

TOPICAL QUESTIONS ON DEVELOPMENT OF SUBJECT OF THE LABOUR LAW OF UKRAINE

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This article is devoted to envisage the subject of labor law, the theoretical approaches to the industry sector of employment relations and employment, as well as characteristics of the relevant rules of the draft Labour Code of Ukraine.

Labor Law, the subject of labor law, employment, employment relationship, the branch of law.

The article is devoted to the analysis of theoretical approaches in the field classification of labour and employment relations as well as studying of tendency of legislation development in this area.

Within performed research, the decision has been made on existence in the conception of two approaches in labour law regarding possibility of connection of the above-mentioned relations and subject of this field. According to the first approach, labour and employment relations cannot be included in the subject of the labour law. Second approach supposes inclusion of employment relations that preceding the latter that are closely connected to the labour relations to the subject of this field. The decision has been made on correctness of the second approach.

In order to fulfil the detailed study of development tendencies of employment law institute, the analysis of the provisions of the applicable legislation was made, namely of the Code of Laws on labour, Law of Ukraine "On Employment of Population". Special attention was drawn to

the study of content of draft of the Labour Code of Ukraine.

Finally, a range of defaults of content of Article 4 “Employment” of the draft of the Labour Code of Ukraine No. 2902 has been detected and represented as follows.

First of all, there is doubling of Article 29 of the Labour Code draft, part 2 of the Law of Ukraine “On Employment of Population” (regarding realization by individual of the right to employment by means of independent search of work or by means of bodies of the state employment service or entrepreneurs having right to render services of mediation agency within the employment process), and doubling of part 1 and 2 of the Labour Code draft according to Clause 1, part 4 and Clause 1, part 5, of Article 50 of the Law of Ukraine “On Employment of Population” (regarding rights of the employer to select employees and regarding prohibition of making discriminating requirements in the announcements on such selection).

Assignment in part 2, Article 31 of the Labour Code draft of right to establish within their corporate documents the contest order of employees selection to the employer (taking into consideration possibility of the employers’ abuse) cannot be estimated positively.

There are also some criticism to the use of concept “reservation of working places for the persons who need social protection” in the text of Article 34 of the Labour Code draft, since the applicable legislation stipulates establishment of working places quota for the persons having additional warranties in terms of help with employment. Establishment of reservation is stipulated in Article 196 of the Code of Laws on labour in terms of employment and internship at the production of the young people graduated from secondary general school, higher professional schools, and other young people under eighteen. The category of “persons who need social protection” is much wider.

We consider to be incorrect narrowing of list of categories of persons

who need social protection in Article 35 of the Labour Code draft comparing to the definition provided in part 1 of Article 14 of the Law of Ukraine “On Employment of Population” and imposing of duty of the quote determining of working places for persons who need social protection on executive bodies of village councils, councils of urban-type settlements and of cities; at the same time such determining shall be agreed with local social bodies (such practice existed but it was not efficient). Absence of such quote on the Labour Code draft is also negative.

Special attention is drawn to the fact that in the Miscellaneous and intermediate provisions of the Labour Code draft among the list of the regulations losing their validity in connection with entering into force of this Code, the Law of Ukraine “On Employment of Population” is not mentioned. This means that it will be applicable at the same time and all the doubling and contradictions mentioned above will take place. Harmonization of the Law of Ukraine “On Employment of Population” with Labour Code is possible only after serious rework and improvement of Article 4 of the “Employment” Labour Code draft.