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Content of the Job Description: Features and Areas of Concern

Elena I. Kiselyova^{1*}, Kateryna R. Koroshchenko¹, Gary Robson²

¹Sumy State University
40007, 2 Rymskyi-Korsakov Str., Sumy, Ukraine

²University of San Diego
CA 92110, 5998 Alcalá Park, San Diego, United States

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Abstract

The article discusses the concept and main features of the key condition of an employment agreement – the job description. Specifying the job description is of great practical importance, since a person is obliged not only to perform the work stipulated in the employment agreement, but also has the right to demand that the owner (or the body authorised by them) provide it. The certainty of the job description allows outlining a particular scope of rights and obligations of the parties, the establishment of which increases responsibility for the assigned task, contributes to the correct organisation of labour. The article notes that the owner or the body authorised by them does not have the right to entrust the employee with performing tasks that do not relate to the employee's job description, and does not have the right to alter the job description without the employee's consent. The exact definition of the job description is also important upon establishing the working hours, a particular duration of leisure time, and the corresponding benefits in connection with the type of work. Despite the fact that the job description is of particular importance in labour law, there are problematic issues that arise in practice. The authors of this study believe that the legislative definition of the job description and its content would reduce the number of disputes relating to the definition of the job description. In particular, difficulties may currently arise upon describing the qualification of a profession, because the legislation requires updating on this matter, and it is also necessary to create a new body that would improve the national classification system in accordance with the European model. International provisions state the necessity of modernising classifiers, because new professions, the transition from one profession to another, as well as the opportunity to modernise the acquired labour skills to acquire a new profession must be legally justified

Keywords: employment agreement, job description, profession, position, national qualification system

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*Corresponding author

Problem Statement

Determination of the content of an employee's job description is one of the main issues in the theory and practice of an employment agreement. The development of labour legislation associated with changes in public relations in connection with economic transformations in Ukraine forces the reconsideration of the developed approaches to the definition of the term "job description". The implementation of professional standards, increasing the requirements for the qualification of employees, aimed at ensuring the competitiveness of production, and improving the quality of public service requires to determine the place of job description at the present stage, its appointment during intermediate transformations. Along with this, the modern practice of applying labour legislation governing the procedure for coordinating the content of the job description also faces certain issues to be eliminated. In this regard, it appears necessary to investigate the provisions that establish requirements for the content of an employment agreement, namely for one of its main conditions – job description. Such investigation is needed to improve the legal regulation of labour relations, reform law enforcement practice, and facilitate further development of the science of labour law.

Analysis of Recent Research and Publications

Ukrainian and foreign researchers investigated the issues of job description research in their studies, for instance: K.L. Tolmashevskiy and A.A. Voityk (they researched certain aspects of job description in the Belarusian and Ukrainian legislation) [1], O. Gevel (considers the job description as a kind of core, around which all other elements of labour relations are united, defined in the content of the employment agreement upon establishing mutual rights and obligations) [2], V.A. Hlozman (identified two sides in the structure of the job description – "objective" and "subjective") [3], V.V. Yeromenko and V.V. Zhernakov (interpreted the employee's job description as a scope of responsibilities for a particular speciality) [4], O.Ye. Kostiuhenko [5], N.P. Matiukhina [6], S.M. Prylypko, O.M. Yaroshenko [7], S.H. Strumylin [8], A.M. Yushko [9], and others.

Purpose of the Article

The purpose of this study is to investigate the legislative regulation of issues concerning the job description, determining the meaning of the job description in the theory of labour law and in practice.

Main Material Presentation

One of the most important conditions for entering into an employment agreement is to determine the employee's job description. Unfortunately, the legislator did not devote enough time to determining the regulatory justification for the job description. In this regard, the question of defining the job description has become relevant for researchers who offer different interpretations of such an important condition for concluding an

employment agreement as the job description. The job description is interpreted as a particular work, considering the speciality, position, specialisation, and qualifications of the employee. In the employment agreement, the parties determine the scope of work that the person is to perform. In other words, the job description is a characteristic of the type of work that the employee is to perform. O. Gevel fairly addresses the fact that the job description is almost critical in the system of labour relations since it is a kind of core uniting and surrounded by all other elements of labour relations (which are determined in the content of the employment agreement upon establishing mutual rights and obligations) [2].

To thoroughly describe the job description, it is necessary to identify the elements that comprise the content of the job description. O.Ye. Kostiuhenko believes that to cover the essence of the employee's job description, it is worth highlighting such components of its content as "type of work", "profession", "speciality", "qualification", "position" [5]. All these concepts are interdependent: the content of the job description affects the definition of the type of work and its complexity; the complexity of the work depends on the qualification and affects the amount of salary; qualification affects the type of work assigned to the employee. It follows that the definition of the content of the employee's job description has to be individualised [10].

Belarusian researchers K.L. Tomashevskiy and A.O. Voityk have a similar opinion on this matter, writing that "the employee's job description is covered through four characteristics: profession, speciality, qualification, position..." [1]. At the same time, some other researchers characterise the job description as the "established scope of rights and obligations of the parties". According to A.M. Yushko [9], the job description should be considered as "a set of tasks and responsibilities of a certain complexity established by the agreement of the parties, limited by the profession (speciality), the directory of qualification characteristics or other discretion of the parties". However, this author supplements this definition with the following indication: "as for such labour duties of employees as to work honestly and conscientiously, to perform the owner's orders in a timely and accurate manner, to take care of their and others' property (Article 139 of the Labour Code of Ukraine), they are not covered by the term "job description", since they are established in law, have a general nature and apply to all employees, regardless of the type of work they perform" [9].

A rather unusual approach to the characterisation of the job description was expressed by the researcher V.A. Hlozman, who, to solve the issue of characterising the content of the job description, proposed to distinguish two sides in its structure – "objective" and "subjective". He believes that the objective side of the job description is "the standards and rules established by the state that govern the professional qualification and other similar parameters of employees, production". Its subjective side is the employee's possession of "appropriate

professional skills, knowledge, experience, and qualification training to work in a particular profession, speciality, or position" [3].

Researchers V.V. Zhernakov and V.V. Yeromenko fairly pointed out that the employee's possession of appropriate professional skills, knowledge, experience, and qualification training is not a "subjective side" of the job description, but acts as "an element of the subjective right of a worker or employee to perform work in a certain speciality, qualification, or position". Having the qualities necessary to perform this work, the employee has the right to demand that this work be provided to them [4].

Furthermore, these authors consider the job description additionally in the "static" and "dynamic" states. Thus, the "job description in statics" is, in their opinion, the concert of the parties to the employment agreement on the nature of the work assigned to the employee, that is, the set of their rights and obligations established by the parties to ensure the performance of work in a certain speciality, qualification, position. From the moment of conclusion of an employment agreement, the job description is formed, it exists, but it will be implemented only during the performance of work, and may not be implemented at all if, for example, the employee does not commence the work. The "dynamic state" of the job description implies the practical implementation of the established rights and obligations of the parties to ensure the performance of work during the implementation of labour relations. Therewith, the employee performs the requirements of job descriptions, and the company provides working conditions [4]. In addition, according to V.V. Zhernakova, V.V. Yeromenko, all of the above is a "broadly defined" feature of the job description. "Narrowly defined", the employee's job description is interpreted as "the scope of responsibilities in a particular speciality" [4].

That is, researchers tend to characterise the content of the job description through several planes: elements (type of work, profession, speciality, qualification, position), subjective and objective meaning, as well as narrow and broad definition.

The authors of this study believe that a more "modern" method of characterising the job description is the elements that comprise its content: type of work, profession, speciality, qualification, and position, since this method is more individual, personalised, and practical.

The first element to characterise the job description is the profession. S.M. Prylypko and O.M. Yaroshenko define a profession as a type of labour activity of a person who has a complex of special knowledge, practical skills obtained through special education, training or experience, which allow working in a certain area of public production, considering various forms of ownership or management [7; 11].

S. Strumylin characterises the profession as "a set of special labour skills acquired through school and extracurricular training, which are usually combined in one person and are combined by a common name" [8];

R. Viesnin considers this category as "a set of special theoretical knowledge and practical skills acquired by a person as a result of special training and work experience in this area" [12]. Professor O.M. Bandurka writes that the profession is "...a concept that describes training and skills in some type of activity" [13], and according to N.P. Matiukhina, "the term "profession" is described by many features. From a socio-economic perspective, for example, the history of the profession, its prestige, and its prevalence can be studied. There are also industrial-technical, medical-hygienic, psychological, and other descriptions of professions" [6].

Of particular importance is the researcher O.V. Lavrinenko's opinion that the profession already includes the concept of work: "the initial category upon describing the term "profession" is actually the term "work", that is, certain tasks and duties that were performed, are being performed, or are to be performed by one person, and the ability to perform tasks and duties of a certain job already constitutes a qualification determined by the name of the profession. A profession is essentially a concept that synthesises the content of the previous two, since it represents the ability to perform such work that requires a certain qualification from a person. All this indicates an organic connection of these concepts, where the latter – "profession" should be considered as generic (general)" [14].

As for such an element as "type of work activity", L. Syrovatska notes that "the speciality describes the type (sort) of labour activity, which requires appropriate special knowledge and skills acquired during special education and practical experience" [15].

The next element is "speciality". According to V. Yershov and Ye. Yershova, speciality is "a set of knowledge and skills in a particular profession, which are acquired through special education and practical experience" [16, p. 94]. M.D. Boiko also concludes that the speciality is "a part of the work activity and within a certain profession, which is most deeply and comprehensively mastered by the employee. The speciality is the main feature that characterises the labour function of an employee, since it contains the specialisation of employees in professions with the specifics of working in a certain type of activity (for example, a physics teacher, general practitioner, car driver, plumber). But to determine particular work that the employee is to perform, it is also necessary to consider the qualifications of the employee" [17].

Another element of the job description is the position. With the help of positions, personalisation of managerial functions and legal obligations, a clear division of labour in the apparatus, and individualisation of employee responsibility are ensured. The system of positions is also of great importance for the professionalisation of the apparatus and improving the competence of its employees (in particular, officers), because it gears citizens to acquire certain knowledge and skills, perform certain work, occupy a certain place in management structures, acquire certain official and

personal rights. A position is, first of all, official duties, for the performance of which official actions must be performed, that is, actions in the interests of the person who founded it, to achieve official goals [14].

The next component of the job description, which plays a key role among other elements, is qualification. O.V. Smirnov believes that qualification should be interpreted as the degree of mastery of theoretical knowledge and practical skills by workers to perform work in a certain specialty: “most importantly, qualification describes the qualitative side of the employee’s ability to work, it allows determining the complexity of the work they are capable of performing” [18]. It is the creation of a national qualification system that is one of the most urgent tasks in Ukraine, as the world is developing every day and professions change and acquire a slightly different meaning. Another important issue is the problem when one type of profession is indicated on paper, but in practice a person performs much more functions.

In Ukraine, the National Qualifications Framework was approved in November 2011¹. As amended by this Resolution, the Framework contains ten qualification levels. The new Law of Ukraine “On Education” of 2017² has stipulated as many as eleven levels of the National Qualifications Framework. There is no clear agreement among the various interest groups as to the sufficient number of levels. The emergence of additional levels that do not coincide with the European Qualifications Framework (EQF) is explained by the existence of a legislative link between the levels of the National Qualifications Framework to the levels of formal education, and through them – to institutions that provide education of a certain level, and their budget funding. Evidently, such a system is not favourable for international recognition of qualifications obtained in Ukraine. The solution of this problem could be facilitated, in particular, by separating the levels of the qualification framework from the categories of educational institutions and further bringing the number of qualification levels of the national and European qualification frameworks into one line [19].

O.A. Levchenko quite appropriately notes that it is necessary to establish a National Agency for Professional Qualifications, whose functions should include both the examination of new qualifications and professional standards, and licensing and accreditation of independent assessment centres that would organise processes for evaluating knowledge and skills in accordance with the requirements of certain qualifications, as well as agencies for the development of standards and educational service providers. Therewith, industry

agencies for determining training needs and developing professional standards should be created based on social partnership. These agencies can be created in cooperation with corresponding public organisations and receive budget funding for the implementation of their activities [20].

The authors of this study share the opinion of O.A. Levchenko that the main goals of establishing the National Qualification System in Ukraine should be as follows:

- development of a National Qualifications Framework (in accordance with the European Qualifications Framework), which will become a tool for defining, comparing, and classifying qualifications in accordance with the education and training system of the European Union countries;
- ensuring that national qualifications of employees meet the needs of employers;
- development of professional standards based on a competence-based approach in accordance with the requirements of employers and their consideration in the development of relevant educational standards, curricula, and programmes;
- recognition and acquisition of professional qualifications by graduates of educational institutions, in particular higher ones, and certification of the results of non-formal training, which will contribute to the development of a system of continuous professional training throughout life;
- development of an effective infrastructure of educational institutions for training personnel, the curricula and programmes of which will be coordinated with professional standards, and graduates, if necessary, will pass independent certification and receive corresponding professional qualifications [20].

The creation of qualification centres is a much more ambitious task, since they should cover not only working professions. Qualification centres should become centres of technology development, methods and tools for evaluating qualifications in a much larger number of professions. The strategic task is to create such regulatory and economic conditions that would allow the centres to become an effective service in evaluation and confirmation of qualifications, convenient for both potential employees and employers [19].

On July 16, 2020, the Draft Law of Ukraine “On the National Qualifications System” was registered³. The authors of this study believe that the draft is quite successful for the following reasons:

- it defines the structure of the National Qualification System (National Agency of Qualifications; qualifications; professional standards; education standards;

¹Resolution of the Cabinet of Ministers of Ukraine No. 1341 “On Approval of the National Qualifications Framework”. (2011, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/1341-2011-%D0%BF#Text>

²Law of Ukraine No. 2145-VIII “On Education”. (2017, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/2145-19/#Text>.

³Draft Law of Ukraine No. 3859 “On the National Qualifications System”. (2020, July). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69496.

standards for evaluating learning outcomes; qualification centres; National and Industry Qualifications Framework; industry and professional councils for the development of professional qualifications; National Register of Professions and Qualifications; legislation that ensures the functioning of the National Qualifications System);

- it establishes industry framework (detailed description of its qualification levels in terms of competences inherent in professional qualifications of a certain industry (sphere) of professional activity) classifications and the procedure for their creation;

- it highlights the composition and activities of the National Qualifications Agency and other advantages.

However, based on the results of public discussion¹, some comments were found on this draft law:

- imperfect interpretation of definitions (certification, descriptor, National Qualifications Framework, type of profession, etc.);

- there is no detailed procedure for assigning qualifications;

- there are too many regulatory elements and separate names of procedures: “attestation”, “certification”, “recognition”, “assignment”, “confirmation”;

- there is no responsibility for the result to the market, entrepreneurs, or customers;

- the principle of “flexibility”, “intersectionality”, “consistency”, which is inappropriate;

- decisions of the National Qualifications Agency may be appealed to the National Qualifications Agency in accordance with the established procedure, etc.

All the comments considered should be

implemented in the Law of Ukraine “On the National Qualifications System”. At present, Ukraine is in need of a transparent and flexible system of development, evaluation, and recognition of professional qualifications. Each individual should feel free in the labour market, freely search for and find a job, change their profession, and improve their qualifications. Individuals who believe that their profession should be modernised should receive additional skills and new qualifications. A clear link between educational and professional qualifications should be ensured so that the education system can timely respond to the needs of the labour market and the real sector of the economy in the issue of training specialists [19].

Conclusions

Thus, the employee's labour function is a concept that covers such elements as profession, position, speciality, type of work activity, and qualification. The definition of the job description is key at the stage of forming an employment agreement to determine all the features of future employment.

Most researchers agree that it is currently necessary to regulate the National Qualification System legislatively. For this purpose, on 16.07.2020, the Draft Law of Ukraine “On National Qualifications” was registered, which contains the creation of new bodies, as well as the specifics of defining the features of new professions. However, the project has some drawbacks that must be addressed. Its adoption is necessary for labour legislation, because the world is changing, automated and new professions appear every day.

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¹Report of the Ministry of Education and Science of Ukraine on Repeated Public Discussion of the Draft Law of Ukraine “On the National Qualifications System”. (2020, April). Retrieved from https://mon.gov.ua/storage/app/media/gromadske-obgovorennya/2020/07/21/ZU_NSK_zvit_pro_grom_obgovorennia.docx

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Зміст трудової функції: характеристика та проблемні питання

Олена Іванівна Кисельова^{1*}, Катерина Романівна Корощенко¹,
Гері Робсон²

¹Сумський державний університет
40007, вул. Римського-Корсакова, 2, м. Суми, Україна

²Університет Сан-Дієго
CA 92110, 5998 Алькала Парк, м. Сан-Дієго, Сполучені Штати Америки

Анотація

У статті розглядаються поняття та основні ознаки ключової умови трудового договору – трудової функції. Конкретизація трудової функції має важливе практичне значення, тому що особа зобов'язана не тільки виконувати роботу, обумовлену трудовим договором, але й має право вимагати від власника (або уповноваженого ним органу) її надання. Визначеність трудової функції дозволяє окреслити конкретне коло прав та обов'язків сторін, встановлення якого підвищує відповідальність за доручену справу, сприяє правильній організації праці. У статті зазначається, що власник або уповноважений ним орган не має права доручати працівникові виконання завдань, які не належить до його трудової функції, не має права змінювати трудову функцію без згоди працівника. Точне визначення трудової функції має значення також при встановленні режиму робочого часу, конкретної тривалості часу відпочинку, відповідних пільг і переваг у зв'язку з видом роботи. Незважаючи на те, що трудова функція має особливе значення в трудовому праві, існують проблемні питання, що виникають на практиці. Автори статті вважають, що законодавче визначення трудової функції та її змісту дозволило б зменшити кількість суперечок, пов'язаних з визначенням трудової функції. Зокрема, наразі при характеристиці кваліфікації професії можуть виникати труднощі, адже законодавство з цього питання потребує оновлення, а також необхідне створення нового органу, який би займався удосконаленням національної системи класифікації відповідно до європейського зразка. Міжнародні норми проголошують, що необхідно осучаснювати класифікатори, адже нові професії, перехід з однієї професії в іншу, а також змога модернізувати набуті трудові навички для здобуття нової професії мають бути нормативно обґрунтовані

Ключові слова: трудовий договір, трудова функція, професія, посада, Національна система кваліфікації
