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ВПЛИВ COVID-19 НА ТРУДОВІ І СОЦІАЛЬНО-ЗАБЕЗПЕЧУВАЛЬНІ ВІДНОСИНИ: НОРМОТВОРЧИЙ ДОСВІД БІЛОРУСІ ТА УКРАЇНИ

Анотація. У статті представлений короткий аналіз ситуації в Білорусі та Україні з поширенням коронавірусу COVID-19 та заходи, вжиті роботодавцями для оптимізації трудових відносин і відносин соціального забезпечення протягом 2020 року. Подається короткий огляд рішень, прийнятих президентами, парламентами, урядами та Міністерством охорони здоров'я обох країн, спрямованих на нерозповсюдження коронавірусної інфекції. Були розглянуті останні правки до Трудового кодексу Білорусі та Кодексу законів про працю України, які регулювали дистанційну роботу з 2020 року. Звертається увага на концепцію самоізоляції згідно із законодавством Білорусі та України, обмежувальні заходи, яких необхідно дотримуватися при самоізоляції громадян у зв'язку з інфекцією COVID-19, а також контакти 1-го та 2-го рівнів. Автори аналізують нові норми законодавства, що регулюють дистанційну та віддалену роботу, введені до трудового законодавства в Білорусі в 2020 році, в Україні в 2020 і 2021 роках. У статті представлений конкретний досвід Білорусі, де за розпорядженням президента розширено права роботодавців тимчасово перевести працівників без їх згоди, а також змінювати основні умови праці без внесення змін до Трудового кодексу. Автори дають оцінку таким законодавчим нововведенням. У статті розглядаються деякі питання соціальної підтримки працівників, які потрапили в ситуацію простою внаслідок зупинення діяльності організації, які простоюють, а також самоізоляції. Наприкінці статті подано кілька пропозицій та рекомендацій щодо подальшої адаптації законодавства про працю та соціальне забезпечення в Білорусі та Україні в контексті пандемії COVID-19

Ключові слова: COVID-19, трудове право, соціальне забезпечення, трудові відносини, віддалена робота, трансфери

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THE IMPACT OF COVID-19 ON LABOUR AND SOCIAL SECURITY RELATIONS: RULE-MAKING EXPERIENCE OF BELARUS AND UKRAINE

Abstract. *The article presents a brief analysis of the situation in Belarus and Ukraine with the spread of coronavirus COVID-19 and measures taken by employers to optimise labour and social security relations during 2020. A brief overview of the decisions taken by Presidents, Parliaments, Governments and Ministry of Healthcare of both countries aimed at containment of coronavirus infection is presented. The latest changes in the Labour Code of Belarus and Labour Code of Ukraine, which regulated remote work since 2020, were touched upon. Attention is paid to the concept of self-isolation under the legislation of Belarus and Ukraine, restrictive measures that must be observed when self-isolating citizens in connection with COVID-19 infection, as well as level 1st and 2nd contacts. The authors analyse the new legislative provisions governing home and remote work, introduced into the labour legislation in Belarus in 2020, in Ukraine in 2020 and 2021. The article presents the specific experience of Belarus, where the presidential decree extended the rights of employers to temporarily transfer employees without their consent, as well as to change essential working conditions, and without making changes to the Labour Code. The authors give an assessment of such legislative innovations. The article deals with some issues of social support for employees who find themselves in a situation of downtime due to the suspension of the activities of organisations that are idle, as well as self-isolation. At the end of the article, some suggestions and recommendations are made for further adaptation of labour and social security legislation in Belarus and Ukraine in the context of the COVID-19 pandemic*

Keywords: *COVID-19, labour law, social security, labour relations, remote work, transfers*

INTRODUCTION

In the conditions of the COVID-19 coronavirus pandemic announced by the World Health Organization on March 11, 2020, most of the world's states have taken measures to close borders and restrict the movement of citizens within their countries. However, many countries have imposed quarantine or even declared a regime of emergency in connection with the pandemic COVID-19 (UK, India, China, most countries of the European Union, Russia, USA, Ukraine), some states (Belarus, Sweden) were limited to milder measures, without lockdown and limiting the right of its citizens to move within their own countries. From 7 to 9 July 2020, the ILO held a Global summit on COVID-19 and the world of work, at which the Director General of the ILO, Guy Ryder, heads of state and government of many countries of the world, as well as international experts spoke. Currently, the agenda of international legal measures to overcome the consequences of the COVID-19 pandemic is being actively discussed both globally and regionally (in particular, in the European Union and the Eurasian Economic Union).

The main question on the agenda: how will the world of work change after the COVID-19 pandemic? In Belarus, 288,267 people were registered with a positive test for COVID-19 as at 01.03.2021. A total of 4,908,397 tests were performed. During this period 1,985 patients with detected coronavirus infection died. 278,661 patients who had previously been diagnosed with COVID-19 recovered and were discharged. According to sentinel surveillance, the frequency of detection of SARS-CoV-2 virus RNA (PCR) in experimental samples for 14 KN. 2021 was 11.9% [1]. 1,357,470 cases of COVID-19 were recorded in Ukraine as at 2 March 2021. Since the pandemic had begun, 26,212 people have died from the coronavirus, and 1176918 people have recovered. A total of 6,948,980 tests were made [2].

In April 2020, a new concept of "self-isolation" appeared in the legislation of Belarus. Since January 2020, changes to the Labour Code of Belarus have legalised the use of distance work, and distance learning elements are widely used in universities. The rules on flexible working

time contained in Articles 128-130 of the Labour Code of the Republic of Belarus¹ (hereinafter referred to as “the Labour Code of Belarus”), but they are less adapted to the conditions of COVID-19 pandemic because they were introduced in 2000 and have not been changed since.

The Law of Ukraine No.540-IX² was adopted on 30 March 2020, which set out the definition of an employment agreement in a new wording, consolidated the concepts of flexible working hours and remote (home) work, and made provision for the payment of partial unemployment benefits for the period of implementation of measures to prevent the emergence and spread of COVID-19, introduced by the quarantine established by the Cabinet of Ministers of Ukraine. The Law of Ukraine No.555-IX for the first time consolidated the concepts of self-isolation and observation on 13 April 2020³. On February 4, 2021, the Verkhovna Rada of Ukraine adopted Law 1213-IX “Amendments to Certain Legislative Acts Concerning the Improvement of Legal Regulation of Television Networks”⁴. The Law, in particular, regulates the issue of flexible working hours and introduces the conclusion of an employment agreement for telework and an employment agreement for home work, the conditions of this introduction, the obligations of the employer and the employee under such employment agreements, etc.

Despite the fact that the ILO, human rights activists, and scholars of labour law had already been seeking legislative measures to combat the effects of the COVID-19 and its impact on labour relations in individual countries [3-7], a review was published on the legislative measures taken in Belarus [8] and Ukraine [9], this paper was the first attempt at comparative legal studies of legal experience in Belarus and Ukraine.

Throughout 2020, attempts were made to analyse the adaptation of labour legislation and legislation in the field of social security in the context of the COVID-19 pandemic in individual countries of the European Union [10], EAEU member states (Belarus, Kazakhstan, Kyrgyzstan and Russia). The studies of such researchers as S.Yu. Golovina, K.S. Ramankulov, K.L. Tomashevski, M.Kh. Khasenov [11], N.L. Lyutov [12], among Ukrainian scientists – S.V. Venediktov, Ya.V. Simutina [9; 13], etc. deserve special attention.

This study attempted a comparative analysis of the legislative measures adopted in Belarus and Ukraine aimed at reducing the negative consequences for labour relations and social support of the population in the context of the economic crisis caused by the COVID-19 pandemic.

1. MATERIALS AND METHODS

The paper is based on the study of scientific achievements of foreign and Ukrainian scientists and the results of research on Ukrainian and foreign legislation on the impact of COVID-19 on labour and social security relations. The study analysed the developments of labour law representatives of Ukraine and Belarus regarding the subject matter, as well as the legislative provisions of both Ukraine and Belarus aimed at providing additional social and economic guarantees in connection with the spread of coronavirus disease (COVID-19). Several proposals and recommendations were made for further adaptation of labour and social security legislation in Belarus and Ukraine in the context of the COVID-19 pandemic.

To achieve the purpose of the study, an appropriate research algorithm was selected, typical for the set of collected materials, conditions and forms of work. The methodological basis of the study were general scientific and special scientific methods, the use of which is due to the purpose of the study and the need to use the theoretical achievements of the science of labour law and social security law in the legislation of Ukraine and Belarus. The study employed such methods as dialectical, systematic analysis, historical, comparative law, formal law, laws of logic, and others. In their interaction, all these methods enabled a full-fledged completed legal study, each of them was used at a certain stage of the study, so the methodology is balanced, thorough, and comprehensive.

The basis of the research methodology was the dialectical method as an objectively necessary logic of the movement of cognition, which allows considering the studied phenomenon in its development, the relationship due to the material conditions of social life. This method helped cover the essence of the impact of COVID-19 on labour and social security relations. The dialectical method allowed considering the legal regulation of home and remote work, self-isolation, and determining the expediency of legislation proposed in 2020-2021 aimed at containment of coronavirus infection. The Aristotelian method provided an opportunity to study the current state of the situation in Belarus and Ukraine with the spread of COVID-19 coronavirus and the measures taken by employers to optimise labour and social security relations during 2020. The comparative legal method was used in the review and comparison of the latest amendments to the Labour Code of Belarus and the Labour Code of Ukraine⁵, which regulated teleworking from 2020. The study considered the

1. Labour Code of the Republic of Belarus. (1999, July). Retrieved from <https://cis-legislation.com/document.fwx?rgn=2562>.

2. Law of Ukraine No. 540-IX “On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19)”. (2020, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/540-20#Text>.

3. Law of Ukraine No. 555-IX “On Protection of the Population from Infectious Diseases” to Prevent the Spread of Coronavirus Disease (COVID-19)”. (2020, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/555-20#Text>.

4. Law of Ukraine No. 1213-IX “On Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of Legal Regulation of Home, Remote Work and Work with Application of Flexible Working Hours”. (2021, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/1213-IX#Text>.

5. Labour Code of Ukraine. (1971, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/322-08#Text>.

concept of self-isolation introduced in accordance with the legislation of Belarus and Ukraine as a restrictive measure in connection with COVID-19 infection. The specific experience of Belarus has been studied, where the President's decree expanded the rights of employers to temporarily transfer employees without their consent, as well as to change the basic working conditions and without amending the Labour Code of Belarus. The study analysed the new legislative provisions governing home and remote work, which were introduced into the labour legislation in Belarus in 2020, and in Ukraine in 2020 and 2021. A brief overview of the decisions taken by the presidents, parliaments, governments and submitted by the Ministries of Healthcare of both countries to prevent the spread of coronavirus infection. The use of the comparative legal method made it possible to determine the place of home and remote work in the structure of a complex legal act in the field of labour and to understand its essence in more detail. The method of system analysis was used in the study of scientific approaches to the place of home and remote work in the system of modern organisation of labour of employees. System analysis convincingly proved the need to develop home and remote work in modern conditions.

2. RESULTS AND DISCUSSION

2.1 Legal regulation of self-isolation in Belarus and Ukraine

In accordance with Article 23 of the Law of the Republic of Belarus No. 340-Z "On Sanitary and Epidemiological Welfare of the Population" dated January 7, 2012¹, restrictive measures are introduced (cancelled) by the decision of the Council of Ministers of the Republic of Belarus, local executive and administrative bodies on the recommendation of the chief state sanitary doctors. The list of restrictive measures and the procedure for their implementation are determined by the Ministry of Healthcare of the Republic of Belarus. In accordance with these rules to prevent the spread of infection caused by a coronavirus COVID-19, a Resolution of the Council of Ministers of the Republic of Belarus No. 208 "On Introduction of Restrictive Measures" dated 08.04.2020² (hereinafter referred to as "the Resolution No. 208") introduced self-isolation on the territory of the Republic of Belarus as a restrictive measure.

Resolution No. 208 legally defined the concept of self-isolation as a system of measures that ensure the isolation (in the home or other conditions) of persons who came from epidemic countries, or persons who had or could have had contact with persons who have infectious diseases, and (or) persons who are carriers of pathogens of such infectious diseases, and (or) persons who are recovering from infectious diseases.

According to Paragraph 3 of Resolution No. 208,

three categories of citizens of the Republic of Belarus, foreign citizens and stateless persons are subject to self-isolation:

- 1) having COVID-19 infection;
- 2) related to contacts:
 - first-level contact with persons with COVID-19 infection – within 10 calendar days from the date of last contact;
 - second-level persons with COVID-19 infection, in the presence of one or more respiratory symptoms, if such citizens are children under the age of 10 and attend a pre-school or general secondary education institution (hereinafter referred to as minors), – for the period of the presence of these symptoms.
- 3) persons who arrived in the Republic of Belarus from countries where cases of COVID-19 infection are registered.

The criteria for classifying citizens as persons who have these first- and second-level contacts are established by the Resolution of the Ministry of Healthcare of Belarus No. 36 "On the Implementation of the Resolution of the Council of Ministers of the Republic of Belarus No. 208 dated 08.04.2020" dated 10.04.2020³;

3) persons who arrived in the Republic of Belarus from countries where cases of COVID-19 infection are registered.

A citizen who is subject to self-isolation is handed a requirement to comply with the rules of behaviour in self-isolation.

In accordance with Paragraph 6 of Resolution No. 208, citizens who are in self-isolation are obliged as follows:

1) not to leave the place of residence (stay), including not to visit places of work (study), trade and public catering facilities, sports, exhibition and concert halls, cinemas, train stations and other places of mass stay of people, except in the following cases of extreme necessity:

2) visit the nearest grocery store or pharmacy to purchase the necessary goods;

3) notify the employer of the reason for absence from work;

4) exclude the use of services that involve contact with other persons, except in cases where such services are required to ensure the safety of life;

5) if your health condition worsens (body temperature rises to 37°C or higher, coughing, shortness of breath), contact an ambulance.

If a citizen violates the requirement of self-isolation, the temporary disability benefit is assigned at the rate of 50 percent of the benefit calculated in accordance with the law. In addition, violation of the requirements for self-isolation may involve administrative or criminal liability [8].

The Law "On Amendments to the Law of Ukraine No. 555-IX "On Protection of the Population from Infectious Diseases" to Prevent the Spread of Coronavirus Disease

1. Law of the Republic of Belarus No. 340-Z "On Sanitary and Epidemiological Welfare of the Population". (2012, January). Retrieved from <https://pravo.by/document/?guid=3961&p0=H11200340>

2. Resolution of the Council of Ministers of the Republic of Belarus No. 208 "On Introduction of Restrictive Measures". (2020, April). Retrieved from https://pravo.by/upload/docs/op/C22000208_1586379600.pdf

3. Resolution of the Ministry of Healthcare of Belarus No. 36 "On the Implementation of the Resolution of the Council of Ministers of the Republic of Belarus No. 208 dated 08.04.2020". (2020, April). Retrieved from <https://pravo.by/document/?guid=3961&p0=W22035248>

(COVID-19)” was adopted in Ukraine on 13 April 2020¹. It is aimed at legal regulation of issues related to the stay by citizens in self-isolation, observation, in temporary healthcare institutions during the implementation of measures counteracting the spread of COVID-19, provided for in the decision of the Cabinet of Ministers of Ukraine on the quarantine setting, as well as expanding the powers of executive authorities and local self-government bodies in the case of a quarantine setting while it is valid. The Law No. 555-IX² and legal acts adopted in its development provide for the following innovations:

A. The concept of “self-isolation” has been defined (the stay of a person in relation to whom there are reasonable grounds for the risk of infection or spread of an infectious disease in a set by him/her place (placement) in order to comply with anti-epidemic measures on the personal obligation basis) and “observation” (the stay of a person (in relation to whom there is at risk of an infectious disease spreading) in the observatory for the purpose of his/her examination and medical observation). If we analyse the definition of self-isolation, then we can make the following conclusions regarding isolated persons: 1) there should be reasonable grounds to consider that a person is at risk of infection or can spread infectious diseases him/herself. However, the legislation does not set a state one or other body establishing a list of justified grounds; 2) the mentioned person must take personal obligations of self-isolation in the place (placement) specified by him/her.

B. It has been set that the grounds and procedure for mandatory self-isolation, observation and hospitalisation are determined by the Cabinet of Ministers of Ukraine in a decision on the quarantine establishment. Persons who need self-isolation are: 1) persons who have had contact with a patient with a testified COVID-19 case, except for persons who used personal protective equipment during the performance of their duties; 2) persons in relation to whom there is a suspicion of infection, or persons who are sick with COVID-19 in a mild form and do not require hospitalisation; 3) persons who have given their consent to self-isolation using the application “Act at Home” of the Unified State Web Portal of Electronic Services before crossing the state border or checkpoints of entry into and out of the temporarily occupied territory; 4) persons who have reached the age of 60. But the fourth group does not include persons from among public servants and employees of state bodies and local self-government bodies, people's deputies and deputies of local councils, judges, military personnel and employees of the Armed Forces of Ukraine, other military formations and law enforcement agencies, as well as persons who carry out activities related to preventing the spread of COVID-19, ensure the activities of legal entities that: carry out activities and provide services in the energy, chemical industry, transport, informational-communication technologies, electronic communications,

banking and financial sectors, defence industry; provide services in the spheres of life support of the population, in particular in the spheres of centralised water supply, sewerage, supply of electricity and gas, food production, agriculture, health care, are communal, emergency and rescue services, population emergency help services; are included in the list of state property objects of strategic importance for the economy and security of the state; are objects of potentially hazardous technologies and industries.

The grounds for observing a person are: a person's application for voluntary observation due to the impossibility of the requirements of self-isolation adherence; the conditions of self-isolation violation by a person for a second time (except for persons who are a subject to self-isolation solely in connection with reaching the age of 60); refusal of a person who had contact with patients or who has signs of COVID-19 infection from a medical examination according to the attending physician appointment; crossing the state border by a person; crossing by a person the checkpoints of entry to the temporarily occupied territories of Donetsk and Luhansk regions, the Autonomous Republic of Crimea and the city of Sevastopol and leaving them.

C. Provided for the issuance and payment of certificates of incapacity to work for the period of persons being in self-isolation, observation, in temporary healthcare institutions;

D. The conditions of leaving the quarantine zone by citizens are determined.

Persons who suffer from infectious diseases in Ukraine are obliged:

- to apply measures recommended by medical professionals to prevent the spread of infectious diseases;
- to comply with the requirements and recommendations of medical workers on the procedure and conditions of treatment, to comply with the mode of operation of healthcare institutions and scientific institutions in which they are treated;
- undergo the necessary medical examinations and inspections on time.

2.2. Rules on home work and remote work in the Labour Code of Belarus and the Labour Code of Ukraine

The Law No. 219-Z “On Changing Laws” dated 18.07.2019 introduced global amendments to the Labour Code of Belarus, which came into force on 28.01.2020. In particular, the Labour Code has received a new Chapter 25, which contains special rules of labour law that regulate the specifics of labour relations with remote employees. Remote employees are individuals who have concluded an employment agreement for remote work. Remote work is work that an employee performs outside of the employer's location using information and communication technologies to perform this work and interact with the employer.

A form of non-standard employment, such as home

1. Law of Ukraine No. 555-IX “On Protection of the Population from Infectious Diseases” to Prevent the Spread of Coronavirus Disease (COVID-19)”. (2020, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/555-20#Text>

2. *Ibidem*, 2020.

work is closely related to remote work. The work of home-workers is regulated by Chapter 25 of the Labour Code of Belarus. This chapter regulates the specifics aspects of labour relations such as concluding, changing and terminating an employment agreement with remote employees, and allows for extensive self-regulation of working hours and rest time by remote employees. Thus, the Belarusian legislator shortly before the COVID-19 coronavirus pandemic had created a legal basis for the use of remote work by employers. According to available information, employers use this flexible form of employment quite widely, transferring many of their employees to remote work by concluding additional agreements to employment agreements [14, p. 40].

However, the Belarusian legislator does not regulate the mechanism for switching to remote work with an employee who previously worked in an office, that is, at the employer's location. Similarly, there are no rules in Belarus that allow for a combination of office work and remote work, although such forms of employment are used in practice during the period of COVID-19 distribution. We believe that in the future, the mode of remote work and partially remote work should be regulated in Chapter 10 of the Labour Code of Belarus "Working time", including the minimum period for warning an employee about switching to this mode.

The only legal possibility for organising distance working in Ukraine for a long time was home work, which was regulated by the Regulations on the Working Conditions of Homeworkers (1981)¹. However, that legal act of the Soviet period was not adapted to modern realities and, accordingly, did not provide for the possibility of performing work using computer technologies, video chats and other similar technical innovations. The rules and requirements for the transition to such a mode of operation were complex and excessive until recently. Thus, the Regulation on Working Conditions for Homeworkers obliges the administration, together with representatives of the trade union, to examine the living conditions of citizens who have expressed a desire to do homework. Representatives of local fire and sanitary inspections may be involved in order to determine general rules for fire safety and sanitation, as well as the living conditions of homeworkers performing certain types of homework. These requirements seem being absurd, but the Ministry of Social Policy of Ukraine, in a letter No. 30/1/204-19 dated 19 February 2019², emphasised that the homeworkers' living conditions must be examined.

And only on 17 March 2020, the Law of Ukraine No. 530-IX³ was adopted, which provided employers with the opportunity to entrust workers with tasks should be done at home, and already on 30 March 2020, the Law of Ukraine No. 540-IX⁴ regulated distance working precisely at the level of the Labour Code – and not only for the quarantine period, but also for all other cases according to the agreement of the parties.

Distance working (home, remote work) is defined as a form of labour organisation in which an employee performs his/her work at one's place of residence or in another place of his/her choice, including using informational-communication technologies, but outside the employer's premises. As a general rule, when concluding an employment agreement for remote work, compliance with the written form of the agreement is mandatory. However, at the time of the spread of the epidemic threat, special rules apply – the condition for remote work could be set in the employer's order without the obligatory conclusion of an employment agreement with the employee in written form.

Today, a serious drawback is the lack of a legislative ban on entrusting remote workers with performing those types of work, which cause inconveniences for their neighbours. While working remotely, employees can use working hours at their discretion, the internal labour regulations do not apply to them. But the employer needs to ensure that the work performed is recorded using any accounting methods on which the parties have agreed. The duration of the working time of employees who perform work remotely cannot exceed the provisions stipulated by the labour legislation of Ukraine (40 or less hours per week). It should be emphasised that distance workers are fully covered by labour legislation, taking into account the specifics and features of remote work set in the employment agreement. That is, the performance of remote (home) work does not entail any restrictions on the scope of labour rights of workers [13; 15]. If an employee who is at remote work properly performs all the obligations assigned to them, their labour is paid in full. That is, not only the official wage itself is paid, but also other components of the salary provided for by the conditions of the employment agreement (additional payments, allowances, bonuses).

Law 1213-IX of February 4, 2021⁵ introduces two independent types (forms) of work – remote and home. The employer has the right when concluding an employment

1. Resolution of the State Committee of Labour of the USSR and the Secretariat of the All-Union Central Committee No. 275/17-99 "On Approval of the Regulations on Working Conditions of Homeworkers". (1981, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0275400-81#Text>

2. Letter of the Ministry of Social Policy of Ukraine No. 30/1/204-19 (2019, February). Retrieved from <https://www.profiwins.com.ua/uk/letters-and-orders/ministry-of-labour-and-social-policy/15136-30s-19.html>

3. Law of Ukraine No. 530-IX "On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19)". (2020, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/530-20#Text>.

4. Law of Ukraine No. 540-IX "On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19)". (2020, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/540-20#Text>.

5. Law of Ukraine No. 1213-IX "On Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of Legal Regulation of Home, Remote Work and Work with Application of Flexible Working Hours". (2021, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/1213-IX#Text>

agreement for remote or home work to receive information about the place of residence or other place of his choice, where the job function will be performed (in order to properly register the employee for remote work). It is possible to acquaint the employee with the rules of internal labour regulations, collective agreement, local regulations of the employer, notices and other documents that the employee must be acquainted with in writing by exchanging electronic documents. According to the Law¹, an employee can remotely get acquainted with the requirements for labour protection through the use of modern information and communication technologies, including video communication. The employee has the opportunity to combine remote work with the performance of work in the normal mode at workplaces on the premises or on the territory of the employer.

2.3. New opportunities for temporary transfers and changes in essential working conditions in Belarus in comparison with Ukrainian model

The Decree of the President of the Republic of Belarus No. 143 “On Support of the Economy” of 24.04.2020² (hereinafter referred to as “the Decree No. 143”) extraordinary expanded rights of employers to change labour relations with employees.

According to Paragraph 14 of the Decree No. 143, employer have the right to change the essential working conditions of an employee, with the exception of salary reducing, due to justified reasons for the adverse impact of the epidemiological situation on the activities of the company. In this case, the employer must notify the employee of changes in essential working conditions in writing no later than one day in advance. It is appropriate to remind that according to Part 3, Article 32 of the Labour Code of Belarus, a period of warning of employees about change the essential working conditions is provided for no later than one month. For comparison, in Russia, such warnings should be issued by the employer 2 months in advance, in Kazakhstan – 1 month before the corresponding changes. A Belarusian employee finds himself in a difficult situation: to agree to work in significantly changed working conditions from the next day, or to be dismissed for refusing to continue working due to changes in significant working conditions with the payment of a two-week average salary.

In Paragraph 14 of the Decree No. 143 there is another rule, which also limits the labour rights of workers: employers are entitled to make temporary transfer, including to another branch or another company in connection with production necessity, caused by the unfavourable impact of the epidemiological situation the activity of the employer, and also for replacement of an absent employee without the employee's consent for up to three months. Note that before the adoption of the Decree No. 143 temporary transfers in connection with industrial necessity were limited to one month without the consent of employees (Article 33 of the Labour Code of Belarus³). Moreover, even this rule was criticised by scholars, since it bordered on forced or compulsory labour, which is prohibited both by the Article 41 of the Constitution of Belarus⁴ and by ratified ILO conventions No. 29⁵ and No. 105⁶. We hope that the provisions of Paragraph 14 of the Decree No. 143⁷, which restrict the labour rights of employees and force them to change essential working conditions and forced temporary transfers for them, will be in effect temporarily, only during the period of the epidemic rise of the COVID-19 disease and when the epidemic situation in the country improves, will be cancelled.

In accordance with the requirements of Part 3, Article 32 of the Labour Code of Ukraine⁸ in connection with changes in the organisation of production and labour, it is allowed to change essential working conditions while continuing to work in the same specialty, qualification or position. The employee must be notified in written form no later than two months in advance about changes in essential working conditions – systems and amounts of remuneration, benefits, operating mode, shorter working hour's establishment or cancellation, combination of professions, changes in grades and titles of positions and others. However, in case of emergency, for example, during the spread of COVID-19 period, admittedly, there is no such time reserve. Actions should be done quickly and decisively. The disadvantage of the current labour legislation of Ukraine is the absence of a legal provision that would allow changing the essential working conditions for the period of a pandemic in a simplified manner and as soon as possible.

In the full absence of work that could be entrusted to employees for the quarantine period, the employer has the right to declare a downtime by his/her order. The employee's

1. Law of Ukraine No. 1213-IX “On Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of Legal Regulation of Home, Remote Work and Work with Application of Flexible Working Hours”. (2021, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/1213-IX#Text>

2. Decree of the President of the Republic of Belarus No. 143 “On Support of the Economy”. (2020, April). Retrieved from https://pravo.by/upload/docs/op/P32000143_1587762000.pdf.

3. Labour Code of the Republic of Belarus. (1999, July). Retrieved from <https://cis-legislation.com/document.fwx?rgn=2562>

4. Constitution of the Republic of Belarus. (1994, March). Retrieved from <https://president.gov.by/en/gosudarstvo/constitution>

5. Home Work Convention of the International Labour Organization (No. 29). (1930, June). Retrieved from <https://www.ilo.org/global/standards/lang--en/index.htm>

6. Home Work Convention of the International Labour Organization (No. 105). (2000, October). Retrieved from <https://www.ilo.org/global/standards/lang--en/index.htm>

7. Decree of the President of the Republic of Belarus No. 143 “On Support of the Economy”. (2020, April). Retrieved from https://pravo.by/upload/docs/op/P32000143_1587762000.pdf

8. Labour Code of Ukraine. (1971, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/322-08#Text>.

consent is not required in that case, and the downtime lasts until the work resumes. At the same time, employees retain the right to be paid for the downtime in the amount of at least 2/3 of the rate (wage) in the absence of work, including for the quarantine period.

According to Art. 103 of the Labour Code of Ukraine¹, the employer must inform the employee about new or changes in the existing conditions of remuneration to the side of deterioration not later than two months before their introduction. Thus, the introduction of a distance working regime at the enterprise is not a basis for a unilateral reduction of wages for employees. The employer notifies the employee about the reduction in wages 2 months in advance in any case and is able to introduce such a reduction only after the end of this period.

Decree of the President of the Republic of Belarus No. 512 of 31.12.2020², which entered into force on 08.01.2021 (hereinafter referred to as “the Decree No. 512”), made some changes and amendments to the Decree No. 143. The Decree No. 512 grants employers the right to “declare down time caused by the adverse impact of the epidemiological situation on the employer’s activities, without limiting the total duration during the calendar year. The employee is idle, the total duration of which exceeds a total of six months in a calendar year, a valid reason for early termination at the request of the employee fixed-term employment agreement (contract) in the period of downtime³”. To clarify this rule, let us recall what is meant by downtime in the labour legislation.

According to Part 1, Article 34 of the Labour Code of Belarus³, downtime is a temporary absence of work due to an industrial or economic nature (failure of equipment, mechanisms, lack of raw materials, materials, electricity). In this case, the total duration of downtime, as a general rule, may not exceed a total of six months during a calendar year.

Thus, the Decree No. 512⁴ essentially removed the restrictions for employers on the duration of downtime caused by the adverse impact of the epidemiological situation on the activities of this organisation. If previously the downtime was limited to only 6 months during a calendar year, now it can last for the entire calendar year or most of it. This provision, on the one hand, allows retaining labour relations with an employee longer, without resorting to staff reduction, and on the other hand, it carries a negative aspect for employees: a low level of their income during downtime (only 2/3 of the wage rate of a worker or employee’s salary). Under Part 1, Article 71 of the Labour

Code of Belarus, in case of non-performance of production standards, defects, idle time through no fault of the employee, the wages may not be less than two thirds of installed him tariff rate (tariff salary), salary. Admittedly, this rule sets only the lower threshold of the guarantee payment in case of downtime not caused by the employee. In cases stipulated by a collective agreement, an agreement, local legal acts, an employment agreement (contract) or an order of the employer, you can increase this guarantee payment, for example, to the amount of the salary (tariff rate).

The Decree No. 512⁵ also granted employers the right to release an employee from work due to his or her sick condition for up to three calendar days in total during the term of this Decree without providing the employee with a certificate of disability. Moreover, the preservation of average earnings for the period of release from work may be provided for by a collective agreement or other local legal act of the organisation, with the exception of budget organisations and other organisations receiving subsidies, whose employees are equal in remuneration to employees of budget organisations. This provision is an innovation in the labour legislation of Belarus, since the Labour Code does not contain legal provisions that allow “releasing an employee from work” in connection with their worsened condition before allowing their suspension if said condition hinders work.

2.4. Payment of temporary disability benefits, guarantees for employees returning from foreign business trips: experience of Belarus and Ukraine

The single real form of material support for the population in the conditions of the epidemic upsurge and the global economic crisis on the part of the Belarusian state at the moment can be considered the expansion of the grounds for temporary disability benefits.

Paragraph 15 of the Decree No. 143⁶ prescribes that temporary disability benefits should be paid to persons actually caring for a child under the age of 10 who attend a pre-school or general secondary education institution, if this child is a first-level contact with persons with COVID-19 infection, or a second-level contact with persons with COVID-19 infection, if there have one or more respiratory symptoms. This allowance is assigned in accordance with the procedure established by the Council of Ministers of the Republic of Belarus for granting temporary disability benefits in the case of caring for a sick child under the age of 14.

If the temporary incapacity for work of the insured

1. Labour Code of Ukraine. (1971, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/322-08#Text>.

2. Decree of the President of the Republic of Belarus No. 512. (2020, December). Retrieved from https://pravo.by/upload/docs/op/P32000512_1609966800.pdf

3. Labour Code of the Republic of Belarus. (1999, July). Retrieved from <https://cis-legislation.com/document.fwx?rgn=2562>.

4. Decree of the President of the Republic of Belarus No. 512. (2020, December). Retrieved from https://pravo.by/upload/docs/op/P32000512_1609966800.pdf

5. *Ibidem*, 2020.

6. Decree of the President of the Republic of Belarus No. 143 “On Support of the Economy”. (2020, April). Retrieved from https://pravo.by/upload/docs/op/P32000143_1587762000.pdf.

person is caused by quarantine, imposed by the sanitary-epidemiological service bodies in Ukraine, financial assistance from the Social Insurance Fund of Ukraine is provided from the first day and for the entire period of absence at work for this reason [16]. Assistance for temporary disability as a result of staying in health care institutions, as well as self-isolation under medical supervision in connection with the implementation of measures aimed at preventing the occurrence and spread of COVID-19, is paid by the Social Insurance Fund to insured persons, starting from the sixth day of disability for the entire period up to complete recovery. Employees for the period of stay in specialised health-care institutions, as well as for self-isolation under supervision in connection with the implementation of measures aimed at preventing the emergence and spread of COVID-19, will be paid assistance in the amount of 50 percent of the average wage (income), regardless of the length of insurance period. Persons whose work is related to serving the population can receive a certificate of temporary disability due to suspension from work during quarantine, if: 1) these persons have been in contact with infectious patients or are carriers of bacteria; 2) if it is impossible to temporarily transfer these persons with their consent to another job that is not associated with the risk of the spread of infectious diseases.

An uncountable achievement of Ukraine is the introduction of partial unemployment benefits for the quarantine period. This benefit is provided by the employment centre to employers and is paid to employees according to the request of the employer for its payment (except for persons who receive a pension and work part-time) in the event that they lose part of their salary as a result of a forced reduction in the duration of working hours due to the termination (reduction) of activities. Partial unemployment allowance (benefit) for the quarantine period is provided for each hour by which the employee's working hours are reduced, at the rate of 2/3 of the tariff rate (wage) established for the employee of the corresponding category. However, the amount of the allowance cannot exceed the amount of minimum wage. The amount is provided to employers for the period of stopping (reducing) activities and within 30 calendar days after the end of quarantine in the event that the employer pays a single social contribution within six months that precede the date of stopping (reducing) activities [17].

Resolution of the Council of Ministers of the Republic of Belarus No. 194 "On Official Business Trips Abroad" dated 03.04.2020¹ established that if an employee cannot return to the Republic of Belarus from a business trip from a foreign country where cases of infection caused by the COVID-19 coronavirus are registered, the period of official business trip for sent employees is extended until the day of their arrival in Belarus, inclusive. For these employees, the place of work (service) and the position of an employee (worker's profession), a civil servant are preserved, and expenses are reimbursed in accordance with

the legislation for employees sent on official business trips. From the date of extension of business trips before the day of arrival to the Republic of Belarus, inclusive, and also at impossibility of execution of the employment agreement (job duties) during the period of seconded workers after their return from a business trip in isolation (10 days) they retained the wages in the amount of not less than two thirds of the salary, unless otherwise determined by collective agreement or another local legal act of the organisation.

The legislation of Ukraine does not provide for any special procedure for sending employees on a business trip (including abroad one) during quarantine. General procedure is used in that case. A business trip, in which the employee is sent by order of the head of the enterprise to perform work specified in the employment agreement, is mandatory for the employee. At the same time, an employee who is performing his/her labour duties has the right to safe working conditions in accordance with the legislation on labour protection. Therefore, the employer, in order to prevent COVID-19 infection, is obliged to provide employees with antiseptic and disinfectants and inform them about preventive measures.

CONCLUSIONS

Summing up we formulate the main conclusions: pandemic coronavirus COVID-19, created a real threat to the life and health of millions of inhabitants of planet Earth, including citizens of the Republic of Belarus and the Ukraine, required the adoption by governments of most countries of the world emergency measures, some of which restricted human rights (freedom of movement, right to privacy etc.); the legislation of the Republic of Belarus legally stipulated the concept of "self-isolation", defines categories of citizens who are subject to isolation (arriving from abroad within 14 calendar days, cases of coronavirus COVID-19 and undergoing outpatient treatment to recovery, as well as persons related to pins 1 and 2 levels).

Ukrainian legislation defines the terms "self-isolation" and "observation", fixes a list of citizens in need of self-isolation (persons who have had contact with a patient with a confirmed COVID-19 case; persons in relation to whom there is a suspicion of infection, or persons who are sick with COVID-19 in a mild form and do not require hospitalisation; persons who have consented to self-isolation using the "Act at Home" application of the Unified State Web Portal of Electronic Services before crossing the state border or checkpoints of entry into and out of the temporarily occupied territory; persons who have reached 60 years of age). However, Ukrainian legislation does not define a state or other authorised body establishing a list of reasonable grounds to believe that a citizen has a risk of COVID-19 infection or can spread it oneself; extending the rights of employers to change essential working conditions with a one-day warning and to temporarily transfer

1. Resolution of the Council of Ministers of the Republic of Belarus No. 194 "On Official Business Trips Abroad". (2020, April). Retrieved from <https://pravo.by/document/?guid=3961&p0=C22000194>.

employees without their consent for up to three months can only be a temporary, exceptional measure that must be immediately cancelled after reducing the spread of COVID-19 to Belarus. At the same time, there is no legal rule in the labour legislation of Ukraine that would allow changing the essential working conditions for the period of a pandemic in a simplified manner and as soon as possible; the disadvantage of Ukrainian legislation is the lack of a legislative ban to entrust remote workers with performing those types of work that create inconveniences for their neighbours; since 2020, changes and additions to the Labour Code have come into force in Belarus, and in Ukraine – in the Labour Code, which introduced the concept of remote work, although the approaches of the Belarusian and Ukrainian legislators differ in many ways. However, the Belarusian legislator does not regulate the mechanism for switching to remote work with an employee who

previously worked in an office, that is, at the employer's location. Similarly, there are no rules in Belarus that allow for a combination of office work and remote work, although such forms of employment are used in practice during the period of COVID-19 distribution. We believe that in the future, the mode of remote work and partially remote work should be regulated in Chapter 10 of the Labour Code of Belarus “Working time”, including the minimum period for warning an employee about switching to this mode. The motioned shortcomings are largely typical to the legislation of Ukraine; the introduction of partial unemployment benefits for the quarantine period in Ukraine deserves respect. The mentioned benefits are provided for each hour by which the employee's working time is reduced, at the rate of 2/3 of the tariff rate (wage) established for the employee of the corresponding category. However, the amount of the benefit could not exceed the minimum wage.

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