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## RESEARCH STATUS OF REGULATORY ISSUES OF ATYPICAL FORMS OF EMPLOYMENT IN UKRAINE

**Abstract. Purpose.** The purpose of the article is to study the regulatory issues of atypical forms of employment in Ukraine. **Results.** The article analyses the scientific perspectives of scholars who have studied the issue of atypical forms of employment in their works. It is stated that the study of the problem of regulatory framework for atypical forms of employment in Ukraine is rather fragmentary, which cannot be regarded sufficient for its consideration as a complex socio-economic phenomenon. Social processes that influence the spread of atypical forms of employment cover most developed countries, and in Ukraine they are evolving somewhat slower than in the EU due to certain differences in socio-economic advancement. Moreover, the regulatory framework for atypical forms of employment in Ukraine does not keep pace with the modern needs of society in this field. In addition, the emergence and development of atypical forms of employment reveal a significant number of problems and shortcomings, the causes, consequences and ways to overcome thereof have become the subject of research by domestic scientists. **Conclusions.** It is concluded that, given the significant growth in the popularity of atypical forms of employment, scholars paid considerable attention to the theoretical aspects of the development of this institution, in particular, its impact on the advancement of the labour market has been actively studied, moreover, many researchers, when considering the regulatory framework for atypical forms of employment, focus only on certain types of employment, such as: remote work, home-based work, etc. It has been determined that in most studies, the authors underline the positive and negative consequences of the spread of atypical forms of employment in Ukraine. Moreover, the significant interest of employers in using atypical employment is emphasised. Special attention is also paid to the issue of economic benefits from the use of labour of such employees. When determining ways to harmonise the interests of employees and employers, scholars focus on strengthening the role of labour law in regulating atypical forms of employment both by the current Labour Code and the future Labour Code.

**Key words:** research, regulatory framework, atypical employment, legislation.

### 1. Introduction

Social processes that influence the spread of atypical forms of employment cover most developed countries, and in Ukraine they are developing somewhat slower than in the EU, due to certain differences in socio-economic development. Moreover, the regulatory framework for atypical forms of employment in Ukraine does not keep pace with the modern needs of society in this field. In addition, the emergence and development of atypical forms of employment reveal a significant number of problems and shortcomings, the causes, consequences and ways to overcome thereof have become the subject of research by domestic scientists.

Some problematic issues related to the regulatory framework for atypical forms of employment are considered in the scientific works by: S.V. Vyshnovetska, O.F. Melnychuk, M.O. Mel-

nychuk, O.E. Kostiuchenko, I.M. Pavlichenko, O.S. Prylypko, O.H. Sereda, S.O. Silchenko, V.O. Shvets and many others. However, despite a large number of scientific achievements, there are still many problems that need to be addressed in the field of regulatory framework for atypical forms of employment in Ukraine.

As a result, the purpose of the article is to assess the research status of the regulatory issues of atypical forms of employment in Ukraine.

### 2. Specifics of atypical forms of employment

The scientific work by O.S. Prylypko is one of the first to study atypical forms of employment in the context of the nature and content of non-standard employment contracts. In her dissertation on the legal nature and content of non-standard employment contracts, the author analyses the issue of determining the flexibility of the regulatory framework for

labour relations, which plays an important role in the development of modern labour law. The researcher determines that increased flexibility contributes to the emergence of new atypical labour relations, new atypical forms of employment and new non-standard types of employment contracts. Flexibility is considered as an effective element of labour market regulation in the context of strengthening the protection of employees' rights. The author defines the concept of "non-standard employment", according to which the latter is revealed as an employee's activity which differs in its regulatory mechanism, working hours of the person, his/her workplace and deviations from the standard rules contained in labour law. O.S. Prylypko emphasises that the main distinguishing feature of employees working under a borrowed labour contract from ordinary employees is that under an employment contract for borrowed labour, an employee enters into an employment contract with an employment agency and undertakes to perform his/her labour function in favour of another person or organisation (user organisation), which shall be specified in the employment contract (Prylypko, 2014). The researcher underlines the reason for atypical forms of employment, namely the flexibility of the labour market due to various factors, and analyses certain types of atypical forms of employment, in particular borrowed labour.

The issues of specificity of labour contracts in non-standard forms of employment are addressed in the dissertation of B.A. Rymar. The author argues that further regulatory framework for fixed-term employment contracts should establish additional cases of their possible application and specifying the rights and obligations of the parties to such contracts. The dissertation analyses the foreign experience of application of teleworker (e-worker) employment contracts and the prospects for using this type of home-based work in national legal practice. When considering a borrowed labour agreement, the author emphasises that it is the basis for a complex tripartite legal relationship between a leasing agency, an employee and a user enterprise, which is regulated by labour, civil, administrative and social security law. The researcher examines the legal nature of the leasing (borrowed) labour agreement and notes that the agreement between the leasing agency and the user enterprise has a civil law nature, although it imposes certain labour obligations on the user enterprise. The author emphasises the need to abolish the state monopoly on employment services and legalise private paid employment agencies, abandon excessive restriction of certain labour law institutions, legitimise more new types of employ-

ment contracts, including atypical, and give the parties greater freedom to conclude, amend and terminate collective and individual contracts and agreements (Rymar, 2009). The author focuses on the inclusion of atypical forms of employment contracts which correspond to the forms of employment into the spectrum regulated by the labour law.

A considerable number of works study certain forms of atypical employment and issues of their regulatory framework. For example, O. Kostiuchenko pays attention to out-staffing as a form that should be used for highly skilled jobs and creative, intellectual labour, which has such socio-economic properties that affect the reduction of transaction costs of employment: a) reduced risks in labour organisation, working time costs and reduced labour productivity by transferring them to the contractor; b) reduced financial burden on the employer's payroll; c) avoidance of time and money costs of obtaining licences (permits) to carry out the relevant work; d) avoiding the costs of employing foreign specialists in Ukraine, which facilitates the mobility of business entities, including foreign experts and other highly qualified specialists; e) exemption of the business entity (entrepreneur-customer) from the need to provide a workplace for a specialist in accordance with regulatory requirements, and thus, reduction of labour protection costs (Kostiuchenko, 2012). A similar problem is addressed in the work by I.V. Lahutina, who examines the risks of standard forms of employment such as outsourcing and out-staffing. The author notes that out-staffing differs from outsourcing in the attitude of the service customer to the staff performing the work. In out-staffing, the staff is directly subordinated to the recipient, and the contractor's task is to select employees who meet the specified characteristics and enter into an employment relationship with them (Lahutina, 2014).

### **3. Problems of the regulatory framework for atypical forms of employment**

The literature review underlines the problems of regulatory framework for the remote form of employment. O.H. Sereda, emphasising the need to improve the regulatory framework for remote employment, describes a remote worker as a person who performs work without entering into a long-term contract with an employer, hired only to perform a certain list of works (freelance worker). A modern remote worker is virtually any specialist who works outside the company's permanent staff and without a long-term employment contract (Sereda, 2014). S.O. Silchenko and D.A. Sierbina emphasise the need for a clear distinction between remote and home-based work.

Unlike the work of home-based workers related to the production of goods or the provision of household services, remote work is possible almost wherever intellectual labour or communication between people is used. Furthermore, of course, such work is impossible without the use of information and communication technologies and appropriate equipment (Silchenko, Sierbina, 2021).

In their works, these researchers examine the essence of the forms of atypical employment chosen by them for the study (primarily in the context of socio-economic significance), the problems arising in connection with their implementation, and note the need to improve the regulatory framework for problematic issues. Plenty of scientific publications consider the consequences of the spread of atypical forms of employment.

For example, I.M. Novak studies both positive and negative features of atypical forms of employment as social innovations in the labour market, such as: engaged (borrowed) labour, flexible employment and transformation of labour relations, in the sense of replacing labour relations with civil ones. The author considers the following as positive results of the introduction of innovative forms of employment for employees: an increase in the level of virtual labour mobility, which removes restrictions related to the place of physical location and allows for greater access to labour markets and the scope of labour efforts; the ability to combine work with study and other useful activities (volunteer work, childcare, solving family problems, etc.) through flexible forms of employment. Nevertheless, the researcher emphasises that workers employed on the terms of non-standard employment face problems such as the lack of a permanent job and an increased risk of unemployment; deterioration in employment conditions, remuneration and safety in the workplace, non-compliance with and/or loss of labour rights and guarantees; loss of pension and other social benefits, guarantees and compensation of an industry-specific nature; lack of the right to receive insurance compensation in the system of compulsory state social insurance (unemployment benefits, temporary disability payments and payments in connection with an industrial accident) (Novak, 2016).

According to S.H. Rudakova, N.S. Danilevych and L.V. Shchetinina, along with the positive aspects of flexible forms of employment and working hours, there are a significant number of negative aspects, such as: difficulties in organising labour when developing shift schedules; part-time workers are usually less adapted in production teams than those working on

a traditional schedule; the use of compressed working hours often leads to increased fatigue; the need for enterprises to use appropriate means of recording the time worked (Rudakova, Danylevych, Shchetinina, 2013).

O.Yu. Hulevych, defining remote work as work at a distance performed with the help of information and communication technologies, argues that it has both positive and negative consequences. According to O.Yu. Hulevych, positive attributes include: free choice of working hours; a calm working environment; the ability to solve family problems, including childcare; reducing the likelihood of conflicts with colleagues and/or management; lack of direct control over the employee's activities; and reduced costs and time spent commuting. Negative consequences are: "self-exploitation" (lack of compensation for night work); delayed work in case of illness or forced work despite being ill, as well as problematic replacement in case of illness; limited ability to use the right to parental leave in case of illness of children; loss of connections with work colleagues; inability to participate in the daily life of the company; lack of guarantees of proper working conditions; limited possibility of inspection of the workplace by safety specialists, as well as the possibility of damage to equipment or software, unauthorised access to information; interference with personal life (Hulevych, 2010). It seems that a significant number of the listed disadvantages are evaluative and depend on the specific living conditions of the employee.

With regard to freelancing as an atypical form of employment, L.F. Lieskova identifies the following advantages for employers: the ability to pay only for the work performed, not for the hours spent at the workplace; the ability to attract higher-class specialists from different regions; the ability to save on expensive office space; no need to provide social guarantees, pay for holidays and sick leave; the ability to minimise paperwork and reporting; the ability to refuse to continue cooperation with a freelancer at any time, which is easier than dismissing a full-time employee and requires certain grounds and more complex legal procedures. The author identifies the following as problems (disadvantages) in freelance work: not always guaranteed payment for the work performed; instability of income; lack of a social package; the need to keep accounting and pay taxes on one's own; not always suitable offers; additional workplace costs; possible problems with satisfying consumer credit orders; illusory opportunities for quality career growth. Meanwhile, the researcher calls the inability to control the process of work performance the only problem (disadvantage) in the employer's activities (Lieskova, 2017).

T.V. Shlapko and E.A. Polianska, considering the problems of the regulatory framework for atypical forms of employment in view of the rapid spread of atypical forms of employment, rightly emphasise the need to adapt legislation to modern conditions, allowing for international experience and specificities of work and labour relations, to provide a clear definition of remote employment, to define the form of the contract for such employment, its content, working hours and rest periods, and the mechanism for regulating and controlling such labour relations (Shlapko, Polianska, 2018).

#### 4. Conclusions

Therefore, this research enables to conclude: first, given the significant growth in the popularity of atypical forms of employment, scholars have scientists focused considerable attention on the theoretical aspects of the development of this institution, in particular, its impact on the development of the labour market has been actively studied; second, a significant number of researchers, when considering the regulatory framework for atypical forms of employment, focus only on certain types of employment, such as: remote work, home-based work, etc.; third, in most studies, the authors underline the positive and negative consequences of the spread of atypical forms of employment in Ukraine. Moreover, the significant interest of employers in using atypical employment is emphasised. Special attention is also paid to the issue of economic benefits from the use of labour of such employees; fourth, when determining ways to harmonise the interests of employees and employers, scholars focus on strengthening the role of labour law in regulating atypical forms of employment both by the current Labour Code and the future Labour Code.

Thus, it should be noted that the study of the problem of regulatory framework for atypical forms of employment in Ukraine is rather fragmentary, which cannot be considered sufficient for its consideration as a complex socio-economic phenomenon.

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## СТАН ДОСЛІДЖЕННЯ ПРОБЛЕМИ ПРАВОВОГО РЕГУЛЮВАННЯ НЕТИПОВИХ ФОРМ ЗАЙНЯТОСТІ НАСЕЛЕННЯ В УКРАЇНІ

**Анотація. Мета.** Мета статті полягає в дослідженні проблеми правового регулювання нетипових форм зайнятості населення в Україні. **Результати.** У статті здійснено аналіз наукових поглядів учених, які у своїх працях досліджували проблему нетипових форм зайнятості. Констатовано, що дослідження проблеми правового регулювання нетипових форм зайнятості населення в Україні є доволі фрагментарним, що не може вважатися достатнім для його розгляду як комплексного соціально-економічного явища. Суспільні процеси, що впливають на поширення нетипових форм зайнятості, охоплюють більшість розвинутих держав світу, причому в Україні вони набувають розвитку дещо повільніше в порівнянні з країнами ЄС, що зумовлено певною відмінністю соціально-економічного розвитку. Разом із цим правове регулювання нетипових форм зайнятості в Україні суттєво відстає від сучасних потреб суспільства в цій сфері. Окрім того, виникнення та розвиток нетипових форм зайнятості виявило значну кількість проблем і недоліків, причини наслідки та шляхи подолання яких стали об'єктом дослідження наукових розробок вітчизняних учених. **Висновки.** Зроблено висновок, що з огляду на значний ріст популярності нетипових форм зайнятості науковці досить багато уваги приділили теоретичним аспектам розвитку даного інституту, зокрема активно вивчали його вплив на розвиток ринку праці, а також значна кількість дослідників у розгляді правового регулювання нетипових форм зайнятості акцентують увагу лише на окремих її видах, зокрема дистанційній роботі, надомній праці тощо. Визначено, що в переважній більшості досліджень автори звертають увагу на позитивні та негативні наслідки поширення в Україні нетипових форм зайнятості. Акцентовано саме на значній зацікавленості роботодавців у використанні нетипової зайнятості. Висвітлено також питання економічних переваг від використання праці таких працівників, крім того, визначаючи шляхи гармонізації інтересів працівників і роботодавців, науковці звертають увагу на посилення ролі норм трудового права у регулюванні питань нетипових форм зайнятості як чинним Кодексом законів про працю України, так і майбутнім Трудовим кодексом.

**Ключові слова:** дослідження, правове регулювання, нетипова зайнятість, правове регулювання, законодавство.

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