labor code of the Republik of Uzbekistan on the development of entrepreneurship and investment activity // Review of law sciences. Tashkent, 2019. N 1. P. 45-50.

[2] Matthew Edwards. The Modernisation and Liberalisation of the Labour legislation of the Republic of Uzbekistan // Central Asian Survey. 2019. Vol. 05. P. 29-33.

[3] Ermatov G. Decent working conditions for certain categories of employees // Laywer. Tashkent, 2017. Vol. 06. P. 54-65.

[4] Sitnikova E.G., Senatorova N.V. Labor Code of the Russian Federation. 2015.

[5] Sukhovskaya M.G. «Working» holidays // Main Book. 2014. Vol. 12. M. 2016.

[6] Arkhimandritova M.A., Gavrilina A.K., Korshunova T.Y. Labor Code of the Russian Federation. M. 2016.

[7] Orlovsky M.A. St-Petersburg, Contract. Scientific and practical commentary on the Labor code of the Russian Federation, 2018.

[8] Shadrina T.V. Work in harmful working conditions: calculating compensation for unused vacation // Remuneration of Labor: Accounting and Taxation. 2017. Vol. 5. P. 64-72.

[9] Ayupova Z.K., Kussainov D.U., Bekbergenova A.K., Nagan Winston. Major ideas and main values of the Universal UN Declaration on Human Rights: the 70-years experience // Bulletin of the Academy of sciences of the Republic of Kazakhstan. 2019. Vol. 1. P. 68-74. https://doi.org/10.32014/2019.2019-1467.8.

[10] Gussenov Barkhudar Sh., Dyrka Stefan. Influence of globalization processes and the fourth industrial revolution on the development of foreign economic activity of Kazakhstan experience // Bulletin of the Academy of sciences of the Republic of Kazakhstan. 2019. Vol. 1. P. 145-150. https://doi.org/10.32014/2019.2019-1467.17

Publication Ethics and Publication Malpractice
in the journals of the National Academy of Sciences of the Republic of Kazakhstan

For information on Ethics in publishing and Ethical guidelines for journal publication see http://www.elsevier.com/publishingethics and http://www.elsevier.com/journal–authors/ethics.

Submission of an article to the National Academy of Sciences of the Republic of Kazakhstan implies that the described work has not been published previously (except in the form of an abstract or as part of a published lecture or academic thesis or as an electronic preprint, see http://www.elsevier.com/postingpolicy), that it is not under consideration for publication elsewhere, that its publication is approved by all authors and tacitly or explicitly by the responsible authorities where the work was carried out, and that, if accepted, it will not be published elsewhere in the same form, in English or in any other language, including electronically without the written consent of the copyright–holder. In particular, translations into English of papers already published in another language are not accepted.

No other forms of scientific misconduct are allowed, such as plagiarism, falsification, fraudulent data, incorrect interpretation of other works, incorrect citations, etc. The National Academy of Sciences of the Republic of Kazakhstan follows the Code of Conduct of the Committee on Publication Ethics (COPE), and follows the COPE Flowcharts for Resolving Cases of Suspected Misconduct (http://publicationethics.org/files/u2/New_Code.pdf). To verify originality, your article may be checked by the Cross Check originality detection service http://www.elsevier.com/editors/plagdetect.

The authors are obliged to participate in peer review process and be ready to provide corrections, clarifications, retractions and apologies when needed. All authors of a paper should have significantly contributed to the research.

The reviewers should provide objective judgments and should point out relevant published works which are not yet cited. Reviewed articles should be treated confidentially. The reviewers will be chosen in such a way that there is no conflict of interests with respect to the research, the authors and/or the research funders.

The editors have complete responsibility and authority to reject or accept a paper, and they will only accept a paper when reasonably certain. They will preserve anonymity of reviewers and promote publication of corrections, clarifications, retractions and apologies when needed. The acceptance of a paper automatically implies the copyright transfer to the National Aca

demy of Sciences of the Republic of Kazakhstan.

The Editorial Board of the National Academy of Sciences of the Republic of Kazakhstan will monitor and safeguard publishing ethics.

Правила оформления статьи для публикации в журнале смотреть на сайте:

www:nauka–nanrk.kz

ISSN 2518–1467 (Online), ISSN 1991–3494 (Print)

http://www.bulletin–science.kz/index.php/en/

Редакторы *М. С. Ахметова, Д. С. Аленов, А. Ахметова*
Верстка на компьютере *Д. А. Абдрахимовой*

Подписано в печать 14.10.2020.
Формат 60x881/8. Бумага офсетная. Печать – ризограф.
21 п.л. Тираж 500. Заказ 5.