Legal Basis for the Electronic Document Workflow in HR Procedures

Svetlana E. Titor, Anatoly Yu. Opimpiev, and Nodari D. Eriashvili

State University of Management, Moscow, Russia
setitor@mail.ru, a.olimpiev@yandex.ru, Professor60@mail.ru

Abstract. Digital economy is a quickly evolving area. The Internet today is present in every branch of economy and public administration. The benefits of electronic technology in everyday life inevitably affect their relevance in the world of work. Major employers already have some experience in converting individual HR documents into electronic form due to the introduction of HR corporate information systems. Modern digital technology cannot go past the world of work. Despite the fact that the labor legislation - or rather, personnel HR management procedures, are characterized by fundamental nature, they are quite archaic, they cannot remain unchanged in the process of global digitalization. The Ministry of Labor and Social Security of Russia has stated the need to conduct an experiment in the conversion to electronic document management in HR record management. The National Duma is considering several draft laws in this regard. However, life preceded these initiatives. During the period of restraining measures (quarantine), imposed to prevent the spread of coronavirus infection (COVID-2019) the need for transformation of labor relations towards their digitalization became relevant naturally. However, one should not forget that the employee in labor relations is always deemed an economically weak side. It is important that when introducing new technologies, the laborer does not become one of the cogs in this machine. His rights when introducing electronic documents must be reliably protected, including on the legislative level. Accordingly, the digitalization of the world of work requires legislative changes.

Keywords: Labor relations · Electronic document management · Labor legislation · Labor contract · HR record management

JEL Code: K31 · J60 · J68

1 Introduction

The State Duma adopted in the third reading a bill on the electronic document workflow in HR record management by individual employers (bill No. 859678-7).

The bill is based on the main directions of the National Program “Digital Economy of the Russian Federation”. Federal Project “Statutory Regulation of the Digital Environment” provides for statutory regulation of digital interaction of the business community and the state, including in terms of HR record keeping.
Currently the National Duma is considering another bill (No. 736455-7) on legally significant communications by parties to an employment contract, which is proposed to be introduced into labor legislation.

The main conclusion of employers, made at the parliamentary hearings on the peculiarities of labor relations in the digital economy, is that the decision to switch to electronic document workflow should be made exclusively by the employer.

The use of electronic digital signatures and the complete transition to electronic document workflow in the HR is being questioned by the trade unions. First of all, unions attribute their doubts to the employee’s economic difficulties when switching to an electronic form of relations with the employer: the employee does not have the financial ability to bear the associated costs: paying for the Internet, purchasing technical means for using it, paying for an electronic digital signature, etc. It will be financially difficult for small and even medium-sized businesses to bear the costs of providing employees with electronic signatures. Trade unions generally believe that today’s modern technology cannot guarantee the safety of electronic data.

Meanwhile, a number of procedures in social and labor relations have already been legislated. Federal Law No. 255-FZ on Compulsory Social Insurance for Temporary Disability and Cases Related to Maternity of December 29, 2006 provides for the possibility of receiving a temporary disability leave in electronic form, but only with the written consent of the employee. The Labor Code of the Russian Federation provides for such type of work as distance employment. Distance employment is remote work, implemented by the employee using the online resources and digital technology. However, the registration of labor relations is carried out in accordance with the law as yet in the form of an exchange of letters in hard copies.

Almost all HR record management is tied to the written form with personal signatures of the employee and the employer. However, we believe, taking into account modern technologies, many processes should and can be converted to electronic format.

The Federal Law No. 63-FZ On Electronic Signature, dated April 6, 2011, defines the notion of “electronic signature”.

There are three types of digital signature:

Basic electronic signature is the use of codes, passwords or other means by which the signature is confirmed by the person concerned.

Encrypted non-certified digital signature is a signature created using information programs using a special private key.

---

1 Comment by the Ministry of Labor of Russia on the introduction of an electronic HR record keeping and electronic document workflow. Date of reference April 9, 2020. https://rosmintrud.ru/labour/relationship/332.

2 Peculiarities of labor relations in the digital economy. Date of reference April 9, 2020. https://law.hse.ru/news/214540782.html.

3 Shmakov: there are questions regarding electronic employment books // January 29, 2018 // http://www.medicalprof.ru/news.html?region=1&news=news3880.

4 Federal Law “Compulsory Social Insurance for Temporary Disability and Cases Related to Maternity” No. 255-FZ, dated December 29, 2006. Date of reference February 13, 2020. http://www.consultant.ru/.
Encrypted and certified digital signature is a signature created with the help of using information algorithms and based on a public key infrastructure. Encrypted and certified digital signature is issued only by a certification center that is accredited by the Russian Ministry of Communications. Signature has a certificate in hard copy or in electronic form, approved by the order of the Federal Security Service of Russia no. 795, dated December 27, 2011.

All three types of digital signatures have different legal meaning. Accordingly, their use in labor relations depends on the legal significance of the procedure.

One of the ways to protect the labor rights of citizens is determined by the current legislation as the state supervision in the field of labor. With the introduction of electronic formats in labor relations, state supervision will have to restructure its origins, methods and formats.

2 Methodology

The issues of electronic document workflow in HR procedures are understudied in the legal and scientific literature because of their novelty. New scientific views of this paper are based on researches of HR record management and digitalization of economic processes, such as: Abdullaev et al. (2019), Cherepantseva et al. (2019), Glotova (2019), Myshko and Kudryashov (2019), Olimpiev et al. (2018), Orlova (2017), Titor (2018), Titor and Svirin (2019), Tuktarova (2019), Vartanyants and Starokozheva (2018). Theoretical and practical provisions of articles devoted to the study of the legal framework of trends in the transition to digital technology in the HR record management. General and private scientific research methods, including dialectical, formal and logical ones, have been applied. Analysis and synthesis method and modelling method.

3 Results

The experiment on introduction of electronic HR record management is aimed at forming and developing mechanisms for conducting and using electronic documents relating to employment relations with employees. The experiment is expected to take place from April 01 till December 31, 2020.

The Russian Ministry of Labor and Social Protection will select a number of employers who voluntarily agreed to participate in the experiment.

As part of the experiment, employers shall:

– independently determine the list of documents that they are ready to keep in electronic form;
– define the structural units involved in the experiment;
– create an information system for processing and storing electronic HR records.

All processes implemented as an experiment should be discussed and adopted within the framework of social partnership. The employer must develop and adopt local regulations relating to the experiment, taking into account the motivated body of the shop-floor union organization. The legislator recommends regulating the issues of
electronic document workflow in HR record management in the collective agreement as well.

The employer must work through all necessary actions with the employee:

– to acquaint the worker with local regulation, determining the procedure of the experiment;
– to notify the employee of the introduction of the experiment, request his consent to participate in the experiment. In this case, the employee has the right to refuse to participate in the experiment and the employer is not entitled to apply any measures of influence to him;
– to prepare the necessary information media for the employee to participate in the experiment, including the acquisition of an electronic digital signature;
– to make appropriate changes to the employment contract with the employee.

The draft law on legally significant communications from the parties to an employment contract provides for the introduction of three new norms into the Labor Code of the Russian Federation and introduces a new concept of “legally significant communications”.

It is proposed that any form of interaction between an employee and an employer that they engage in for the purpose of transmitting certain information, which entails the relevant legal consequences under labor law, shall be considered legally significant.

It is proposed to codify transmitting such communications by electronic or other technical means as one of the means of providing such messages. The authors of the bill also propose to formalize in legislation a provision that would allow conclusion of an employment contract through the exchange of electronic documents and information transmitted by technical means.

Recognizing an employee as a weak party to an employment contract, the authors of the bill provided for the right of an employee to choose a form of communication: paper or electronic. Moreover, in order to prevent possible abuses on the part of an employee or employer when concluding an employment contract in the manner specified in the bill, the authors have provided for amendments to the law in the form of “the duty to behave in good faith” for both parties to the employment contract.

Indeed, labor legislation requires many HR procedures to be carried out in writing, against signature of the employee. For example:

– notifying the employee of possible changes in the terms of the employment contract;
– notifying an employee of a possible dismissal due to staff redundancy;
– notifying an employee of a possible dismissal as not having passed the probationary period;
– notifying an employee of dismissal at the end of the employment contract;
– familiarization with the orders against signature: about employment; about disciplinary punishment; about dismissal;
– notifying the employee of the provision of regular paid leave;
– etc.

Many of these personnel procedures can well be converted into electronic format. However, it is necessary to classify those procedures according to their legal
significance and contestability in order to determine what kind of electronic digital signature should be used for their implementation.

It is considered that the “written form” of a document provided for in labor law (e.g. employment contracts, full liability contracts, apprenticeship contracts, addenda to the employment contracts), when converted into electronic format, should be signed with a more legally significant electronic signature – enhanced encrypted and certified digital signature. This will give the document special, legislatively fixed guarantees, including the guarantees against falsification by unscrupulous participants in labor relations.

Familiarization of an employee “against the signature” can also be replaced by an electronic signature.

We believe that in cases where familiarization against signature entails no special legal consequences for the employee, a basic electronic signature would be sufficient. Such cases include:

- familiarizing the employee with the upcoming leave in accordance with the leave schedule;
- notifying the employee of the impending dismissal at the end of the period;
- familiarizing the employee with orders for employment, dismissal (except dismissal by the employer), transfer to another job by the agreement of the parties, etc.

These actions are always accompanied or confirmed by any additional documents, actions, i.e. the employee’s signature duplicates other types of familiarization. For example, when entering into a fixed-term employment contract, the employee is aware of its duration. Supplementary notice “against signature” only reminds him about it. When entering into employment relationships, an employee enters into an employment contract. Further reading of the employment order only duplicates the notice of employment. When an employee resigns, the employee voluntarily writes a resignation notice and signs it. Familiarization with the dismissal order against signature only duplicates the employee’s declaration of will.

However, there are HR procedures that entail consequences for the employee. Electronic acquaintance with them should be carried out by means of a more legally significant electronic signature – an encrypted non-certified digital signature. For example, notifying an employee of an impending dismissal “against signature”. This notice is followed by certain consequences: duration of notice period, possibility of contentious situations.

By analogy, when the rule uses the wording “written consent”, the legal effects of a can be classified into two groups:

- cases where the employee’s written consent to certain actions is directly confirmed by the voluntary actions (e.g. going to work on a day off or public holidays, etc.);
- cases where the employee’s subsequent actions may be considered as forced subordination of the employee to the employer, it is necessary to provide for consent with the use of an encrypted non-certified digital signature (for example, when transferring the employee to another job).
Accordingly, electronic signatures of varying importance should be used. In the first case, it may be the basic electronic signature. In the second case, the encrypted non-certified digital signature should be used.

Submission of “written application” provided for by legislation, may be replaced by an electronic notice by the employee. The electronic signature is used in a similar way depending on the legal significance of the application. For example, a letter of resignation must be signed with enhanced encrypted and certified digital signature. An application for transfer to another job can be signed using basic simple electronic signature, because this will be followed by the execution of such a transfer in the form of an addendum to the employment contract, which the employee will sign using enhanced encrypted and certified digital signature.

Analysis of legal practice shows that the written form of HR procedures in the labor legislation should not be converted into electronic registration in full in certain situations that may lead to labor dispute:

– when regulating relations with the participation of socially vulnerable categories of workers: disabled persons, women and other persons having and raising young children, persons under 16 years of age, in order to prevent risks of negative and disputable consequences. Physical, physiological, psychological and other features of the above categories of employees may hinder the execution of documents in electronic form.
– during regulation of relations related to the resolution of individual and collective labor disputes, due to the high risks of disputed situations;
– in regulating relations related to controversial situations that may result in an individual employment dispute (e.g., procedures for dismissing an employee, etc.).

4 Conclusion/Recommendations

Changes in labor legislation in the transition to electronic HR record management should take into account the following points:

– voluntariness of the parties to the employment contract for electronic document workflow in HR records management;
– employer’s obligation to provide the employee with the necessary technical equipment to ensure remote electronic communication with the employer;
– employer’s obligation to reimburse the employee for the material costs of electronic communication (payment for the Internet);
– employee’s right to refuse electronic format of communication with the employer (if this is acceptable taking into account the employer’s technology and specifics of the work);
– employer’s obligation to monitor and ensure the availability of all information systems, equipment, devices, etc.;
– employee’s obligation to treat the provided technical means with care, to bear material responsibility for their loss or damage caused by the employee, to inform
the employer in due time about the equipment malfunction, disconnection of the Internet resource, etc.;

- mandatory participation of the elected bodies of the shop-floor union organization in the discussion and adoption of local regulations governing electronic document workflow;

- employer’s obligation to issue documents at the employee’s request, including on paper.

Legitimization of electronic digital signatures requires amending the legislation in force. It is proposed that the existing wording be replaced by new wording based on the following principles:

- Replace the phrase “to familiarize employees against signature” with the phrase “to familiarize employees against signature (including using a basic electronic signature)”;  
- “written employment offer” be replaced by “written and/or electronic employment offer, signed using the encrypted non-certified digital signature”;  
- “written agreement between the parties” be replaced by “written and/or electronic agreement between the parties, signed using the encrypted certified digital signature”;  
- “with the written consent of the employee” be replaced by “with the employee’s written consent and/or consent obtained electronically through the official communication sources defined by the employer, signed using a basic electronic signature”;  
- “in writing” be replaced by “in writing and/or electronically by sending through official communication sources identified by the employer, signed using a basic electronic signature”;  
- “upon a written application of the employee” be replaced by “upon a written application of the employee and/or application in electronic form sent through official communication sources identified by the employer, signed using basic simple electronic signature”.

References

Abdullaev, N.V., Avanesyan, N.V., Artyukov, A.V.: Tsifrovizatsiya otрасles rossijskoy ekonomiki [Digitization of the spheres of the Russian economy]. In: Teslenko, I.B. (ed.) Stoletovs Vladimir State University. Rusayns, Moscow (2019)

Cherepantseva, Y.S., Valitova, A.I., Starkova, D.V.: Tsifrovizatsiya i osnovnye napravleniya ee vozdeystviya na trudovye otnosheniya v Rossiyskoy Federatsii [Digitization and the main directions of its influence on the labor relations in the Russian Federation]. Works Orenburg Inst. (branch) Moscow State Acad. 38(1), 176–180 (2019)

Glotova, S.A.: Tendentsii razvitiya kadrovogo deloproizvodstva v ramkah programmy «tsifrovaya ekonomika» [Tendencies of development of HR document turnover within the program “digital economy”]. In: Larina, M.V. (ed.) Upravlenie dokumentami v tsifrovoy ekonomike Materialy nauchno-prakticheskoy konferentsii, pp. 98–103. Science, Moscow (2019)
Myshko, F.G., Kudryashov, E.Y.: Ispol’zovanie elektronnykh dokumentov, podpisannykh usilennoy kvalitsirovannoy podpis’yu, v organakh prokuratury Rossiyskoy Federatsii [Using electronic documents signed by qualified electronic signature in the authorities of the prosecutor’s office of the Russian Federation]. Zakon i pravo 4(1), 154–156 (2019)

Olimpiev A.Y., Myshko F.G., Strelnikova I.A.: Tsifrovizatsiya ekonomiki v Rossiyskoy Federatsii: sostoyanie i perspektivy razvitiya [Digitization of economy in the Russian Federation: the state and perspectives of development]. In: Tereliansky, P.V. (ed.) Shag v budushchee: iskusstvennyy intellekt i tsifrovaya ekonomika. Revolyutsiya v upravlenii: novaya tsifrovaya ekonomika ili novyy mir mashin Materialy II Mezhdunarodnogo nauchnogo foruma. Science, Moscow (2018)

Orlova, E.E.: Zanyatost’ naseleniya kak pravovaya kategoriya: ponyatie i priznaki [Employment as a legal category: notion and features]. Trudовое право в России и за рубежом 1(1), 14–17 (2017)

Soyfer, V.G.: Problemy pravovogo obespecheniya dostoynogo truda i sovremenikh form zanyatosti [Problems of legal provision of decent labor and modern forms of employment]. Zakonodatel’stvo i ekonomika 5, 10–18 (2013)

Titor, S.E.: Inspektsiya truda v Rossi: istoriko-pravovoe issledovanie [Labor Inspection in Russia: A Historical and Legal Study]. Iздателский Дом ГУУ, Moscow (2018)

Titor, S.E., Svirin, Y.A.: Tsifrovizatsiya v trudovom prave. Chernye dyry v Rossiyskom zakonodatel’stve [Digitization in labor law. Gaps Russ. Law] 2(1), 61–67 (2019)

Tuktarova, Y.R.: Sovershenstvovanie kadrovogo deloproizvodstva s vvedeniem elektronnykh trudovykh dogovorov [Improvement of HR document turnover with introduction of electronic labor contracts]. In: V sbornike: Tsivilizatsiya znaniy: rossiyskie realii Trudy XX Mezhdunarodnoy nauchnoy konferentsii, pp. 779–785. Science , Moscow (2019)

Vartanyants, T.A., Starokozheva, V.P.: Vnedrenie elektronnogo kadrovogo dokumentooborota: sushchnost’, riski, vozmozhnosti [Implementing online document turnover: essence, risks and opportunities]. Sotsial’no-trudovye issledovaniya 1(1), 145–156 (2018)