The legal characteristic of labor agreements in Ukraine

Правова характеристика трудових угод в Україні

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Referring to labor relations in Ukraine, the first point worth mentioning is that this country has a huge industrial potential and human resources. According to statistics, at the beginning of 2014, the Ukraine's population was more than 45 million, of which 20 million were employed persons[1]. Regardless of the number of workers, the legal regulation of their work is far from an ideal one.

The main reason of such a condition is the antique legislative base. The key legal act for governing labor relations – The Labor Code of Ukraine[2] – was adopted on10 December 1971when another social, economic, and political system was in place. At that time, the sole employer in Ukraine was the state. Hence, state-owned enterprises, institutions and organizations were involved in employing the powerful potential offered by the Soviet political doctrine. The norms of the Code were worded so that the employee was always confronted by a powerful entity possessing huge economic and administrative resources. The public policy at that time was based on the principles of a military and defense doctrine, which had a bearing on major production and research facilities by using the resources of large enterprises and ignoring small ones. Employees in the 1970s' formally had extensive constitutional labor relations rights; however, they also could have been held criminally liable for "parasitism" (refusal of a person to work).

Despite the significant changes in Ukraine over the last forty years, the Labor Code in this country has retained Soviet concepts, which cannot be efficient for modern economic relations. Further, I will dwell on the key problems in labor agreement regulations in Ukraine.

The form of labour agreements. Article 21 of the Labor Code provides for two forms of labor agreements. The first one, the ***employment agreement***, is the most widespread in the country. This form of agreement has an unlimited term. A fixed term of unemployment agreements possible only when an employment relation cannot be established for an unlimited period (depending on the nature of work or the conditions of its implementation, and the interests of the employee). The Labor Code does not establish a limit period for the employment agreement, thus giving the employer and employees the right to determine its term individually.

Despite the fact that Article 24.1 of the Labor Code contains grounds, under which the employment agreement shall be done in writing, this does not apply in practice. There are two reasons for this: a)no responsibility is implied when an employment agreement is done in verbal form; and b)the norm in Article 24.3of the Labor Code, which provides that employment are stars from the time when the employer issue the disposal.

Failing to use the written form of a labor agreement first and utmost affects workers' rights. The reason of this is that such a labor agreement establishes additional individual rights and obligations of the parties, which may not always be reflected in the law. Moreover, employees scarcely ever have adequate knowledge to understand the laws; hence, fully documented labor relations are preferred.

The second form of a labor agreement is a ***contract (sector contract)***. It is concluded with specific categories of employees (managers of companies, professional athletes, police officers, etc.).The key features of the contract areas follows: it is always a terminal one and is done in writing; it may contain additional responsibilities of the parties (including financial ones) and provisions for termination; and it is focused to ensuring financial support and organization of the employee.

[1] Державна служба статистики України [Electronic resource]. – Access mode : http://www.ukrstat.gov.ua.

[2] Кодекс законів про працю України : Закон України від 10 грудня 1971 р. № 322-VIII [Electronic resource]. – Access mode : http://zakon2.rada.gov.ua/laws/show/322-08.

The law establishes the scope of application of the contract. For example, the Law for Legal Practice and Advocacy indicates that the contract shall concluded with legal support.

Interestingly, in the future labor legislation (referring to the new draft Labor Code),the contract form of a labor agreement shall be absent. This is because contract, by its legal nature, is closer to civil (private) law and it has no place in the regulation of labor relations.

Parties to the labor agreement. The ***employer*** in Ukraine can be a legal or physical person. A physical person has the right to hire employees who have reached the age of 18 and acquired full civil responsibility. In this case, the labor agreement establishes the following additional requirements: it is concluded in writing and registered with a state body (the territorial employment center).

The ***employee*** can be any person who has reached 16years of age and can conclude a labor agreement with an employer. Besides, employers in Ukraine can hire 14 to 15years old juveniles with approval of their parents or guardians, and if their work conditions do not impede their education and personal development. In addition, according to Article 187 of the Labor Code, juvenile employees (14 to 17years old) are set equal to adults (18+ years old persons) in their labor relations rights.

The big disadvantage of the Labor Code is that it does not differentiate between the legal regulations of employment for specific categories of employees. For example, pursuant to the Civil Code, a person who has not reached full civil responsibility(at 18 years) cannot be hired as manager of a company (enterprise). However, the Labor Code has no age restrictions to concluding labor agreements with persons under sixteen years of age for executive positions. Hence, in Ukraine, managers of private companies can be 16 to 17 years old. Obviously, this is wrong because such employees have a special status – they represent the interests of the employer who delegates them full responsibility (criminal, administrative, financial and disciplinary), which is unacceptable for juveniles.

Labor agreement terms and conditions. In Ukraine, the Labor Code has no specific requirements to the labor agreement. The main requirement to labor agreement terms and conditions is abidance of the employee and employer to the *in favorem* principle at its conclusion or revision. This principle in Ukrainian labor law implies that everything is allowed, which the law does not prohibit, or does not violate employee rights as compared with current legislation.

The current practice of concluding labor agreements establishes the following specific conditions:

a) *the place where an employee will work*. The Ukrainian Labor Codeine this case uses the following three categories: "work", "place of work" and «workplace'. These categories have different meanings depending on the Article of the Code where these categories are specified. For example, the category "work" has a dual meaning. Primarily, it is the physical or mental activity of an employee aimed at obtaining certain results. Secondly, it insane area, to which an employer has a legal relation, and in which the employee shall exercise a labor function.
b) *labor function of an employee*. In Ukraine, there exists a special document –the Occupational Classification. It establishes the criteria to each profession existing in the country. The employee cannot be hired to a profession absent in the Occupational Classification. An employee must execute his labor function personally and cannot delegate it to someone else.
c) *work time*. The fixed work time limit in Ukraine is 40 hours a week. The parties to a labor agreement cannot exceed this work time standard.
d) *wages*. In Ukraine, employees cannot work without remuneration even if they are owners of a company. The wages are negotiated in the majority of cases. However, an employer cannot pay an employee less than the minimal wage, which the government defines each year for unqualified work. In 2015, the minimum wage was 1 218 hrivnas. The maximum wages in Ukraine are not established, but if they exceed ten minimum ones they are taxed at a higher rate.

The additional conditions of a labor agreement are as follows: tests when hiring; the option of combining professions (working by several labor agreements); using personal equipment; the provision of accommodation or parking space; paid telephone conversations, and others.

Employee's workbook. Because Ukrainian labor law does not require a written form of a labor agreement, workbooks are used for registering years of employment and avoiding labor disputes. A workbook is an official personal document containing information about the labor activity of an employee.

Using workbooks for registering an employment relationship is typical for all post-Soviet countries; however, some of them (the Baltic countries, Armenia, Azerbaijan, etc.) have refused to maintain these workbooks. Historically, the workbook appeared in Ukraine in 1918, when after the October Revolution a large part of Ukraine became part of the Soviet Union. At that time, the passports of citizens were annulled and replaced with workbooks. Since those times, the form of a workbook has been revised many times, but its concept as the labor passport of an employees still maintained in modern Ukraine.

Employers who hire employees for a term of over five days demand that the employee, including foreigners and stateless persons, submit their workbooks to the employer for record purposes. A workbook contains the following information: the full name of an employee, his/her birthdate, employment history, transfers, release, rewards and encouragements. Penalties of employees are not registered in the workbook.

Termination of a labor agreement/ An employee has the right to terminate a labor agreement at any time by notifying the employer thereof in two weeks. Exceptions from this rule are the fixed-term employment agreement and a contract. However, even with such forms of labor agreements, an employee shall always have the right to terminate labor relations when he/she cannot continue labor relations (pregnancy, moving to another area, necessity to care for a sick relative) or if an employer has violated the labor legislation, and/or labor conditions and collective agreement terms.

An employer can terminate a labor agreement only in strict cases envisaged by the law: liquidation, reorganization and bankruptcy of the employer; failure on the part of the employee to meet requirements to a job position due to lack of qualification or health conditions; when an employee regularly defaults on his/her duties; employee's absence at work without good reason for over three hours during the workday; prolonged illness of an employee for over four consecutive months; being at work in a drunken or intoxicated state; and recruitment (mobilization) of an employer–physical person.

Note that this concept of labor agreement termination is ill-suited for modern labor relations. The main reason of such a conclusion is that the limitations on termination of labor relations imposed on the employer fail to stimulate the professional advancement of an employee. In concluding a labor agreement, the employee knows that actually he cannot be discharged. Hence, eventually, the employee rests satisfied without improving his/her competitiveness in the labor market.

Moreover, this has an adverse effect on the employee (when searching for a new job), the employer (the inability to hire a more qualified employee) and the state (to instill an employment policy).

Moreover, other grounds for termination exist in Ukraine: by agreement between the parties; termination of the labor agreement (except when the employment relationship is actually continuing); employee recruitment or military draft; employee transfer to another employer or another area; entry into force of a verdict, by which a worker has been sentenced to imprisonment or other punishment preventing continuation of work; and on contract-specified grounds.

Presently, the situation in Ukraine has changed dramatically. In a market economy, private entrepreneurs enjoy the advantage of employing a workforce. However, labor legislation remains a Soviet-based one with state regulation of relations.

In turn, market conditions lead to keen competition between companies, often resulting in their bankruptcy, layoff of employees, implementation of unpopular economic austerity measures to stay afloat, conversion of their own activities and other drastic measures. All this increases the unemployment level in Ukraine, leads to irregular working hours, and makes employees economically more dependent on the employer. These problems can be resolved by developing a state policy aimed at economically stimulating employers and increasing the labor competitiveness of employees. However, it is doubtful that a new legislation, which would encourage the emergence of new labor relations between employees and employers, will be adopted in the near future.

Referring to labor agreements in Ukraine, note that their positive features are as follows: they are simple to conclude; there is an opportunity to customize the labor relations specified in the contract; and significant state involvement in protecting the rights of employees. The negative features are as follows: substantial state regulation; no obligatory requirement to conclude agreements in writing; the possibility of agreement termination only in strictly defined cases; and the ignoring of fixed-term agreements.

Summary

The legal regulation of labor relations in Ukraine has complicated and specific features. The reason is that labor relations in this country are still based on the time worn labor legislation inherited from the USSR. It features a lack of real trade union authority, state control of the majority of aspects of employing labor, disregard of the economic interests of employers, maintains an outdated employment policy, and so forth. The article analyses the key issues of concluding labor agreements in Ukraine. Besides, the author has also characterized the ways of further development of Ukrainian labor legislation.

Анотація

Правове регулювання трудових відносин в Україні має складні й специфічні особливості. Причина в тому, що трудові відносини в нашій країні засновані на трудовому законодавстві, отриманому в спадок від СРСР. До їх особливостей належать відсутність дієвих органів профспілкової організації, державний контроль над більшістю аспектів застосування праці, нехтування економічними інтересами роботодавців, підтримка застарілої політики зайнятості тощо. У статті здійснено аналіз ключових питань укладення трудових договорів в Україні. Крім того, охарактеризовано шляхи подальшого розвитку українського трудового законодавства.

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