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EMPLOYMENT OF THE DISABLED

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Abstract

The article deals with legal aspects and explores the problems of employment of the disabled on the basis of law enforcement practice. It also provides a detailed overview of current Russian legislation and analyzes the key international legal acts that establish the basic principles of legal regulation of employment of the disabled, as well as corresponding national regulatory legal acts. Based on the analysis, the probabilistic forms of discrimination manifestation in the process of work and the implementation of employment of the disabled, differentiated by individual areas of activity, have been determined.

Keywords

Employment – Disabled – Job quotas – Individual rehabilitation program – Special jobs

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Introduction

According to the Universal Declaration of Human Rights, everyone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, sex, language, religion, political or other opinions, national or social origin, property, birth or another status. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment (Universal Declaration of Human Rights, adopted by the UN General Assembly on December 10, 1948).

Based on Articles 9, 10 and 15 of the European Social Charter (revised) of May 3, 1996, the right to vocational guidance and training, as well as the right of the disabled to independence, social integration and participation in society, are guaranteed.

According to the Convention on the Rights of Persons with Disabilities, the member state is under the following obligations: to prohibit discrimination based on disability with regard to all matters relating to all forms of employment, including conditions of employment, recruitment, retention of employment, promotion and safe and healthy working conditions; to expand labor market opportunities for the disabled and their promotion, as well as assist in finding, obtaining, maintaining and resuming work; to hire people with disabilities in the public sector, as well as provide people with disabilities with a reasonable adjustment of the workplace¹.

The Constitution of the Russian Federation in Article 7 establishes the provision that the Russian Federation is a social state whose policy is aimed at creating conditions for a worthy life and free development of a person. This postulate mostly affects the interests of certain segments of the population, which, above all, include the disabled.

One of the directions of the internal policy of the Russian Federation is social security and protection of the rights of the disabled in all spheres of life.

In the framework of this activity, the Russian Federation ratified the Convention for the Protection of the Rights of Persons with Disabilities. Moreover, the Federal Law of January 1, 2016 came into force that touched upon the provision of assistance to the disabled in all areas of society (Federal Law of December 1, 2014, No. 419-FL "On amending certain legislative acts of the Russian Federation on the social protection of the disabled in connection with the ratification of the Convention on the Rights of the Disabled"). In the framework of this activity, the law "On the Social Protection of Persons with Disabilities in the Russian Federation" is currently in force.

According to Article 1 of the Federal Law "On the Social Protection of Persons with Disabilities in the Russian Federation", a disabled person is a person who has a health disorder with a persistent disorder of body functions caused by diseases, consequences of injuries or defects, leading to restriction of life activity and causing the need for social protection. Disability confirmation is carried out by a federal institution of medical and social expertise.

¹ Yu. V. Samovich, "Mezhdunarodno-pravovye aspekty zashchity interesov lits s ogranichennymi vozmozhnostyami", *Mezhdunarodnoe pravo i mezhdunarodnye organizatsii* num 3 (2018): 40-46.

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The level of the development of society is characterized not only by the economic potential but also by the ability of the state to maintain a decent standard of living for the disenfranchised and disabled.

Most people who are partially disabled want to continue working to the best of their ability. To help such citizens, Russian legislation has fixed a set of measures to increase the level of employment of the disabled, the implementation of which is controlled by executive authorities. There are special requirements for jobs for the disabled and there are also certain quotas for people with disabilities.

Individual issues of palliative care are considered in the articles by Blagodir², Maslova³, Yushchin⁴, Kurova⁵, Chistyakova⁶ and others.

Methods

In the research, we were guided by general scientific and special legal methods. Such general scientific methods as analysis and synthesis, generalization and analogy, as well as the following special methods of cognition, were used most actively: formal-legal and legal analysis. The combination of these methods made it possible to comprehensively and extensively analyze the investigated phenomenon: to identify problematic issues in the field of employment of people with different categories of disability and to analyze national legislation and international legal acts within the framework of the issue under study, as well as judicial practice and scientific literature.

Results

Article 2 of the Labor Code of the Russian Federation provides for the main principles of the legal regulation of labor relations and other relations directly associated with them. In particular, freedom of work is recognized, including the following: the right to work that everyone freely chooses or freely agrees to; the right to dispose of one's ability to work, to choose a profession and a form of activity; forced labor and work discrimination is prohibited; guaranteed protection against unemployment and employment assistance; equality of the rights and opportunities of workers is proclaimed, ensuring equal opportunities for workers without any discrimination for promotion of work, taking into account labor productivity, qualifications and length of service in the specialty, as well as for training and further professional education, ensuring the right of workers to protect their dignity during the period of employment. The obligation to provide professional rehabilitation of the disabled stems from the content of the International Labor Organization Convention N 159 "On vocational rehabilitation and employment of persons with disabilities", according to which, states must take measures to organize vocational

² A. L. Blagodir, "Trudoustroistvo invalidov v stranakh EAES: analiz zakonodatelstva", Trudovoe pravo v Rossii i za rubezhom num 4 (2018): 53-56.

³ A. Maslova, "Otvetsvennost rabotodatelya po voprosam trudoustroistva invalidov", Sudebnaya praktika i ee analiz", Trudovoe parvo num 12 (2016): 101.

⁴ V. P. Yushchin, "O diskriminatsii invalidov", Otdel kadrov kommercheskoi organizatsii num 12 (2017).

⁵ N. N. Kurova, "Obzor rossiiskogo zakonodatelstva po voprosam diskriminatsii v sfere truda i zanyatosti invalidov", Advokat num 2 (2017): 1-27.

⁶ L.V. Chistyakova, Otvetsvennost rabotodatelya za narushenie trudovogo zakonodatelstva (Moscow: GrossMedia, ROSBUH, 2018).

guidance services, vocational training and employment of persons with disabilities so that they are able to get and keep a job, as well as receive promotions.

The vocational training of persons with disabilities in the Russian Federation is carried out in those professions and specialties, the mastery of which gives them the greatest opportunity to be competitive in regional labor markets. The right of persons with disabilities to employment must be provided by legislative guarantees on job quotas.

The issues of job quotas in the Russian Federation are stipulated by the Law "On social protection of the disabled in the Russian Federation" and the Law "On employment in the Russian Federation". The subjects of the Russian Federation independently establish quotas for hiring disabled people in the amount of at least 2% and not more than 4% of the average number of employees. In case of non-fulfillment or impossibility of fulfilling the quota, employers pay a mandatory monthly fee to the budget of the subject of the federation for each disabled person not arranged for the quota.

Discussion

In accordance with the Constitution of the Russian Federation, the state guarantees equality of human and civil rights and freedoms regardless of gender, race, nationality, language, origin, property and official status, place of residence, attitude to religion, beliefs, membership in public associations and other circumstances.

Labor is free; everyone has the right to freely dispose of their abilities to work and choose a type of activity and profession, to work in conditions that meet safety and hygiene requirements, to remuneration for work without any discrimination and no lower than the minimum wage established by federal law, as well as the right to protection against unemployment.

The issue of compliance by the employer with the norms of job quotas for people with disabilities, as well as the creation of jobs for them that meet the requirements of safety and their health status in accordance with the individual rehabilitation program, remains a serious problem⁷.

According to E.G. Sitnikova, N.V. Senatorova and E.A. Serebryakova, the obligation to create special working conditions arises from the employer from the moment when they become aware of the existence of the employee's disability. This moment does not always coincide with the moment of establishing the disability itself. Employees sometimes conceal information on health status, being in fear about non-admission to the job. The employer does not have access to information about the state of health of the employee either when hiring them or not unless the work requires preliminary or periodic medical examinations. At the same time, the legislation does not establish the obligation of the employee to notify the employer about the state of their health, except in the absence of the employee at the workplace due to temporary disability⁸.

⁷ G. N. Kuleshov; A. A. Neznamova; M. A. Volkova; A. L. Shilovskaya y R. R. Lenkovskaya, "Mechanisms for the enforcement of the rights of disabled people", *International Journal of Innovative Technology and Exploring Engineering* Vol: 8 num 7 (2019): 2675-2679.

⁸ E. G. Sitnikova; N. V. Senatorova y E. A. Serebryakova, "Izmenyaem trudovoi dogovor: prava, obyazannosti, oformlenie", "Redaktsiya "Rossiiskoi gazety" vypusk num 5 (2017): 175.

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Vocational training can be carried out not only in schools but also directly in production, since the presence of the enterprise-wide production base, choice of a profession, reduction of terms of training and higher level of financial security while learning contribute to further employment of the disabled⁹.

Thus, the implementation of the guarantees established for a disabled employee primarily depends on the communication of information about the disability to the employer. Moreover, such information must be documented¹⁰.

If the employee does not submit an individual rehabilitation program to the employer, this may be regarded as a refusal of the disabled person to participate in this program. In accordance with part 7 of Article 11 of the Law "On the Social Protection of Persons with Disabilities in the Russian Federation", such a refusal relieves the employer of responsibility for the implementation of the rehabilitation program. This conclusion is confirmed by judicial practice (Decision of the Volga City Court of the Volgograd region of October 19, 2012, N 2-4736/2012).

This issue is quite controversial from the point of view of law enforcement practice since the Labor Code of the Russian Federation provides an exhaustive list of documents that an employee must provide when being hired. It does not contain any certificate of disability or any other documents confirming its existence or absence.

Thus, the Labor Code of the Russian Federation does not oblige a person to inform the employer about the state of their health and the existence of a disability. The only exception is the case when the disability leads to a situation that threatens the life and health of people, the safety of the employer's property.

Information about a person's state of health refers to their special personal data (Law of July 27, 2006, N 152-FL "On personal data"), respectively, such data can be provided only with the consent of the employee.

Employers' avoidance of providing information to the employment service on the availability of jobs and vacant posts, as well as already created or allocated jobs for disabled people following the quota, is also a rather important problem¹¹.

Employers are required to submit monthly information to the employment service bodies on the availability of jobs and vacant positions, created or allocated jobs for the employment of persons with disabilities in accordance with the established quota for the employment of persons with disabilities, including information about local regulations containing information about these jobs, the implementation of quotas for the employment of the disabled.

⁹ A. L. Blagodir, "Trudoustroistvo invalidov v stranakh EAES: analiz zakonodatelstva", *Trudovoe pravo v Rossii i za rubezhom* num 4 (2018): 53-56.

¹⁰ E. O. Tchinaryan; M. S. Lavrentieva y I. Y. Nikodimov, "Legal Aspects of Socially Significant Diseases Prevention among Children and Young People", *Journal of Pharmaceutical Sciences and Research* Vol 10 num 12 (2018): 3194-3197.

¹¹ N. V. Lutovinova; R. R. Lenkovskaya; G. N. Kuleshov y E. O. Tchinaryan, "Self-Employment: Innovation in The Regulation of Entrepreneurial Activity", *International Journal of Recent Technology and Engineering* Vol: 8 num (2019): 7588-7591.

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In connection with the foregoing, it can be concluded that it is important for the employer to understand that it is necessary to comply with the rules established by law in order to avoid bringing them to administrative responsibility. Namely, it is necessary to create or allocate jobs for the employment of persons with disabilities and adopt local regulations containing information about these jobs, create working conditions for the disabled following the individual rehabilitation or habilitation program for the disabled person and provide the information necessary for the organization of employment of persons with disabilities in the prescribed manner.

It is also worth noting the problem of discrimination against persons with disabilities in employment.

Discrimination on the basis of disability, which means any difference, exclusion or restriction due to disability, the purpose or result of which is to diminish or deny the recognition, realization or exercise, on an equal basis with others, of all political and economic rights and freedoms guaranteed in the Russian Federation, in social, cultural, civil or any other field is not allowed in accordance with the Convention on the Rights of Persons with Disabilities and the Law "On the Social Protection of Persons with Disabilities in the Russian Federation".

Any direct or indirect restriction of rights or establishment of direct or indirect advantages in the conclusion of an employment contract, depending on gender, race, nationality, language, origin, property, family, social and official status, age, place of residence (including the presence or absence of registration at the place of residence or stay), attitude to religion, beliefs, belonging or non-belonging to public associations or any social groups, as well as other circumstances not related to the business qualities of employees, is not allowed.

The business qualities of an employee should, in particular, be understood as the ability of an individual to perform a specific labor function, taking into account their professional qualifications (for example, having a certain profession, specialty, qualification), personal qualities (for example, health status, having a certain level of education, work experience in this specialty or industry)¹².

It should be noted that the refusal for a disabled person to be hired on the grounds that they are disabled is regarded as discrimination of employers, which is associated with restoring illegally dismissed disabled people in court for failing to comply with the law when employing disabled people¹³.

The legislation of the Russian Federation establishes rules for increased protection and certain preferences exist in relation to persons with disabilities. Persons with disabilities who have an advantage in employment over other people take their places following special quotas for employment of persons with disabilities, which is not a discriminatory circumstance in relation to others.

¹² V. P. Yushchin, "O diskriminatsii invalidov", Otdel kadrov kommercheskoi organizatsii num 12 (2017).

¹³ O. Baidina, "Trudoustraivaem invalidov: s chem pridetsya stolknutsya rabotodatelyu", Trudovoe pravo num 5 (2018): 51-60.

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The minimum number of special jobs for the employment of disabled people is set by the executive authorities of the subjects of the Russian Federation for each enterprise, institution or organization within the established quota for employment of disabled people¹⁴.

It is necessary to create working conditions for persons with disabilities in accordance with an individual rehabilitation or habilitation program for the disabled. Special workplaces for the employment of the disabled – jobs that require additional measures for the organization of labor, including the adaptation of the main and auxiliary equipment, technical and organizational equipment, additional equipment and technical devices based on individual capabilities of people with disabilities. Special jobs for the employment of persons with disabilities are equipped by employers, taking into account the impaired functions of people with disabilities and the limitations of their livelihoods in accordance with the basic requirements for such equipment of these jobs, as determined by the federal executive body that carries out the functions of developing and implementing state policy and legal regulation in the field of labor and social protection of the population.

It should be noted that if the employers are public associations of disabled people and organizations formed by them, including business partnerships and companies, authorized (share) capital of which consists of the contribution of the Disabled People's Association, these employers are exempt from compliance with the established quota for hiring disabled people¹⁵.

The issue of employment of parents raising children with disabilities is an important aspect. The aforementioned circumstances require the development of a system to encourage the employer and search for opportunities to provide jobs for parents of children with disabilities without compromising the quality of work of the enterprise, in which they are able to work.

It is worth noting that the main obstacle to find a job is not the low professional qualifications of the parents, but the fact that the disabled child has no one to stay with. It became very important to adapt the labor market conditions to the opportunities and potential of this category of population, as well as an individual approach to the search for procedures to improve the ability of unemployed parents (guardians, trustees) to work¹⁶.

Thus, the analysis of the Russian legislation regulating legal relations in the sphere of labor and employment of disabled people allows identifying the probabilistic forms of discrimination in the process of labor and employment of disabled people, differentiated in the following areas of activity¹⁷.

¹⁴ E. V. Shestakova, Slozhnye voprosy izmenenii trudovogo zakonodatelstva v 2019 godu (Moscow, 2019).

¹⁵ V. I. Treskov, Veterany, invalidy, chernobylytsy - vashi lgoty i privilegii (Moscow: Redaktsiya Rossiiskoi gazety, 2017).

¹⁶ D. A. Semyannikova, Sodeistvie zanyatosti roditelei, vospityvayushchikh detei-invalidov. Sotsialnoe i pensionnoe pravo 4 (2017).

¹⁷ N. N. Kurova, "Obzor rossiiskogo zakonodatelstva po voprosam diskriminatsii v sfere truda i zanyatosti invalidov", Advokat num 2 (2017): 1-27.

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When entering employment:

1) unjustified refusal to offer a job on the basis of disability, including in the state and municipal service;

2) failure by the employer to comply with the rules on reduced working hours for disabled people;

3) failure by the employer to provide extended annual paid leave to the disabled;

4) ignoring the provisions of federal and regional legislation on quotas for jobs for persons with disabilities, including in the field of state and municipal services and in organizations, regardless of legal forms of ownership;

5) actual absence of jobs created or allocated for the employment of persons with disabilities in accordance with the established quota;

6) failure to provide the applicant with information about the availability of jobs and vacant positions created or allocated for the employment of persons with disabilities in accordance with the established quota for employment of the disabled;

7) failure to provide the employment service bodies with information on the availability of jobs and vacant positions created or allocated for the employment of disabled people following the established quota for employment of the disabled, including information on local regulations containing information about these jobs, the quota for employment of the disabled;

8) failure by the employer to take measures to adapt the main and auxiliary equipment, as well as technical and organizational equipment, and to provide technical devices for the workplace for the disabled;

9) inclusion of professions and positions belonging to the category of work with harmful and (or) dangerous working conditions in the created or allocated by the employer jobs for the employment of disabled people under the established quota;

10) presentation of an unreasonable condition when applying for a job – attracting disabled people to work at night, on weekends and public holidays, to work overtime;

11) employment of persons with disabilities in violation of the individual rehabilitation and habilitation program or the conclusion of a medical and social examination;

12) failure to comply with hygienic requirements for working conditions of the disabled;

13) lack of unhindered access to social, engineering and transport infrastructure facilities for persons with disabilities, including wheelchair users and service dogs;

14) failure to comply with accessibility requirements for the physical environment, transport, information and communication, including information and communication

technologies and systems, as well as other facilities and services open or provided to the public;

15) refusal of reasonable provision;

16) lack of effective legal protection against discrimination on any ground;

17) lack of access to employment services;

18) lack of information on the expansion of opportunities for self-employment, entrepreneurship, development of cooperatives and organization of their own business;

19) insufficient state incentives for employers to employ persons with disabilities in the private sector of the economy;

20) failure to comply with the procedure for ensuring accessibility for the visually impaired to official sites of federal state authorities, public authorities of the subjects of the Russian Federation and local authorities on the Internet;

21) failure to comply with the procedure for providing services for the translation of Russian sign language (sign language interpretation, tactile sign language);

22) non-inclusion of a disabled person in the federal register of the disabled used in the provision of public services to the disabled;

23) subsequent refusal to register a disabled person as unemployed¹⁸.

Conclusions

Summing up, it is possible to conclude that the current legislation of the Russian Federation requires constant improvement in terms of ensuring an accessible and barrier-free environment. The solution to these issues would contribute to the even greater social integration of the disabled, which would give them the opportunity to realize their needs in many areas of public life.

In this regard, in accordance with Article 23 of the Law "On the Social Protection of Persons with Disabilities in the Russian Federation" in organizations, regardless of their organizational and legal form, working conditions must be created for persons with disabilities following the individual program of rehabilitation and habilitation. Similar provisions are enshrined in Article 224 of the Labor Code of the Russian Federation, according to which, the employer is obliged to arrange working conditions for the disabled in coordination with their individual rehabilitation programs.

The following shortcomings can be identified in the social policy of the state concerning the employment of persons with disabilities:

1) there are no new legislative initiatives on the psychological adaptation of disabled people to the workplace, there are no relevant programs of employers, who also

¹⁸ V. Alistarkhov, "Kto pomozhet invalidam?", Ezh-Yurist num 26 (2014): 24-29.

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have to prepare staff to work next to disabled people in order to avoid negative attitudes towards disabled people;

2) the selection criteria for granting subsidies to the subjects of the Russian Federation are poorly developed, which can lead to corruption in the regions;

3) it is completely unclear how the employer should spend the money received for the employment of a disabled person;

4) the legislation does not provide for a priority list of employers who are obliged to employ disabled people. However, such a list should be and it should begin with companies with public ownership;

5) the legislation provides for a list of priority professions, in which disabled people can be competitive, but this list is not exhaustive and should be supplemented with positions of state and local government bodies.

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