МІНІСТЕРСТВО ОСВІТИ І НАУКИ УКРАЇНИ
СУМСЬКИЙ ДЕРЖАВНИЙ УНІВЕРСИТЕТ
НАВЧАЛЬНО-НАУКОВИЙ ІНСТИТУТ ПРАВА

Правові горизонти

Legal horizons

ВИПУСК 25 (38)

Суми – 2020

SECTION 4
LAND LAW; AGRICULTURAL LAW; ENVIRONMENTAL LAW; NATURAL RESOURCES LAW

СЕКЦІЯ 4
ЗЕМЕЛЬНЕ ПРАВО; АГРАРНЕ ПРАВО; ЕКОЛОГІЧНЕ ПРАВО; ПРИРОДОРЕСУРСНЕ ПРАВО

DOI: http://www.doi.org/10.21272/legalhorizons.2020.i25.p65

PROTECTION OF EMPLOYEES' LABOR RIGHTS DURING THE QUARANTINE

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In this article, the impact of the global pandemic on the organization of work at enterprises in Ukraine, and the protection of workers' labor rights during the quarantine was overviewed. The grounds for dismissal of employees in Ukraine, which are provided in the Labor Code of Ukraine, were analyzed. Such forms of termination of the employment contract as dismissal at the employer's initiative, termination of the employment contract at the employee's initiative, and by agreement of the parties were explored. When terminating an employment contract at the employee's initiative and by agreement of the parties, the main condition is the desire of the employee. The employer cannot force him/her to resign voluntarily. It was found that dismissal can be considered legitimate if there are two conditions: there must be one of the grounds for dismissal provided by the Labor Code, and the dismissal procedure must be followed. The dismissal procedure includes the need to acquaint the employee with the dismissal order, compliance with the deadlines for payment upon dismissal, and compliance with the deadlines for the issuance of employment records. The scope of employees' rights during quarantine and the scope of guarantees provided in the event of dismissal of an employee was determined. If the employee works at an enterprise, institution, organization, the employer must provide appropriate working conditions, for example, provide the employee with personal protective equipment (masks). The law provides a number of guarantees for employees who have been fired (depending on the grounds for dismissal): payment of severance pay, the possibility of transfer to another position, compensation in case of violation of the terms of issuance of the employment record book, etc. The new legal framework, which was created to regulate labor relations during the quarantine, such as Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID ‑ 19)" № 530 ‑ IX of March 17, 2020, and Law of Ukraine "On Amendments to Certain

Legislative Acts Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID ‑ 19)" № 540 ‑ IX of March 30, 2020, were analyzed. Such forms of organization of work at the enterprise in the conditions of quarantine as a remote mode of work, a temporary mode of downtime, etc. were overviewed. It was found out that vacation leave is an employee's right, not an obligation, so the employer cannot force the employee to go on leave. In case of illegal dismissal, the employee has the right to file a lawsuit with a request to reinstate, change the formulation of the reasons for dismissal or make the payment of average earnings during the forced absence. It is important to follow the deadlines for applying to the court. For example, in the case of dismissal, this period is one month from the date of delivery of a copy of the dismissal order or from the date of issuance of the employment record.

Keywords: quarantine, dismissal, termination of employment contract, reinstatement, downtime, remote work, flexible mode of work.

Кисельова О., Кордунян І. Захист трудових прав працівників під час карантину. У статті розглядаються питання впливу світової пандемії на організацію роботи на підприємствах в Україні та питання захисту трудових прав працівників в умовах карантину. Було проаналізовано підстави звільнення працівників в Україні, які закріплені у Кодексі законів про працю. Було досліджено такі форми припинення трудового договору як звільнення за ініціативою роботодавця, розірвання трудового договору за ініціативою працівника та за угодою сторін. При розірванні трудового договору за ініціативою працівника та за угодою сторін головною умовою є бажання працівника. Роботодавець не може впливати на нього, примушуючи звільнитися за власним бажання. Було з'ясовано, що звільнення може вважатися законним за наявності двох умов: має бути одна із підстав для звільнення, передбачена Кодексом законів про працю, та повинна бути дотримана процедура звільнення. Процедура звільнення включає необхідність ознайомлення працівника з наказом про звільнення, дотримання строків розрахунку при звільненні та дотримання строків видачі трудової книжки. У статті визначено обсяг прав працівників під час роботи в умовах карантину та обсяг гарантій, передбачених у випадку звільнення працівника. Якщо працівник працює на підприємстві, установі, організації, роботодавець повинен забезпечити належні умови праці, наприклад, забезпечити працівника засобами індивідуального захисту (масками). Законом передбачений ряд гарантій для працівників при звільненні (в залежності від підстави звільнення): виплата вихідної допомоги, можливість переведення на іншу роботу, компенсації у випадку порушення строків видачі трудової книжки тощо. У статті було проведено аналіз нової законодавчої бази, яка була створена з метою врегулювання трудових відносин в умовах карантину, зокрема, Закон України «Про внесення змін до деяких законодавчих актів України, спрямованих на запобігання виникненню і поширенню коронавірусної хвороби (COVID‑19)» та Закон України «Про внесення змін до деяких законодавчих актів, спрямованих на забезпечення додаткових соціальних та економічних гарантій у зв'язку з поширенням коронавірусної хвороби (COVID‑19)». Було досліджено такі форми організації роботи на підприємстві в умовах карантину, як дистанційний режим роботи, тимчасовий режим простою, надання працівникам відпусток та ін. Відпустка є правом працівника, а не обов'язком, тому роботодавець не може змусити працівника піти у відпустку. У випадку незаконного звільнення, працівник має право подати позов до суду з вимогою поновити на роботі, змінити формулювання причин звільнення або здійснити виплату середнього заробітку за час вимушеного прогулу. Важливо дотримуватися строків звернення до суду, наприклад у випадку звільнення такий строк складає один місяць з дня вручення копії наказу про звільнення або з дня видачі трудової книжки.

Ключові слова: карантин, звільнення, розірвання трудового договору, поновлення на роботі, простої, віддалена робота, гнучкий режим роботи.

Formulation of the problem. During the global crisis caused by the pandemic, the issue of protection of workers' rights becomes relevant. With the introduction of quarantine restrictions, many

companies faced financial problems, which led to the complete or partial cessation of their work. In order to save financial resources, some employers began to look for new forms of work organization, and others – decided to lay off employees. Unfortunately, such dismissals are often illegal, so the issue of protecting workers' rights is extremely relevant today.

Analysis of recent researches and publications. The problem of the protection of employees' labor rights during a global pandemic has been studied by many scientists and legal practitioners, including A. Pavlynska, K. Lotosh, A. Pashkina, G. Sandul, V. Andreev, B. Kokhansky, Y. Tomko, and many others.

The purpose of the article is to study the issue of the protection of employees' labor rights during the quarantine in Ukraine.

The main content. The Constitution of Ukraine guarantees everyone the right to protect their rights and freedoms from violations and unlawful encroachments [1].

During the pandemic, the most common cases of violations of labor rights are illegal dismissal of workers, non-payment of wages, forced leave without pay, and so on. In order to protect themselves from the illegal actions of the employer, first of all, every employee must know their rights.

The Labor Code of Ukraine contains an exhaustive list of grounds for dismissal of an employee and only if there is at least one of them, such dismissal is legal. The current legislation provides three forms of termination of an employment contract: at the employer's initiative, at the employee's initiative, and by agreement of the parties.

According to the Labor Code of Ukraine, the general grounds for termination of employment contract by the employer are:

1) changes in the organization of production and labor (liquidation, reorganization, bankruptcy or reorganization of the enterprise, reduction of staff);

2) detection of incompatibility of the employee with the position or work performed due to insufficient qualifications or health status;

3) systematic non-fulfillment by the employee without a reasonable explanation of the obligations imposed on him by the employment contract or the rules of internal labor regulations, if this employee has previously been subject to disciplinary or public sanctions;

4) absenteeism (absence from workplace for more than three hours during the working day) without a reasonable explanation;

5) non-appearance for work for more than four months in a row due to temporary disability, not counting maternity leave, unless the legislation establishes a longer period of preservation of the place of work (position) for a certain disease;

6) reinstatement of an employee who previously performed this work;

7) appearance at work in a state of intoxication, in a state of narcotic or toxic intoxication;

8) committing theft of the owner's property at the place of work;

9) conscription or mobilization of the owner-an individual during a special period;

10) establishing the incompatibility of the employee to the position to which he/she was hired during the probationary period (Article 40) [2].

It should be noted that dismissing an employee on the grounds of a change in the organization of production and labor, the employee's incompatibility with the position, and the reinstatement of an employee who previously performed this work is possible only if it is impossible to transfer him/her to another position.

Another problematic issue is the clarification of causes the reasons for absence from the workplace if it was the reason for his/her dismissal. The person must prove that the reason for the absence is reasonable (serious). The current legislation does not contain criteria for determining the level of "seriousness" of the cause, and therefore in practice sometimes there are difficulties in proving this fact.

Anna Pashkina notes that due to the cancellation of transport connections, according to established practice – a serious reason is an objective impossibility to get to the workplace. If a person lives and works in different cities and cannot get to work, this is a serious reason, as the government has banned intercity transport. However, if the employee lives near the office and does not show up for work, this reason will not be considered serious. Therefore, in each case, it is necessary to understand how the conditions of quarantine affect the ability to perform the labor function [3].

Thus, the dismissal of an employee can be recognized as legal only if there are grounds specified by law, and if the dismissal procedure is followed. Otherwise, the employee may appeal to such an employer's action.

Regarding the employee's resignation or dismissal by agreement of the parties, it should be remembered that such exemption is legal only if the employee desires to resign. The employer has no right to force the employee to resign; such dismissal is illegal and may be appealed in the manner prescribed by law.

During quarantine, many employers are unable to financially support the company and retain employees, so they are often forced to change the organization of the company or reduce the number of employees. In such cases, the employee is provided by law with a number of guarantees, in particular, in case of dismissal, the employer must notify employees at least two months before the changes in the organization of the enterprise. Also, to offer the employee another job,

and in case of refusal - within the period prescribed by law to acquaint the employee with the dismissal order, make calculations and return a filled employment record book.

Every employee has the right to defend their rights not only in case of dismissal but also in the course of work. While working at the company, in terms of quarantine restrictions (for example, the requirement to wear a mask), workers have the right to work in safe and proper working conditions. The employer is obliged to ensure these rights, in particular, to provide employees with personal protective equipment.

In order to regulate the organization of enterprises, several legislative acts were adopted, such as Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID ‑ 19)" № 530 ‑ IX of March 17, 2020 (hereinafter – the Law of Ukraine № 530) and Law of Ukraine "On Amendments to Certain Legislative Acts Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID ‑ 19)" № 540 ‑ IX of March 30, 2020 (hereinafter – the Law of Ukraine № 540). These regulations have made changes to the current labor legislation on the regulation of remote work, vacations.

If it is impossible to perform work functions with the physical presence of employees in the workplace, the employer has several options for organizing work:

1) temporarily transfer the employee to another job;

2) introduce a downtime at the enterprise, to transfer the enterprise to a remote mode of work;

3) provide employees with leave.

The employer may temporarily transfer the employee to another job at the same company or to another company only with the consent of the employee. The law provides that the transfer can be carried out without his/her consent, unless it is contraindicated for worker's health, only to prevent or eliminate the consequences of natural disasters, epidemics, epizootics, industrial accidents, and other circumstances that pose or may pose a threat to life or normal living conditions of people. This transfer period cannot exceed one month [2].

An alternative option is to introduce a downtime at the enterprise, which involves the cessation of work caused by the lack of organizational or technical conditions necessary to perform the work, unavoidable force, or other circumstances.

In case of downtime, employees may be transferred with their consent, taking into account their specialty and qualifications, to another position at the same company or to another company, but in the same area. The term of such transfer cannot exceed one month. Downtime caused by no fault of the employee, including the period of quarantine established by the Cabinet of Ministers of Ukraine, is paid at the rate of not less than two-thirds of the tariff rate which is set for the employee category (salary) in accordance with Part 1 of Art. 113 of the Labor Code of Ukraine.

In the case of the introduction of quarantine restrictions, the employer in consultation with the employee can establish a flexible mode of work for a specified period or indefinitely both upon employment process and later under Part 1, Art. 60 of the Labor Code of Ukraine [2]. Law of Ukraine № 540 made changes to this article by regulated flexible mode of work and the concept of remote work. Accordingly, flexible mode of work is a form of work organization that allows the establishment of a work schedule that is different from the rules of internal labor regulations, in compliance with the established daily, weekly, or for a certain accounting period (two weeks, months, etc.) working hours. Flexible mode of work can include:

1) a fixed time during which the employee must be present at the workplace and perform their duties; at the same time it may provide for the division of the day into parts;

2) variable time, during which the employee at its discretion determines the periods of work within the established norm of working hours;

3) break time for rest and meals [4].

Remote (home-based) work is a form of work organization when the work is performed by an employee at his place of residence or at another place of his choice, including with the help of information and communication technologies, but outside the employer's premises. In remote work, employees distribute working time at their discretion; they are not covered by the rules of internal labor regulations unless otherwise provided in the employment contract [4].

It is important that while working in a flexible mode of work or in remote (home-based) work, employees have the same amount of rights and responsibilities as when working in normal conditions. An employer cannot reduce wages by claiming that the employee works from home. The same principle must be observed with regard to the length of the working day. An employee is not required to work overtime while working remotely.

It is necessary to pay attention to such aspects of the organization of remote work, as its documentation. According to Part 2 Art. 60 of the Labor Code, during the pandemic, the condition of remote (home) work and flexible mode of work may be established in the order of the owner or his authorized body without the mandatory conclusion of a written employment contract for remote (home) works [2]. This rule simplifies the procedure for registration of the flexible mode of work and remote work.

For example, in Russia, in order to formalize the transition to remote work the employer and the employee must, by mutual consent, amend the employment contract concluded between them or sign an additional agreement. According to Part 2 of Art. 312-1 of the Labor Code of the Russian Federation, employment contract or an additional agreement to the employment contract may provide for the employee to perform the employment function remotely on a permanent basis (during the term of the employment contract) or temporarily (continuously for a certain employment contract or an additional agreement to the employment contract for a period not exceeding six months, or periodically under the condition of alternation of periods of performance by the employee of a labor function remotely and periods of performance by him of a labor function at a stationary workplace) [5].

Thus, if the employer decides to introduce the flexible mode of work or remote (home-based) work at the company, he/she must obtain the consent of employees and document this decision.

Every employee has the right to vacation leave. During quarantine, unpaid leave is gaining popularity. According to Art. 26 of the Law of Ukraine "On Leave" for family reasons and other reasons, the employee may be granted unpaid leave for a period specified in the agreement between the employee and the owner or his authorized body, but not more than 15 calendar days per year [6]. Law of Ukraine № 530 amended the Code of Labor Laws related to this type of leave, namely, the period of leave without pay for the period of quarantine is not included in the general term (15 days) [7].

It should be noted that the employer has no right to force a person to write an application for leave, as leave is a right and not an obligation of the employee.

If the employee's rights have been violated by the actions of the employer, an employee has the right to appeal them in the manner prescribed by law. In the case of dismissal, the most common cases of violation of labor rights are illegal dismissal and non-compliance with the dismissal procedure.

We have already considered the main grounds for declaring the dismissal illegal at the beginning of the article. One of the main conditions for the legality of the termination of an employment contract with an employee is in compliance with the dismissal procedure. There are three key procedural elements of this procedure:

1) acquaintance of the employee with the dismissal order;

2) compliance with the terms of calculation upon dismissal;

3) compliance with the terms of issuance of the employment record book.

If an employee is dismissed at the initiative of the owner or his authorized body, he/she is also obliged to issue a copy of the dismissal order to the employee on the day of dismissal. In other cases of dismissal, a copy of the order is issued at the request of the employee.

If an employee is dismissed, payment of all amounts due to him from the company is made on the day of dismissal. If the employee did not work on the day of dismissal, these amounts must be paid no later than the next day after the dismissed employee submits a request for payment. The owner must notify the employee in writing of the accrued amounts due to the employee upon dismissal before paying these amounts. In case of non-payment due to the fault of the owner in due time, in the absence of a dispute over their size, the company must pay the employee his average salary for the entire period of delay until the actual date of payment.

The owner or his authorized body is obliged to issue the employee a duly executed employment record book on the day of dismissal. In accordance with paragraph 4.1 of the Instruction "On the procedure for keeping employment record book of employees", approved by the order of the Ministry of Labor of Ukraine, the Ministry of Justice of Ukraine, the Ministry of Social Protection of Ukraine № 58 of July 29, 1993, in case of delay in the issuance of the employment record book due to the fault of the owner or the body authorized by him, the employee is paid the average salary for the entire period of forced absence. The day of dismissal in this case is the day of issuance of the employment record book [8].

A similar rule, which enshrines the possibility of recovering the average salary for the late issuance of the employment record book, is provided in Part 5 of Art. 235 of the Labor Code of Ukraine.

In the case of dismissal of an employee on the grounds of a change in the organization of production and labor, the employee's incompatibility with the position, and the resumption of the employee who previously performed this work, the employee has a right to severance pay under Art. 44 of the Labor Code.

If an employee was unlawfully dismissed, he/she has the right to appeal such dismissal in court. An employee may file a claim for:

a) reinstatement at work;

b) change in the formulation of the reasons for dismissal;

c) payment of average earnings during the forced absence.

It should be noted that the time limit for applying to the court with a claim in cases of dismissal is one month from the date of delivery of a copy of the dismissal order or from the date of issuance of the employment record book.

When making a decision on reinstatement, the body that examines the labor dispute at the same time is making a decision on payment of the average salary during the forced absence, but not more than for one year. If the application for reinstatement is considered for more than one year, not through the fault of the employee, the body that considers the labor dispute makes a decision on the payment of average earnings for the entire period of forced absence [2].

If the formulation of the reason for dismissal is found to be incorrect or inconsistent with applicable law, in cases where it does not entail the reinstatement of the employee, the body that examines the labor dispute is obliged to change the formulation and indicate in the decision the reason for dismissal. If the incorrect formulation of the reason for dismissal in the employment record prevented the employment of the employee, the body, at the same time decides to pay him the average salary during the forced absence.

Conclusions. After analyzing the current Ukrainian labor legislation, in particular, the rules that govern the grounds and procedure for dismissal of employees, we can conclude that any deviation from the law by the employer is a violation of employees' labor rights. The Labor Code of Ukraine establishes the grounds for the dismissal of employees, reference to any other reasons is illegal, and such dismissal may be appealed. Quarantine and other restrictive measures are not grounds for the dismissal of employees. A study of the organization of work during quarantine showed that employers have several options for organizing the work of employees, such as transferring employees to remote work, introducing the flexible mode of work, transferring the company to downtime, and others. The regulation of these forms of labor organization is carried out by the recently adopted Laws of Ukraine № 530 and № 540. Among the key problems of regulation of remote workers' work in Ukraine remain – the absence of a statutory obligation of the employer to compensate the employee costs for equipment and workplace communication services and observance by employees of the mode of work and rest.

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