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## PARTICULARITIES OF CONCLUDING, AMENDING AND TERMINATING LABOUR CONTRACTS UNDER ATYPICAL FORMS OF HIRED WORKERS' EMPLOYMENT

**Abstract. Purpose.** The purpose of the article is to reveal the particularities of concluding, amending and terminating employment contracts in the context of atypical forms of hired workers' employment. **Results.** Relying on the analysis of scientific views of scholars and provisions of legislation in force, the article reveals the essence, content and particularities of concluding, amending and terminating employment contracts in case of atypical forms of hired workers' employment. The author emphasises that the issue of changing the terms of an employment contract in atypical forms of employment is insufficiently regulated, since it is currently regulated similarly to general categories of employees, which certainly does not correspond to the reality and needs of the relevant forms of employment. It is established that changing the terms and conditions of an employment contract in the context of atypical forms of hired workers' employment is a complex process in nature and content, and its particularities are determined by: the specifics of labour relations arising between employees working remotely, at home or on a flexible schedule; particularities of organisation of the labour process, workplace, etc. **Conclusions.** It is concluded that nowadays the procedure for concluding, amending and terminating employment contracts in case of atypical forms of hired workers' employment is somewhat vague and does not allow for the specifics of the employment activities of the category of employees under study. In particular, the issue of changing the terms of an employment contract is insufficiently regulated, since it is currently regulated similarly to general categories of employees, which certainly does not correspond to the reality. Therefore, among the particularities of concluding, amending and terminating employment contracts in atypical forms of hired workers' employment, the following should be highlighted: ambiguity of regulatory mechanism, because, on the one hand, the legislator has regulated the issue of concluding an employment contract in a fairly comprehensive manner, but the amendment and termination of the latter are enshrined in the legislation in force in a rather superficial manner; the terms of an employment contract are changed allowing for the specifics of the organisation of the workplace of the category of employees under study, working hours and rest periods; an employment contract is terminated on the general principles provided for by the Labour Code of Ukraine.

**Key words:** conclusion, change of terms, termination of an employment contract, atypical forms of employment, hired workers.

### 1. Introduction

The specifics of the work of employees who work remotely or from home require a special approach to concluding an employment contract with them. In general, an employment contract is the primary legal form of streamlining the production process, as it determines the place where the employee will work, his or her labour function with the employer, how long the production relationship will last and what are the social benefits for the employee

and the employer (Shcherbyna, 2009). The importance of concluding an employment contract is that it allows the parties to labour relations to effectively protect their rights and legitimate interests. Therefore, the present research aims to study the particularities of concluding, amending and terminating employment contracts in the context of atypical forms of hired workers' employment.

Some problematic issues related to the conclusion of an employment contract were consid-

ered in their scientific works by: O.P. Vikhrov, I.O. Vikhrova, T.P. Holopych, M.I. Inshyn, V.V. Marchenko, V. Shyshliuk, V.I. Shcherbyna, and many others. However, it should be noted that currently the literature review reveals insufficient development of the issue of conclusion, amendment and termination of employment contracts in case of atypical forms of hired workers' employment.

That is why the purpose of the article is to reveal the particularities of concluding, amending and terminating employment contracts in case of atypical forms of hired workers' employment.

## **2. Particularities of concluding an employment contract**

To begin with, it should be noted that an employment contract is a written agreement concluded in accordance with the procedure established by law between an employee and an employer, the subject matter thereof is, on the one hand, the employee's obligation to perform a specified scope of work, and on the other hand, the employer's obligation to provide conditions for this and pay wages in a timely manner and in full. Therefore, by signing an employment contract: 1) the employee undertakes to: a) properly perform his/her job duties; b) comply with the internal labour regulations and labour discipline; c) comply with the conditions stipulated not only by individual and collective labour agreements, but also by the provisions of the legislation in force; 2) accordingly, the employer assumes the following obligations: a) to pay wages to the employee in a timely manner and in full; b) to comply with the provisions of the legislation in force on labour protection, on social security, etc.; c) to ensure other rights, freedoms and interests of employees guaranteed by the Constitution and applicable law.

An important stage in the conclusion of an employment contract is the determination and discussion of its terms between the parties to the legal relationship. In this context, it is worth mentioning Resolution No. 459 of the Cabinet of Ministers of Ukraine of 20 August 2014 (as amended by Resolution No. 24 of the Cabinet of Ministers of Ukraine of 17 February 2021), which sets out standard forms of employment contracts for home and remote work. According to this legal regulation, the following conditions should be stipulated in the remote work agreement: the employee's position, rights and job responsibilities (type and scope of work); the arrangements of remote work, for example, a task by e-mail or through a program with a deadline for its completion; the procedure and deadlines for completing the task: according to instructions or free choice of tools; the pro-

cedure and deadlines for submitting reports on the work performed by employees; the main place of work, part-time or combined work; workplace (if defined), particularities of combining remote work with work at the office workplace; term of the contract: fixed-term or indefinite contract, terms of extension; remuneration terms; working hours, time off (lunch), leave; internal labour regulations, if agreed in the employment contract; frequency and procedure for the employer to provide employees with briefings (training) on occupational safety and fire protection; employee responsibility for ensuring safe and harmless working conditions in the workplace; the employer's responsibility for the equipment safety precautions, if such equipment is transferred to the employee; the amount, procedure and terms of payment of compensation to employees for the use of equipment, software and hardware, information security and other means owned or leased by them. If the employment contract does not specify this, the employer shall provide this, and also pays the costs associated with it (Lysenko, 2021).

When an employee enters into an employment contract, the employer shall inform the employee of the terms of remuneration, the amount, procedure and timing of payment of wages, and the grounds on which deductions may be made in cases provided for by law. Pursuant to the Labour Code, Article 29, parts 1 and 2, when concluding an employment contract for remote work, the employer shall inform the employee against a receipt about the working conditions and familiarise him/her with the collective agreement (Korol, 2021). It is also important to conduct a labour protection briefing. It is conducted by a specialist of the labour protection service or another specialist in accordance with an order (instruction) for the enterprise, who has undergone training and knowledge testing on labour protection issues in accordance with the procedure established by the Model Regulations. The record of the induction briefing is made in the Logbook of the induction briefing on labour protection, which is kept by the labour protection service or the employee responsible for conducting the induction briefing, as well as in the order on hiring an employee. The Induction Logbook is a document for permanent storage (Website of the magazine "Occupational safety and fire safety", 2017).

It should be noted that the working conditions set out in a collective agreement or employer's regulation do not need to be duplicated in each employee's employment contract. In this regard, provided that the procedure for informing employees about their working condi-

tions is complied with in the manner prescribed by law, the employment contract may contain a relevant reference to the collective agreement or employer's regulation without setting out specific remuneration terms and conditions (Korol, 2021).

It is also important to note that when entering into an employment contract for remote work, the employer shall systematically instruct (train) the employee on occupational health and safety and fire safety within the scope of the employee's use of equipment and facilities recommended or provided by the employer. Such instruction (training) may be conducted remotely, using modern information and communication technologies, in particular by video communication. In this case, the fact that the relevant electronic documents are exchanged between the employer and the employee shall be deemed to confirm the instruction (training). When performing remote work, the employer is responsible for the safety and proper technical condition of the equipment and means of production transferred to the employee for remote work (Code of Labor Laws of Ukraine, 1971).

Therefore, the conclusion of an employment contract in the context of atypical forms of hired workers' employment is a crucial stage in the formation and further development of labour relations with the category of employees under study. The development of labour relations, the efficiency of an employee's performance of his/her duties, etc. directly depend on the clarity and content of the terms and conditions in the employment contract. Meanwhile, despite the stability of legal relations and certainty of the employee's labour function as one of the principles governing atypical forms of hired workers' employment, labour relations are dynamic, and therefore they may change under the influence of production necessity, as well as other facts and factors provided for by the applicable legislation of Ukraine.

### **3. Grounds for amending an employment contract**

According to M.I. Inshyn, amendment of an employment contract is an important institution of labour law. The stability of labour relations and the effectiveness of the protective function performed by the labour law depend on the perfection of the rules governing the amendment of an employment contract. Therefore, the author concludes that amendment of an employment contract is a stage in the dynamics of labour relations development of transforming the subjective rights and obligations of an employee and an employer, arising from the essential terms of the employment contract previously established by them, which may be in the form of a new employment con-

tract, modification of the previous employment contract that was the basis for the employment relationship between the employee and the employer, or a new arrangement with features different from the previous employment contract and is called a transfer and is the basis for the emergence of a new employment relationship (Inshyn, 2017).

Article 32 of the Labour Code of Ukraine provides for three types of changes to the terms of an employment contract: 1) transfer to another job; 2) transfer to another workplace; 3) change of essential working conditions. Meanwhile, in our opinion, in the context of the topic being studied, it makes no sense to talk about the first two types of changes to the terms of an employment contract. Thus, essential terms and conditions of employment are the necessary and additional terms and conditions of the employment contract that have been agreed upon between the employee and the owner or his/her authorised body in the employment contract, as well as the working conditions established by law, collective agreement, agreement, local regulations on the day of the employment contract conclusion (Marchenko, 2010, p. 210). In the educational and scientific literature, the main features of changes in essential working conditions are as follows: 1) as a rule, they are initiated by the employer; 2) they relate to working conditions that affect the content of the employment contract and the nature of its performance; 3) they may affect the essential terms of the employment contract; 4) they require prior notification of each employee (no later than two months in advance); 5) they require prior consent of the employee (preferably in writing); 6) they may be temporary or permanent; 7) they are executed by amending the employment contract and/or on the basis of an order (instruction) of the employer; 8) in case of disagreement of the employee, they may result in termination of the employment contract (the Labour Code, Article 36, clause 6) (Inshyn, Kostiuk, Melnyka, 2015, p. 257).

Following the Labour Code of Ukraine, due to changes in the organisation of production and labour, it is allowed to change the essential working conditions while continuing to work in the same speciality, qualification or position. An employee shall be notified of changes in essential working conditions, such as systems and amounts of remuneration, benefits, working hours, establishment or cancellation of part-time work, combination of professions, change of grades and job titles, etc., no later than two months in advance. If the same essential working conditions cannot be maintained and the employee does not agree to continue working under the new conditions, the employ-

ment contract is terminated under the Labour Code of Ukraine, Article 36, paragraph 6 (Code of Labor Laws of Ukraine, 1971).

Consequently, what actions should the employer take if he/she decides to change the employee's work mode (transfer to remote work or transfer from remote work to another work mode)? According to Article 32 of the Labour Code, an employee shall be notified of changes in essential working conditions (in particular, remuneration systems and amounts) no later than two months in advance. Therefore, if the employer decides to change the employee's work mode (transfer to remote mode or transfer from remote mode to another work mode), the employer shall notify such employee at least two months in advance (Korol, 2021). In addition, pursuant to the Labour Code, Article 60-2, Part 11, in the event of a threat of an epidemic, pandemic, or the need for employee self-isolation in cases established by law, remote work may be introduced by an order (instruction) of the owner or his/her authorised body without the obligation to conclude a remote work agreement in writing. The employee shall be familiarised with such an order (instruction) within two days from the date of its adoption, but before the introduction of remote work. In this case, the provisions of the Labour Code, Article 32, Part 3, do not apply (Korol, 2021).

Therefore, that changing the terms and conditions of an employment contract in the context of atypical forms of hired workers' employment is a complex process in nature and content, and its particularities are determined by: the specifics of labour relations arising between employees working remotely, at home or on a flexible schedule; particularities of organisation of the labour process, workplace, etc.

Finally, the focus of our research should be on the termination of an employment contract in case of atypical forms of hired workers' employment. Termination of an employment contract is all cases of termination of employment relations and expiration of an employment contract, including its dissolution, due to the will of the parties or a third party who is not a party to it, as well as on the basis of circumstances beyond their control, on the ground, in the manner and under the conditions determined by the labour legislation (Shyshliuk, 2016).

The legislation in force states that an employment contract concluded with employees working remotely or at home is terminated on the grounds and in the manner prescribed by the labour legislation. In particular, pursuant to Article 36 of the Labour Code of Ukraine, the grounds for termination of an employment contract are: 1) agreement

of the parties; 2) expiry of the term, unless the employment relationship is actually ongoing and neither party has requested its termination; 3) call-up or enlistment of an employee or an individual employer for military service, or assignment to alternative (non-military) service, except in cases where the employee retains his/her job and position in accordance with the Labour Code, Article 119, part 3, 4) termination of an employment contract at the initiative of the employee (Articles 38, 39), at the initiative of the employer (Articles 40, 41) or at the request of a trade union or other body authorised to represent the labour collective (Article 45); 5) transfer of an employee, with his/her consent, to another enterprise, institution, organisation or transfer to an elected position; 6) refusal of an employee to transfer to another location together with the enterprise, institution, organisation, as well as refusal to continue work due to changes in essential working conditions; etc. (Code of Labor Laws of Ukraine, 1971).

In this context, it should be noted that the terms of notice of termination of the employment contract and the amount of compensation payments in case of early termination of the employment contract at the initiative of the employer are determined in accordance with the labour legislation. Such notices may be reviewed using the electronic means of communication specified in this Agreement. In this case, the fact of exchange of relevant electronic documents between the Employer and the Employee shall be deemed as a confirmation of familiarisation (Order of the Ministry of Economic Development, Trade and Agriculture of Ukraine On approval of standard forms of employment contracts on home and remote work, 2021).

#### 4. Conclusions

To sum up, it should be noted that nowadays the procedure for concluding, amending and terminating employment contracts in case of atypical forms of hired workers' employment is somewhat vague and does not allow for the specifics of the employment activities of the category of employees under study.

Thus, the following particularities of concluding, amending and terminating employment contracts in atypical forms of hired workers' employment should be highlighted:

- ambiguity of regulatory mechanism, because, on the one hand, the legislator has regulated the issue of concluding an employment contract in a fairly comprehensive manner, but the amendment and termination of the latter are enshrined in the legislation in force in a rather superficial manner;

- the terms of an employment contract are changed allowing for the specifics

of the organisation of the workplace of the category of employees under study, working hours and rest periods;

– an employment contract is terminated on the general principles provided for by the Labour Code of Ukraine.

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### ОСОБЛИВОСТІ УКЛАДЕННЯ, ЗМІНИ ТА ПРИПИНЕННЯ ТРУДОВИХ ДОГОВОРІВ У РАЗІ НЕТИПОВИХ ФОРМ ЗАЙНЯТОСТІ НАЙМАНИХ ПРАЦІВНИКІВ

**Анотація. Мета.** Мета статті полягає у розкритті особливостей укладення, зміни та припинення трудових договорів у нетипових формах зайнятості найманих працівників. **Результати.** У статті, спираючись на аналіз наукових поглядів учених та норм чинного законодавства, розкрито сутність, зміст та особливості укладення, зміни та припинення трудових договорів у разі нетипових форм зайнятості найманих працівників. Акцентовано увагу на тому, що не досить врегульованим є питання зміни умов трудового договору у разі нетипових форм зайнятості, адже нині воно регулюється аналогічно до загальних категорій працівників, що, безумовно, не відповідає дійсності та потребам відповідних форм зайнятості. З'ясовано, що зміна умов трудового договору у разі нетипових форм зайнятості найманих працівників – це складний за своєю сутністю та змістом процес, його особливості зумовлюються: специфікою трудових правовідносин, які виникають між працівниками, що працюють дистанційно, надомно чи за гнучким графіком; особливостями організації процесу праці, робочого місця тощо. **Висновки.** Зроблено висновок, що на сьогодні порядок укладення, зміни та припинення трудових договорів у разі нетипових форм зайнятості

найманих працівників є дещо розмитим та не враховує специфіку здійснення трудової діяльності досліджуваної категорії працівників. Зокрема, не досить врегульованим є питання зміни умов трудового договору, адже нині воно регулюється аналогічно до загальних категорій працівників, що, безумовно, не відповідає дійсності. Тож, серед особливостей укладення, зміни та припинення трудових договорів у разі нетипових форм зайнятості найманих працівників слід виділити такі: неоднозначність правового регулювання, адже, з одного боку, законодавець досить змістовно врегулював питання укладення трудового договору, втім зміна та припинення останнього закріплені у нормах чинного законодавства досить поверхнево; зміна умов трудового договору здійснюється з урахуванням особливостей організації робочого місця досліджуваної категорії працівників, часу роботи та часу відпочинку; припинення трудового договору здійснюється на загальних засадах, які визначені у Кодексі законів про працю України.

**Ключові слова:** укладення, зміна умов, припинення трудового договору, нетипові форми зайнятості, наймані працівники.

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