DOI https://doi.org/10.30525/2592-8813-2026-spec-5

CONCLUSIVE ACTIONS IN LABOUR LAW (ISSUES AND PRACTICE)

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Abstract. Cooperation between employers and other labour market participants often depends not only on words, but is sometimes expressed through behaviour or silence. The article examines the types of conclusive actions, their legal basis, and the specific features of their practical application in the organization of labour relations. A conclusive action is the action that is associated with an unspoken willingness to conclude, continue, change or terminate a contract. Conclusive actions are recognized and used in many countries, with their application varying depending on local legal systems, judicial practices, and traditions. They constitute a significant element of labour relations and provide a flexible mechanism for the conclusion, interpretation, and execution of employment contracts.

The use of conclusive actions helps employers manage the work process more effectively; however, misinterpretation of such actions may lead to employer errors, non-compliance with employment contracts, and economic losses.

Key words: conclusive actions; legal basis; non-verbal communication; labour relations; employment contract.

Introduction. The purpose of this article is to examine the impact of conclusive actions on the effectiveness of labour relations and the particularities of their use by subjects of labour law.The interaction between employers, employees, clients, and other participants in the labour market depends on the nature of their behaviour – even their silence can be significant. The vast majority of employers are business entities whose operations are materially based on contracts. Conclusive actions refer to actions that demonstrate a non-verbal willingness to enter into, continue, modify, or terminate a contract.

Such actions are used across a wide range of industries and are an integral part of modern business practices, as they allow for the identification and interpretation of legal relationships even in the absence of a formal agreement [6; 7; 12]. For example, if an employee consistently performs their job duties and receives compensation for them, this is regarded as conclusive actions confirming the continuation of the employment relationship [16]. This form of conduct applies to situations in which the parties act or behave as though a written contract exists between them.

However, the implied form of concluding a contract may sometimes be exploited by unscrupulous business operators [5]. In labour disputes, such actions are of great significance, as they may serve as evidence of the existence of an employment contract. In cases where one of the parties – most often the employer – refuses to fulfil their obligations, the actions performed may serve as proof.

In Ancient Greece and Rome, it was assumed that contracts could be concluded through silent consent or actions. For example, *manu datio* – the transfer of an object – and *stipulatio* – through unilateral acts such as an oath or a handshake – were recognized forms of contract conclusion [1; 21]. In modern times, this tradition continues in the form of implied conduct.

Roman law has also influenced Latvian legislation. For instance, the Labor Law of Latvia provides that employment relations may be terminated not only by written agreement, but also on the basis of the actual conduct of the employee and employer [4, Article 115, Paragraph 5].

The need for a separate examination of conclusive actions in labour law arises from the following reasons:

1) presence of numerous shortcomings in the application of conclusive actions, including psychological and legal factors;

2) specific requirements for the regulatory and legal framework;

3) errors made by legislators and judges regarding conclusive actions;

4) existing difficulties faced by employers and employees in identifying the situational nature of implied behaviour;

5) particular characteristics of implied (conclusive) contracts;

6) errors made by parties to labour relations in the use of conclusive actions;

7) interaction between implied contractual relations and "traditional" forms of contracts.

The Concept and Essence of Conclusive Actions. The concept of conclusive actions has been examined in detail by the author previously [14]. A contract may be concluded or performed without being signed – through actions, inaction, or silence. This means that a contract is considered concluded or performed based on the behaviour of the parties [8; 9; 10; 11; 17; 23; 24], and in certain situations, work may commence prior to the signing of a written agreement.

The external manifestations of conclusive actions include:

1) non-verbal forms of communication: gestures (such as a handshake), facial expressions, body language, eye contact, appearance, and in some cases, even silence [14; 3, Article 1428]

2) specific behaviours of an individual (or individuals) related to particular contractual relationships – for example, the payment of wages or adherence to a work schedule without the conclusion of a written employment contract.

Silence is one of the most complex forms of conclusive actions.The Latvian Cabinet of Ministers has intentionally adopted a resolution to implement the "silence means consent" principle in the administrative practices of public institutions [18]. According to the Civil Law, silence does not, in itself, constitute either agreement or disagreement [3, Article 1430]. As they say in France: *"ça dépend" – "it depends."*

The Nature of Conclusive Actions. Psychologically, these actions are based on principles of trust and expectation, and in essence, conclusive actions in labour law can be viewed as:

- a tacit declaration of intent or an expression of will that leads to an agreement between the parties in an employment relationship;
- a form of concluding an employment contract, where the employee behaves as if they have already agreed to certain terms;
- the conduct of the employer and employee, from which a clear intention to conclude a contract or undertake specific obligations can be inferred;
- a legal tool that ensures the enforcement and protection of the parties' obligations under an employment contract, even without a written agreement;
- a situation in which labour relations are created or modified based on the actions of both parties, who behave as if the agreement were documented in writing. The requirement for a written contract is considered satisfied when a written offer to conclude a contract is accepted in accordance with Articles 39 and 41 of the Labour Law [4];
- the principle of tacit consent, which allows for the recognition of contractual obligations based on the actual conduct of the parties (e.g., receiving wages, wearing a standard work uniform, etc.);
- a legal category which refers to the conclusion of contracts and, therefore, to the creation of obligations between the parties involved;
- a legal concept referring to situations where the actions or silence of an employee may be considered as consent to enter into or modify a contract;
- a legal fact (i.e., the emergence or continuation of an employment relationship).

As a legal concept, conclusive actions are interpreted and applied differently across legal systems, regions, and specific circumstances.

Conclusive actions may be demonstrated not only by individuals (natural persons as employers), but also by legal entities (corporate employers).

Types of Conclusive Actions. The following types of conclusive actions can be identified:

• by form of non-verbal communication: visual and auditory actions such as gestures and signals. A smile, handshake, nod, or respectful behaviour – all of these can play an important role in communication. Gestures are especially significant in the work of stockbrokers. The "thumbs up" gesture is used not only in digital environments but also as a sign of approval in real-life interactions [2].

• by their role in the legal regulation mechanism: for the purposes of concluding, extending, modifying, or terminating a contract.

• by the method of consolidation within the existing legal system:

1) mandatory conclusive actions provided for by legal acts. For example, if an employer allows an employee to continue working after the end of their shift, the employer cannot later claim that they refuse to pay the employee because the worked time exceeded the agreed shift duration [4, Article 68; 3, Article 1969]

2) conclusive actions performed in accordance with legal custom. In particular, the usual commission rate for a broker's work that is "customary" in a given region [14; 13, Article 70, Paragraph 1]. For example, in the Riga region, this is equivalent to two months' rent.

• silence may be considered as consent if the employee's actions indicate that they understand and agree to the proposed working conditions [22], and the employer's actions demonstrate that they accept the work performed.

• conclusive actions may take the form of implied actions, implied behaviour, and even deceptive conduct deception, where a person can be deliberately misled without making any verbal statements. Implied behaviour can be such that it leads to the conclusion of an employment contract or another type of agreement. In the case of deceptive conduct, a person does not lie directly or verbally but through actions and indirect expressions of deceit – for example, by misrepresenting the actual quality of completed work

• conclusive actions are often encountered in mobile and computer applications, where users, by utilizing the functions of an application or platform, perform actions that indicate their consent to the terms set by the developer or operator of the application [19]. The user's subsequent actions – such as logging into the system or regularly using it – further confirm this consent. For example, platforms like Uber and Bolt effectively operate as actual employers, while drivers are not "partners," as the developers of these platforms have claimed, but rather ordinary employees

• employees' adherence to the appropriate dress code demonstrates their attitude toward potential clients. Interestingly, even criminals use a kind of "dress code" in their activities – such as wearing a postal worker's or plumber's uniform – to create a deceptive appearance of legitimacy.

• an employee's failure to fulfil their job duties, along with the employer's inability to restore the employment relationship, may be considered sufficient grounds for terminating the employment contract [3, Article 2193; 4, Article 101, Paragraph 1].

Challenges of Applying Conclusive Actions. Conclusive actions are not applicable in all cases. Like written and oral contracts, implied contracts must meet certain legal requirements, be clear, and be provable. If a contract is concluded through conclusive actions (an implied contract), no issues typically arise as long as all parties fulfil its terms.

However, potential problems may include:

1) different interpretations of conclusive actions due to their frequent ambiguity. For example, gestures or facial expressions that mean one thing in one culture may be interpreted entirely differently in another

2) if conclusive actions are not expressed clearly enough, a court may refuse to recognize the contract as concluded, and it may have no legal force

3) some non-verbal signals may create negative associations for clients. An inappropriate tone of voice, unsuitable facial expressions, or improper attire may lead clients to perceive the employee as unprofessional

4) conclusive actions are inappropriate where the law requires a specific form of expression of intent, such as a written employment contract [4, Article 40]

5) the use of conclusive actions may require additional clarification, which can delay or even cancel the conclusion or performance of a contract

6) conclusive actions can be a source of disputes when questions arise as to whether it is sufficient for concluding, terminating, or amending a contract

7) in the event of a dispute, it can be difficult to assess the legality of work performed under an implied contract. This is especially problematic in cases involving violations of occupational safety rules that result in accidents or even the death of an employee [20]

8) disagreements may arise over whether the actions performed serve as valid evidence, and which situations are appropriate for relying on them

9) if the meaning of the conclusive actions differs from the contents of a written contract, such actions may become grounds for a dispute and require judicial interpretation

10) there is legal uncertainty due to the lack of clear definitions and the presence of so-called "open concepts" regarding what kind of implied behaviour can be considered a basis for concluding, amending, or terminating a contract

Methods for Resolving Problems Associated with the Application of Conclusive Actions. Mutual trust and understanding between employers and employees serve the foundation for the use of conclusive actions in labour law. However, it is important to consider the potential negative consequences of their application. To prevent such issues, various methods can be used in employment practice. They include:

1) clearly defined terms of the employment contract and use of supplementary documentation

2) to qualify conclusive actions as acceptance (offer acceptance), such conduct must occur under the terms specified in the employment contract

3) to ensure safety, both the employer and employees must mutually agree on the use of such actions and share a common understanding of their meaning

4) case law and judicial precedents are essential elements in the legal interpretation of conclusive actions: court rulings and precedents help clarify which situations are recognized as implied contracts and define the criteria for their application

5) employees and employers should be informed about methods of communication to avoid misunderstandings and potential legal disputes

6) courts often rely on the history of the employment relationship. If successful cooperation has continued for a sufficiently long time, the court may determine that an implied contract exists

7) special attention should be given to cultural and cross-cultural factors, as well as regular training of staff in effective non-verbal communication, including professional gestures and communication skills in the work process

8) an objective assessment of specific work situations and circumstances in which conclusive actions occurred is essential. This includes evaluating the context of the parties' behaviour, as well as considering legal norms, customs, and judicial practice

9) the availability of direct and indirect evidence will be used to resolve any disputes about the use of conclusive actions. This may include written agreements, other documents, surveillance footage, and witness testimony

10) there are legal means to protect parties to an employment contract from the potential negative consequences of conclusive actions:

- a preliminary agreement on the use of such actions

- studying and applying existing knowledge on conclusive actions and their consequences
- legal assistance and consultation from lawyers, social psychologists, and cross-cultural experts.
- These measures help ensure informed decisions about which actions may be considered conclusive and the legal consequences and risks associated with them.

11) regular communication between the parties to the employment relationship

12) assessment of factual and legal aspects of the situation in which conclusive actions occurred, and its impact on the work process and labour outcomes

13) using artificial intelligence to analyse and interpret conclusive actions, increasing accuracy and preventing their misuse.

Conclusions.

1) conclusive actions are an essential element of labour relations and provide a flexible mechanism for concluding and interpreting employment contracts

2) the use of conclusive actions helps employers manage the work process effectively

3) conclusive actions are recognized and used in many countries; their application may vary depending on local legal systems, court practice, and traditions

4) it would be appropriate to amend Article 1428 of the Latvian Civil Law ("The will may be expressed both explicitly and implicitly"). The word "implicitly" should be removed from the article and replaced with the words "or through conclusive actions"

5) it is necessary to consider the potential negative consequences of using conclusive actions in employment relations and to apply them lawfully and reasonably to avoid future disputes

6) disputes regarding conclusive actions are typically resolved through the State Labor Inspectorate, courts, trade unions, or other dispute resolution bodies, taking into account available evidence

7) these actions are significant, as they may serve as proof of the conclusion of an employment contract or the acceptance/rejection of changes to its terms

8) to prevent or reduce possible negative consequences of the conclusive actions, various methods and techniques can be applied, e.g. written or technical documentation and enhanced communication between parties to the employment relationship.

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