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COMPONENTS OF THE COLLECTIVE AGREEMENT ON LABOR AND SOCIAL SECURITY OF EMPLOYEES OF A LEGAL ENTITY

Abstract. This article is the first in a theoretical study of labor law and social security law, which examines the content of a collective agreement in the context of social security for employees of a legal entity.

The scientific work explores the theoretical and practical problems of the collective agreement regarding the social security of workers and offers some recommendations for improving the current legislation of Ukraine.

Increasingly, in Ukraine, there is a certain development of contractual regulation of legal relations of social security of employees, which is applied without specific measures of influence on employers.

Labor law and social security law have a dualistic content of legal regulation. These branches of law contain public and private influence on the legal relations of employees, that is, individuals and legal entities - employers. Now we see that labor law and social security law provide an opportunity to emphasize such a method of legal regulation of these branches, which combines the state and contractual method of legal regulation of labor and social security relations.

It would be appropriate to consider collective agreements in labor law and social security law as specific agreements and regulatory acts of the state.

The article provides a definition of collective agreements in the regulation of social relations, in terms of additional social protection of employees or their family members, increasing the amount of one-time or permanent social payments provided for by law.

It was found that to restore the proper level of social security for employees and their family members, it is necessary to introduce mandatory funded social security as an additional element of guarantees for overcoming social risks, with the aim of forming social savings.



Keywords: social security of employees and their family members, social security law, labor law, social security agreement, collective agreements, collective contracts, mechanism of social protection of employees.

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СКЛАДОВА ЗМІСТУ КОЛЕКТИВНОГО ДОГОВОРУ ЩОДО ТРУДОВОГО ТА СОЦІАЛЬНОГО ЗАБЕЗПЕЧЕННЯ ПРАЦІВНИКІВ ЮРИДИЧНОЇ ОСОБИ

Анотація. Стаття є першою в терористичному дослідженні трудового права та права соціального забезпечення, яка вивчає зміст колективного договору також в контексті соціального забезпечення працівників юридичної особи.

Наукова праця досліджує теоретичні та практичні проблеми колективного договору відносно соціального забезпечення працівників, пропонувані рекомендації щодо вдосконалення чинного законодавства України.

Всебільше в Україні відбувається певний розвиток договірної регулювання праводносин соціального забезпечення працівників, який застосовується без конкретних заходів впливу на роботодавців.

Трудове право та право соціального забезпечення має дуалістичний зміст правового регулювання. Ці галузі права містять публічний та приватний вплив на праводносини працівників, тобто фізичних осіб та юридичних осіб - роботодавців. Зараз ми бачимо що трудове право та право соціального забезпечення надає можливість використовувати метою правового регулювання цих галузей, який поєднує державний та договірний спосіб правового регулювання трудових та соціально-забезпечувальних відносин.

Новаційно-доцільно було б розглядати колективні договори у трудовому праві та праві соціального забезпечення, як специфічні договори та нормативні акти держави.

В статті надано значення колективних договорів у регулюванні соціальних відносин, зокрема в частині додаткового соціального захисту найманих працівників або членів їх сім'ї, підвищення розміру одноразових або простійних соціальних виплат, передбачених законодавством.

З'ясовано, що для відновлення належного рівня соціального забезпечення працівників та членів їх сім'ї необхідним є впровадження обов'язкового



накопичувального соціального забезпечення як додаткового елемента гарантій подолання соціальних ризиків, з метою формування соціальних накопичень.

Ключові слова: соціальне забезпечення працівників та членів їх сім'ї, право соціального забезпечення, трудове право. договір у сфері соціального забезпечення, колективні угоди, колективні договори, механізм соціального захисту працівників.

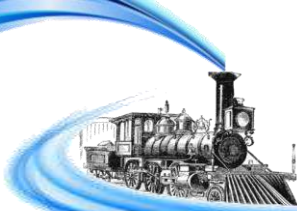
Introduction. Labor law and social security law have a dualistic content of legal regulation. These branches of law contain public and private influence on the legal relations of employees, that is, individuals and legal entities - employers. Now we see that labor law and social security law provide an opportunity to emphasize such a method of legal regulation of these branches, which combines the state and contractual method of legal regulation of labor and social security relations. It would be appropriate to consider collective agreements in labor law and social security law as specific agreements and regulatory acts of the state.

The article provides a definition of collective agreements in the regulation of social relations, in terms of additional social protection of employees or their family members, increasing the amount of one-time or permanent social payments provided for by law. It was found that to restore the proper level of social security for employees and their family members, it is necessary to introduce mandatory funded social security as an additional element of guarantees for overcoming social risks, with the aim of forming social savings.

Problem statement. The legislation of Ukraine provides for two types of social dialogue acts: collective agreements and collective contracts. The basis for their distinction is their characteristics such as the scope of the act, parties, content, procedure for signing, actions, etc. Collective agreements are concluded at the national, sectoral and territorial levels, and collective contracts cover the lowest level of social dialogue - local [1]. Rulemaking at the local level is carried out directly by the participants in labor relations, who develop and determine the content of the norms, adopt acts containing them. Such an opportunity for employees is a guarantee, firstly, to know the scope of the rights and obligations that they have, and, in addition, to adapt them to meet their needs and pursue their own interests [2].

Article 1 of the Law of Ukraine "On Collective Agreements and Contracts" provides for a collective agreement, which is concluded based on current labor legislation, obligations accepted by the parties in order to regulate production, labor and socio-economic relations and coordinate the interests of employees and employers. The scope of concluding a collective agreement is determined by part one of Article 2 of this Law, according to which a collective agreement is concluded at an enterprise, institution, organization, as well as with an individual who uses hired labor.

Analysis of recent research and publications. Important aspects of the formation and development of social security for employees are highlighted by such



Ukrainian scientists as O.O. Lyashchenko, N.B. Bolotina, O.O. Gudz, O.V. Lupyna, V.P. Nyskoguz, S.M. Prylypko, D.I. Sirokhi, M.V. Sorochyshyna, B.I. Stashkiva, V.S. Tatarenko, R.M. Tymofiyeva, M.M. Shumyla, L.P. Chanysheva, N.I. Yaroshenko and others. However, the implementation of social security for employees is only planned.

The purpose of the study is to analyze and study the features and mechanisms of social security for employees in the context of a collective agreement.

Presentation of the main material. The contractual nature of a collective agreement plays a fundamental role in determining its content. The content of a collective agreement is the most important aspect, as it reveals the provisions (conditions) on which the parties agreed when concluding it. The conditions describe the rights, obligations and responsibilities of the parties in labor, social, and economic relations. A feature of a collective agreement is that its content may contain provisions on issues that do not directly relate to the sphere of the employee's performance of his labor function, but to one degree or another arise from the employee's involvement in this enterprise, institution, organization or individual using hired labor. It is fair to note that such provisions may also apply to members of the employee's family, for example, regarding payment of housing and communal services, medical insurance, etc. The content of the agreement may also include benefits and additional guarantees for former employees who, for example, were dismissed due to staff reductions, pensioners, persons who suffered injuries at work and cannot continue to work for objective reasons [1]. In general, the adoption of local acts pursues the goal of consolidating social security at a higher level than that provided for by law. The content of the act should be aimed at the effective use of the financial resources available to the employer, which will be expressed in providing higher guarantees in the areas of labor and social security. Thus, within a specific organization, for example, provision of travel vouchers, health benefits, provision of medicines, pension supplements for labor veterans, persons with children, additional guarantees for persons with disabilities, benefits for women, provision of housing at the expense of the employer, and other advantages and additional benefits may be introduced. But it is important that collective agreements contain specific rules that do not repeat similar provisions of the law, are not an abstract plan of action of the parties to the social partnership, but reveal clearly defined obligations in the field of social security of employees [3, p. 588].

For enterprises in certain industries, there is a need to enshrine social security measures in collective agreements, which is clearly indicated in legislative acts. For example, the Mining Law of Ukraine dated October 6, 1999 No. 1127-XIV stipulates that coal mining enterprises and coal-fired power plants provide coal for household needs to certain categories of employees free of charge in the amount determined by the collective agreement [4]. Therefore, the need to conclude a collective agreement always follows from the current regulatory legal acts, otherwise it would lead to restrictions on the rights of employees, among other things, to social security.



In addition to social security itself, as mentioned above, failure to conclude collective agreements can also negatively affect employment and social protection in case of unemployment. For example, in Art. 51 of the Law of Ukraine “On Employment of the Population” dated July 5, 2012 No. 5067-VI [5] states that the rights and powers of trade unions to ensure the protection of citizens from unemployment and its consequences are determined by a collective agreement [6, p. 47].

All terms of a collective agreement can be differentiated into four types:

1) normative terms are local law rules that: fill gaps in the legislation; clarify or detail its provisions regarding a specific enterprise or organization; resolve issues for which a collective agreement settlement procedure is directly provided;

2) binding terms are those that establish a clear range of responsibilities, executors, and deadlines;

3) informational terms are norms of legislative acts and collective agreements regarding the general provisions of labor, social, and economic relations;

4) organizational terms are those that relate to the procedure for concluding, amending, and operating a collective agreement, monitoring its implementation, and liability for violation and non-performance. [1].

Article 7 of the Law of Ukraine “On Collective Agreements and Contracts” defines the content of a collective agreement that is created by the parties within their competence. The collective agreement establishes the mutual obligations of the parties regarding the regulation of labor, social, and economic relations. Based on this, it seems possible to assume that today collective agreements may not contain a “normative part”. However, this is not the case, because collective agreements and contracts certainly belong to the sources of labor law and social security law, as they contain norms that are mandatory for implementation [1].

The terms of collective agreements must meet a number of requirements: a local-level norm cannot regulate relations that are fixed at the law level - in an imperative manner; if the current legislative acts directly indicate the need to include certain conditions in a collective agreement, the parties must do so; a collective agreement may include any norms that do not worsen the employee's position compared to current legislation and acts that are higher in legal force than a collective agreement [1].

The essence of the content of a collective agreement is reduced to detailing the general norms of labor law and social security law. The effect of its norms extends exclusively to relations within the framework of a separate enterprise, institution, organization or individual using hired labor, where such norms were developed and approved. The current legislation regulates only an approximate range of issues that may constitute the content of the agreement. It is not mandatory, but serves as a kind of recommendation, playing the role of a guide for the parties regarding its possible conditions, which, in turn, are based on their interests regarding the problems and important aspects of the activities of a particular labor collective and organization, and consider the material and financial capabilities of the employer.



According to Art. 9-1 of the Labor Code of Ukraine, enterprises, institutions, organizations within their powers and at their own expense may establish additional labor and social and household benefits for employees compared to the legislation. As G.I. Chanysheva rightly notes, the reference in the text of the article to such a group of relations as production relations is unsuccessful, because they are the subject of general economic theory. During the Soviet era, production relations were given the role of the main form of any relations, not understanding their essence correctly enough. G.I. Chanysheva emphasizes that “today's science does not abandon this type of relations, but identifies them with technological relations, which are determined by technology, physical and intellectual capabilities of personnel” [7, p. 154].

According to Art. 7 of the Law of Ukraine “On Collective Agreements and Contracts”, the contract may establish mutual obligations, including, among other things, the provision of housing and household, cultural, medical services, the organization of health and recreation for employees, etc. A collective agreement may contain higher guarantees, social and household benefits, regarding children’s health and the purchase of New Year’s gifts for employees’ children, etc., than those provided for in the current legislation and agreements.

Sometimes collective agreements contain a section devoted to social services and medical care. Importantly, it provides for the possibility, for example, of guaranteeing additional insurance for employees (for example, at the expense of corporate pension funds). In this case, Art. 20 of the Law of Ukraine “On Non-State Pension Provision” dated July 9, 2003 No. 1057-IV, provides that a collective agreement may provide for the creation of a corporate pension fund by the employer or the deduction of employers’ pension contributions to other pension funds. Payment of pension contributions by individuals to corporate and professional pension funds is voluntary, unless otherwise provided by law.

The collective agreement may establish rules on benefits for employees: persons with disabilities, temporarily unable to work, pre-retirement age, etc. It may include a plan for carrying out measures aimed at disease prevention and rehabilitation, reducing the incidence of industrial injuries and occupational diseases (can be drawn up in the form of an appendix). It is advisable to also establish measures for providing special nutrition, indicate the organizations with which health insurance contracts have been concluded, etc.

This will become especially relevant from the moment when compulsory state health insurance is introduced in Ukraine. Not the least place is occupied by the norms aimed at housing and household support, which may include providing housing to employees, transport services, the opportunity to place children in preschool institutions, etc. In modern conditions, financing of all additional support measures provided for by collective agreements is carried out mainly by the funds of the enterprises themselves, since certain centralized allocations are not provided today.

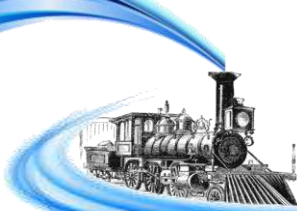


Resources for social and household and medical support are formed by the employer in specially created funds, which can attract funds from various origins: enterprise profits, employee contributions, charity, etc. Often, contractual acts on social security as sources of law duplicate the provisions of current legislation or are transformed into a kind of action plan for the parties to social dialogue, which necessitates their more detailed regulation to overcome the above-mentioned shortcomings. Such acts should contain clearly defined obligations for the employer in the field of social protection of employees. Most collective agreements contain sections that enshrine social guarantees and benefits, other types of social security, the volume of which, importantly, is greater than that provided for at the level of individual laws [1]. As S.S. Lukash rightly notes, under today's business conditions, the collective agreement includes norms that enshrine the "conditional" obligations of the employer. This causes a situation in which the other party's corresponding right to demand its performance arises, which is also conditional. That is, the stimulating and motivating nature of such provisions of the collective labor agreement becomes obvious. It cannot be conditional - the collective agreement must provide, in addition to measures to encourage employees, various types of social security, which would also fulfill its motivating role [1]. Practice shows that the norms of collective agreements are always formed in such a way that the income of the enterprise, the volume of products sold, the fact of expansion or reduction of production, etc. become the determining factors for the presence or absence of the right of employees to demand from the employer the fulfillment of the social security obligations assumed.

It is expedient to establish the legal liability of the specified parties for failure to fulfill obligations assumed in accordance with the collective agreement. Even though it is provided for in the Law of Ukraine "On Collective Agreements and Contracts", the mechanism for its implementation has not yet been prescribed. Most often, as noted by O.V. Khrabatin, in the event of failure to fulfill obligations under a collective agreement for the reporting period in the relevant calendar year, the parties, for the most part, postpone their fulfillment to the next year, and, most importantly, no legal liability arises in this case [8, p. 96].

Thus, a collective agreement is a specific source of social security law at the current stage of its development. The features of such an agreement are as follows:

- 1) its parties are the employer and the employees;
- 2) it operates within a specific enterprise, institution, organization or individual who uses hired labor;
- 3) an important component of its content is social security measures, since it concerns the regulation of social relations;
- 4) the level of social security provided for in it cannot be lower than that provided for by legislation and collective agreements;
- 5) it allows establishing additional types of social security, increasing the amount of social payments provided for by legislation, etc. [1].



Conclusion of a collective agreement at an enterprise, institution, organization, as well as at an individual who uses hired labor is an exceptionally positive moment. Conclusion of it with strict compliance with the legislation, taking into account financial capabilities (to ensure the possibility of implementing its provisions on improving the material and social situation of employees) contributes to stability, high labor productivity, building a strong base for social security, the absence of social tension, etc., which, by the way, will serve the interests of both employees and the employer.

It is necessary to agree with O.M. Yaroshenko that “now the collective agreement has become that form of law that, without cumbersome procedures for adoption and implementation, is able to mediate social and labor relations at any enterprise and ensure their dynamic development, without, of course, excluding the regulation of relations at the state level and lower levels” [9, p. 137].

Conclusions. The collective agreement is an important component in its content, there are social security measures, the level of which cannot be lower than that provided for by law and collective agreements. At the same time, the collective agreement allows to increase the level of social protection of employees (to establish additional types of social security, to increase the amount of social payments provided for by law, etc.).

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