

ICEST 2021**II International Conference on Economic and Social Trends for Sustainability of Modern Society****LEGAL PROBLEMS OF HUMAN RESOURCE MANAGEMENT IN
THE EMPLOYMENT IN RUSSIA**

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Abstract

The phenomenon of unemployment describes the world, and is a global problem of our time. The loss of a job, inability to find a job quickly is the cause of depression, leading to losing connections with the community; melancholy; frustration, which are not so easy to cope with. The state faces the task of creating conditions under which a citizen will freely exercise the right to free labor. Provision of employment for the population is one of the directions of the social policy of the state apparatus, which is considered both as support for the individual in his desire to work and create, and in providing a real opportunity to have the means of a decent life. The effective implementation of labor rights, on the one hand, serves as a guarantee of a person's success while, on the other hand, it entails the development and growth of the economic level; in general, contributes to the achievement of constitutional goals of a high living standard and all-round development of individual abilities. A well-thought-through strategy of the state in combating unemployment should be addressed in a combination of regulatory and law enforcement problems. The study examines the shortcomings of legal regulation of state efforts in terms of the employment of its citizens. The paper analyzes individual provisions of this article, and elaborates amendments to the existing legal norms.

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1. Introduction

Employment of the population is an important factor in economic development, a key element of the system of industrial relations, one of the indicators of the country residents' living standard. The state policy aimed at combating unemployment is a whole range of measures in different spheres of life, promoting employment and creating conditions for a reasonable distribution of labor in the labor market, the use of innovative technologies in the labor field, and the introduction of new professions. Programs of financial support for unemployed are being implemented, which provide opportunities for retraining, obtaining new professional knowledge and competencies. The state policy concerning this aspect is of particular importance in the time of economic crisis, when enterprises are massively closed and the number of off-duty citizens is increasing.

For the effective solution of employment problems in the country, the correct legal regulation of these relations is of great importance.

2. Problem Statement

The problematic aspect of the law on population employment is the shortcomings of the legal regulation in certain areas of state employment policy. In particular, the author examines issues related to employers' obligation to allocate quotas on jobs for physically challenged individuals and graduates. The interaction between public and private employment services is also considered, being a big area of concern, namely the regulation of private employment agencies activities.

3. Research Questions

The author of the article aims to identify the shortcomings of legal norms that determine the main directions of public policy against unemployment, in particular employers' obligations to maintain jobs and create new ones for disabled workers, as well as to analyse state policy directions in the field of employment in terms of private employment agencies activities regulation.

4. Purpose of the Study

The purpose of this article is to develop recommendations for improving legislation in the field of public policy to ensure employment of the population.

5. Research Methods

The dialectical cognition method of social and legal phenomena has been selected as the main research method. When studying the material, the methods of comparative law, technical and legal analysis, concrete definition, interpretation, and historical method were also applied.

6. Findings

Smart measures of public policy on employment are the key for reducing the unemployment rate, successful employment of the population and, in general, progressive development of the country's economy. Efficient human resource management is due to legal sources, thus it is necessary to continue improvement of legislation in this sphere, to express a well thought-through employment policy in clear and well-defined rules.

The Sustainable Development Goals (hereinafter SDGs) were developed by the UN General Assembly for the estimated period from 2015 to 2030. The participants of the international organization considered the successful development of states in economic, social and environmental aspects, outlined the directions of progressive movement and specified the guidelines.

One of the first SDGs in the sustainable development program is the global fight against poverty in all its forms. Despite the introduction of scientific and technological progress achievements in the economies of states, today 736 million people continue to remain below the poverty line, with a number of factors contributing to this. The most important multifaceted segment of human resource management for solving the set program tasks is the world of work, where availability of an individual's work with decent wages is the basic condition for the quality of life with no place for hunger and all the factors accompanying poverty. Therefore, states should pursue a sustainable employment policy, especially taking into account the growth of poverty, unemployment, an increase in the number of company bankruptcies, thus, address the issues of legal regulation to protect citizens from unemployment in the first place.

The term "unemployed" is defined by the International Labor Organization as a person who is not employed, is in search of work and is ready to do it. The right of a citizen for protection from unemployment is set in paragraph 3 of Article 37 of the Constitution of the Russian Federation, as a guarantee of the basic right to work, employment opportunity for everyone, choosing occupation or profession in accordance with their skills. Its implementation is ensured through direct contact of a potential employee and the employer, or by registering with the state employment service, or by contacting other similar organizations.

The sphere of Russian population employment is regulated by the laws and by-laws of the Russian Federation and the constituent entities of the RF. The main source is the Russian Federation Law dated April 19, 1991 "On employment in the Russian Federation" and the Labor Code of the Russian Federation.

The unemployment rate in the Russian Federation is not constant. The historical survey on the employment of Russian population allows us to assert the absence of unemployment in the USSR, which is an undoubted achievement of the planned economy. The introduction of market reforms in the 90s resulted in an excessive labor supply in the job market compared to demand; unemployment rose and its values reached from 5 to 13% of the economically active population. The most unfavorable years in this aspect should include 1998 - 2000, followed by the unemployment rate decreased. In 2019 it amounted to 5.3% of the working population, in June-August 2020 it rose to 6.3% of the workforce. At the same time, there is no reason to argue that the growth in the number of employed citizens in certain periods is solely the merit of the state policy. The reasons for this phenomenon are diverse and associated with: the reduction in the working-age population applying for jobs; demographic gap of "perestroika" period; specificity of economic development, integration processes and other factors.

Effective human resource management in terms of employment of citizens certainly and primarily depends on government programs and measures taken. The state policy on promoting employment of the population are defined in Article 5 of the Russian Federation Law "On Employment of the Population in the Russian Federation" and are drawn up with respect to the main duty of the state - to promote the right of citizens to full, productive and independently chosen employment (clause 1 of article 5) (Law of the Russian Federation, 1991). On the basis of the article provisions, programs are being developed to promote citizens employment, especially for vulnerable segments of the population, vocational training and retraining, internships for graduates, etc.

One of the state policy directions in this area is encouraging employers to retain positions and create new ones, mainly for those who experience difficulties in finding a job (Zaitseva & Chukreev, 2017). This aspect of employment has always been considered from the point of assistance to physically challenged individuals. According to Article 20 of the Federal Law of November 24, 1995 No. 181-FZ "On Social Protection of the Disabled in the Russian Federation", disabled people are guaranteed job provision in compliance with their medical status. To ensure this, quotas are established at enterprises, institutions and organizations - jobs specifically reserved for this category of workers, and accordingly, the employer is entitled to financial incentives for such practices (Federal Law, 1995).

The maximum limit of quotas for disabled people is established by the indicated federal law, with the constituent entities of the Russian Federation specifying them. In general, the number of employees of the enterprise predetermines the size of quotas; the ratios are also defined in federal law No. 181-FZ. At the same time, regions are given sufficient freedom to determine alternative ways of fixing quotas. This is important for small businesses, which also have to observe quotas by law, but do not have the ability to equip a special workplace considering an employee's medical condition. Reservation of jobs for people with disabilities can be replaced by renting a job from another employer, creating such jobs by several employers jointly, or providing financial assistance to a non-commercial organization of the disabled in creating such jobs.

The employer is obliged to create or allocate a workplace for a disabled employee and create working conditions for them (Article 24 of Law 181 FZ). This provision of the law limits the possibilities for both an employee and an employer in terms of concluding a remote contract - that is, an agreement according to which an employee's labor function is performed outside an employer's location or a place that is under their control. (Labor Code of the Russian Federation, 2001). This contract gap becomes more annoying, given that signing such an agreement would be preferable for a person with disabilities, who faces difficulties when moving to an employer's permanent premises. If the remote contract is nevertheless concluded with a disabled employee, the regulatory authorities may subject an employer to responsibility for the fact that he did not create a workplace, as provided by law. It should be noted that currently not only the disabled experience employment problems. According to the Federal State Budgetary Institution 'All-Russian Research Institute of Work' of the Ministry of Labour and Social Protection of the Russian Federation, unemployment is rapidly growing younger, every 5th person who applied to the employment service is under 25 years old. In 2020 there were 410 thousand graduates from Russian universities, 267 of which studied full-time, which means they did not enter into employment contracts and do not have professional expertise or their experience is considered insufficient by a potential employer; 23% of young

specialists remain unclaimed. Therefore, employers should provide incentives for reserving places for graduates as well (Ivanova et al., 2020). This type of assistance to young people is not new. In the former USSR each university graduate was obliged to work for three years as a young specialist in the qualification received, thereby solving the issues of labor distribution by the national economy sectors and territories, gaining experience and work skills, as well as financial security. The outflow of young forces from production is a threatening factor for the economy development; the state must come to grips with improving the regulation of youth employment. To carry out this kind of activity, it is necessary to continue to develop a system of employers' participation in professional career reservations for universities, to encourage all types of interaction of employers with higher education institutions, to establish additional tax incentives for reserving jobs for young specialists.

Recent amendments to Article 5 of Law FZ 181 concern the regulation of the activities of non-governmental organizations that promote the employment of citizens, including private employment agencies as another direction of the state's efforts in the field of employment. This amendment to the law did not happen by chance, the joint work of state and private employment organizations is a well-known practice of many states and is effectively used to solve the problem of employment; in Russia non-state structures have also been actively engaged in employment for a long time. Despite the fact that the Russian Federation has not yet ratified ILO Convention No. 181 "On Private Employment Agencies" (Convention of the International Labor Organization, 1997), in 2016 their status and activities of such organizations were regulated with the adoption of Law No. 116-FZ "On Amendments to Certain legislative acts of the Russian Federation ", in accordance with which amendments were made to Article 5 of Law No. 181-FZ, as well as to the Labor Code of the Russian Federation and other regulatory legal acts. Thus, at the state level the activities of these companies were recognized, as well as the possibility of attracting employees to work with third parties, which had not been regulated in Russia before. The inclusion in the Labor Code of the Russian Federation of a new chapter 53.1 "Features of the labor regulation of workers sent temporarily by the employer to other individuals or legal entities under an agreement on the provision of labor (personnel)" eliminated the gap in the legal regulation of an entire segment of the labor market.

The development of non-typical forms of employment in Russia can be welcomed, their appearance is due to the introduction of digital technologies into the economy, and harmonization of labor contracts types of foreign states law is natural and contributes to the elimination of unemployment. Recently, a lot of legal issues have arisen on the relations classification under an agreement on outstaffing, which was named both the rent of labor and the hire of personnel, which was freely referred to either civil or labor contracts. The establishment of a new type of labor contract has legally eliminated contradictions. According to Art. 341.1 of the Labor Code of the Russian Federation, activities to provide personnel to not employers can be carried out by private employment services, which are also determined by the employer in law. In accordance with the agreement concluded with the assignee they are obliged to monitor the compliance of the assignee with the terms of the contract and labor law. Employees must carry out a labor function in the interests, under the direction and control of the assignee, with which they do not have employment relationship. Thus, the personnel under this agreement receive the protection provided for employees by the labor law.

The contract concluded between a private employment agency and a legal (physical) person on the personnel provision is of a different nature. The parties to the contract are called the contractor (private employment agency) and the customer (assignee) in accordance with clause 2 of Art. 18.1 of the Russian Federation Law "On Employment of the Population in the Russian Federation", the agency undertakes to provide personnel to perform the work stipulated in labor contracts under the management, control and in the interests of the managing party. This agreement refers to the type of civil contracts for services provision and is not considered in the context of the Labor Code of the Russian Federation.

The provisions of Article 18. of the Russian Federation Law " On the employment of the Russian Federation population " indicate that a private employment agency must be registered on the territory of the Russian Federation and its obligation to undergo accreditation for this type of activity is determined. It should be noted that the ILO Convention No. 181 "On Private Employment Agencies" establishes a rule for their provision of free employment services (Convention of the International Labor Organization, 1997). However, our law does not contain such a provision. According to some authors this is caused by the risk of private companies' income decrease due to making profit from their services (Zaitseva & Chukreev, 2017). It should be mentioned that the Russian Federation Law "On the employment of the Russian Federation population" provides the obligation of the receiving party to pay services to a private agency for the personnel provision. The same rule can be set for employers to whom a private company sends a person for employment. This would significantly improve the state of a citizen who is listed as unemployed, and therefore does not have extra money. Today this practice exists, but it is not always respected by the parties of legal relationships.

It is very important to solve the problems of interaction between state employment agencies and the respective private companies; the need for cooperation of those is defined in Article 5 of the RF Law "On Employment of the RF Population". When determining the forms of such interaction, one can use the experience of some states: establish the obligation of services in the regular exchange of information on the situation on the labor market (Lithuania), holding joint fairs (Poland), notifying the state employment bodies of the existing private employment agencies by posting this information on the official website of the employment agency (Slovakia) (Public-Private Partnerships in Employment Services, 2003). Specific forms of interaction and cooperation between employment agencies and private employment agencies should be included in the programs to promote the employment of citizens of state bodies (Convention of the International Labor Organization, 1997).

7. Conclusion

The analysis carried out in the study showed that there are certain shortcomings in the regulation of state policy towards combating unemployment. In terms of the state policy research in the context of ensuring population employment the following proposals have been developed:

1. - to amend the norms concerning the obligation of employers to set quotas for jobs for disabled people, namely, to supplement Article 24 of the Law "On Social Protection of Disabled People in the Russian Federation" dated November 24, 1995 N 181-FZ, part 2, clause 1 and clause 2 with the words: "The employer's obligation to create a workplace for an employee and create working conditions for

disabled people does not apply to distance contracts, unless otherwise provided by an agreement between them."

2.- to supplement part 7 of clause 2 of article 5 of the Russian Federation Law dated April 19, 1991 N 1032-1 "On employment of the population in the Russian Federation" with the words: "and also to encourage employers who maintain existing jobs and create new ones for graduates of higher educational institutions according to quotas introduced similarly to quotas for people with disabilities by the Federal Law "On Social Protection of Disabled People in the Russian Federation" of November 24, 1995 N 181-FZ, Art. 21".

3 - add to Part 1 of Art. 341.1 of the Labor Code of the Russian Federation the obligation of private employment agencies to provide employment services for employees free of charge.

4 - to define in the last paragraph of clause 2 of article 5 of the Russian Federation Law dated 19.04.1991 N 1032-1 "On employment of the population in the Russian Federation" a non-exhaustive list of forms of regular interaction between public and private employment services, such as the exchange of information on the labor market, holding joint fairs, notifying the state employment agencies about existing private employment agencies by posting this information on the official website of the state employment agency, etc.

The article discusses only some problem areas of legal regulation of employment. It is necessary to timely and comprehensively reform labor relations, taking into account the dynamics of innovative effects in the economic and social spheres. Well thought-through measures of the state in combating unemployment, correct and clear regulation of the citizens' employment is an important condition for the growth of their well-being.

References

- Convention of the International Labor Organization. (1997). *June 19, 1997 No. 181*.
https://www.ilo.org/moscow/areas-of-work/gender-equality/WCMS_249143/lang--en/index.htm
- Ivanova, N. G., Shechelyakov, E. S., Kurbatova, S. M., Rahinsky, D. V., & Kuzhleva, A. A. (2020). Information and communication technologies and their use in additional and higher education. *Journal of Physics: Conference Series*, 12100.
- Federal Law. (1995). November 24, 1995 N 181-FZ "On social protection of disabled people in the Russian Federation". *Official gazette of the Russian Federation of November 27, 1995 N 48 Art. 4563*.
- Labor Code of the Russian Federation. (2001). N 197-FZ *Official gazette of the Russian Federation of January 7, 2002 N 1 (Part I) Art. 3*
- Law of the Russian Federation. (1991). April 19, 1991 N 1032-1 "On employment of the population in the Russian Federation". *Bulletin of normative acts of the RSFSR, 1992, 1, 4 – 18*.
- Public-Private Partnerships in Employment Services. (2003). Geneva: International Labour Office, 2003. *Skills Working Paper, 17, 29*.
- Zaitseva, L. V., & Chukreev, A. A. (2017). Private employment agencies and agency work in Russia: comparative legal research. *Bulletin of Perm University. Legal sciences*. 35. 84-94.
<https://doi.org/10.17072/1995-4190-2017-35-84-94>