

Problems of the registration of labor relations in conditions of the economic model of the Fourth Industrial Revolution

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Abstract - The large-scale implementation of the digital technologies in conditions of the transformation of the economic model of the Fourth Industrial Revolution (4IR) requires new approaches in the registration of labor relations, due to the presence of an integrated legal institution of labor relations in the digital economy, which includes the norms of economic and labor law. Questions arise on the possibility of broader application of various aspects of the digital economy to the issues of regulating labor and other directly related relations so that these processes could be consolidated at the legislative level and in local regulations. The article is devoted to the legal aspects of the introduction of electronic documents. The key element in deciding on the establishment of the electronic document management (for example, electronic labor contract) is the issue of entering into, modifying and terminating an employment contract in electronic form. To do this, according to the authors, it is necessary to resolve the issue of changing the Labor Code of the Russian Federation in which it is stated that the employment contract is concluded in writing, drawn up in two copies, each of which is signed by the parties. It also requires a legislative decision on the issue of a written notice to the employee about changes in the conditions of the employment contract and familiarization with relevant orders (instructions).

Keywords - digital economy; labor relations; working conditions; electronic sick-list

I. INTRODUCTION

At the present time, the world economy is at the initial stage of the Fourth Industrial Revolution, which is characterized by the large-scale implementation of the digital technologies, artificial intelligence, bio- and neurotechnologies. At the same time, the technologies being introduced create a new reality of the interaction between the participants of the labor relations. As Klaus Martin Schwab, the author of the concept of the Fourth Industrial Revolution, points out "... we need a new regulatory and legal climate, without which innovative technologies cannot be applied". One of the most important components of the formation of a new regulatory climate is the transformation of the content of labor contracts. There are also many issues related to the possibility of a wider application of the achievements of the digital economy in the practice of legal regulation of labor and other directly related relations, as well as reflection and consolidation of these processes at the legislative level, and in local regulations of employers.

II. LITERATURE REVIEW

Evaluating the economic prospects of technological progress a century ahead the well-known economist John Maynard Keynes predicted in 1930 the release of labor from production, which should lead to a reduction in working time [1]. Economists at Oxford University estimate that 47% of existing occupations in the US will be automated within 20 years [2]. According to the estimates of experts in the field of labor relations of the International Bar Association (IBA), presented in the report “Artificial Intelligence and Robotics and Their Impact on the Workplace” [3], in the near future 1/3 of the jobs occupied by university graduates can be replaced by machines and software. In Finland, the Netherlands and Canada, projects for testing unconditional basic income are already being implemented. The government of Sweden is studying the issue of legislating a 6-hour working day as a component of solving the problem of technological unemployment [4]. The need for “structuring” artificial intelligence by type and status is also indicated by the “Artificial Intelligence and Life in 2030” research held and published by Stanford University in 2016 [5]. As shows the review of scholarly publications [9, 10, 11, 12], currently in different countries much attention is paid to analyzing the impact of the digital era on changes in the organization of labor relations and their legislative regulation.

Recently, in scientific publications a lot of attention has been paid to the negative consequences and risks of the Fourth Industrial Revolution. Thus, Klaus Martin and Nicholas Davis note that “...during the previous industrial revolutions, too little was done to protect vulnerable groups of the population, the environment and future generations from unforeseen consequences, the costs of progress, secondary impacts and the deliberate misuse of new opportunities”. If we consider the problem of labor relations, in the countries with a developed economy, most of the new jobs are occupied by freelancers, temporary employees and part-time workers. So, 94% of new jobs that appeared in the US from 2005 to 2015 created in conditions of alternative employment with restrictions in labor rights and social protection [13].

Considering the regulatory framework for the digital economy in the Russian Federation, several problem areas can also be identified. In particular, the use of the qualified electronic signature of the head of an organization. In organizations a qualified electronic signature of a chief executive manager is often used by other employees, for example, the chief accountant for filing annual reports or a lawyer for sending documents to court. It is noted that there are cases when as a result of the transfer by the owner of a key of a qualified electronic signature to another person, unfavorable consequences may occur for the owner of this signature. Obviously, in such a situation, the owner of the electronic signature will refuse to sign the relevant documents on his behalf and will seek to recognize these actions as illegal, which entailed the corresponding adverse consequences, for example, if the employee was actually admitted to work.

The transfer of the electronic signature by the owner is in fact a violation of the law on the confidentiality of the key, with consequences being generally accepted in judicial and administrative practice. It is believed that the document is signed by the owner independently, although it may be with the help of his electronic key by another person, and the burden of proving the reverse and establishing the actual author of the document falls on key-holder.

An electronic signature is currently being used for insurance premiums payments by the employer on behalf of employees to compulsory medical insurance fund. Paragraph 10 article 431 of the Russian Federation Tax Code establishes that the payers (employers) whose average number of individuals in favor of which payments and other rewards are made exceeds 25 people over the previous reporting period have to provide calculations to the tax authority in electronic form using enhanced qualified electronic signatures via telecommunication channels.

Another problem in the regulation of labor and directly related relations in the digital economy concerns is, for example, the application of a disciplinary penalty to an employee. According to Art. 193 of the Labor Code of the Russian Federation, prior to the application of a disciplinary sanction, the employer must request a written explanation from the employee. If after two working days the specified explanation is not provided by the employee, then a corresponding statement is drawn up. If this act is drawn up within the framework of electronic document circulation, then in practice this may lead to the extension of the authority of the head to impose a disciplinary punishment or falsification of it.

III. METHODOLOGY

Wishing to contribute to the development of a legal understanding of labor relations in the digital economy the authors have set a goal to present a system of legislative support for labor relations, focusing on controversial doctrinal and legislative provisions.

The main reasons for the sectoral regulation of working conditions, as we see it, are features of the organization of labor, the technological process and the level of technical equipment of organizations in a given sector of the economy (incl. service sector). This causes the need to establish special rules governing the working conditions of people employed in specific types of work [6]. Although the equality of rights and obligations of parties to relations based on an employment contract should be maintained, regardless of the scope of labor, as well as equality of ways to protect their rights and legitimate interests [7].

The complexity is due to the fact that in practice we are faced with various aspects, the regulation of which is currently carried out by more than one branch of law. The research focus is the labor law regulation and the impossibility of settling the whole range of relations arising between an employer and an employee in the process of exercising first labor function by the latter using the norms of labor law [8].

Specific steps taken towards the legal development of the digital economy are forced by the established reality. The emergence of new types of employment, such as remote working, led to the introduction of Chapter 49.1 in the Labor Code of the Russian Federation: “Features of the regulation of the work of remote workers”. Article 312.2 of the Labor Code of the RF stipulates that an employment contract for remote work and an agreement to amend the conditions of a remote work contract determined by the parties may be concluded through the exchange of electronic documents. But in the event that an employment contract for remote work is concluded through the exchange of electronic documents, the employer is obliged to send the remote employee a duly executed copy of contract via registered mail with a notice within three calendar days from the date of employment contract is set.

The current approach to registration of labor relations raises certain difficulties. In part, this is associated with certain costs for both employees and employers. The annual costs of sending documents to millions of employees beared by employers is estimated at the amount of 5 to 7 billion rubles, and acquiring qualified electronic signatures costs employees from 3 to 5 billion rubles a year, which in most cases resorts to refusal in signing an official employment contract and, as a result, leads to illegal employment.

In modern realities, the question arises of a broader use of the digital economy related to the legal regulation of labor and related relations in the legalization of electronic document management for employment.

IV. PRACTICAL SIGNIFICANCE

One of the most promising areas is the introduction of electronic workbooks. However, in our opinion, this seems so far impossible. By virtue of Article 66 of the Labor Code of the Russian Federation, the labor records are the main document on the employment and work experience of an employee, and on the basis of art. 234 of the Labor Code of the Russian Federation, an employee has the right to receive compensation from the employer in the event of a delay in issuing a work record or if the wording of the reason for dismissing an employee is incorrect or inappropriate to the law.

Decisive factor in introducing electronic document management (for example, electronic labor contract) will be the problem of concluding, amending and terminating an employment contract in electronic form.

The first issue would be the changes in Art. 67 of the Labor Code of the Russian Federation, in which it is expressly stated that the employment contract is concluded in writing, is set up in two copies, each of which is signed by the parties. Art. 68 of the Labor Code of the Russian Federation, the order (instruction) of the employer on employment is announced to the employee under a signature within three days from the date of the actual commencement of work. At the request of the employee, the employer is obliged to issue him a duly certified copy of the order (instruction).

This also makes it necessary to provide for a certain mechanism for introducing an electronic signature, taking into account the requirements imposed by the Federal Law of 06/04/2011 No. 63 “On Electronic Signature” (as amended on 12/31/2017).

In the Civil Code of the Russian Federation, an electronic signature is defined as a legal prop, giving legal effect to a document, and is analogous to a handwritten signature. Federal Law of April 6, 2011 No. 63 Art. 2 establishes that an electronic signature is information in electronic form that is attached to other information in electronic form (signed information) or subsequent use with such information and which is used to determine the person signing the information. The owner can later transfer it to another person, for example, his deputy, therefore, it is not possible to determine who specifically signed the personnel document, since participants of electronic document management will have access to information about the owner of this signature. In the Russian legislation there is some uncertainty regarding the use of electronic signature by a person who is not its owner.

A novelty in the legislation of the Russian Federation (from July 1, 2017) was the introduction of amendments to Federal Law of 21 November 2011 No. 323 “On the Principles of the Protection of the Health of Citizens in the Russian Federation” in paragraph 3.2. art. 59 3.2. a certificate of incapacity for work (sick-list) is issued in the form of a document on paper or (with the written consent of the patient) in the form of an electronic document signed with the use of a qualified electronic signature by a medical worker and a medical organization. To implement this innovation it is necessary for the medical organization and the employer to be participants in the Unified Integrated Information System “Sotsstrakh”, and for the insured person (the employee) to express his consent in writing as to form a sick-list in electronic form. The information contained in the electronic sick-list must be signed by qualified signatures of both the medical worker and the medical organization. Such innovations should reduce paper workflow, which will make information exchange faster and more transparent, but at the same time, the consent of the insured person on the electronic sick-list has to be drawn only in writing.

V. CONCLUSION

In practice, there is a risk that the employee has given a written consent to the registration of the electronic sick-list, and the doctor of the medical organization is not aware on whether the employer is a member of the information interaction system. From this it follows that when an employee is issued an electronic sick-list, an employer who is not registered in the Unified Integrated Information System “Sotsstrakh” will not be able to see it. In this case, the medical organization has the right to replace the electronic sick-list with a paper version at the request of the insured person. In the information system, with the help of the software used by the medical organization, a note is placed on the termination of the electronic sick-list (Letter No. 02-09-11 / 22-05-13462).

In order to exclude the possibility of forging an electronic sick-list, it is transmitted in encrypted form and is certified by

a strengthened electronic signature of the doctor of the medical organization, which is not provided free of charge. The decision on the purchase of electronic signature is taken by the medical organization independently.

In practice, the desire expresses by the insured person to receive the certificate of incapacity for work in an electronic form (electronic sick-list) is not enough, since the medical worker and the medical organization must have a strong qualified electronic signature, and the employer must be registered with the Unified Integrated Information System "Sotsstrakh".

VI. DISCUSSION

Numerous Russian employers have been able to organize an electronic document flow in certain aspects of human resources issues, but if a large percentage of employers are still unable to implement an electronic HR system for technical and economic reasons. Therefore, it is worth giving the right of the employers themselves to choose between paper and electronic models. As for employees, it is necessary to preserve the traditional and customary way of receiving services. Even imposing obligations on employees to use an electronic signature in the event that an employer uses an electronic document management system, the legislation should provide the right for employees to receive these documents on paper.

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