

## **PEDTR 2019**

### **18<sup>th</sup> International Scientific Conference “Problems of Enterprise Development: Theory and Practice”**

## **PROBLEMS OF CHANGING LABOUR LEGISLATION IN THE CONTEXT OF IMPROVING LABOUR EFFICIENCY**

M. K. Kot (a)\*

\*Corresponding author

(a) Samara State university of Economics, 443090, Soviet Army Str., 141, Samara, Russia, mkroz@mail.ru

### ***Abstract***

The study considers legal problems of the state modernization strategy for labor resources in terms of increasing their efficiency and competitiveness. The legal problems in introducing and applying uniform professional standards and liabilities for continuing education in the Russian Federation are studied. The author considers labor legislation of Russia in terms of the changing approach to qualifications of employees, which is taken into account when hiring and checking their qualifications. In addition, the norms controlling the rights and obligations of employees in receiving education and advanced training are analyzed. These norms are the legal basis for the implementation of the state policy on increasing labor productivity and economic efficiency as a whole. The author considers organizational and legal conditions for Russia's transition to professional standards instead of the previously existing system of paid works, as well as problems that arise in connection with this, namely, the uneven distribution of professional standards, their incompleteness, lack of obligation to apply these standards to all economic entities, lack of thought in legal consequences when using standards in terms of fulfilling requirements for staff development and retraining. This provision does not allow changing the situation in the field of labor force efficiency and contributes to the preservation of traditional practices, according to a subjective assessment, by the head of staff qualifications when deciding on the hiring and certification of personnel.

2357-1330 © 2020 Published by European Publisher.

**Keywords:** Professional standards, labour, advanced training, labour efficiency.



This is an Open Access article distributed under the terms of the Creative Commons Attribution-Noncommercial 4.0 Unported License, permitting all non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

## **1. Introduction**

Economic globalization requires professional mobility of workers. The development of new technology is accompanied by rapid changes in the industrial production, economy and social sphere, entailing modernization of existing professions and the emergence of new ones. Internationalization and openness of the labor market require comparability of professions, and, as a result, a national qualification system is created, professional standards are developed and implemented. In these conditions, questions of increasing the effectiveness of labor legislation controlling retraining, and acquisition of additional professional education are of particular importance. The increased effectiveness of legal regulation of relations for training and additional professional education of employees directly at the place of work would allow solving the tasks of increasing labor productivity and competitiveness in rapidly changing economic conditions. The main goal of the state legal influence on labor market relations is to ensure a balance between supply and demand for labor resources. An ideal situation is undoubtedly considered when demand is in line with supply. Under current conditions the role of the state in this case does not come down to a directive, imperative impact on this process, but represents a system of measures that have both an economic and legal nature.

Consequently, the main emphasis of state regulation is on the fact that potential employees exchange their qualifications, knowledge, skills, professional competence for the salary that the employer provides them. The determining moment in this matter will be the creation of necessary legal conditions to achieve optimal coordination of interests of employers and future employees, as well as interests of the state.

## **2. Problem Statement**

### **2.1. Legal and organizational basis for improving labor efficiency in the Russian Federation**

On July 1, 2016, the provisions of Federal law dated 02.05.2015 No. 122-FZ “On amending the labor code of the Russian Federation and articles 11 and 73 of the Federal law “On education in the Russian Federation” related to the implementation of professional standards in assessing professional suitability of the employee by the employer took legal effect.

The planning and distribution system of personnel training that existed in Soviet times optimally solved the problems of correlation of labor market needs for personnel and the system of training specialists by educational organizations (Kelchevskaya & Shirinkina, 2019). With the transition to market relations, this system was destroyed. Fierce competition contributed to the development of the business, while educational processes and technologies lagged behind in their development. The material and technical base of educational organizations did not have time to improve in accordance with new needs of production and economy (Svirin & Titor, 2016).

### **2.2. Existing problems of the reform on improving labor efficiency**

The main idea of the transition of Russia to a new personnel assessment system based on professional standards was associated with systemic changes in the ways of interaction between educational organizations and end users of educational services - employers. It was supposed to link the expected results of educational activities with strengths of specialists in sections: know, be able, own to reduce the cost of

retraining staff and the time for the young employee to be included in the labor process. That is why the main developers of professional standards are business communities, professional groups representing a specific sector of the economy. At the same time, the interest of employers in the formation of necessary professional competencies among students should have been expressed in establishing closer ties between educational organizations and real employers. However, this process is either not observed at all, or occurs spontaneously, or is formal in nature as the fulfillment of mandatory requirements of the relevant ministry in the field of education to include practitioners among teachers and participants of graduation tests. According to the National Qualifications Development Agency, most employers have to retrain young professionals at their own expense (National Qualifications Development Agency, 2019).

In addition, the lack of a systematic approach to the formation of national qualification standards leads to the emergence of problems of a purely legal nature: regulatory legal acts of various levels (from laws to by-laws) may contain requirements for filling positions in a number of professions and positions that have public law significance (for example, judge), social significance (doctor, teacher), are classified as dangerous, harmful (Skripnikova, Shirmanova, & Korobko, 2019). In this case, a conflict arises between the professional standard, which is a by-law, since it is approved by the Ministry of Labor of the Russian Federation, and other acts of the same or higher level. A similar situation has developed with specialists in the field of medicine. The situation is further complicated by the fact that professional standards do not have equal strength for all participants in the labor market. So, standards are mandatory only when requirements for a certain position are established at the federal level, for example, at the level of the law (Article 195.3 of the Labor code of the Russian Federation adopted by the State Duma on December 21, 2001). Thus, in the same field of activity, the employer will apply professional standards to one of his employees, but not to others. A unified approach to the application of professional standardization is established only in relations between organizations of the budget sector of the economy (Meeting of the legislation of the Russian Federation, 04.07.2016, N 27 (part III), Art. 4484).

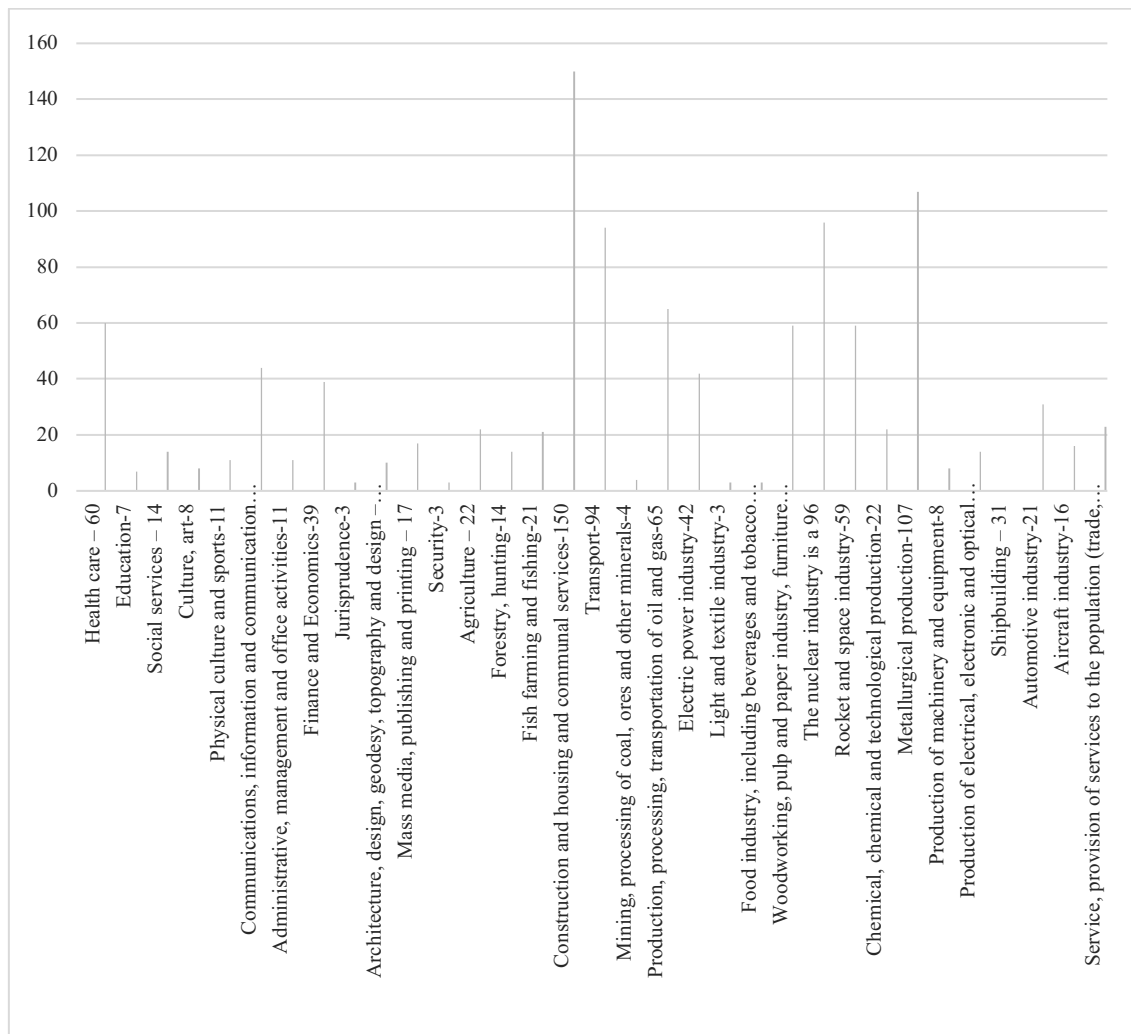
The interweaving of private and public interests is characteristic of labor law, but at the same time, the tasks of unifying qualification requirements are not fulfilled. It means that the approach of employers to accept workers and set requirements for labor duties remains varied and subjective. This leads to the collapse of another goal of professional reform - achieving an equal approach to employees in employment, personal selection, proficiency testing, lowering the level of subjectivity in making managerial decisions. In addition, in relation to employees who, according to their qualification requirements, turn out to be inconsistent with professional standards after their introduction, the existing draft regulatory acts do not provide for the employer's obligation to train or retrain these employees (Smirnova & Poluektova, 2019).

Another legal issue of the professional standard is the problem of changing the volume of requirements for a position in view of newly introduced professional standards in organizations. Employees whose scope of duties will be expanded under new standards are entitled to refuse to continue work in accordance with Art. 74 of the Labor code of the Russian Federation adopted by the State Duma on December 21, 2001. However, such a refusal is the basis for termination of the employment contract with the employee. At the same time, the existing judicial practice confirms the legitimacy of requirements of employers to impose additional duties within a certain position. Meanwhile, the increased volume of labor tasks performed under general principles of labor law should lead to higher wages. But, since this area

relates to the area of the employer's activity not controlled by the state, the employee will not be able to legally oblige the employer to pay a higher wage.

If we talk about a general assessment of the current system of professional standardization, it should be noted that the traditional approach to deep differentiation of types of professions and positions that prevailed during the Soviet era has been preserved in general in Russia, which reduces the possibility of complex application and use of standards as model for a certain circle of professional competencies. Therefore, despite the introduction of the 1301th professional standard, we need more standards. In addition, the classification of types of economic activities according to which standards are adopted differs from the All-Russian classifier of economic activities (OK 029-2014. The All-Russian classifier of types of economic activities”, approved by Order of Rosstandart dated January 31, 2014 No. 14-st).

It is necessary to conduct a deeper comparative analysis (for example, based on qualification guides) of already approved professional standards and the introduction of planned foundations for their development to cover the full range professional standards. Another disadvantage of the existing system of professional standardization is the uneven distribution of the number of accepted professional standards by industry. It is clearly seen in the following diagram.



Source: author.

**Figure 01.** The ratio of the number of professional standards by industry in January 2020

The identified imbalance leads to the fact that most of professions in demand in the economy are not covered by current professional standards. According to the Federal State Statistics Service, about 40 percent of the Russian population is engaged in industrial production and trade, the service sector (Federal State Statistics Service, 2019).

As for trade, it does not have any requirements in the field of personnel qualifications. Light industry, the sphere of production most demanded by the population, has three professional standards, which have a very narrow scope (goods for children), and the food industry also has 3 standards.

### **3. Research Questions**

The study is supposed to give a critical analysis of one of strategic directions for modernization of society and the state - make labor resources more effective through the introduction of uniform professional requirements and advanced training of employees. Labor legislation of Russia is analyzed in the aspect of creating the necessary legal framework for implementing a competency-based approach to training of employees, assessment of their qualifications.

### **4. Purpose of the Study**

The purpose of this study is a systematic analysis of legal problems when implementing the state modernization strategy of labor resources illustrated by labor legislation of the Russian Federation. To achieve the purpose, it is necessary:

- Identify the interests of the parties: workers, employers and the state;
- Establish legal obstacles to the interests of the parties, the goals of the state.

### **5. Research Methods**

The methodological basis of this study is the general scientific dialectical method of cognition, as well as private scientific methods: the comparative method and the method of interpretation. The work also used some private scientific methods, such as historical, statistical. The latter method made it possible to visualize the distribution of the number of accepted professional standards by sectors of the economy.

### **6. Findings**

#### **6.1. Proposals to amend legislation**

The study revealed that the existing mechanism of legal regulation of relations in question does not fully meet the needs of modern production and the interests of workers. The author considers the right of the employee to additional professional training to be insufficiently guaranteed. It is proposed to consolidate the obligation of the employer to organize advanced training of employees with a frequency of once every three years. In case of failure to fulfill the obligation and the subsequent dismissal of employees, it is necessary to oblige the employer to reimburse the expenses incurred by the employment service for retraining citizens. It is advisable to determine conditions under which the employee can initiate additional professional training in the law (long-term work experience with the employer, absence of violations of

labor discipline, etc.), which would facilitate the right of workers to additional professional training. The additional contract on vocational training is concluded if there is no obligation for the employer to organize advanced training (Sagandykov, 2016). If the employer has such a duty by virtue of instructions of the law and other regulatory legal acts, the employee cannot be required to work out a certain period for this employer. This would be against the law. Accordingly, the employee has no obligation to reimburse training costs. The necessity of clarifying the concept of “competence” and aligning it with the term “qualification” is emphasized (Akhmetshin, Vasyaycheva, Sakhabieva, Ivanenko, & Kulmetev, 2018). Thus, the norms controlling relations in training and further professional education do not quite meet practical needs, do not cope with the task of forming necessary competencies and need further improvement. We also need to clarify and harmonize the concepts used in various regulatory legal acts.

## **6.2. Organizational offers**

The Federal law of 03.07.2016 №238-FZ “On an independent assessment of qualifications” provides for the formation of a voluntary qualification assessment system for compliance with professional standards by associations of employers. This qualification assessment system is based on confidence in the assessment quality on the part of the market. In accordance with the Law on Independent Qualification Assessment, it is planned to form councils for professional qualifications in relevant economic sectors, which, in turn, will delegate authority in professional assessment to centers for assessing qualifications. The characteristic feature of these centers is that they cannot be created on the basis of educational organizations. It is expected that a professional exam will be conducted by representatives of employers. The certificate issued to applicants who have passed such a professional exam will open up greater opportunities for the employee in the labor market (Kuznetsova et al., 2019).

Qualification Assessment Centers will actually carry out certification of the employee for his qualification compliance with the work performed. Labor legislation obliges the employer to carry out the specified certification with the participation of trade unions, which helps to protect the rights of the employee. Meanwhile, the above-mentioned procedure for the independent assessment of qualifications does not provide for the participation of trade unions. The results of this assessment can be used by the employer to terminate the employment contract with the employee on the basis of inconsistency of job due to insufficient qualifications. Thus, the role of the trade union as a defender in assessing qualifications of employees is leveled, and the degree of protection of workers' labor rights is significantly reduced (Shumik, Arnaut, & Smitskikh, 2019).

## **7. Conclusion**

As a result of the study of legal reforms to modernize labor legislation, it can be concluded that the goal of the reform does not match legal methods chosen by the legislator. In addition, certain contradictions remain in legislation, caused by the fact that the rules for vocational training and advanced training were introduced under the conditions of the previous legal policy, and thus do not meet the current trends in the economic development (Smirnova & Poluektova, 2019).

The lack of the final result of the reform to improve labor efficiency is mainly due to the predominance of a departmental approach to solving these problems, the lack of dialogue and systemic relations between representatives of the public sector, the education sector and the real economy (Abuzyarova, 2018). The author identifies the main problems of professional standards in Russia:

- Incomplete professional standards for the main professions and specialties in demand in the economy;
- Uneven adoption of standards by industry;
- Regardless of the economic sector, lack of obligations of employers to apply professional standards and to build a system of official behavior of employees;
- Lack of obligations of employers to retrain employees at their own expense.

## References

- Abuzyarova, N. A. (2018). Economic and legal regulation of the Russian labor market. *Journal of Russian Law*, 1(253), 128-137.
- Akhmetshin, E. M., Vasyaycheva, V. A., Sakhabieva, G. A., Ivanenko, L. V., & Kulmetev, R. I. (2018). Key determinants of labor market development of Samara region. In K. S. Sliman (Ed.), *Proceedings of the 31st International Business Information Management Association Conference, IBIMA 2018: Innovation Management and Education Excellence through Vision* (pp. 3914-3923). Milan: IBIMA.
- Federal law dated 02.05.2015 No. 122-FZ "On amending the labor code of the Russian Federation and articles 11 and 73 of the Federal law "On education in the Russian Federation". Retrieved from <http://base.garant.ru/71001244/> Accessed: 01.12.2019.
- Federal law of 03.07.2016 № 238-FZ "On an independent assessment of qualifications". Retrieved from <http://base.garant.ru/71433946/> Accessed: 01.12.2019.
- Federal State Statistics Service (2019). Labor market, employment and wages. Retrieved from [https://www.gks.ru/labor\\_market\\_employment\\_salaries](https://www.gks.ru/labor_market_employment_salaries) Accessed: 11.12.2019.
- Kelchevskaya, N. R., & Shirinkina, E. V. (2019). Regional determinants of effective use of human capital in the digital economy. *Economy of Region*, 15(2), 465-482.
- Kuznetsova, I. G., Bulyga, R. P., Rakhmatullina, L. V., Titova, S. V., Shichiyakh, R. A., & Zakirov, R. A. (2019). Problems and prospects of human capital development in Modern Russia. *International Journal of Economics and Business Administration*, 7(2), 164-175.
- Meeting of the legislation of the Russian Federation, 04.07.2016, N 27 (part III), Art. 4484. Retrieved from [http://www.szrf.ru/szrf/docslist.phtml?md=1&nb=100&year=&issid=1002016027030&div\\_id=4.1](http://www.szrf.ru/szrf/docslist.phtml?md=1&nb=100&year=&issid=1002016027030&div_id=4.1) Accessed: 11.12.2019.
- National Qualifications Development Agency (2019). Monitoring results 2018. Retrieved from: <https://nark.ru/activity/monitoring-rynka-truda/itogi-monitoringa-2018.php>. Accessed: 11.12.2019.
- OK 029-2014. The All-Russian classifier of types of economic activities", approved by Order of Rosstandart dated January 31, 2014 No. 14-st. Retrieved from [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_163320/](http://www.consultant.ru/document/cons_doc_LAW_163320/) Accessed: 11.12.2019.
- Sagandykov, M. S. (2016). The combination of private law and public law principles in the implementation of constitutional principles in the field of labor. *Bulletin of the South Ural State University. Series "Law"*, 16(2), 109 - 114.
- Shumik, E. G., Arnaut, M. N., & Smitskikh, K. V. (2019). Dynamic development as the way of entrepreneurship efficiency increase. *International Journal of Innovative Technology and Exploring Engineering*, 8(6), 540-549.
- Skipnikova, G. V., Shirmanova, G. S., & Korobko, S. M. (2019). Qualification level of employees in the estimation of efficiency of the labor potential of the enterprise. In D. B. Solovov (Ed.), *International Scientific Conference, FarEastCon 2018. Smart Innovation, Systems and Technologies*, 139 (pp. 500-508). Cham: Springer.

Smirnova, A., & Poluektova, N. (2019). Professionalization of social work in Russia: Challenges for education system. *Social Work Education, 38*(3), 347-358.

Svirin, Y. A., & Titor, S. E. (2016). Professional standards and an independent assessment of the qualifications of workers: Problems of theory and practice. *Modern Law, 11*, 38-42.

The Labor code of the Russian Federation adopted by the State Duma on December 21, 2001. Retrieved from <http://base.garant.ru/12125268/> Accessed: 11.12.2019.