

The Peculiarities of Legal Regulation of Labor Discipline for Remote Workers

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ABSTRACT

Advances in the digital economy open new ways of organizing work. Employees, whose professional activity is not associated with personal presence at work, are moving from the classic, "factory" working regime to more flexible forms of work organization. Despite the rise in remote employment in the last decade, such forms of work organization were not common in Europe or Russia. Only the announcement of the coronavirus pandemic in the world by WHO immediately made telecommuting a widespread phenomenon in the working life of society. This article is devoted to the peculiarities of the legal regulation of labor discipline for remote workers. The necessity of recognizing a new form of control over the performance of a remote worker's labor function is clearly seen in current conditions. The author proposes strategies for employer control over the performance of a remote worker's labor function, as well as modern software and hardware tools to ensure the implementation of such control. This article is considered to formulate the legal conditions for the onset of disciplinary liability of remote. The author formulates proposals for amendments to the current labor legislation on the basis of the research.

Keywords: *Remote work, Remote employment, Labor discipline, Subordination to internal regulations, Employee control, Forms of control, Local regulations.*

1. INTRODUCTION

The processes of digitalization of the economy have a serious impact on the labor. The development of digital technologies naturally determines the emergence of new forms of employment. According to the International Labor Organization, 17% of workers in the European Union work remote. In most EU countries, even more workers work remote on a non-permanent basis [1]. At the same time, there are serious discussions around the world about new forms of employment, their distinctive features and consequences for working conditions and the labor market, which indicates the absence of comprehensive legal regulation of these issues [2-7].

The literature also discusses the emergence of a "new type of employee" in connection with deep involvement in digital technologies [8]. Thus, O.N. Balabanova and I.P. Balabanov describe such workers as people of the younger generation, whose ideas of success are not measured by wealth or status. Free working time and

reasonable control by the employer also mean a lot to them [9].

Another factor that influenced the growth of remote employment was the measures to counter the spread of the new coronavirus infection COVID-19. Thus, in accordance with the Decrees of the President of the Russian Federation and the explanations of the Ministry of Labor of the Russian Federation, many workers were forced to work remote. (see Decrees of the President of the Russian Federation of March 25, 2020 No. 206; dated 02.04.2020 No. 239; dated April 28, 2020 No. 294; Letter of the Ministry of Labor of the Russian Federation of April 23, 2020 No. 14-2/10/P-3710) [10-13].

In the Russian Federation, the peculiarities of the legal regulation of the labor of remote workers since 2013 are regulated by Chapter 49.1 of the Labor Code of the Russian Federation [14]. What is more, today, the State Duma discusses a draft law "On Amendments to the Labor Code of the Russian Federation in terms of regulating remote work", which determines the following

issues: the conceptual apparatus of remote (distant) work, the procedure for interaction between an employee and the employer, methods of control of the employer over the actions of the employee, methods of exchanging information, the conditions for the onset of disciplinary liability of the employee for non-compliance with the established procedure, etc.

The lack of clear legal regulation gives rise to controversial issues in the field of legal regulation of the labor of remote workers, primarily in terms of exercising control over the performance of their labor function.

Therefore, the study of the peculiarities of subordination of remote workers to the rules of the internal labor regulations of the employer as an organizational element of labor relations is promising and relevant.

2. RESEARCH GOALS

The purpose of this article was an attempt to formulate the features of subordination of remote workers to the rules of the internal labor regulations of the employer as an organizational element of labor relations, particularly: the features of the form of control, specific methods of control over remote workers and legal aspects of their application, as well as to formulate the legal conditions for prosecuting remote workers.

3. METHODOLOGY

We used the following methods during the study: analysis of theoretical literature, domestic and foreign experience, analysis of statistical data and forecasts made by the European Foundation for the Improvement of Living and Working Conditions and the International Labor Organization.

4. MAIN RESEARCH DIRECTIONS

During the study we managed to observe the following issues:

- the genesis of the emergence of the concept of remote employment: a historical approach.
- conditions and factors for rethinking the approach to the concept of control over an employee; new forms of control over the performance of a remote worker of their duties.
- subjects and methods of control over the performance of a remote worker: the use of software and hardware to monitor the activities of remote workers: conditions, legal prerequisites, the algorithm of the employer's actions
- strategies of control over workers in conditions of remote work: types, problems of applying these strategies and ways to solve them.

- legal conditions for bringing remote workers to prosecution.

5. THEORY

Firstly, the organizational element of the labor relationship finds expression in the specificity of the labor function and secondly - in the subordination of the employee to the employer's internal labor regulations. The power-subordination element starts from the nature of hired human labor, which dictates the need to empower the employer with managerial authority. However, in recent years, the managerial component of the labor relationship has been modified. Some new forms of labor organization (for example, using remote work) imply a complete or partial refusal to interfere in the course of tasks and assignments. In other words, in the new conditions of development of society and the economy, there is a transformation of the organizational element of the labor relationship.

The idea of the remote work concept, developed in 1972 by Jack Nilles, an American scientist and chief scientific consultant to the President under the Kennedy and Johnson presidency, was that "One don't have to keep all the staff in the office to be productive." Journalist Frank Schiff published an article titled "Working from home can save gas" in the Washington Post. This article is rightfully considered the first presentation of the concept of remote work, also, it included the first concept of "flexible workplace" [15]. Thus, the idea of telecommuting emerged in the midst of the US energy crisis in the 1970s, and its main rationale was the possibility of saving gasoline when workers stopped commuting.

The key point of Jack Nilles' concept was not only territorial dissociation between employer and employee in order to save energy, but also that the employer still had the authority to control employees by sending them tasks and receiving reports through possible means of communication (for example, mail).

Many authors investigating the problems of implementing the managerial element in remote work come to the conclusion that remote work entails a weakening of such a defining feature of traditional labor relations as the subordination of the employer's economic mastery to the employee [16,17].

This approach is justified, since the employer (or their representative) or the immediate supervisor do not have the opportunity to constantly see and check the implementation of the direct labor function by the employee (to record how much time the employee spends on the work, not in communication with colleagues).

At the same time, some authors propose to rethink the criteria of "control" in the framework of the legal regulation of labor relations on distance work. Thus, E.A.

Mzhavanadze states that there is a modification of control that is normal for this form of atypical employment [18]. The territorial disunity between the employee and the employer leads to the fact that the employer is forced to look for new forms of control over the employee. The employer allows the employee to separate from him geographically, which means that he deliberately deprives himself of control of the “visibility” of the employee. Thus, it becomes unimportant for the employer to control how the employee spends his working time (in communication or performing work tasks) or how he searches for solutions to the assigned tasks. In other words, the employer in this case can execute control over the result of work, but not over the process of performing a direct labor function.

The weak side of this position may be the uncertainty in the differentiation of labor and civil law relations, since control over the process of executing the labor function is one of the signs of the existence of labor relations [19,20].

However, speaking about changing the form of control over an employee, it is important to remember that in accordance with the ILO Recommendation No. 198 On the employment relationship [21], one of the signs indicating the existence of an employment relationship is the fact that the work is performed in accordance with the instructions and under the control the other side. At the same time, the ILO Recommendation does not directly indicate that only the process of performing labor is controlled. With a literal interpretation of this provision, we can conclude that the employer has the right to control his own instructions. At the same time, the form of control is not clearly indicated. It might be the form of constant monitoring of the process of the employee's search for acceptable solutions or the form of monitoring the intermediate stages of solving the task. After receiving the intermediate result, the employer retains the right to make managerial decisions (for example, to adjust the methods of performing the task or initial data). Therefore, we can assume that in this case, the employer can give instructions to the employee and control the employee's performance of intermediate results. Such an order of interaction between the employee and the employer will testify to the existence of power-subordination relations between the employee and the employer and show the need to obey the managerial decisions of the employer, that is, the existence of labor relations.

In order to avoid disputes about the branch affiliation of the relations of remote workers, it would be rational to fix a provision on the ability to control not the process of performing an employee's labor function, but the intermediate results of fulfilling the employer's instructions in the Labor Code of the Russian Federation.

Considering the issue of control over an employee as part of the implementation of an employment contract on

teleworking, it would be rational to assume that such control will not be executed personally by the employer (or their representative) or the employee's immediate supervisor. In this case, when executing control, the employer's use of digital technologies and public information and telecommunication networks comes out on top, which is dependent on the nature of labor relations on distant work.

System analysis of Art. 22, art. 312.1 and part 8 of Art. 312.2 of the Labor Code of the Russian Federation allows us to conclude that it is possible to use software and hardware and the Internet not only to perform the labor function of a remote worker, but also to monitor such an employee by the employer.

Based on the above, we can conclude that there are at least two forms of control over the performance of job function of a remote worker: control over the working time during which the employee performs his job and control over the implementation of intermediate results of the tasks assigned to the employee during the performance of the job function. Therefore, from the point of view of the goal of executing control over an employee, we can speak about the presence of different strategies for controlling employees.

As part of the first strategy (time strategy), it is important for the employer to keep track of the percentage of the employee's devotion to work tasks performance during established working time. These workers may include, for example, representatives of creative professions, whose wages do not depend on quantitative indicators. In this case, employers can install programs that can take screenshots at specified intervals, transmit data on the number of keystrokes on the keyboard, filter web traffic, monitor user activity and compare it with planned working hours on their employees' computers. Preset programs include, for example, Worksmart Pro Tracker, Clever Control, Timely and others.

With a different strategy (strategy of completed tasks), the transparency of work processes is important for the employer. They need to see which of the employees is engaged in certain tasks and how much time employees spend on completing a specific task. Such information can be important both for the employer (in order to revise the initial data on labor rationing and to understand the workload of the employee) and the employee (so that they can independently address their colleagues horizontally, having an understanding of the responsibilities of another employee). In this case, the employer can use programs that allow all employees to see how the process of completing a common task is organized, who is responsible for the implementation of each part of a large task, as well as allowing to create and distribute tasks with an indication of the time of their execution and quickly unite employees into

common processes. Such programs as Bitrix 24, Asana and others are suitable to perform these tasks.

In both cases, from the point of view of respecting the rights of employees, the employer must adopt local regulations (with mandatory familiarization of employees against signature), which will establish methods for setting work tasks and reports on their implementation, norms for remote work, methods and terms of communication with management and quantitative and qualitative performance indicators. In accordance with Art. 22 of the Labor Code of the Russian Federation, an employee has the right to receive reliable information, including on the procedure for monitoring the performance of his labor function. In office work, the procedure for monitoring an employee is most often obvious - one can come to the employee at any time and give him an order and check its implementation personally. Regarding to remote workers, it is necessary not only to prescribe one's job responsibilities (in an employment contract or job description), but also to determine the issues of communication and control of the employee. This procedure will be considered a legitimate assignment of labor duties to an employee during the remote work.

6. CONCLUSIONS

As a result of the study, we conclude that there are peculiarities of subordination of remote workers to the rules of the employer's internal labor regulations as an organizational element of labor relations. Furthermore, we have formulated legal recommendations for exercising control over the performance of the labor function by workers during remote work. Author proposes to identify strategies for monitoring the performance of remote workers depending on the characteristics of the form of control. The article identifies the problems employer may face in executing control over remote workers and suggests legal ways to solve them. Also, author formulated suggestions for improving the current labor legislation.

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