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LEGAL ASPECTS OF ANALYSIS OF WORK TIME EXPENDITURES OF STAFF IN ORGANIZATIONS

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Abstract

Current workforce management requires the search and rationalization of labour reserves according to the introduction of new technologies in business processes. In this regard, the paper reveals the legal aspects of evaluating effectiveness of staff working hours in various non-standard situations. The study reveals some informative and legal procedures on a number of issues to regulate social and labour relations about the use of working hours. In particular, the procedure and conditions to involve an employee in work on a day off. The clause to regulate an annual and extra paid leave and the procedure for its calculation, based on the accounting of work or calendar days, is developed. The authors showed how the leave schedule is made and what important requirements, in the context of the labour legislation, need to be considered. The procedure for calculating leave compensation and the amount of holiday pay is distinguished. The concept of total account of working hours is given. The procedure to calculate overtime for awarding is presented. The evaluation of reference period of time in the conduct of total account of working hours is given. The authors also describe the procedure to calculate the working time standard for part time or half-time working day. The algorithm to determine additional rest days for overtime on a rotation basis is described and calculated.

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1. Introduction

To achieve efficiency, it is required to correctly formulate goals, structure tasks, have a clear system of performance indicators, and properly allocate available resources. Working hours, as an organization's resource, is a quantitative measure of labour spent on production. But how long and how often is it possible to involve employees in work and what is the regularity in order not to spend the most expensive personnel resource – their health? Let us consider some aspects of work time expenditures in the organization related to the involvement of employee in work in various situations.

2. Problem Statement

Is it possible to involve employees in work on their legal days off? How to justify the need for such work? The practice shows that it is possible to involve an employee in work on a day off if several important conditions are respected. First, in order to prevent disasters, industrial accidents or elimination of their consequences, as well as the consequences of past spontaneous actions.

Secondly, there is a practice to involve in work when an accident should be prevented, as well as when there is a destruction or damage of the property of an employer, the state or municipality. Employees have the right to refuse to participate in such work. In this case, the law will be at their side.

Let us name another reason why employees with their written consents can be involved in work on their days off. This is the performance of work due to the military or emergency situation or caused by emergency circumstances. Such circumstances may include fires, floods, earthquakes, famines, epidemic or epizootic, even if the disaster has not occurred but there is a threat of its occurrence. What is important here is the fact that there is a threat to the life and health of a significant number of people if not the entire population as a whole.

From the legal point of view, in these cases, it is clear why a person has to work. However, it is not clear who and how determines the degree of this threat to the population. It may be the emergency services that monitor the reports and warn the population about upcoming emergencies.

However, there are some categories of workers who are not involved in such work at weekends. They include disabled people, women with children under the age of 3, fathers who raise such children without a mother. Another category is guardians or social visitors of children under the age of 3. It is necessary to remember that while saving someone's life, your health should be also protected. Therefore, if there are some medical grounds or medical exemptions, there is no reason to participate in such mass rescue operations. In all cases of involving employees to work at weekends, it is necessary to obtain their written consents. It can be a staff briefing document or another special form.

3. Research Questions

3.1. Granting of annual paid leave

There are a lot of nuances in the topic of working hours use. For example, every person working under a labour contract has the right to annual paid leave guaranteed by the federal legislation (Article 115 of the Labour Code of the Russian Federation, LC RF). In addition to the basic vacation, which is granted to all employees without exception, there is also an additional vacation granted only to representatives of

certain professions. Moreover, an employee can apply to the employer with a request for unpaid holiday. It is important to know how to calculate vacation time and what kind of documents need to be issued.

The right to the annual additional paid leave depends on the conditions of work (LC RF, Article 117), job characteristics (LC RF, Article 118), irregular working hours (LC RF, Article 119), climatic zones (LC RF, Article 321), and other features of labour activity.

Additional leave is usually provided to an employee along with the main one. However, it happens that for some reasons employees do not want to immediately take all the days off, or the company administration cannot let them rest for a long time. In this case, a written agreement is drawn up, according to which the employee's leave is divided into several parts. Article 125 of the Labour Code of the Russian Federation allows to do it.

3.2. Points of procedure: leave schedule

The order to grant annual rest to employees is set in accordance with the leave schedule. Employers are required to annually draw up this document and approve it no later than December 17 of the current year. The schedule includes both the main and additional vacation periods of all employees of the organization, as well as those which were not used in the previous period. If there is a trade union in the organization, its opinion is taken into account when approving the schedule (LC RF, Articles 123 and 372).

When performing this procedure, it is important to understand that when drawing up the schedule, the employee's opinion is only taken into account, but is not mandatory. The schedule is made to satisfy the organization's needs but not employees. Each employee of the organization (his or her position does not matter) is only a labourholder (that is to say, a holder of special professional abilities to work in a particular workplace). Therefore, it is not people who are hired but their labour force, which is in demand in the production process. In this regard, each employer has the right to dispose the resources available, including employees' workforce, in accordance with production needs. It would be good if employee's wishes coincide with employer's needs in terms of providing leave, but it does not necessarily happen. However, if employees belong to a privileged category, that have the right to rest at convenient time, and if they want to use this right, they need to write an application.

Both an employee and employer have to respect all the formalities to:

- Send an employee a notice in advance;
- Issue an appropriate order;
- Make an entry in a personal card.

Does an employee need to file an application in advance (if an employee does not belong to the privileged category)? If paid rest is provided in accordance with the approved schedule at the enterprise, this is not necessary.

The employer has to notify employees two weeks in advance that they will start their vacation period. It is necessary to understand that the vacation period is not an absence from work, but an element of the working schedule or time of non-work, when an employee needs to fully recover labour potential in order to start working with new forces at the end of this time period.

Thus, the working life of each employee includes periods of work and non-work related to working hours for one working day, a month, and a year. No one is dismissed from work during the vacation period.

It is just labor regime element, which everyone must clearly respect. In accordance with the current standards of the Labour Code of the Russian Federation, employees and employers can be brought to disciplinary responsibility for time regime violation. The law enforces employer’s duties and guarantees the workers’ rights in terms of work time expenditures throughout the employee’s working life in the organization. The employer has to deliver an order to grant leave.

This orders drawn up by the HR representative using a unified form T-6 or a form approved by the employer. The order has to reflect:

- Full and abbreviated name of the company, registration number of the order, and the index (if any);
- Date of drawing up the document;
- Employment number, full name, organization unit, and employee’s position;
- Period (working year) of leave granted;
- Exact number of calendar days of the holiday period and the start and end dates;
- If other types of leave are provided at the same time as the main one, their types, duration, and start and end dates are reflected in the order;
- Total duration of rest time.

After the head of the organization has certified the order with the signature, it is necessary to make the document known to an employee. The employee needs to sign the order and indicate the date of review.

3.3. Total account of working hours

The concept of total account of working hours is introduced for the workers who work, for example, in shifts, when it is not possible to follow the normal length of working week, and it is impossible to interrupt the work process. It is defined by Article 91, Part 2 of the Labour Code of the Russian Federation. Shift labour is introduced in cases when there is an exceedance of production process duration in comparison with a permissible duration of daily work (LC RF, Article 103, Part 1). Then, the shift schedule is developed and approved (LC RF, Article 103, Part2) (Table 01). But there is a condition: it is forbidden to work for two shifts in a row (LC RF, Article 103, Part 5). The break between shifts should be double the time of work per shift (Para11, Resolution of the council of people's commissars (CPC) of the USSR, 24.09.1929). Continuous rest should last not less than 42 hours between weeks (Letter of Rostrud, 20.01.2014, NoPG/13281-6-1).

Table 01. An example of filling the time sheet during two-shift work, 11 hours shift

Worker's full name	Employment number	Shifts by days																Worked for a month	Including night time, hours	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16		Days	Hours
1	15	I	I	B	B	I	I	B	B	I	I	B	B	I	I	B	B	16	176	-
		I	I	B	B	I	I	B	B	I	I	B	B	I	I	B	B			-
2	15	II	II	B	B	II	II	B	B	II	II	B	B	II	II	B	B	16	176	128
		II	II	B	B	II	II	B	B	II	II	B	B	II	II	B	B			128

Source: authors.

Total account of working hours is a type when an organization establishes the reference period, which does not exceed one year and not more than 3 months for employees engaged in hazardous/dangerous jobs (LC RF, Article 104, Part1). Staff make the norm of working hours during this period. This information should be noted in the rules of Corporate LabourPolicy (CLP).

It is also important to keep in mind that overtime should not appear when drawing up a work schedule. If it appears, it indicates a shortage of labour. Such a violation causes a fine, according to Article 5.27, Part 1 of the Administrative Violations Code in the amount of 1,000-5,000 rubles for individuals and 30,000-50,000 rubles for legal entities.

For employees who have a usual work schedule (the general category of employees over 18), a working week is 40 hours. When working under harmful, dangerous or difficult working conditions, a working week is 36 hours. A working week is 24 hours for the category of youth under the age of 18.

According to Article 37 of the Constitution of the Russian Federation, limiting the maximum number of working hours is a guarantee of the right to rest. Thus, if employees do not belong to these categories, their working day may be more than 8 or even 12 hours (Zhizherina, 2017). However, if employees have worked more than they should have worked in the reference period, the employers are obliged to pay them overtime at higher rates.

4. Purpose of the Study

Issues of time management and evaluation are discussed in organizations around the world (Makhmudova & Solovova, 2019). It is important to understand how much employees have worked and whether they have earned the right to rest? How to calculate the number of days for additional leave? How to respect the procedure to grant legal leave to an employee within different working arrangements in the organization? How to respect the requirements of the labour legislation?

In order to answer all the employer's questions, it is necessary to determine the start date of a working year, not calendar one (LC RF, Article 124), and then count six months from the date of setting of the labour relations. It is necessary to take into account that vacations do not include:

- Absence periods from work without serious cause;
- Suspension from work;
- Maternity leave.

It is important to know that certain categories of employees (judges, convicted during corrective labour, and scientific employees in budgetary institutions who have a degree of candidate of science or doctor of science) have annual paid leave in working days, not calendar ones. When calculating the specified time, working days should be converted into calendar ones, in accordance with Article 120 of the Labour code of the Russian Federation.

5. Research Methods

As a general rule, the Labour code of the Russian Federation does not set a length limit of a working day. However, there are some exceptions (LC RF, Article 94):

- Child labourers (in dependence to the age);

- Disabled persons (according to the medical report);
- Workers under harmful and (or) dangerous working conditions;
- Some categories of creative workers, according to the list established by the government of the Russian Federation;
- Employees who work on a rotational schedule (Decision of state committee for labour of the USSR, 1987).

5.1. Procedure to calculate days for leave compensation

For each fully worked year, an employee should be compensated for full annual paid leave. As a general rule, it includes 28 calendar days (LC RF, Article 115). For a year not fully worked, the number of unused vacation days to compensate is determined proportionately with the time worked.

How to calculate the days to compensate unused vacation time? If employees worked without leave at their previous place of work for less than 11 months and had the right of leave in calendar days, the number of unused days of leave is determined by the formula:

$$H_v = \frac{N_v}{12 \text{ month}} \cdot H_w - n_v,$$

H_v - Number of unused vacation days in calendar days;

N_v - The number of vacation days granted to an employee for the working year;

H_w - Number of working months under this employer;

n_v - Number of vacation days used under this employer.

Thus, the indicator "Number of working months under this employer" is considered taking into account the following rule (Para 35, Rules "On regular and additional holidays", 1930):

- If half a month or more has been worked, this month is counted as a whole month;
- If less than half a month has been worked, this month is not counted.

Leave compensation at dismissal is not paid if an employee has worked at the previous place of work for less than half a month, or if all the leaves were used on the date of dismissal.

The result of calculations using this formula may not be an integer. In this case, the value can be rounded off, but not according to the rules of mathematics but always to the higher side in favor of an employee (Letter of Ministry health and social development of the Russian Federation, 2005).

When the number of unused vacation days is set, it is time to calculate leave compensation at dismissal.

$$C = D_v \cdot W,$$

C - Leave compensation;

D_v - Number of unused vacation days;

W - Daily average wage.

In turn, the daily average wage of an employee is determined in the same way as when calculating vacation pay (Government resolution of the Russian Federation, 24.12.2007, No 922).

Leave compensation at dismissal is usually calculated according to the formulas given above. But for a number of cases, there are rules for determining leave compensation.

5.2. The procedure to calculate overtime with a total account for working hours

In accordance with the production calendar, which reflects all working days, weekends, and holidays, even if there were sick days or vacation days, it is possible to calculate the number of overtime hours.

First, you should calculate working time standard in the period. To do this, the length of a working week (40, 36 or 24) is divided by the number of working days per week (5 or 6-day week) minus 1 hour if there is a pre-holiday shorter working day, and multiplied by the number of such days in the accounting period.

For example, there were 20 working days in March 2019. There was one pre-holiday shortened day. Working time standard for a 40-hour working week is:

$$40 \text{ hours / month: } 5 \text{ days / week} * 20 \text{ working days} - 1 \text{ hour} * 1 \text{ holiday day} = 159 \text{ hours.}$$

This means that any hours worked over 159 hours are paid as overtime.

Public holidays are defined by Article 112 of the Labour code of the Russian Federation. According to Government resolution of the Russian Federation, 01.10.2018, No1163, in 2019, Russian workers had 247 working days (1970 hours) and 118 days off within a 5-day working week, and 299 working days and 66 days off within a 6-day working week.

5.3. Procedure to calculate working time standard for shorter or reduced working hours

There is a procedure to calculate working time standard for shorter or reduced working hours. For example, for an employee holding a second job.

$$H_w = \frac{T}{5 \text{ days}} \cdot h,$$

H_w - Number of working hours within a shorter or reduced working day;

T - Duration of working time in a week;

5 days - five day work week;

h - Number of working days in the period.

In this case, the amount of work time can be calculated as follows. Let us assume that according to the labour contract, an employee got a one-quarter-time basis job, that is to say, 10 hours a week: $40 * 0.25$.

If there are 21 working days in a month, the number of working hours should be calculated as follows:

$$10 \text{ hours / 5 days / week.} * 21 \text{ days} = 42 \text{ hours.}$$

5.4. Procedure to calculate the working time standard when working on a rotation basis

Scientists around the world look for approaches to evaluate new forms of employment Larsen, Rand, Schmid, Bobkov and Lokosov (2019); Bobkov, Kvachev and Novikova (2017); Larsen, Rand, Schmid and Dean (2018). In Russia, when working on a rotation basis, total account of working hours and work on schedule are used. They are regulated by Articles 300, 301 of the Labour Code of the Russian Federation.

The only peculiarity is that the work on a rotation basis lasts more than 8 hours. Daily overtime within the work schedule is accumulated and added up to whole working days. They are used to provide employees with additional rotational leave. To find out how many days of rest are allowed with overtime, when working on a rotation basis, the number of accumulated hours should be divided by 8 (Table 02), (Zhizherina, 2017).

Table 02. Calculation of additional days of rest with overtime on a rotational basis

Duration of a daily shift, hours.	Number of work shifts per week	Number of working hours per week: (box 1 * box 2)	Overtime a week, hours: (box 3 – 40 hours)	Number of additional days of rotational leave for weekly overtime: (box 4 / 8 hours)
1	2	3	4	5
8	6	48	8	1
9	6	54	14	1.75
10	6	60	20	2.5
11	6	66	26	3.25
12	6	72	32	4

Source: authors.

At the same time, each day is paid in the sum of the daily wage rates distribution.

6. Findings

Working time management contributes to the employees' motivation and allow the staff to work under a convenient labour regime. Moreover, competent accounting of the use of working hours also allows to effectively use the time resource in the organization. The introduction of individual working hours to some categories of personnel and establishment of a flexible work schedule should be reflected in the employee's labour contract (LC RF, Article 57). Any employee's overtime must also be taken into account in terms of fair pay and provision of additional rest time to regain employee's working capacity.

7. Conclusion

In general, the Russian control bodies strictly monitor satisfying the legal requirements and citizens' rights. The Labour Inspection carries out both scheduled and unscheduled inspections for this purpose. The employer has considerable penalties, defined by the Administrative Violations Code of the Russian Federation (Administrative violations code, dated December 30, 2001 N 195-FZ, Article 5. 27), in the event that there is non-implementation of procedures.

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