

UDC 349.2

DOI <https://doi.org/10.32849/2663-5313/2023.2.02>**Oleksandr Husarov,***PhD in Law, Head of Pechenizka ATC, Postdoctoral Student, Kharkiv National University of Internal Affairs, 27 Lev Landau avenue, Kharkiv, Ukraine, postal code 61080, oleksandrusarov@ukr.net***ORCID:** orcid.org/0000-0001-7493-1789

Husarov, Oleksandr (2023). Particularities of social security in the context of atypical forms of hired workers' employment. *Entrepreneurship, Economy and Law*, 2, 14–19, doi <https://doi.org/10.32849/2663-5313/2023.2.02>

PARTICULARITIES OF SOCIAL SECURITY IN THE CONTEXT OF ATYPICAL FORMS OF HIRED WORKERS' EMPLOYMENT

Abstract. Purpose. The purpose of the article is to reveal the particularities of social security in the context of atypical forms of hired workers' employment. **Results.** Social security in the context of atypical forms of hired workers' employment is best understood as a purposeful activity of the State (represented by its authorised institutions and their officials) and employers themselves, which is enshrined and regulated by the current legislation of Ukraine, aimed at creating appropriate legal and organisational conditions for the implementation of social and economic guarantees, which in their entirety: a) contribute to the stable development of labour relations with employees who work from home, remotely or on a flexible schedule; b) provide the category of employees being studied with a decent standard of living in the event of certain social risks. It is emphasised that an important element of social security is the compulsory State social insurance of Ukraine in case of unemployment. Unemployment insurance is provided to persons working under an employment agreement (contract), including those performing alternative (non-military) service, a civil law contract or on other grounds provided for by law, military personnel (except for military servicemen) and other persons, persons performing service and receiving financial support (hereinafter referred to as military personnel), persons engaged in independent professional activities, individual entrepreneurs, members of a farm, unless they are persons subject to insurance on other grounds. **Conclusions.** It is concluded that nowadays the issue of social security in the context of atypical forms of employment is regulated rather superficially, since the legislator does not distinguish this category of workers separately in this context. Therefore, the features of social security of the category of workers under study can be identified as follows: The legislator, when defining the range of persons entitled to social insurance, does not distinguish between workers who work from home, remotely or on a flexible schedule; the current legislation does allow for the specifics of the labour and legal status of the categories of workers under study, and therefore their social security is not properly regulated; the existing regulatory sources do not actually enshrine the duties of employers in relation to employees working in the context of atypical forms of employment.

Keywords: social security, atypical forms of employment, hired workers, social insurance.

1. Introduction

A special guarantee for protection in the context of atypical forms of hired workers' employment is their social security. The latter is not only an integral part of the social policy of any state, but also an indisputable requirement of civilised existence at a sufficiently high level of every society without exception. After all, a person, as the main guarantor of the existence of society, should feel cared for and treated humanely by both the state and the employer. Only the focus on social security and social groups that are directly dependent on will enable the state to ensure historical recognition of the past, sta-

ble current functioning and happy existence of citizens in the future, which is the basis for the existence of a democratic legal social state (Pidlypna, 2015).

Some problematic issues related to social security of employees who work from home or remotely have been considered in the scientific works by: A.I. Alimpiiev, V.M. Andriiv, M.I. Bondar, M.L. Zakharov, M.M. Klem-parskyi, V.P. Komarova, S.O. Pohribnyi, O.H. Popov, S.H. Rudakova, Ya.V. Svichkari-ova, O.V. Tsiatkovska, and many others. However, despite a considerable number of scientific achievements, the issue of social security in the context of atypical forms of hired work-

ers' employment remains insufficiently developed in the legal literature.

As a result, the purpose of the article is to reveal the particularities of social security in the context of atypical forms of hired workers' employment.

2. Social security in the context of atypical forms of hired workers' employment

Social security in the context of atypical forms of hired workers' employment is best understood as a purposeful activity of the State (represented by its authorised institutions and their officials) and employers themselves, which is enshrined and regulated by the current legislation of Ukraine, aimed at creating appropriate legal and organisational conditions for the implementation of social and economic guarantees, which in their entirety: a) contribute to the stable development of labour relations with employees who work from home, remotely or on a flexible schedule; b) provide the category of employees being studied with a decent standard of living in the event of certain social risks.

It should be noted that the scientific literature distinguishes between the following forms of social security: state provision, social assistance, social support, and compulsory social insurance. In the context of the presented issues, it is most appropriate to talk about compulsory state social insurance, which is an important component of social security of various categories of workers, including those engaged in non-standard forms of employment (On the approval of the Regulation on the working conditions of home-based workers, 1981). However, according to the Regulation on working conditions for home-based workers, social security of home-based workers also includes such an important area as promoting safe working conditions that would allow them to earn a decent living and prevent injuries and occupational diseases at work. For example, in addition to the above-mentioned requirement that the employer personally inspects the working conditions of the home-based worker, the employer shall provide equipment, tools and devices for free use by home-based workers, and repair them in a timely manner. In cases where a home-based worker uses his or her own tools and mechanisms, he or she is paid compensation for their depreciation in accordance with the procedure established by law. By agreement of the parties, the home-based worker may be reimbursed for other expenses related to the performance of work at home for the enterprise (electricity, water, etc.) (On the approval of the Regulations on

the working conditions of home-based workers, 1981). Therefore, compulsory state social insurance for atypical forms of hired workers' employment is a system of social, economic, political and material guarantees enshrined in the current legislation of Ukraine, which are provided to a person for the purpose of social security in the event of certain social risks paid by public funds. Therefore, compulsory state social insurance, as an element of social security, helps to protect citizens from circumstances that may harm a person's health and deprive them of the opportunity to earn money. Thus, social insurance is one of the main mechanisms for regulating social risks, which determines a number of its characteristics: this form of social security, in most cases, applies to employees, for whom the main and often the only source of livelihood is wages. Second, understanding social risk as a natural and objective mass phenomenon that affects certain, rather significant socio-demographic and professional groups and segments of the population. Third, all major social partners, that is employees, entrepreneurs and the state, finance social insurance to some extent, as social insurance costs are socially necessary for the reproduction of labour force and are included in the cost of production, which is a recognition of the non-tax nature of these costs (Nadraha, 2014; Mytko, 2019).

The issue of compulsory state social insurance is regulated by the Constitution of Ukraine and international legal regulations, which set out only the general principles of compulsory state social insurance. This issue is regulated comprehensively at the legislative level. In this context, first of all, the Fundamentals of the Legislation of Ukraine on Compulsory State Social Insurance. In accordance with this regulation, compulsory state social insurance of Ukrainian citizens is carried out on the principles of: legislative definition of the conditions and procedure for the implementation of compulsory state social insurance; compulsory insurance for persons working under an employment agreement (contract) and other grounds provided for by labour legislation, and for self-employed persons (members of creative unions, creative workers who are not members of creative unions), and citizens who are entrepreneurs; granting the right to receive payments under the compulsory state social insurance to persons engaged in entrepreneurial, creative activities, etc; compulsory financing by insurance funds of expenditures related to the provision of material support and social services in the amounts stipulated by the laws

on compulsory state social insurance; solidarity and subsidies; state guarantees for the exercise by insured citizens of their rights; ensuring a standard of living not lower than the subsistence minimum established by law by providing pensions, other types of social benefits and assistance that are the main source of subsistence; targeted use of compulsory state social insurance funds; parity of representatives of all subjects of compulsory state social insurance in the management of compulsory state social insurance (Law of Ukraine on the Fundamentals of the Legislation of Ukraine on compulsory state social insurance, 1998).

It should be noted that, depending on the insured event, the types of compulsory state social insurance are as follows: pension insurance; temporary disability insurance; and medical insurance; accident insurance at work and occupational diseases that caused disability; unemployment insurance; other types of insurance provided for by the laws of Ukraine (Law of Ukraine on the Fundamentals of the Legislation of Ukraine on Compulsory state social insurance, 1998). Therefore, it is most appropriate to consider this issue depending on the insured event that occurred with employees working in the context of atypical forms of employment.

3. Elements of social security in the context of atypical forms of hired workers' employment

First of all, we will focus on social security in case of atypical forms of hired workers' employment due to temporary disability. This type of insurance is available to persons working under an employment agreement (contract), gig contract, other civil law contract, on other grounds provided for by law, at enterprises, institutions, organisations regardless of their form of ownership and business, including those who are residents of Diia City, including in foreign diplomatic and consular missions, other representative offices of non-residents or individuals, as well as those nominated to elected positions in state authorities, local governments and other bodies, individual entrepreneurs, persons engaged in independent professional activity, members of a farm, if they are not covered by insurance in connection with temporary disability on other grounds (Law of Ukraine On compulsory state social insurance, 1999). The following types of financial support and social services are provided under temporary disability insurance: 1) temporary disability allowance (including care for a sick child); 2) maternity benefits; 3) funeral assistances (except for the burial of pensioners, the unem-

ployed and persons who died from an industrial accident); 4) payment for treatment and/or rehabilitation care in the departments of a sanatorium and health resort facility after illnesses and injuries (Law of Ukraine On compulsory state social insurance, 1999). It should be noted that in this case, employees who work remotely, from home or on a flexible schedule are equated with general categories of employees. This, in our opinion, is a significant gap, since the conditions under which a person may lose his or her ability to work in the context of atypical forms of employment may differ greatly from those for general categories of employees.

Next, the compulsory state social accident insurance at work and occupational diseases that result in disability should be analysed. The following are subject to accident insurance: 1) persons working under an employment agreement (contract), gig contract, other civil law contract, on other grounds provided for by law, at enterprises, institutions, organisations regardless of their form of ownership and business, including those who are residents of Diia City, including in foreign diplomatic and consular missions, other representative offices of non-residents or individuals, as well as those nominated to elected positions in state authorities, local governments and other bodies, individual entrepreneurs, persons engaged in independent professional activity, members of a farm, if they are not covered by insurance in connection with temporary disability on other grounds; 2) pupils and students of educational institutions, clinical residents, postgraduate students, doctoral students involved in any work during, before or after classes; during classes when they acquire professional skills; during the period of industrial practice (internship), performance of work at enterprises; 3) persons held in correctional institutions and engaged in labour activity in the production of these institutions or in other enterprises under special contracts (Law of Ukraine On compulsory state social insurance, 1999). Allowance for temporary disability due to an illness or injury not related to an industrial accident or occupational disease, stay in healthcare facilities, as well as self-isolation under medical supervision in connection with measures aimed at preventing the occurrence and spread of coronavirus disease (COVID-19), as well as the localisation and elimination of its outbreaks and epidemics, is paid by the Fund to insured persons starting from the sixth day of disability for the entire period until the recovery of working capacity or until the medical and social expert com-

mission (hereinafter – MSEC) establishes disability (establishment of another group, confirmation of the previously established disability group) regardless of the dismissal, termination of entrepreneurial or other activities of the insured person during the period of disability, in the manner and amounts established by law (Law of Ukraine On Compulsory state social insurance, 1999).

An important element of social security is the compulsory State social insurance of Ukraine in case of unemployment. Unemployment insurance is provided to persons working under an employment agreement (contract), including those performing alternative (non-military) service, a civil law contract or on other grounds provided for by law, military personnel (except for military servicemen) and other persons, persons performing service and receiving financial support (hereinafter referred to as military personnel), persons engaged in independent professional activities, individual entrepreneurs, members of a farm, unless they are persons subject to insurance on other grounds (Law of Ukraine On Compulsory state social insurance, 1999).

According to the Law of Ukraine "On compulsory state social insurance in case of unemployment", the types of benefits are: unemployment allowance; funeral assistance in the event of the death of the unemployed or a person who was dependent on him/her. In turn, the types of social services under this Law and the Law of Ukraine "On Employment of the Population" are: vocational training or retraining, advanced training in vocational (vocational-technical), professional pre-university and higher education institutions, including in educational institutions of the State Employment Service, at enterprises, institutions and organisations; career guidance; search for suitable work and assistance in employment, including through the organisation of public works for the unemployed in accordance with the procedure established by the Cabinet of Ministers of Ukraine; providing employers who employ citizens referred to in part one of Article 14 of the Law of Ukraine "On Employment of the Population" with compensation in accordance with Article 26 of the Law of Ukraine "On employment of the population"; providing employers, small businesses, that employ unemployed people with compensation in accordance with Article 27 of the Law of Ukraine "On employment of the population"; providing one-time financial assistance for the organisation of entrepreneurial activities in accordance with Article 27 of the Law of Ukraine "On employment of the population"; implementa-

tion of measures to promote the employment of internally displaced persons in accordance with Article 24-1 of the Law of Ukraine "On employment of the population"; information and consulting services related to employment (Law of Ukraine On compulsory state social insurance, 1999).

The last type of insurance is pension insurance, which is regulated by the Law "On compulsory state pension insurance." This legal regulation defines the principles and structure of the compulsory state pension insurance system; the range of persons subject to compulsory state pension insurance; types of pension payments; conditions for acquiring the right and the procedure for determining the amount of pension payments; retirement age of men and women at which a person is entitled to an old-age pension; minimum amount of an old-age pension; procedure for making pension payments under the compulsory state pension insurance; the procedure for using the funds of the Pension Fund and the accumulative pension insurance system; the organisation and procedure for managing the system of compulsory state pension insurance (Law of Ukraine On compulsory state social insurance, 1999). The following categories are eligible to receive pensions and social services from the PAYG system: 1) citizens of Ukraine who are insured in accordance with this Law and have reached the retirement age established by this Law or are recognised as persons with disabilities in accordance with the procedure established by law and have the required length of service for the respective type of pension, and, in case of death of these persons, their family members referred to in Article 36 of this Law and other persons provided for by this Law; 2) persons who, prior to the date of entry into force of this Law, were granted a pension in accordance with the Law of Ukraine "On pension provision" (except for social pensions) or were granted a pension (monthly lifetime allowance) under other legal regulations, but they were entitled to a pension under the Law of Ukraine "On pension provision", provided that they did not receive a pension (monthly lifetime allowance) from other sources, and in cases provided for by this Law, their family members did (Law of Ukraine On Compulsory state social insurance, 1999).

4. Conclusion

To sum up, it should be noted that nowadays the issue of social security in the context of atypical forms of employment is regulated rather superficially, since the legislator does not distinguish this category of workers separately in this context. Therefore, the features

of social security of the category of workers under study can be identified as follows:

- The legislator, when defining the range of persons entitled to social insurance, does not distinguish between workers who work from home, remotely or on a flexible schedule;
- The current legislation does allow for the specifics of the labour and legal status of the categories of workers under study, and therefore their social security is not properly regulated;
- The existing regulatory sources do not actually enshrine the duties of employers in relation to employees working in the context of atypical forms of employment.

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Олександр Гусаров,

кандидат юридичних наук, голова Печенізької ОТГ, докторант, Харківський національний університет внутрішніх справ, проспект Льва Ландау, 27, Харків, Україна, індекс 61000, oleksandrhusarov@ukr.net

ORCID: orcid.org/0000-0001-7493-1789

ОСОБЛИВОСТІ СОЦІАЛЬНОГО ЗАХИСТУ ЗА НЕТИПОВИХ ФОРМ ЗАЙНЯТОСТІ НАЙМАНИХ ПРАЦІВНИКІВ

Анотація. Мета. Мета статті полягає у з'ясуванні особливостей соціального захисту за нетипових форм зайнятості найманих працівників. **Результати.** Під соціальним захистом за нетипових форм зайнятості найманих працівників найбільш доцільно розуміти закріплену та регламентовану нормами чинного законодавства України цілеспрямовану діяльність держави (в особі її уповноважених інституцій та їх посадових осіб) і самих роботодавців, що спрямована на створення належних умов правового й організаційного характеру з метою реалізації гарантій соціального й економічного характеру, які у своїй сукупності: а) сприяють стабільному розвитку трудових правовідносин із працівниками, що здійснюють трудову діяльність як надомники, дистанційно чи за гнучким графіком; б) дають змогу забезпечити досліджуваній категорії працівників гідний рівень життя в разі настання певних соціальних ризиків. Наголошено, що важливим елементом соціального захисту є загальнообов'язкове державне соціальне страхування на випадок безробіття. Страхуванню на випадок безробіття підлягають особи, які працюють на умовах трудового договору (контракту), включно з тими, які проходять альтернативну (невійськову) службу, цивільно-правового договору чи на інших підставах, передбачених законом, військовослужбовці (крім військовослужбовців строкової служби) та інші особи, які проходять службу й отримують грошове забезпечення (далі – військовослужбовці), особи, які провадять незалежну професійну діяльність, фізичні особи – підприємці, члени фермерського господарства, якщо вони не належать до осіб, які підлягають страхуванню на інших підставах. **Висновки.** Зроблено висновок, що на сьогодні питання соціального захисту за нетипових форм зайнятості регулюється досить поверхнево, адже законодавець у цьому контексті вказав категорію працівників не виокремлює. Усе зазначене вище дає змогу виділити такі особливості соціального захисту досліджуваної категорії працівників: законодавець, визначаючи коло суб'єктів, що мають право на соціальне страхування, фактично не виокремлює працівників, що здійснюють трудову діяльність як

надомники, дистанційно чи за гнучким графіком; нормами чинного законодавства не враховується специфіка трудових статусу досліджуваних категорій працівників, а отже, їх соціальний захист належним чином не врегульовується; у чинних нормативних джерелах фактично не закріплюються обов'язки роботодавців щодо працівників, які працюють за нетиповими формами зайнятості.

Ключові слова: соціальний захист, нетипові форми зайнятості, наймані працівники, соціальне страхування.

The article was submitted 17.10.2023

The article was revised 08.11.2023

The article was accepted 28.11.2023