

ABSTRACT

Topic: Towards the development of remote work in Kazakhstan: guidelines for legal regulation and mechanisms for their effective implementation

The goal of the dissertation is to study the peculiarities of the legal regulation of remote work based on the analysis of theoretical research and regulatory experience of foreign countries, as well as to develop practice-oriented recommendations for the regulatory and local regulation of remote work in order to further develop it in Kazakhstan.

Tasks of the dissertation research:

1. The study of prerequisites for emergence of remote work through the study of dynamics of flexibility in labor relations;
2. Analysis of the distinguishing characteristics of remote work and determination of its legal nature in the system of types of non-standard employment;
3. Review of modern models of legal understanding of remote work through the analysis of regulatory experience of foreign countries;
4. The study of issues of labor relations emergence in the field of remote work with a discussion on the principle of voluntariness;
5. Research on issues of ensuring information security and the right to confidentiality when performing remote work;
6. The study of the discourse on maintaining a balance between the career and personal life of a remote employee by considering the possibilities of exercising the right to disconnect;
7. The study of key conditions for organization of the remote worker's labor process and the analysis of the effectiveness of application of certain grounds for termination of an employment contract for remote work;
8. The study of the role of social dialogue in the development of remote work with the development of recommendations on the issues of collective contractual regulation of remote work.

Methodology

Selection of research methods is determined by the goal and tasks of the dissertation. The legal and sociological aspect of relations under consideration requires the use of methodological approaches developed both in jurisprudence itself and borrowed from sociology. At the same time, both general scientific and special methods of cognition were used in the framework of the study. In order to conduct the research, we held a systematic review of scientific literature, a sociological survey, the results of which were used in a dissertation study and tested in a scientific article for a peer-reviewed scientific journal, and the clustering method of foreign jurisdictions.

The object of the dissertation research is social and labor relations in the field of remote work. At the same time, relationships that develop within the framework of an employment contract are investigated. The work does not consider relations of the organization of work in the framework of civil law transactions. The research concerns mostly legal aspects, however, given the social nature of labor

relations, consideration of social aspects, the application of sociological methods is carried out within the limits associated with the achievement of the tasks set.

Scientific novelty and provisions submitted for defence.

The scientific novelty of the dissertation work is determined by the fact that it represents the first comprehensive study of the legal issues of regulation of social and labor relations in the field of remote work in the Republic of Kazakhstan at the present stage.

The analysis of legislation and the practice of its application in this area made it possible to identify the main problems of improving legislation and propose ways to solve them, as well as formulate a number of scientific positions.

The most significant theoretical conclusions and practical proposals reflecting the scientific novelty of the dissertation research are contained in the following provisions submitted for defence:

1. When determining the understanding of remote work, it is important to distinguish this format of organizing labor relations from other forms of organizing work outside the employer's location. According to sub-item 55-2) of Article 1 of the Labor Code of the Republic of Kazakhstan, the key distinguishing feature of remote work is "the use of ICT in the process of doing work." Fixing this modality in this form does not give a clear distinction and leads to a broad interpretation and confusion of similar categories. In this regard, we have justified that the main feature of remote work should be recognized as the presence of a network necessary both for the performance of work and for communication with the employer. Based on the above, we propose the following wording of sub-item 55-2) of Article 1 of the Labor Code of the Republic of Kazakhstan: "*remote work is implementation of the labor process outside the location of the employer, the host party and their facilities using information and communication technologies in the course of work to connect to a network that ensures the performance of the labor function, the relationship with the employer (accessibility) and control for the work performance.*"

2. When investigating the issue of labor relations emergence in the field of remote work, the importance of the sign of voluntariness in establishing this format is justified. As performing remote work requires a certain preparedness of the organization in terms of resources, legal, personnel, the forced transfer of employees to remote work mode on the basis of the introduction of a state of emergency, quarantine and other similar cases will be rather formal, with subsequent violations of workers' rights. *In this regard, it is proposed that voluntariness be considered as a mandatory sign of the emergence of remote work.* It is proposed to resolve issues related to the occurrence of situations forcing the employer to remove an employee by introducing the category of "remote work" into the Labor Code of the Republic of Kazakhstan through fixing the grounds for the use of forced remote work. This step will make it possible not to regulate labor relations with remote workers for forced reasons by the norms of remote work.

3. Given the social aspect of remote work, the importance of maintaining a work-life balance in maintaining the health of a remote worker is justified. At the same time, the principles of the labor legislation of the Republic of Kazakhstan do

not provide for the principle of maintaining a work-life balance. Based on the study of the regulatory experience of foreign countries and strategies to ensure this balance, it is recommended that the Labor Code of the Republic of Kazakhstan enshrine the right of a remote employee to disconnect through the introduction of the following additions to *sub-item 5 of Article 138*: “*An employee beyond working hours has the right to withdraw from work and refrain from using work-related electronic communications. The employer is obliged to respect the right to disconnect the employee.*”

4. Based on the conducted research, the need to develop certain minimum requirements for data protection and ensuring the right to privacy in Kazakhstan at the level of basic instructions is justified: the use of proven platforms, secure devices, digital solutions and computer programs, the use of secure or encrypted communication channels and mandatory instruction.

Considering the technological control capabilities that employers have today, *it is proposed that when concluding an employment agreement or at the level of collective regulation, it is necessary to provide rules for implementation of the employer’s right to control remote workers.* At the same time, in order to ensure an appropriate balance between the right of employees to privacy and the business interests of employers, the recommendation to exercise control in a proportional manner is justified, through the establishment of the employer’s obligation to coordinate with the employee (or his/her representative) the confidentiality policy applied to remote work.

5. Due to the atypical nature of labor relations with a remote worker, the need to consolidate special additional grounds for termination of an employment contract at the initiative of the employer is justified, in particular, it is proposed to amend item 9 of Article 138 of the Labor Code of the Republic of Kazakhstan as follows:

“An employment contract with a remote worker on the initiative of the employer may be terminated on the basis of Article 52 of the Labor Code of the Republic of Kazakhstan, as well as in the following cases:

1) *impossibility of further continuation of the employment contract with a remote employee due to the lack of volume of remote work because of a change in the development strategy of the organization. The procedure for termination of an employment contract at the initiative of the employer on the specified basis is regulated by the norms of item 2 of Article 53 of the Labor Code of the Republic of Kazakhstan;*

2) *unauthorized change by an employee of the place of work, which resulted in the inability of a remote employee to perform duties under an employment contract on the same terms (the presence of regional wage-increasing coefficients; lack of communication in the area necessary for the employee’s interaction with the employer, etc.). Termination of an employment contract on this basis must be confirmed by an act of the internal commission indicating in it the justifications confirming the change in conditions. The procedure for the commission work is established by the act of the employer;*

3) *violation of information security rules by a remote employee, which led to the leakage of confidential information. The procedure for termination of an employment contract at the initiative of the employer on the specified basis is regulated by the norms of item 6 of Article 53 of the Labor Code of the Republic of Kazakhstan*".

6. Recognizing social dialogue and mechanisms of collective legal regulation as the most effective tools for implementation of remote labor relations, practice-oriented recommendations have been developed, proposed as basic for inclusion in collective agreements of organizations regarding the regulation of remote work.

The full text of recommendations is given in *Annex B* of the dissertation. The proposed draft includes recommendations in the following areas:

1. *Grounds for emergence of an employment relationship with a remote employee.*

2. *The organization's policy in the field of remote work and its transparency.*

3. *The content of employment contracts with a remote employee (equipment and tools, costs, workplace, contract term, working hours, accounting method; security, confidentiality, data protection and cybersecurity, reversibility issues)*

4. *Meeting the principle of equal treatment of a remote worker*

5. *Selection criteria for remote work (categories of remote workers, requirements, the right of preferential involvement in remote work)*

6. *Health and safety, the right to disconnect a remote worker*

7. *Technical support for a remote worker*

8. *The right to confidentiality of a remote employee*

9. *Training and career in the field of remote work organization*

10. *Collective rights of remote workers.*

Scientific contribution and practical significance

The scientific significance of the dissertation research is associated with the desire to further develop distance work in Kazakhstan and expand scientific information in the field of legal regulation of this form of labor relations. This research corresponds to the priority directions of the development of science in the Republic of Kazakhstan, in particular the priority "Intellectual potential of the country".

The study contributes to a better understanding of aspects related to the legal regulation of remote work in Kazakhstan to ensure equality of remote workers. Insufficient scientific justification of the remote form of labor relations is one of the reasons for the lack of proper legal regulation, the dissertation work is a contribution to the development of this problem.

Recommendations proposed in the dissertation are aimed at creating methodological assistance to employers in implementation of remote work in the organization and minimizing the risks associated with insufficient elaboration of local norms in this direction.

The conducted research can also be used for educational activities, in

particular, the results of the research can form a theoretical basis for research of students of higher educational institutions, can be used to develop an educational and methodological complex of the discipline “Labor Law of the Republic of Kazakhstan”.

Results of the dissertation research, conclusions and suggestions can be taken into account in the law-making activities of state bodies to improve labor legislation in the field of remote work.

Results of the dissertation research were tested in the form of publications in two scientific articles, in journals indexed in Scopus; three articles in journals recommended by the Committee, as well as in a speech at an international conference. All publications have been prepared and published in collaboration with a scientific consultant as part of the content of the dissertation. The doctoral student was a key figure in all publications and made a significant contribution to the preparation of each scientific article, in particular to the work on conceptualization, source studies, methodology, basic research and article design, editing.