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Problems of transforming labor legislation of Ukraine in connection with the dissemination of latest employment forms

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Abstract

The article explores the dynamic development of atypical forms of employment in the country and its impact on the Ukrainian labor market. The study highlights the need to create institutional and legal regulation of the latest forms of employment. This approach will facilitate the use of the positive aspects of atypical employment (adaptability, flexibility, the possibility of combining work and personal life, and others). The result of the reform of labor legislation in Ukraine should be the introduction of the latest forms of employment, establishing social dialogue, as well as increasing social

guarantees for workers of atypical forms of employment to European labor standards.

Keywords: Employment, Atypical employment, Remote work, the latest forms of employment, Telework, Labor market.

Problemas de transformación de la legislación laboral de Ucrania en relación con la difusión de las últimas formas de empleo

Resumen

El artículo explora el desarrollo dinámico de formas atípicas de empleo en el país y su impacto en el mercado laboral ucraniano. El estudio destaca la necesidad de crear una regulación institucional y legal de las últimas formas de empleo. Este enfoque facilitará el uso de los aspectos positivos del empleo atípico (adaptabilidad, flexibilidad, la posibilidad de combinar la vida laboral y personal, y otros). El resultado de la reforma de la legislación laboral en Ucrania debería ser la introducción de las últimas formas de empleo, el establecimiento de un diálogo social y el aumento de las garantías sociales para los trabajadores de formas atípicas de empleo según las normas laborales europeas.

Palabras clave: Empleo, empleo atípico, trabajo remoto, las últimas formas de empleo, teletrabajo, mercado laboral.

1. INTRODUCTION

The current stage of development of Ukraine is characterized by dynamic socio-economic progress, entry into the global financial

system, which is reflected in social, labor and other processes. Scientific and technical development, the experience of Western countries stimulate the rapid development of various forms of employment (Inshyn, 2014a; Krasnorutska, 2018). The current Code of Labor Laws of Ukraine 1971 is full of editions, amendments and does not fully comply with the modern realities of labor relations (Konstantinovsky, 2018). For the last few decades, there has been a sharp increase in new forms of employment. The reasons for this growth are multifaceted, namely:

- Increased competition as a result of globalization;
- Technological changes that contributed to the reorganization of business and labor;
- The increased participation of women in the labor market;
- the emergence of new types of contractual agreements, sometimes as a result of legal changes, as well as due to changes in business models (Schmid, 2016).

The American Freelancers Union estimates that in early 2010, there were 42 million independent workers, and the European Commission counted 32.5 million freelancers in the EU27 (Bureau and Corsani, 2016). At the same time, according to Eurofound data for 2015, social and economic changes have led to the emergence of new forms of employment in Europe for both workers and self-employed. Besides the distinction between self-employment and paid work, these new forms of employment have serious implications for working conditions and the labor market (Mandl et al., 2015).

A growing body of modern research shows that increasing labor market flexibility provides new employment opportunities for young workers, unskilled workers, minorities and immigrants. These groups of workers are represented disproportionately in the flexible employment market (Booth et al., 2002; Kahn, 2007). In addition, temporary employment appears to be a common way to return the unemployed to work. On the other hand, increasing the flexibility of the labor market has its consequences: since workers with flexible employment are less protected from job loss than regular workers with standard employment, they are more exposed to unemployment risks and have access to fewer jobs on average (Berton and Garibaldi, 2012).

From a theoretical point of view, the views on the standard of employment have changed depending on the conditions of the socio-economic development of society. For the fast-growing service sector, those employees are required that have flexible working hours, are more mobile and, if necessary, easier to dismiss, because they have only a temporary employment contract, also, that combine executive and entrepreneurial functions, etc. (Koch and Fritz, 2013). Small enterprises' demand for workers has a similar character, as the role of the former in the modern economy is constantly growing (Schmid, 2016).

The difficult socio-economic situation in Ukraine requires urgent measures to find tools to create an effective labor market in the context of other macroeconomic components of growth, which has led to increased interest in employment in the scientific community. In this

regard, the theoretical and methodological foundations developed by scientists, lawyers, economists, require thorough testing in a real market environment, taking into account the achievements of foreign and domestic legal science in recent years.

The most important relative characteristic of employment is an indicator of labor activity of the population (Kougias, 2017). It gives quantitative information about the relative number of people employed in the national economy and can be calculated both for the entire employed population as a whole and for individual sex and age groups.

Employment is a form of matching labor supply in the labor market to demand for it, as well as the main indicator of labor market balance (Dimoulas, 2014). On the one hand, employment reflects the achieved level of development, the contribution of living labor as a factor of production, and on the other hand, employment gives future proportions of production factors. Employment combines production and consumption, and its structure determines the nature of their relationship (Boeri, 2011).

Science has not developed a unified approach to understanding atypical employment. However, some scholars note that atypical employment is the labor activity of workers of a specific classification group, which is provided for and/or not prohibited by the legislation of Ukraine. At the same time, it does not fall under standard rules and requires a special legal mechanism of regulation and organizational and economic support, because of the peculiarities in the organization of the working time regime, working conditions and workplace (Vapnyarchuk, 2016). The Organization for Economic Co-operation

and Development (OECD) describes nonstandard work as all labor relations that do not meet the “norm” of regular employment with one employer over a long period of time (OECD, 2015). The International Labor Organization (ILO) believes that non-standard forms of employment consist of employment agreements that differ from “standard labor relations”. As the latter are understood as full-time work, subordinate and bilateral relations between the employee and the employer, including temporary or fixed-term employment contracts, self-employment, as well as part-time work (ILO, 2016).

Today, new forms of nonstandard work have arisen on the labor market that are not regulated by applicable labor laws, among which distance employment is worth noting. Such a phenomenon in Ukraine is in its infancy, although in many countries of the world it has spread and is in competition with conventional forms of employment (MacKenzie and Martínez Lucio, 2014). In the modern globalized world, diversification of employment relations is becoming a major competitive advantage. The ability of the labor market to adapt to rapid changes in the socio-economic and institutional environment depends on such diversification (Lang et al., 2013). However, the diversification of employment relations is negatively related to the rigidity of labor laws.

For the development of atypical forms of employment in Ukraine, it is necessary to create conditions for legal support and regulation of relations of distance work, introduce state development programs and stimulate confidence in new types of work among employers and workers. Unfortunately, the legislation of Ukraine does

not use the term “remote work”, and the “Regulation on the work conditions of homeworkers” approved by the Decree of the USSR State Labor Committee dated September 29, 1981 No. 275/17-99 can be considered the only act regulating such relations. Thus, domestic labor legislation lacks the categorical apparatus regarding the latest forms of employment.

The dynamic development of social processes and the world of work necessitates regular updates, and in some cases, the creation of a new regulatory framework that can meet the needs of modern society. Thus, the purpose of the article is to analyze the practice of application and features of legal regulation of the latest non-standard forms of employment in the national legislation and the legislation of foreign countries in the current conditions of socio-economic development. The study also highlights the question of international standards implementation into national legislation.

2. METHODOLOGY

The methodological basis of this study is a thorough study of Ukrainian labor legislation in order to find the best model for introducing a modern regulatory framework regarding the latest forms of employment. Since Ukrainian legislation and science lack the conceptual and categorical apparatus, this study highlights the work of foreign scientists and the laws of countries, whose legislation is already more adapted to the emergence of new forms of employment.

In addition, the problem of studying employment in Ukraine is exacerbated by the prevalence of informal employment.

The object of this study is the development of atypical forms of employment in Ukraine and in the world. Attention is paid to the obsolete norms of the Code of Labor Laws of Ukraine, legislative acts of developed countries (the UK, Germany, France, the USA, Australia and Israel) in the dynamics of their development. The subject of the study is also the regulatory documents of the International Labor Organization (conventions and recommendations). World statistics on the prevalence of such forms of employment as telecommuting, teleworking, homework, work using information and communication technologies, has become a tool with the help of which global trends in non-standard forms of employment are found in the study.

Although the problems of taxation, social security, and the protection of the labor rights of workers of atypical forms of employment are not the main subjects in this study. However, the use of works devoted to these problems has helped to extend the study of the transformation of labor legislation and fill the article with relevant empirical data.

This study provides the basis for improving national legislation and developing concepts for the transformation of labor legislation, taking into account the popularization of the latest forms of employment.

3. RESULTS and DISCUSSION

Recently, part-time employment has been rapidly spreading (ILO, 2016). In countries that have secured part-time employment in their legislation, one of the main arguments has been that the absence of the opportunity to work part-time or on a new work schedule often causes absenteeism after maternity leave (OECD, 2015). The system of social vacations in Ukraine allows the mother to stay with the child for a long time after birth, but in fact does not contribute to pooling employment and parental responsibilities, which leads to a decrease in the share of working women and the spread of poverty among families with children (Vapnyarchuk, 2016).

In the conditions of the economic crisis in Ukraine, borrowed labor is gaining popularity among new forms of employment and labor organization, which is usually used within the framework of personnel leasing, outsourcing and outstaffing schemes (Sereda, 2014). According to various sources, in 2010 about 25% of all companies represented in Ukraine used outsourcing services. The most popular types of outsourcing were IT outsourcing (27%), legal (25%), accounting (20%), transport (12%) and personnel (6%), while other types of outsourcing accounted for 10% of the given market of services (Guk, 2010).

Over the past few years, Ukraine has been a leader among software developers in Central and Southern Europe. At the moment, Ukraine is also a leader in the region in the number of outsourcing companies in the IT sector (3.2 thousand) and the number of

specialists who work in them (more than 40 thousand people). At the same time, the pay of Ukrainian programmers is lower than the similar services of foreign IT-specialists (European Commission, 2015). At the same time, the complete absence of legal regulation in the field of telework as one of the types of the latest forms of employment remains an acute problem. According to European Telework Development Initiative, telework is a form of employment in which ICTs are used to perform work remotely (i.e., neither in the place where the results of this work are needed nor in the place where this work is usually performed) (Social Dialogue Committee, 2006).

The fact that these workers work in places remote from the central office brings them closer to the legal status of homeworkers, the regulation of labor of which in Soviet times is the subject of a special by-law. Namely, “Regulations on working conditions for homeworkers”, approved by the USSR State Committee for Labor and the Secretariat of All-Union Central Council of Trade Unions as of September 29, 1981. Such work is also regulated by international labor standards: ILO Home Work Convention No. 177 (1996b) and ILO Home Work Recommendation No. 184 (1996a).

However, the current Regulation of 1981 and the aforementioned international acts relate to the work of traditional homeworkers - persons of low qualification, who perform mostly simple, manual work at home. However, modern remote workers are much different, use completely different technology and, besides, are not tied to their homes.

Since remote work goes beyond the legal regulation of home work (as the concept of home work is narrower than remote work and is one of its types), in many countries, including Ukraine, problems arise in the application of labor legislation to regulate such work. If the parties decide to conclude the contract remotely, not in paper form, they can refer to the electronic form of the contract and sign it with an “electronic digital signature”, which is expressly permitted by applicable law. The Law of Ukraine “On Electronic Trust Services” defines the legal status of an electronic digital signature, which is intended to ensure the activities of individuals and legal entities carried out using electronic documents. An electronic digital signature cannot be invalidated simply because it is electronic or based on an enhanced key certificate.

One of the draft Labor Code No. 2410 as of November 08, 2019, provides for such type of employment as distance work, but it is equalized with homework. Remote (home-based) work is the work that the employee performs outside the employer's location, its branch, representative office, other separate structural unit (including those located in another location), outside the stationary workplace, territory or facility. An employee is directly or indirectly under the control of the employer, including when using information and communication technologies to perform work (labor function) (Verkhovna Rada of Ukraine, 2019). However, one can only guess about the prospects of this draft.

In addition to homework, which many scientists and lawmakers have long been paying attention to, there are other atypical forms of

employment that can be classified according to criteria such as working conditions, staff qualifications, working hours and internal work schedule. In general, the following non-standard types of employment can be distinguished:

1. Remote employment, which can be divided into work at home and office work: work that is performed mainly by highly qualified personnel. Most of the time is allotted to work at home (accountant, designer, etc.).

2. Home work: a set of identical operations that do not require the high qualifications of their executor. Mostly, persons with disabilities perform such work; payment is made according to the result (gluing envelopes, assembling products from small parts, sewing clothes).

3. Freelance remote work: home-based work carried out by non-staff employees based on an agreement with the employer (journalist, writer, and translator).

4. Mobile remote work: work that involves the use of new technologies. Employees contact customers using computer technology and provide the services they need (sales representatives, hotline operators).

5. Work in special workplaces: the employer creates special facilities provided with telecommunications. It is a work in a team (programmer, designer, manager, etc.).

In the labor market of Ukraine and other countries, such a thing as on-call work and problems associated with the legal settlement of legal relations in this area are becoming common. To date, domestic

scientists have not agreed on the definition of an employment contract for work on call. On-call work means human labor performed periodically in accordance with previously agreed labor agreement with an employer. Others describe the on-call labor contract as an opportunity for the employer to attract a call worker with or without an indication of working day's length (MacKenzie and Martínez Lucio, 2014). An analysis of the domestic practice of alternative employment schemes' operation gives reason to argue that the use of such practice exacerbates crisis processes within the system of labor regulation as well as shortcomings in the labor market. Therefore, a number of objective factors due to the realities of the modern system of social and labor relations confirm the relevance of improving the regulatory mechanisms of the relevant employment sector and the creation of an appropriate regulatory framework. The improvement of atypical employment regulation in the labor market of Ukraine should occur at the national level.

The category of employment is historical in nature, that is, its structure, goals, methods of formation and other characteristics do not remain constant, but change depending on the development of the labor market, demand, supply, labor price and the person him/herself, that is, is formed as an integral part of the labor market (Kahn, 2010). This approach makes scientists find out the reasons for the inefficient functioning of the labor market and the search for ways to regulate flexibly the economic movement of labor.

Ukrainian legislation does not use such concepts as “freelance”, “distant work”, “outsourcing”, “freelance work”, which indicates its

inconsistency with current trends in the development of the labor market. In the USA, developed countries of the European Union, official statistics on freelance and remote work are conducted (Eurostat, 2018), which cannot be said about Ukraine. This caused difficulties in the study of this problem in Ukraine.

Both the well-being of the workers themselves and the degree of flexibility and civility of labor relations will depend on the effectiveness of regulation in Ukraine of non-standard forms of employment and outsourced labor as rather complex and contradictory phenomena in the modern sphere of labor. Researchers at the University of Melbourne assess the real impact of “non-standard” forms of employment on workers amid growing concern about casual and contractual labor relations. As a rule, random, urgent and subcontracting employment mechanisms are associated with lack of work, unpredictable working hours and limited opportunities for career advancement. However, the research team also finds that such employment can be an important entry point into the labor market, and for some, it is better to combine such work with personal preferences (Mooi-Reci and Wooden, 2016).

Extensive use of the capabilities of IT technology and the Internet outside the office of the company allows one to create a “flexible working schedule” and more optimized use of working hours. An employer who allows employees to work at home can actively influence the structure of his/her production costs (Lang et al., 2013). The growth potential of economic efficiency associated with IT technologies is a powerful incentive to use the remote work regime in

the field of scientific and scientific-technical activity. Studying and publishing the results of work of enterprises that use this new style of work should play a large role in creating a smooth transition to a remote work regime. There is an urgent need for the adoption of the Law on Telework and amendments to the Labor Code regarding the remote work regime.

The growth of atypical forms of employment in Europe has significantly changed the levels of social protection of workers and created key problems such as disproportionate tax evasion and social security contributions. Thus, many atypical workers lost, partially or completely, social protection benefits (Ziomas et al., 2017). It is noted that in Greece the situation is fraught with risks, since a significant part of workers is in a long time in conditions of flexible employment with all the corresponding negative consequences for wages, working hours and working conditions (Pavlopoulos, 2015).

Naturally, some groups of workers more than others benefit from atypical working conditions. For example, in the USA, professional independent contractors may refuse certain advantages, which is offset by their high payment and autonomy (Kalleberg, et al., 2000). However, for other groups of workers, atypical work has a harmful effect, because poor-quality work allows employers to deny the existence of an employment relationship with their employees, preferring to consider labor as goods that they purchase from an external contractor. In Israel, non-standard employment agreements encourage employers to abandon collective bargaining and challenge workers' right to have unions. Thus, employers evade legal obligations

against which employees do not have effective remedies (Benjamin, 2002; Nadiv and Feldman, 2010).

The good aspect is that the increased level of flexibility and autonomy in choosing the time and place of work is often highlighted as the main advantage of mobile work through ICTs, and in many cases, it is the main factor that motivates employees to request this form of employment. When properly managed, this can lead to a better balance between work and personal life and increase personal productivity, as work can be better adapted to personal work patterns (Deutscher Bundestag, 2013; Felstiner, 2011; Klein and Ratier, 2012). For example, an employee at the Norwegian subsidiary of Hewlett-Packard told how he appreciated the flexibility inherent in his mobile work based on ICT, when his priorities shifted towards his family. He appreciates his professional independence, being able to work anywhere, including at home with his children. That is why he has chosen to stay at Hewlett-Packard in Norway rather than moving to another company (Holtgrewe, 2014).

A standard program for Ukrainian business entities' development can be proposed (Fig. 1), if they express a desire and have reasons and prerequisites to use, at least partially, non-standard forms of employment.

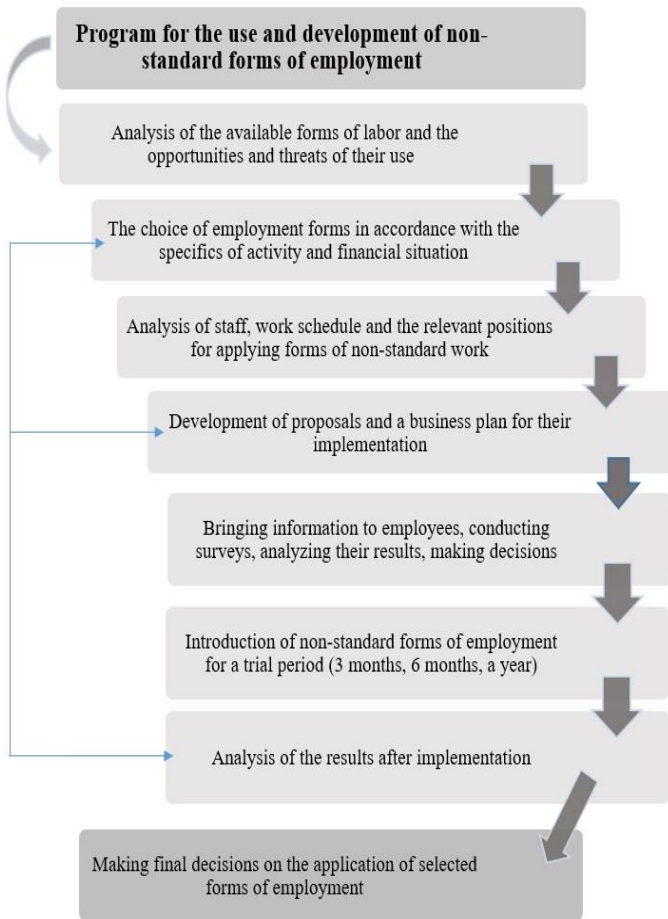


Figure 1: The program for the development of non-standard forms of employment for a business entity

It is extremely important to align measures for the protection of atypical workers with standard employment so that the former receive the same level of protection. It is also of relevance to stop the employers' abuse of these measures by setting limits. Currently,

atypical workers do not have adequate coverage under the existing social security system (Inshyn, 2014b). Social and employment policies are still seen as a policy of benefits that burdens the state budget, and not as an instrument of social investment (Kougias, 2017).

Flexible employment creates conditions for the impoverishment of human capital. Non-standard forms of employment can become a constructive employment tool if they are accompanied by the following:

- An active employment policy;
- An effective system of continuing education;
- A comprehensive social protection system for the unemployed;
- A fruitful social dialogue that helps employees manage social risk and adapt to changes in the labor market (Kougias, 2017).

These elements have not yet been present, and the transition in this direction is not simple and not cheap. Designing and implementing a broad national development plan based on the concepts of equitable growth, social justice and social inclusion, which will provide the necessary funding, are more than just a necessity.

In the future, further social innovations in the field of flexible employment are expected:

- Public-private partnerships to create jobs;
- Innovative forms of work flexibility combined with social technologies for monitoring and recording working conditions and safety;
- Distribution of outsourcing, out staffing and staff leasing;
- Modernization of social dialogue;

- Expansion of areas and improvement of instruments of active employment policy.

4. CONCLUSION

Analysis of atypical work in Ukraine and the world proves the need for its legal regulation in order to determine the rights and obligations of its subjects, as well as the responsibility of the latter, if there are grounds for this. Thus, legislative recognition of certain types of atypical work is the first step in improving labor legislation. In this direction, the state needs to take a number of measures to fill the gap in the legal regulation of atypical labor activity, especially since studies of these processes in Ukraine have shown their relevance and mass character.

Non-standard forms of employment will continue to develop with the development of world labor market. Regulation through national legislation, collective bargaining and comprehensive social protection systems is key to ensuring that atypical work is associated with decent work for the benefit of both workers and entrepreneurs.

The directions of forming a policy to improve the quality of non-standard jobs at the state level should be as follows:

- 1) Bridging regulatory gaps regarding the equal rights and opportunities of workers, regardless of the form of organization of labor, employment and working hours;

2) ensuring control over the conditions and methods of using labor, compliance with the principles of social responsibility by parties to social and labor relations;

3) Improving the mechanism of social dialogue;

4) Providing the social protection system with greater flexibility and at the same time guaranteeing the basic level of social protection of non-standard workers;

5) Promoting the implementation of employment and social policies in order to facilitate the preservation of existing jobs and the creation of new ones, paying attention to the system of balance between work and life.

At the local level, the main direction of atypical work regulation should be collective contractual regulation of social and labor relations and coordination of the interests of the subjects in the system of social partnership.

This plan should be created by a modern welfare state, which will provide both the necessary financial support and effective policy that will help the unemployed to reintegrate into the labor market. Thus, the study is of practical value since it outlines the direction for the legislator regarding amendments to labor legislation, and can form the basis of the new Labor Code of Ukraine, the adoption of which is a necessity. In addition, the scientific value of the article lies in the fact that it can become the basis for further developments in the field of regulation of atypical forms of employment.

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