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PECULIARITIES IN CONCLUDING AN EMPLOYMENT CONTRACT IN THE CODE OF LABOR LAWS AND SIMILAR ACTS OF FOREIGN COUNTRIES

Досліджено укладання строкових трудових договорів та договорів на невизначений термін. Відображено, які джерела зарубіжних країн спрямовані на регулювання питань, пов'язаних із встановленням трудових правовідносин. На основі зарубіжного законодавства, визначено, з якого віку особа може бути учасником трудових правовідносин. Проаналізовані основні умови, які згідно із законодавствами, становлять основу для створення та функціонування трудового договору. Зазначено максимальну тривалість строкового договору в різних правових системах. Розглянуто особливості укладання трудового договору з такою категорією працівників, як робітники-мігранти. Розкрито поняття «комерційної таємниці» та нормативно-правові акти зарубіжних країн, які регулюють це поняття. З'ясовано зміст та порядок укладання «Пакту про не конкуренцію». Зроблено висновок, що в процесі укладання трудового договору значну роль відіграють такі два чинники, як громадянство або правовий статус працівника.

Ключові слова: *трудовий договір, строковий договір, безстроковий договір, працевлаштування, роботодавець, працівник.*

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Peculiarities in concluding an employment contract in the code of labor laws and similar acts of foreign countries

The conclusion of fixed-term employment contracts and contracts for an indefinite period was studied. It is highlighted which sources of foreign countries are aimed at regulating issues related to the establishment of labor relations. On the basis of foreign legislation, it is established from what age a person can become a participant in labor relations.

The main conditions that, according to the legislation, form the basis for the creation and functioning of an employment contract are analyzed. The maximum duration of a fixed-term contract in different legal systems is indicated. The peculiarities of concluding an employment contract with such a category of workers as migrant workers are considered. The concept of "commercial secret" and which legal acts of foreign countries regulate this concept are revealed. The content and procedure for concluding the "Non-Competition Pact" have been clarified. It was concluded that when concluding an employment contract, such two factors as citizenship or legal status of the employee play a significant role.

Keywords: *employment contract, fixed-term contract, permanent contract, employment, employer, employee.*

Formulation of the problem. An important contract that almost everyone encounters in life, which regulates and ensures the rights and obligations of the parties, plays a guaranteeing role, and confirms the existence of legal relations - is an employment contract. It is worth noting that an employment contract operating within one state is gradually losing its relevance. After all, given the pandemic, martial law, open borders, and mobility of workers who work remotely, the study of the peculiarities of the conclusion and implementation of an employment contract in foreign countries is gaining relevance.

Analysis of recent research and publications. The issue of the employment contract and the practical aspects of its conclusion were studied in the works of such scientists as O.M. Potopakhina, S.M. Prilipka, VI Prokopenko, T. Kolesnik, K. Lewandowski, L. Mishalsky, I. Yatskevich, S.V. Venediktov and others.

The purpose of the article is to compare and find out what features are inherent in foreign countries when concluding an employment contract.

Presentation of the main material of the study. The leading role in concluding an employment contract is played by the age of the future employee and the type of contract, because it depends on, namely: the form of conclusion, occupation, duration of the employment contract, the choice of regulations to regulate it.

The age at which a person has the opportunity to enter into employment in foreign countries varies from 14 to 16 years. For example, from the age of 15, you can get a job in Germany (for agricultural work, the age of the employee can be reduced to 13 years), Italy, the Czech Republic, Austria, Finland, Sweden, and Japan. After reaching the age of 16, an employment contract can be issued in Great Britain, France, Spain, Portugal, Hungary, Brazil, and China [1].

We consider it expedient to begin research on contractual constructions regulating labor relations from the fixed-term employment contract. It is concluded with a small privileged group of workers, which include temporary, so-called "borrowed" workers, the underemployed, and immigrants. A characteristic feature of the presented labor relations is their instability, because they are mostly concluded when there is an improvement in the economic situation, and in case of its deterioration, usually terminate their effect. Examining the legal acts regulating this type of agreement in foreign countries, it should be noted that the countries of the European Union (hereinafter - the EU) have in common the implementation of the provisions of Council Directive 1999/70 / EC of 28 June 1999 on the Framework Agreement. about work for a certain period. However, in addition to the above Directive, countries have their instruments for regulating and concluding fixed-term contracts.

In Italy, the issue of fixed-term work is regulated by Directive №81 / 2015 of 15 June 2020, as well as the law of 18 April 1962 "On the regulation of fixed-term employment contracts". Under Italian law, this type of contract is concluded in writing. Contracts for the performance of works valid for no more than 20 (calendar, working) days may be concluded orally. The term of the contract can be up to 36 months, including the possibility of an extension. In the case of concluding a fixed-term contract exceeding 12 months, the employer is obliged to justify the need to conclude a fixed-term contract. Such a need may exist in the case of the emergence of a temporary need that is not related to the normal functioning of the enterprise. In case of failure to provide reasonable information, the fixed-term contract is automatically considered to be concluded for an indefinite period [4, p.287-288]. Also the new law of Italy on April 18, 1962. fixed-term contracts are concluded only in certain cases: for seasonal work, to replace temporarily absent employees, for creative workers, etc.

In Poland, the source of regulation of employment contracts, including fixed-term, is the Labor Code of 1974, Art. 25 of this act establishes a provision under which the period of employment under a fixed-term contract, including the total period of employment under several fixed-term contracts con,cluded between the same parties to the employment relationship may not exceed 33 months, and the total number of contracts may not exceed 3, otherwise, a perpetual agreement will be deemed to be in force between the parties.

When concluding a fixed-term contract in the Czech Republic, it is worth remembering such rules as a fixed-term contract can be concluded or extended for a total term of 2 consecutive years 3 times.

With regard to German law, it can be noted that the conclusion of a fixed-term contract is governed by the "Act on Part-Time and Limited Employment" (Gesetz über Teilzeitarbeit und befristete Arbeitsverträge - TzBfG) and the Law on Temporary Employment. The maximum term for which a fixed-term contract is concluded is 2 years. If you sign a fixed-term contract with a company that has emerged relatively recently, then the duration of the contract will be up to 4 years, and the number of extensions - is not limited. In the case when the term of work with a temporary worker

lasts longer than the established period, then the contract automatically becomes indefinite.

It should be emphasized that the written form of the contract is also mandatory for sea charter, with managers, and so on.

In contrast to the fixed-term contract, both written and oral forms of contract are provided for contracts concluded for an indefinite period. However, employment contracts concluded orally also have their own characteristics. Thus, according to German law, in the case of an oral contract, the main provisions must in any case be set out in writing, and no later than 1 month after the start of work, the employer must issue the employee a document signed by the employee. It is interesting to note that if the employer does not provide written confirmation of the basic requirements of the oral agreement, German law does not provide for any sanctions, but if

the case goes to court, then the court will be on the side of the worker. The contract concluded orally automatically becomes indefinite. Austrian law also states that the employer is obliged to issue a service letter (Dienstzettel) to the employee within one month of the start of the employment relationship, confirming the existence of an employment relationship based on an oral contract.

The written form of the contract is mandatory in countries such as Italy, the Czech Republic (however, even if the contract is not concluded in writing, it can not automatically be considered invalid), Norway, and Luxembourg. Spanish law provides for the right of the parties to require the conclusion of an employment contract in writing [14].

Determining its essential conditions becomes important when concluding an employment contract. In our opinion, it is worth noting the peculiarities of defining the terms of the agreement as significant in foreign countries. Thus, the German legislator to the essential terms of the employment contract includes a place of work, employee responsibilities and job description, pay, working hours, leave, notice period for future dismissal, instructions on the application of tariffs, and in-house agreements[7]. Austrian legislation refers to the essential conditions of the employment contract include: place and conditions of work, employee position, responsibilities, duration and amount of employment, paid leave, information on social and pension insurance, wages, bonuses, and sick pay [5].

The Czech Labor Code stipulates that the contract between the employer and the employee agrees on the following formalities: type of work, place of work, and start date. We consider it necessary to pay attention to the peculiarities of legal regulation of labor relations in Czech law: 1) If the employment contract does not specify the basis of the rights and obligations of the employee arising from employment, then the law requires the employer to inform the employer in writing; 2) It is believed that an employment relationship has arisen between the employer and the employee, which is covered by the Labor Code. Thus, the employee has all the rights arising from the employment relationship, including remuneration for the work performed by him if the contract does not contain all the formalities, and the employee began to implement the employment contract; 3) The autonomy of the will of the parties is present in their chosen languages for the conclusion of an agreement between them [13].

Employees often have to sign non-disclosure and non-competition provisions (as provided for in the Non-Competition Covenant), which means that the employee must be loyal to the employer and must not compete with him for a certain period (1-5). years) after dismissal, for example, not to create a similar company, hire a similar company, establish business relations with clients of the former employer and not disclose information from the previous place of work.

The non-competition agreement is drawn up in writing and is part of the employment contract or is concluded separately during employ employment/termination employment contract. The procedure for concluding the Non-Competition Pact and its entry into force is provided for in the laws of such countries as Italy, and Spain, or enshrined in the case-law of both Germany and France. The Labor Code of the Czech Republic stipulates that competition applies not only to “executive” employees, it can also be agreed upon with any employee.

With regard to the provision of secrecy, it should be noted that the meaning of the word “secrecy” in the context of labor relations varies somewhat from country to country. In the Czech Republic, any secret is classified as information that constitutes an economic or business secret; in Germany, this is any information related to the activities of the company, which, in the opinion of its owner, should be kept secret.

The regulations governing trade secrets in Germany include the German Trade Code, the Promotion Act, the Limited Liability Company Act, the Production and Economic Cooperatives Act, and the Unfair Competition Act. The issue of “trade secrets” is usually regulated in employment contracts. In Italy, according to the provisions of Article 2105 of the Civil Code of 1942, the employee is prohibited from engaging in activities that may cause competition with the employer or may be related to the disclosure of secrets of the organization that may harm the company. former employer.

The citizenship/legal status of the employee also influences the conclusion of the employment contract in some way. For example, EU citizens can, based on a document such as the Council of Europe Movement Agreement of 1957, move freely within European territory to seek/find work without the need to obtain a work permit[8]. As a result of such interaction, there is a question of a choice of the legislation which will regulate the specified legal relations. The answer to this question can be found in the EU Regulation № 593/2008 on the law applicable to the Rome I Treaty of 17 June 2008 [9], which states that the employer and the employee jointly choose the legislation of the state.

Considering the peculiarities of concluding an employment contract in foreign countries, it is impossible to avoid the peculiarities of concluding a contract with a migrant worker. Among the standard rules, the contract is concluded for a period and after continuous work for 4-10 years, depending on the country, the migrant will have

the right to apply for a permanent residence permit in the country, which in turn removes restrictions and allows you to hire any job change. In Austria, labor relations with foreigners are regulated by the "Act on the Employment of Foreign Workers" and the Austrian Law on the Employment of Foreigners. Polish law regulates such relations by the Labor Code and the Law on Employment and Unemployment.

Conclusion. Summarizing the above study, it can be noted that despite the spread of the same directives and recommendations, there are still differences in the conclusion of an employment contract in the European Union. Among the differences in the age from which a person can enter into employment, taking into account the free movement of persons between EU countries, we consider it appropriate to establish the same age of employment in all EU Member States. Also excellent is the duration of the fixed-term employment contract. At the same time, the legislation of the EU countries contains common provisions on the procedures for recognizing a fixed-term contract as concluded for an indefinite period and restrictions on the renegotiation of fixed-term employment contracts.

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