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Labour of professional female athletes

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Abstract. The aim is to study the peculiarities of legal regulation of the work of women athletes. To answer the question to what extent the current labour legislation can effectively influence the relations between the parties of labour legal relations with the participation of female athletes. To disclose the specifics of individual labour law institutions in the field of athletes' labour regulation, such as employment contracts, working hours, labour protection, guarantees and compensations. Organization and methods of research: the subject of the research includes legal acts and regulatory norms handling separate institutes of labour law, practice of their application, as well as a complex of theoretical provisions on labour relations of professional athlete. The research is based on the general scientific methods of cognition: formal-logical, system-structural and comparative-legal. The study also uses different ways of interpreting legal norms. Results: analysis of modern legislation and scientific literature was carried out, gaps in the regulation of the work of women athletes were identified and proposals were developed to improve and further develop Russian labour legislation in the field of sport. Conclusion The care for the health, maternal function and the possibility of combining family responsibilities with employment should remain as the main directions in the regulation of women's work.

Key words - women, employment contract, professional athlete, guarantees, benefits.

I. INTRODUCTION

Russian labour legislation defines labour protection as a system for preserving the life and health of workers in the course of labour activity, including legal, socioeconomic, organizational and technical, sanitary and hygiene, medical and preventive, rehabilitation and other events (part 1 of article 209 of the Labour Code of the Russian Federation 2) It follows from this definition that Russian legislator understands labour protection as a social phenomenon.

E. V. Kryazhev, summarizing the position of legal scholars on the content Institute of labour protection, distinguishes:

- general rules on labour protection, rules and regulations on technology safety and industrial sanitation (single, intersectoral and industry);

- norms establishing the provision of workers and employees personal protective equipment and the neutralization of harmful effects on working production factors (norms providing for the organization of therapeutic and preventive nutrition, supply with milk, soap, work uniform, etc.);

- special labour standards for women, minors and people with disabilities.

The work of women athletes is regulated not only by the general rules of labour legislation, which establishes various guarantees of labour rights for all workers, but also by rules adopted taking into account the conditions of sporting activity, the psycho-physiological characteristics of the body and the existence of family obligations. Russian legislation is consistent with the content of international legal acts and should ensure the right of women to health care, safe working conditions and protection during their pregnancy [1].

II. MATERIALS AND METHODS

Professional athletes in the Russian Federation are employees, as are other people working under an employment contract. The Federal Law "On Physical Culture and Sport in the Russian Federation" defines an athlete. This is an inndividual who is engaged in the chosen type of sport and performs at sports competitions Labour relations between professional athlete and physical culture and sports organizations are regulated by the norms of labour legislation, collective agreements, agreements, local acts, taking into account the norms approved by the All-Russian sports federations. Each sport has developed local acts that influence the regulation of labour relations [2].

Prior to the conclusion of an employment contract, a sports organization shall be obliged to familiarize the employee with the content of local regulations and the collective agreement, upon signature. This is due to the fact that since it is practically impossible to include all working conditions of an employee in an employment contract, many employers adopt local regulations on certain groups of issues of a general nature for all or a specific group of employees [3].

Local regulations include internal work regulations, staff schedule, vacation schedule, job descriptions, occupational safety instructions, regulations on personal data, etc. However, not all local regulations adopted by the employer are brought to the attention of the employee, but only those that are directly related to his or her work. These can be the norms approved by all-Russian federations, the rules of the corresponding sports, regulations (rules) on sports competitions, the terms of the employer's contracts with sponsors (partners), advertisers, organizers of sports events in the part related to the work of the athlete.

Meanwhile, in practice, the employer often faces the problem of determining the list of local regulations with which

it is obliged to familiarize employees, i.e. to provide information.

The best way out of this situation will be to develop for each position, which is listed in the staffing table of the organization, a list of specific local regulations that directly regulate the work of the employee. Where exactly should the employee's signature be placed, as well as the date confirming that the employee was informed and acquainted with the local regulations just before entering into the employment contract and not after it, the legislator does not indicate what can be considered as another gap in the legislation.

When entering into an employment contract, the employer is actually obliged to find out the details of a person's private life (whether the future employee is a single mother, a pregnant woman, a person with family responsibilities, etc.) [4]. Article 23 of the Constitution states that everyone has the right to privacy and family secret. According to many scientists, "privacy" is the broadest concept, which includes "personal data of employees" [5].

According to A.M. Lushnikov, the information related to the employee's private life and included in personal data can be divided into groups. "Information required by the employer and received from the employee or with his consent in accordance with the law, such as disability and occupational diseases, property and marital status. Information provided on the employee's own initiative to obtain benefits, guarantees and compensations, e.g. for women, single mothers, pregnant women, people with family responsibilities. And the information, which the employer has no right to demand, on the basis of the Federal Law of 27.07.2006 № 152-FL "On Personal Data" [5].

Trying not to disclose their personal lives, future employees conceal information about themselves, which gives rise to conflict situations in the regulation of labour to provide various benefits and compensation. For optimal coordination of the interests of the parties, it is necessary to enshrine the status of a single mother in the local acts of the organization, as well as a list of guarantees and a list of required documents to confirm this special status. After reading the guarantees, the employee will be interested in providing the necessary information to the employer, and with his/her personal consent.

At employment it is possible to confirm the status of a single mother on the basis of the birth certificate of the child in which the father is not registered; the certificate on death of one of spouses; the decision of court on recognition of the second parent as dead, incapacitated, not known. If the child's father has been convicted, a court verdict and a certificate from the correctional facility will be required. Both legal and factual circumstances must be taken into account in each case [6]. Chapter 14, "Protection of Employees' Personal Data", of the Labour Code can eliminate these contradictions by clearly defining the rights and obligations of the parties to labour relations.

The Labour Code does not establish a test for employment of pregnant women and women with children under the age of one and a half year. In standard situations, the employee and the employer agree to a probationary period. In practice, it is difficult to establish such a condition with an athlete. The sports organization employs a female athlete to take certain risks. But if the employer starts checking the athlete during the probationary period, he risks losing more, because he himself is interested in the sports achievements of the future employee. In practice, some international sports federations consider it illegal to establish a test for employment (FIFA Chamber Decision No. 16695 of 12 January 2006 on dispute resolution). Currently, there is a practice in sport of professional testing of an athlete that does not coincide with the probationary period, as the latter includes the testing and control of abilities in a real environment [7].

Article 256 of the Labour Code of the Russian Federation gives women the right to work part-time while retaining the state benefit for the care of a child under 1.5 year of age. Also based on the article 93 this time is set by the agreement of the parties, for a convenient period for the employee. But the implementation of these norms in practice, the employer has some difficulties. For example, it is not clear to what extent working time can be reduced to be considered incomplete. The law does not limit the length of part-time work for women on parental leave. If we proceed from the provisions of the Convention of the International Labour Organization of 24.06.1994 № 175 "On part-time work", the working time, the duration of which is less than normal, i.e. 40 hours per week, should be considered incomplete. It follows that the employer can establish part-time working hours by reducing them insignificantly. This conclusion is confirmed by the decisions of the courts, where the court justifies the legality of the payment of benefits, arguing that the law does not specify for how long the working day should be reduced in order to consider it incomplete.

The Social Insurance Fund took into account the position of the courts and gave an explanation in its letter (Letter of the Federal Insurance Service of the Russian Federation dated 19.01.2018 № 02 - 08 - 01/17 - 04 - 13832l). The law does not regulate the maximum working hours for part-time employees. A childcare allowance of 40 per cent of average earnings does not constitute compensation for lost earnings when the working day is reduced by only one hour or less. The Fund regarded this as an additional material incentive, which indicates an abuse of the right. In its letter, the Social Insurance Fund did not announce the maximum length of part-time work, noting that there should be enough time to care for the child. Further, the Social Insurance Fund pointed out that it was not lawful to receive childcare allowance if the employee's working hours on parental leave exceeded 60% of the employee's normal working hours.

Legislation allows women to be on parental leave and to work part-time while maintaining the allowance. However, in order to maintain the balance between the interests of the parties to the employment relationship when establishing part-time work, it is necessary to take into account that most of the time is devoted to the care of the child. Reduce the employee's working time by more than 40% so that the Social Insurance Fund could not withhold any amounts previously paid from the employee's earnings.

An employee is hired on the basis of an employment contract. The work function is to prepare for sports competitions and participate in competitions in a particular sport. But the relationship between a woman athlete and an employer is not always labour-intensive. Sometimes, a woman carries out training activities on her own, participating in competitions at her own expense, received from the organizers of sports competitions and sponsors under the contract for the provision of services. In team sports, relationships sometimes arise on the basis of a contract for the

provision of services on a paid basis. Performance of the service (work) consists in preparation and participation in competitions as a part of the team of the sports organization [8].

In sports, it is difficult to set the same rules for all kinds of sports. If this is a team sport, the relationship should be governed by labour law. If it is an individual sport, there are two possible options - employment or civil contract. However, according to the rule of the Labour Code of the Russian Federation, if the relations arose on the basis of a civil contract, but were later recognized as labour relations on the basis of the law, the norms of labour law will be applied to such relations.

The employer's replacement of the employment contract with a civil law one is due to financial and managerial reasons. Such employment schemes are illegal and employers bear administrative liability in the form of a fine of 50,000 to 100,000 roubles for legal entities. For repeated violation - in the amount from 100,000 to 200,000 roubles [9].

The analysis of mutual obligations of the parties to the employment relationship with an athlete allows us to identify several characteristic features of the employment contract with an athlete. An employee's work is formalized with the indication of his or her work function, i.e. work in a certain profession. Accordingly, a sports club may not require the performance of work not stipulated by the employment contract. A female athlete undertakes to obey the employer's authority, which is expressed in the requirements set forth in the internal work regulations of the organization. Labour relations are characterized by a personal nature of work performance. Every employee is obliged to perform his or her own work function for the benefit of and under the direction and control of the employer. The employment contract is of a compensatory nature, as evidenced by the obligation of the sports organization to pay the salary in full and on time. Typical features of wages under an employment contract are: the establishment by the state of a minimum wage; the establishment by the legislator of the frequency of its payment, at least every half a month; established limits on deductions from wages; provided for the retention of wages in full or in part, when the employee is unable to perform work for valid reasons, such as undergoing medical examinations, advanced training. The sports organization, using the work of the athlete, is obliged to create a healthy and safe working environment, to comply with labour laws, providing various guarantees and compensations.

It is the employment contract that prohibits unjustified refusal of employment. It is forbidden to refuse to conclude an employment contract because of pregnancy and the presence of children, despite the fact that such a situation complicates the implementation of training and competitive activities. It is prohibited to refuse to conclude an employment contract to employees invited by transfer from one employer to another during the transfer of athletes. If a woman is refused to conclude an employment contract, she has the right to request a written explanation from the sports organization and the opportunity to apply for judicial protection. By concluding a civil contract, a woman athlete is deprived of all social guarantees and benefits that establish labour standards.

Today, the labour legislation provides additional guarantees and benefits to sports workers, dividing them into those established by the Labour Code and the collective agreement, local acts of the organization. At the legislative level, the employer provides a woman athlete with sports equipment and equipment for employment at her own expense. Additional annual leave is granted for at least four calendar days. The employer may establish more days of such leave on the basis of a collective agreement. In the event of a sports injury that occurs during the period of performance of duties under the employment contract, the sports club shall pay an additional payment to the temporary disability allowance up to the amount of the woman's average earnings.

The Resolution of the Plenum of the Supreme Court "On the Application of Legislation Regulating the Labour of Athletes and Coaches" clarifies that a sports injury is any injury or other health damage related to sports activities, if the loss or other health damage occurred during the performance of a sportsman's labour duties to prepare for competition and participation in sports competitions. The employer's obligation to pay arises if the employee is ill with an occupational disease. Temporary disability allowance in connection with an industrial accident or occupational disease is paid for the entire period of illness until recovery or establishment of a permanent loss of professional ability to work in the amount of 100% of his/her average earnings.

Sports clubs often abuse their rights and do not claim their athletes to compete, but this is not a reason to reduce their salaries. In practice, sports organizations introduce downtime (temporary suspension of work) for the duration of the competition. A woman is paid in the amount of 2/3 of her average earnings for the period of her suspension from participating in the competition.

The Supreme Court, in its Resolution, considered in more detail the painful points in the relations between athletes and employers. The Court concluded that the organization's inability to include a woman in the application for participation in a sporting event due to non-compliance with the requirements of the All-Russian Sports Federation in the field of sport is not a reason to impose a downtime regime on her. In this way, the athlete is guaranteed a full salary, even though she will not be able to perform a part of the work function associated with participating in the competition.

The following additional guarantees and compensations may be provided in the organization's collective agreement or the athlete's employment contract. These are rehabilitation measures to improve health; provision of accommodation to athlete for the duration of the employment contract; medical care; additional payments in case of complete loss of working capacity of the employee; additional pension insurance.

The constant strain on women's bodies and the frequent injury rate encourage the legislator to take care of the health and lives of workers. Athletes are subject to the general provisions of the labour protection regulations contained in the Labour Code of the Russian Federation. But at the same time, the content of occupational safety for such categories of workers has its own peculiarities. The collective agreement of the organization may establish the peculiarities of the working hours regime, overtime work, night work, weekends and non-working holidays, as well as the peculiarities of remuneration.

Under the general rules of the Labour Code, the use of women's labour in work involving the lifting and moving of loads exceeding the permissible standards is prohibited. The norms of maximum allowable loads for women when lifting and moving weights are established by the Decree of the

Government of the Russian Federation. These standards are differentiated according to the nature of the work. The maximum permissible weight of the load may not exceed 7 kg during the work shift. If the lifting and moving of weights is interchanged with other work (up to two times per hour), the maximum permissible weight of the load is 10 kg. Increased physical activity is one of the essential features of labour for athletes, significantly affecting regulation protection of their labour. During training and competition, women athletes are subject to high levels of physical activity. The integral impact of such loads on the employee's body reaches from 80 to 100% of the maximum possible. Recovery from such loads ranges from 12 to 24 hours.

Taking into account such specifics of labour activity, the legislator still allows exceeding the maximum allowable loads. The Supreme Court of the Russian Federation has clarified that the limit values of loads may be exceeded when lifting and moving weights manually by women athletes only if such loads are not prohibited for reasons of health and there is a medical report. For example, a woman can lift a barbell up to 100 kg. Therefore, for a sport such as weightlifting, there is also an exception to the general rules regarding the work of athletes. In addition to the permissible standards for lifting and moving weights manually, special standards for lifting and moving weights for pregnant sportswomen are established, which are much lower than the permissible standards.

Sanitary rules and regulations establish the following permissible loads for pregnant women: lifting and moving weights in alternation with other work (up to 2 times per hour) - 2.5 kg. Lifting and moving weights constantly during the working shift - 1.25 kg, the total weight of the goods transported from the working surface during an 8-hour working shift should not exceed 480 kg. Also, according to the rules and regulations, technological processes and equipment should not be a source of increased danger. Pregnant women are advised not to lift objects above the shoulder strap, from the floor, with an inclination of the torso more than 15 degrees. It is prohibited to use the labour of such category of employees for performance of works related to exposure to infectious disease pathogens, soaking of clothes and footwear, works on draught. The general provisions for the provision of guarantees and benefits for pregnant women are also applied to women athletes. Pregnant athletes should refuse to exercise during training sessions. For example, lifting weights, lifting legs from lying on the back, stretching exercises. Sports such as volleyball, basketball, diving, parachuting and horseback riding should be abandoned. The employer must reduce the intensity of training for pregnant athletes and not involve them in the competition.

Under article 254 of the Labour Code, pregnant women, on the basis of medical report and at their request, are required to reduce their production standards or to be transferred to lighter work while maintaining their average earnings. As long as the employer chooses a job for her that is free of adverse production factors, the woman is exempted from the job at the expense of the employer. During the monitoring period in medical institutions, women's earnings are maintained at their place of work. Women athletes do not always express their desire to reduce the intensity of their training on the basis of an application in sports activities [10]. Many continue to compete in the early stages of pregnancy, hiding this fact from the employer. This causes a lot of psychoemotional tension and is contraindicated in pregnancy.

In order to achieve a balance between the interests of the parties in regulating the work of female athletes, it is advisable to establish an employer's obligation to reduce the training load during pregnancy and to prevent such workers from competing in sports. To supplement Article 348.9 of the Labour Code of the Russian Federation with the following

- Pregnant women athletes, on the basis of a medical report, are given less exercise. It is prohibited to allow them to participate in sports competitions;

- The guarantees and benefits provided by the Code to pregnant women are also applied to women athletes.

The employer's employment contract with the female athlete includes civil law conditions. For example, the transfer of residential premises to the employee's ownership [11]. Terms and conditions regarding image rights (transfer to the club of the rights to use the employee's personal image), participation in sponsors' advertising [12]. A right of redemption clause, which means that the contract sets out the amount by which any employer will be deemed to have redeemed the contract from the current athlete's club and will have the opportunity to declare it as their player. If the contractual amount is paid and the athlete agrees to the transfer, the sports organisation does not prevent this. This transaction is not regulated by the labour law, therefore, this condition should not be specified in the employment contract.

At present, there is no unanimity of scientists on the issue of uniting in a single contract the conditions that arise not only from labour but also from civil legal relations. In the event of a dispute over non-compliance with the terms and conditions of the employment contract, which are of a civil law nature, even though these terms and conditions are included in the employment contract, they still constitute civil law obligations of the employer. It is proposed that a civil law agreement be concluded at the same time as an employment contract to resolve conflicts [7].

III. RESULTS AND DISCUSSION

The employer faces the problem of determining the list of local regulations, with which he is obliged to familiarize employees, i.e. to bring the information. It is proposed to develop for each position, specialty, profession on the basis of the staff list of the sports organization, the list of specific local regulations that directly regulate the work of the employee. To supplement Article 68 of the Labour Code of the Russian Federation with a provision on where the signature should stand and the date confirming that the employee was familiarized with the local acts just before signing the employment contract. For example, in a separate annex to the employment contract, or in a special register of familiarization, which will also include the surname, name, patronymic of the employee, the date of familiarization.

In order to provide various guarantees and benefits during sports activities, the employer needs to know the personal data of the employee (whether the future employee is a single mother, a pregnant woman, a person with family responsibilities, etc.). It is not quite clear to the employer what kind of information about the employee he can demand and what kind of information he is not entitled to on the basis of the Law "On Personal Data". It is proposed that the Labour Code in the chapter "Protection of personal data of an employee" clearly defines a complete list of information that an employer may not require from an employee not only at the

stage of concluding an employment contract, but also in the course of employment.

The Labour Code does not establish a test for employment of pregnant women and women with children under the age of one and a half year. In standard situations, the employee and the employer agree to a probationary period. But this norm has not found its application in practice in sports organizations. We consider it expedient to note this norm for such categories of workers as athletes and coaches, due to the complexity of its application.

Legislation allows women to work part-time, with 40 per cent of the average earnings from caring for a child up to the age of 1.5 being maintained. However, in order to maintain a balance between the interests of the parties, working hours should be reduced by more than 40% so that the Social Insurance Fund is not able to withhold amounts previously paid inappropriately in the future.

Many women in the workplace prepare for and participate in competitions at an early stage of pregnancy, hiding this fact from their employers. This causes a lot of psychoemotional tension and is contraindicated in pregnancy. In order to achieve a balance between the interests of the parties in regulating the work of women athletes, it is advisable to establish an employer's obligation to reduce the training load during pregnancy and to prevent such workers from competing in sports. To supplement Article 348.9 of the Labour Code of the Russian Federation with the following:

- Pregnant women athletes, on the basis of a medical report, are given less exercise. It is prohibited to allow them to participate in sports competitions;

- The guarantees and benefits provided by the Code to pregnant women are also applied to women athletes.

The employer's employment contract with the female athlete includes civil law conditions. In the event of a dispute over the non-fulfillment of the terms of the employment contract, which are of a civil-law nature, it is proposed to conclude a civil-law agreement simultaneously with the employment contract.

IV. CONCLUSION

The work of professional female athletes is regulated by many different regulations: federal laws, treaties, agreements, charters of sports organizations, sports regulations, labour legislation, with certain features.

Sports organizations are obliged to guarantee their employees appropriate working conditions, the provision of medical care, to prevent the risks of accidents in the process of sporting events, observe labour protection.

Therefore, when applying these standards in practice, sports organizations-employers have many problems in regulating the work of employees. It is important to maintain the balance between the interests of athletes and their employers in sporting activities.

Quite often, women athletes are burdened with family responsibilities, engaged in raising children. The legislator is trying by providing various benefits and guarantees to protect them from the arbitrariness of the employer.

The norms of the Labour Code provide women with certain rights and guarantees, both when concluding an employment contract and in the course of their work. If the relations between a woman athlete and sports organizations are regulated by the norms of civil law, the employee shall be deprived of all preferences provided for by the labour legislation, and this should not be allowed.

The main directions in the regulation of women's work should remain as the care for their health, maternal function and the possibility of combining family responsibilities with employment.

The situation in society calls for the development and adoption of additional social protection measures for pregnant women and women with children under the age of one and a half year, including measures of a legal origin, which have been identified on the basis of an analysis of legislation and its application and proposed in the results of the study.

The adoption of the proposed measures will update the provisions of the legislation governing labour relations with the participation of athletes in the Russian Federation and greatly facilitate the application of these standards in practice.

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