

LEGAL REGULATION OF DISTANCE WORKING IN THE REPUBLIC OF BELARUS

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Distance working is one of the forms of labor organization, which is not yet regulated at the legislative level in the Republic of Belarus. However, in the case of amendments to the Labor Code of the Republic of Belarus, the problem of identifying the peculiarities of such work will be relevant. Thus, the object of the research is public relations arising between an employer and an employee in the course of organization of distant work. The main goal is to distinguish distance working from other flexible forms of employment, such as home-based work and domestic work. This will help to make the choice of the form of employment more conscious on the part of both workers and employers.

Дистанционная работа является одной из форм организации труда, которая до сих пор не урегулирована на законодательном уровне в Республике Беларусь. Однако в случае внесения изменений в Трудовой кодекс Республики Беларусь проблема выявления особенностей такой работы будет актуальной. Таким образом, объектом исследования являются общественные отношения, возникающие между работодателем и работником в процессе организации дистанционной работы. Основная цель состоит в том, чтобы отличать дистанционный труд от других гибких форм занятости, таких как работа на дому и работа в качестве домашних работников. Это поможет сделать выбор формы занятости более осознанным как со стороны работников, так и со стороны работодателей.

Key words: labour relations, forms of employment, distance working, home-based work, domestic workers.

Ключевые слова: трудовые отношения, формы занятости, дистанционная работа, работа на дому, домашние работники.

With the development of science and technology, new forms of employment, including distance working, are gaining popularity. The development of flexible forms of employment is the subject of a number of innovations that will appear in the Labour Code of the Republic of Belarus [4] if the Law of the Republic of Belarus «On Amendments to the Labour Code of the Republic of Belarus» [3] is adopted. The new Chapter 25-1 will contain provisions on the peculiarities of the regulation of the labor of workers engaged in distance working.

Currently, the Labour Code of the Republic of Belarus regulates such form of employment as home-based work. Home-based workers are those who have concluded a labour contract with the employer to perform work at home as personal labor using their own materials, equipment, tools, mechanisms, devices or allocated by the employer or purchased at the expense of the

employer (art. 304 of the Labour Code of the Republic of Belarus). Although the term «home-based workers» is used in the Labour Code, this category of workers can perform its labour function not only in the place of residence, but also in any residential or non-residential premises belonging to the worker or other persons. In addition, it is necessary to take into account that work performed in excess of the established working hours by home-based workers is not recognized as overtime work (art. 119 of the Labour Code of the Republic of Belarus). It is believed that these rules are related to the peculiarities of home-based work: the employee decides when (at what time and on what days) to work, whether it be working days or holidays, day or night time. Active development of information technologies leads to the fact that even in this form of employment, the employer has the ability to control the employee, and the latter can work overtime, and on weekends and public holidays with a complete and accurate record of such working hours [1].

But what is the difference between distance workers and home-based workers? The difference is that the former are mainly engaged in intellectual work, not material work. The key point is the use of communication and information technologies.

The Labour Code of the Republic of Belarus provides for such a concept as «domestic workers», which means persons performing work under a labour contract in the household of citizens, providing them with technical assistance in literary and other creative activities and other types of services (art. 308 of the Labour Code of the Republic of Belarus). A labour contract with such persons is not concluded if the work is of a short-term nature (less than 10 days within a month) (art. 309 of the Labour Code of the Republic of Belarus). A labour contract with such workers may be terminated by agreement of the parties with 3 days' notice to the party to the contract (art. 311 of the Labour Code of the Republic of Belarus).

House-based work and other distance forms of employment are tried sometimes to be identified with work under civil law contracts. But this is not the same thing. Entrepreneurial activity is the independent activity of legal entities and individuals, which is carried out by them in civil turnover on their own behalf, at their own risk and under their property responsibility. The main purpose of such activity is to obtain profit (art. 1 of the Civil Code of the Republic of Belarus) [2].

The main difference is that the employee does not bear entrepreneurial risks and his or her activity is aimed at obtaining income from work in a certain position (profession), but not at obtaining profit from the provision of services. The employee performs the work completely independently, without involving any other persons, both physical and legal [1].

Distance working will be understood as the performance of an employment function defined in the labour contract, using communication and information technologies outside the employer's location. They will be covered by labour legislation, but with some specificities. The employee and the employer will determine the procedure for the exchange of electronic documents in the labour contract themselves. The peculiarity of registration of distance working will be that the conclusion of the labour contract will be allowed only in the personal presence of an employee. However, this condition is not mandatory for changing the terms of the labour contract. However, if an agreement to change the employment contract is still concluded through the exchange of electronic documents, the employer is obliged to send the employee a copy of such an agreement in hard copy by the registered mail. The place of conclusion of the employment contract will be the location of the employer [3].

There is the question what kind of equipment the distance worker will use. The labour contract may stipulate the employee's obligation to use the equipment, software and hardware and other means provided or recommended by the employer. Expenses of the employee related to the implementation of distance working shall be reimbursed by the employer. The work and rest schedule is covered by Chapters 10 and 11 of the Labour Code of the Republic of Belarus, and the specifics of recording working hours and rest periods are defined in the labour contract. However, it is difficult to monitor compliance by employees with the established regime. As for the termination of the labour contract with a distance worker, if the employer sends an order to terminate the labour contract electronically, the employer is also obliged to send a copy of such an order by post with notice of its delivery [3].

Although the introduction of distance form of employment at the legislative level will be a significant step in the organization of the work process for both employers and employees, many issues remain to be resolved. For example, why is the conclusion of the labour contract allowed only in the personal presence of the employee, and termination of the labour contract is allowed by mail? The employee, acting as a weaker party in the relationship with the employer, in this case is in a less favourable position. Also, as it was mentioned earlier, the parties will independently determine the mode of recording working hours and rest time in the labour contract. It is difficult to monitor compliance by employees with the established regime. It is likely that electronic communication can be used to regulate compliance with the established regimes. And in conclusion I'd like to say that many issues will be addressed by the employer and employees themselves, which

necessitates the development of further recommendations for drafting the labour contract.

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