

RPTSS 2018
International Conference on Research Paradigms
Transformation in Social Sciences

**DIFFERENTIATION OF LABOR REGULATION FOR BOOSTING
EMPLOYEES' PROSPERITY**

E.V. Krasnoyarova (a)*

*Corresponding author

(a) Irkutsk National Research Technical University, Russian Federation, 83 Lermontov street, 664074, Irkutsk,
Russia, phone: (3952) 405865, e-mail: krasnoyarova.65@mail.ru

Abstract

The social and moral nature of Russian labor laws makes it difficult to evaluate the principle of unity and differentiation. A universal legal labor differentiation mechanism ensures equality of labor rights and opportunities, takes into account the character of labor of specific categories of employees. The article analyzes the concept of differentiation. It emphasizes that labor regulation differentiation involves benefits and guarantees, restrictions by developing and adopting special laws ensuring equal opportunities for employees. Legal restrictions are imposed depending on different factors only by federal laws. The article deals with objective and subjective differentiation grounds. The classification of differentiation grounds based on restrictions is suggested. The provisions of the Labor Code of the Russian Federation, law enforcement practice, including the RF Constitutional Court ruling, are analyzed. The issues of specific labor regulation for employees with family obligations (single parents) sent on business trips, involved in overtime work, work at weekends and on holidays, nightwork are dealt with. Methods for improving Russian labor laws are proposed. The article concludes that adoption of special labor laws needs elaboration and adherence to the generally recognized principles of the international labor law.

© 2018 Published by Future Academy www.FutureAcademy.org.UK

Keywords: Differentiation, regulation of labor, differentiation criteria.



1. Introduction

Social functions of labor law correspond to key areas of social and legal development toward progress and civil society formation. Over the decades, international communities have been trying to promote peace based on the equality of all employees and setting special rules for less protected employees, including women and minors. The conventions of the International Labor Organization, the European Social Charter of the Council of Europe, Charters of social rights and guarantees of CIS citizens, concepts of the Model Labor Code and other international acts encourage improvement of the international labor law, CIS labor legislation and national labor laws. The Model Labor Code says that “the labor legislation aims to achieve social justice in social and labor relations”.

According to the Russian Constitution, “the Russian Federation is a social state which aims at creating conditions for worthy lives and free development of citizens. In the Russian Federation, the labor and health of people are protected, state support is ensured to the family, maternity, paternity and childhood. These are main priorities of legal development”.

The labor law of the Russian Federation developed a universal regulation mechanism for labor and associated relations based on integration and differentiation of labor rules. Differentiation focus, purposes and nature influence quality characteristics of social development. Differentiation is based on the equality of labor rights by creating special opportunities for employees who need social government protection and restricting rights of those employees who can take advantage of their employment situation. Integration and differentiation of the labor regulation contributes to social justice in the world of work. Universalism of integration and differentiation of the labor regulation means its multidimensionality. Integration and differentiation of the labor regulation is a basic principle of the labor law involving equality of employees’ rights and opportunities. Integration and differentiation of labor rules is a feature of the labor law method. Differentiation contributes to the unity of labor law, and unity creates conditions for differentiation of legal regulation of labor relations (Orlivsky, 1978).

Integration involves uniform labor rules for all employees concluding labor agreements and for all employers regardless the legal structure and form of ownership. Differentiation involves differences provided for by special legal acts. Differentiation contributes to the equality of employees’ opportunities, implementation of the principle of equality of their rights. Integration and differentiation are interrelated concepts. They are constantly developing and improving due to social and moral orientation of labor rules (Krasnoyarova, 2014).

2. Problem Statement

At present, theoretical views on the issue of differentiation are changing. Theoretical and methodological criteria of labor regulation differentiation are being developed. Intensive differentiation of legal regulation of labor relations, awareness of a wide range of factors influencing labor activities are typical trends of labor law development (Nurtdinova & Chikanova, 2004, 2015). The analysis of researches (Ershova, 2007), legal acts and law enforcement practice speak for progressive development of special legal rules. The present study aims to analyze legal mechanisms taking into account opportunities of employees and contributing to their prosperity growth. Under the equality of rights, opportunities of employees are not equal. The opportunities of some workers are restricted due to the following factors: health status, age,

disability, labor functions, labor conditions, psychology and physiology of female employees, natural and climatic conditions, etc. These factors can be classified into objective (specific labor functions, labor relations, location, etc.) and subjective (personality, health status, age, physiology of female employees, fertility, etc.). In some cases, special rules are introduced as a result of government responsibility for persons who need special social protection (minors, pregnant women, disabled persons, employees of the Far North and equivalent areas, employees working under arduous and harmful labor conditions, etc.). For example, there are special guaranties to minors. According to Article 267 of the Labor Code of the Russian Federation, their annual basic paid leave is 31 days. It can be granted at any time convenient for them. Privilege rules and guarantee rules are constantly improving. For example, special attention is paid to the regulation of labor conditions of pregnant women and women having children. For example, according to Article 254 of the Labor Code of the Russian Federation, in accordance with a medical report, pregnant women may be moved to another job excluding the one with unfavorable working environment with reservation of average salary. According to Article 259, it is forbidden to send pregnant females to business trips and to make them work in overtime, night time, on free days and holydays. The employer has no right to cancel labor contracts with pregnant employees without their agreement. In general, Chapter 41 of the Labor Code of the Russian Federation contains guarantees to employees with family liability. According to the author, these rules need improvement taking into account the growth of social prosperity. In other cases, application of special rules results from social interests. It is particularly relevant for the regulation of labor of transport employees, chief executive officers, members of company collective executive bodies, public servants, etc. For these categories of employees, some restrictions are established. For example, according to Article 276 of the Labor Code, the chief executive officer has the right to hold paid posts in other organizations only upon agreement of the organization-authorized body, property owner, or authorized agent (body) of the owner. The chief executive officer has no right to participate in inspection and control bodies of this organization.

Special procedures of labor regulation decreasing a level of guarantees, restricting employees' rights and freedoms, increasing disciplinary and financial responsibility can be provided for only by law. These provisions are based on the rights and freedoms provided for by the Constitution of the Russian Federation. They agree with basic principles of the international labor law and rules of the international law, in particular with Article 29 of the Universal Declaration of Human Rights which states that "in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. The special procedures are often associated with professional activities and involve discipline requirements. Special requirements are set for chief executive officers and their deputies due to their specific management functions. Their unlawful actions can infringe rights of a great number of employees. Their professionalism influences the labor performance, psychological climate in the team, prosperity of employees, and their success as members of the society.

3. Research Questions

Development of labor legislation should follow the line of employee protection and preservation of legal rules, which meet the needs of the age.

4. Purpose of the Study

The article aims to analyze special legal rules, labor regulation differentiation rules, describe their characteristics, systematize restriction rules, identify labor rules, which should be amended. The article suggests solutions to the issue.

5. Research Methods

The labor law is constantly improving. Restriction rules regulate labor of special categories of employees depending on different factors. The author suggests restriction-based classification of labor conditions: 1. Special status of an employee (public and municipal servants, teaching employees, health workers, sportsmen, organization heads and their deputies) (Krasnoyarova, 2017). The legislator pays special attention to anti-corruption restriction rules. 2. Special labor conditions dealing with hazardous factors. Restriction rules regulate labor conditions related to transport means operation. Special rules can specify professional training requirements and discipline issues (Chapter 51 of the Labor Code). Special procedures are set for employees involved in underground operations (employees involved in underground mining operations, construction and maintenance of underground structures, underground rescue operations). The legislator sets medical survey requirements for employees according to their professional qualifications. Additional obligations are imposed on employers: provision of employees with certified protective clothing, footwear and other individual protection means; adherence to technical documents and technological standards, equipment and process requirements when carrying out underground operations.

Differentiation rules are included in both the Labor Code and special laws regulating labor relations in different industries. They contain guarantee rules.

Restrictions differ from prohibitions. Special categories of employees are prohibited to engage in certain activities. For example, individuals who had previous convictions for deliberate serious crimes are not allowed to work in educational organizations. Individuals deprived of the right to hold certain positions are not allowed to perform certain functions. According to Article 3.11 of the Administrative Offenses Code of the Russian Federation, the following categories of employees can be disqualified: public and municipal servants; persons performing administrative functions in commercial companies (e.g., members of the board of directors); non-corporate entrepreneurs; persons engaging in private practices; coaches, sports medicine experts; industrial safety experts; health workers, pharmacists, etc. These prohibitions are motivated by government responsibility for social prosperity.

6. Findings

Family, motherhood, fatherhood, childhood support is a priority for any democratic state. Due to its social significance, it involves development of legal mechanisms which would ensure efficient protection corresponding to social and economic policies of the society. According to international legal rules, employees with family liability are males and females caring for children and ill family members. The

analysis of Chapter 41 of the Labor Code “Special procedures for female employees and employees with family liability” allows the conclusion that the rules prescribing special procedures for female employees due to physiology and fertility are most developed. “Guarantees for female employees and employees with family liability can be classified into two groups: 1. Before childbirth guarantees (pregnancy guarantees). 2. After childbirth guarantees (maternity guarantees) as well as guarantees provided to other persons who nurseries a child” (Krasnoyarova, 2014).

Before childbirth guarantees are related to the physiology of female bodies, female reproductive function. They are provided only to mothers. Other legal guarantees can be provided to fathers ensuring the equality of female and male family rights and obligations. The international legal rules disregard kinship of relationship of individuals with family liability. According to Russian legal acts, employees with family liability are mothers, fathers, adoptive parents, guardians, unmarried mothers or fathers. For example, according to Article 256 of the Labor Code of the Russian Federation, “child rearing leaves may be granted fully or partially to the child's father, grandmother, grandfather, other relatives or tutor actually nursing him/her”.

There are three groups of guarantees to pregnant females: 1. Guarantees while concluding a labor contract. For example, according to Article 64 of the Labor Code of the Russian Federation, unjustified refusal to conclude a labor contract is prohibited. It is not allowed to refuse women in conclusion of a labor contract because of their pregnancy or presence of children. 2. Guarantees while changing labor conditions, working and resting time due to pregnancy. Rates of outputs, service standards may be reduced for pregnant females in accordance with a medical report and upon their request or they may be moved to another job excluding the one with unfavorable working environment with reservation of average salary. The average salary to the pregnant female is reserved for the period of obligatory medical examination. 3. Guarantees while cancelling a labor contract. The employer has no right to cancel labor contracts with pregnant employees without their agreement (Article 261 of the Labor Code of the Russian Federation). The Convention on the rights of the child says that “States Parties undertake to ensure the child such protection and care as it is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures” (Krasnoyarova, 2014). Within the meaning of this Convention, Article 259 of the Labor Code of Russia needs to be amended. Differentiation rules raise doubts.

Article 259 of the Labor Code of the Russian Federation provides for guarantees in case of business trips depending on the age of a child. According to our opinion, business trips (as well as other deviations from standard labor conditions) are possible only upon employee’s written agreement. Three years in Clause 2 of Article 259 and five years in Clause 3 of Article 259 of the Labor Code should be replaced by 16 years.

The rules which force employers to prolong the labor contract with pregnant employees are progressive. However, in this situation, employer’s and employee’s interests are disbalanced, particularly, when the contract is concluded for two months (a fixed term labor contract). It will be difficult to ensure employee workload.

Article 261 of the Labor Code says that in the event of expiration of a contract term during pregnancy

of an employee, the employer upon the request of the pregnant female is to prolong the labor contract up to the date when she has the right for a maternity leave. It appears that the contract should be extended up to the date when her child reaches the age of one and half or three years.

The analysis of law enforcement practices of Russian courts, in particular, the Constitutional Court of Russia identified some problems. For example, according to Part 4 of Article 261 of the Labor Code of the Russian Federation, “the employer has no right to cancel contracts with female having children under three years old, single mothers nursing children under 14 years old (handicapped children under 18 years old), other employees nursing the above mentioned children without mothers’ agreement (excluding dismissal according to clause 1, sub-paragraph “a”, clause 3, clauses 5-8, 10 and 11 of Article 81 and clause 2 of Article 336 of the Labor Code of the Russian Federation of the present Code).

“The constitutionality of the legal rule was challenged by A.E. Ostaev, a father of three children, one of whom is under three years old, and one more is handicapped. His wife nursing the children does not work. Ostaev was dismissed according to clause 2 of part 1 of Article 81 of the Labor Code of the Russian Federation (reduction of number of employees in organization). Ostaev argued that part 4 of Article 261 of the Labor Code of the Russian Federation is unconstitutional since it does not provide equal guarantees to fathers and mothers of children under three years old, whereas the Constitution of the Russian Federation grant equal parenting rights and impose equal parenting responsibilities. The deprivation of equal dismissal guarantees is incompatible with Article 7 (part 2), Articles 19 and 38 (parts 1 and 2) of the Constitution, the Convention of the International Labor Organization “On workers with family responsibilities” (clause 1 of Article 1 and Article 4). It discriminates on grounds of sex and creates unfavorable conditions for the families where mothers nurse children under three years old and are not in employment relations”. The decision of the Constitution Court determines main development trends, which are important for labor legislation improvement.

7. Conclusion

To conclude, it should be noted that introduction of special legal rules (differentiation rules) requires deep analysis. They should be introduced with the only purpose – to ensure due acknowledgement and respect of human rights and freedoms, satisfaction of just moral requirements, generally accepted principles of International Labor Law.

References

- Ershova, E.A. (2007). *Labor Law in Russia*. Moscow: Statut. 620 p.
- Krasnoyarova, E.V. (2014). Differentiation as a legal antipode of discrimination, *Bulletin of Irkutsk State Technical University*, 2.
- Krasnoyarova, E.V. (2017). Competitive selection for academic teaching positions, *Kadrovik*, 10, 42-51.
- Labor Code of the Russian Federation No 197-FZ of December 30, 2001 (as amended on November 27, 2017).
- Krasnoyarova, E.V. (2014). Features of Labor regulation for persons with family obligations, *Bulletin of Irkutsk State Technical University*, 6
- Nurtdinova, A.F., & Chikanova, L.A. (2004). *The theory of labor legislation development*. Moscow, 547 p.
- Nurtdinova, A. F, & Chikanova, L. A. (2015). Differentiation of Legal Regulation of Labor Relations as Typical Tendencies of Labor Law Development, *Journal of Russian law*, 6
- Orlivsky, Y.P. (1978). *Unity and differentiation of Soviet labor labor*, 364.