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SOBRE EL DERECHO DE LOS TRABAJADORES A UNA EDUCACIÓN PROFESIONAL ADICIONAL: LEY LABORAL Y ASPECTOS EDUCACIONALES

ABOUT THE RIGHT OF EMPLOYEES TO ADDITIONAL PROFESSIONAL EDUCATION: LABOR LAW AND EDUCATIONAL ASPECTS

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RESUMEN

El derecho de los empleados a la formación y la educación profesional adicional como uno de los estándares legales internacionales para los derechos laborales, los principales principios internacionales necesarios para la formación del mecanismo legal de realización de los derechos de los trabajadores en la formación profesional se revisan en este trabajo. Con base en el análisis de la legislación laboral se considera la implementación de los derechos del empleado para la formación mediante la conclusión del contrato de aprendizaje, los empleados de las condiciones para combinar el trabajo con la educación y la provisión de salvaguardas especiales. El artículo analiza las cuestiones problemáticas de proporcionar garantías para la realización del derecho de los trabajadores a la formación y la educación profesional adicional. Se da la fundamentación teórica y se abre el mantenimiento del concepto de garantía de los derechos, incluso en las relaciones legales laborales. Se da la característica del mantenimiento legal de la realización del derecho de los trabajadores para la preparación y la formación profesional adicional, incluidas las garantías generales de los derechos laborales y las garantías adicionales especiales. El artículo señala algunas lagunas y deficiencias de la legislación laboral existente.

Palabras clave:

Empleados, educación vocacional, educación profesional adicional, educación superior.

ABSTRACT

Employee's right to be trained and to have additional professional education as one of international legal standards for labor rights, the main international principles necessary for the formation of legal mechanism of realization of rights of workers on professional training is reviewed in this work. Based on the analysis of labor legislation it is considered the implementation of the rights of the employee for training by the conclusion of the apprenticeship contract, the employees of conditions for combining work with education and the provision of special safeguards. This article analyzes the problematic issues of providing guarantees for the realization of workers' right to be trained and to have additional vocational education. The theoretical substantiation is given and the maintenance of concept of a guarantee of the rights, including in labor legal relations is opened. The characteristic of legal maintenance of realization of the right of workers for preparation and additional vocational training, including general guarantees labor rights and special additional guarantees is given. The article notes some gaps and shortcomings of the existing labor legislation.

Keywords:

Employees, vocational education, additional professional education, higher education.

INTRODUCTION

The right of employees to vocational training in accordance with ILO Convention No. 142 "On vocational guidance and training in the field of human resources development" (1975) refers to international legal standards. According to the provisions of the Convention, the State develops training programs that take into account the needs, opportunities and challenges of employment, both regionally and nationally, taking into account the stage and level of economic, social and cultural development, the relationship between human resources development and other economic, social and cultural objectives. The programs allow all persons, on the basis of equality and without any discrimination, to develop and apply their abilities to work in their own interests and in accordance with their aspirations, taking into account the needs of society. The Labor Code of the Russian Federation, defining in art. 2 the basic principles of the legal regulation of labor and other directly related relations proclaims, as one of the principles, to ensure the equality of opportunities for employees without any discrimination for promotion in work taking into account labor productivity, qualifications and length of service in the specialty, as well as preparation and additional professional education. The right to training and additional vocational education in accordance with the procedure established by the Labor Code of RF, other federal laws, is one of the basic rights of the employee.

DEVELOPMENT

Additional vocational education is aimed at satisfying educational and professional needs, professional development of a person, ensuring that his qualifications match the changing conditions of professional activity and the social environment. Additional professional education is carried out through the implementation of additional professional programs (programs of professional development and professional retraining programs), to the development of which persons with secondary vocational and (or) higher education are admitted persons receiving secondary vocational and (or) higher education. The in-service training program is aimed at improving and (or) acquiring new competencies necessary for professional activities, and (or) increasing the professional level within the available qualifications. The program of professional retraining is aimed at obtaining the competence necessary to perform a new type of professional activity, acquiring new qualifications. The content of the program should take into account the professional standards, qualification requirements specified in the reference books. Forms of training and the terms of mastering an additional professional program

are determined by the educational program and (or) the agreement on education. The term of mastering an additional professional program should provide an opportunity to achieve the planned results. In accordance with the changes that came into force on September 1, 2013, the minimum admissible period for mastering the programs for raising the level of professional skill can not be less than 16 hours, and the period of mastering the programs of professional retraining is less than 250 hours. Order of the Ministry of Education and Science of the Russian Federation No. 499 fixes the possibility of implementing supplementary education programs through full or part-time internships. The internship is carried out in order to study the best practices, including foreign ones, as well as to consolidate the theoretical knowledge gained during the development of professional retraining or advanced training programs, and to acquire practical skills for their effective use in the performance of their duties.

The content and terms of the internship are determined by the employer taking into account the proposed programs in agreement with the head of the organization where it will be conducted. Internship can include, for example, activities such as independent work with educational publications, the acquisition of professional and organizational skills, the study of the organization and technology of production, work, the performance of the functional duties of officials (as a temporary acting or backup), etc. The need for upgrading or retraining is determined by the employer. Forms of additional vocational education are determined by the employer taking into account the opinion of the representative body of employees, fixed in the collective agreement, agreements, employment contract. The direction of the employee for training in additional professional programs, as a rule, is formalized by an additional agreement to the employment contract and / or the student contract (which is also an additional one to the employment contract). The Labor Code of the RSFSR of 1971 did not contain articles on the student's contract, but included a special chapter entitled "Benefits for Workers and Employees Combining Work with Learning," which defines two forms of vocational training. According to the first, the administration of enterprises, organizations, and institutions organizes industrial training at the expense of the enterprise, organization, institution within the working time established by the labor legislation for employees of the corresponding ages, occupations and industries (Article 184, 185 of the 1971 Labor Code of the RSFSR). The second form was associated with training without interruption in production in general and vocational schools. Such legal regulation caused ambiguity of opinions and positions of scientists concerning the legal nature of the student's contract.

Under the conditions of perestroika, a resolution was adopted by the Central Committee of the CPSU and the Council of Ministers of the USSR on February 6, 1988, No. 166 "On the restructuring of the system of advanced training and retraining of managers and specialists in the national economy," according to which the professional development should become the responsibility of employees, and the administration of the organization provided and organized it. After the adoption of this normative act, the rights and duties of employees and administration have become the subject of broad discussions in the scientific community. Discussions were, as a rule, on two issues.

1. Does the employee have a subjective right to demand promotion, and does the administration accordingly have an obligation to raise this position in the office?
2. Can the administration recover from the employee, who was dishonest in his duties during the training, compensation paid for this period? Concerning the first question, uniform views were generally expressed: promotion is not a subjective right of the employee, and he can not claim it. And on the second issue, specialists and practitioners divided into two groups. Some thought that if the person who received the specialty had the right to save wages for the period of training and leaves the work without good reason before the expiration of the contract, the enterprise has the right to recover the amount paid in proportion to the worked time. This position is confirmed by the jurisprudence of that period. Other authors were of the opinion that such payments were guaranteed, and they were offered to limit their involvement to disciplining the employee. In connection with the adoption on December 30, 2001 of the Labor Code of the Russian Federation (here in after referred to as the LC RF), which came into force on February 1, 2002, principal approaches to regulating the issue of training employees (in all possible training options) have changed.

The new Labor Code in Art. 57 provides for the possibility of including in the employment contract the conditions for the employee's obligation to work after training not less than the contractual period if the training was carried out at the expense of the employer's funds. Since neither the Labor Code nor other legal acts stipulate otherwise, the period of completion after training is determined by agreement of the parties. In the editorial office, which was in force until September 1, 2013, Art. 196 TC established that the need for professional training and retraining of personnel for their own needs is determined by the employer. New edition of Art. 196 TC retained the principle of this position: the need for additional professional education for their own needs is determined by the employer. This approach is fully consistent with the provisions of Art.

2, 21 and 22 of the Labor Code of the Russian Federation, according to which additional professional training of employees occurs in accordance with the Labor Code, other federal laws. Article 21 of the LC RF determines the corresponding right of the employee, however it is not correspondent, i.e., does not give rise to the unconditional obligation of the employer. Although the legislation of several European countries there have been tendencies to change the legislation in this direction. For example, in France, the Labor Code provides for such an obligation of the employer. The employer must create the conditions necessary for combining work with training, provide guarantees and benefits provided by labor legislation and other normative legal acts containing labor law norms, collective agreements, agreements, local regulatory enactments, and an employment contract to employees who undergo training. As already noted, Art. 57 of the LC RF provides for the possibility of including in the employment contract the conditions for the employee's obligation to work after training not less than the period established by the contract if the training was carried out at the expense of the employer's funds.

Inclusion of such a condition in the employment contract does not violate the constitutional rights of citizens. According to the legal position of the Constitutional Court of the Russian Federation, by concluding an agreement on training at the expense of the employer's funds, the employee voluntarily assumes the duty to work for at least a certain period of time from the employer who paid the training, and in case of dismissal without valid reasons before the expiration of the term, to reimburse the costs incurred on his training, when calculating them according to the general rule in proportion to actually worked out after the end of training time. This approach allows to ensure the balance of rights and interests of the employee and employer, helps the employee to obtain competitive advantages in the labor market, and the employer - to compensate for the costs of training the employee. The costs incurred by the employer in training the employee are subject to reimbursement. There is no disagreement between specialists only one type of costs to be reimbursed - this is the cost of training (expenses for payment of educational services). Some experts, relying on the decisions of the courts, also speak about the possible reimbursement of scholarships, payment of leave, travel, accommodation. However, another position is justified, according to which the expenses incurred by the employer due to direct instructions of the labor law norms in connection with the payment of travel to the location of the educational institution and back, as well as other expenses provided by the legislation as guarantees and compensations, are not subject to recovery from the employee. We believe that in

connection with the changed approach of the legislator to the implementation of the provision on additional vocational education in practice, there may now be one more question: can an employee refuse to upgrade his qualification or retraining (for example, in case he is not satisfied with the terms of the additional agreement on the duty to work a certain period or obligation to return the amount spent by the employer on his training)? The answer can not be unambiguous. The above-mentioned resolution of the Central Committee of the CPSU and the Council of Ministers of the USSR of February 6, 1988, No. 166 "On the restructuring of the system of advanced training and retraining of managers and specialists in the national economy" stipulated the development of qualification and retraining as an employee's duty. On the one hand, Art. 21 LC RF fixes the receipt of additional education (training or retraining) only as the right of the employee, therefore, it can be concluded that the employee may refuse to receive additional education. On the other hand, the need for professional development or retraining of employees, as a rule, is an objective necessity for the employer due to the development of production and the complication of machinery and equipment, and the achievements of science. Developed and adopted in the past three years, professional standards - a vivid confirmation of this. In professional standards, periodic qualification or retraining is established as one of the mandatory requirements for the qualification of the employee (for example, in the professional standard "Occupational Safety Specialist" the head of the labor protection service requires higher education in the direction of training "Technospheric security" or higher education plus additional professional education (namely professional retraining) in the field of labor protection).

CONCLUSIONS

Professional standard "Personnel Management Specialist" for the generalized labor function "Strategic management of the personnel of the organization" (the possible names of the posts - HR Director, HR Director, Deputy Director General for Personnel), in addition to higher education, not lower than the level of specialty or master's degree, sets the following requirements to additional vocational education - programs of professional retraining in the field of personnel management, operational management, economics, organization; programs of advanced training in the field of personnel management, strategic and operational management. In some spheres of the economy, the requirements for additional education are set at the level of federal laws. For example, in accordance with the Federal Law "On Education in Russian Federation" for pedagogical employees of educational organizations of

higher professional education, the requirement is to study under the programs of continuing education at least every three years. Such qualification requirements, enshrined in federal laws and professional standards, impose on the employer the duty to create conditions for obtaining additional vocational education, and for the employee - the obligation to undergo advanced training or retraining.

The issue of the conditions for passing such an education should be the subject of social partnership agreements (agreements, collective agreements), because both the employer and the employee are interested in specialists of the appropriate level. Additional professional education in the near future will become increasingly important in connection with the development and implementation of professional standards. In order to maintain their competitiveness, employers will be forced to take care of their employees' skills development, improvement of their knowledge and skills. And the main role in the realization of such needs will be played by additional vocational education.

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