

Professional Education and Training of Employees: On the New Doctrine of the Institute of Labor Law

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Abstract. The article examines the correlation between the concepts of "professional education", "professional teaching", "professional preparation", "qualification", fixed in the Labour Code of the Russian Federation and the Federal law "On education in the Russian Federation". In the Labour Code of the Russian Federation the concept of "preparation" is synonymous with the concepts of "professional education" and "professional teaching". It is proposed to delete the indefinite term "preparation" from the title and content of the Chapter of the Labour Code of the Russian Federation. There is a different interpretation of the concepts of "qualification" in the Labour Code and the Federal law. As a result - different interpretation of this concept by courts of General jurisdiction. Courts may to confuse the term of "advanced training" and "professional preparation".

The necessity of using the correct concept of "qualification" provided in article 195.1 of the Labour Code of the Russian Federation is substantiated. It is emphasized that the category of "professional standard" refers more to labour rather than educational relations, and their consolidation in the Labour Code of the Russian Federation is unreasonable.

The conclusion about the need to name Section IX of the Labour Code of the Russian Federation "professional education and professional teaching" is formulated.

Despite the presence in article 1 of the Labour Code of the Russian Federation of the right of the employee to preparation and additional professional education, in part 2 of article 22 of the Labour Code of the Russian Federation does not provide for the corresponding obligation of the employer. In this regard, the authors consider it important to fix in article 22 of the Labour Code of the Russian Federation the obligation of the employer to provide professional education and professional teaching of employees. In development of this, the authors propose to establish the obligation of the employer to send the employee to professional teaching, retraining for vacant positions before dismissal of the employee to reduce the number or staff.

1. Introduction

Currently, the doctrine has not been developed and there is no conceptual model of the institute of professional education and professional teaching in the labour law of Russia. There is no system of continuous education, in the Labour Code of the Russian Federation norms on professional education and professional teaching are scattered in various sections and chapters. In order to train qualified personnel, it is necessary to create a balance between the interests of the employee, the employer and

the state in the field of professional education and professional teaching. Therefore, legal issues and problems of professional education and training, taking into account the implementation of the principle of its continuity are relevant in the context of modern socio-economic realities. Their solution is of paramount importance for the economy and social sphere of the country.

2. The ratio of the concepts of professional education, professional teaching, professional preparation, qualifications in the Labour Code of the Russian Federation and the Law "On education in the Russian Federation»

The conceptual model of professional education and professional teaching is largely determined by the Federal law of December 29, 2012 № 273-FZ "On education in the Russian Federation" (hereinafter – the Law № 273-FZ).

Law No. 273-FZ establishes two different concepts: professional education and professional teaching. The difference between them is that professional education allows you to conduct professional activities in a certain area and (or) perform work in a specific profession or specialty, but professional teaching – only perform certain labour, official functions (certain types of labour, official activities, professions). It follows that the concept of "professional education" is broader than "professional teaching".

The terminology of the Law No. 273-FZ is not entirely consistent with the terminology of section IX Labour Code of the Russian Federation (hereinafter – the Code). In particular, the Code uses the vague term "preparation" instead of the term "professional education and professional teaching". The definition of the latter is absent in the Code and Law No. 273-FZ, but is used as a synonym for the concept of vocational education and professional teaching, i.e. it is understood as the acquisition by an employee of professional knowledge, skills and abilities. From the analysis of Art. 5, 17, 68 of the Law № 273-FZ and Art. 65, 70, 84, 283, CH. 26 of the Code it follows that the concept of "education" is also used by the legislator to refer to the result of gaining knowledge, skills and abilities. From part 1 of Art. 196 of the Code it follows that "preparation" of the worker is considered by the legislator as the term uniting the phrase "professional education and professional teaching". The same content is contained in this term and in other provisions of the code. In particular, part 5 of article 196 of the Code establishes that "employees undergoing preparation, the employer must create the necessary conditions for combining work with education".

The term "preparation" is also used in the content of article 225 of the Code. Contrary this, article 225 of the Code is called more optimally and correctly: "Training in the field of labour protection".

In the same sense, the term is used in Law No. 273-FZ and in some bylaws. Thus, article 85 of the Law stipulates that in the field of preparation of employees there are, in particular, educational programs and training programs. According to the decree of the Government of the Russian Federation of February 13, 2019 № 142 "On training of managerial personnel for the organizations of the national economy of the Russian Federation in the 2018/19 academic year preparation of employees is carried out by educational organizations.

In the legal literature, the term "preparation of employees" is also considered as similar to the terms "professional teaching and professional education" [1,2] or "form of professional teaching" [3]. Thus, in order to improve the legislation, it is necessary to change the name of the Institute of "preparation and additional professional education" of employees, since the term "preparation" used in it is hardly appropriate.

The proposal to delete the somewhat imprecise and abstract concept of "preparation" from the name of the Institute should be recognized as relevant. Moreover, this term is not consistent with article 43 of the Constitution of the Russian Federation and the concept of Law No. 273-FZ.

In the scientific literature, additional professional education is defined in different ways. Some researchers define it as postgraduate education in the system of advanced training or obtaining a second specialty [4], others characterize it as: a continuous process throughout the life course..." [5].

It seems that the name of the institution under consideration should be correct, extremely accurate and clear both in the theory of labour law and for the enforcement. In this regard it is necessary to

make changes to Art. 1 of the Code instead of the name of the relations on "preparation and additional professional education of workers directly at this employer" to replace with the relations on "professional education and professional teaching of workers (personnel) for the employer".

In Art. 2 of the Code in the name of one of the principles of labour law of the word "preparation and additional professional education" to replace with: "professional education and professional teaching".

A similar option could be proposed in article 21 of the Code, which should specify the employee's right to " professional education and professional teaching", as well as in the title of section IX of the Code.

At the same time, professional education and professional teaching should be distinguished not only in theory but also in practice. It seems that the right to vocational education is realized between the student and the educational organization (higher and secondary vocational education). Professional teaching (professional retraining) and advanced training are not education, as they are aimed at acquiring knowledge and skills necessary to perform a certain job function (articles 15, 57 of the Code). The Code does not differentiate these concepts (art. 1, 2, 21, 196-197).

Part 1 of article 2 of the Law № 273-FZ and part 1 of article 195.1 of the Code gives a different definition of the concept of "qualification of the employee". The definition contained in № 273-FZ is Significantly wider, because it includes not only the level of knowledge, skills, professional skills and experience of the employee, but also the competence characterizing the readiness to perform a certain type of professional activity.

Such inconsistency of the concept of qualification leads to lawsuit. So, the Krivosheinsky district court of the Tomsk region recognized lawful dismissal according to item 3 "b" h. 1 Art. 81 of the Code, the municipal employee who entered service, in violation of the law without higher education. According to the court, the employee does not correspond to his position due to insufficient qualifications due to his lack of higher education (case No. 33-720/04). The authors rightly point to the infidelity of this formulation: "the Legislator under the term "insufficient qualification" refers to the inability of the employee to perform his job function due to the inconsistency of his business qualities to the requirements that the employer makes to this position"[6]. Naturally, the Tomsk regional court overturned the decision of the court of first instance[7].

The code, unlike Law No. 273-FZ, defines qualifications not by the level of skills in general, but by the level of professional skills. The wording of the Code should be recognized as more accurate, since the skills of an employee not related to the performance of his / her work function cannot be considered as an element of the employee's qualification.

Law No. 273-FZ characterizes qualification by the level of competence, and the Code – by the level of "work experience". The terms "competence" and "work experience" are to some extent similar in content. As the researchers note the concept of competence is currently the main category of the concept of vocational education and training in the European Union [8]. There is no Legal definition of competence in Russian labour law. Some authors consider that it basically coincides with the concept of "business qualities of the worker"[9].

It seems that competence is "the area of issues in which someone is well aware" or "knowledge, experience of a person in a certain area, giving him the opportunity to deeply understand the essence of phenomena, events, etc.". Experience means "the totality of knowledge, skills, skills learned from life, practice, etc.".

In this regard, it seems more reasonable definition of qualification, enshrined in part 1 of article 195.1 of the Code, as the experience of professional activity (work) is individual for each employee, it can not be reduced to knowledge, skills and abilities.

Sometimes the courts allow confusion between advanced training and professional teaching. So, dubnensky city court of the Moscow region in its decision of January 25, 2016 in the case № 2-55/2016 pointed out that since the teaching of the employee in the specialty "Radiology" was due to the need, in connection with the licensing requirements, the presence of x-ray certificate of professional development, there was no professional teaching of the defendant or his retraining in the

workplace, and was advanced training of the employee. The terms "ability" and "skills" are interrelated. Ability means the capacity to do any work, to do anything, acquired as a result of learning, experience, etc., and a skill is a ability acquired by exercise, habit. Therefore, the skills presuppose and imply an individual manifestation of the ability of the employee.

The Institute of "training and additional professional education" is presented in the Code in the form of section IX, including Chapter 31 "General provisions" (art. 195.1, 195.2, 195.3, 196, 197) and Chapter 32 "Student agreement" (art. 198-208).

It should be noted that the title of section IX of the Code "Employee qualifications, professional standards, preparation and additional professional education of employees" is controversial and not entirely correct.

This name is not consistent with the provisions of Art. 1, 2 and 21 of the Code. In particular, the category "professional standard" refers to labour, not to educational relations. As a result, the following rules and articles are not quite appropriate in this section: part 2st. 195.1 definition of the concept of "professional standard", article 195.2: "Procedure for the development and approval of professional standards", part 1 of article 195.3 "Procedure for the application of professional standards". Further, the term "qualification" is an element of professional education and professional teaching. Therefore, it is unreasonable to fix it in the title of the section. Thus, on the basis of the above, section IX of the Code should be called "Professional education and professional teaching".

3. Problems of ensuring the right of workers to vocational education and training

In accordance with article 1 of the Code, the legal regulation of relations on preparation and additional professional education of employees directly from the employer is one of the tasks of labour legislation.

According to article 2 of the Code, ensuring equal opportunities for workers without any discrimination on preparation, additional professional education is one of the basic principles of legal regulation of labour relations and other directly related relations.

According to article 21 of the Code, an employee has the right to preparation and additional professional education. In Art. 1 and 2, 21, CH. 31 of the Code provides rules (rules) on preparation and additional professional education of only workers, thereby the structure of possible subjects of the specified legal relations is narrowed and in this context does not correspond to CH. 32 of the Code.

In addition, it is obvious that it is advisable to include in the subject of labour law the relations arising between the employer and the employee, in the direction of the latter for professional education and professional teaching in educational organizations, training centers, etc. It follows from the analysis of the norms of the Code that relations by professional education and professional teaching are carried out exclusively to meet the interests and needs of the employer in highly qualified, competent workers, and such relations are directly related to labour relations (article 1 of the Code). In this regard, there is a significant gap in the absence of the principle of continuous education (training) of the employee in article 2 of the Code.

Despite the presence in article 1 of the Code of the right of the employee to preparation and additional professional education, part 2 of article 22 of the Code does not provide for the corresponding obligation of the employer. In practice, this leads to the fact that the courts are denying to employees compensation expenses spent on self-training. On this issue, the authors opinions are divided, some believe that the burden of professional teaching, retraining should be borne by employees, the employer and the state, and even propose to introduce the obligation of the employer to organize training of employees with a certain periodicity, for example, once every three years [12], other authors – that for workers contractual forms of professional teaching is preferable, as they meet the contractual nature of labour relations [13]. Consequently, the right of an employee to preparation and additional professional education is: not a right-claim, but a right-opportunity [14].

Taking into account the exceptional importance of the legal phenomenon under consideration, it seems appropriate to fix the obligation of the employer to provide professional education and professional teaching of employees in article 22 of the Code.

It is also necessary to establish the obligation of the employer before the dismissal of the employee on reduce the number or staff with the consent of the employee to send the employee to vocational training by the vacant position so that before the expiration of the two-month notice of dismissal, the employee was trained and could take the vacant position. Otherwise, to recognize dismissal illegal. Similar norms already exist in point 4 of article 19 of the Federal law "On the status of the military personnel".

4. Conclusion

In Chapter 31 of the Code it is advisable to consolidate all forms of professional education and professional teaching (art. 196-197): higher education; secondary professional education; professional teaching (retraining); advanced training; internship.

In addition, it would be advisable to exclude from article 196 of the Code last part concerning the provision of guarantees to an employee when his employer sends him to undergo an independent qualification assessment. At the same time, from Art. 197 of the Code it would be necessary to exclude the right of workers "to pass an independent assessment of qualification" as this right not absolutely agrees with the General provisions fixed in Art. 1, 2 and 21 of the Code.

In the doctrine of professional education and professional teaching, it is advisable to take into account the norms of section X of the Code, in particular that the training of specialists in occupational safety and their additional professional education is the main direction of the state policy in the field of occupational safety (Art. 210), on the obligation of the employer to provide training to the employee in safe methods and techniques of work, instructing on occupational safety, training in the workplace (art.212), training on labour protection (art. 225).

Thus, the legislator uses different categories, while not defining their concept. It is clear that such inconsistency and inconsistency of norms is unacceptable.

The following provisions of Law No. 1032-1 appear to be positive for the legal concept of vocational education and training:

- about ensuring continuous and balanced training;
- about professional education, training.

In this regard, article 16.3 of Law No. 1032-1 indispensably have to provide for a provision "on ensuring continuous and balanced professional education and professional teaching of employees (personnel)".

Thus, the meaning of the terms "professional education" and "professional teaching", "qualification" should be uniform in the legislation (on employment, educational and labour).

It seems necessary to fix the obligation of the employer to provide professional education and professional teaching of employees in article 22 of the Code. In the development of this, to establish the obligation of the employer to send the employee to professional teaching, retraining by vacant positions before the dismissal of the employee on reduce staff.

It is important to note that the characteristic features of the Russian labour legislation on professional education and professional teaching of employees (personnel) are:

- strengthening the reception of international standards of vocational education (ILO, UNESCO);
- the tendency of convergence of the Russian labour legislation on vocational education and training with international norms and principles.

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