SOME PROBLEMS ARISING IN ENSURING THE RIGHT TO INFORMATION OF EMPLOYEES

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ABSTRACT

The article is devoted to the consideration of problems arising from the performance by individual entrepreneurs and organizations engaged in commercial activities, the obligations of an employer to provide employee representatives with information relating to labor relations and other relations directly related to them. The article discusses in detail the issues on which the employer, in accordance with the current legislation, must provide information to workers' representatives, the rule of law on the term of transfer of certain types of information. Conclusions are drawn on the required amount of information that the employer must inform on each of these issues, on the period for providing information, as well as on the procedure for providing the workers' representatives with the required information, a list of ways to endow workers' representatives with legally relevant information.

Keywords: Employee Representatives, Information, Liquidation of the Organization, Reorganization of the Organization, Changing the Terms of the Employment Contract.

INTRODUCTION

Individual entrepreneurs and organizations in the exercise of economic activity are endowed not only with rights, but also with responsibilities that correspond to the rights of other subjects, including workers. The employee, by virtue of the current Russian legislation, owns the right to information and the employer is obliged to provide the employee with this information. The employer also in turn has the right to information. Information exchange is the easiest way of interaction between the parties, the minimum level of social dialogue, ensures the implementation of other forms of social dialogue.

In relation to the information listed below, any access restrictions cannot be established:

1. Regulatory legal acts affecting the rights, freedoms and duties of a person and a citizen, as well as establishing the legal status of organizations, state bodies and local governments;
2. Information about the state of the environment;
3. Information on the activities of state and municipal bodies, on the use of budget funds (with the exception of information constituting state or official secrets);
4. Information accumulated in open collections of libraries, museums and archives, as well as in state, municipal and other information systems created or intended to provide citizens (individuals) and organizations with such information.

Unfortunately, the norms of the Labor Code of the Russian Federation on the rights of the obligations of the employer, which are recognized, including individual entrepreneurs, commercial organizations, are scattered, the order of transfer, the specific amounts of information provided and the timing of providing each type of information are not defined.

LITERATURE REVIEW

The right of access to information is determined by the presence of the constitutional enshrining of this right and the existence of a certain legislative base, which, however, leaves unresolved the question of the relevance of both legislative activity and the practice of ensuring the citizens' subjective rights to access information (Gibb, 2000). However, both in terms of access neither to information, nor in defining the goals and limits of the limitation of human rights; in legal science there has not yet been a uniform and scientifically based approach (De-Propris, 2019). Under the right to information, many understand not the subjective right of citizens to access national information resources, but informatics, information technology, telecommunications, security, archiving, and other official duties of existing departments (Galindo et al., 2014).

Nowadays, there should be a generally accepted position, according to which the main objective of legal regulation in the information sphere is to ensure rights and freedoms, and their restrictions have a derived meaning (Hamidi et al., 2008).

Hence the urgent need to create, instead of a multitude of legislative normative legal acts, diverse, fragmentary, contradictory and inconsistent among themselves, a single and exhaustive federal or model law on the right to information (Kotler et al., 2000).

Free access of citizens to information is a necessary attribute of modern democracy; therefore, information created by government agencies in all spheres and levels should be accessible to the public (McConnell, 1997), and any official restrictions on such access should be specifically justified and affect as little of this information as possible (Mullakhmetov et al., 2018).

METHODOLOGY

The theoretical and methodological basis of the study is made up of domestic and foreign articles in the field of legal regulation of workers' rights to information, including monographs, articles and analytical reviews. The study is based on general methods, such as dialectical, logical, historical, expert analysis, statistical analysis and comparative analysis, expert estimates. This type of statistical analysis was used as a summary and grouping of the basic laws in the field of the right of workers to information.

The article provides a statistical analysis of legal acts: On state registration of legal entities and individual entrepreneurs, on trade secrets, the Regional Industrial Tariff Agreement in the housing and communal services of Altai Krai for 2017-2019 on the determination of the types of information about which the employer is obliged to notify the employee. The article is valuable to all workers who want to protect their rights in labour relations.

The study of the right to information of workers in an organization as a modern problem of the labor rights of workers in Russia was carried out using comparative legal, systemic and structural methods and a method of critical analysis. Thus, the analysis of the latest scientific publications focused on the study of the right to information of workers, the synthesis and presentation of the research results made it possible to apply the method of critical analysis and the system-structural method. So, in the Labor Code of the Russian Federation three addressees for receiving information (information) about labor and other directly related relations are listed, certain information is assigned to each subject without specifying its scope. The distribution of information, taking into account the content of some articles of the Labor Code of the Russian Federation, is shown in Table 1.

Table 1
INFORMATION AND THE SUBJECTS TO WHOM IT IS ADDRESSED BY DIRECT INDICATION IN SOME ARTICLES OF THE LABOR CODE OF THE RUSSIAN FEDERATION

Employee Representatives	On the reorganization, liquidation of the organization.
	On the introduction of technological changes that entail a change in the working conditions of workers.
	On the training and additional professional education of employees.
	On other issues stipulated in federal laws, constituent documents of an organization, in a collective agreement and agreements (Part 2 of Art. 53 of the Labor Code of the Russian Federation).
Workers	On the schedule shift (Article 103 of the Labor Code of the Russian Federation).
	On the introduction of new labor standards (Art. 162 of the Labor Code of the Russian Federation).
	About adopted local regulatory acts, directly related to labor the activities of workers (article 22 of the Labor Code of the Russian Federation).
	About personal data of employees and processing of these data (Art. 89 of the Labor Code of the Russian Federation).
Worker	The time of the start of the holiday (Art. 123 of the Labor Code of the Russian Federation).
	On compliance with the collective agreement (Art. 21 of the Labor Code of the Russian Federation).
	On working conditions and protection requirements labor in the workplace (Art. 21 of the Labor Code of the Russian Federation).

Since the receipt of information by representatives of employees according to part 1 of Art. 53 of the Labor Code of the Russian Federation is one of the forms of employee participation in the management of an organization; this study focuses on problems that arise when employers provide information to employee representatives (Akhmetshin et al., 2018). All listed in Part 2 of Art. 53 of the Labor Code of the Russian Federation questions reflect processes that can significantly affect the status of each of the workers.

Thus, the liquidation by virtue of Art. 81 of the Labor Code of the Russian Federation is the basis for termination of the employment contract, and reorganization may entail termination of the employment contract in case of employee's refusal to continue work due to reorganization of the organization, reorganization and technological changes are recognized as grounds for changing the terms of the employment contract (Kurennoy et al., 2017). Training and additional vocational education may entail an increase in wages or the preservation of work while reducing the number or staff, when the labor productivity and qualifications of the latter are assessed.

RESULTS & DISCUSSION

The Labor Code of the Russian Federation does not specify the order in which information should be provided to employees' representatives. This raises the question of whether the employer should provide information only after a corresponding request from the employee representative? (Table 2).

Table 2
ADVANTAGES AND DISADVANTAGES OF COMMUNICATING INFORMATION AT THE REQUEST OF EMPLOYEE REPRESENTATIVES

Advantages	Disadvantages
1. Representatives of employees receive only the information that is currently legally relevant to them; 2. The employer does not spend time collecting and transmitting information in which the representatives of the workers are not interested	1. Representatives of workers for a long period of time may not be aware of the planned reorganization, liquidation, technological changes, the determination by the employer of the need for training of workers and additional vocational education and therefore not send the corresponding request; 2. The absence of the request the employer may mistakenly use as a reason not to provide information, but the law directly lists the issues on which the employer is obliged to provide information, and the request for information is not specified; 3. Waiting for the request by the employer may prevent the posting of relevant information on these issues, which, in turn, will not allow the workers' representatives to submit proposals on the listed issues to the governing bodies of the organization in a timely manner and participate in their consideration, that is, to realize the powers enshrined in Part 3 of Article. 53 of the Labor Code of the Russian Federation.

Thus, despite the gap in the norms on the procedure for providing information on the issues listed in Part 2 of Art. 53 of the Labor Code of the Russian Federation, information should not be transmitted at the request of the representatives of the employees, but as it is received by the employer. The advantages of communicating information only at the request of the employee representatives are refuted by the existing shortcomings of providing information in this form.

The employer does not have the right to refuse to provide this information, citing its classification as a commercial secret, since the labor law does not provide for restrictions (conditions) for the realization of the right to information. Moreover, from the analysis of paragraphs Art. 5, paragraph 1 of Art. 6 of the Federal Law of 08.08.2001 N 129-FL *"On state registration of legal entities and individual entrepreneurs",* it follows that information on the reorganization and liquidation of legal entities is open and publicly available.

In addition, information constituting a commercial secret is information that has certain characteristics, namely: they have real or potential commercial value due to their unknownness to third parties (Bang et al., 2018), to which third parties do not have free access to legally and in respect of which the owner of such information has introduced a trade secret regime (Bernal et al., 2019).

The Labor Code of the Russian Federation does not specify to what extent the information on the issues listed above is to be reported to the representatives of the employees (Novikova et al., 2018). The employer must report the start of the reorganization and the form of reorganization; that the organization is in the process of liquidation (Bernal et al., 2019), the formation of a liquidation commission or the appointment of a liquidator, as well as the preparation of an interim liquidation balance sheet (Borman et al., 1992). Information on the form of reorganization allows workers to determine the duration of the collective agreement (if such was concluded), because only reorganization in the form of transformation does not affect the duration of the designated social partnership act concluded in the organization (De-Propris, 2019). Having information on the form of reorganization, employees will have the opportunity to make a conclusion about the specifics of the state registration of legal entities created as a result of reorganization.

Notice of reorganization may also include information on the right of the employee to refuse to continue work in connection with the reorganization and terminate the employment relationship, as well as the right to continue to work, taking into account the reorganization of the employer.

With regard to the liquidation of the organization, the notification of it may include a link to Part 1 of Art. 178 of the Labor Code of the Russian Federation, according to which upon termination of an employment contract on this basis, the employee is recognized the right to the severance pay and the retention of the average monthly earnings for the period of employment, but not more than, according to the general rule, two months from the day of dismissal.

Regarding the issue of introducing technological changes that entail a change in the working conditions of workers, the employer seems obliged to give workers' representatives information on what exactly the changes in technology are (for example, what equipment or machines will be introduced) and what working conditions will change (Zoorob, 2018; Tugce, 2019; Pieroni et al., 2019; Hair et al., 2010). In other words, the employer is obliged to provide information not about any technological changes, but only about those for which the working conditions change and, accordingly, the conditions of the employment contract, since the

working conditions at the workplace are the conditions of the employment contract according to Art. 57 of the Labor Code of the Russian Federation. Considering part 3-4 of Art. 74 of the Labor Code of the Russian Federation, the employer in the notification can inform about the right of workers to disagree with such changes of the employment contract and about the obligation of the employer in such a situation to offer another job that the employer has; the termination of the employment contract in the event that the employer does not have a vacant position or the employee refuses to work offered by the employer; on the conditions and procedure for the introduction of part-time work when changing these working conditions. With regard to the issue of training and additional professional education of employees, taking into account Art. 196 of the Labor Code of the Russian Federation, the employer must inform about the conditions, procedure and forms of preparation and the said education, about the guarantees available in connection with the employee's training.

Regarding the term for providing information to employees' representatives, unfortunately, the general term is not mentioned in the Labor Code of the Russian Federation. However, in the Labor Code of the Russian Federation there are terms associated with the above issues, namely, the minimum two-month notice period for employees for dismissal due to liquidation and change of technological conditions, under which the conditions of the employment contract agreed by the parties cannot be specified saved. Since reorganization, like liquidation, may result in termination of an employment contract, a legal analogy is allowed, an employer is obliged to provide representatives of employees with information on reorganization no later than two months before the date of registration of a legal entity created by reorganization.

It seems that the notice period for the reorganization is to be fixed precisely in the Labor Code of the Russia, which would, firstly, remove the uncertainty in this matter; secondly, to exclude difficulties in determining the moment from which workers' right to information would be considered violated, and therefore subject to protection in accordance with the procedure established by law. If a rule is envisaged in the Labor Code of the Russian Federation on specifying the said term in a collective agreement, then a single legal regulation on the designated issue will be excluded-collective periods may provide for different periods of information. In some organizations, collective bargaining agreements are not concluded, and therefore this question may remain without legal regulation at all. In the absence of fixing the deadline for providing information on reorganization in the Labor Code of the Russian Federation, this issue is regulated by various legal acts.

So, by virtue of paragraph 5.8.1. The regional sectoral tariff agreement in the housing and communal services of the Altai Territory for 2017-2019 (registered by the Ministry of Labor and Social Protection of the Altai Territory No. 65 on February 20, 2017), employers are obliged to notify the elected bodies of the primary trade union organizations of the forthcoming reorganization and provide them with information about such a decision, adopted by the authorized management body of the organization, within 20 days from the date of the adoption of the relevant decision, but not less than 2 months before the start of the reorganization.

The above terms of notification, depending on two legal facts-decision making and the beginning of reorganization, are quite acceptable in a certain area-in the industry at the regional level of social partnership. However, it is unlikely that such an approach can be recognized as justified in federal legislation. Employers-organizations differ among themselves in a variety of

indicators-these are the types of economic activity, the organizational and legal form, the number of separate structural units, the number of employees, the level of development of social partnerships, and other facts. These facts in varying degrees affect the duration of the period during which the right to information must be and can be exercised, taking into account also the balance of interest of the parties.

The notice period for training and further professional education of employees seems to depend on the length of time that workers should devote to training and further professional education, but in any case, the period should be reasonable to enable employees to exercise or protect their rights in the designated area.

CONCLUSION

The method of transferring information to the Labor Code of the Russian Federation is not fixed, obviously, the legislator has left this issue to the discretion of the parties. In this regard, it is not contrary to the law that the parties agree on such methods as written notifications to representatives of employees, advertisements in printed form on the public stands of the organization, emails, messages on the official websites of the legal entity and corporate print media.

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