IV. LABOR LAW

Information for citation:
Vasilyeva Yu. V., Shuraleva S. V. Distantsionnaya rabota v Rossii: problemy pravoprimeneniya [Remote Work in Russia: Issues of Law Enforcement]. *Vestnik Permskogo Universiteta. Juridicheskie Nauki* – Perm University Herald. Juridical Sciences. 2016. Issue 32. Pp. 216–225. (In Russ.). DOI: 10.17072/1995-4190-2016-32-216–225.

UDC 349.2: 341.9
DOI: 10.17072/1995-4190-2016-32-216–225

REMOTE WORK IN RUSSIA: ISSUES OF LAW ENFORCEMENT

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Introduction: *the article considers the positions of courts and federal executive authorities on the application of norms on remote work.* ***Purpose:*** *to study the specific features of the application of legislation on remote work basing on judicial practice and explanations from the competent authorities.* ***Methods:*** *the methodology comprises universal and general research methods, as well the method of system and structure analysis and the technical method.* ***Results:*** *legal regulation of remote work is developing in Russia. In disputes, employees and employers advert to judicial decisions, doctrine, explanations by the Russian Ministry of Labor, Federal Service for Labor and Employment, Ministry of Finance, Federal Tax Service. Explanations, which are issued by these bodies in the form of letters, can be referred to acts of formal inauthentic interpretation. They are of an advisory nature and help employees and employers to understand the content of law, foster the formation of a uniform practice. Analysis of letters and some court decisions on remote work has showed that letters are mainly focused on specific issues concerning conclusion of remote work employment contracts and their contractual clauses, while legal practice is primarily focused on the grounds and procedure for termination of the contract.* ***Conclusions:*** *The position of the Ministry of Labor on the impossibility of concluding a remote work employment contract with a foreign worker is critically evaluated. This interpretation limits the freedom of parties of the employment contract and reduces the benefits of remote work. The explanation of the Federal Service for Labor and Employment that the remote work employment contract should indicate the place of work is only valid for the cases when remote workers are provided with additional guarantees on wages or social insurance. Judicial practice on termination of remote work employment contracts is being formed now. However, an important point has already been designated: the establishment of additional grounds for termination of a contract by the employer must be agreed by the parties, which should be confirmed by the signature of the employee. In the absence of the employee's signature a contract cannot be accepted as a proof of the employer's right to its termination on additional grounds specified in the contract.*

Keywords: remote work; remote workers; law enforcement; conditions of the employment contract; place of work

Information in Russian

ДИСТАНЦИОННАЯ РАБОТА В РОССИИ: ВОПРОСЫ ПРАВОПРИМЕНЕНИЯ

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Введение: *в статье рассмотрены позиции судов, федеральных органов исполнительной власти в части применения норм о дистанционной работе.* ***Цель:*** *исследовать особенности применения законодательства о дистанционной работе на примере судебной практики и разъяснений компетентных органов.* ***Методы:*** *методологическую основу исследования составляют всеобщие, общенаучные методы, а также системно-структурный, формально-юридический методы.* ***Результаты:*** *правовое регулирование дистанционной работы в России развивается. В спорных ситуациях работники и работодатели обращаются к судебным решениям, доктрине, разъяснениям Минтруда России, Роструда, Минфина России, ФНС России. Разъяснения, которые издаются указанными органами в форме писем, можно отнести к актам официального неаутентичного толкования. Они имеют рекомендательный характер, помогают работникам и работодателям уяснить содержание права, способствуют формированию единообразной практики. Анализ писем и некоторых судебных решений по дистанционной работе показал: в основном письма посвящены отдельным вопросам заключения трудового договора о дистанционной работе и условиям данного договора, а судебная практика – преимущественно основаниям и порядку расторжения договора.* ***Выводы:*** *критически оценивается позиция Минтруда о невозможности заключения договора о дистанционной работе с иностранным работником, поскольку ограничивается свобода сторон трудового договора и понижается значение преимуществ дистанционной работы. Разъяснение Роструда о том, что в договоре о дистанционной работе следует указывать место работы, является справедливым для тех случаев, когда дистанционному работнику предоставляются дополнительные гарантии по заработной плате или социальному страхованию. Судебная практика о расторжении трудового договора о дистанционной работе только формируется. Но уже обозначена важная позиция: установление дополнительных оснований расторжения договора по инициативе работодателя должно быть согласовано сторонами, что подтверждается подписью работника. При отсутствии подписи работника договор не может быть принят в качестве доказательства права работодателя на его расторжение по дополнительным основаниям, указанным в договоре.*

Ключевые слова: трудовой договор о дистанционной работе; дистанционные работники; судебная практика; письма федеральных органов исполнительной власти; условия трудового договора; место работы

Introduction

«The Sandwich Generation» – this is how quite a large group of working-age adults called, who need to find a balance between career, caring for aging parents and raising their own children.

Foreign corporations and public authorities successfully use strategies of "flexible" employment, which help such workers to combine work and family responsibilities, including: indefinite leave, surrounding, focused only on the results of work, "flexible" schedule, the division of work between two workers, remote work [7]. This type of atypical employment has become popular in the United States, Europe and other countries, a significant amount of scientific research is dedicated to it [6, 8, 9, 10].

In Russia relations in the field of remote work now just in progress and as it often happens with something new, meet a restrained resistance of law enforcers, who don't rush to change the current practice. In terms of legislative freedom enforcers are looking for the usual "foothold", which are: the judicial practice, the positions of the competent federal executive bodies (hereinafter – the federal authorities), in particular, the Ministry of Labor and Social Protection of the Russian Federation (hereinafter – the Ministry of Labor) and the Federal Service for Labor and Employment (hereinafter – Labor Service). Available clarifications of the federal authorities about remote work devoted to the conclusion of the employment contract on the remote work and its conditions. Some labor law questions about remote work in the context of the calculation and payment of taxes dealt with in the documents of the Ministry of Finance of the Russian Federation (hereinafter – the Ministry of Finance) and the Federal Tax Service of Russia (hereinafter – the Federal Tax Service).

The practice of courts of general jurisdiction on the merits yet not numerous, mainly related to disputes about termination of the employment contract. Arbitration courts also spoke on the possibility of the working remotely in dealing with individual disputes on deduction of expenses for the payment of insurance compensation on compulsory social insurance for temporary disability and cases related of maternity[1].

Taking into account the impossibility to consider all available materials in a single article, we chose the most interesting, in our view, legal positions. But firstly we should turn to the question of their legal nature.

On the legal nature of the official positions of the courts and the individual federal executive bodies

Any "dialogue" with the law, any implementation of law, and especially such form as the application of the law, assumes clarification of legal requirements and permissions. As a rule, in this situation special clarifications of legal acts help, which are given formally and informally. Both clarification of the requirements of the rules as an internal intellectual process, and an explanation of them as an expression outside personal conclusions often combine one concept – interpretation of law [4, p. 392]. On the subject of clarification of a legal act normally distinguished on formal and informal interpretation. At the same time under the official interpretation we mean the interpretation, which is given by the competent authorities and officials and is legally binding for all concerned, it causes certain consequences. Informal interpretation comes from entities whose activities are not official, state, and therefore, it has no legal force and does not imply legal consequences. An important feature of this interpretation is that it does not involve power, coercion, punishment. Any sanctions are excluded here [5, pp. 356–357].

In the literature, there are several classifications of official interpretation. Here is just one of the variants of such a classification: official interpretation is divided into normative (general) and causal (individual), authentic (author) and legal (authorized, delegated); judicial [5, p. 356].

In this connection, the judicial interpretation in the form of the Supreme Court's judgments can be seen as an act of formal normative interpretation and legal positions, which are set out in other judgments, – as acts of the official casual interpretation. However, in dealing with disputes legal practitioners and researchers often take into account the entire array of law practice that has developed on this issue.

[1] *Decree* of the Thirteenth Arbitration Court of Appeal on 05.12.2013 in case No. A26-3198 / 2013, Decree of the Federal Arbitration Court of the Volga district from 25/04/2014 No. A72-13400/2013 [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus".

The explanations of federal authorities (in the forms of official letters, information, answers to questions, etc.) according to the classification above can be attributed to the official authentic interpretation, if such explanations are their own normative legal acts or to legal interpretation, if such a right is delegated to them.

For example, paragraph 5.16 of the Regulation on the Ministry of Labor and Social Protection of the Russian Federation approved by the Russian Federation Government Decree on 19.06.2012 № 610 (hereinafter – the Regulation on the Ministry of Labor)[1] provides that the Ministry of Labor provides clarifications on the issues within its competence, in cases provided by the legislation of the Russian Federation. According points 5.2.140, 5.2.12 of the Regulations on the Ministry of Labor, it has the power to give clarifications on issues related to the application of specific federal laws and regulations of the Russian Government.

According to Clause 5.5.4 of the Regulations on the Federal Service for Labor and Employment, approved by the Russian Federation Government Decree on 30.06.2004 № 324 (hereinafter – the Regulations on Labor Service)[2], this authority inform and consult employers and workers on the enforcement of labor laws and normative legal acts containing norms of labor law.

The right to give written explanations to the tax authorities, taxpayers, payers of fees and tax agents on the application of the Russian legislation on taxes and fees granted to the Ministry of Finance on the basis of point 1 of Article 34.2 of the Russian Tax Code[3].

The Federal Tax Service of Russia has the right to give legal entities and natural persons explanations on issues falling within the established field of activity according to para. 6.3. of The Provisions of the Federal Tax Service, approved by the Russian Federation Government Decree on 30.09.2004 № 506[4].

Thus, it is possible to agree with the proposition that all public authorities, which is responsible for bringing the legal regulations in the life may be the subjects of official inauthentic interpretation. The terms of these bodies is quite wide. Legal validity interpretation acts of various authorities varies. They are mandatory to use, if they are not in contrary to the requirements of other legal regulations, if the interpretation of the subordinate body corresponds to the explanations on the same matter, given by these higher authorities. In other words, the legal force of expository statutes is determined by their place in the mechanism of legal regulation and corresponds to the force of other provisions emanating from any authority [4, p. 401].

What is the legal validity of such clarifications of the federal authorities? Part of the answer to this question is contained in the clarification of these bodies themselves. For example, in a letter from the Russian Federal Tax Service on 31.01.2014 № CA-4-14/1645[5] states that the legal positions in the sphere of state registration of legal entities and individual entrepreneurs (including on remote workers-managers), as set out in this letter, subject to the application of the territorial tax authorities in the exercise of the functions of state registration, as well as the bringing to the privies. Thus, these explanations are mandatory as a minimum for the territorial bodies of the Federal Tax Service of Russia.

In the Ministry of Finance letters[6] we can find a reservation that such a letter "does not contain any legal norms, it does not specify the regulatory requirements and it is not a normative legal act. Written explanation of the Ministry of Finance on the questions of application of the legislation of the Russian Federation on taxes and levies aimed taxpayer and (or) tax agents are informative and explanatory nature and do not prevent taxpayers, tax authorities and tax agents use norms of the Russian legislation on taxes and duties within the meaning of other than the interpretations set out in this letter". In other words, it highlights the informative nature of such explanations.

[1] *On approval* of the Statute about Ministry of Labor and Social Protection of the Russian Federation: Russian Federation Government Decree on 19.06.2012 No. 610 (as amended on January 16, 2016.) // Coll. Rus. Fed. legislation. 25.06.2012. No. 26, Art. 3528.

[2] *On approval* of the Statute about the Federal Service for Labor and Employment: Russian Federation Government Decree on 30.06.2004 No. 324 (as amended on December 25, 2015.) // Coll. Rus. Fed. legislation 12.07.2004. No. 28, Art. 2901.

[3] *Tax Code* of the Russian Federation (Part One): Federal Law on 31.07.1998 No. 146-FZ (as amended on 5 April 2016.) // Coll. Rus. Fed. legislation. 05.12.1994. No. 32, Art. 3301.

[4] *On approval* of the Federal Tax Service: Decree of the Russian Government dated 30.09.2004 No. 506 (as amended on February 5, 2016) // Coll. Rus. Fed. legislation. 04.10.2004. No. 40, Art. 3961.

[5] *Letter* of Russian Federal Tax Service on 31.01.2014 No. SA-4-14/1645 [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus" (accessed 09.04.2016).

[6] *For example*, letters on 04.08.2015 No. 03-04-06 / 44857 on the question of taxation of personal income tax revenues of the citizen of the Republic of Belarus, performing remote work outside of the Russian Federation; on 16.10.2015 No. 03-04-06 / 59439 on the question of the personal income tax on income of a staff member working remotely in the Republic of Moldova. [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus" (accessed 09.04.2016).

In the Labor Service letters (for example, a letter on 20.11.2015 № 2628-6-1 "On working conditions in the workplace")[1] , sometimes also indicated that the letter is not a normative legal act.

The Appeals definition of Penza Regional Court on 17.07.2012 in case № 33-1679[2] provides the following assessment of the Labor Service letters, "the letters of the Federal Labor and Employment Service does not give rise to legal consequences for an indefinite number of persons and the court is not bound when making decisions by the opinion of any person and organizations". However, we can't say that this attitude is common in judicial practice.

Thus, we can draw the following conclusions. Firstly, an explanation as well as work on informing and consulting, are carried out by federal authorities in the framework of their competence, which gives explanations the nature of the official interpretation. It is obvious that the legal positions of the federal executive bodies in order to create uniform practices are used by the downstream or subordinate public authorities in their activities. At the same time, the obligation of these explanations for an indefinite number of persons does not arise from the legislation and other normative legal acts.

Secondly, the role of such clarifications of the federal authorities seems to us, first of all, is to help individuals and organizations to understand the content of the rule of law and form their own legal position. However, this does not exclude the fact that citizens, organizations and other public bodies may have their understanding of legal acts, which in cases of disputes will be announced in court.

Regarding the value of the legal positions of the Ministry of Labor we must also note the following. According to para. 1 of the Regulation on the Ministry of Labor this authority is a federal body of executive authority responsible for the development and implementation of state policy and normative legal regulation, including the field of demography, labor, quality of life and income, pay, conditions and labor protection, social partnership and labor relations.

The competence of the Ministry of Labor is also the introduction to the Government draft federal laws, normative legal acts of the President of the Russian Federation and the Government and other documents that require the Russian Federation Government decision on matters relating to the installed purview of Ministry of Labor and to the competence of the subordinated to it Labor Service (point 5.1 of the Ministry of Labor Regulation). It is worth noting that the Russian Federation Government was the subject of the legislative initiative on the bill № 88331-6 "On Amendments to Certain Acts of the Russian Federation (about the peculiarities of legal regulation of the work of employees performing work outside the employer's location)"[3].

Thus, the legal positions of the Ministry of Labor are of particular interest because the body has a direct impact on the formation of the labor legislation and subordinate legislation in the sphere of Labor, including in the field of remote work.

Next, consider some of the legal positions of the federal executive bodies and judicial authorities on various aspects of the employment contract on the remote work.

Conclusion of an employment contract on the remote work

The Ministry of Labor received a complaint concerning the calculation of insurance contributions to state extra-budgetary funds for payment to be made in favor of the citizen of Ukraine who has concluded an employment contract on the remote work. Under the agreement, it was assumed that labor duties the worker will perform in the territory of Ukraine. In the Labor Ministry letter on 07.08.2015 № 17-3 / B-410[4] with references to Art. 13, 312.3 of the Labor Code of the Russian Federation (hereinafter – the Labor Code)[5] concluded: ensuring by the employer safe working conditions for remote workers working outside the Russian Federation, is not possible. Therefore, the Labor Code does not provide the possibility to conclude an employment contract on the remote work with a foreign citizen performing job duties outside Russia. Cooperation with such foreign citizens should be carried out within the framework of a civil contract. Its payouts will not be a subject of insurance contributions.

[1] On the working conditions at the workplace: Russian Labor Service Letter on 20.11.2015 No. 2628-6-1 [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus".

[2] *Appeals* definition of the Penza regional court on 17.07.2012 on the case No. 33-1679 [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus".

[3] *On the Amendments* to certain Acts of the Russian Federation (about the peculiarities of the legal regulation of workers performing work outside the employer's location): Bill No. 88331-6 [Electronic resource]. Access from the Automated System for ensuring legislative activity.

[4] *A letter* of the Ministry of Labor on 07.08.2015 No. 17-3 / B-410 [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus".

[5] *The Labor Code* of the Russian Federation: the Federal Law of on 30.12.2001 No. 197-FZ (As amended on 30.12.2015) [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus".

It seems that a similar position Ministry of Labor will follow in respect of stateless persons. From an economic perspective for the employer such a decision can be beneficial and convenient. But from a legal point of view, questions remain.

The main argument, which uses the Labor Ministry – the impossibility for the employer to provide a safe working conditions worker and safety and health of remote workers in another country. It does not take into account that the obligation of the employer to ensure safe working conditions to remote workers, in principle, limited. According to Art. 312.3 of the Labor Code the employer is obliged to carry out an investigation and registration of accidents and occupational diseases; comply with the instructions of officials of the Federal Labor Inspectorate and its territorial bodies; implement compulsory social insurance against industrial accidents and occupational diseases. According to some scientists, many of the duties of the employer in the field of occupational safety and health objectively can not be made by him, such as monitoring the state of working conditions in the workplace, prevention of emergency situations. Therefore, the employee himself must take care of the security of their employment [3].

Following the logic of the Labor Ministry, the Russian employers should not conclude an employment contract on the remote work with the Russian citizens living abroad, because for the Russian employer is just also difficult to provide them with a safe working conditions in the territory of another state. However, in this case the Ministry of Labor explained that for Russian citizens, regardless of their location no limits are provided. That's why it is possible to employ remotely Russian citizens living abroad [2][1].

It seems that the problem of creating a safe working conditions for remote workers in another state is still not a key argument. The more interesting question is the issue of the relationship of Chapter 49.1 of the Labor Code and the special rules on the legal status of foreign citizens at the intersection of administrative and labor law. Legal regulation of the workers who are foreign citizens or stateless persons, in the national legislation generally provides chapter 50.1 of the Labor Code, and Articles 13, 13.1 of the Federal Law of 25.07.2002 № 115-FZ "On the Legal Status of Foreign Citizens in the Russian Federation"[2].

However, to the general rule may be set exceptions. For example, the Presidential Decree on 11.28.2015 № 583 "On measures to ensure the protection of the Russian Federation's national security and citizens of the Russian Federation from criminal and other illegal actions and on the application of special economic measures against the Republic of Turkey" in the number of such measures is indicated ban for employers , customers of works (services) who are not included in the list defined by the Government of the Russian Federation, to attract since the 1 January 2016 to work workers from among the Turkish Republic citizens who are not in labor and (or) civil relations with these employers, customers of works (services) as on the 31 December, 2015[3]. We believe that this prohibition fully extends to the labor relations in the field of remote work.

It is important to take into account the international treaties of the Russian Federation. For example, the labor activity of workers of the Member States of the Eurasian Economic Union is governed by Art. 97 of the Treaty on the Eurasian Economic Union (signed in Astana, 05.29.2014)[4]. Point 1 of this Article provides for the right of employers and (or) customers of works (services) of a Member State to involve in the implementation of labor activity workers of Member States without regard to

[1] I*n the context of* this perspective noteworthy letters of the Ministry of Finance on the issue of taxation of personal income tax incomes of natural persons – foreign citizens who have concluded with Russian organizations employment contracts on the remote work and perform the above work outside the Russian Federation in their country. Explanations were given in respect of the citizens of Moldova, Belarus, Ukraine, a resident of Germany. Pointing, in particular, that the income of individuals who are not tax residents of the Russian Federation, as a consideration for the performance of labor duties outside the Russian Federation shall not be subject to tax on income of natural persons, the Ministry of Finance, apparently, does not question the validity of contracts on the remote work with foreign citizens. Letters of the Ministry of Finance on 16.10.2015 No. 03-04-06/59439, on 15.07.2015 No. 03-04-06/40525, on 04.08.2015 No. 03-04-06/44857, on 04.08.2015 No. 03-04-06/44849, on 04.08.2015 No. 03-04-06/44852, on 04.08.2015 No. 03-04-06/44855, on 16.10.2014 No. 03-04-06/52135 [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus".

[2] *On the Legal* Status of Foreign Citizens in the Russian Federation: the Federal Law on 25.07.2002 No. 115-FZ [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus".

[3] *On measures* to ensure the national security of the Russian Federation and the protection of Russian citizens from criminal and other illegal actions and the application of special economic measures against the Republic of Turkey: Presidential Decree on 28.11.2015 № 583 [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus.

[4] *Treaty* on the Eurasian Economic Union (signed in Astana on 29.05.2014) [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus".

limitations on the protection of the national labor market. At the same time the workers of the Member States are not required to obtain a permit for carrying out work in the State of employment.

However, analysis of the rules about the specific features of the conclusion of employment contract, temporary transfer, suspension from work, termination of employment contracts with foreign citizens and stateless persons shows that under Russian law the legal regulation of labor of this category of workers is aimed at those who work on the territory of the Russian Federation. Apparently, on this basis, Ministry of Labor believes that the involvement of foreigners in work is carried out only after crossing a border by them and obtaining permits to work, so it is impossible to conclude an employment contract on the remote work with foreigners living in another state.

It seems, however, that this is a restrictive interpretation of the law, because the chapter 50.1 of the Labor Code does not contain a prohibition on attracting foreigners to work under the conditions of the contract on the remote work, and the chapter 49.1. of the Labor Code does not contain provisions restricting the attraction to the remote work of foreigners and persons without citizenship. We believe that the prohibition of remote work for foreigners living outside the country, restricts the freedom of the remote labor relations, does not corresponds to the objectives of chapter 49 of the Labor Code and significantly reduces the advantages of remote work.

The conditions of the employment contract on remote work

In a letter of Labor Service on 10.7.2013 № SG/8960-6-1 "About the determination of the workplace"[1] indicated that the contract on the remote work should contain information on the place of work, in which the remote worker directly performs duties assigned to him by the employment contract. The letter contains a link to the general rule: part 1 Art. 57 of the Labor Code, which fixes the condition of the work place as mandatory. However, one of the main characteristics of the employment contract on the remote work is the fulfillment of employee his labor function out of the place of the employer location.

In fact, the place of labor activity of the remote worker can be anywhere, including work at home. Ministry of Finance in a letter on 01.08.2013 № 03-03-06/0978, pointed out that from the definition of a remote work given in Article 312.1 of the Labor Code follows that the employee's permanent place of work is his location[2]. At the same time the Labor Code does not contain the legal definition of the place of work. This term is used in the code in different meanings: as a synonym for the position occupied by the employee, as an indication of an employer and as the place of performance of his labor function.

In our opinion, the condition of the place of work for the employment contract on the remote work loses its constitutive importance in connection with the impossibility (and the absence of unnecessarily) for the employer to monitor the actual location of the remote work, and also with the interaction of a remote worker and his employer through information and communication network – Internet. [1, p. 91]. However, in some cases it can (and should) be indicated in the employment contract with a remote worker.

For example, if a remote worker works on the territory of the Russian Federation with the established regional coefficients to wages. Obviously, the employer must pay such worker wages and social security benefits taking into account these factors, even if the employer is situated in the "normal" area. In this case, it seems justified the fixation of the place of work in the employment contract on the remote work. Moreover, if the employment contract is not designated "north" place of work, the Social Insurance Fund, when checking the correctness of accrual by the insurant benefits for temporary disability, will not adopt to offset the amount of payments, increased by the regional coefficient. We add that the fixing of the "northern" place of work, the remote worker has a right to extra leave with certain duration, travel expenses to the place of rest and back in the normal order.

If an employer wants to "insure" themselves against moving of the worker to the territory, where he could live and receive benefits and compensation that are different from the standard, the employment contract on the remote work must specify that the work is carried out by remote worker in the territory of the Russian Federation (other countries), with the except in certain areas.

[1] *About the determination* of the workplace: Russian Labor Service Letter on 07.10.2013 No. PG/8960-6-1 [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus" (accessed 09.04.2016).

[2] *Letter* of Ministry of Finance on 01.08.2013 No. 03-03-06/30978 // Wages: acts and comments to the accountant. 2013. No. 10. [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus" (accessed 09.04.2016).

Violation of this provision will be provided as the basis for the termination of the employment contract on the remote work.

Secondly, the condition of the place of work gains value if the remote worker's performing of labor function is connected with the necessity of sending on mission (including sending to the location of the employer organization). In this regard, the Ministry of Finance has a noteworthy legal position according to which, in case of sending on mission the employee performing the work remotely, on a mission outside the place of his permanent work specified in the employment contract, to the amounts of travel reimbursement apply rules of point 3. Art. 217 of the Tax Code (Ministry of Finance letter on 01.08.2013 № 03-03-06/30978)[1].

Thirdly, the condition of the place of work is important in deciding whether to maintain the employee's right to receive child care allowance for children aged under 1,5 years old. According to Art. 11.1 of the Federal Law № 255-FZ "On *Compulsory Social Insurance* for *Temporary Disability* and *Cases* Related to *Maternity*"[2] right to this allowance is maintained when a person who is on leave for childcare, working part-time or at home and continues to care of the child.

Federal Arbitration Court of the Ural District in this regard pointed out that the current labor law requires freedom of the parties to establish home-based forms of organization of the labor process; the possibility of its organization is determined by the employer, taking into account economic feasibility and the real possibility of the work at home. At the same time, labor legislation contains no restrictions on the number of persons who can work at home. The Court rejected the argument of the territorial body of Social Insurance Fund of Russia that working at home has to be connected only with material production[3]. Despite the fact that this decision was taken by the court even before the introduction of the Labor Code chapter on remote work, it retains its value.

At the same time, the right to receive child care allowance can not be extended "by default" to all remote workers, combining work and care of a child aged under 1,5 years old. According to the provisions of Chapter 49.1 of the Labor Code remote worker has the right to independently determine the mode of his working time, and the employer is usually restricted in the ability to control the place of work and the worker's movements during the working day.

So, in order to preserve the right to child care allowance for children aged under 1,5 years old, the place of fulfillment of worker his labor function (at home) should be specified in the employment contract and working hours and periods of rest time for workers should be stipulated. To reduce working hours when working at home is not required.

Termination of the employment contract on the remote work

One of the most "flexible" rules on remote work in the Labor Code should be recognized the norm of Art. 312.5, according to which the termination of the employment contract on the remote work by the employer must be made on the grounds stipulated by the employment contract. On the one hand, it gives freedom to the employer in the formulation of such grounds and the possibility at any time without any problems, "leave" a remote worker. On the other hand, it seems that such grounds must have at least non-discriminatory character and follow from the special nature of remote work.

Judicial practice shows that debates about dismissal on such "contractual" reasons already take place. Thus, the Appellate decision of Moscow City Court on 01.20.2015 in case № 33-1146 / 2015[4], states that the remote worker (the plaintiff) was employed by the company "Biocodex" (the defendant) from 21.11.2012 and worked as regional manager in a separate unit in Kazan on the basis of an employment contract signed 21.11.2012 and the order № 058 on 21.11.2012. An additional agreement between the parties on 01.10.2013 to the employment contract adopted a new version of an employment contract without changing the labor function due to organizational changes in the working

[1] *Letter* of Ministry of Finance on 01.08.2013 No. 03-03-06/30978 [Electronic resource]. URL: http://www.glavbukh.ru/npd/edoc/97_46842 (accessed 04.09.2016).

[2] *On compulsory* social insurance for temporary disability and cases related to maternity: Federal Law on 29.12.2006 No. 255-FZ (As amended on March 9, 2016.) // Coll. Rus. Fed. legislation. 01.01.2007. No. 1 (part 1.), Art. 18.

[3] *According* to the materials of the case, the employee was allowed to perform the duties of Chief of Staff on conditions of work at home with the establishment of the operating mode, preserving the right to receive a child care allowance for children aged under 1,5 years old. Decree of the Federal Arbitration Court of the Ural District on 13.03.2012, № F09-1216 / 12. [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus".

[4] *Appeals* definition of the Moscow City Court on 20.01.2015 in the case No. 33-1146 / 2015 [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus".

conditions pursuant to Art. 74 of the Labor Code. In accordance with point 6.5.3. of this edition of the employment contract could be terminated by the employer on the grounds provided by the Labor Code, as well as at any time in connection with the inconvenience of further cooperation or in connection with production necessity.

According to the order of the defendant to the plaintiff since 12.01.2013 has been transferred to remote workers office for the position of Regional Sales Director in Rostov-on-Don. By the order on 20.05.2014 plaintiff was dismissed 30.05.2014 by the employer on the basis of point 14, Art. 81 of the Labor Code and Art. 312.5 of the Labor Code in connection with the inconvenience of further cooperation, as well as in accordance with the production necessity determined by the employer. Unfortunately, in the present case, the Court did not give a legal assessment of the contractual grounds of dismissal, as the term to appeal has been missed by the plaintiff (Art. 392 of the Labor Code), as was claimed by the respondent. Meanwhile, the situation indicates that it is important not only to formulate adequate grounds for termination of the employment contract, but also to provide for the terms of notice on these grounds. The duty of recognition for all workers the right for a reasonable period of notice for termination of their employment, proclaimed in paragraph 4 of Art. 4 of the European Social Charter, should cover also remote workers. The phrase "at any time" in the text of the considered contract is clearly violates this right. We believe that the "reasonable period of notice" or ways of their definitions should be provided by Art. 312.5 of the Labor Code.

Another example of judicial practice demonstrates the importance of proper formation of the employment contract with a remote worker under the threat of impossibility for an employer to terminate the contract on the grounds specified in this agreement (Appeals definition of the Kurgan Regional Court on 11.06.2015 in case № 1534/2015)[1].

From the case materials we see that the remote worker (the plaintiff) worked in the company "Data Center" (the defendant) in the group of adding headings on the position of content manager. According to the employment contract employee's place of work was out of the employer's location. Work under this contract was a remote work, it could be paired with business trips in Russia and abroad. This employment contract did not contain the signature of the plaintiff and there were no plaintiff's data on familiarization with the order on hiring of an employee in the case file. With the consent of the defendant the plaintiff worked in the Kingdom of Cambodia. The plaintiff was dismissed from his position, the employment contract with him was terminated on the basis of Art. 312.5 of the Labor Code in connection with the employer's lack of a sufficient amount of work.

The first-instance court restored the employee in the previous position. The Court of Appeal, affirming the illegality of the dismissal of an employee, made important from our point of view, conclusion: the basis of the termination of an employment contract on the remote work by the employer stated in this contract, in particular, in the conditions of absence of the sufficient work, if there is no worker's signatures on the employment contract is inconsistent, because an unsigned employment contract can not be accepted as proof of the employer's right to its cancellation on the grounds specified in this contract.

Interesting to learn the judgment of the Court of Appeal on the illegality of recovery in favor of the worker the amount of money spent by him on his return from the Kingdom of Cambodia. Court of Appeal upheld the trial court's position that such funds are damage caused by the employee and the need to return to the plaintiff of the Kingdom of Cambodia to the mound. Based on Art. 232, 233 of the Labor Code, the appellate court pointed out: during the trial the plaintiff has not presented evidence to support the existence of an agreement reached between him and the defendant, about the necessity of fulfillment of labor duties in the Kingdom of Cambodia. Labor activity of the plaintiff is remote and can be carried anywhere. There is no evidence of the culpable wrongdoing of the employer who caused damage to the plaintiff which was expressed in the production of expenses associated with the return from the Kingdom of Cambodia to Kurgan.

Conclusions

1. Explanations that are contained in the letters of the federal authorities, issued on matters within their competence, may be regarded as an official inauthentic interpretation, which helps law enforcers understand the content of the right, but are not legally binding for them.

2. Critically evaluated the Ministry of Labor's position on the impossibility of conclusion of a contract on the remote work with a foreign worker. This interpretation is not supported by sufficient

[1] *Appeals* definition of the Kurgan Regional Court on 11.06.2015 in the case № 1534/2015 [Electronic resource]. Access from the Reference and Legal System "ConsultantPlus".

arguments, restricts the freedom of parties of the employment contract and reduces the benefits of remote work.

3. Explanations of the Labor Agency that the agreement on remote work should indicate the place of work, is valid for cases where remote workers provide additional guarantees on wages or social insurance. This condition is not mandatory for the parties in the other cases.

4. Legal practice on the termination of the employment contract on the remote work has only started to form, but an important position has already been designated: the establishment of additional contract termination reason by the employer must be agreed by the parties, which is confirmed by the signature of the worker. Without the signature the contract can not be accepted as proof of the employer's right to its cancellation on additional grounds specified in the contract.

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