
ТРУДОВЕ ПРАВО

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ПРАВОВЕ РЕГУЛЮВАННЯ НАДОМНОЇ ПРАЦІ

Досліджуються теоретичні та практичні питання правового регулювання надомної праці. Аналізуються міжнародні стандарти правового регулювання трудових відносин надомних працівників. Вносяться пропозиції щодо удосконалення відповідних положень проекту Трудового кодексу України з урахуванням міжнародних стандартів у цій сфері.

Ключові слова: *надомна праця, надомні працівники, трудове законодавство.*

Чанишева Г. І. Правовое регулирование надомного труда

Исследуются теоретические и практические вопросы правового регулирования надомного труда. Анализируются международные

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стандарты правового регулирования трудовых отношений надомных работников. Вносятся предложения по совершенствованию соответствующих положений проекта Трудового кодекса Украины с учетом международных стандартов в данной сфере.

Ключевые слова: *надомный труд, надомные работники, трудовое законодательство.*

Chanysheva Galiya. Legal regulation of home work

The article deals with theoretical and practical issues of legal regulation of home work. International standards of legal regulation of labor relations of home workers are being analyzed. Proposals are made on improvement of relevant provisions of the draft Labour Code of Ukraine, taking into consideration international standards in this area.

Key words: *home work, home workers, labor legislation.*

The employer is entitled to organize the work of the employees of his enterprise at his own discretion. Where necessary, he may enter into an employment contract with persons, who prefer due to any reason to work at home.

The purpose of this article is the study of theoretical and practical issues of legal regulation of work from home (outwork) and introduction of proposals for improvement of relevant provisions of the draft Labour Code of Ukraine.

The current Code of Laws on Labour does not contain rules concerning home-based work (outwork). Legal regulation of of labour relations of homeworkers is carried out with the acts of labour legislation with regard to peculiarities, established by the Regulations on working conditions of homeworkers, approved by the Resolution of the State Labour Committee of USSR and the Secretariat of the Central Council of Trade Unions of USSR of 29 September 1981 №275 / 17-99¹. The work of home workers is also regulated by collective and employment agreements.

According to the Regulation on working conditions of homeworkers, approved by Resolution of the State Labour Committee of USSR and the Secretariat of the Central Council of Trade Unions of USSR of 29 September 1981, acting in the part, that does not contradict the legislation of Ukraine, outworkers (homeworkers) are persons, who concluded employment agreements with an enterprise on the performance of personal work at home form the materials and using tools and means of work, that are assigned by the enterprise, or those, that were purchased at the expense of the enterprise.

Preferential right to conclude an employment contract on home work is provided to: women with children under the age of 15 years; disabled and retirees (regardless of the type of the granted pension); persons who have reached the retirement age, but are not receiving pension; persons with reduced capacity for work, for whom in due course it is recommended to work in home conditions; persons, who are looking after disabled persons or a family member who has been ill over a long period of time and requires nursing due to the health reasons (state of health); persons, employed in jobs with the seasonal nature of production (off-season period), and pupils with resident instruction; persons, who for objective reasons can not be employed directly in manufacturing in this area (e.g. in areas with free labor resources).

The employment contract on home-based work is usually concluded in writing. In the employment contract with a homeworker should be most fully stated out both basic and additional conditions, governing mutual obligations of the parties. Hiring of homeworkers is executed by issuing an order (directive) of the owner or a body, authorized by him. For homeworkers, who previously have not worked in social production, the work-books are set up after handing over of their first performed task.

In the same way records are made into the work-books of homeworkers who have these books. Payment for work of homeworkers is performed on piece rate system for the actual work performed or for manufactured products, that meet the requirements for their quality.

The existing Regulation on working conditions of homeworkers was adopted in Soviet times in different socio-economic conditions. It continues to operate in the absence of special rules in the national legislation. At that time home-based work was limited to manual labor and had little value for the enterprise. In modern times the prospects of home work have changed considerably, especially in connection with the use of telecommunication and information technologies that allow decentralization of many components of production activity of an enterprise from the most sophisticated and accurate (trade, accounting, programming, conduction of research, collection and processing of information and exchange of it) to the most simple (typing on the computer). In this connection it is necessary to develop and adopt a special legal act of the working conditions of homeworkers.

Indisputably the Regulation does not consider international labor norms adopted later. What is at issue is the ILO Home Work Convention № 177 of 1996² and ILO Recommendation № 184 concerning home work³.

Many of the international conventions and recommendations on labor, containing norms of general application, concerning working conditions, are applicable to homeworkers. However, the ILO Convention №177 provides that specific condition, typical for home work, make it desirable to improve the application of Conventions and Recommendations to homeworkers and supplement them with norms, in which the peculiarities of home work are taken into account.

According to Article 1 of the Convention in relation to this Convention:

a) the term «home work» means the work, that a person, called homeworker performs:

i) in the place of residence or other premises of his choice, other than the industrial premises of the employer;

ii) for remuneration;

iii) with the aim of production of goods or services as specified by the employer, irrespective of who provides the equipment, materials or

other resources used, unless this person has the degree of autonomy and economic independence, that is required in order to be considered an independent worker under national legislation or court decisions.

According to subitem b) of Article 1 of the Convention, persons with the employee status do not become homeworkers within the meaning of the Convention only through the fact of exercising from time to time work as employees at home, rather than at their usual workplaces. The term «employer» means a natural or a legal person who directly or through an intermediary, no matter whether or not intermediaries are stipulated in the national legislation, provide work at home for the benefit of the enterprise.

Convention (Article 4) proclaims the principle of equality of treatment between homeworkers and other wage earners, taking into account peculiarities of home work and, where necessary, the conditions applicable to the same or similar type of work performed in the enterprise.

Equality in treatment should be encouraged, in particular concerning:

- a) the right of homeworkers to organize or join the organizations of their own choice and to participate in the activities of such organizations;
- b) protection against discrimination in employment and occupation fields;
- c) protection in the field of safety and labour hygiene;
- d) remuneration of labour;
- e) protection through the established by the legislation social security systems;
- f) access to professional training;
- g) minimum age for admission to employment or access to employment activity;
- h) maternity protection.

This principle should be also stipulated in Article 56 of the draft Labour Code and its content should be specified taking into account the provisions of Article 4 of the Convention.

ILO Recommendation №184 stipulates the appointment by each member of the Organisation according to national laws and practice of authority or authorities, which are responsible for development and implementation of national policy in the field of home work. Besides, a supervisory body should be appointed on the national level and, where necessary, on regional, sectoral or local levels should be secured the records of employers, providing work to homeworkers, and all intermediaries, who are used by these employers. In order to do so this the body must specify, what information the employers should submit or have for submission to a specific authority.

Article 4 of the Recommendation provides for the collection and update of information, which includes data separately concerning men and women, on the distribution and peculiarities of home work, which should be taken as the basis for the national policy in the field of home work and for the measures taken for its implementation. This information should be published and made available to the general public.

According to Article 5 of the Recommendation 1) A homeworker should be informed of the specific conditions of employment in writing or in any other appropriate form, which is consistent with national legislation and practice. 2) This information must include, in particular: a) the name and address of the employer and the intermediary, if any; b) fares or rates of remuneration of labour and calculation methods; and c) the type of work to be performed.

So, according to ILO Recommendation concerning home work №184 of 1996 an employee must be aware «under the signature» of the full name of the employer; remuneration of labour conditions; type of work to be performed. Performance of works may be carried out involving family members of the homeworker.

In general, the question of control over home work is answered quite circumstantially in ILO acts. ILO Recommendation №184 requires employers to notify the competent authority if they employ homeworkers

for the first time. Employers should keep records of all homeworkers, which they employ, separately for women and men. Employers should also keep registration lists of work tasks entrusted to homeworkers, stating:

- a) the time allocated for the tasks;
- b) tariff rates of pay;
- c) costs incurred in homeworker, if any, and the size of compensation, paid in connection with it;
- d) any deductions from wages, held under national legislation;
- e) the wages due and salaries paid after deductions were carried out, together with the date of payment. A copy of a registration sheet should be provided to the homeworker.

ILO instruments stipulate the security of the right of homeworkers for association and collective bargaining; regulate in detail the questions of remuneration of labour, safety and labour hygiene, duration of working time, rest periods and vacations, social security and maternity protection, protection in the event of termination of labour relations, settlement of disputes.

In particular, the establishment of minimum wages for home work in accordance with national laws and practice is stipulated. Wage rates of homeworkers should preferably be established as part of collective bargaining or, if such are not carried out: a) by the decision of the competent body after consulting with the most representative organizations of employers and workers, as well as organizations dealing with homeworkers and organizations of employers of homeworkers or, if there are no such organizations, with representatives of homeworkers and employers of homeworkers, or b) in frames of other relevant procedures of establishment of wages at the national, sectoral or local levels.

If while setting the wage rates were not used the abovementioned means, they should be established by the agreement between the homeworker and the employer.

Homeworkers should receive compensation for: a) the costs associated with their work, i.e. for energy and water use, connection and maintenance

of machinery and equipment; and b) time spent on maintenance of machinery and equipment, replacement of tools, sorting, unpacking and packing and other operations.

The abovementioned conditions on the performance of home-based work are not regulated by the national legislation. ILO Convention №177 of home work of 1996 is so far not ratified by Ukraine.

According to Article 3 of the Convention, each Member of the Organisation that ratified this Convention acknowledges, holds and periodically reviews the national policy in the field of home work aimed at improvement of the state of homeworkers, in consultation with the most representative organizations of employers and workers and with organizations, dealing with the problems of homeworkers and with organizations of employers, that provide work to homeworkers, where such organisations exist. Domestic legislation is not even in the initial stage of the proper legal regulation of labor of homeworkers, let alone improvement of their situation.

Article 5 of the ILO Convention №177 provides, that national policy on home work should be carried out by means of legislation, collective agreements, arbitration awards or in any other appropriate manner, consistent with national practice.

Thus, one of the tasks facing the national legislator, is the task of development and adoption of a special legal act on the working conditions of homeworkers, considering international labor standards.

For the first time a norm about a labour contract on home work was included into the Draft Labour Code of Ukraine (Article 51 «Conditions on work at home» of Chapter 1. «Labour and employment contract» of the Second Book «The origin and termination of employment relations. The employment contract»).

Part one of the indicated article stipulates the inclusion during the conclusion of the employment contract or later of a condition of performance of work at home (home work) if he has all the conditions neces-

sary for this, that meet the requirements of occupational safety, fire safety and sanitation.

In the following parts of Article 51 of the draft Labour Code are concretized the conditions of performance of home work.

In particular, it was ascertained, that the employment contract of work at home may envisage the use by the employee of his own equipment and tools with appropriate compensation for their wear and tear (depreciation) and reimbursement of other costs related to performance of work at home: payment for electricity, water supply and so on.

The procedure and terms of providing the employees who perform work at home, with raw materials and semi-finished products, payments for manufactured products, replacement of value of materials, export of finished products, are set by the employment contract.

In case, when the receipt of raw materials and delivery of finished goods are performed by the employee directly to the employer, the time spent on obtaining and delivery is included in the working time with the appropriate payment.

No other features of the employment contract of work at home are stipulated by the Draft Code. As for the term and form of such a contract, as other labor contracts, it is concluded in writing for an indefinite and definite period of time (articles 41 and 43 of the Draft).

It is necessary to amend article 51 of the draft Labour Code of Ukraine and bring it in accordance with international labor standards. In Article 51 should be described the definition of home work in accordance with Art. 1 of the Convention and Article 1 of the Recommendation. Analysis of the content of the indicated article leads to the conclusion, that the legislator only declares the possibility of conclusion of an employment contract on performance of work at home, ignoring the peculiarities of such a contract, its content (remuneration of labour, working hours, rest periods and vacations), the question of protection in case of termination of labor relations and other specific conditions, typical for home work.

Proper regulation of employment contracts of work at home will increase the employment rate of persons with reduced capacity for work⁴, women with children and other categories of employees, who are not able to compete in the labor market on equal footing and to ensure their effective legal protection.

In developing the special regulations on home work as the basis should be taken the ILO Convention №177 and №184 ILO Recommendation on home work. In this statute should be noted the need to ensure equality of homeworkers with other employees concerning the right to organize or join the organizations of their choice and to participate in the activities of such organizations; protection against discrimination in employment and occupation; protection in the field of security and labour hygiene; wages; access to professional training; minimum age for admission to work or admission to employment activity; maternity protection; the right to obtain information on conditions of employment.

These acts of ILO require spreading over the homeworkers of the provisions on regulation of working hours and rest periods, minimum wage rates, protection upon termination of employment contract, registration of employers who use home work and intermediaries in this area.

1. *Положение об условиях труда надомников*: Утв. пост. Госкомтруда СССР и Секретариата ВЦСПС от 29 сентября 1981 г. №275/17-99 // Бюллетень Госкомтруда СССР. – 1982. – №1. **2.** *Конвенция МОП № 177 про надомну працю* 1996 р. // Конвенції та рекомендації, ухвалені Міжнародною організацією праці. 1965-1999. – Т. II. – Женева : Міжнародне бюро праці, 1999. – С. 1477-1480. **3.** *Рекомендація МОП № 184 щодо надомної праці* 1996 р. // Конвенції та рекомендації, ухвалені Міжнародною організацією праці. 1965-1999. – Т. II. – Женева : Міжнародне бюро праці, 1999. – С.1481-1486. **4.** Куровська Г. Надомна організація праці – шлях до підвищення рівня зайнятості осіб з інвалідністю / Г. Куровська // Україна: аспекти праці. – 2008. – №5. – С. 20.

Чанишева Г. І. Правове регулювання надомної праці

У статті досліджуються теоретичні та практичні питання правового регулювання надомної праці. У чинному КЗпП відсутні норми про надомну працю. Правове регулювання трудових відносин надомників відбувається актами трудового законодавства України з урахуванням особливостей, встановлених Положенням про умови праці надомників, затвердженим постановою Держкомпраці СРСР і Секретаріату ВЦРПС від 29 вересня 1981 р. №275/17-99. Праця надомників регулюється також колективним і трудовими договорами.

Положення про умови праці надомників було прийняте ще за радянських часів в інших соціально-економічних умовах. Воно продовжує діяти за відсутності спеціальних норм у вітчизняному законодавстві. У той час надомна робота обмежувалася ручною працею і мала невелике значення для підприємства. У сучасний період перспективи надомної праці значно змінилися, особливо у зв'язку з використанням телекомунікаційних та інформаційних технологій, які дозволяють забезпечити децентралізацію багатьох складових виробничої діяльності підприємства, від найбільш складних і точних (торгівля, бухгалтерська справа, програмування, проведення досліджень, збір і обробка інформації, обмін нею) до найбільш простих (набір тексту на комп'ютері). У зв'язку з цим обґрунтовується необхідність розробки і прийняття нового Положення про надомну працю з урахуванням міжнародних трудових стандартів.

У статті аналізуються міжнародні стандарти правового регулювання трудових відносин надомних працівників, закріплені Конвенцію МОП №177 про надомну працю 1996 року і Рекомендацію МОП № 184 щодо надомної праці 1996 року. Конвенцією МОП № 177 проголошується принцип рівності у ставленні між надомниками та іншими найманими працівниками з урахуванням особливостей надомної праці і, в міру потреби, умов, які діють щодо такого самого або аналогічного виду роботи, виконуваної на підприємстві.

Вносяться пропозиції щодо удосконалення відповідних положень проекту Трудового кодексу України з урахуванням міжнародних стандартів у цій сфері. Пропонується у ст. 51 визначити поняття надомної праці відповідно до ст. 1 Конвенції МОП № 177 та ст. 1 Рекомендації МОП № 184. Аналіз змісту ст. 51 проекту Трудового кодексу України дозволяє дійти висновку, що законодавець лише декларує можливість укладення трудового договору про виконання працівником роботи вдома, залишаючи без уваги особливості такого договору, його зміст (оплата праці, тривалість робочого часу, періодів відпочинку та відпустки), питання захисту у разі припинення трудових відносин та інші конкретні умови, характерні для надомної праці.

Конвенцією (ст.4) проголошується принцип рівності у ставленні між надомниками та іншими найманими працівниками з урахуванням особливостей надомної праці і, в міру потреби, умов, які діють щодо такого самого або аналогічного виду роботи, виконуваної на підприємстві. Зазначений принцип пропонується закріпити у ст. 56 проекту Трудового кодексу України і конкретизувати його зміст з урахуванням положень ст. 4 Конвенції МОП №177.

При розробці спеціального Положення про надомну працю слід взяти за основу норми Конвенції МОП №177 і Рекомендації МОП №184. У даному Положенні необхідно зазначити на необхідність забезпечення рівності надомників з іншими найманими працівниками щодо права на створення організацій або вступу в організації за власним вибором та на участь у діяльності таких організацій; захисту від дискримінації в галузі праці та занять; захисту у сфері безпеки і гігієни праці; оплати праці; доступу до професійної підготовки; мінімального віку прийому на роботу або допуску до трудової діяльності; захисту материнства; права на отримання інформації про умови найму.

Ключові слова: надомна праця, надомні працівники, трудове законодавство, проект Трудового кодексу України.