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LEGAL REGULATION OF HOME-BASED WORK

Taking into account the trends in the development of society, traditional forms of employment of the population are becoming less popular, which leads to an increase in the number of unemployed. In this regard, the need for atypical forms of employment capable of modernizing the labor market is growing. The article examines the peculiarities of the legal regulation of home work in modern conditions as one of the types of atypical employment. This topic is currently relevant, because the increase in the number of employees who perform work at home, which is determined by both objective and subjective factors, has certain advantages for both employees and employers.

The article analyzes current national legislation and international acts regarding the definition of the concept of «home-based work» and its features. The main features of home-based work include the following: 1) concluding an employment contract in writing; 2) the employee's workplace is fixed and cannot be changed without agreement with the employer; 3) introduced for persons who have practical skills to perform certain jobs or can be trained in such skills; 4) employees are subject to the general operating regime of the enterprise, institution, organization, unless otherwise stipulated by the employment contract; 5) the employee is provided with the technical means necessary for the performance of the work function.

A mandatory condition of the employment contract on home-based work is the definition of the employee's job function, the criteria for which the employee should meet must be determined by the employer.

It was concluded that, despite the positive points in the regulation of homework, certain issues of its application require further refinement.

Keywords: *home-based work, employment contract, employee, employer, workplace, work regime.*

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Правове регулювання праці вдома

Розглянуто особливості правового регулювання надомної праці в сучасних умовах як одного із видів нетипової зайнятості. Ця тема сьогодні актуальна, адже зростання кількості працівників, які виконують роботу на дому, що зумовлено як об'єктивними, так і суб'єктивними факторами, має певні переваги як для працівників, так і для працедавців.

Здійснено аналіз чинного вітчизняного законодавства та міжнародних актів щодо визначення поняття «надомна робота» та її особливостей. До основних ознак надомної належать такі: 1) укладення трудового договору в письмовій формі; 2) робоче місце працівника фіксоване і не може бути змінено без погодження з працедавцем; 3) запроваджується для осіб, які мають практичні навички виконання певних робіт або можуть бути навчені таким навичкам; 4) на працівників поширюється загальний режим діяльності підприємства, установи, організації, якщо інше не передбачено трудовим договором; 5) працівник забезпечується технічними засобами, необхідними для виконання трудової функції.

Обов'язковою умовою трудового договору про надомну роботу є визначення трудової функції працівника, критерії відповідності якій працівників повинні визначати працедавці.

Незважаючи на позитивні аспекти у регулюванні надомної роботи, окремі питання її застосування вимагають подальшого доопрацювання.

Ключові слова: *надомна робота, трудовий договір, працівник, роботодавець, робоче місце, режим роботи.*

Formulation of the problem. In modern conditions, caused in particular by the disease of Covid-19 and the declaration of martial law in Ukraine, along with traditional forms of labor organization, the role of non-typical forms of employment of the population is increasing. According to Yu. Ostapenko, atypical employment currently means an objectively forced deviation from the general standards established by labor legislation regarding the organization of the working time regime, workplace and working conditions, and is not prohibited or provided for by labor legislation regarding labor relations that arise and continue between the employer (or employers) and a person who is employed in the field of labor in an atypical way (atypical employee), based on non-standard (atypical) employment contracts [6, p. 266-267].

In the scientific research, a number of factors that produce an increase in demand for atypical employment are identified: (1) structural shifts in the process of transition from mass assembly line production to production inherent in the post-industrial economy (knowledge economy); (2) increased global competition; (3) significant expansion of the service sector; (4) unprecedented scale of application of information and communication technologies; (5) increasing flexibility of the labor market and production [4, p. 176].

The classification criteria used to determine alternative forms of employment are: 1) workplace; 2) mode of working hours; 3) the mechanism of legal regulation [3, p. 86].

Atypical forms of employment include home and remote work, flexible working hours, part-time and reduced working hours. The use of a certain type of atypical form of employment depends on socio-economic conditions, as well as the characteristics and needs of certain categories of employees. In addition, the use of such forms of employment can serve as an alternative to unemployment, as it will reduce the burden on the employer regarding the need to arrange workplaces and increase the possibility of increasing labor costs.

Analysis of recent research and publications. Theoretical and practical problems of legal regulation of homework were studied in the scientific works of K.M. Gorbacheva, A.S. Diligul, V.P. Kokhan, S.S. Lukash, V.V. Nezhevelo and others.

The aim of the article is to characterize the peculiarities of the legal regulation of home work as one of the types of atypical form of employment.

Presenting main material. As already mentioned, the COVID-19 pandemic made certain adjustments to the organization of labor relations. The establishment of certain quarantine restrictions and prohibitions led to the need to introduce home and remote work. At the same time, the issue of balancing between the guaranteed amount of labor rights of employees and ensuring the performance of the labor function continues to gain the greatest relevance. Many mechanisms for compensation of costs, evaluation of work performed, forms and effectiveness of control in conditions of non-standard forms of employment require due attention from both scientists and practitioners [1, p.161].

It is worth noting that the issue of the use of home-based work is not completely new for domestic labor legislation. The Regulation on the working conditions of domestic workers was approved by the Resolution of the State Committee of Labor of the USSR and the Secretariat of the Central Committee of the Russian Federation dated September 29, 1981 No. 275/17-99. According to Clause 1 of the Regulation, persons who entered into an employment contract with the enterprise on the performance of work at home with personal labor from materials and using equipment and labor tools issued by the enterprise or purchased at the expense of its funds were considered home workers.

Part 8 of Art. 179 of the Labour Code of Ukraine stipulates that at the request of the mother, father of the child or the persons specified in part seven of this article, during their stay on leave to care for the child, they can work part-time or at home.

In addition, in accordance with Part 3 of Art. 18 of the Law of Ukraine «On the Basics of Social Protection of Persons with Disabilities in Ukraine», the State Employment Service assists persons with disabilities who are unable to work at enterprises, institutions, and organizations in employment with the condition that they perform work at home.

On February 4, 2021, the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on Improving the Legal Regulation of Remote, Homework and Flexible Working Hours» was adopted, which added to the Labor Code of Ukraine Article 60-1 «Homework». According to part 1 of this article, home work is a form of work organization in which the work is performed by the employee at his place of residence or in other premises determined by him, characterized by the presence of a fixed zone, technical means (main production and non-

production assets, tools, devices, inventory) or their aggregates necessary for the production of products, provision of services, performance of works or functions provided for by the founding documents, but outside the production or working premises of the owner of the enterprise, institution, organization or body authorized by him.

Convention of the International Labour Organization «On Home Work» No. 177 of June 20, 1996 in Art. 1 defines home work as work that a person called a home worker performs: at his place of residence or in other premises of his choice, but not in the employer's production premises; for a reward; for the purpose of producing goods or services, according to the instructions of the employer, regardless of who provides the equipment, materials or other resources used, unless that person has at his disposal such a degree of autonomy and economic independence as is necessary in order to consider her an independent employee in accordance with national legislation or court decisions.

A. Diligul considers home-based work as a type of flexible employment, which involves skilled or unskilled labor activity of a person who is not rigidly tied to material objects located at the location of the employer, including in online mode with the use of modern means and types of telecommunications, which allows to maintain direct contact in different premises or cities [2, p. 5].

S. Lukash attributes the advantages of home-based work to: 1) the production process can be divided into separate tasks; 2) the capital required for production – for example, sewing machines or personal computers – is available at a relatively low cost; 3) available workforce [5, p. 41].

According to Art. 5 Recommendations of the International Labor Organization regarding home-based work No. 184 dated 20.06.1996, the domestic worker must be informed about the specific conditions of employment in writing or in any other appropriate form that corresponds to national legislation and practice. This information must include, in particular: a) the name and address of the employer and the intermediary, if any; b) tariffs or wage rates and methods of calculation; and c) the type of work to be performed.

Homework can be introduced exclusively for persons who have practical skills to perform certain jobs or can be trained in such skills (Part 10 of Article 60-1 of the Labour Code of Ukraine). Since the legislator does not define the criteria on the basis of which the practical skills of the employee will be determined regarding the possibility of performing certain work, it is appropriate to grant the right to the employer to determine both the types of work that can be performed on the basis of the contract on home work and the requirements for employees who will perform work on the basis of such a contract. It is indisputable that the specific type of work of a home worker also depends on the state of his health in accordance with the recommendations of the medical and social expert commission.

In addition to the above, pregnant women, employees who have a child under the age of three or take care of a child in accordance with medical conclusion before she reaches the age of six, employees who have two or more children under the age of 15 or a child with a disability, parents of a person with a disability since childhood of subgroup A of the I group, as well as persons who have taken into custody a child or a person with a disability since childhood subgroups A of I group.

The home worker concludes an employment contract with the employer, the standard form of which is approved by the order of the Ministry of Economic Development, Trade and Agriculture of Ukraine dated 05.05.2021 No. 913-21. The employment contract on home work must specify the workplace, which cannot be changed by the employee without the employer's consent. If the employee is unable to perform work at a fixed workplace for reasons beyond his control, the employee has the right to change the workplace, provided that he notifies the employer at least three working days before such a change in the manner determined by the employment contract on home work. This regulatory provision establishes one of the distinguishing features of contracts on home and remote work. In particular, in accordance with Part 4 of Art. 60-2 of the Labor Code of Ukraine, in the case of remote work, the employee independently determines the workplace and is responsible for ensuring safe and harmless working conditions there.

It is worth noting that there are exceptions to the general rule on the obligation of a written employment contract on home work. In particular, in accordance with Part 8 of Art. 60-1 of the Labour Code of Ukraine during the threat of the spread of an epidemic, a pandemic, the need for self-isolation of the employee in cases established by law, and/or in the event of a threat of armed aggression, an emergency situation of man-made, natural or other nature, home work may be introduced by order of the employer without mandatory conclusion of an employment contract on home work in written form. The employee gets acquainted with such an order within two days from the day of its acceptance, but before the introduction of home-based work.

In contrast to remote work, in which the employee allocates working time at his own discretion, in case of work from home, the general operating regime of the enterprise, institution, organization applies to employees, unless otherwise stipulated by the employment contract.

The rights and obligations of employees and employers are determined by the employment contract. In particular, the employee has the right to: provide him with the work defined by the contract; change of terms and termination of the contract in cases provided by law; timely and full payment of wages in accordance with one's work function in the amounts and order determined by legislation; provision of social guarantees; rest, including paid annual leave, weekends, non-working days, holidays, breaks for rest and meals; protection of one's labor rights, freedoms and legitimate interests in accordance with legislation; compensation for damage caused by mutilation or other health damage related to the performance of labor duties, in accordance with the procedure established by law; mandatory social insurance in cases provided for by law; receiving compensation in the case of using one's tools for their wear and tear (depreciation) in accordance with the legislation; other rights established by law; other rights stipulated by the contract. The employee's responsibilities include: conscientiously performing his/her work function, which is defined by the contract and job description (if available); to carry out tasks, instructions and orders of the employer; to comply with other terms of the contract, in particular, if it is provided for, the peculiarities of the regulation of the working regime, methods of communication with the employer; perform other duties stipulated by legislation, collective agreement, agreement and other regulatory acts of the employer; to constantly improve one's skills and improve one's qualifications; treat and use the employer's property and means of production carefully, if they are in the employee's use; comply with the requirements of regulatory legal acts on labor protection; to inform the employer in any possible way about the occurrence of situations that make it impossible to properly perform homework; other obligations stipulated by the contract.

The employer has the right: to demand from the employee the fulfillment of labor duties and conditions provided for in the contract, careful treatment and proper use of the property and means of production of the employer, if they are in the use of the employee (including equipment, software and technical means, means of protection information, other means, etc.); to encourage the employee for conscientious and effective work; to bring the employee to disciplinary and financial responsibility in the manner established by the law; to approve the instructions clarifying and detailing the functions and duties of the employee; other rights stipulated by the legislation; other rights stipulated by the contract. The employer's responsibilities include: complying with the requirements of the legislation, the terms of the collective agreement, general and branch agreements and the contract; provide the employee with work in accordance with his specialty and qualifications in accordance with the terms of the contract; to provide the employee with means of production, materials and tools necessary for the employee to perform homework, unless otherwise stipulated by the contract; timely pay the employee the full amount of the appropriate salary specified in the contract, within the terms and in the manner established by the legislation, the collective agreement, general and industry agreements, the contract, and also make all necessary compensations and reimbursements, including those specified in the contract; provide mandatory state social insurance for the employee in accordance with the procedure established by law; familiarize the employee with the rules of internal labor regulations and the collective agreement, provide the employee with recommendations on working with the equipment and tools that the employer provides to the employee to perform a certain amount of work; to ensure safe and harmless working conditions of the employee; to systematically instruct (train) the employee on labor protection and fire safety within the scope of such employee's use of equipment and tools recommended or provided by the employer; perform other duties established by law; other obligations stipulated by the contract [7].

Home workers, as well as other workers, are covered by guarantees for the realization of their labor rights and interests, which are divided into three groups. The first group of guarantees includes the creation of a reliable and effective system of legal regulation of labor relations. The second one involves ensuring the implementation of certain institutions of labor law: disciplinary responsibility, conclusion, execution and termination of an employment contract; vacation guarantees; wages; etc. The third one is ensuring the possibility of protecting one's rights by means of: self-defense; appeal to the Labor dispute commission; in court [2, p. 4-5].

According to Art. 4 of the Convention of the International Labour Organization No. 177, equality of treatment should be encouraged, in particular, regarding: a) the right of home workers to create organizations or join organizations of their own choice and to participate in the activities of such organizations; b) protection against discrimination in the field of work and occupation; c) protection in the field of occupational safety and hygiene; d) wages; e) protection through social security systems established by law; f) access to professional training; g) the minimum age for employment or admission to work; and h) maternity protection.

Conclusions. Home-based work is a form of atypical employment, which is characterized by the following features: 1) concluding an employment contract in writing. An exception to this rule is allowed in cases specified by law; 2) the employee's workplace is fixed and cannot be changed without agreement with the employer; 3) introduced for persons who have practical skills to perform certain jobs or can be trained in such skills; 4) employees are subject to the general operating regime of the enterprise, institution, organization, unless otherwise stipulated by the employment contract; 5) the employee is provided with the technical means necessary for the performance of the work function.

In general, it can be said that the legal regulation of home-based work has recently acquired a new character, since not only the definition of home-based work has been fixed at the legislative level, its characteristic features have been determined, but also the form of the employment contract on home work has been approved. Meanwhile, despite these positive points, some issues of the application of home-based work require further refinement.

References

1. Horbachova, K. M., Nezhevelo, V. V. & Mishchenko, Ye. V. (2021). Aktualni problemy pravovoho rehulyuvannya dystantsiynoyi, nadomnoyi roboty ta hnuchkoho rezhymu zaynyatosti naseleण्या v Ukrayini [Current problems of legal regulation of remote, homework and flexible employment regime in Ukraine]. *Yurydychnyy naukovyy elektronnyy zhurnal – Legal scientific electronic journal*, 3, 160–163. Retrieved from http://lsej.org.ua/3_2021/42.pdf [in Ukrainian].
2. Dilihul, A. S. (2018,). *Pravove rehulyuvannya nadomnoyi pratsi za trudovym zakonodavstvom Ukrayiny* [Legal regulation of home-work within Labor Law of Ukraine]. Extended abstract of candidate's thesis. Kharkiv. Retrieved from http://dspace.univd.edu.ua/xmlui/bitstream/handle/123456789/5020/aref_Dilihul_2018.pdf?sequence=1&isAllowed=y [in Ukrainian].
3. Kotova, L. V. (2012). Ponyattya ta yurydychna pryroda al'ternatyvnykh form zaynyatosti u suchasnykh umovakh [The concept and the legal nature of alternative forms of employment in the modern world]. *Aktualni problemy prava: teoriya i praktyka – Actual problems of law: theory and practice*, 25, 83–95 [in Ukrainian].
4. Kokhan, V. P. (2013). Nestandardna zaynyatist' v Ukrayini: vyklyky chasu [Non-standard employment in Ukraine: challenges of time]. *Pravo ta innovatsiynе suspilstvo – Law and innovation society*, 1, 173–187. Retrieved from <https://openarchive.nure.ua/bitstream/document/17826/1/doc11.pdf>. [in Ukrainian].
5. Lukash, S. S. (2021). *Nadomna robota: mizhnarodnyy dosvid* [Homework: international experience]. Retrieved from http://dspace.univd.edu.ua/xmlui/bitstream/handle/123456789/10255/Nadomna%20robota_Lukash_2021.pdf?sequence=1&isAllowed=y. [in Ukrainian].
6. Ostapenko, Yu. O. (2020). Netyпова zaynyatist' yak osoblyva problema realizatsiyi trudovykh prav pratsivnykiv [Non-typical employment as a special problem of realization of labor rights of employees]. *Yurydychna nauka – Juridical science*, 4 (106), 262–268 [in Ukrainian].
7. *Typova forma trudovoho dohovoru pro nadomnu robotu, zatverdzhena nakazom Ministerstva rozvytku ekonomiky, torhivli ta silskoho hospodarstva Ukrayiny 05 travnya 2021 roku № 913-21* [Standard form of employment contract on home work, approved by order of the Ministry of Economic Development, Trade and Agriculture of Ukraine dated May 5, 2021 No. 913–21]. Retrieved from <https://zakon.rada.gov.ua/laws/show/z0886-21#Text>. [in Ukrainian].

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