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## THE CONCEPT AND FEATURES OF ATYPICAL EMPLOYMENT AS A SPECIAL FORM OF EXERCISING LABOUR RIGHTS OF EMPLOYEES

**Abstract. Purpose.** The purpose of the article is to define the concept and reveal the features of atypical employment as a special form of exercising labour rights of employees. **Results.** The article, relying on the analysis of scientific views of scholars and provisions of current legislation, suggests the author's definition of "atypical employment as a special form of exercising labour rights of employees". It is proved that from the legal perspective, atypical employment is one of the forms of exercising labour rights of a person, since it, like any employment, is associated with meeting personal or social needs to obtain monetary remuneration. It is determined that atypical employment is the result of changes in social forms of production, information and digital progress, social transformations, and factors of both general and individual nature. Therefore, atypical employment should be best interpreted as a socio-economic phenomenon manifested in the flexibility of employment conditions of employees, which primarily involves their performance of labour activities outside the actual location of the business entity. **Conclusions.** It is concluded that the main features of atypical employment are as follows: first, it is comprehensive as it combines quite diverse forms of employment which differ from standard (typical) employment; second, it is based on a person's voluntary choice to exercise his/her right to work in a certain atypical form; third, its specificity is that atypical employment is either directly provided for by current legislation or is not prohibited by it; fourth, the employer's control over the progress of work is significantly limited, usually controlling the timeliness, efficiency and quality of work; fifth, atypical employment prevails in intellectual and creative work; sixth, atypical employment manifests itself in various forms, with each individual form having its own distinctive features that distinguish it from other forms of atypical employment.

**Key words:** atypical employment, labour rights, employers, labour activities, regulatory framework.

### 1. Introduction

Social and economic processes have a global character and gradually involve Ukraine in them, affecting the exercise of employees' labour rights. According to Yu. O. Ostapenko, the desire of employers to optimise the use of labour resources and take full advantage of scientific and technological progress leads, on the one hand, to new exploitation of employees and, on the other hand, to increased flexibility of employment. In this regard, the labour market becomes more and more flexible and, despite the fact that standard employment remains the most common in the labour market (in particular, in Ukraine and most post-Soviet countries), the trend of new types of employment becomes more and more noticeable and interesting for the parties to labour relations (Ostapenko, 2020). The flexibility of the labour market leads to diversity in exercising labour rights

of employees. A striking manifestation of such changes is the emergence and popularisation of atypical forms of employment.

Some problematic issues regarding the essence and content of certain atypical forms of employment have been considered in their scientific works by: O. O. Bilous, U. Ye. Huzar, V. P. Kokhan, M. R. Lychkovska, M. V. Lutsyk, Yu. O. Ostapenko, T. V. Parpan, O. S. Prylypko, L. Yu. Prohoniuk, M. M. Toporkova, Ya. V. Saichenko. and many others. However, despite the considerable scientific heritage, there is no comprehensive research in the legal literature on the essence and content of atypical employment as a special form of exercising labour rights of employees.

Thus, the purpose of the article is to define the concept and reveal the features of atypical employment as a special form of exercising labour rights of employees.

## 2. Content of the form of exercising the right to work

It should be noted that the form of exercising the right to work may be considered as active actions of a person to enter into and participate in relations regulated by legal provisions on performing labour as activities not prohibited by law aimed at earning income. According to the Law of Ukraine "On Employment of the Population" of 5 July 2012, employment can be defined as the activities of persons not prohibited by law related to meeting their personal and social needs in order to receive income (wages) in cash or in any other form, as well as the activities of members of the same family who perform economic activities or work for business entities based on their property, including free of charge (Law of Ukraine On Employment of the Population, 2012). The Law provides for two types of employment: full-time and part-time. However, it should be noted that today the traditional understanding of the right to work is based on full-time employment as typical or standard employment. The literature review reveals quite a variety of approaches to understanding this type of employment.

According to T. V. Parpan, standard employment is characterised by the fact that hired labour is performed on the basis of an employment contract concluded for an indefinite period; work is performed on a full-time basis on the territory of an enterprise, institution, organisation; these labour relations are usually formalised directly with the employer (Parpan, 2019). L. Yu. Prohoniuk, following a similar perspective, notes that typical employment is understood as employment for hire in the form of an indefinite employment contract, organised in the normal working day mode at an enterprise or organisation, under the direct supervision of the employer or his/her authorised persons (Prohoniuk, 2018).

Therefore, the authors underline the following critical criteria for understanding typical (standard) employment: a fixed working day, work place, and uncertainty of the duration of the employment contract (permanence). According to U. Ye. Huzar and M. V. Lutsyk, the concepts of "standard" and "non-standard" employment are not generally accepted but are increasingly used by researchers and policy makers. "Standard" employment is usually considered to be full-time employment on the basis of an indefinite employment contract in an enterprise or organisation, under the direct supervision of the employer or managers appointed by him/her, while all forms of employment that deviate from the described standard, including self-employment, may be considered "non-standard" (Huzar, Lutsyk, 2013).

To sum up, the following features of typical or standard employment can be distinguished: indefinite term of the employment contract; full-time work in accordance with the requirements of the applicable law; fixed start and end times; the workplace is determined by the employer and is located outside the employee's place of residence, usually on the employer's premises; working hours are usually clearly regulated.

M. R. Lychkovska emphasises the fact that the introduction and use of exclusively standard methods and forms of employment (full-time employment on the basis of an indefinite employment contract) do not always contribute to achieving the greatest effect. According to the author, the standard (typical) model of employment is optimal only for a certain stage of socio-economic development of society, i.e., each stage of development will have its own typical model. Based on this, M. R. Lychkovska recommends that we stop calling new, flexible forms of employment "non-standard" or "atypical", which generates a negative attitude towards them (Lychkovska, 2016). V. P. Kokhan argues that the emergence of new forms of labour, which differ from the existing ones by their organisation, flexibility, use of information and telecommunication technologies and the increasing importance of the creative component of labour, has forced experts to combine them all under the name of "non-standard employment" as opposed to standard employment. In the literature, it is also referred to as atypical, non-traditional employment, or atypical labour activity (Kokhan, 2013). This remark emphasizes that atypical employment is derived from typical (standard) employment. Some authors contrast atypical employment with typical (standard, traditional) employment.

The scientific community has not developed a unified approach to understanding the concept of atypical employment. Some scholars argue that atypical employment is the labour activities of employees of a certain classification group, which are provided for or not prohibited by the current legislation of Ukraine, but due to the particularities of the organisation of working hours, workplace and working conditions do not comply with standard rules and require a special regulatory mechanism, organisational and economic support (Prohoniuk, 2019). Yu. O. Ostapenko defines atypical employment as labour relations between an employer (employers) and a person employed in an atypical manner (atypical employee), which are not prohibited or provided for by labour legislation and are based on non-standard labour contracts. Atypical employment is an objectively forced deviation from the general standards set by the legislator regarding the organisation of working

hours, workplace and working conditions, due to the special needs of the employer(s) and the atypical employee (Ostapenko, 2020). The authors define the common characteristic feature of atypical employment as either its direct enshrining in the current legislation or the absence of a direct regulatory prohibition of such employment.

M. M. Toporkova and O. O. Bilous consider atypical (non-standard) employment as the activities of citizens based on labour relations in which one or more essential features of traditional labour relations are modified: their duration, place of performance, working hours, particularities of performance of labour function by an employee, etc. (Toporkova, Bilous, 2019). These scholars base the understanding of atypical employment on the mandatory attribution of activities performed as an atypical form of employment to the scope of labour relations in which at least one of the features of typical (standard) employment is subject to change.

Ya. V. Saichenko considers non-standard employment as a form of involvement of persons in labour, which is a manifestation of increased flexibility and individualisation of labour relations, the essence of which is that one of the features differs from the standard regulatory model of relations between participants to the labour process, based on the indefinite duration of an employment contract, full-time work, work under the direct supervision of one employer in the premises belonging to him/her at one workplace with subordination to the internal labour regulations and inclusion in the labour collective (Saichenko, 2021). The characteristic features of atypical forms of employment include their flexibility, which does not coincide with the features of standard employment, resulting in a fairly wide variety of such atypical forms of employment.

### 3. Forms of atypical employment in Ukraine

One of the most popular forms of atypical employment in Ukraine is remote work. Based on the analysis of diversity in the field of atypical forms of employment, U. Ye. Guzar and M. V. Lutsyk identify the following types of remote employment: 1) remote employment divided into work at home and work in the office: work performed mainly by highly qualified personnel who have the trust of the employer. Most of the time is spent working at home (accountant, designer, etc.); 2) home-based work: a set of monotonous operations that do not require high qualification of their performer; 3) freelance remote work: home-based work performed by freelancers under an agreement with the employer (journalist, writer, translator); 4) mobile remote work: work that involves

the use of new types of technologies. Employees contact clients using computer equipment and provide them with the services they need (sales representatives, hotline operators); 5) work in special workplaces - the employer creates special premises with telecommunication connections. Work in a team is expected (programmer, designer, marketer, etc.) (Huzar, Lutsyk, 2013). It seems that the listed types of remote employment do not exhaust all possible forms of it, however, remote forms of employment have certain common features. The essential features inherent in remote work, as one of the most common forms of atypical employment, are as follows: 1) It is applied within the framework of labour relations; 2) The place of performance of labour function does not coincide with the location of the employer (work outside the office); 3) The employee has more autonomy in the use of working time than when working in the office; 4) The process of managing hired labour is performed with the help of information and telecommunication technologies (Silchenko, Sierbina, 2021).

O. S. Prylypko underlines the spread of non-standard employment, by which the author means the work of an employee under an employment contract that provides for deviations from work under an indefinite full-time employment contract (Prylypko, 2013). Besides, the author considers borrowed labour to be a non-standard employment, and in her opinion, borrowed labour is a complex phenomenon which has three parties to labour relations: a borrowed labour employee, a private employment agency and a service customer (another employer). Borrowed labour has a large number of types, and when using this type of labour relations, services (outsourcing) or personnel (leasing of personnel, outsourcing of personnel and recruitment of temporary personnel) may be provided (Prylypko, 2013).

One of the atypical forms of employment that is developing as a result of social and economic transformations is outsourcing, a practice in which an individual or company performs tasks, provides services or produces products for another company the functions thereof could be or are usually performed within the firm (Toniuk, 2017). The essence of outstaffing is the transfer of personnel outside the employer's staff and their subsequent registration in the employer's staff, with the latter assuming full legal and financial responsibility for the employees. By providing outstaffing services, a recruitment agency assumes the powers of a formal employer for the employees of the client company, thereby ensuring full financial and legal responsibility for them, including: payment of salaries and taxes, and maintenance of personnel records in accordance with the labour

legislation of Ukraine. Therefore, outstaffing is a new way of development of HR management, which currently has a number of disadvantages and advantages that determine the feasibility of its implementation for each individual enterprise (Pysarchuk and Marachevska, 2011). According to K. S. Kosinova, in the case of outstaffing as a type of outsourcing, there are problems with the preparation of labour contracts and protection of employees' rights. In fact, the person is in an employment relationship with one employer and performs labour functions for another, and this latter shall ensure proper working conditions, although the provider company will be responsible for this (Kosinova, 2017). Outsourcing and outstaffing, as relatively new forms of atypical employment for Ukraine, obviously require more comprehensive regulatory frameworks to protect the rights and legitimate interests of employees.

L. Krasnorutska considers atypical employment as labour activities of employees of a certain classification group, which are provided for or not prohibited by the current legislation of Ukraine, but due to the specifics of the organisation of working hours, workplace and working conditions do not comply with the standard rules and require a special regulatory mechanism and organisational and economic support. The researcher identifies atypical forms of employment as borrowed labour, on-call work, part-time work, self-employment, short working week, etc. Moreover, the author notes that the content of the category of non-standard employment is not limited to these (Krasnorutska, 2018).

According to M. M. Toporkova and O. O. Bilous, the grouping of all types of atypical employment into a sub-general array significantly complicates the assessment of atypical employment as a socio-economic phenomenon. In general, its advantages and disadvantages are related to the fact that, on the one hand, it provides flexibility of the labour market, and on the other hand, it leads to an uncontrolled labour market and insecurity of the positions of its employees. The rapid informatisation of society and the innovative development of the country's economy led to the emergence and spread of new atypical types of employment that differ from the standard ones. In accordance with the right to work guaranteed by the Constitution of Ukraine, every citizen has the right to free choice of employment that provides an opportunity to earn a living. The steady growth in the popularity of atypical types of employment in Ukraine naturally requires ensuring transparency of their use in order to comply with the interests of the state, employee, employer, that is, all participants in labour rela-

tions, which requires regulatory framework (Toporkova, Bilous, 2019).

#### 4. Conclusions

Therefore, atypical employment is the result of changes in social forms of production, information and digital progress, social transformations, and factors of both general and individual nature. Therefore, atypical employment should be best interpreted as a socio-economic phenomenon manifested in the flexibility of employment conditions of employees, which primarily involves their performance of labour activities outside the actual location of the business entity. From the legal perspective, atypical employment is one of the forms of exercising labour rights of a person, since it, like any employment, is associated with meeting personal or social needs with the aim of obtaining monetary remuneration.

The main features of atypical employment are as follows: first, it is comprehensive as it combines quite diverse forms of employment which differ from standard (typical) employment; second, it is based on a person's voluntary choice to exercise his/her right to work in a certain atypical form; third, its specificity is that atypical employment is either directly provided for by current legislation or is not prohibited by it; fourth, the employer's control over the progress of work is significantly limited, usually controlling the timeliness, efficiency and quality of work; fifth, atypical employment prevails in the field of intellectual and creative work; sixth, atypical employment manifests itself in various forms, with each individual form having its own distinctive features that distinguish it from other forms of atypical employment.

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## **ПОНЯТТЯ ТА ОЗНАКИ НЕТИПОВОЇ ЗАЙНЯТОСТІ ЯК ОСОБЛИВОЇ ФОРМИ РЕАЛІЗАЦІЇ ТРУДОВИХ ПРАВ ПРАЦІВНИКІВ**

**Анотація.** Метою статті є визначити поняття та розкрити ознаки нетипової зайнятості як особливої форми реалізації трудових прав працівників. **Результати.** У статті, спираючись на аналіз наукових поглядів вчених та норм чинного законодавства, запропоновано авторське визначення «нетипової зайнятості як особливої форми реалізації трудових прав працівників». Доведено, що в правовому аспекті нетипова зайнятість є однією із форм реалізації трудових прав особи, оскільки вона, як і будь-яка зайнятість, пов'язана із задоволенням особистих чи суспільних потреб з метою отримання грошової винагороди. Визначено, що нетипова зайнятість є наслідком зміни суспільних форм виробництва, інформаційного, цифрового прогресу, соціальних перетворень, факторів як загального, так і індивідуального характеру. Таким чином, нетипову зайнятість найбільш доцільно тлумачити як соціально-економічне явище, що проявляється в гнучкості умов зайнятості працівників, що, перш за все, передбачає здійснення ними трудової діяльності поза межами фактичного розташування суб'єкта господарювання. В правовому аспекті нетипова зайнятість є однією із форм реалізації трудових прав особи, оскільки вона, як і будь-яка зайнятість, пов'язана із задоволенням особистих чи суспільних потреб з метою отримання доходів. **Висновки.** Зроблено висновок, що основних рис нетипової зайнятості доцільно віднести такі: по-перше, вона має комплексний характер, оскільки об'єднує в собі доволі різноманітні форми зайнятості, які відрізняються від стандарт-

ної (типової) зайнятості; по-друге, вона заснована на добровільному виборі особи реалізації свого права на працю у певній, нетиповій формі; по-третє, її особливість полягає у тому, що нетипова зайнятість є такою, що або безпосередньо передбачена чинним законодавством, або не заборонена ним; по-четверте, контроль з боку роботодавця за ходом виконання роботи є суттєво обмежений, зазвичай він контролює своєчасність, оперативність та якість виконання роботи; по-п'яте, нетипова зайнятість переважає в сфері інтелектуальної та творчої праці; по-шосте, нетипова зайнятість проявляється у різноманітних формах, при цьому кожна окрема форма має свої власні відмінні риси, що відрізняють її від інших форм нетипової зайнятості.

**Ключові слова:** нетипова зайнятість, трудові права, працівники, трудова діяльність, правове регулювання.

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