Contribution to the Development of Labor Resources as a Strategic Task of Labor Law

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Abstract. Development of labor market institutes, employment growth and the efficient use of hired labor directly depend on improving labor mobility. Increase of the labor market flexibility is to be achieved by improving the regulatory framework in the field of labor, enabling the development of professional mobility based on professional development, training and retraining. The article analyzes the possibilities of legislative regulation of labor mobility. Different types of labor mobility are considered: territorial, professional, functional. The connection of the innovations of the labor legislation to the economic needs of society and the modern state economic policy is traced. The author offers the ways of improving the regulatory framework in the field of labor in order to implement the labor mobility idea. The necessity of revision of some traditional approaches to legal regulation of issues related to labor function, transfers and some others is proved.

Connection between professional standards and professional mobility of workers is revealed, writer makes the conclusion about the stimulating role of professional standards in increase of educational level and vocational training of workers. Taking into account that the idea of continuous professional education during all labor life has to be put in a basis of professional mobility formation and competitiveness of experts as it is recommended by the ILO acts, necessity of correction of the Labor code standards for the purpose of establishment of guarantees for the persons who independently increase their professional level is summarized.

1. Introduction

The General Agreement between national associations of trade unions and employers and the Government of the Russian Federation for 2018–2020 delivers an important message. It says that the current economic policy should be aimed at: developing human potential as the main factor of economic growth; creating conditions for self-realization citizens; the growth of real incomes of workers and the level of pensions; raising the standard of living of the population; the elimination of the causes of poverty. The effective functioning of the labor market must be regarded as a condition for ensuring the dynamic and sustainable development of the Russian economy and raising the standard of living of the population. The labor market’s functioning urgently requires the modernization of labor legislation – it must be brought in line with the objective needs of an emerging innovative model of economic growth. The promotion of labor resources should be a strategic task of labor law.

In its program documents the Russian state forecasts the prospects for the further development of the Russian economy and formulates certain goals that would make up a framework for the modernization of Russian legislation in general, and labor legislation in particular. One of the priorities for the state and the employers is to improve the quality of the workforce and developing its professional and
territorial mobility. Government of the Russian Federation passed the Executive Order of November 17, 2008 N 1662-p having approved the Concept of the long-term socio-economic development of the Russian Federation for the period up to 2020, setting the following tasks: increasing the flexibility of the labor market, including improving the regulatory legal framework in the field labor and employment; improving the quality of the workforce and the development of its professional mobility on the basis of reforming the system of vocational education at all levels, developing the system of continuous vocational education, vocational training and retraining of personnel, taking into account the definition of state priorities for the development of the economy; the development of labor market institutions, the growth of employment and the efficiency of labor, through increasing the territorial mobility of labor resources. The search for ways to improve labor legislation is an urgent task. Finding the solution of this task is the focus of this article.

2. Improving the quality of the workforce and developing professional mobility

Professional mobility implies an individual’s ability to master new knowledge, new skills and new abilities that would ensure the effectiveness of work, as well as successfully switch to another type of activity or change its profession. Professional mobility implies possession of a system of generalized professional competencies and the ability to effectively apply them into performance in related labor functions, and switch from one activity to another.

The concept of professional mobility, which lacks a legal definition, is interpreted differently by specialists from different branches of knowledge. In legal science the phenomenon of professional mobility is poorly studied. Though the same thing cannot be said about sociology, psychology, or pedagogy, with scholars from each segment have all paid close attention to problems of the increasing professional mobility, starting from the stage of training specialists in educational entities [1]. Sociologists call professional mobility a ‘career elevator’, which moves both upwards and downwards, presenting many variations for one’s self-realization [2].

Professional mobility may be explained by a number of objective and subjective factors. The objective factors include, first of all, such socio-economic determinants as: building an innovative economy and creating the new markets for ideas, developments, intellectual property, innovative products, developing new (primarily, information) technologies; institutional changes in economics and the associated change in the structure of the labor market. In the conditions of tough international competition, the economic development of a country should be determined mainly by its scientific and technological advantages, in turn, an innovative economy requires mobile and competitive highly qualified professionals. The subjective factors influencing the processes of professional mobility are the ability and the desire of individuals to master new professional competencies. Also, the awareness of the need to adapt to constantly changing socio-economic conditions drives individuals out of their comfort zones. In modern world the need in developing personal potential increases, urging individuals to move up the career ladder.

The rapid changes in technologies and production brought up the professional mobility and made it a critical component of one’s qualification. In the Russian Federation, since 2012, professional standards have been introduced in the practice of labor relations formation. The professional standard refers to the characteristics of the qualifications required by the employee to carry out a certain type of professional activity (pt. 2, Art. 195.1, Labor Code of the Russian Federation). Professional standards are positioned as the key element of the national system of qualifications. They connect the sphere of labor and the sphere of vocational education, as they lay down the basis for the federal educational standards at all levels of vocational education. The value of professional standards for the sphere of labor relations is unipolar, yet they also aid in creation of HR policies: standards serve as a tool for determining evaluation criteria, are taken into account when organizing training and certification of workers, are integrated in the instructions, the assignment of tariff discharges to employees, are used to establish remuneration systems involving the specifics of the organization of production, labor and management.
A step-by-step introduction of professional standards aims at establishing the conditions for improving the workforce qualification and its professional mobility. Professional standards will increase motivation for additional professional education, professional development and retraining, since, unlike qualification reference books, they establish the so-called ‘key competencies’ that have a wide range of actions and can even go beyond the job assignments. However, today there are numerous reasons for criticism of the existing system of professional standards, assuming the experts’ publications [3].

The next stage is the introduction of procedures to determine the level of professional training of a specialist, his readiness to perform one or another professional activity. Today, an independent qualification assessment is being actively developed. Considering it, the following procedure is provided by Federal Law of July 3, 2016 N 238-FZ ‘On Independent Assessment of Qualification’, where the certification and accreditation of specialists are also introduced. For several years, mandatory certification has been provided for certain categories of specialists. For example, only persons with a certificate of expertise are allowed to organize a special assessment (Article 20 of the Federal Law of December 28, 2013 N 426-FZ ‘On the Special Assessment of Working Conditions’). According to Art. 100 of the Federal Law of November 21, 2011 N 323-FZ ‘On the Basics of Citizen Health Protection in the Russian Federation’ until January 1, 2026, only the certified persons who have received the medical diploma have the right to perform medical and pharmaceutical services in the Russian Federation. But from January 1, 2016, the transition to the procedure for the accreditation of specialists is underway, which should be completed on December 31, 2025.

Mass implementation of an accreditation system for certified specialists (procedures for confirming employees’ compliance with international and national qualification standards) will require a certain adjustment of the norms of the labor contract institute. For example, in terms of establishing the obligation to pass accreditation, meaning the consequences for an unsuccessful accreditation (suspension from work, change or end of a contract). Currently, as for the end of a contract from the employer’s side (written in the paragraph 3 of Art. 81 of the Labor Code of the Russian Federation), the law calls it the employee’s incompatibility with the position held or the work performed due to insufficient qualifications, confirmed by the results of certification. The question of increasing the quality control procedures may be fair in such case. A good way is the independent assessment of qualifications [4]. This also includes the procedures for accreditation and certification of specialists.

It is worth mentioning, that the Labor Code of the Russian Federation does not imply compulsory vocational training and improve their skills. According to the Art. 197, employees have the right to training and additional vocational education, as well as to undergo an independent assessment of qualifications. The exceptions are some categories of workers who, by the law, are obliged to periodically study and improve their skills (pedagogical and medical workers, state and municipal employees, and others). It is relevant to raise the question of the transformation of the employee’s right to training and additional professional education into a legal obligation. the duty to improve their qualification level should become an integral part of the work duties of employees. The continuous development of innovative technologies, the emergence of new forms of work organization and modern methods of solving professional tasks simply forces the employees to at least stay on the appropriate level of qualification.

The Human Resources Development Recommendation, 2004 (No. 195) [5] procures the improvement of the quality of the workforce and developing of professional mobility. It requires to develop a national strategy for the development of labor resources and training. Global community recognizes that education, training and lifelong learning are fundamental and should form an integral part of, and be consistent with, comprehensive economic, fiscal, social and labor market policies and programs that are important for sustainable economic growth and employment creation and social development. Members of ILO should identify human resources development, education, training and lifelong learning policies which facilitate lifelong learning and employability as part of a range of policy measures designed to create decent jobs, as well as to achieve sustainable economic and social development.

Tracing on these recommendations, The General Agreement between national associations of trade unions and employers and the Government of the Russian Federation for 2018–2020 provides for
measures aimed at ensuring the continuous professional development of workers, training and retraining of personnel regarding development priorities in economy, including:

- development of in-service training of employees of organizations, as well as advanced professional training of employees subject to release;
- the formation of a system of recognition and evaluation of the results of internal training;
- development of professional mobility based on vocational training and additional vocational education, including unemployed citizens;
- development of a vocational guidance system.

Of course, the main ways of forming professional mobility are vocational training and additional vocational education. The ILO recommends that states determine policies that promotes and sustains public and private investment in the infrastructure needed for the use of information and communication technology in education and training, as well as in the training of teachers and trainers, using local, national and international collaborative networks.

One of the latest trends in the educational sphere is the creation of corporate universities that carry out educational activities in relation to their employees. Such corporate universities have LUKOIL, Rosgosstrakh, Norilsk Nickel, Gazprom, Rosneft, X5 Retail Group, Russian Railways, Sberbank of Russia, Severstal, Mechel, RUSAL, Rosatom, Euro-network, Rostelecom and other large Russian companies. In line with modern world trends in 2011, PJSC TATNEFT created the Electronic Corporate University – the new generation educational resource, which has become a significant element in the management system of innovative development of the company. The university uses modern educational technologies: distance learning courses, electronic trainings and simulators, online protection of graduation projects.

Corporate universities implement programs of vocational training, advanced training, and additional vocational education, while their program content often goes beyond the framework of educational programs offered by “classical” universities. So, in the corporate university of Sberbank there are courses in the development of management competencies, leadership, education and corporate culture, IT, risk management, project management, processes, finance and risk [6]. Studying at universities is carried out on-the-job, on-the-job, with a partial set-off from production, with appropriate provision of guarantees to employees for the preservation of average earnings.

The key advantage of such training is targeted practical orientation, assuming the specifics of the employer, and provides training for company employees according to strategic goals of the enterprise. In addition, there is another big bonus for employers: The Labor Code of the Russian Federation allows a labor contract to include or training agreement a condition on working off a certain period after training at the expense of the employer. In the case of dismissal without good reason before the expiration of the term stipulated by the employment contract or the agreement on training, the employee is obliged to reimburse the costs incurred by the employer for his training, calculated proportionally not worked out after the end of training, unless otherwise provided by the employment contract or the agreement on training (Art. 249 of the Labor Code of the Russian Federation).

Despite the presence of such positive examples of the participation of employers in solving the state task of improving the quality of labor resources, economic incentives for business to participate in the development of vocational education and training remain one of the tasks of modern legislation. The use of tax, tariff, credit and other tools to increase the interest of employers in organizing their own educational structures, sending workers to vocational training and advanced training in the framework of existing organizational forms can give good results and open up new prospects for increasing professional mobility of workers.

Professional mobility of the population is closely related to the availability of additional training for each employee, professional retraining and advanced training, not only at the suggestion of the employer, but also on his own initiative. The basis for the formation of professional mobility and competitiveness of specialists should be based on the idea of continuing professional education throughout their working life, as provided for by art. 4 Human Resources Development Convention, 1975 (No. 142) [7]. However, the Labor Code today does not contribute to the full implementation of
this task. According to Part 1 of Art. 196 of the Labor Code of the Russian Federation, the need to train workers (vocational education and vocational training) and additional vocational education is determined by the employer. The exception is set in Part 4 of Art. 196 of the Labor Code of the Russian Federation: in cases provided for by federal laws and other regulatory legal acts of the Russian Federation, the employer is obliged to conduct vocational training or additional professional education of employees, if this is a condition for the employee to perform certain types of activities.

Continuing professional education of workers is impossible without the participation of the employer; therefore, certain adjustments of labor legislation norms are needed in order to establish guarantees for individuals who independently improve their professional level, as well as for those who, on their own initiative, undergo vocational training, retraining and advanced training time. One of the ways to overcome this problem may be inclusion in Art. 128 of the Labor Code of the Russian Federation of another case of compulsory provision of leave without pay to the employee - for the period of study that does not provide guarantees and compensation to persons combining work with education.

In order to establish guarantees of continuing education, L. Filyushchenko proposes to formulate the obligation of the employer to organize staff development with a certain frequency, for example, once every three years, and also to determine the conditions under which an employee can initiate retraining, professional development. In particular, the right of an employee to declare a referral for training and additional professional education can be linked to the duration of work for a particular employer, with the absence of violations of labor discipline) [8].

3. Labor law supporting functional mobility
Close to the meaning of professional mobility is ‘functional’ mobility, i.e. the ability and willingness of the employee to change the content of their work function in the face of changing organizational and economic needs of the employer. Functional mobility is a change in the set of functional duties of an employee while maintaining the work function as a job title, profession, or specialty. Functional mobility is caused by dynamic processes in the system of social division of labor and is intended to promote the rational distribution and redistribution of personnel in order to increase efficiency and productivity of labor.

Functional mobility has the least regulatory content, which directly creates problems of law enforcement. The need to increase the mobility of labor resources requires a conceptual review of the content of the fundamental category of labor law - the labor function, under which Articles 15 and 57 of the Labor Code of the Russian Federation mean ‘work in a position in accordance with the staffing table, profession, specialties indicating qualifications; specific type of assignment-my employee work’. A natural question arises: is a labor function a list of actions performed (work) or the name of a position, profession, or specialty? The lack of a clear legal definition gives rise to labor disputes (for example, about the legality of changing the employee’s proper instructions without his consent), which are ambiguously resolved in judicial practice. It is worth paying attention to the legislative experience of the nearest neighbors. In contrast to the Russian Code of Art. 19 of the Labor Code of the Republic of Belarus defines the labor function more closely. First, an indication is given that this may be work not for one, but for several professions, specialties, and positions. By the same token, the question of the legitimacy of establishing “combined” labor functions (driver-forwarder, accountant-cashier, etc.) is removed. Secondly, the definition contains a reference to the job description, which is not mentioned at all in the Labor Code of the Russian Federation. Finally, thirdly, the Belarusian Code introduces the term “functional responsibilities” into the conceptual apparatus, revealing the content of the concept of the labor function through reference to them.

The practice of Russian employers has developed a custom – to fix the labor function in the labor contract by specifying only the name of the position, profession, specialty, and disclose the content of the labor function of a particular employee through the job description, which has the status of a local regulatory act. And if the change in the labor function as a condition of the employment contract is possible only by agreement of the parties, drawn up in writing (Articles 72, 72.1 of the Labor Code of the Russian Federation), then the adjustment of the job description is allowed only at the discretion of
the employer and does not require obtaining the consent of the employee. And here arises the problem of determining the limits of such discretion. On the one hand, there is an objective need for labor mobility, on the other hand, one should not forget about the restriction established by Art. 60 of the Labor Code of the Russian Federation: it is prohibited to demand from an employee a work that is not subject to an employment contract.

An analysis of judicial practice in labor disputes confirms the thesis that an employee may be charged with additional duties that were initially absent in the job description, but characteristic of their position, corresponding to the goals and objectives of the structural unit in which he works, provided that the employee has sufficient qualification to perform such work. In one of the court decisions, the following arguments are presented in favor of the conclusion that the employer's approval of the job description is not a translation requiring the consent of the employee. The content of the employee’s specific actions may vary depending on the time, conditions and circumstances that he may encounter in the performance of his job duties. In the process of organizational-technical and economic development, the development of modern management technologies, the introduction of new technical means, the implementation of measures to improve the organization and increase the efficiency of labor, it is possible to expand the range of duties of employees compared to the established corresponding characteristics. In this case, without changing the official name of the labor function, the employee may be entrusted with the performance of duties stipulated by the characteristics of other positions, similar in content, of equal complexity, the fulfillment of which does not require a different specialty and qualification, resulting in a change (clarification, specification) of the employment status of the employee’s duties does not constitute a change in his labor function, respectively, does not require the consent of the employee [8]. In another case, the court agreed with the employer that reducing the circle of responsibilities of the employee, as stipulated by the job description, does not indicate that the employer changes the terms of the employment contract on a one-sided basis. The court clarified that the content of specific actions performed by the employee in the performance of his official duties may vary depending on the specific circumstances and tasks assigned to the employee [9].

However, there are not isolated cases when the courts differ in their assessments about the legal consequences of the employee’s refusal to work under the new job description. We believe that in order to prevent labor disputes over the content of the labor function and in order to maintain the functional mobility of workers, provisions should be introduced into the Labor Code of the Russian Federation regarding content, procedure for developing, approving and revising job descriptions. Also, the legislator should have provided for a procedure for notifying an employee of a change in job description and the legal consequences of not working in the new conditions.

4. Territorial mobility: a way to redistribute labor resources
Territorial mobility originally emerged from the need to develop separate (usually remote) Russian regions and to solve the problem of the redistribution of labor resources. Recently, the need to support the territorial mobility of the working population has been largely caused by the needs of the so-called ‘priority development regions’, individual large investment projects and priority state projects (APEC Summit 2012, Winter Olympics 2014, FIFA World Cup 2018). Soviet labor legislation solved the problem of territorial mobility in different ways: with the help of organized recruitment of workers, agricultural resettlement, social conscription, distribution of young specialists. In the Labor Code of the Russian Federation, only the rotational method of organizing labor has been preserved, connected with workers moving to another locality to the place of work (Chapter 47).

In 2014, an attempt was made to solve the problem of territorial mobility in the Federal Law of 19.04.1991 N 1032-1 ‘On employment of the population in the Russian Federation’, which introduced significant changes aimed at increasing the mobility of labor resources, creating conditions for the redistribution of labor resources between the subjects of the Russian Federation. For this purpose, the lawmakers procured the creation of a state information and analytical system. National Job Base ‘Work in Russia’ with information on job opportunities, employers who need workers, vacancies and vacancies, people looking for jobs, and other information. The Law on Employment of the Population
is supplemented by Article 22.2, which establishes measures to assist employers in attracting labor resources. Particularly, employers are provided with financial support coming from a certificate (a document confirming the employer's participation in a regional program for increasing labor mobility) to attract workers from other constituent entities of the Russian Federation for employment. Funds for financial support are used by the employer to provide support measures for an employee engaged in the implementation of a regional program to increase labor mobility for employment from another subject of the Russian Federation. The law provides for the conclusion by an executive body of a constituent entity of the Russian Federation, exercising powers in the field of promoting employment, of an agreement with an employer on participation in a regional program to increase labor resources. Initially, such an agreement provided for the obligation of the employer not to reduce the number or staff in the period of receipt and use of financial support provided by the certificate, but the legislator subsequently abandoned the idea of such a restriction of employer's personnel management. And this is fully consistent with the legal positions of the Constitutional Court of the Russian Federation, which has repeatedly noted that by realizing the rights enshrined in the Constitution of the Russian Federation (Articles 34, 35), the employer has the right to independently implement its economic activities and rational property management. responsibility to make the necessary personnel decisions. The decision to change the structure, staffing, number of employees of the organization belongs to the exclusive competence of the employer (Definitions of the Constitutional Court of the Russian Federation dated July 15, 2008 N 411-O-O, 412-O-O O and 413-O-O O, from 1 June 2010 N 840-OO, dated September 29, 2011 N 1164-OO O and N 1165-OO, dated September 24, 2012 N 1690-O, etc.).

The peculiarity is not only the order of admission to work, but also the employment contract with the employee involved in the framework of the regional program to increase the mobility of labor resources: first, it can be concluded for an indefinite period, and for a period of not less than two years; secondly, it specifies obligatory support measures, including compensation and other payments provided by the employer to the employee, the procedure and conditions for their provision. In case of termination of the employment contract initiated by the employee before the expiration of one year, except as provided in the agreement on participation in the regional program for increasing the mobility of labor resources, the employee will be obliged to reimburse the employer for the funds in the amount of support measures provided to the employee and other payments. The procedure and conditions for reimbursement by the employee of these funds are specified in the employment contract. It appears that the legislator did not consider all cases of termination of an employment contract without good cause, in particular, dismissal on the initiative of the employer for the employee's violation of a disciplinary offense or other guilty conduct (Art. 81, paragraphs 5-10, etc. Labor Code of Russia). This hole in paragraph 10 of Art. 22.2 of the Law on Employment must be eliminated, otherwise the employer who decided to dismiss an employee for violations of labor discipline will be deprived of the possibility of collecting money from him, provided as support measures, and will not, in turn, refund the budget of a constituent entity of the Russian Federation means financial support in the amount actually spent on the provision of employee support measures. By the way, Russian labor legislation delivers an analogue of such support measures – the Art. 169 of the Labor Code of the Russian Federation establishes the procedure for reimbursement of expenses when moving far to work. The Decree of the Government of the Russian Federation of April 2, 2003 N 187 ‘On the amount of reimbursement of expenses when moving to work in another locality to employees who have signed an employment contract for work in federal state bodies, employees of state extra-budgetary funds of the Russian Federation and federal state institutions’ specifies the procedure for the return of funds paid to the employee in connection with moving to work elsewhere. The employee is obliged to fully return these funds, not only when terminating the contract before the end of a definite term without a good reason, but also in cases if the employee was dismissed for guilty acts which, in accordance with the law Russian Federation are subject for termination of the employment contract. This is also relevant to regulation of the obligation of a dismissed employee to reimburse the employer the amount of support measures provided to the employee in accordance with the Employment Act.
In some regions of the Russian Federation, the attraction of labor resources is a priority, financial support for the implementation of regional programs also provides for the provision of subsidies from the federal budget to the budgets of the regions of the Russian Federation to co-finance costs associated with the implementation of additional activities under regional programs, aimed at increasing the mobility of labor resources. In accordance with the Order of the Government of the Russian Federation of April 20, 2015 N 696-p (as amended on 07/06/2019), the list of constituent entities of the Russian Federation that attracts labor resources is a priority today includes 19 regions (Republics of Buryatia, Komi, Sakha (Yakutia), Zabaykalsky, Kamchatka, Krasnoyarsk, Primorsky and Khabarovsk Territories; Amur, Arkhangelsk, Vologda, Kaluga, Magadan, Sakhalin, Tambov and Ulyanovsk Regions; Yevreisky Autonomous Region, Chukotka Autonomous Region). The government periodically revises and clarifies this list depending on the situation on the labor market and the needs of the region in attracting labor resources to individual investment projects [11].

Following the transfer of the employee to another employer and moving to work in another region problems arise associated with the termination of the employment contract with the former employer. First, it seems that such a case should be attributed to the number of valid reasons for termination of an employment contract on the initiative of an employee, in relation to which Art. 80 of the Labor Code does not require a two-week deadline. Secondly, when concluding an urgent employment contract for work in another region, the possibility of returning to the former employer is not excluded, in connection with which it would be possible to provide for such workers the legal construction of a “temporary transfer to another employer”.

5. Conclusion
Thus, the main vector of development of labor law is its adaptation to modern market reforms. In order to do that, labor legislation needs a permanent adjustment that allows the business community to make the transition to an innovation model of economic growth. At the same time, it is necessary to solve the simple task of preserving the traditional legal constructions developed by science, legislation and law-applying practice and the test of time, and creating new, institutions and individual legal norms that are adequate to the requirements of the modern market economy and are designed to contribute to the formation of a modern mechanism of social development based on a balance of entrepreneurial freedom, social justice and national competitiveness. Contributing to the development of labor resources by means of labor law is one of the ways to solve the global task, declared in the Art. 1 of the Labor Code of the Russian Federation: the creation of the necessary legal conditions for the achievement of optimal coordination of the parties to labor relations and interests of the state.

Building a post-industrial society is associated with the rejection of the universal legal regulation of labor relations, the search for the most appropriate mechanisms for regulating innovative labor activity. This indicates the need to revise some well-established legal norms relating to such fundamental categories of labor law as employment contract, labor function, workplace, working time. Forming a new type of labor relations, as it seems, will contribute to the development of the Russian economy and increase its competitiveness in the global market.

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