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ELECTRONIC PERSONNEL DOCUMENT MANAGEMENT: FROM LEGAL EXPERIMENT TO PRACTICE

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The subject. The introduction of electronic technologies into management processes has led to the need to regulate the issues of the use of electronic personnel document management (further - EPDM). In the spring of 2020, Russia was conducting a legal experiment on the use of electronic documents related to work. As part of this experiment, according to the rules established by federal law, individual employers voluntarily refuse to issue certain types of personnel documents in paper form. It concerned employment contract and other contracts with an employee (on financial responsibility, apprenticeship), a vacation schedule, employee statements, as well as regulatory and organizational and administrative documents of the employer on labor (orders on admission, dismissals, penalties, etc.). The results of this experiment became the basis for the introduction of appropriate amendments to the Labor Code of the Russian Federation.

The main purpose of the study is to develop recommendations for improving the current labor legislation for the legalization of electronic personnel document management as part of a system of measures to achieve the maximum balance of interests of employees and employers.

The main methods of the research are the analysis and generalization of judicial practice on labor disputes related to the evaluation of electronic evidence, the practice of using electronic personnel document management by individual employers, both participating and not participating in the legal experiment conducted at the federal level.

The main results, scope of application. The preliminary results of above mentioned experiment have been summarized and an assessment of the validity and potential effectiveness of the draft law submitted to the Russian Federal Assembly has been given. The authors propose the results of a critical analysis of the interim results of the legal experiment on the introduction of EPDM. The authors demonstrate the pros and cons of electronic document management in terms of the readiness of the current legislation for it, as well as subjects of labor relations. The innovations of the prepared draft law on the introduction of a new article 22.1 to the Russian Labor Code as well as its positive aspects and some shortcomings are considered. Not only legal and technical shortcomings are indicated, but also some fundamental substantive contradictions. For example, a negligent attitude to the involvement of employees in making managerial decisions in the social and labor sphere due to the establishment of a trade union monopoly in a number of issues of social dialogue when introducing electronic personnel document management. The draft law does not consistently address issues related to security, enhanced qualified signature and the costs associated with obtaining it by an employee. The modern attitude of Russian courts to electronic evidence in labor disputes is demonstrated by the example of judicial practice. These examples demonstrate the most pressing issues of the introduction and use of EPDM, which need to be resolved at the legislative level. There is a need for effective protection of all participants in labor relations in the context of the development of digital technologies and their implementation in the daily life of each person.

Conclusions. Adoption of new federal law regulating EPDM was necessary to establish general rules for employee-employer interaction in the digital environment, as well as for legalization of the exchange of electronic documents as a way of labor management.

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1. Introduction

The introduction of digital technologies in the sphere of organization and management of labor, certainly, affects labor and directly related legal relations [1, p. 10; 2]. Making managerial decisions by the employer, bringing them to employees, implementing them and monitoring their implementation with the help of electronic document management systems, e-mail, biometric and other electronic control systems creates new subjective rights and obligations of a material and procedural nature.

Nowadays, the widely implemented electronic document management systems (hereinafter – EDMS) are aimed at increasing the efficiency of management processes by accelerating the dissemination of information necessary for organizing production, its unification, strict accounting and control. Today, there are no disputes about the benefits of the implementation of EDMS, many scientists and specialists in the field of personnel management have noted their positive impact on management efficiency and increased labor productivity [3].

There are many definitions of the term "electronic document management system" [4], but mostly they are of a technical nature and differ little from each other. By summarizing the attributes of an EDMS contained in various definitions, it can be characterized as a system for automating the handling of information documents throughout their entire lifecycle (creation, modification, storage, search, classification, etc.), as well as interaction processes between employees. At the same time, documents primarily mean unstructured electronic documents (Word, Excel files, etc.). As a rule, EDMS includes an electronic archive of documents, a workflow automation system and support for office work functions.

In 2019-2020, "Otkritie" Bank and the Moscow School of Management SKOLKOVO conducted the third research of the readiness of small and medium-sized businesses for the digital economy (BDI - Business Digitalization Index). The research operator was the National Financial Research Agency (the NFRA Analytical Center). According to this research data, over the past six months, the level of digitalization of small and medium-sized businesses in Moscow and the Russian regions has increased. Today, the level of digitalization is 50 points on a scale from 0 to 100 (an increase of 5 points from last year). Despite the growth of the business digitalization index, a value of 50 points indicates that the business is only half-ready. Wherein, only 11% of companies have high level of digitalization. Among medium-sized companies, the share reaches 20%, among individual entrepreneurs - 10%, among micro and small enterprises - 12-15%. The share of entrepreneurs who believe that digitalization improves the convenience of doing business (from 34% to 57%) and enhance the speed of work (from 33% to 53%) has increased. The transition of companies to electronic document management continues: 81% of small and medium-sized businesses have abandoned paper document management partially or completely[1]. It seems that in large companies, electronic document management is presented on an even larger scale, and in all its forms, from production, management and ending with tax.

According to the TAdviser database, EDMS in Russia is most actively implemented in the public sector. The top five also includes financial services branches, construction, trade and engineering. At the end of 2019, EDMS implementation projects were most often introduced in trade, construction, medicine and the public sector[2]. According to 2019 data, the top five federal districts of the Russian Federation with the greatest distribution of EDMS projects include: Central, Volga, Siberian, Northwestern, Ural. The cities in which a greater number of EDMS projects were registered at the end

[1] The pandemic and the transition of companies to remote work. Index of digitalization of small and medium-sized businesses. July 7, 2020. NAFI Analytical Center.URL: https://nafi.ru/analytics/pandemiya-i-perekhod-kompaniy-na-udalenku-indeks-tsifrovizatsii-malogo-i-srednego-biznesa/

[2] EDMS in Russia: industry specifics // TAdviser. State. Business. IT. 9.12.2020.URL: https://www.tadviser.ru/index.php

of 2019 are Moscow, St. Petersburg, Yekaterinburg, Samara and Kazan[3].

2. Legal experiment on the introduction of The Electronic Personnel Document Management

In the spring of 2020, an experiment was launched in the country on the use of electronic documents related to work, the rules for which are determined by Federal Law №122-FZ of April 24, 2020[4] (hereinafter - Law № 122-FZ). This law, as initially envisaged, was to last until March 31, 2021 and lead to the preparation of proposals for amending the labor legislation of the Russian Federation regarding the use of electronic documents related to work in the field of labor relations. However, later, the validity period of the mentioned law, and therefore the experiment envisaged by it, was extended until November 15, 2021. The law concerns electronic personnel document management, but the results of its implementation may well affect the regulation of general rules for all types of EDMS. The Law provides for voluntary participation of employers and employees in the experiment, as well as the ability to choose whether to use the "Work of Russia" system (distributed "federal" EDMS) or to use in parallel with it the employer's information system (local EDMS). The procedure for conducting the experiment was approved by order of the Ministry of Labor of the Russian Federation dated May 14, 2020 № 240n. As part of the experiment, employers refuse from personnel document of two types, which are drawn up in paper form by virtue of the law:

a) documents for which the paper form is a requirement of the law (for example, an employment contract, an agreement on liability, a student contract, a vacation schedule, a letter of resignation at the initiative of an employee, etc.);

b) documents with which the employee must be familiarized against signature (orders for hiring, transfers, dismissal, disciplinary liability, notices of dismissal to reduce the number or staff of employees, local regulatory legal acts relating to the work performed by the employee).

Initially, 18 employers entered the experiment, later, their number doubled. Considering that applications for participation in the experiment could be submitted until May 30, 2021 and information on the results of the experiment could be submitted until August 15, 2021, the number of participants varied. According to the Ministry of Labor of the Russian Federation, at the end of May 2021, the number of employers participating in the experiment was 381[5].

Features of the implementation of projects of electronic personnel document management (hereinafter referred to as EPDM) are closely related both to the requirements of labor and social security legislation, the imperative norms of which today do not allow the parties to labor relations to agree on the abolition of paper forms of individual documents and replace the procedure for mandatory familiarization with personnel documents with digital ones. They are also connected with the peculiarities of archiving, with the need for long-term storage of personnel documents (50 and 75 years). In addition, even when addressing the issues of modernizing labor and social security legislation, issues of authentication of the parties to an employment relationship in a digital environment require a separate solution. This is necessary because they are not characterized by legal equality, and because the exchange of documents can be carried out both at the local, and at the federal and mixed levels of the EDMS, which require a different level of protection for documents of varying degrees of importance in terms of protecting labor and other social employee rights.

As experts note, "a feature of legal regulation in a digital economy is the dependence between digital technologies that open up new communication opportunities and a system of legal

[3] Geography of EDMS/ECM-projects. // TAdviser. State. Business. IT. 17.12.2020.URL: https://www.tadviser.ru/index.php

[4] Federal Law № 122-FZ of April 24, 2020 “On conducting an experiment on the use of electronic documents related to work” // Collection of Legislation of the Russian Federation. 2020. № 17. P. 2700.

[5] On conducting an experiment on the use of electronic documents related to work // Official website of the Ministry of Labor of Russia. URL: https://mintrud.gov.ru/ministry/programms/trudotn/eksperiment (accessed 12.06.2021).

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regulators that ensure the possibility of their use" [5, p. 473], therefore, any use of digital technologies is possible only if they are incorporated into the current system of regulators [5, p. 473].

Undoubtedly, the results of this experiment will demonstrate the pain points, pluses and minuses of EPDM in terms of the readiness for it of both the current system of legislation and the subjects of labor relations. In addition, the results of the experiment will make it possible to formulate clear proposals for improving labor legislation and employment legislation (as stated in the law on the experiment itself). Hoping for the positive results of the ongoing experiment, we suppose, that the main emphasis should be placed on strengthening the protection of labor rights, especially, taking in consideration, that foreign literature has already expressed the necessity on adopting the Declaration on digital rights and principles in order to respect human rights in the digital context [6]. On the other hand, one cannot ignore the issue of clarifying the legal obligations, which arise for the subjects of labor relations due to their interaction with the internet. In the scientific literature, it is noted, that in modern conditions the issue of the legal obligations of the subject of legal labor relations is much more acute than before. This can be explained by the complexity of determining the legal obligations that arise in virtual space [7, p. 166].

Thus, let one dare to predict those problems, that will require their own resolution through the improvement of legislation today.

3. Preliminary results of the legal experiment

On April 30, 2021 (more than six months before the end of the experiment), the State Duma received the draft Federal Law № 1162885-7 "On Amendments to the Labor Code of the Russian Federation (regarding the regulation of electronic document management in the field of labor relations)". The draft law proposes to supplement the Labor Code of the Russian Federation with Article 22.1, formulating in it a legal definition of electronic document management in the field of labor relations, which may positively affect the further development of the necessary normative regulation.

Preservation of the principle of voluntary transfer to electronic document management that was provided for earlier in the Law № 122-FZ can be positively assessed in the draft law. At the same time, part 10 of the proposed for adoption article 22.1 of the Labor Code of the Russian Federation provides for the right of an employer to unilaterally introduce EPDM for all employees, if less than 50% of employees have filed an application to refuse the transition to EPDM. Attention is drawn not only to the excessive possibility of a strong-willed decision by the employer (in our opinion), but also to the inconsistency in this part of the draft law submitted to the State Duma of the Russian Federation with the explanatory note attached to it. In the explanatory note, the authors explain that the above mentioned "automatic" distribution of EPDM to all employees is possible if this is provided for by the collective agreement. It seems that in this part it is necessary to clarify the draft law and bring the norm in line with the principles of social partnership. The latter means the establishment of the right of employer to introduce EPDM in relation to all employees, not in law, but in contractual order. The draft law, adopted in the first reading, at the time of writing this article also provides for a large-scale future typing of personnel documents. It is assumed that the Ministry of Labor will approve uniform requirements for the composition and format of personnel electronic documents. This will make it easier to check supervised entities (it will be possible to launch automated monitoring of compliance with labor laws). In addition, the draft law provides for the creation by the Ministry of Labor of the Russian Federation of "reference models" or business schemes for documenting personnel processes as a tool to prevent violations of labor legislation at the stage of formation of personnel documents. Thus, continuing the trend towards digitalization and automation of the processes of preventing possible violations and state control over compliance with labor laws [8, p. 49]. All together will significantly strengthen the risk-based approach in the regulation of labor and related legal relations [9]. It should be noted that the typification of labor contracts has

long begun, and the Labor Code of the Russian Federation partially legitimizes this (Article 309.2 of the Labor Code of the Russian Federation, Part 3 of Article 275). Here are just a few examples: A standard form of an employment contract concluded between an employee and an employer - a small business entity that belongs to micro-enterprises, and an employee and an employer - a non-profit organization, approved by Decision of the Government of the Russian Federation of August 27, 2016 № 858; Standard form of an employment contract with the head of a state (municipal) institution, approved by Decision of the Government of the Russian Federation of April 12, 2013 № 329; An approximate form of an employment contract concluded by an employer (ship owner) and an employee (sailor) for work as part of the crews of sea vessels and mixed (river-sea) navigation vessels flying under the State Flag of the Russian Federation, approved by Order of the Ministry of Labor of the Russian Federation dated January 20, 2015 № 23n; An exemplary employment contract (contract) with an employee engaged to perform work in the regions of the Far North and areas equated to them, approved by the Decision of the Ministry of Labor of the Russian Federation dated 06.23.1998 № 29; An exemplary employment contract with the head of a federal state unitary enterprise, approved by order of the Ministry of Economic Development of Russia dated July 11, 2016 № 452.

Despite the rather high level of elaboration, the draft law still leaves behind a number of issues related to the shortcomings of legal technique.

Firstly, in our opinion, it seems that the place for innovations in the Labor Code of the Russian Federation has been chosen unsuccessfully. It remains a mystery why article 22.1 follows article 22 "Main rights and duties of the employer" in the chapter on labor relations? Is it not supposed to use EPDM in other relations directly related to labor (for example, employment relations with this employer, training and additional professional education of employees directly with this employer, social partnership, financial liability of employers and employees in the world of work)? Already today, EPDM is provided for in the field of state control (supervision) over compliance with labor legislation[6] and in the field of labor protection[7], that is, it is actively being introduced into all institutions of labor law. The idea of "closing" all the rules about EPDM in one article, including 32 parts, is also unfortunate. It seems that it would be more logical to structure the rules on EPDM by separate articles and allocate a separate chapter for them, for example, 2.1.

Secondly, the draft law is filled with separate internal contradictions. For example, in part 4 of article 22.1, the norm on the introduction of EPDM, by issuing a local regulatory act, does not provide for the implementation of the procedure for taking into account the opinion of the representative body of employees in accordance with article 8 and 372 of the Labor Code of the Russian Federation. On the other hand, part 23 of article 22.1 on the local normative act regulating the procedure for introducing EPDM provides for such a procedure. If part 4 of article 22.1 mentions an organizational and administrative document, then it should have been called an order, but if in parts 4 and 23 of article 22.1 the same document is meant, then the rules for its adoption should also be the same. In addition, the "clarification" in Part 23 of article 22.1 that the opinion of the elected body of the primary trade union organization is taken into account "if any". Thus, the possibility of participation of other representatives of employees as it is provided for in part 2 of article 8 of the Labor Code of the Russian Federation is excluded. Such a careless attitude to the issue of the involvement of employees in the process of making managerial decisions in the social and labor sphere can have long-term negative consequences for the development of industrial democracy, especially in the context of a steady decline in the number of trade union members [10].

One should also pay attention to the gap in part 15 of article 22.1, which lists far from all the documents with which, according to the Labor Code of the Russian Federation, it is necessary to acquaint the employee against signature: there is no mention

[6] Federal Law of July 31, 2020 № 248-FZ «On State Control (Supervision) and Municipal Control in the Russian Federation»

[7] Federal Law № 311-FZ dated June 2, 2021 «On Amendments to the Labor Code of the Russian Federation»

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of vacation notices, about the upcoming dismissal to reduce the number or staff of employees, in connection with the expiration of the employment contract, etc.

The most difficult part of the draft law is devoted to the types of electronic signatures, which must be used in EPDM by parties to labor relations. This is also due to the complexity of the repeated terms used. The complexity of their application is objectively related to the need for a proper description of complex technological processes, and with some inconsistency in the proposed approaches. And if, after overcoming all the difficulties with reading and understanding the norms on the rules for the use of advanced qualified, advanced unqualified and simple electronic signatures, everything is more or less clear, then still, some questions regarding the costs of acquiring an enhanced qualified signature by an employee do remain. Part 18 of article 22.1 states that it is the right of the employer to provide (pay) an employee for obtaining an advanced qualified signature, but part 28 relates all the costs of ensuring the work of an EPDM, including the costs of obtaining an electronic signature by an employee (in the event of its absence) to the employer. We suppose, that the latter must mean that all the costs of the employee of obtaining an advanced electronic signature (if necessary) must be compensated by the employer. Different approach is made in connection to persons, applying for job – in relation to, none of the analyzed articles provides for the obligation of the employer to provide an electronic signature. However, the legislator establishes a guarantee: the absence of an electronic signature of a person applying for a job cannot be a basis for refusing to conclude an employment contract with him. We suppose that this means the possibility of drawing up an employment contract in paper form as an exception to the rule.

It seems that, taking into account the results of the experiment on the introduction of EPDM in the context of digitalization of every aspect of life, the draft law on the introduction of Article 22.1 into the Labor Code of the Russian Federation is relevant and timely. Actuality of introducing the EPDM is conditioned by many factors, starting from the influence of technical progress on the economy, and finishing with the development of non-typical forms of employment [11]. The only thing, one cannot agree with the developers of the draft law is, that the introduction of the proposed article will not require changes to other federal laws. First of all, it will be necessary to clarify a significant amount of articles of the Labor Code of the Russian Federation that mention documents or signatures in order to bring them into line with the norms of article 22.1. Moreover, it seems possible, that changes or additions of tax legislation may be required, for example, in part costs of maintaining an, issuing an advanced qualified signature and compensation in connection with its provision. It also seems likely that the legislation on information security can be amended, especially in terms of protecting personal data and using an electronic signature. Differentiation of electronic signatures reflect deep connection of EDMS with access and security, thus it is exactly the content of materials that determines the actual application of the right to access and the provisions of safety [12]. Other countries also recognize different forms of signatures. For example, in the United States, in 1999, "the Uniform Electronic Transactions Act" (UETA) state model law was issued, which recognizes all types of electronic signatures[8]. It eliminated all the discrepancies, that arose in connection with the adopted laws of different states, which differed from each other in this part [13]. Further applications of norms of article 22.1 of the Labor Code of the Russian Federation may reveal the necessity of simplifying approaches to the possibilities of using a simple electronic signature of an employee in other cases, which are not yet established, especially when using local EPDM. The possibility of using simple signatures is acceptable if there is an agreement between the parties to the employment contract and compliance with a number of other conditions related to the application of article 9 of the Federal Law of April 6, 2011 № 63-FZ "On Electronic Signature" [14].

The implementation of EPDM expands

[8] Unif. Elec. Transactions Act, 7A U.L.A. 225 (2002) [hereinafter UETA], available at http://www.uniformlaws.org/shared/docs/electronic%20transactions/ ueta_final_99.pdf

obligations of an employer in part of ensuring proper protection of local networks from unauthorized access and in part of familiarizing the employee with the rules for using network communications with the employer. Employee, on his part, must keep confidentiality of the information regarding his electronic signature and be responsible for all actions (inaction) carried out on his behalf, under his electronic signature. Both parties will have to ensure that other employees and third parties have limited access to the workplace of an employee and (or) his or her personal account in the local information system. Certainly, electronic interaction between employee and employer will demand more in-depth attitude towards the issues of protection of personal data and informational safety in the sphere of labor and directly related relations. Such an order should be established in the local regulations on electronic document management.

4. Judicial practice on the use of personnel electronic documents

Nowadays it can be stated that digital technologies have also affected the evidentiary issues in labor disputes [15; 16; 17; 18]. Quite often, in the reasoning of court decisions, one can meet an assessment of electronic evidence, including those presented in the EDMS. Moreover, such judicial practice is widespread everywhere where EDMS is applied.

Judicial practice does not demonstrate proper unity in resolving issues of applicability of the use of electronic documents (their images) in relations between employees and employers. Labor Code of the Russian Federation in most cases mentions the written form of documents and requires the employee to familiarize themselves with them against signature.

A rare exception is aricle 136 of the Labor Code of the Russian Federation, which establishes the obligation of the employer to notify each employee of wages in written form (by issuing a payslip), but does not specify that this should be done exclusively "under signature". Therefore, judicial practice in this matter quite consistently confirms the right of the employer to send payslips to employees by e-mail (Appeal ruling of the Tyumen Regional Court of August 16, 2017 in case № 33-4774/2017; Appeal ruling of the Orenburg Regional Court of 33-578/2017 (33-10750/2016) and others). The correctness of this position is confirmed by the Ministry of Labor in a letter dated February 21, 2017 № 14-1 / OOG-1560. Also, when considering labor disputes, the courts come to the conclusion about the legality of posting pay slips on the internal website of an employer in the personal account of an employee (Appeal ruling of the court of Khanty-Mansi Autonomous Area – Yugra dated April 15, 2014 in case № 33-1540/2014; Appeal ruling of the Novosibirsk Regional Court dated June 24. 2014 in case № 33-5183/2014, Ruling of the Supreme Court of the Republic of Bashkortostan dated March 31, 2015 № 33-4385/2015, etc.).

Electronic interaction of employees with the employer through the exchange of documents, notification of circumstances of legal significance is carried out mainly with the help of:

1) specialized software (EDMS - electronic document management systems used exclusively in the internal information network of the employer);

2) e-mail (both the personal e-mail of the employee and corporate e-mail created using the servers of the employer are used);

3) programs (applications) for instant messaging over the Internet (messengers WhatsApp, Viber, etc.).

Law enforcement problems associated with the use of electronic documents are due to the fact that legal acts in the sphere of labor do not regulate the issues of electronic interaction between the parties to an employment relationship (with the exception of remote workers), which results in different approaches to interpreting the possibilities of using digital documents.

EDMS widely implemented in practice is aimed at increasing the efficiency of management processes by accelerating the dissemination of information necessary for the organization of production, its unification, strict accounting and control [19]. An analysis of judicial practice on the issue of the use of the EDMS allows one to conclude that courts mainly accept electronic evidence, including those presented in the EDMS. Let us give some examples. Based on the data contained in the

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work registration files in the EDMS, the court concluded that the accountant actually performed his job duties after the date of dismissal, supposedly of his own free will, and satisfied the claims for reinstatement at work (Decision of the Vyaznikovsky City Court (Vladimir Region) dated July 1, 2014 to case № 2-1113/2014). Resolving the case on the material liability of the employee for harm caused to the employer as a result of a shortage of entrusted material assets, the court assessed the results of the internal audit entered into the EDMS as properly executed. The court decision notes that the fact of proper approval of the conclusion on the fact of the identified shortage was established, according to the approval sheet, within the framework of electronic document management (Decision of the Leninsky District Court of Izhevsk dated September 26, 2017 № 2-2027/2017 2-2027/2017~M- 1390/2017 M-1390/2017). While refusing to satisfy a claim for accepting an order for a disciplinary sanction, recovery of a bonus, compensation for non-pecuniary damage, the court considered the fact of the availability of tickets for extraordinary certification on labor safety, placed in the public domain in the local network of the enterprise, to be proven (Decision of the Leninsky District Court of Komsomolsk-on - Amur dated August 30, 2017 № 2-1175/2017 2-1175/2017~M-1057/2017 M-1057/2017). The court considered proven the fact that the employer properly fulfilled the obligation to take into account the opinion of the trade union committee when dismissing the employee, examining as evidence a printout from the EDMS (Decision of the Berezniki City Court dated August 15, 2017 № 2-2182/2017 2-2182/2017~M-1992/2017 -1992/2017). With the help of EDMS data considering the time of registration of the issued orders, the court established the chronology of events and concluded about the observance of the procedure for bringing the employee to disciplinary responsibility (Decision of the Leninsky District Court of Rostov-on-Don dated June 1, 2017 № 2-1086/17 2-1186/2017 2-1186/2017~M-773/2017 M-773/2017).

Thus, one can conclude that the courts recognize the admissibility of evidence obtained through the EDMS of the employer. However, the issue of the legitimacy of notifying an employee about the facts of legal significance through the EDMS remains controversial. For example, in one case, the court assessed the notification of the employee through the EDMS of the upcoming dismissal with a proposal to familiarize himself with the order and receive a employment record book as proper compliance with the procedure and refused to reinstate the employee in work (Decision of the Motovilikhinsky District Court of Perm dated September 18, 2017 № 2-3623/2017 2-3623/2017~M-2972/2017 M-2972/2017). In another case, the court found the familiarization with the order on assignment of duties send in electronic form (via EDMS), to be legal. Thus is regardless of whether it was brought to the attention of employees in electronic form, or in paper, its meaning in relation to the order and timing of execution does not change (Appeal ruling of the civil investigation committee of the Rostov Regional Court dated December 3, 2015 № 33-18720/2015). The Supreme Court of the Republic of Karelia declared it legal to bring an employee to disciplinary liability in the form of dismissal under paragraph 5 of article 81 of the Labor Code of the Russian Federation. The court refuted the argument of plaintiff about the late familiarization with the order to hold the day of labor protection, since it was established that the order was familiarized via the EDMS. This is confirmed by the signature in the familiarization sheet for the orders and the printout of the relevant information used in the document management software of the employer (Appeal ruling of the Supreme Court of the Republic of Karelia dated April 30, 2013 № 33–1348/2013).

However, there is also a contradicting practice that is based on the conviction of the courts that it is only possible to familiarize an employee with personnel documents in written paper form. Thus, the court did not take into account the arguments of the defendant's appeal that the transfer of the plaintiff to another workplace was agreed with the employee by familiarizing him or her with the order in the corporate EDMS and affixing the appropriate mark of consent in electronic form. The arguments were not accepted because the current labor legislation does not provide for an electronic form of document management when

concluding employment contracts and additional agreements to employment contracts (Appeal ruling of the Moscow City Court dated November 14, 2018 № 33-50084/2018). Tver Regional Court, having considered the case of the dismissal of an employee under paragraph 5 of article 81 of the Labor Code of the Russian Federation, came to the conclusion about illegality of brining an employee to disciplinary liability for failure to fulfill the duties imposed by the order, since the duties provided for by this order are not related to his job duties, enshrined in the employment contract and job description, and the plaintiff was not familiarized with the order in accordance with the law. The 1C: Document Management EDMS used by the employer, which contains data on familiarization with the order, according to the court, does not meet the requirements of the current labor legislation, which provides for the employer's obligation to familiarize the employee against signature with all local regulations directly related to the employee's labor activity (Appeal ruling of the civil investigation committee of the Tver Regional Court dated February 12, 2019 № 33-645/2019). The Moscow City Court agreed with the stated legal position, and clarified that "the possibility of maintaining shift schedules in electronic form is not straightly prohibited by the current legislation, however, in the given case, the employer is obliged to provide an employee with appropriate fixation of his or her familiarization with the specified schedule in written form. The mark of familiarization with the schedule in electronic form of the document does not univocally prove the fact of bringing the relevant information to a specific employee and does not allow identifying the latter" (Ruling of the Moscow City Court of June 25, 2019 № 4ga-0615/2019). The current decision indicates the relevant problem with identifying an employee when he or she receives information within the framework of electronic interaction with an employer.

Different position is taken by one of the Kazan Region Courts, which considered it legal to familiarize employees with local regulations through the EDMS, which allows the employee to enter only with his electronic key and after reading the electronic version of the document, press the "Read" button, which means signing the document with an electronic signature (Decision of the Novo-Savinovsky District Court of Kazan dated January 16, 2014 № 2-1091/14). Courts also allow the possibility of familiarization with local regulations via e-mail (Appeal ruling of the Moscow City Court dated 07/08/2015 № 33-23965/2015, Appeal ruling of the Primorsky Regional Court dated 03/06/2014 № 33-1126).

Thus, considering the judicial practice, one can conclude, that nowadays, the familiarization of employees with personnel documents via EDMS is unsafe for the employer, despite the fact that EDMS remains the fastest tool of bringing all the necessary information to the employees [20]. Despite that, it is exactly the EDMS that allows to leave a "digital footprint", that testifies the completion of all the obligations of an employer to inform employees.

Judicial practice on the issues of the use of e-mail for the purpose of exchanging documents (information) between the employee and the employer in cases, where parties must notify each other about legally significant actions remains uncertain.

For example, notifying an employee about the start of a vacation via e-mail was declared unlawful because the employer did not determine the form for notifying employees about the start time of the vacation via e-mail (Decision of the Moscow District Court of Cheboksary dated September 4, 2015 № 12-855/2015).

The courts relate differently to the practice of notifying employees about the upcoming dismiss via e-mail. Thus, by the Decision of the Sovetsky District Court of Novosibirsk dated 04.02.2016 in case № 2-331/15, the notice of termination of the employment contract due to the unsatisfactory test result sent to the employee via e-mail was recognized as improper. When reasoning the decision, the court indicated that the norm of article 71 of the Labor Code of the Russian Federation does not provide a possibility of sending such a notification in electronic-digital format, and this circumstance was considered the only reason for refusing to recognize the dismissal as legal. On the contrary, the Chelyabinsk Regional Court, in a similar situation, recognized that it was possible to send a notice of dismissal based on the test via e-mail, since

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the internal rules of the organization provide that the document flow in relations between the employee and the employer is carried out in electronic form, is equivalent to written form and has legal force, with the exception of cases where the form of the document flow is expressly established by law. When hiring, the plaintiff was issued an individual corporate email address, the password to which is assigned to employees personally, and she received an electronic notice of termination of the employment contract from the employer's email address (Appeal ruling of the Chelyabinsk Regional Court dated June 29, 2017 № 11-6893/2017) .

Different positions of the courts can also be found on the issue of an electronic method of notifying an employee about dismissal due to a reduction in the number (staff). Some courts believe that this practice is legitimate, since the current legislation does not establish a form of notice of the upcoming dismissal for reduction in the number, when hiring, the plaintiff was given access to corporate e-mail with the appropriate login, to which the notice of the upcoming dismissal was sent, and the job description and the internal labor regulations provide for correspondence between the employee and the employer using corporate e-mail (Ruling of the Investigative Committee in civil cases of the First Cassation Court of General Jurisdiction dated January 13, 2020 in case № 8G-4081/2019). Other courts draw the opposite conclusion: sending the document via e-mail is not considered as a proper notification, since the employee must be notified personally and against signature (Appeal ruling of the Supreme Court of the Republic of Buryatia dated November 23, 2016 № 33-6287/2016).

The issue on how the employee will notify the employer of his intention to dismiss of his own free will is ambiguously resolved. Since article 80 of the Labor Code of the Russian Federation establishes a written form of notification, most courts interpret the word "written" as a handwritten or printed and further signed text document. The courts base their decisions on a postulate, according to which only the original application of the employee can be the considered as basis for dismissal of one's own free will. Request of an employee for termination of a labor agreement of his or her own free will has legal force only if it is submitted on paper and if it contains a personal handwritten signature of an employee. The scanned copy of an request sent by an employee to the human resources department via e-mail, does not contain an original signature of an employee and thus does not allow to identify an employee with a sufficient degree of certainty in the system of electronic document management. Wherein the courts highlight that electronic document management is only allowed in connection to remote workers (Appeal ruling of the Supreme Court of the Komi Republic dated March 29, 2018 in case № 33-1853/2018; Appeal ruling of the Omsk Regional Court dated January 22, 2014 in case № 33-187/2014; Appellate ruling of the Moscow City Court dated June 6, 2016 №№ 33-22057/2016).

However, lately an opposite position can be observed. Thus, in one of the cases, a further conclusion was made: the intention of the employee to terminate the employment relationship of his own free will can be expressed by sending photos to the address of a representative of the employer (to the telephone of the head of the human resources department) via mobile messenger «WhatsApp» (Ruling of the Sixth Court of Cassation of General Jurisdiction of 05/14/2020 in case № 88-10258/2020).

A somewhat different situation occurs with the interpretation by the courts of the rule on the withdrawal by an employee of a request for termination of a labor agreement of his or her own free will, although here, too, the opinions of the courts on the issue of the probative value of the document that draws up the will of the employee diverge.

Thus, some judges believe, that an employee is not limited in the choice of means to withdraw an request, a letter, received by an employer via e-mail is enough. The court can reinstate an employee, even if the email was sent in the evening on the day of dismissal (Ruling of the Moscow City Court dated May 22, 2019 in case № 33-22466/2019, Resolution of the Presidium of the Kemerovo Regional Court dated June 18, 2018 № 44g-40/2018).

The argument that article 80 of the Labor Code of the Russian Federation does not clarify the

form a request of an employee for termination of a labor agreement of his or her own free will, which means that it does not have to be drawn up on paper, seems convincing. Thus, the Sverdlovsk Regional Court agreed with the plaintiff that this can be done in the WhatsApp messenger, since "part 4 of article 80 of the Labor Code of the Russian Federation does not provide for the procedure and method for an employee to file an application to withdraw a request of termination". The court reinstated the plaintiff, dismissed of his own free will, at work, ordered the employer to pay for the time of forced absenteeism and compensate for non-pecuniary damage (Appeal ruling of the Sverdlovsk Regional Court dated May 21, 2020 in case № 33-6953/2020).

There is also another position of the courts. The intention expressed in correspondence via the WhatsApp messenger, cannot testify the will of an employee to continue employment relations. This intention has to be proven by a proper executed application, which was not submitted by the plaintiff, accordingly, the procedure for dismissing the plaintiff by the defendant was not violated (Ruling of the Ninth Cassation Court of General Jurisdiction dated April 9, 2020 № 8G-1610/2020 [88-2714/2020]).

We consider it necessary, taking into account the established law enforcement practice, to enshrine in the Labor Code of the Russian Federation the right of the parties to notify each other of facts of legal significance by means of e-mail, the accuracy of the address of which the parties confirm in the employment contract as informational data.

Such simple methods of electronic reporting as the use of instant information exchange programs (messengers) and sending SMS messages are gaining more and more popularity. The attitude of the courts to this kind of correspondence is also ambiguous. For example, correspondence in messengers was recognized by the courts as evidence in the following cases: when an employee, using correspondence with the director in the Telegram messenger, proved that he agreed on the use of two days off (Ruling of the Chelyabinsk Regional Court of 04/08/2019 № 11-4171/2019); when the employer, as evidence of the employee's guilt in being absent from the workplace after the vacation, submitted to the court a message sent to the employee via the WhatsApp messenger, which notified that the vacation was over and the employee should go to work, and also arrive to give explanations (Appeal ruling of the civil investigation committee in civil cases of the Khabarovsk Regional Court dated 05.29.2017 № 33-4096/2017); when the notification by the employee of the immediate supervisor of the impossibility of returning to work due to the death of a relative, obtaining his consent in the Viber messenger, and filling out an application for the day of leave without pay for the return was sufficient evidence for the court that there was no absenteeism in the actions of the employee (Ruling of the Investigative Committee in civil cases of the Sixth Cassation Court of General Jurisdiction dated May 14, 2020 in case № 8G-10232/2020[88-11841/2020]).

The use of messengers for discussing labor issues (screenshots from the Instagram social network, electronic correspondence and audio recording of voice messages in the group created by the employer in WhatsApp messenger) is considered as an evidence of the emergence of labor relations between parties (Appeal ruling of the Omsk Regional Court dated November 28, 2018 № 33 -7850/2018; Rulings of the Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation dated April 13, 2020 № 9-KG20-1, dated December 16, 2019 № 44-KG19-27; Appeal ruling of the St. Petersburg City Court dated January 16, 2020 № 33- 821/2020).

Opposite practice, when courts do not consider correspondence in messengers as a proof of actions of the employer or the employee exists. Thus, the court did not take into account the defendant's argument about notifying the employee in the form of a screenshot of the correspondence in the WhatsApp messenger, since, according to the court, it is not a proper notification of the person subject to disciplinary liability about the conduct of an internal audit in relation to him and the need to give explanations on this occasion (Appeal ruling of the civil investigation committee in civil cases of the Supreme Court of the Republic of Dagestan dated August 8, 2018 № 33-4375/2018). In another case, the court did not consider it legal to notify through the Viber application about sending an employment

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record book to an employee by mail (Appeal ruling of the Investigative Committee in civil cases of the Trans-Baikal Regional Court dated March 9, 2016 № 33-1014/2016). Actions of an employee, committed with the help of digital technologies, can also be considered illegal. Thus, the notification by the employee of the employer of the suspension of work in case of delay in the payment of wages via Skype was considered unlawful, because the legislator does not provide for such a form of notification (Appeal ruling of the Moscow City Court dated March 14, 2017 № 33-4599/2017).

It should be added that SMS-correspondence, messages in messengers are used by the courts as one of the evidence of legally significant facts [21] and are taken into account in conjunction with other evidence. Besides, the courts always check, whether the possibility of the use of electronic documents is provided by local regulatory acts, a collective agreement, an employment contract.

Same approach is seen in other countries of the world. For example, case law in the USA testifies on that courts consider electronic documents from the EDMS as evidence in a case. For example, in Tomlinson v. El Paso Corp., 2007 WL 2521806 (D.C., August 31, 2007), electronic records of pension plans were requested from the defendant-employer. In employment discrimination lawsuit Zhou v. Pittsburg State University № 01-2493-KHV, 2003 WL 1905988 (February 5, 2003) four years of salary information for music department teachers obtained from the EDMS was examined [22]. Nevertheless, USA scientists note imperfectness of the case law in part of examining electronic documents, especially in part of their authentication [23; 24; 25].

Returning to Russian judicial practice, it should be noted, that the implementation in the Labor Code of the Russian Federation of the amendments considered in these research, will allow not only to legitimize EPDM, but will also become the appropriate material basis for the law enforcement practice to uniformity.

5. Conclusion

It seems that the addition of labor legislation with the norms on the implementation of EPDM is conditioned by the need to establish common rules for the interaction of the employer and the employee in the digital environment, to legalize the exchange of electronic documents as a mean of managing labor and performing the labor function by the employee. Such necessity has been repeatedly substantiated by scientists [26; 27].

The system of legal regulation of EDMS, including also personnel EDMS, must include the already known levels. At the same time, the role of local process regulation increases significantly, since, as American experts in the field of legal regulation of IT and electronic data management rightly point out, there is no optimal solution and rules for EDMS for all organizations. In each separate case they depend on the structure of organization, type of business, applied technologies etc. The development of a smart approach to storage and management of electronic information and electronic documents must be based on the full understanding of how separate business users actually use information, which they need in their work. The approach to EDMS should take into account differences between departments, business units and other groups, and ideally eliminate differences and tailor solutions that best advance the corporate mission of the organization while respecting core legal obligations [28].

Nevertheless, centralized state regulation is required in part of establishing universal rules of the existence of the digital environment. Already today, some federal laws in the Russian Federation establish such rules (for example, Federal Law № 63-FZ of 04/06/2011 "On Electronic Signature"[9]). Moreover, federal laws establish common rules for separate types of EDMS or contain norms, that provide legal liability of individuals for offenses in the digital environment. We hope that, based on the results of the experiment conducted by the Ministry of Labor, an updated federal law will be adopted on the relevant additions to the Labor Code of the Russian Federation regarding the use of electronic documents in labor and legal relations directly related to them. This amended federal law will take into account the results obtained, the problems

[9] Collection of Legislation of the Russian Federation. 2011. № 15. P. 2036.

identified and the difficulties faced by employers. Speaking of foreign legal regimes, separate laws that establish some universal rules when managing electronic documents also do act there. In the United States and Great Britain, with their traditional case-based legal system, considerable attention is paid to the disclosure of information, including electronic information, for the purposes of legal proceedings [29].

In our legal system, the priority is given to establishing such general rules and procedures that would maximally meet the needs of legal regulation on the basis of a balance of interests of employees and employers. It is exactly within the ongoing search for a balance of contradicting interests of employers and employees [30, p. 5; 5, p. 45; 31] where the transformation of labor legislation is held today.

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