

WAYS OF IMPROVING LEGISLATIVE SUPPORT OF PART-TIME EMPLOYMENT IN UKRAINE

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The spread of flexible forms of employment, such as part-time employment, reflects the modified behaviour of workers, which allows to harmonize work and other activities such as family, education or additional work, etc.

The reverse side of this process is untimely changes in labour legislation, which in its turn leads to job creation with a low level of social protection, lack of career promotion and low salaries.

The research of part-time employment was conducted by such scientists as B. Vasylychenko, N. Bolotina, V. Venediktov, C. Venediktov, V. Himpelson, L. Gruzina, P. Zakernychyi, V. Kabalina, R. Kapeliushnikov, V. Korotkyi, V. Kostyuk, L. Kotova, M. Inshyn, V. Petrov, S. Prylypko, V. Prokopenko, N. Ushenko, N. Khutorian, O. Yaroshenko, V. Shcherbyna and others. But in the

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context of ongoing European integration processes, some issues of part-time employment should be researched in the context of flexible forms of employment.

The Law of Ukraine “On Employment of the Population”, namely, Chapter 11, Part 1, Article 1 gives the following definition, “part-time employment is an employee’s employment during working hours, which are shorter than the time prescribed by law, and may be established under an agreement between the employee and the employer with wages proportional to the hours worked or depending on the output” [1].

We believe this definition to be quite precise because it highlights features of part-time employment, which makes it possible to distinguish it from full-time employment.

Such features include:

- working hours are shorter compared to normal working hours, established by law (40 hours per week);
- the basis of the establishment is the will of the parties and the employment contract;
- payment for labour is carried out in proportion to the time worked or the output;
- existence of categories established by law, which cannot be denied part-time employment;
- absence of limitation of labour rights and duties of the parties.

Instead, the current Labour Code does not contain a definition of part-time employment, and includes the provision of shorter working hours. In particular, it is determined that shorter working hours are established “under an agreement between the employee and the owner both during hiring or later, there can be established shorter working hours or shorter working week” [2].

Proceeding from the fact that establishment of shorter working hours is one of the main components of part-time employment, it is unacceptable to duplicate certain provisions of various laws and regulations as for establishment and payment for labour. We emphasize that these norms need to be harmonized and detailed in order to avoid collisions with this flexible form of employment.

It should be noted that the current legislation is not clear enough as for division of part-time employment into voluntary and involuntary, since there are cases when establishment of part-time employment comes not from the subjective desire of the party of the employment contract, but by objective circumstances. In this case, it goes about forced temporary part-time employment. We consider it necessary to differentiate the categories of voluntary and involuntary part-time employment in the current legislation.

In legal literature there are various positions regarding the relation between the concepts of “part-time employment” and “partial unemployment”. Some scholars consider them identical, while others convincingly deny this fact. In our opinion, it is impossible to identify these two concepts as the main factor distinguishing these two categories is external coercion and the lack of desire of the parties to establish part-time employment, so, we will consider them from this point of view.

V. Venediktova believes that a characteristic feature of partial unemployment, which distinguishes this economic and legal phenomenon from the phenomenon of similar part-time employment is the reason that leads to shorter working hours or shorter working week, and, as a result, reduce of wages. Such a reason is decline in the financial situation of the enterprise, associated with decrease in production, which, in its turn, leads to involuntary part-time employment [3, p. 31].

According to V. Bezusyi, the main feature that distinguishes partial unemployment from part-time employment is the employee's attitude to work under conditions of part-time employment. If an employee wishes to work full-time, but is forced to work part-time, this is partial unemployment. If an employee is satisfied with this form of employment, then this is not unemployment, but voluntary part-time employment [4, p. 15]. This state of affairs points at the need to supplement the Law of Ukraine "On Employment of the Population" with the definition of the concept of "involuntary part-time employment".

In our opinion, speaking about the legal regulation of part-time employment, it is necessary to analyse the main international legal acts that regulate this issue and were adopted in order to protect the rights and interests of employees working part-time. In particular, such acts include ILO C175 Part-Time Work Convention, 1994; ILO R182 Part-Time Work Recommendation, 1994; Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work.

ILO C175 aims primarily at preventing discrimination against part-time employees. It obliges the member states to take steps to ensure that part-time employees enjoy the same protection as employees in a similar condition.

It should be noted that prohibition of discrimination against part-time employees is the main provision of Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work. The Directive aims at improving the quality of part-time work and promoting its development on a voluntary basis. As a result, labour law of the EU member states prohibit discrimination against part-time employees; this prohibition is also present in the national legislation of other countries, such as the Republic of Korea, Mozambique, the Russian Federation and Turkey. In some cases, direct and indirect discrimination against part-time employees is explicitly prohibited (for example, Bulgaria and Sweden).

One of the important steps towards integration of national legislation on part-time employment was signing of the Association Agreement between Ukraine and the EU, Euratom and their member states. One of the areas of reform in Ukraine is social and labour, which involves implementing changes on employment, safe and healthy working conditions, social policy, equal opportunities etc.

The Government approved the Action Plan on implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, dated October 25, 2017, No. 1106. The implementation of certain points of this plan should ensure the compliance of the employment legislation adopted by the Cabinet of Ministers of Ukraine and the authorized bodies of state power with the framework of implementation of European integration obligations of Ukraine. In accordance with

the Association Agreement, Ukraine has committed itself to adapting the national legislation to EU standards and practices in the area of employment, social policy and equal opportunities.

In terms of fulfilment of these commitments, in November 2015 the new Labour Code of Ukraine draft (Reg. No. 1658) was adopted at the first reading. The provisions of the Code provide the implementation of the provisions of some EU acquis (in particular, Directives 91/533/EEC, 1999/70/EC, 97/81/EC, 2001/23/EC). On April 11, 2017, the Verkhovna Rada Committee on Social Policy, Employment and Pension recommended the Parliament to adopt it at the second reading and in general [5]. But in spite of this, it can be considered that the two plan items have not been implemented, as the new Labour Code draft at the time of the deadline will not be considered at the second reading.

So, taking into account the analysis of the international regulations, European standards, the Labour Code and the new Labour Code draft, we consider it necessary “On Employment of the Population” to define the concept of “involuntary part-time employment” in the Law of Ukraine as follows:

“Involuntary part-time employment is the employment of an employee on terms of working hours, less than the standard working hours prescribed by law, established between the employee and the employer through macroeconomic and macro-social conditions that do not allow to work full-time and usually has a temporary nature”.

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