Telework of a Company Employee: Issues of Organizing and Monitoring the Performance of Labor Duties

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Abstract

Coronavirus pandemic and restrictive measures adopted by the authorities of many states have necessitated the massive transfer of employees of various organizations to remote forms of performing work duties. Such a transfer required a change in approaches to the organization of work and control over the performance of labor duties, which raised many questions and problematic points, both for employees and employers. The purpose of this study is to identify issues of an organizational and legal nature in the relationship between an employee and employer in connection with the forced massive transition to telework and the formation of proposals for resolving problematic aspects.

Keywords

Distance Employment, Organization of Telework, Labor Relations, Labor Contract, Protection of Labor Rights.
Introduction

Today, objective circumstances have led to a large-scale spread of the mode of work outside stationary workplaces and the development of interaction between the parties to labor relations using information and communications technologies (Potekhina et al.: 2020; Shcheglov et al.: 2020; Gladilina et al.: 2020). There are contradictions between real processes in the world during the pandemic and Russian labor law, in particular, forms of employment and working hours established by it. Currently, telework remains difficult to use, although it is used by a fairly large number of employees and employers (Baybarin et al.: 2020; Vinichenko et al.: 2020).

Interest in telework and its regulation is extremely high today, not only due to the transition to the digital economy, but also the COVID-19 pandemic that came in 2020 with the introduction of the necessary measures for the physical distancing of people, observance of which required withdrawal of workers from common premises, offices, etc., to avoid contact between sick and healthy people (Bondaletova et al.: 2020; Reshetnikova: 2020). Since the announcement of the pandemic, the number of organizations using a telework format in their activities has begun to noticeably grow. On March 20, 2020 (before the start of the self-isolation regime in Moscow and several regions of Russia), it was recorded that only 3% of Russian companies completely switched to telework. By mid-April, as the epidemiological situation worsened and restrictions were imposed, the share of such organizations had already been 14% (Gordeev: 2020). Such rapid growth in distance employment has seriously contributed to the fact that in 2020, a lot of research papers appeared, among which the works of O.A. Kozhevnikova (2020), S.A. Saurin (2019), G.G. Rudenko (2020), and others. However, at the moment, the regulation of telework in Russia has not reached an appropriate level. Therefore, new works, especially studies of world experience, which also determine the prospects for further development of Russian legislation, will be very relevant. Such works include this study, the hypothesis of which lies in the assumption that the current legal regulation is insufficient to properly protect the rights of teleworkers, as a party to an employment contract that needs more protection.

Methods

In the study, the dialectical method of cognition of reality was used as a methodological basis, in combination with the system-structural, statistical, and formal-legal methods. The comparative legal method made it possible to study the legislative framework of distance employment and practical approaches to the organization of telework in various
countries. The regulatory framework of the study is represented by international labor acts and norms governing distance employment. The theoretical basis was the works of scientists on the topic of distance employment. Statistical and other information used in the studies presented was taken from the official websites of the Russian Federation, various states, international organizations, and commercial companies.

Results

Structural changes taking place in recent years on the labor market in the Russian Federation are currently characterized by the emergence and active spread of new forms of employment that are largely atypical for the existing legal order. Their appearance is associated primarily with economic transformations in social labor, the development of an innovative economy, as well as urgent demands of business in terms of reducing wage costs. One of the forms of atypical employment which has recently been legalized in the Russian Federation is telework.

In the digital economy, the share of distance forms of employment is steadily increasing. Digital skills may become the catalyst that will accelerate economic growth in the not too distant future. However, the technological lag of developing countries from developed countries may over time create the so-called “trap of the digital divide” (Chetty et al.: 2018), which is characterized, among other things, by the lag in the legal regulation of new forms of labor relations. Therefore, the study of these relations, including a comparative legal analysis of the legislation regulating the work of teleworkers in Russia and the world, is relevant today.

In the Labor Code of the Russian Federation of 30.12.2001 No. 197-FZ (Trudovoikodeks Rossiiskoi Federatsii: 2001), Chapter 49.1, introduced by Federal Law No. 60-FZ of 05.04.2013 is devoted to the regulation of telework. This chapter contains five articles and regulates the following: the concept of telework; specifics of concluding and changing the terms of a telework agreement and procedure for exchanging documents; features of the organization and labor protection of teleworkers; features of working time and rest time of a teleworker; features of termination of an employment contract for telework.

A significant part of the norms of Chapter 49.1 of the Labor Code of the Russian Federation is devoted to the organizational aspects of telework, for example, electronic document management procedures. The parties to an employment contract can exchange not only paper but also electronic documents. To give them legal effect, an enhanced qualified digital signature (DS) is required. In practice, many Russian companies ignore
these requirements, and most employees do not have the necessary software and technical capabilities to use DS. Besides, despite the conclusion of an electronic labor contract, the legislation establishes the requirement for a paper form of the contract. In the digital economy, it is necessary to significantly modernize the norms of the current labor legislation on the introduction of paperless personnel workflow both in the implementation of labor activities by an employee and in the interaction of an employer with an employee and vice versa.

In general, the content of Chapter 49.1 of the Labor Code of the Russian Federation testifies to an insufficiently clear legislative regulation of telework. Many important aspects are left to the discretion of the parties to the employment contract, where an employee is a weaker party, and their ability to defend their interests at the stage of concluding the contract is usually small. Most of the questions among researchers (Rychagova: 2019; Chernykh: 2019) are caused by Article 312.5 of the current Labor Code of the Russian Federation, which allows contractually establishing additional grounds for dismissal. In practice, labor contracts for telework establish such additional grounds for dismissal of an employee as a violation of the deadlines for the delivery of work plans and reporting documentation, provision of inaccurate information about the work done, failure to communicate within a period specified by the contract, non-confirmation of receipt of an electronic document, etc. (Rychagova: 2019). A very arbitrary idea of the grounds for dismissal allows an employer to discriminate against a teleworker, which is not permissible under labor law.

From January 1, 2021, the Federal Law of 08.12.2020 N 407-FZ “On Amendments to the Labor Code of the Russian Federation Regarding the Regulation of Telework and the Temporary Transfer of an Employee to Telework at the Initiative of an Employer in Exceptional Cases” (Federalnyizakon Rossiyskoy Federatsii: 2020) (hereinafter – the Law) was signed by the President of the Russian Federation.

The Law amends Chapter 49.1 of the Labor Code of the Russian Federation. In particular, it is supplemented by four articles, (312.6-312.9 of the Labor Code of the Russian Federation), which provides, inter alia, that an employment contract or an additional agreement to an employment contract may provide for an employee to perform a job function remotely on an ongoing basis (during the term of the labor contract) either temporarily (continuously during the period specified by the employment contract or an additional agreement to the employment contract not exceeding six months or periodically, provided that the periods of the employee’s work function remotely and periods of their work function at a stationary workplace alternate). It is stipulated that the
performance of a labor function by an employee remotely cannot be a reason for reducing their wages (Article 312.5 of the Law). The Law establishes additional grounds for terminating an employment contract with a teleworker and the procedure for the temporary transfer of an employee to telework at the initiative of the employer in exceptional cases. An important point seems to be the restriction of the employer’s right to provide additional grounds for dismissal of an employee in the employment contract. Now, in addition to the general grounds, the employer can also and only dismiss if during the period of performance of the labor function the employee does not interact with the employer on issues related to the performance of the labor function without a valid reason for more than two working days in a row from the date of receipt of the relevant request from the employer (if a longer period of noninteraction is not provided for by the employment contract), as well as in the event of a change by the employee of the location of the performance of the labor function, if this entails the impossibility of fulfilling the employee’s obligations under an employment contract under previous conditions.

Besides, the Law establishes some obligations of an employer to ensure the safety of teleworkers and resolves the issue of providing teleworkers with the equipment necessary for work and compensation for communication costs.

Thus, several gaps in the legal regulation of telework in 2021 will be closed. However, one cannot talk about the detailed regulation of distance employment in the Russian Federation with such a small number and volume of adopted norms.

**Discussion**

Detailed regulation of teleworker’s labor in the United States began to develop much earlier than in the Russian Federation, back in the 1990s, against the backdrop of the rapid development of information technology. Around the same time, the first scientific studies were carried out, where Jack Nilles (1994) identified a new form of work – telework. Currently, US legislation is aimed at stimulating the introduction of flexible forms of employment. The 2014 presidential memorandum states: “It is the policy of the Federal Government to promote a culture in which managers and employees understand the workplace flexibilities and work-life programs available to them and how these measures can improve agency productivity and employee engagement” (The White House. Office of the Press Secretary: 2014). US workers have the right to direct their employer to request flexible employment and an employer is obliged to study such a request and give an answer within 20 days. If a refusal is received, an employee has the right to appeal against it.
The active development of legislation is currently reflected in the Teleworking Improvement Act (111th Congress of the United States of America: 2010), addressed to the US executive authorities. The main reason for its implementation was the awareness of the benefits that distance employment provides to both employees and employers. US law establishes equal rights, guarantees, and obligations for telecommuters and traditional workers. Under the Telework Enhancement Act, each government agency in the US must develop its local act on teleworking; include in the staffing list of employees responsible for the implementation of telework management processes; determine the list of functions and positions and then employees who can be transferred to telework; develop a schedule for telework. The transfer of an employee to telework in the US requires mandatory training. An employer is obliged to develop a course for employees in which basic teleworking skills will be acquired. Successful completion of the training course is a prerequisite for the transfer of an employee to such a job. By decision of the manager, an employee may be released from the obligation to undergo training or take an exam if they have the necessary skills. US law pays considerable attention to information security and communications issues when organizing teleworking. Thus, each employer determines the procedure for teleworker’s access to information systems and the use of personal data and assesses cybersecurity threats and ways to reduce them. Those employers who use teleworking are required to create a special website for teleworkers, which contains all the necessary instructions and announcements.

In the European Union, the Framework Agreement on Telework was signed in 2002 (ETUC, UNICE-UEAPME, CEEP: 2002). Telework means “is a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer’s premises, is carried out away from those premises on a regular basis”. The framework agreement, which defines the basic approaches to the regulation of telework, is supplemented and expanded at the level of individual states. The EU Framework Agreement sets out several important issues and features that make it possible to effectively protect the rights of workers. Typically, an employer is responsible for providing, installing, and maintaining the equipment required for telecommuting when an employee is not using their equipment. If the work is done regularly, an employer usually compensates or covers the costs directly caused by the work, in particular those related to communication. An employer provides an employee with appropriate technical support. They are responsible, according to national laws and collective agreements, for the cost of loss and damage to equipment and data used by an employee. Further, each EU country has the right to independently determine how to assess and compensate the employee’s
expenses. An employee can use the Internet, computer equipment, and software for both professional and personal needs. Consequently, the parties must determine how to account for and allocate such costs. A separate group includes issues related to ensuring the safety and health of teleworkers. In the EU, the employer is responsible for health and safety in the workplace according to Directive 89/391 (The Council of the European Communities: 1989), subsidiary directives, national laws, and collective agreements. An employer informs the telecommuter about the company’s health and safety policy, including the safe use of computers and other equipment. Teleworker is required to comply with these safety rules. To ensure that the applicable safety and health regulations are applied correctly, the employer, representatives of the union, and government authorities have access to the teleworking site (Kossek et al.: 2006). If an employee works from home, such access is based on prior notice.

In international practice, in addition to strict legislative norms, there are also recommendatory norms. A joint telework guide was prepared in the UK in August 2003 to provide employers, employees, and others with information, advice, and guidance on teleworking issues (DTI: 2003). The stated purpose of this document is “to provide a useful checklist of issues to consider when doing teleworking and explain how the text of the European agreement can best work in the context of the UK labor market” (Dex, McCulloch: 2016). This guide has received a positive assessment from both employees and employers. Its main task is to answer the most typical questions about distance employment (Mello: 2007). Ireland adopted the Teleworking Guidelines for Good Practice in 2004. The Guidelines take into account the EU framework agreement, expand, and clarify it. They highlight the key elements to consider when implementing telecommuting. The Guidelines encourage employers to draw up a written document specifying how telecommuting mechanisms will operate within the company. Similar acts have been adopted in Lithuania, Norway, and many other European countries.

Brief results of a comparative legal study of the legislation on distance work in Russia, the US, and the EU are shown in Table 1.

<table>
<thead>
<tr>
<th>Country</th>
<th>Main legislative acts</th>
<th>General characteristics of the approach</th>
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<tbody>
<tr>
<td>US</td>
<td>Telework Enhancement Act, 2010</td>
<td>The procedure for the transition to telework has been determined in detail, the obligation of the employer to conduct training for the employee is fixed, and measures are indicated to expand the use of distance employment in public authorities</td>
</tr>
<tr>
<td>EU</td>
<td>ETUC, UNICE-UEAPME, and CEEP, Framework Agreement on Telework, Brussels, 16 July 2002</td>
<td>As a general rule, the employer undertakes to provide the employee with equipment and reimburse the cost of communication services. The procedure for ensuring employee safety is regulated in detail</td>
</tr>
<tr>
<td>Russia</td>
<td>Labor Code of the Russian Federation (five articles)</td>
<td>The main focus is on the procedure for concluding and terminating an agreement. Establishment of the employer’s obligation to provide the employee with equipment, payment of labor-related expenses, safety, etc. left to the discretion of the parties to the contract</td>
</tr>
</tbody>
</table>
In addition to the differences presented above, Russian legislation, unlike American or European, does not provide for the possibility of partial distance employment. However, many workers (for example, teachers) are partially involved in the field of telework. One of the directions for improving Russian legislation can be the introduction of the concept of full and partial distance employment.

**Conclusion**

The study shows that so far a teleworker does not have the same legal guarantees in the termination of an employment contract at the initiative of an employer that ordinary workers have. With the massive transition to remote forms of work, it seems inappropriate to give an employer the right to establish additional conditions for terminating the employment contract on their initiative, which gives them the possibility of further abuse of this right in relations with employees. The massive nature of possible abuse can have far-reaching negative social consequences. Thus, having previously adopted the norms on distance employment, the legislator somewhat deviated from the principle of the legal protection of the employee’s rights as the weaker side of the employment contract. However, the later attempts of the legislator to improve the situation, demonstrated in the amendments to the Labor Code of the Russian Federation, which come into force on 01.01.2021, give hope that shortly the main problems of balancing the rights of the employer and employee in telework will be removed. Thus, the hypothesis of the study seems to be proven.

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