

EXPERIENCE OF THE CIS COUNTRIES IN REGULATING THE USE OF REMOTE PERSONNEL LABOR

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Abstract: *The research focuses on the concepts of “remote work”, “remote worker”, the introduction of remote work, the features of the procedure for interaction between a remote worker and the employer, the regulation and organization of labor of remote workers devoted to the study of aspects. The study also examines the approaches to regulating the work of teleworkers in the legislation of foreign countries, and in this regard develops important proposals and recommendations for improving the legislation of the Republic of Uzbekistan.*

Key words: *remote work, remote worker, introduction of remote work, regulation, organization of labor.*

Russia. In the Russian scientific literature, the question of the need to regulate remote work has been raised more than once. As advantages of this form of employment for employers, Russian scientists emphasize the ability to save costs, attract workers from other regions and states¹. For employees, the remote form provides advantages such as a flexible work schedule, reduced time to go to work, the ability to independently plan and perform their tasks².

Chapter 49 of the Labor Code of the Russian Federation dated December 30, 2001 No. 197-FZ is devoted to the regulation of remote work. This chapter regulates the following:

- 1) the concept of remote labor;
- 2) the procedure for concluding an employment contract with remote employees, features of changing the terms of work and the exchange of documents;
- 3) features of the organization and labor protection of remote employees;
- 4) features of the working hours and rest time of a remote employee;
- 5) features of termination of an employment contract with a remote employee.

The concept of remote labor is contained in Article 312.1 of the Labor Code of the Russian Federation, the analysis of the text of which makes it possible to single out at least two distinguishing features of remote work. First of all, it is carried out by the employee outside the location of the employer (his branch, representative office, other separate structural unit from the stationary workplace, territory or

¹ Васильева Ю.В., Светлана В., Шуралева Е. А. 2016. Правовое регулирование дистанционной работы: проблемы теории и практики. Пермь: ПГНИУ.

² Надилова А.К. 2013. К вопросу об актуальных проблемах правового статуса субъектов трудового права. Российский ежегодник трудового права 8: 553–563.

object). This rule is due to the fact that Russian legislation distinguishes between remote labor and labor. A remote worker does not have to work from home, his activities can also have a Travel, Travel character. Secondly, in this form of employment, remote work is carried out using information and communication technologies³. Russian legislation, unlike American or European legislation, does not provide for the possibility of partial remote employment. However, in reality, many employees (for example, teachers) are partially involved in remote labor⁴. Apparently, one of the directions for improving Russian legislation could be the introduction of a concept of full and partial remote employment.

The main part of the norms of Chapter 49.1 of the Labor Code of the Russian Federation is devoted to the procedures for Electronic Document Management. The parties to the employment contract can exchange not only paper documents, but also electronic ones. To give them legal power, an electronic digital signature (EDS) is required. In practice, many Russian companies ignore these requirements, and most employees do not have the necessary software and technical capabilities to use their land. In addition, despite the conclusion of an electronic employment contract, the legislation establishes a requirement for the presence of a paper form of the contract. Therefore, in the conditions of the digital economy, it is necessary to significantly modernize the norms of the current labor legislation on the introduction of paperless exchange of documents both in the implementation of labor activities by the employee and in the interaction of the employer with the employee.

Kazakhstan. In the legislation of other countries that are members of the CIS, remote labor is partially regulated⁵. Separate norms of remote labor regulation are contained in the Labor Code of the Republic of Kazakhstan⁶, in accordance with Article 138 of which the employer is obliged to provide a remote employee with means of communication, as well as cover the costs associated with their installation and maintenance. If the employee uses his own means of communication, the employer is obliged to cover the costs incurred. This approach complies with European standards. According to the agreement of the parties, other expenses (electricity, water and other expenses) related to the performance of work by the employer to the remote worker can be reimbursed.

The Kazakh Labor Code adequately covers the issues of controlling the working hours and working hours of a remote employee. According to him, employees can switch to a full or mixed mode of remote work. In this case, a strict accounting of working time for remote employees (tabel) is carried out in compliance

³ Кожевников О.А., Марина В. Чудиновских. 2020. Регулирование труда дистанционных работников в России и за рубежом. Вестник Санкт-Петербургского университета. Право 3: 563–583. <https://doi.org/10.21638/spbu14.2020.303>

⁴ Лютов Н.Л. 2018. Дистанционный труд: опыт Европейского союза и проблемы правового регулирования в России. LexRussica 10 (143): 30–36.

⁵ Чудиновских М.В. 2018. Регулирование дистанционного труда в странах Евразийского экономического союза. Евразийская адвокатура 4: 109–111

⁶ Трудовой кодекс Республики Казахстан от 23.11.2015 № 414-V6. https://online.zakon.kz/document/?doc_id=38910832

with restrictions on the daily duration of working hours, the features of control over which are established in the employment contract or at the employer's command.

The ground must be created for the remote employee to communicate with the employer during working hours, that is, in order for the employer to communicate with the employee during working hours, his service number must be in contact, timely reply to messages arriving online.

When working remotely, when the performance of work cannot be determined by the employer for a certain period of time, the Working Time is controlled by the level of fulfillment of the volume of work established by the employment contract and is indicated in the document on accounting for working time (tabel)⁷.

Also, the labor legislation of Kazakhstan covers the procedure for transferring employees to the remote mode of operation at the initiative of the employer when emergency situations and martial law are introduced, in which the situation is regulated by the document (order) adopted by the employer. The employer's order should reflect:

- 1) the basis for the transition to a full or mixed mode of remote labor;
- 2) list of employees temporarily transferred to the full or mixed mode of remote labor;
- 3) period of work for a period not exceeding the date of elimination of the situation that caused the temporary establishment of a full or mixed mode of remote labor;
- 4) the procedure for the provision of equipment, information objects necessary for the employee to fulfill labor obligations by the employer in accordance with the law of the Republic of Kazakhstan “on Informatization, communication services and other means”. In this case, the employer will bear the costs of equipment, installation and maintenance of the necessary equipment.

Tajikistan. In the Republic of Tajikistan, the concept of remote labor is also regulated by the legislative Labor Code of Chapter 23 (articles 255-257)⁸ dedicated to remote labor. The definition of remote labor is given:

A separate form of implementation of the labor process outside the employer's location using information and communication technologies in the process of work is remote work.

With this state Labor Code, the issue of equipment and expenses for them, which must be provided to the employee by the employer, is regulated. The employer provides the employee with means of communication (means of communication) and assumes the costs of their installation and maintenance. If the employee constantly uses his means of communication, the employer will pay compensation. The amount and procedure for their payment are determined in agreement with the employee.

⁷ Трудовой кодекс Республики Казахстан от 23.11.2015 № 414-V6.
https://online.zakon.kz/document/?doc_id=38910832

⁸ Трудовой кодекс Республики Таджикистан https://andoz.tj/docs/drugie_kodeksi/Code_%E2%84%968_Labor_code_RT_ru.pdf

It is noteworthy that the working time and rest time are equally applied to the employee who works remotely with the employee who works from the stationary workplace. Based on the experience of developed countries, there is no legal choice regarding the regulation of working hours and rest time according to the desire and choice of a remote employee.

Labor legislation in Tajikistan has a number of gaps in the regulation of remote labor, in which the issues of concluding, amending and terminating an employment contract with a remote employee are not covered. Also, the permanent or temporary order of the employee to work remotely, as well as the procedures related to the transition of remote labor to a full or mixed mode, remained open.

Belarus. In the Labor Code of the Republic of Belarus, remote work is allocated as a separate category. Belarusian lawyers consider it one of the forms of home work. At the same time, Belarusian legislation establishes the right to conclude such an agreement on a preferential basis with women with children under 16 years of age, disabled people, pensioners, persons with Labor disabilities, persons caring for disabled people or family members who have been ill for a long time with caring persons and persons who, for objective reasons, cannot directly get a job⁹.

The amended edition of the Labor Code of the Republic of Belarus, which comes into force from January 2020, provides for the provision and implementation of conditions that ensure the legality of remote Labor Relations, the specifics of concluding and terminating an employment contract with remote workers, guarantees for the protection of the rights of such workers (ensuring the safety of working conditions¹⁰.

According to the legislation of Belarus, the conditions for the exchange of electronic documents or electronic form messages (including SMS messages, files and records) between the employer and the remote employee in remote work, which include written assignments, other information for the performance of labor obligations, the results of the work performed; statements and explanations of the employee, notifications, orders and other documents¹¹.

In this state, in the regulation of remote labor, there is a need for a wider expression, illumination of the norms regarding working hours, rest time and labor protection.

Ukraine. On February 4, 2021, the Verkhovna Rada of Ukraine adopted the Ukrainian law “on amendments to certain legislative acts to improve the legal regulation of remote work.” This law is intended to regulate all legal aspects of the

⁹ Чудиновских М.В. 2018. Регулирование дистанционного труда в странах Евразийского экономического союза. Евразийская адвокатура 4: 109–111.

¹⁰ Языков Н.В. (2020). Особенности режима и учета рабочего времени в отношении дистанционных работников (Doctoral dissertation, Белорусский государственный экономический университет)

¹¹ Трудовой кодекс Республики Беларусь https://kodeksy-by.com/trudovoj_kodeks_rb.htm

use of remote work in Ukraine¹². According to the law, now, when concluding an employment contract for remote work, the employer transfers all the necessary briefings in a remote format.

The Code of labor laws of Ukraine is supplemented by articles 601 and 602, which regulate in detail the issues of Labor and remote labor. In the previous edition of the labor code, remote work and home employment were defined as the same concept.

Article 602 of the code of labor laws notes that in the case of the introduction of remote work, the employee independently determines the place of work and is himself responsible for ensuring safe and harmless working conditions there. Unlike the labor legislation of other countries, in Ukraine, a remote employee is the person responsible for labor protection himself.

In the Ukrainian state, employees can switch to remote work for the following reasons:

When there is a risk of spreading an epidemic, a pandemic, when there is a need for self-isolation of an employee in cases established by law, and (or) the threat of armed aggression, when emergency situations occur. Implemented, natural or of a different nature, can be introduced with the order (instruction) of the owner of remote work or the body authorized by him “without the condition of concluding an employment contract for remote work in writing.” The employee gets acquainted with such an order (instruction) within two days from the date of its receipt, but before the introduction of remote work.

Pregnant women, workers who have a child under the age of three or are caring for a child by medical certificate until the child is six years old, workers with two or more children under the age of 15 or children with disabilities, as well as persons under the guardianship of a person with disabilities from Group I childhood can work remotely.

An employee may require a transition to temporary, remote work for a period of up to two months if actions are committed that contain signs of discrimination against him at an Enterprise, Institution, Organization, workplace. The owner of the Enterprise, Institution, Organization or the body authorized by him may refuse such a transfer to the employee if it is not possible to carry out remote work, taking into account the Labor function of the employee.

Moldova. The Parliament of the Republic of Moldova adopted amendments to the Labor Code of the Republic of Moldova on May 21, 2020 by Law No. 69, and these changes came into force from the date of May 26¹³. Chapter 73 of the labor code "Labor" was supplemented by Part 2, in which, if the employee does not have the opportunity to work at the workplace organized by the employer, the employer can temporarily transfer employees to work from home or remotely with an order

¹² Новости трудового законодательства: удаленная работа <https://www.legalalliance.com.ua/rus/novosti/novosti-trudovogo-zakonodatelstva-udalennaa-rabota/>

¹³ Работа с соблюдением дистанции <https://noi.md/ru/analitika/rabota-s-soblyudeniem-distancii>

(instruction, decision) substantiated taking into account the specifics of the work “in order to ensure health and safety” in.

At the same time, it is allowed not to make appropriate changes to the individual employment contract. The order is delivered to the employee on time, including through electronic means.

According to Moldovan labor legislation, remote workers conclude an additional agreement to an existing document containing an individual employment contract or regulations on remote work. The remote worker uses all the rights and guarantees provided for in the law, collective agreement, employment contract or other regulatory documents. If there are any innovations or specific features in the remote work, they will be reflected in the document drawn up by both parties¹⁴.

Signing or amending an individual employment contract for remote work is carried out on the basis of the conditions provided for by the Labor Code, including the exchange of electronic documents using an electronic signature. In addition to the generally accepted conditions in an individual employment contract for remote work, the following points should also be indicated:

- 1) conditions for remote work;
- 2) the mode of work and the method of monitoring, in which the employer has the right to check the activities of the employee;
- 3) procedure for accounting for hours worked,
- 4) conditions for reimbursement of expenses related to remote work and other provisions agreed by the parties.

As for the organization of the health and safety of a remote worker, the employer carries out the labor protection of the employee in accordance with the Moldovan Labor Code, Law No. 186/2008 on Occupational Safety and other regulatory documents in the field of Health and labor protection¹⁵.

And in some other CIS member states, it should be recognized that work aimed at Legal Regulation of remote work has become much more alive after the coronavirus pandemic. In particular, on May 4, 2020 in the Kyrgyz Republic, the Ministry of Labor and social development included in parliament a draft law “on amendments to the Labor Code of the Kyrgyz Republic”, which provides for the legal regulation of remote personnel labor¹⁶. Also, the draft resolution of the Government of the Kyrgyz Republic on the draft law of the Kyrgyz Republic “on amendments to the Labor Code of the Kyrgyz Republic” was included in the public discussion¹⁷. However, despite the importance and necessity of this law, the bill remains “in standby mode”.

¹⁴ Трудовой кодекс Республики Молдова http://continentonline.com/Document/?doc_id=30398053#pos=2228;-42

¹⁵ Работа с соблюдением дистанции <https://noi.md/ru/analitika/rabota-s-soblyudeniem-distancii>

¹⁶ Минсоцтруда выносит на общественное обсуждение законопроект, регулирующий деятельность дистанционных работников http://www.ibr.kg/ru/news/legislation/5044_pravovoi_obzor_za_410_2020

¹⁷ Дистанционная работа в Кыргызстане (включая дистанционную работу иностранных работников) <https://gratanet.com/ru/publications/distantsionnaya-rabota-v-kyrgyzstane>

The draft law was developed in order to regulate the remote work of an employee outside the workplace. First of all, the project provided a definition of the place of work.

According to the project, the remote mode of work is determined by the employment contract and the order of the employer. To establish a remote mode of operation, the consent or application of the employee is not required in the following cases:

- 1) introduction of a state of emergency;
- 2) martial law,
- 3) occurrence of force majeure circumstances.

The Ministry of Labor and social affairs of the Republic of Armenia also developed in March 2020 a draft law on additions to the Labor Code, which provides for the introduction of a remote method of work to regulate the interaction of the employer and employees in an emergency¹⁸. In Azerbaijan, too, many articles began to be published on social networks that the inclusion of the basic rules about remote work and remote work in the labor code became relevant during the coronavirus pandemic¹⁹.

Based on the above, it can be concluded that the results of the analysis indicate that the legislation of the CIS countries, including the Russian Federation, is significantly lagging behind the legislation of foreign countries (USA, EU). Taking into account the fact that in some foreign countries more successful experience has been gained in the organization of remote jobs, the legislation on remote labor in the CIS countries should be carefully considered, the reason is that at present the issues of remote work are not fully regulated in the science and practice of these countries. At the same time, blind copying from foreign norms is also unacceptable. Remote employment regulation is more effective if it is carried out taking into account foreign experience and the peculiarities of the national mentality, established legal traditions and institutions.

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¹⁹<https://bsc.az/news/koronavirus-i-distancionnye-rabotniki-novaa-kategoria-otnosenij-v-trudovom-prave-2>

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