DIGITAL TECHNOLOGIES IN LABOR RELATIONS AND PERSONNEL DOCUMENT MANAGEMENT: PROSPECTS FOR USE (LEGAL ASPECT)

INTRODUCTION
No one will deny that the fourth industrial revolution is rapidly invading our lives, and the pandemic has only accelerated this process. On the one hand, the digital technology enriches the labor relations between the employee and the employer, contributing to their existence with the help of digital technologies. For example, the use of an electronic digital signature makes it possible to actively develop labor relations in a remote format, regardless of geographical obstacles, professions, and ways of implementing labor functions (SAPFIROVA; VOLKOVA; PETRUSHKINA, 2020).

On the other hand, excessive use of digital technologies negatively affects the legal nature of labor relations, gradually erasing the difference between labor and civil relations with elements of labor. Currently, the digitalization of labor relations is only beginning to be implemented, and so far this is mainly reflected in the norms governing the work of remote workers. However, many legal experiments are already being conducted, with the help of which it will be possible to form not just a new labor law, but also a new approach to the legal nature of labor relations.

The literature review consists of two parts. The first part is the study of the basics of labor law and labor relations, forming their signs and main features that allow distinguishing labor relations from civil law (L.S. Tal (1913), N.G. Aleksandrov (1948)), etc. The second part of the literature is research on the problems of remote labor (Vasileva Yu. V., Shuraleva S. V. (2015), Belyaeva I. Ya., Chernyaeva D. V. (2018), Lyutov N. L. (2018), Chernykh N. V. (2019), etc. (ARKHIPOV et al., 2018)) and in general about new forms of employment (BLANPAIN, HENDRICKX, 2016). However, the problems of labor digitalization have only just begun to be analyzed by scholars (TOMASHEVSKII, 2011) and are of modern interest for further study of these issues.

METHODS
Getting reliable results depended on the methods by which they became possible. Thus, the formal-legal method allowed formulating the proposals put forward by us in the course of the study. The method of legal analysis was used to study international and Russian normative legal acts on remote work and acts on legal experiments on the digitalization of labor and labor relations. The conclusions and suggestions made by us based on the results of the study will be useful not only for the legislator to ensure a reasonable, objective, fair and necessary level of development of draft regulatory legal acts but also for the law enforcement officer in disputable situations when considering and resolving labor disputes, as well as for the effective use of digital technology in labor relations and personnel document management.
RESULTS

Labor legislation in Russia is just beginning to regulate relations related to the use of electronic technologies. First of all, this is the work of remote workers. Not so long ago, the features of remote work found their consolidation in the norms of labor law in Russia, the legal regulation of which was radically revised from January 01, 2021. Remote work is gaining popularity not only because its use is the first step in the digitalization of labor, but also because it is profitable for the parties to labor relations: the employee does not spend time and money on travel to and from the place of work, comfortable working conditions, and a familiar environment.

The acts regulating remote work include acts of international and Russian law, in particular, the ILO Convention No. 177 “On Home Work”, meaning any work carried out at home, including remote work (ILO CONVENTION, 1996). A more specific act that reflects the specifics of working with IT is the Framework Agreement on Teleworking between the European Commission and European Trade Union and Employer Associations, which is aimed at ensuring the implementation of the control function by the employer and the safety of the information that the employee receives in the course of performing his/her work function remotely. N.L. Lyutov (2018) claims not without reason that the adoption of these provisions is associated with an increased motivation of employers to control remote workers.

When an employee performs a labor function in a remote form (remote work), there are several traditional elements: the uncertainty of the place of work, the limited control of the employer over the performance of the labor function by the employee, the inability to ensure labor protection, accurate accounting of working hours. The presence of these features of remote work undermines to a large extent the foundations of labor law, leveling such a fundamental feature of labor relations as the organizational subordination of the employee to the employer, i.e. the organizational control of the employer over the employee.

Despite the changes in the norms on the work of remote workers, the issue of the possibility of concluding employment contracts on remote work with citizens living outside the Russian Federation is still not resolved. The position of the Ministry of Labor of the Russian Federation is known it is considered that the employer will not be able to provide appropriate conditions and labor protection to remote workers (as if it can provide this for remote work on the territory of the Russian Federation, if the employee performs a labor function, for example, in Sakhalin, and the employer is located in Moscow). Most importantly, the rule of extending the current legislation to the territory of the Russian Federation does not allow its jurisdiction to cover other countries where remote workers can live (LETTER OF THE MINISTRY OF LABOR OF RUSSIA, 2017). However, this argument of the Ministry of Labor of the Russian Federation is criticized by scholars (CHERNYKH, 2019), and we agree with them since Article 59 of the Labor Code of the Russian Federation indicates the basis for the conclusion – sending an employee to work abroad and applying Russian legislation to him/her.

Violating the logic of the study, it should be pointed out that a comprehensive analysis of the norms of the Labor Code of the Russian Federation shows that they do not contain a clear indication of the Russian citizenship of the employee (Articles 20 and 57 of the Labor Code of the Russian Federation), and Chapter 49.1 of the Labor Code of the Russian Federation as a whole does not indicate the binding of the employee in work to a specific area, formulating the concept of “remote worker”. The only rule (Article 312.8 of the Labor Code of the Russian Federation) that contains a reference to the locality of the performance of the labor function is the rule on the termination of labor relations with a remote employee working permanently if the employee changes the locality of the performance of the labor function if this entails the inability of the employee to perform duties under the employment contract on the same terms. Given that a remote employee enters into an employment contract without reference to the location of the employer and even employee, the indication of termination of the employment relationship in connection with the change of the employee’s area of performance of the labor function seems, at first glance, an illogical position of the legislator.
However, a careful reading of this rule makes it possible to assume that this means a change in the area where there are no information and telecommunications networks, including the Internet, and public communication networks, and accordingly the remote worker is deprived of the opportunity to be such. Over time, such areas in Russia will not remain, but now they still exist, and this rule can be applied. Another example of the use of digital technology in labor relations is the introduction of an electronic format for maintaining a work record. In practice, it is often called an electronic work record, although this term is not provided for in the Labor Code of the Russian Federation.

Since January 1, 2020, the digital technology has received a mass character for the first time in Russia. An electronic form of the employment record was introduced for all employees without exception. Following Article 66.1 of the Labor Code of the Russian Federation, the employer must electronically generate all information about the employee's work and work experience and then submit it to the Pension Fund of the Russian Federation. The Labor Code of the Russian Federation refers to the electronic work record as information about work activities. This information began to be formed only from January 01, 2020, and for the future. It was decided in December 2020 that all information about the employee's employment until December 31, 2019, can be transferred to the Pension Fund of the Russian Federation at the request of the employee.

During 2020, the employee had to decide whether to duplicate all the information about his/her work in paper form or to limit himself/herself only to the electronic form of this information. In the case of the choice of duplication, the employer shall maintain its paper counterpart along with the electronic work record until 2027. The next example of digitalization of labor relations is the registration and signing of an employment contract in electronic form. If 2020 in Russia was marked by the introduction of an electronic work record, then 2021 is likely to be characterized by the introduction of an electronic form of an employment contract.

Despite the opinion polls on granting the right to conclude an employment contract in electronic form (57% of the surveyed citizens spoke positively (FEDERAL SERVICE FOR LABOR AND EMPLOYMENT, n.d.)), so far the Labor Code of the Russian Federation provides for only a written (paper) form of an employment contract, except for remote workers, with whom an employment contract can be concluded in electronic form. Therewith, if the employee and the employer have enhanced qualified electronic signatures, they can sign an employment contract in electronic form, if the local regulatory act provides for the procedure for storing a copy of the employment contract with the employer. However, it should be borne in mind that according to the Law on Electronic Signature (FEDERAL LAW OF THE RUSSIAN FEDERATION, 2011) and the Law on Information, Information Technologies and Information Protection (FEDERAL LAW OF THE RUSSIAN FEDERATION, 2006), an electronic document always has an electronic form, and if it is printed out, it will be a copy of it, and not an electronic document.

In practice, there are questions about the "mixed" form of signing employment contracts, for example, the employer signed the employment contract with the enhanced qualified digital signature, and the employee personally signed the employment contract, which was printed out with the employer's enhanced qualified digital signature. Or another situation: the employment contract on the part of the employer is signed by a facsimile, and the employee signs the contract with a "live" signature. To what extent does this form of signing entail legal consequences for the parties to the employment relationship? The Ministry of Labor of the Russian Federation speaks negatively, rightly arguing that facsimile or a mixed form of signing a document is possible only if the law does not require a personal signature or an electronic digital signature.

Since the employment contract must be signed personally by its parties, or it is possible to sign the enhanced qualified digital signature, according to the Law on Electronic Signature (FEDERAL LAW OF THE RUSSIAN FEDERATION, 2011), other forms of signing it are illegal. The exception is remote workers of all types. With them, employment contracts are concluded both in written (paper) form and through the exchange of electronic documents. In this case, the employer uses the enhanced qualified digital signature, and the employee can
use either the enhanced qualified digital signature or enhanced unqualified electronic signature. It is also possible to use a simple electronic signature if this is provided for by a collective agreement, a local regulatory legal act, or an additional agreement to the employment contract.

Other manifestations of labor digitalization include the introduction of electronic labor document management. Before considering it, we note that the first element of the electronic labor document flow is an electronic labor contract. To test electronic employment contracts, a legal experiment is being conducted (FEDERAL LAW OF THE RUSSIAN FEDERATION, 2020), the result of which is a very high probability of introducing this form of employment contract into practice.

The legal experiment is conducted on the portal of the All-Russian database of vacancies “Trudvsem.ru”. The experiment is proposed to be extended until July 31, 2021. It resulted in a draft law on amendments to the Employment Law, according to which the All-Russian database of vacancies “Trudvsem.ru” will be transformed into a single digital platform in the field of employment and labor relations “Trudvsem.ru” (DRAFT FEDERAL LAW, 2021). All employers with more than 25 employees shall post information about vacancies and special jobs for the disabled on this platform.

DISCUSSION

The absence of norms on the citizenship of the Russian Federation concerning the employee and the lack of reference to the locality of the performance of the labor function of a remote employee allows asserting that the Labor Code of the Russian Federation does not contain norms prohibiting a person living outside the Russian Federation to be a remote worker. This means that it is not prohibited to hire an employee in a remote format who will perform a labor function outside of the Russian Federation. Given the new provisions of the Labor Code of the Russian Federation, which delimit the types of remote work, our above statement applies to remote work permanently, it is unlikely that such an employee can be accepted for temporary remote work. If the remote worker is a foreign citizen, then the rules for attracting and using foreign labor should apply.

All mandatory personnel documents (for example, an employment contract, an order for the admission and dismissal of an employee, a shift schedule, a vacation schedule, internal labor regulations, etc.) can not only have a paper form but also be registered on the Unified digital platform in the field of employment and Labor Relations “Trudvsem.ru” in the personal accounts of organizations and signed by the parties to the labor relations. This will be convenient, first of all, for the parties to the employment relationship. Therewith, the discretion of the employee and the employer should be considered: a paper or electronic version to avoid duplication of document flow. If the electronic version is a priority for the organization, then its paper counterpart is excluded, or vice versa. Thus, the interests of both the employee and the employer will be considered.

Practice dictates the need for a clear consolidation in the Labor Code of the Russian Federation of the right of the parties to labor relations to conclude employment contracts in electronic form, signing their enhanced qualified digital signature and providing for the procedure for their storage by the employer. It is already possible to sign employment contracts with any employee if he/she has an enhanced qualified digital signature; this is not prohibited by the Labor Code of the Russian Federation, but there is no direct permission. The potential of the Unified digital platform in the field of employment and labor relations “Trudvsem.ru” allows reducing the period of keeping a paper employment record by the employer until 2022 when it is planned to launch this digital platform in full.

CONCLUSION

As a result of this study, we have made several conclusions that show the problems of using digital technologies in labor relations and personnel document management, which is used to formalize labor relations and the prospects for its development.

Firstly, the analysis of the norms of the Labor Code of the Russian Federation allows asserting the possibility of concluding employment contracts on remote work with citizens living outside the Russian Federation.
Secondly, it is necessary to form an electronic personnel document flow of the employer, including only mandatory personnel documents on a Unified digital platform in the field of employment and labor relations “Trudvsem.ru”. All other documents that are not mandatory (for example, employee statements, vacation orders, and others) can be digitized at the employer’s discretion.

Thirdly, to minimize the employer’s expenses and preserve the confidentiality of information, it is important to provide the right of all employees and employers in the Labor Code of the Russian Federation to sign an employment contract with a simple electronic digital signature through the employer’s personal account on the Unified digital platform in the field of employment and labor relations “Trudvsem.ru" (its creation is lobbied for by the draft Law on Amendments to the Employment Law) (DRAFT FEDERAL LAW, 2021) or on the portal "Gosuslugi".

Fourthly, it is impractical to force the employer to duplicate the registration of information about the employee’s work in electronic and paper form until 2027.

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Digital technologies in labor relations and personnel document management: prospects for use (legal aspect)

Tecnologias digitais nas relações de trabalho e gestão de documentos de pessoal: perspectivas de uso (aspecto jurídico)

Tecnologías digitales en las relaciones laborales y gestión documental de personal: perspectivas de uso (aspecto jurídico)

Resumo

O objetivo do artigo é estudar as perspectivas de uso de tecnologias digitais nas relações de trabalho e gestão de documentos pessoais. No decorrer da pesquisa, utilizou-se o método de análise jurídica e o método jurídico formal. Os principais resultados permitem tirar conclusões e fazer sugestões para melhorar a regulação jurídica do uso da tecnologia digital nas relações de trabalho e o fluxo de documentos pessoais que forma essas relações de trabalho. Como resultado, os autores fazem as seguintes conclusões e sugestões. Na Plataforma Digital Unificada no campo do emprego e das relações de trabalho "Trudvsem.ru", o empregador deve ter o direito de formar um fluxo de trabalho de RH eletrônico como um todo, colocando documentos obrigatórios de RH lá, enquanto outros documentos de RH podem ser digitalizados a critério do empregador. Isso reduzirá o período estabelecido de duplicação pelo empregador do fluxo de trabalho de RH em papel e eletrônico do registro de emprego. A conclusão sobre a possibilidade de celebração de contratos de trabalho em trabalho remoto com cidadãos que vivem fora da Federação Russa também foi justificada.

Palavras-chave: Empregado. Empregador. Livro eletrônico. Trabalhador remoto. Plataforma digital.

Abstract

The purpose of the article is to study the prospects of using digital technologies in labor relations and personnel document management. In the course of the research, the method of legal analysis and the formal legal method were used. The main results allow drawing conclusions and making suggestions for improving the legal regulation of the use of digital technology in labor relations and the personnel document flow that forms these labor relations. As a result, the authors make the following conclusions and suggestions. On the Unified Digital Platform in the field of employment and labor relations "Trudvsem.ru", the employer should be given the right to form an electronic HR workflow as a whole, placing mandatory HR documents there, while other HR documents can be digitized at the discretion of the employer. This will reduce the established period of duplication by the employer of the electronic and paper form of the employment record. The conclusion about the possibility of concluding employment contracts on remote work with citizens living outside the Russian Federation has been also justified.

Keywords: Employee. Employer. Electronic workbook. Remote worker. Digital platform.

Resumen

El objetivo del artículo es estudiar las perspectivas de uso de las tecnologías digitales en las relaciones laborales y la gestión documental de personal. En el curso de la investigación, se utilizaron el método de análisis y el método jurídicos formal. Los principales resultados permiten sacar conclusiones y hacer sugerencias para mejorar la regulación legal del uso de la tecnología digital en las relaciones laborales y el flujo de documentos de personal que conforma estas relaciones laborales. Como resultado, los autores hacen las siguientes conclusiones y sugerencias. En la Plataforma Digital Unificada en el campo del empleo y las relaciones laborales "Trudvsem.ru", el empleador debe tener el derecho de formar un flujo de trabajo electrónico de recursos humanos en su conjunto, colocando documentos de recursos humanos obligatorios allí, mientras que otros documentos de recursos humanos se pueden digitalizar a discreción del empleador. Esto reducirá el periodo establecido de duplicación por parte del empleador del formulario electrónico y en papel del registro de empleo.

Palabras-clave: Empleado. Empleador. Libro de trabajo electrónico. Trabajador remoto. Plataforma digital.