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The employer's duty to provide labor protection in Ukraine

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Abstract

This paper aims to improve the doctrine of labor protection, its legal regulation in view of the employer's obligation to ensure safe and healthy working conditions. The obtained results can be used as a basis for further research by the Institute of labor protection. The conclusions, suggestions, and recommendations can be used in the process of improving the labor legislation of Ukraine. The results might be helpful for increasing the level of labor protection efficiency at enterprises, institutions, organizations as well as at educational institutions (to improve the educational and methodological content of disciplines).

Keywords: Labor, Protection, Conditions, Employer, Enterprise.

El deber del empleador de proporcionar protección laboral en Ucrania

Resumen

Este documento tiene como objetivo mejorar la doctrina de la protección laboral, su regulación legal en vista de la obligación del empleador de garantizar condiciones de trabajo seguras y saludables. Las conclusiones, sugerencias y recomendaciones pueden ser utilizadas en el proceso de mejora de la legislación laboral de Ucrania. Los resultados podrían ser útiles para aumentar el nivel de eficiencia de la protección laboral en empresas, instituciones, organizaciones e instituciones educativas (para mejorar el contenido educativo y metodológico de las disciplinas).

Palabras clave: trabajo, protección, condiciones, empleador, empresa.

1. INTRODUCTION

Given the European integration processes in Ukraine, as well as the new labor market requirements, there is a need to consolidate the existing labor legal framework. The ways to ensure implementation of labor protection standards are of utmost importance. Thus, proper working conditions can be created for employees to fulfill qualitatively their work duties. RAMIREZ, VILLALOBOS and HERRERA (2018) point out that the process of human talent (HTP) in strategic management is a tool both administrative and operational that will guarantee the financial and social value of companies, guided by their corporate principles (RAMOS, 2007; HERNÁNDEZ, CHUMACEIRO and ATENCIO, 2009.). Hence, it is important to find the best way to oblige the employer to comply with labor protection requirements. The

importance of labor protection in the socioeconomic sector of the national economy is manifested in the following (MADDUX ET AL., 2017):

- (1) Ensuring the continued observance of healthy working conditions;
- (2) Avoiding occupational accidents and diseases; outlining the key causes and conditions of their occurrence;
- (3) Ensuring the protection of the working capacity and longevity of employees.

Employee's safety is the core value and the most important component of any business. Therefore, a key responsibility of the employer is to provide occupational safety at the enterprise, institution or organization, which is manifested in the following (Stergicm-Kita et al., 2015):

- (1) Humanization of labor;
- (2) Increase in labor productivity;
- (3) Increase in economic indicators;
- (4) A significant reduction of injuries and diseases at work;
- (5) Reducing employees' hours, etc.

Up to date, many legislative acts have been adopted regarding the employer's obligation to provide occupational safety and health. However, there are still many drawbacks and gaps. In order to identify the weaknesses and strengths of the current regulation in this field, it is

necessary to conduct a thorough theoretical study. As the latter is important both for the doctrine of labor law and for practice in general (ALLI, 2008; OLIVEIRA ET AL, 2018; VILLALOBOS and RAMÍREZ, 2018; RAMÍREZ, ESPINDOLA, RUÍZ and HUGUETH, 2019).

Therefore, the purpose of this work is to identify the main responsibilities of the employer to ensure occupational safety in the industry of Ukraine. The specifics of Ukrainian enterprises' activity are in the availability of jobs at enterprises, institutions, organizations with dangerous and harmful working conditions. Thus, the issue of occupational safety at these enterprises is relevant. It should be noted that for the first time a comprehensive analysis is made of the employer's obligations to provide labor protection at the enterprise, institution or organization (CARTER & BIRRELL, 2000; HERNÁNDEZ, CHUMACEIRO, ZIRITT and ACURERO, 2018; VILLALOBOS, RAMÍREZ and DÍAZ-CID, 2019; REN & JIANG, 2019).

2. MATERIALS AND METHODS

The study is based on the application of the general system-structural method, the main elements of which provided a high effect of building models for solving the problem. The following methods are at the heart of the system of scientific analysis methodology of the employer's obligation to ensure occupational safety (KAUPPINEN ET AL., 2000):

- (1) The dialectical method contributed to the definition of the legal nature of the employer's duty to labor protection;
- (2) Systematic method - it has been used to carry out a systematic, complete, and objective study of the employer's obligation to provide safety (RONCONI & SJ, 2015);
- (3) Logical methods and techniques — deduction, induction, analogy, analysis, synthesis, applied to the scientific analytics and legal features of the employer in terms of labor protection.

With the help of the logical and semantic methods, the conceptual apparatus is deepened in the specified sphere.

The following documents were used in the study:

- (1) Code of Laws of Ukraine on Labor;
- (2) The Law of Ukraine On Occupational Safety;
- (3) The Law of Ukraine On Ensuring the Sanitary and Epidemic Well-Being of the Population;
- (4) Basics of Ukrainian legislation on health care;
- (5) Resolution of the Cabinet of Ministers of Ukraine (On approval of the lists of works, professions and positions, employment in which gives the opportunity to achieve extra-annual leave for work in harmful and difficult working conditions);
- (6) Resolution of the Cabinet of Ministers of Ukraine No. 559-2001 - On conducting periodic medical examinations to employees working at food companies and equivalent groups of employees and keeping health records (VENEDIKTOV ET AL., 2006);

- (7) Resolution No. 1248-1999 - On periodic medical examinations - on drug test;
- (8) Resolutions No. 1465-2001, No. 994-2003 – About the costs of implementing the occupational health and safety measures; on psychiatric medical examination (MULLEN ET AL., 2017);
- (9) Orders of the Ministry of Health of Ukraine (No. 246-2007 - On periodic medical examinations of workers of certain categories (working in harmful and difficult working conditions and persons under 21);
- (10) Decisions of the Ministry of Social Policy (On approving methodological recommendations for performance appraisal of workplaces. On application of the procedure for short-time working week lists. On application of lists 1 and 2 for granting retirement pensions on preferential terms), etc.

3. RESULTS AND DISCUSSION

Improving productivity is impossible without creating safe working conditions in the workplace. The latter stipulates the control of work discipline and responsibility of employees. Another important aspect is constant regulation of industrial safety conditions. Employer's efforts are directed to guarantee safety of work, preservation of life and health of employees.

Paying special attention to the requirements of safety and health, the state in every way intensifies the concern for the protection of workers, taking into account the specific conditions of work in certain areas of production. These are industry, transport, construction,

agriculture, which are quite diverse due to differences in production processes, machinery and equipment, climate impacts. These may include those that adversely affect the health of workers or create a risk of injury. Ministries issue typical provisions on safety and industrial sanitation for enterprises (which are under their control). This has undoubtedly improved the organization of the activities of all units in the field of labor protection.

The head and chief engineer of the enterprise are responsible for the state of occupational safety. The Fundamentals of Labor Law set out the obligatory rules on labor safety for administration.

The main document regulating the rights and duties of the subjects of labor protection is the Law of Ukraine On Occupational Safety (On labor protection..., 1992). This law provides us with an explanation of the very concept of employer, employer's obligation to provide occupational safety at the enterprise, institution, or organization. Thus, article 13 states that the employer is obliged to create in the workplace in each structural subdivision such working conditions that are in accordance with legal regulations. The mentioned article also states that the employer has to ensure compliance with the requirements of the legislation on workers' rights in the field of labor protection (HERNÁNDEZ and CHUMACEIRO, 2018a; HERNÁNDEZ and CHUMACEIRO, 2018b).

To this end, the employer ensures the operation of a safety management system in the enterprise as a whole, namely:

- Establishes appropriate services and appoints officials who provide solutions to specific safety issues; approves instructions and duties, rights and responsibilities for the performance of the functions assigned to them, and controls their compliance.
- Develops with the participation of the parties to the collective agreement and implements complex measures to achieve the established standards and increase the level of labor protection.
- Ensures the implementation of the necessary preventive measures.
- Implements progressive technologies, achievements of science and technology, means of mechanization and automation of production, requirements of ergonomics, positive experience in labor protection field.
- Ensures proper maintenance of buildings and structures, production equipment, monitoring of their technical condition.
- Ensures the elimination of causes leading to accidents, occupational diseases; ensures the implementation of preventive measures identified by the commissions following the investigation of these causes.
- Organizes work safety audits, laboratory examinations of working conditions, assessment of technical condition of production equipment, workplace attestations for compliance with regulatory legal acts.
- Takes measures to eliminate dangerous and harmful to health production factors.
- Develops and approves regulations, instructions, other labor protection acts, which are valid within the enterprise and establish rules for employees on the territory of the enterprise, in

industrial premises, at construction sites, workplaces in accordance with the normative legal acts.

- Informs employees about regulations and acts of the company on labor protection.

- Carries out control over observance by the worker of technological processes, rules of handling of machines, mechanisms, equipment and other means of production, use of means of collective and individual protection.

- Promotes safe working methods and cooperation with workers in the field of labor protection.

- Takes urgent measures to assist the victims; attracts, if necessary, professional emergency services in case of accident at the enterprise.

The regulations should be of imperative nature for the employer to be more obliged to create conditions that minimize the risk of dangerous and harmful situations at work. Overall, in terms of labor protection, Ukraine has gone a long way in implementing European legislation, in the national adoption of new regulations or amending existing ones, as labor protection is an important area of public life. However, there are still areas in need of refinement.

Over the last decade, a new European Union policy has been introduced to liberalize regulatory frameworks to open labor markets in Europe, stimulate new forms of labor migration, supply and demand (HERNÁNDEZ and CHUMACEIRO, 2018a; STERUD ET AL., 2018). Therefore, when introducing a new labor protection policy, Ukraine must not only take into account all the requirements of the

European Union but also make them work to reduce labor migration (CHUMACEIRO, HERNÁNDEZ, YORI and ZIRITT, 2013). It should also be noted that the scattering of the rules governing the employer's duty to provide occupational safety can lead to negative consequences, since the failure of the normative technique of presenting these rules can lead to conflicts or gaps in the legislation.

4. CONCLUSIONS

Highlighting the general obligations of the employer to provide safety at the enterprise, institution, organization, the authors came to the conclusion that such obligations can be classified as follows. Namely, obligations that are aimed at ensuring occupational safety related to the activity of the enterprise and obligations aimed at providing labor protection of the employee him/herself. The safety of the work process of the employee is one of the most important tasks of the employer.

Thus, the general obligations of the employer, which are aimed at ensuring the protection of labor in relation to the enterprise itself, include:

- The creation of appropriate service and the appointment of officials to address labor protection issues.
- Development of measures for achieving the established standards and improving the level of labor protection.

- Ensuring the implementation of the necessary preventive measures.
- Introduction of advanced technologies, achievements of science and technology, means of mechanization and automation of production, requirements of ergonomics, positive experience in occupational safety, etc.
- Ensuring the proper maintenance of buildings, structures, equipment, monitoring their technical condition.
- Strict adherence to labor law and labor protection rules, etc.

Obligations for the protection of the employee's work include:

- Approving instructions on the obligations of officials, rights and responsibility for the performance of the functions assigned to them.
- Eliminating causes leading to accidents, occupational diseases; implementing preventive measures.
- Establishing rules of performing works and behavior on the territory of the enterprise and control over their observance.
- Taking urgent measures to assist the victims.
- Compulsory state social insurance.

These obligations must always be fulfilled. A large number of regulations and by-laws impose obligations that the employer must comply with regarding occupational safety and health. Legislative regulations display the obligations to observe or ensure the proper labor protection in such a way that directly concerns the employer or indirectly the enterprise, institution or organization. However, as the

enterprise (institution or organization) is a property of the employer him/herself, then these obligations directly concern the employer. Therefore, there are direct and indirect obligations in the legislation that are vested in the employer to provide protection both in society as a whole and in his/her enterprise, institution or organization.

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