Volume 2, Issue 11, November - 2024 **ISSN (E):** 2938-3811

FOREIGN EXPERIENCE OF EMPLOYEE SELF-DEFENSE

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Abstract
Concepts such as “self-protection of the labor rights of the employee, implementation of the ongoing reforms in this regard, filling gaps in the legislation”, improvement of the current legal documents in this area, as well as self-protection of the labor rights of the employees It is dedicated to increasing efficiency using the latest information systems in the field of production, as well as analyzing foreign experience.

Keywords: Employee self-defense, employment contract, profession, qualification, specialty, working hours.

Introduction

In the works of scientists of the USA, Great Britain, and Germany, the concept of a form of protection of the labor rights of employees is not found. Instead, concepts such as institutions, mechanisms and procedures for the protection of employee rights are used.

If we pay attention to the world experience, there are courts specialized in the protection of labor rights in countries such as Germany, Finland, and France. In some provinces of the USA and Canada, there are administrative bodies specializing in the implementation of judicial functions. Although specialized labor courts abroad have not been established for many years, their efforts to regulate labor relations are significant.

The purpose of self-defense is to stop actions that violate labor rights.

The experience of the German state: In particular, the German state has a unique system of public control over compliance with labor legislation. In Germany, the importance of the trade union in raising public control in the field of labor to a higher level and the possibility of online (remote) implementation of every complaint and proposal. It is indicated that the competent bodies will respond to the petitioner online (remotely) or in writing within three days. The above requirements are specified in Article 17 of the German Constitution. We believe that there is a need to apply the experiences in this regard to the legislation of our country with changes and additions. Although the German Labor Code does not have a specific article on the term "Self-defense of labor rights", the state labor law contains rules and norms that protect the labor rights of employees[1]. According to Article 75 of the Labor Code, the employer's obligations to create safe and healthy working conditions are defined, and the employee has the right to demand compliance with the specified conditions and to request protection if they

are violated marked as. Articles 104-113 of the German Labor Code regulate the conditions under which an employee may legally refuse to perform work in the event of a threat to his or her health or life, and to provide certain levels of protection for employees. substances can be the basis. In particular, in 2013, amendments and additions were made to some parts of the German Labor Code, and article 612 of this code describes stress and psychological risks, obliging employers to take measures to prevent psychosocial risks and stress in the workplace. does. In order to force the violator of labor rights to take certain actions, other methods of protection of labor rights should be used[2]. Self-defense as a method of protection of subjective rights, freedoms and legal interests can be used only by the employee himself. Employers cannot use this method to protect their rights, freedoms and legal interests. The period of suspension of labor duties for self-defense is not limited and is determined by the time necessary to restore the violated rights and freedoms of the employee. Self-defense of labor rights is carried out freely by employees[3]. The manager and other officials of the organization do not have legal grounds to force the employee to perform work, threaten him or exert any psychological pressure. Disciplinary action against employees who use the right of self-defense is also not allowed. Based on all of the above, we can conclude that every employee has the right to protect his rights and freedoms, as well as his interests protected and guaranteed by the state. Importantly, in our opinion, it is a condition that all guarantees and rights are fully preserved by the employee only if the employer or his representatives are notified in writing. In labor law, self-defense is considered as a special protective measure. Speaking about the demand for self-protection of labor rights in practice, it should be noted that employees resort to this method in case of significant violation of their labor rights. In the legislation, the self-protection of the labor rights of employees is the first priority, but most of the employees do not use this right, because they believe that in our country, which has a strong tradition of public administration, it will be protected by the state through jurisdictional bodies. more efficient and reliable.

In conclusion, it can be said that the employee has the right to have safe and healthy working conditions, as well as to have his labor rights respected by the employer. If these rights are violated, the employee has the right to take measures to protect himself. This may include contacting the appropriate authorities, participating in trade union activities, refusing to perform work if it poses an immediate risk to health or life, and going to court to protect your legal rights. The protection of labor rights emphasizes the importance of employees being aware of their rights, as well as being ready to use the tools provided by law to ensure fair and safe working conditions. Therefore, balanced labor relations require mutual respect and respect for the interests of both parties - the employee and the employer.

The experience of the Russian state: Article 379 of the Criminal Code of the Russian Federation is called a form of self-defense. According to this norm, it is established that the employee has the right to refuse to perform tasks that are not specified in the employment contract, as well as tasks that pose a risk to his life or health. It is required to notify the employer in writing. Analyzing the similar norms in the legislation of both countries, the employee's right to self-protection is manifested in inaction against illegal behavior.

In the Labor Code of the Russian Federation, we can find relations related to the transfer of an employee to another job. According to it, transferring an employee to another job is divided into two types: permanent and temporary.

Transfer of an employee to another permanent job is carried out in the following cases:

- permanent change of the structural unit where the employee works (if the structural unit is specified in the employment contract);
- moving to another area with the employer.

If the employee refuses to relocate together with the employer, the employment contract is terminated on general grounds by paying severance pay in the amount of two weeks' average salary. If the amount of severance pay is determined in the labor contract or collective agreement to be higher than the average salary for two weeks, the employer must pay the increased amount of severance pay. Taking into account that the Labor Code of the Russian Federation provides a complete list of reasons for which an employer can temporarily transfer an employee to another position without his consent, he gives a list of cases in which it is practically impossible to use such a right. According to him:

- a person with a disability;
- pregnant women, as well as young mothers with children under 3 years of age;
- minors;
-disabled persons, if such work is limited due to health reasons;
- other citizens prohibited from working in new conditions due to medical restrictions[4].

It should be noted that even if the above persons take the initiative and announce a decision to eliminate the consequences of emergency situations or other force majeure situations, the administration will not allow them to have a negative impact on their health. does not have the right to engage in work that may reveal secrets.

The Labor Code of the Russian Federation introduced the following procedure. In the following exceptional cases (to prevent or eliminate their consequences), the employee's consent to transfer to another job is not required:

- during natural or man-made disasters (fire, flood, famine, earthquake, epidemic and epiisolators);
- production accident;
- in other exceptional cases that threaten the life or normal living conditions of the entire population or part of it.

If the conditions of the transfer arise due to special circumstances that threaten the life and normal living conditions of the entire population or part of it, then in the following cases, the employee's consent to the transfer for a period of up to 1 month is not required. interruptions (temporary suspension of work due to economic, technological, technical or organizational reasons), the need to prevent the risk of property loss or damage, replacement of a temporarily absent employee. According to the Labor Code of the Russian Federation, the time of temporary transfer of an employee to another job is valid in the following order:

- for any work;
- for a period of up to one year;

- to replace a non-temporary employee;
- until the absent employee returns to work.

In this case, the period of transfer to another job has expired, the employee continues the transferred job and the previous workplace has not been given to him, or the employee has not requested to secure the previous workplace. the condition (paragraphs 1 or 2) becomes invalid and the transfer to another job is considered permanent. the provider has the right to impose disciplinary punishment against him. Another important aspect is that it is clearly indicated in what cases the employee can refuse the initiative of the employer to transfer to another job. According to it, it is legal for an employee to refuse to be transferred to management when there is a danger to life and health due to violations of labor protection requirements, when he is transferred to a job with harmful and (or) dangerous working conditions not provided for in the labor contract. Disciplining an employee for refusing to do such work is illegal[5].

US experience: Foreign countries do not recognize employee self-defense as a separate form of labor rights protection. An employee can protect his right to form, join, and collective defense as provided for in Article 7 of the US National Labor Relations Act. There are a number of restrictions on the individual protection of the employee's rights. Individual protection can be carried out on the basis of the "Interboro" doctorate only if it is provided for in the team agreements. The essence of this doctrine is that individual protection of the right is allowed only when this right is related to the interests of all employees provided for in the collective agreement. This prevents the employee from defending his rights individually. According to the Labor Standards Act adopted by the Ministry of Labor of the province of British Columbia, Canada, the "Self-help kit" procedure has been introduced. In the "Self-help kit" the order of the employee to protect his rights and the sequence of actions are shown on a systematic basis. This document was adopted in order to quickly and fairly resolve labor disputes, in particular, disputes related to non-payment of wages on time[6].

Forms of protection of labor rights of employees are classified according to a number of criteria. Below we will analyze the opinions about the judicial form, extrajudicial form, and pre-trial form of protection. The judicial form of protection of labor rights of employees is the main, most widely used and reliable form. Principles such as the independence and professionalism of judges, the transparency of court proceedings, the availability of favorable conditions for determining the true situation, and the obligation to execute court documents ensure the priority of this form of protection.

Focusing on world experience, countries such as Germany, Finland, and France have courts specialized in the protection of labor rights. In some provinces of the USA and Canada, there are administrative bodies specializing in the implementation of judicial functions. Specialized labor courts have been established abroad for many years.

In essence, the form of protection means that a certain activity is legally organized or formalized. For example, if the prosecutor, according to Article 40 of the Law "On the Prosecutor's Office", asks the employer who violated the rights of the employee to eliminate the violation of the law by filing a report, the State Labor Inspectorate, according to Article 49 of the Labor Code, will send an administrative notice to the employer will prevent future

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violations by applying fines. Forms of protection of labor rights of employees are classified according to a number of criteria. Below we will analyze the opinions about the judicial form, extrajudicial form, and pre-trial form of protection [7]. The judicial form of protection of labor rights of employees is the main, most widely used and reliable form. Principles such as the independence and professionalism of judges, the transparency of court proceedings, the availability of favorable conditions for determining the true situation, and the obligation to execute court documents ensure the priority of this form of protection.

In our opinion, the out-of-court form of protection is the form of protection carried out by the bodies that check and control compliance with the labor legislation, as well as by the representative bodies of employees, including trade unions, non-governmental non-profit organizations, as well as by the employee himself. The development of this institution serves as a guarantee of ensuring the rule of law, the rights and freedoms of employees in the country. In addition, the following forms of protection of employee rights can be listed: protection of labor rights by the Constitutional Court, Human Rights Parliamentary Representative (Ombudsman), collective labor disputes, employee rights and interests, negotiation, conciliation, mediation, protection through mediation, arbitration, protection of labor rights by international organizations are among them.

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