

Problems of Legal Regulation of Distance and/or Remote Labor: Pandemic Testing

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ABSTRACT

This paper deals with the legal regulation of distant and/or remote labour. The new needs of the society caused by the pandemic of a new coronavirus infection (Covid-19) are not only to create an urgent regulatory framework for distant (and/or remote) workers, but also to carefully and strictly observe the balance of rights in employee-employer relations. In order to study and evaluate the existing regulatory framework of remote work, the authors studied the current legislation in this area. On the basis of the study, certain contradictions and shortcomings of regulations on distant and/or remote labor were identified, which can often cause conflict and controversial situations in labor relations. This situation is also confirmed by the analysis of jurisprudence on the most important and problematic issues presented in the paper. The pandemic prompted the legislator to develop a new law in the field of regulating remote work as quickly as possible, including with a special focus on regulating a new form – temporary remote labor. A critical review of the short stories proposed by the legislator in this area is presented by the authors when studying the draft federal law “On amending the labor code of the Russian Federation in terms of regulating distant and remote work”. The paper highlights the shortcomings of the legal writing of the legislator when formulating terms and concepts of the sections devoted to the regulation of distant and remote work, in particular: distant (remote) work, temporary distant work, temporary remote work. As a result of the study, the authors developed certain recommendations that could positively affect the observance and harmonious combination of the rights of both parties to the labor relationship (employee and employer) within the new federal law.

Keywords: *distant work, remote work, rights of workers, protection of rights, judicial practice*

1. INTRODUCTON

The needs of the society, its individual strata or groups determine the significance of a phenomenon of real reality. The social value of law is expressed in the unequivocal value of streamlining relations, the possibility of harmonious development and the protection of the interests of the society as a whole, as well as its individual elements and members. In turn, the rights of citizens, as well as the guarantees of their implementation and protection, determine the level of social development. From these perspectives, the social significance of labour law is difficult to overestimate, since its purpose is to balance the relations between an employee and an employer in an optimal and mutually beneficial way, which greatly affects stable and progressive development of the society.

The preamble to the Universal Declaration of Human Rights emphasizes that neglect and contempt for human rights led to barbaric acts that outrage the conscience of humankind, so that the creation of a world in which people have freedom of speech and belief and are free from fear and need is proclaimed as high aspiration, while the *human rights themselves must be protected by the rule of*

law. In the International Covenant on Civil and Political Rights, these ideas are developed and complemented by the requirements of providing *effective remedies* to anyone whose rights and freedoms were violated.

The key provisions of the international act fully relate to labour law as a regulator of legal relations between employees and employers. The Labor Law of Russia is designed not only to provide all interested participants in labor legal relations with sufficient, adequate and timely regulation, but also to guarantee a degree of legal protection that would ensure the development of both individuals and the society as a whole rather than their standstill.

The legal regulation of human and civil rights is based on the norms of epy constitutional law, which not only consolidate the system of personal, socio-economic rights of citizens, but also establish legal guarantees for their real implementation. The Constitution of the Russian Federation proclaims that the state guarantees the equality of human and civil rights and freedoms irrespective of gender, race, nationality, language, origin, property and official status, place of residence, attitude to religion, beliefs, membership in public associations, as well as other circumstances. The Constitution cannot but evolve. If it is not fictitious, but real, then it cannot but reflect epy reality. The latter is by no means static [1]. Development can be

positive or progressive (expanding the list of constitutional rights and freedoms of citizens, introducing new or improving existing mechanisms for the protection of human rights, etc.), neutral and negative or regressive (for example, imposing unjustified restrictions or conditions) [2].

The pandemic of a new coronavirus infection (COVID-19), creating an unprecedented situation throughout the world [3], has proved to be a real strength test for the law and order, the level of legislation, the system of state bodies, society, as well as individual employees and employers. Due to the high level of contagiousity of the infection the international organizations, authorities of all states are trying to curb its spread, reduce the increase in incidence, restrict the freedom of movement of citizens, suspend or significantly limit the work of many organizations, introduce self-isolation and social distancing regimes. Changes in the political and economic life of the society during this period require new approaches to the legal regulation of labor relations.

As a result of the measures taken by Russia to protect citizens, a new type of labor appeared – “remote” – covering millions of people and unresolved by the labor law, which led to a sharp “imbalance” of the rights and interests of participants in labor relations, a decrease in the level of legal protection of workers who suddenly changed their status to “remote”, lack of understanding of the scope of their duties by employers, as well as, to general confusion and bewilderment.

In legal and labor realities, the situation with coronavirus provoked a sharp increase in the number of workers forced to work according to the “remote” scheme. We cannot say that there were no such opportunities before. The Roadmap of the Program “Digital Economy of the Russian Federation” (approved by the Order of the Government of Russia No. 1632-r “On approval of the program “Digital Economy of the Russian Federation”” dated 28.07.2017) implies that by the end of 2019, the country shall ensure a regulatory framework for regulating labor and social relations with flexible and remote employment, including the identification of barriers that hinder the formation of flexible labor relations, and regulatory legal acts were adopted to ensure the regulation of these relations (Clause 2.9). At the same time, the protection of the interests of Russian citizens, the provision of their employment are indicated among the national interests in the field of the digital economy (Subclause “z”, Clause 42 of the Strategy for the Development of the Information Society in the Russian Federation for 2017-2030).

Needless to say that for most employees, the traditional standard labor relations stipulated in the labor contract are most preferable (preferably for an indefinite period with a normal working day, a five-day working week, social insurance, a workplace provided for by the labor contract and approved by the special assessment of working conditions (SAWC)).

However, globalization, decentralization and specialization of production combined with the introduction of information technologies, the objective need for mobile labor, as well as a number of other factors,

create structural changes in the labor market and lead to many atypical forms of employment [4].

In recent years, specialists have been interested in the issues of non-standard (or atypical) relationships [5–12]. In the scientific literature, non-standard (atypical) forms of employment include forms that are characterized by independent distribution and rational use of working time (home-based labor; underemployment; flexible working time modes; rotation based work, etc.). Atypical employment refers to the activity of individuals based on such an employment relationship, where one of the signs of a standard labor relationship (organizational, personal, property) is absent or changed. With remote work, as a rule, the organizational characteristic changes.

Such atypical labor relations as distance relations are caused by a number of factors, but, above all, by the increase in the importance of information and the development of information technologies in modern society [13], which has led to the fact that in many cases the work of specialists does not require their direct participation in the corporate effort. Moreover, it is possible to carry out the work in the so-called “online” mode, when the employer and the employee can maintain constant contact by means of special technical means, being in various premises, cities or even states [14].

According to researchers, the volume of Internet traffic from 1997 to 2018 increased by more than 150,000 times. Social and technical processes are so interconnected and interdependent that shifts in one sphere lead to an avalanche-like process not in centuries or decades (“butterfly effect”) [15], but in a short time or directly in real time. Thus, computer technology has changed not only the nature of information transfer, but also to a large extent the way of life of people. Mobile applications, screenshots allow determining, for example, at what speed the courier delivers food or the programmer writes the program; after processing the results, the platform provider can punish/encourage the performer using automatic systems/programs, providing him with access to the most profitable sites [16]. Besides, the manpower options include crowdwork and work-on-demand via apps. Crowdwork (from English crowd and working) is a work organized using online Internet platforms that make it possible to establish contact between an undefined number of organizations, companies and individuals, regardless of their territorial distance. Crowdwork (crowdworking) is the result of a new crowdsourcing management strategy, when an organization or a specific person (crowdsourcer) is invited through Internet platforms to perform a certain task, work, and not a specific organization or a specific person, but an indefinite number of people (crowd) based on an open request. Work-on-demand via apps is a work that is offered through mobile applications and refers to such traditional activities as transportation, cleaning, courier work; this may also include clerical work [17, 18]. Since none of the areas of the modern economy can avoid the influence of computerization, both employers and employees should objectively take this into account in their activities. The technical and technological aspects certainly have an impact on the content of the labour

function of employees, which cannot but lead to changes in the subject-matter of labor contracts. It was the development of the information space and information technologies that triggered the increase in the number of workers with a remote mode of work.

2. DISTANT WORK: REGULATORY ISSUES

The labor legislation of the Russian Federation does not know the term “remote work”. Chapter 49.1 of the Labor Code of the Russian Federation, which appeared in the Labor Code of the Russian Federation in 2013, enshrined the term “remote work”, introducing already a sufficient amount of time existing relations that cause numerous problems and legal disputes. In foreign countries, the options for such work appeared a little earlier, in the 1990s of the last century (“telework”, “telehomework”, “telecommuting”) [19–22].

The main difference between new types of home work (including remote work) is not so much where the employee is in working hours (it is at home or elsewhere owned by the employee, since these locations may coincide) and whether the workplace belongs directly to the employer and whether it or its authorized representatives have the ability (or the need) to exercise direct “physical” control over the employee [23].

Remote work is the performance of an employment function defined by a labor contract outside the location of the employer, his branch, representative office, or other separate structural subdivision (including those located in another area), outside the stationary workplace, territory or facility, directly or indirectly under the control of the employer, provided that public information and telecommunication networks, including the Internet, are used to perform this work function and to carry out interaction between the employer and the employee on issues related to its implementation (Article 312.1 of the Labor Code of the Russian Federation).

From the definition it can be concluded that the characteristics of a remote labor contract differ from those of a standard traditional labor contract.

It is necessary to agree with the opinions of some scholars who believe that the essential (constitutional) conditions of the labor contract on remote work are the conditions on the employment function and the conditions on remuneration of work [24]. According to Article 57 of the Labor Code of the Russian Federation, the condition on the place of work is mandatory for inclusion in an ordinary labor contract, and the condition on the place of work is an additional condition (Rostrud’s letter No. PG/8960-6-1 “On Determining the Workplace” dated October 7, 2013 with reference to Article 57 of the Labor Code of the Russian Federation states that the contract on remote work should contain information about the place of work in which the remote worker directly performs the duties assigned to him by the labor contract). The place of work should be understood in at least two aspects: 1) as the

place of application of the employee’s work; 2) as the organization in which the employee was employed [25].

The definition of Article 312.1 of the Labor Code of the Russian Federation states that the condition on a particular workplace loses its significance, the employee performs his work outside the employer’s location (at home, at a country house, in a sanatorium). When concluding a labor contract on remote work with an employee, the employer consciously decides that the employee should not be in the employer’s office, should not obey the internal labor rules and regulations (to which other employees working in normal working conditions are subordinate). In fact, an employee can be in another time zone [26], in another city, in another constituent entity of the Russian Federation, outside the country. When the employee performs his duties on remote labor conditions, the employer saves significantly on rent, he does not need to properly organize the workplace for the employee and conduct SAWC in accordance with the requirements of the labor protection legislation. Employees can also appreciate the benefits of such work: no time and funds are spent on transport, free schedule, ability to stay at home, more flexible work performance mode.

Nevertheless, due to various circumstances (production needs, external changing conditions, subjective reasons), there are situations related to the employee changing his place of residence, region, change of the employer’s position on the employee’s performance of work on a distance basis. If the will of the parties does not coincide, then there is a need to resolve disputes. Jurisprudence is quite controversial and cautious in addressing such issues.

An interesting example is the question of changing the labor contract with a remote employee who changed the place of actual residence and moved from Moscow to the Krasnodar Territory (Appeal Decision of the Judicial Chamber on Civil Cases of the Moscow City Court of March 18, 2020 in case No. 33-11871/2020). An employee has been in labor relations with SPAO RESO-Garantiya, since 2008 he has been performing his labor duties remotely at his place of residence in Moscow by providing him with remote access to the working system of SPAO RESO-Garantiya (***), in which he received and performed work tasks. The working issues were resolved through electronic correspondence; he was provided with a corporate email address. On the basis of the company’s order of April 15, 2009 (in order to provide a plan of measures to reduce costs and optimize jobs in the central office), a list of employees ready for remote work at the place of residence was compiled, indicating the criteria of such employees. The service note stated that the transfer of this employee is carried out according to the program of optimizing jobs in the central office, he has the necessary skills and experience to work remotely and gave his consent to transfer to work in such conditions from October 1, 2009. In 2015, the employee changed his place of residence, having moved to the Krasnodar Territory, and the employer did not object to changing the place of actual performance of labor duties until 2018. These circumstances were established by the court during the trial. However, on April 9, 2018, the employee was fired

for absenteeism due to being out of the stationary workplace.

As the Constitutional Court of the Russian Federation has repeatedly pointed out, the decision of the employer to recognize the specific reason for the absence of an employee at work is disrespectful and, as a result, his dismissal for absenteeism can be checked through judicial procedures. The court assesses the totality of the specific circumstances of the case, including the reasons for the employee's absence from work (decisions of the Constitutional Court of the Russian Federation No. 75-O-O dated February 19, 2009, No. 1793-O dated September 24, 2012, No. 1288-O dated June 24, 2014, No. 1243-O dated June 23, 2015, etc.).

Despite the lack of a properly formalized additional agreement to the labor contract on remote work, the court found it proved that there was an agreement between the employer and the employee on the remote work from 2009 to 2018, therefore, there are no signs of absenteeism in the actions of the employee due to the absence in the stationary workplace.

We believe that this controversial situation could have been avoided if the employer had concluded an additional agreement to the labor contract and, guided by the capabilities of Article 312.5 of the Labor Code of the Russian Federation, provided such an additional basis for the termination of the labor contract as a change in place of residence. Such examples are not isolated (for example: Decision of the Moscow City Court of 14.03.2017 in case No. 33-4599/2017; Decision of the Moscow City Court of 16.06.2017 in case No. 33-22734/2017).

However, in practice, court decisions on changing the workplace of an employee in the case of a remote nature of work are also known, which are difficult to agree with. For example, in the case where the employer changes the condition on the remote nature of work to a stationary workplace due to changes in organizational or technological working conditions (for example, the Appeal Decision of the Kemerovo Regional Court of May 18, 2017 No. 33-4529/2017).

Changes in organizational conditions were considered changes in the structural divisions of the company, optimization of the load on personnel and in connection with the need to speed up the process of resolving issues – changing the remote nature of work to stationary. The employee was notified of this according to the rules of Article 74 of the Labor Code of the Russian Federation, but did not formulate his position on such changes, and two months later he was fired. When considering the dispute, the court saw an abuse of the right in the actions of the employee, and regarded the actions of the employer as lawful.

This court decision causes conflicting feelings. Article 74 of the Labor Code of the Russian Federation establishes the rules for changing the conditions of the labor contract, and not the type of labor contract. According to Chapter 49.1 of the Labor Code of the Russian Federation, it is not an ordinary "labor contract, one of the conditions of which is a condition on the remote nature of work", but a "labor contract on remote work", which refers to a separate

independent type of labor contract. The remote nature of work is the core of this type of contract, and changing this criterion changes the essence of the entire contract, and not just its one condition. Therefore, according to Article 312.2 of the Labor Code of the Russian Federation and Article 72, 72.1 of the Labor Code of the Russian Federation, it is more correct to apply the provision that changing this condition is possible only by written agreement of the parties. Other actions such as the choice of a mechanism for changing the workplace through article 74 of the Labor Code of the Russian Federation by the employer should be regarded as abuse of the right by the employer, infringement of the rights and interests of the employee. Indeed, when concluding a labor contract, it was this component that was important for the employee – remote work (possibly due to various important circumstances: the presence of young children, state of health, the need to care for a sick family member), and the parties came to an agreement on this nature of legal relations; therefore, to change such a condition in fact unilaterally, only by notifying, without the consent of the employee, should be regarded as a violation of the rights of the employee as a party to the labor contract on remote work.

It is regrettable that the existing regulation of legal relations in the field of remote labor is insufficient and does not meet the modern needs of society. The difficulties of employers and employees in applying the existing standards are confirmed by the diverse and contradictory jurisprudence of the Russian courts. Nevertheless, the sudden and rapidly growing situation with the pandemic of a new coronavirus infection (Covid-19) can be regarded as a necessary impetus for a new stage in the development of the legislative framework for the settlement of the remote labor.

3. "NEW" REMOTE WORK: CONTRADICTIONS AND COMPLEXITIES OF LEGAL REGULATION

The term "remote work", as well as the phenomenon itself, appeared after the Presidential Decree No. 206 of March 25, 2020, which allowed working only enterprises in certain areas of activity. However, the rest of the employers were placed on "non-working days", since the main goal was to prevent workers from reaching jobs and minimize social contacts between citizens in order to avoid the catastrophic consequences of the pandemic. It should be noted that the Decree of the President of the Russian Federation No. 206 (and even the later Decree of the President No. 239) do not contain any reference to remote work. Only the recommendations of the Ministry of Labor and other ministries state that employers shall transfer employees to remote work if possible. What is remote work? Based on the meaning of the required actions provided for by the Decree of the President of the Russian Federation, "remote" is the one that is not provided for by

the Labor Code of the Russian Federation, and is “remote” from the employer, from the place of work, from the specific workplace provided for by the labor contract.

As already noted, the Labor Code of the Russian Federation already contains a term suggesting that the employee does his work not at a stationary workplace, not on the territory of the employer, and this is remote work (which is not very common in Russia, but continues to be adjusted [27]).

Was it possible to use the norms of Chapter 49.1 of the Labor Code of the Russian Federation on remote work to transfer workers to “remote” work? We believe not, because, despite some semantic similarities between the terms “distant” and “remote”, they have a number of significant differences.

The condition on distant work:

- was established upon mutual agreement of the parties;
- generally for an indefinite period;
- was not caused by extreme causes;
- typically involves the content of the requirement to provide results (reports) by a certain date (for example, once a week).

The need for “remote” work:

- forced;
- was caused by the pandemic and was not dependent on the wishes of the employer and employee;
- influenced many sectors of the economy;
- extended to such labor functions, the specifics of which in most cases did not imply work “not in the office”.

On the one hand, positive aspects were revealed for the employer (saving on rent, there is no need to equip a workplace, utility bills decreased, some workers were satisfied with this option of work), on the other hand, “remote” work brought many problems and inconveniences to many workers – using their housing (often small) not for rest, but for work; increased utility charges; dissatisfaction with family members; “blurred” working day; use of personal technical means to perform the working tasks.

According to the Federal State Statistics Service (labor force survey), in 2019, only 30 thousand people out of 67.1 million employed worked on the basis of a labor contract for performing work at home using the Internet (remote work) [28]. Since April 2020, 6 million Russians switched to the “remote” mode; after some weakening of isolation measures, 5 million citizens still work in this format [29]. In the absence of legal norms, the state was not ready for the mass transfer of workers to the “remote” mode of work.

As the need for “remote” work during the pandemic was ever more needed and there was no legal regulation, the relevant Russian government authorities were forced to follow the ILO Recommendations on Minimizing the Impact of COVID-19 (Organization of Labor in Pandemic Conditions COVID-19: Guidance for Employers) in making their recommendations. One of the most important recommendations was the recommendation on the need to ensure social distance through the introduction of flexible

forms of labor organization, including through the transfer of workers to remote work (Clause 1.6 of the Recommendations). The analysis of the Recommendations suggests that remote work (in the context of combating COVID-19) is understood to mean:

- 1) the need to stay and perform labor duties outside the office, the territory of the employer, the stationary workplace;
- 2) the remote place of work need not be the place of actual residence or registration of the employee (this may be a country house, a house of parents or children, other relatives);
- 3) a place where the condition of social distancing is realistically feasible and which meets the safety requirements for the health of the employee.

Since the virus has a high degree of contagiousity and, as a result, a high rate of spread, many countries began to introduce isolation (self-isolation) or quarantine regimes (sometimes with a ban on leaving the place of residence).

As already noted, the term “remote work” is unknown to the Labor Code of the Russian Federation. The function of implementing the ILO recommendations was taken over by the Ministry of Labor of the Russian Federation. According to Clause 1 of the Regulation on the Ministry of Labor, this authority is a federal executive body that performs the functions of developing and implementing state policy and legal regulations, including on the demographics of work, living standards and incomes, wages, conditions and protection of work, social partnership and labor relations. The legal positions of the Ministry of Labor are advisory in nature, they help employees and employers understand the content of the law, contribute to the formation of uniform practice and have a direct impact on the formation of labor legislation and by-laws in the field of labor, including in the field of remote work.

After the publication of the Presidential Decree No. 206, the Ministry of Labor and Rostrud repeatedly expressed their explanations regarding “remote work” (March 26, April 2, April 9, April 13, April 23, May 14, etc.). However, the explanations are unfortunately ambiguous and contradictory and do not help to understand the concept of “remote labor”. Thus, according to the first Recommendations to employees and employers in connection with the Decree of the President of the Russian Federation No. 206 “On the announcement of non-working days in the Russian Federation” of March 26, 2020, employees, by agreement with the employer, can work remotely, if official duties and organizational and technical conditions of work allow this. This approach allows concluding that, according to the Ministry of Labor, distant labor and remote work are synonymous words that have the same meaning and content.

In several days in response to a question of possible operating modes during the days off the Ministry of Labor took slightly different position – “... first of all, these are various forms of work at home: remote, distant, home work if technical capabilities allow to perform work out of a workplace” [30]. Accordingly, remote work is

considered as an independent option, along with distant and home-based.

In Rostrud's Letter No. 0147-03-5 (item 16) of April 9, 2020, "remote work" and "distant labor" are again used as synonyms. The Clause 21 of the Information of the Federal Service for Labor and Employment dated April 13, 2020 "List of the most frequently received questions on the hotline regarding the observance of labor rights of workers in the spread of coronavirus infection" it is proposed to understand remote labor as a transfer to distant work.

According to the Letter of the Ministry of Labour and Social Protection of the Russian Federation No. 14-2/10/P-3710 "On the direction of recommendations about application of flexible forms of employment in the conditions of prevention of spread of new coronavirus infection in the territory of the Russian Federation" of April 23, 2020, **various forms of work at home can be used during the days off: remote, distant, outwork.**

The inconsistency of the Ministry of Labor and Social Protection of the Russian Federation, whose functions include the implementation of the State policy and regulations helping employees and employers understand the content of the law, does not contribute to a uniform practice in the interpretation of the term "remote work". This is partly due to the absence of a norm defining "remote work" in the Labor Code of the Russian Federation as an independent legal category, however, the Code has chapters on similar concepts – "home-based work" and "distant work".

The current norms of the Labor Code of the Russian Federation do not imply temporary remote employment of an employee: it provides for the possibility of concluding either a traditional labor contract (Article 57 of the Labor Code of the Russian Federation) or a labor contract on remote work, which does not imply finding a workplace in the office (Chapter 49.1 of the Labor Code of the Russian Federation). Articles 72.1 and 72.2 of the Labor Code of the Russian Federation regulate only the issues of temporary transfer and are limited to such cases under which the situations of the epidemic and non-working days under the Decree of the President of the Russian Federation No. 206 of 25.03.2020 and the Decree of the President of the Russian Federation No. 239 of 02.04.2020 do not fall absolutely.

4. DRAFT FEDERAL LAW "ON AMENDMENTS TO THE LABOR CODE OF THE RUSSIAN FEDERATION REGARDING REGULATION OF DISTANT AND REMOTE WORK": ANSWERS OR NEW QUESTIONS?

In order to eliminate the gap in the legal regulation of relations on "remote" work, a draft federal law "On Amendments to the Labor Code of the Russian Federation regarding the Regulation of Distant and Remote Work"

was submitted to the State Duma of the Russian Federation on June 16, 2020 (Bill No. 973264-7). In particular, it is proposed to name Chapter 49.1 of the Labor Code of the Russian Federation "Chapter 49.1 Features of regulation of distant and temporary remote work". Let us try to analyze certain provisions of this bill. Based on the proposed title of the chapter, it will be devoted to two types of work: distant and temporary remote. However, when reading the first article in this chapter (Article 312.1), it becomes clear that this is not so. It is assumed that Article 312.1 of the Labor Code of the Russian Federation "Basic concepts used in this chapter" will include a clarification indicating that remote work is synonymous with distant work – "Distant (remote) work is the performance..." (further, the definition of distant work that becomes remote work is kept the same as previously). However, further the authors of the bill contradict themselves, since Article 312.1-1, 312.2, 312.3, 312.4 refer to distant work only. And only in new articles 312.6-312.8 the term "distant (remote) work" appears again. If the draft law is adopted, then the new norms will cause the question: is this approach of the legislator a conscious act or are we talking about shortcomings in legal writing? If the legislator deliberately allowed such a "dualization", then it must be recognized that "distant work" and "distant (remote) work" are different legal categories. Consequently, as before the Articles 312.1-1-312.5 regulate the relations between the employer and the remote employee (in the understanding that was laid down in Chapter 49.1 of the Labor Code of the Russian Federation in 2013), and Articles 312.6-312.8 are devoted to a new category – "distant (remote) work".

But then it must be recognized that the legislator's approach to the definition of the main concepts contained in Chapter 49.1 in Article 312.1 of the Labor Code of the Russian Federation is extremely unsuccessful, since Part 1 contains a definition of only distant (remote) work (which was previously the definition of just distant work); Part 2 of this article refers to temporary distant (remote) work; Part 3 – to combined distant (remote) work. Further, in the proposed new Article 312.1-1 of the Labor Code of the Russian Federation "General Provisions on Remote Workers", remote workers are considered to be persons who have concluded an agreement on distant work.

This approach of the legislator is inconsistent and illogical, raises a number of questions and objections. First, the content of these two articles implies, at a minimum, the understanding that distant work and distant (remote) work are different legal categories. Second, if the definition of remote operation is given in an article that contains the main conceptual apparatus for a given chapter, then the term "distant (remote) work" should therefore be considered as a generic, more general category with respect to the term "distant work". Besides, in the proposed draft law, the definition of distant work as one of the basic categories of this chapter is not at all present in Article 312.1 of the Labor Code of the Russian Federation. Is it then correct to talk about distant work in Articles 312.1-1-312.5 of the Labor Code of the Russian Federation? B, it is necessary to determine whether

Articles 312.1-1-312.5 of the Labor Code of the Russian Federation extend their action to “remote” workers (after all, these articles refer only to distant work).

The title of Article 312.7 of the Labor Code of the Russian Federation of the bill (Article 312.7. “Interaction of the employer with a remote employee and an employee in the mode of temporary distant (remote) work during the rest time of the employee”) allows understanding the position of the legislator. However, the text analysis of Article 312.6 and Article 312.8 of the bill leads to the conclusion that the legislator introduces at least two more options for “non-stationary” work – “temporary distant” and “temporary remote” work (in Article 312.6 – “...in priority order for temporary remote work in a simplified manner in cases of natural or man-made disasters...”; Article 312.8 “Payment of the employer’s interaction time with a remote employee and an employee in the mode of temporary distant work during the rest time of the employee”).

We believe that the authors of the bill should take a closer look at the terminology laid down in the new version of Article 312.1 of the Labor Code of the Russian Federation, in the proposed new Articles 312.6-312.8 of the Labor Code of the Russian Federation and formulate a more understandable and more logical approach to such categories as “distant work” and “distant (remote) work”, emphasizing, first of all, what is distant work in contrast to distant (remote), etc.

There is another important point here. The pandemic showed that the most urgent need for remote work arises only during critical non-standard situations and is not applicable in all areas of activity. It should also not be forgotten that the state was the initiator of this number of transfers to remote work, employers were only forced to obey. Accordingly, the issue of the correct way to arrange the transfer of workers to remote work is important. The bill (Article 312.6) suggests to provide a possibility of temporary distant (remote) work on the basis of the agreement of the parties or production needs, natural or technogenic disasters, production accidents, industrial accidents, fire, flood, earthquake, epidemic, epizooty and any exceptional cases threatening life or normal vital conditions of all population or its part. In these cases, a simplified procedure for introducing a mode of temporary distant (remote) work is allowed, in which it is enough to issue a local regulatory act and compile a list of employees (the conditions of the labor contract are not changed, an additional agreement to the labor contract is not concluded).

It is difficult to accept that the terms of the labor contract do not change. They change. Temporarily, but changing: the workplace changes (the employee will work at home, where there may be many family members and small living space, a sick relative, etc.); you will have to use your computer (and it is one for all); perhaps the housing is rented, and the owner is not satisfied with this; the law does not provide for the resolution of the issue of surcharge for depreciation of its technical means and electricity. If the rule in question is left in the proposed version, a “favorable” ground will be created for a large number of individual labor disputes, since this version of

the regulation of the simplified procedure for introducing a regime of temporary distant (remote) work will clearly violate the rights of employees.

Besides, in order to maintain at least some balance of employees’ rights, it seems necessary to establish any relatively certain deadlines for transferring workers to remote work. Within the meaning of the article, the term is determined exclusively by the employer, which is fraught with possible infringement of the rights of employees.

The Clause 2 of the ILO Recommendations (Organization of Labour in Pandemic COVID-19: Guidance for Employers) suggested that employers should request workers to work at home, or that workers themselves may make a request if practicable. However, before transferring, the employer must decide whether this function can be performed remotely. If so, the employer should discuss with the workforce the availability of the equipment, technology and training necessary to liaise with colleagues and the organization; precisely determine what is expected of managers and employees in the work plan and the conditions for its implementation; clarify the ability to manage time so that employees can work at times and places that are convenient to them, achieving maximum productivity; assess safety and health risks and take the necessary protective measures in relation to home work, ensuring confidentiality and safe working methods; assess potential risks known to the employee, including specific risks associated with domestic work (e.g. risk of domestic violence); sufficiency of the available room for work.

In the Information of the Federal Service for Labor and Employment dated April 13, 2020 “List of the most frequently received questions on the hotline concerning the observance of employees’ labour rights in the spread of coronavirus infection, the “employers are invited to create the necessary conditions for working at home and conclude with the employee” a small additional agreement to the current labor contract and issue an order of an arbitrary form on temporary distant work”. The Letter of the Ministry of Labor and Social Protection of the Russian Federation No. 14-2/10/P-3710 dated April 23, 2020 formulated a different position – “when switching to remote work, it is necessary to conclude an additional agreement”, and “...when transitioning to remote work... the employer needs to determine the lists of workers moving to remote work at home, and the procedure for organizing work (schedule, how to exchange information about production tasks and their fulfillment, the possibility of using the organization’s resources at home). It is also necessary to issue an order on the temporary (for the period of measures aimed at the non-proliferation of new coronavirus infection) transfer of employees to remote work at home and familiarize workers with it’.

Again, there is an inconsistency of positions that do not allow the employer to be determined: is it necessary to conclude an agreement when switching to “remote work” or it is enough to familiarize the employee with the order. It is not possible to use the ILO Recommendation to solve the problem, since Clause 3.6 simply states that “employees are legally obliged to assist the employer in

ensuring a healthy working environment, as provided for by the provisions of the current legislation, collective agreements or internal documents of the company”.

We believe that this clause of the Recommendations does not provide an answer to the question of consent or disagreement of the employee. It is unlikely that the phrase “employees are obliged to assist the employer in ensuring a healthy working environment” should be interpreted as the obligation of the employee to move home to perform work duties. Employee’s housing is not a production environment. Besides, in accordance with international rules and the Constitution of the Russian Federation, a citizen’s home is inviolable, and even on the basis of this, the employer does not have the right to demand that the employee switch to “remote” work, presuming that the workplace will most likely be at the place of residence of the employee.

When transferring to “distant” and “remote” work, the employer provides the employee with technical means and other resources. The use of personal equipment should be reflected in the labor contract, providing for compensation for this. For temporary remote work, it is possible to use suitable equipment available at the employee’s home (Clause 3.2 of the ILO Recommendations).

In the case of remote work, care should be taken to protect information (in particular, ensuring data protection when working at home; if remote work involves the transfer of confidential information outside the place of work, the employer must ensure that the systems protect such data when it is transmitted).

In case of distant work, taking into account the need to comply with the anti-epidemic requirements of state authorities to prevent the spread of the epidemic, the employee and employer can also, if necessary, exchange electronic images of documents with their subsequent processing in the prescribed manner.

The possibility of formalizing labor relations by exchanging electronic documents appeared in the labor legislation in 2013 in relation to remote workers. These were the first steps towards electronic employment relations [31].

Since January 2020, amendments to the Labor Code of the Russian Federation have come into force regarding the possibility of storing information on the employee’s work and the service record in electronic form (Article 66.1 of the Labor Code of the Russian Federation). A person with work experience under a labor contract can receive information on work activities from the employer, in the Pension Fund, through a single portal of public services in the form of an electronic document signed by an enhanced encrypted and certified digital signature. The events of recent months caused by the pandemic of a new coronavirus infection (Covid-19) have significantly exacerbated the problem of resolving and using digital technologies and electronic interaction. The situation with coronavirus spurred lawmakers to adopt the Federal Law No. 122-FZ “On conducting an experiment on the use of electronic documents related to work” of April 24, 2020, the purpose of which is so far only to conduct an experiment on the use of electronic document circulation

within employee-employer relations. It is proposed to abandon the requirement to sign a labor contract on remote work using an enhanced encrypted and certified digital signature (CDS).

The bill states the need to reflect the procedure for electronic interaction in the local regulatory act in the case of temporary distant (remote) work and in the case of combined distant (remote) work ensuring information integrity.

The considered bill proposes to change the grounds for terminating the labor contract. In the current edition (Article 312.5 of the Labor Code of the Russian Federation), the norm is read as follows: “Termination of a labor contract on remote work at the initiative of the employer is carried out on the grounds provided for by the labor contract”. On the one hand, this opportunity gives freedom to the employer, thereby maintaining a certain balance in the regulation of labor relations. On the other hand, in practice, there are cases of dismissal of remote workers due to a decrease in the volume of work, inefficiency of this employee, changes in the employer’s development strategy, which in general can be regarded as worsening the rights of remote workers and disrupting the balance of interests.

There are examples in judicial practice when there is no grounds for dismissal provided for in the labor contract at all (it only states – “upon management decision”). The dismissal is executed by the decision of the head in accordance with the relevant clause of the contract, which provides for the grounds for dismissal, as required by Article 312.5 of the Labor Code of the Russian Federation. For example, a citizen K. concluded a contract on home work with Yandex.Eda LLC, which after some time was amended and the contract turned into a contract on remote work. The additional agreement includes a separate clause for the grounds for dismissal at the initiative of the employer – “the employer’s decision to terminate the labor contract without specifying the reasons but paying the compensation”.

According to the court, “the dismissal of an employee without specifying the reasons for dismissal with the compensation of the plaintiff’s rights does not violate and cannot be qualified as discrimination, since the legislator provided the opportunity for the employer to terminate them when concluding labor contracts with remote employees without indicating the grounds, and therefore the dismissal of the plaintiff under the rules of Part 1 of Article 312.5 of the Labor Code of the Russian Federation, which provides for the right of an employer to dismiss a remote employee on additional grounds agreed by the parties, provided exclusively in the labor contract, is lawful” (Appeal Decision of the Judicial Chamber on Civil Cases of the Moscow City Court of May 20, 2020 in case No. 33-13707/2020). We believe that the court misinterpreted Article 312.5 of the Labor Code of the Russian Federation, “confused causes and consequences”.

In another case, plaintiff P. entered into a contract with Johnson & Johnson LLC on the terms of an ordinary labor contract. After some time, an additional agreement on transfer to remote work was concluded, which as an

additional reason for dismissal stated the non-compliance with the norms of local regulations, instructions of the immediate supervisor or instructions of the head of the LLC. The court found that the circumstances of violation of local regulatory acts of the employer were presented to the plaintiff only after signing an additional agreement on remote work, while violations were revealed earlier (in terms of the fact that in the official correspondence the plaintiff discussed the motivation of their employees with the clients, as well as the official correspondence coordination contained material motivation programs for customer employees in the amount of 20% of retail sales) and relate to the period of work performance by the plaintiff before signing the supplementary agreement and the application of legal consequences to the legal relations of the parties that occurred during the period of the validity of the old version of the labor contract, are not based on the law and violate the rights of the employee (Appeal Decision of the Judicial Chamber on Civil Cases of the Moscow City Court of December 12, 2019 in case No. 33-55871/2019). We believe that these actions of the employer should be regarded as an abuse of law. The court granted the plaintiff's claim for reinstatement, payment of wages and compensation for non-pecuniary damage.

In order to prevent discrimination and infringement of the rights of distant and "remote" workers, it is planned to amend Article 312.5 of the Labor Code, excluding the possibility of determining the grounds for dismissal by a labor contract.

Quite a large number of disputes between employers and remote workers arise over the issues of fair performance of labor duties and observance of labor discipline. According to Part 1 of Article 312.4 of the Labor Code of the Russian Federation, unless otherwise provided by the labor contract on remote work, the regime of working time and rest time of the employee is established by him at his discretion. Based on the meaning of this norm, the employer has the right, by agreement with the employee, to determine the features of the working and rest time modes [32]. Since remote workers perform their work functions outside the stationary workplace, the requirement to comply with the internal labor rules and regulations becomes meaningless. However, the employer has the right to set certain deadlines for the fulfillment of tasks, requirements for the employee to be on call at certain hours, etc. For example, the plaintiff P. concluded a labor contract for remote work with LLC Management Company "Project Investment Technologies" (later renamed to LLC "KorClass"). Clause 1.6 of the contract provided for the employee to perform an employment function outside the employer's location. The interaction between the employee and the employer of KorClass LLC was carried out using public information and telecommunications networks, including the Internet. At the same time, the employee is obliged to provide the employer with a reasonable written report for the previous working week on a weekly basis until 10:00 Moscow time of the first working day following the previous working week, as well as according to the individual requirements of the employer (direct manager), in electronic form about

the work done by sending an e-mail. The labor contract provided for an additional reason for dismissal – in case of violation of the deadlines for submitting reports two or more times. The employee repeatedly violated the reporting requirements, which was recorded by the employer. As a result, the dismissal was recognized by the court as lawful (Decision of the Judicial Chamber on Civil Cases of the Seventh Cassation Court of General Jurisdiction of May 12, 2020 in case No. 8G-965/2020 [88-5475/2020]).

The draft federal law proposes to supplement Article 312.4 of the Labor Code of the Russian Federation with new parts: "The employee and employer establish an interaction procedure that provides for a specific time for the remote employee to perform the labor function within the working time established by the labor agreement on remote work. The procedure for interaction is established by a local normative act adopted taking into account the opinion of the elected body of the primary trade union organization, and a labor contract on remote work. The interaction procedure may provide for the duty of the remote employee to respond to calls, emails and requests of the employer made in a different form, as well as the period during which the remote employee is obliged to respond to requests of the employer related to the performance of the work function. The employee is not obliged to respond to the employer's requests made in any form, outside the time established by the procedure for interaction".

The draft federal law proposed by the legislator demonstrating its desire to provide society with the necessary regulatory framework for regulating remote labor as soon as possible needs to be further improved taking into account the revealed contradictions in the proposed legal structures and legal writing.

5. CONCLUSION

The outbreak of the coronavirus pandemic (COVID-19) not only created an unprecedented situation around the world, but also acted as a litmus test exposing many problems and revealing shortcomings in economic, political and social spheres, including in the field of legal regulation.

Many workers were deprived of the opportunity to work under normal conditions provided for in the labor contract; they could not properly exercise their right to rest (working at home, in fact with an abnormal regime, without being able to exercise the right to leave outside the country); were restricted in freedom of movement, etc.

The legislator has the task not only to develop the necessary regulatory framework for regulating labor in the new conditions in a timely manner, but also to ensure that the balance of the rights of employees and employers is ensured for their harmonious interaction and development.

The current situation in Russia with employees forced to work under "remote" conditions allows formulating several proposals, the application of which could

positively affect the regulation of the labor rights of such workers.

First, in cases where the transfer to “remote” work takes place due to circumstances similar to the current situation, and at the initiative of the state, it is necessary to provide guarantees to employees (for example, the opportunity to refuse). The option proposed in the draft law does not meet the requirements of international standards and the Constitution of the Russian Federation on the freedom of work.

Second, the legislator needs to clearly determine the conceptual framework: what is “distant work”, “distant (remote) work”.

Third, it would be more logical to fix the basic parameters and at least the minimum amount of compensation for workers performing their duties not in a stationary workplace, but, as a rule, at home, using their living space, electricity, computer and other equipment, etc.

In the context of a global and non-exclusive pandemic trial with a new coronavirus infection, the social value of labor law as a necessary regulator of legal relations between employees and employers is revealed in a new way. The development of information technologies in the world in general and in Russia in particular, can allow labor law realizing its potential in regulating new forms of employment as an effective tool for ensuring and protecting the labor rights of workers in the Russian Federation.

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