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ACTUAL PROBLEMS OF APPLICATION OF LABOR PROTECTION RULES OF THE RF LABOR CODE AND THE WAYS OF THEIR SOLUTIONS

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The subject. The article deals with topical issues of ensuring the realization of the employee's right to healthy and safe working conditions.
The purpose of the study is to identify the main directions of improvement of the Labor Code of the Russian Federation in the field of labor protection.
The methodology includes formal-legal method, the analysis of the components of the right to healthy and safe working conditions, as well as the right to information and related rights.
The main results. The author formulates proposals for amending a number of articles of the Labor Code, including those containing the most important branch principles, as well as those on termination of the employment contract and ensuring the right of an employee to a workplace that meets the requirements of labor protection.
Examples from judicial practice show a low level of legal awareness of Russian employers and their disdainful attitude to labor legislation. This is expressed not only in violation of labor protection rules, but also in the absence of proper registration of an employee, when a written labor contract is not concluded with him. Thus, the relationship between the norms of different labor law institutions is expressed, expressed in their protective potential. The existing approach to understanding labor protection in a broad sense to a certain extent may be in demand even now. For example, by improving the norms on the conclusion, modification and termination of an employment contract, it is possible to achieve in parallel a certain improvement in working conditions for workers. This is due to the fact that legal registration of employment in most cases is associated with a higher level of security, since an employee without clearance does not actually exist for the state control and supervisory bodies.
Conclusions.Understanding of labor protection as all-round protection of labor capacity of the person, being so widespread in Soviet time, looks quite justified nowadays too. The Labour Code of the Russian Federation, as the central regulatory legal act, should be considered as an instrument not only of legal regulation, but also of a powerful ideological impact on domestic employers, and changes and additions to labor legislation concerning labor protection should be made according to above-mentioned conclusion.
Keywords: labor protection, Labor Code, special assessment of working conditions, the duties of the employer on labor protection, the principles of labor law, the employment contract.

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1. **Introduction**

Despite the fact that the norms of the Labor Code of the Russian Federation[1] (hereinafter referred to as the Labor Code), devoted to labor protection issues, are sufficiently detailed and

[1] Трудовой кодекс Российской Федерации от 30 декабря 2001 г. // СЗ РФ. 2002. № 1. Ч. 3.

perfect, nevertheless, it is necessary to note their clearly low efficiency in terms of practical implementation [1-3]. The state, through its control and supervisory bodies and other bodies, currently lacks the capacity to enforce these standards by employers [4-5]. G.V. Khnykin writes about the low level of controllability of labor protection in Russia [6, p. 56], which in reality is confirmed by a number of incidents, which are at times very similar to each other. Thus, Perm Krai and Omsk regional courts upheld decisions made by the district courts[2]. Fabulas of both cases, unfortunately, are standard: workers without registration worked for employers who were individual entrepreneurs. During the performance of their duties, both were injured, both were taken by employers to health facilities, and employers asked workers to indicate the trauma's household character. Let us emphasize once again the favorable outcome for the employees of the judicial examination in both cases, however, traumatic amputation of the right hand fingers in one case and fracture of the spine in the other can hardly cause optimism in this situation. The legal nihilism of employers in the described examples is multifaceted: it is not only a violation of the rules of labor protection, but also failure to comply with the requirements for registration of people entering the work. Given the existing interpenetration of the norms of different institutes in the industry, such violations seem to be the most dangerous for the life and health of the employee, and it can be assumed that by eliminating problems in the application of norms, for example, on the conclusion of an employment contract or the regulation of working time, we ensure the implementation of the constitutional right of the employee to healthy and safe work.

2. The right of the employee to labor protection and related rights: a general overview

If we try to generalize all the specific responsibilities of the employer in relation to the employee in the field of labor protection [7-8], then we can talk about the following most important rights of the latter in this area:

1) Right for information on working conditions in the workplace. Thus, in particular, the provisions of Art. 57 of the Labor Code of the Russian Federation and the Federal Law "On the Special Assessment of Working Conditions" are closely connected to each other. The employer, if he strictly follows the requirements of the relevant norms, in most cases can not conclude an employment contract with the employee without first conducting a special assessment of working conditions at his workplace. Knowing the presence of unfavorable production factors in the future workplace, their concentration, the potential worker can predict possible harm to his or her body and the time of possible relatively safe work at this place. Thus, the employee's right to information regularly violated by employers is closely connected with the protection of his labor. While it is difficult to judge how effective a countrywide campaign will be to conduct a special assessment of working conditions, but the statistics on its predecessor - the certification of jobs - it is difficult to call optimistic. Thus, in the Omsk region by the beginning of 2012 slightly more than half of the jobs were certified [9, p. 10].

2) The right to protection by the employer from unfavorable production factors. This right is traditional, has its own fixation in Art. 37 of the Constitution of the Russian Federation and presupposes the existence of a whole set of counterpart duties of the employer: to ensure the conduct of the same special assessment of working conditions, training of workers in labor protection, providing them with milk and therapeutic and preventive nutrition, individual and collective protection equipment, etc. As we see, this right is most closely connected with the right of the employee to information about working conditions in the workplace and is to a certain extent his logical continuation.

3) The right to legal registration of labor relations (as indicated in Article 21 of the LC RF, it is a question of the right to conclude, modify and terminate an employment contract in the manner and under the conditions established by the RF LC and other federal laws). This right, at first sight, natural and not requiring concretization, nevertheless, deserves special attention and seems to be as necessary as, for example, the right to rest or to the dignified pay of an employee. Increasing the

[2] См.: Апелляционное определение Красноярского краевого суда от 14 января 2015 г. по делу № 33-240/15, А-13 // ИПС КонсультантПлюс; апелляционное определение Омского областного суда по делу № 33-2905/2015.

effectiveness of regulation in this direction will simultaneously lead to an increase in the level of safety of working conditions. For example, improving the norms on the conclusion of an employment contract, it is possible to achieve in parallel a certain improvement in working conditions for workers. This is due to the fact that legal registration of employment in most cases is associated with a higher level of security, since an employee without registration does not actually "exist" for state control and supervisory authorities, he may not be instructed on labor protection, not be provided with means of individual protection, etc., but from the point of view of the state there are no violations of the law.

To some extent, consideration of the concept and content of labor protection in a broad sense [10, p. 45-47]. T his is due to the fact that many labor regulations by their nature are universal rights (rather, it is their dignity, and not a lack of), so the solution of one problem brings a solution, and other tasks. The modern appeals to the understanding of labor protection in this vein are also not accidental: "Every kind of labor (including the intellectual one) in its own way wears out every ... resource for work capacity and therefore must mean its system of labor protection measures ... The labor protection as a whole must realize the tasks all-round concern for a man of labor, capable of changing the content and quality of his work capacity. So, labor protection can be regarded as the all-round protection of a person's working capacity "[11, p. 477].

3. **Labor Code: on the issue of the revision of certain provisions**

As already noted in this article, the situation with the provision of healthy and safe working conditions in the country can be recognized as a crisis [12-14]. And we should talk about the improvement of labor legislation in two areas: not only in the field of law, but also in the field of ideology.

Undoubted advantage of the LC RF in comparison with its codified predecessors is the presence of Art. 2, devoted to the key principles of the legal regulation of labor relations. At the same time, the list of these principles is often criticized by domestic lawyers, including, due to its insufficient completeness. It seems that formulated in Part 1 of Art. 210 of the Labor Code of the RF such a main direction of the state policy in the field of labor protection, as ensuring the priority of preserving the life and health of workers, in fact is one of the most ambitious principles of labor law and should take its rightful place in art. 2 of the LC RF. In fact, the priority of preserving the life and health of workers can be first of all talked about in terms of labor protection, but this provision is also relevant for establishing an adequate salary for the worker, determining the regimes of his working time and rest time, protection against discrimination, and so on.

Once again, it is necessary to emphasize the universal nature of the norms of the Labor Code of the Russian Federation on the conclusion, amendment and termination of the employment contract - their interrelationship with the labor protection standards is obvious. In fact, violating the rules of concluding an employment contract, the employer at the same time violates the rules of labor protection - if there are no material traces of the employee's stay with a particular employer, that is, there is no written employment contract, then, as a rule, there is no employee's signature and in the journal of labor protection briefings, in the personal card of the issuance of personal protective equipment, etc. Consequently, by increasing the efficiency of the norms on the conclusion or termination of the employment contract, in modern conditions we also raise the degree of safety of working conditions for the employee. As an unpopular, but necessary measure, it is possible to recommend strengthening of different types of legal responsibility (criminal, administrative, disciplinary) for the employer and his officials, if the accident occurs with an employee who is not properly registered.

Part 3 of Art. 80 of the Labor Code allows the employee to resign at his own request within the time frame determined by him, if the employer has committed violations of labor legislation. It seems that if the reason for dismissal was the violation by the employer of labor protection legislation (for example, the employment contract does not contain data on harmful and dangerous production factors in the workplace, and the employee finds out about them and even senses their

impact on the body after starting work), then the employer, in addition to the appropriate calculation with the employee, must also provide him with compensation for the violation of his labor rights - for information and for protection from unfavorable factors. The amount of such compensation may, for example, be 50% of the average monthly salary of an employee. Such a payment can be considered as a kind of compensation for moral damage - and, unlike the uncertainty of the amount of compensation for the latter, will have a concrete expression.

4. **Conclusions**

Summarizing the abovementioned, it should be noted that the understanding of labor protection in a broad sense looks quite justified due to protracted transition to a market economy. Such a broad approach in modern social and economic conditions, allows the notion of occupational safety and health to gain a new meaning and content. The Labor Code of the Russian Federation, as the central normative legal act of the industry, should be viewed as an instrument of not only legal regulation, but also a powerful ideological influence on domestic employers, and introduce changes and additions to it in the field of labor protection, taking this circumstance into account. One can agree with V.G. Kaurin, proposing to introduce into scientific terminology the notion of socio-legal security (as a minimum necessary level of protection) [15, p. 34-53]. The changes in labor legislation proposed in the article appear to help increase the protection of workers.

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