

INFORMATION TECHNOLOGIES IN BUSINESS PROCESSES AND MODERN LABOUR ACTIVITY REGULATION PROBLEMS

by

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The development of Information technology gives companies ample opportunity to perfect business processes. Recently, cost reduction has become one of the most effective ways to increase business profitability and company capitalization and is carried out using new forms and methods for employee management, namely, through telecommuting.

Legislative regulations for such work have been developed, many problems however remain unresolved. First, the border between the labour contract and the civilised service contract (contract of compensated providing of services) is being broken. As a result, the standards for labor rights protection are being decreased for workers who work through the Internet in comparison with usual workers. Therefore, such workers are discriminated against, even if they have the same citizenship. There are also problems with fiscal competition.

KEYWORDS

information technology, telework, labour legislation, workplace revolution, digital age, electronic (virtual) company, post-socialist countries, taxation problems

1. INTRODUCTION

The development of new information technologies means the degree of economic activity mobility increases. In recent years, the transformation of the traditionally developed regulated relations due to economic and social process has become one of the urgent problems.

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In the work and employment field, the influence of avalanche-like growth in the use of information technologies leads to the phenomena development, which is new to legislators and which requires changes in the current labour legislation. This phenomena is the increase in remote labour activity, or telework.

The term "telework" and the ideological framework of the solution to the problem of ensuring workers' mobility was offered in 1973 by J. Nilles of the University of Southern California while working on the projects aimed at solving rush hour transportation problems of transportation. One of the ways to save fuel resources and to reduce traffic jams, he offered, was the creation, by means of telecommunication, a labour relations model where the worker works closer to their home or from home¹. The "telework's father" himself (he introduced this concept) defined telework as a workplace revolution. The process representing the "movement" of work to the employee, instead of the movement of employees to their workplaces, as well as the possibility of working from home, telecenters (centers of public access to information technologies), or telecottages using information technologies².

The International Labour Organization (ILO) offered, in 1990, a definition based on two characteristics. It is a labour organization form where work is carried out at another (other than central office or production facilities) place and there is no direct contact with other workers³.

The term "telework" is understood, as a rule, as a kind of labour activity, carried out outside the employing company's main office and the worker works without direct control from their managers and colleagues⁴. Telework can be carried out on the basis of employment contract or contract of compensated providing of services, the difference is in the volume of rights a remotely working worker (teleworker).

Due to the character of technological changes in the society, the question of the evolution of traditional business has become urgent during recent decades. Traditional companies are replaced with virtual economic activity realized by the application of information technologies to existing activities.

¹ Nilles, J. 1991, Telecommuting and urban sprawl: mitigator or inciter? *Transportation*. Vol. 75. pp 411-432.

² Nilles, J. 1998, *Managing Telework. Strategies for managing the virtual workforce*. N.Y., USA: Wiley. pp 7-18, 33.

³ International Labour Office. 1990, *Conditions of Work Digest on Telework*, Vol. 9.1. Geneva: ILO, p 7.

⁴ Singe, I., Croucher, R. 2003, The management of trust-based working time in Germany. *Personnel rev.* Bradford, Vol. 32, № 4. pp 492-509.

In the new conditions, business management model is changing. Several decades ago, the main company development area was sales promotion and development of new industry branches. In the digital age, the primary development area is cost management. In such conditions, a wide niche for nontraditional employment appears. These forms provide considerable economic advantages, first due to acceleration of business processes and the minimization of costs.

In the digital age, companies, which have managed to transfer a considerable part of their business processes, such as personnel management and labour activity, to a virtual environment, obtain competitive advantages.

Initially, the telework (or telecommuting in the USA literature) concept was used for describing work from home. However now, this term is more widely applied to all forms of mobile labour activity. Despite the variety of institutional forms for such work, the main idea is the possibility of changing the workplace location using new technologies⁵.

2. DISCUSSION

When choosing the most suitable and most effective research method, it is necessary to take into account that these problems have been somewhat underestimated in the most of CIS and Baltic countries. Five years ago, for Ukrainian, Latvian, Russian, and Belarusian companies, working at the office was more advantageous than the remote employment connected with the workplace organization with costly modern information technologies. The application of the qualitative changes measurement method shows that the situation is changing quickly. According to recent research, in 2014, about 23% of employees in companies and organizations in Russia will get the opportunity to work completely outside of the office. In Ukraine, these figures are even higher - up to 34%. According to our calculations, in 2019, this will reach 40%, and in the long term, it will be 56%. Additionally, the first to begin to work in the new mobile style are managers: 98% of managers and 84% of people responsible for making the financial decisions are already mobile to some degree and promote the distribution of this practice in the companies. The research has also shown that popularity of virtualiza-

⁵ Harris, L. 2003, Home-based teleworking and the employment relationship. Managerial challenges and dilemmas. *Personnel rev.* Bradford, Vol. 32, № 4. pp 422–437.

tion among companies is growing due to the increasing necessity to transition to mobile work⁶.

In one of our previous papers, we noted that with the commercialization and development of Internet use, the questions connected with such new legal phenomenon as regulation of labour relations in a virtual staff, electronic (virtual) company's internal labour routine, etc.⁷ will become more important. Currently, these problems are beginning to get clear outlines.

Experts note that until recently, the Russian labour legislation contained separate provisions regarding the features of regulating outworkers, however is had no system for the legal regulation of outworkers, especially ones who worked interactively through Internet.

In the Russian labour legislation, unlike other countries' (the USA, Japan, Chile) legislation, until recently, there was even no definition for the "telework" concept. Only separate non-standard employment forms, in particular possibility to conclude labour contracts for a certain period, for part time employment, for working from home (Articles 57-59, 74, 93, 100, 310-312 of the Labour Code of Russia)⁸, were regulated.

There was an uncertainty regarding the question about the correlation between the regulation of work of traditional outworkers (who carried out, as a rule, technologically simple operations, so-called manual work requiring no qualification) and workers of the new information economy. Modern outworkers are, as a rule, highly skilled workers whose activity is not connected with product manufacturing and primitive manual work.

After the provisions of the Chapter 49.1 ("About the features of regulating remote workers") of the Labour Code of Russia became effective, only some questions of regulating the work of "teleworkers" have been solved. Therefore the legal definition of the "remote work" concept has been established for the first time, separate features of conclusion and changing terms of the remote work labour contract, the organization and protection of remote workers' labour, the working hours and day-offs for remote workers, and the termination of remote work labour contract have been regulated.

⁶ Voronin, Yu. 2013, About 23 percent of Russians in 2014 will be able to work remotely. RG: December, 18.

⁷ Tedeev, A. 2007, Theoretical principles of legal regulation of information relations, emerging in the global computer networks. M: Manuscript, p 67.

⁸ Almaeva, Yu. O. 2013, Entity, the legal nature, prospects and problems of development of remote working in Russia. Questions of law (Voprosy pravovedenia). № 3. p 253-263.

However, this new regulation has only created new problems, which are characteristic not only for Russia, but of all post socialist countries.

3. PROBLEMS AND CONCLUSIONS

The development of remote work and the imperfection of its regulation creates a variety of problems.

1. The contract concluded between the company and the worker for carrying out labour activity in global computer networks' information environment loses a number of the labour contract's traditionally distinctive features, and the labour relations in digital age assume a civic nature.

The differences between the labour contract and the civil service contract (contract of compensated providing of services) are vanishing.

There is a big difference, recall, among these contracts. According to the doctrine established during the Soviet time, an employment contract is an agreement between workers and enterprise, according to which a worker should perform work in line with certain profession, qualification or his position, under subordination of the internal labour rules and regulations, and the company should pay him a salary and to ensure working conditions envisaged by the labour legislation, the collective agreement and the agreement of the Parties⁹.

At present, this approach has not been changed. Under the employment contracts it is meant the agreement between an employer and an employee, according to which the employer is obliged to provide the worker with work due to the labor function, ensures the conditions stipulated by labor legislation and other normative legal acts containing norms of the labour rules and regulations, by collective agreement, some other agreements, local normative acts and the agreement to pay salary in time and in full and the employee undertakes to perform personally this agreement, the function of labor, to abide the internal labour rules and regulations in force at a given employer (article 56 of the Labour Code of Russia). Therefore, it is the personal agreement and its economic content – it is sale contract by an employee of its workforce subject to the fulfillment of numerous social guarantees.

According to a civilian contract of compensated providing of services this agreement by which the contractor undertakes the task to perform certain acts or to carry out certain activities and the customer undertakes to

⁹ Smolyarchuk, V. I. 1974. *The Socialist labour contract*. M. p 23-26

pay for these services (article 779 of the Civil Code of Russia). There are no measures of social guarantees by such contract to speak about.

Worldwide, workers have struggled for standards of ensuring their rights and social protection (daily working hours, guaranteed leave time, sanitary conditions, vacation pay, and sick pay) for two centuries. With telework, this struggle must happen again.

In telework conditions, it is impossible to ensure the following rules that are traditional for labour legislation, but not provided for those who work under civil contracts:

- Compliance by the worker with the rules of organization's internal labour regulations, including the impossibility of ensuring the teleworker's rights to leave, fixed working hours, special overtime payment and payment for working during official holidays;
- Personal activity character, without intermediaries and subcontractors (when labour activity is carried out through the Internet, the employer cannot control it);
- Alimentary remuneration nature.

With telework, it is impossible to establish a universal labour remuneration system based on the time spent for this work or on the worker's obligation to work uninterruptedly during certain hours. In digital age conditions, remuneration can only be concrete, agreed between the parties, as payment for concrete tasks. It leads to the transformation of the labour function itself, which comes to an obligation to carry out concrete tasks within a concrete time frame, and the worker becomes a businessman. The worker assumes the employing company's economic risks and the responsibility for delayed task completion.

In the post-socialist countries, the labour contract institution is of great importance for the differentiation of relations regarding civil law and labour law regulation. Telework is causing the differences to vanish.

In the past differentiation of approaches to the regulation on performance of job functions between labour and civil laws in socialist times was mostly ideological. This ideology was based on the words of V.I. Lenin expressed in 1921 in the development of the draft civil code: "in the field of economy we do not recognize private, all that is connected with economy for us is public". This formula in the USSR was inviolable dogma in the formation of (labour) legislation.

The socialist labour law, with its numerous social guarantees, was declared as great achievement and distinction from capitalist countries, where employees are forced to sell their labor to capitalists-oppressors. In Communist legal doctrine the civil law, as private rules was treated as an inevitable outgrowth of the tsarist regime, the value of which as of the development of socialism should be reduced. To prevent regulation of labour matters by methods of civil law (i.e. to recognize that labour issues are private matters, not the state), in the Soviet period was unthinkable.

Another (opposite) approach would be the recognition of ideological insolvency concept of humanistic superiority of Soviet law ("progressive") on the "decaying" bourgeois law.

To-day the former ideology has gone, but the post-socialist legal doctrine not much has changed, i.e. in the legislation of the same legal structure still exists. So it turns out that in the post-socialist law of any employment should be regulated only labour law. But this dogma was not applicable in the conditions of development of information technologies, as these outdated approaches are contrary, as we have established, the very essence and content of telework. It turns out that the rest of the socialist period dogmas are driving today's Russian legislator to the trap, it prevents effectively regulate telework. Naturally, Western rules and regulations have not such problem for the regulation of telework.

In Russia the main consequences are that the rights won by workers in the new conditions cannot always be protected.

2. There are taxation problems with telework especially, if a worker living in another country works in the company, or if the worker (for example, journalist) has to travel to various countries. There are two problems. The first, what country and according to what country's laws must the company pay taxes from incomes of such worker: at the company location, at the worker location, or the work location?

We can offer the following way to solve telework taxation problems. In the first case, it is needed to make changes to the Tax Code of Russia and to provide rules for solving conflicts related to the tax jurisdiction of such employee. Such amendments should establish the principle of taxation of incomes of individuals corresponding to the source of payment of income to the taxpayer – i.e. at the location of the company-employer. In particular, it is necessary to make relevant amendments to part 1 of article 208 of the Tax Code of Russia, improving the list of payments which are recognized for the

purposes of taxation in Russia as income from Russian sources. At the same time, Russian companies which are using telework, should be vested with the functions of a tax agent in respect of paying to such employees of the tax to incomes of physical persons.

Besides this tax competition problem, the double, or even multiple, taxation problem arises. To resolve these problems, in each particular case it should be ruled by the agreements for the avoidance of double taxation, if they signed between the countries. Beside this, at the signing of new contracts and the changing of already existing it should be included provisions on taxation of incomes of teleworkers based on the country in which the registered company – employer.

3. Taking into account fiscal costs due to deductions and territorial budgets, certain workers being citizens of the same country can be less or more profitable for a national company. It leads to inadmissible discrimination and infringement of their labour rights.

In the situations described above, the introduction of new information technologies require appropriate development of the labour and financial legislation.

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