

**THE TASKS OF DIFFERENTIATION OF ADJUSTMENT  
OF LABOUR RELATIONS**

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ABSTRACT

The article is devoted to highlighting the problems of differentiation of labour relations. On this issue the position of domestic and foreign scholars is analyzed according to differentiation of adjustment of labour relations and also current labour legislation and Project of Labour Code of Ukraine. The authors determined that in the current conditions labor law should not hinder the development of market relations and inflict normal functioning of economic relations in the country. Employment law is designed in parallel with the interests of workers also take into account the interests of employers to ensure the balance of parties interests in labour relations. Grand PhD in Economic sciences, Professor Taras Bozhydarnik examined specific aspects of social responsibility of businesses as a prerequisite for preserving the social character of labor law in modern conditions. PhD in Juridical sciences Nataliya Scherbyuk identified that differentiation is a positive separation of the legal status of workers, even if in some cases, leads to decline in the guarantees of employees or limit their labor rights; it does not contradict the idea of social equality, which is higher than the level defined by the principle of equality and is an implementation of the protective function of labour law.

**Key words:** differentiation of labour relations, market relations, labour law.

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## INTRODUCTION

Since its inception labour law has the social nature. This is due to the fact that from the beginning the task of this branch of law was a legal regulation of relations connected with the use of hired labor, which would ensure, on the one hand, equality of the parties in the event of the above relations and on the other hand the need to protect the economically weaker employee from the economically more powerful employer. At the same time the labour legislation provides mutual strengthening of economic and social policy whereas the ways of its reformation have ambiguous nature. According to V.Venediktov, with the development of a market relations it is noticed a slight shift in the nature of labor law. First of all, it is indisputable social character of labor law. Secondly, the functional orientation of labor law in new conditions should not be one-sided only to protect worker. Thirdly, concern for better consolidation and the gradual development of human rights in the the labour sphere.<sup>1</sup> Considering this, the question of job differentiation of legal regulation of labor relations in the modern world is actual.

The problems of differentiation in labor law were investigated by Soviet, Ukrainian and Russian scientists: M. Baru, N. Bolotin, V. Burak, T.Kolyada, O. Kuryenniy, J. Orlovskiy, P.Pylypenko, N. Khutoryan and others. However, these issues remained scarcely explored, in the determination and analysis of tasks in differentiation of legal regulation of labour relations nowadays.

The purpose of this article is to study and to determine the tasks of differentiation the legal regulation of labour relations in the modern socio-economic conditions.

## THE DIFFERENTIATION OF ADJUSTMENT OF LABOUR RELATIONS

One of the features of labor law is the combination of unity and differentiation in the legal regulation of labor. This feature provides a dual pur-

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<sup>1</sup> Venediktov V. *Labour law of Ukraine: Textbook*, Kiev 2008, p. 8.

pose: to establish common, the same working conditions for all employees and at the same time differentiation of conditions for certain categories of workers under certain circumstances. We can not ignore the fact that the right of being "the only measure" is used to different people. We should take into account a number of circumstances that require a different approach to content of law: labor conditions, sex, age and physiological characteristics of workers. Consideration of these circumstances gives the appearance of the various kinds of exceptions, additions, to the general rules governing relations, connected with the employment of citizens.<sup>2</sup>

According to Article 2-1 of the Labour Code of Ukraine, Ukraine provides equal labour rights ...<sup>3</sup> One of the basic principles of legal regulation of labour relations Draft Labour Code of Ukraine (Art. 3) determines the equality of rights and opportunities of employees, including gender equality by ensuring the unity and differentiation conditions ...<sup>4</sup> As you can see, the legislator considers the unity and differentiation as the basic principles of legal regulation of labour relations in the future.

In Western European and American legal doctrine there are usually distinguished two basic approaches to equality at work: reaching the so-called formal or real equality. Formal equality is a traditional concept, which provides the equal treatment to all persons. In turn, real equality is the different treatment to different persons. Obviously, to achieve this "real equality" to certain categories of workers it should be granted certain advantages over other workers on various issues.<sup>5</sup>

Regulations on the need for differential treatment to the owners of the rights and freedoms develop in parallel with the idea of about unacceptable discrimination in employment. Discrimination and differentiation are concepts related but different. It is advisable to outline their differences.

The subject of differentiation of labour rights advocates law making authority or social partners that are eligible to receive, respectively, regula-

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<sup>2</sup> *Trudovoe right of: Tutorial* / TV Yvankyna, SP Mavrina EV Mahnytskaya et al.; Ed. AS Pashkova, Petersburg 1993, p.53

<sup>3</sup> Labor Code of Ukraine: electronic resource, zakon.rada.gov.ua/go/254k/96-bp.

<sup>4</sup> Draft Labor Code of Ukraine: electronic resource], zakon.rada.gov.ua/go/254k/96-bp.

<sup>5</sup> Liutov NL *Mezhdunarodnoe trudovoe right: Uchebnoe posoby*, Moscow 2011, p. 153.

tion or collective agreements (contracts).<sup>6</sup> The subject of discrimination is the employer or other person with the consent of the employer. The grounds for differentiation can serve the objective evidence of employment (in this case it is associated with a production function of labor law) or subjective symptoms of the employee who needs increased protection of their labor rights. Discrimination lies in deprivation or restriction of the labour rights of certain categories of employees or a specific employee for any ground that is not provided by any normative act and is not connected with the requirements that apply to certain kinds of work or qualifications of employees. Also discrimination is considered as a provision of unjustified privileges and preferences to certain categories of employees who are not established labor laws, local acts<sup>7</sup> or on grounds not specified by law or local regulations. Differentiation is carried out through special rules that can be adopted at national or local level. Discrimination is carried out, usually at the local or individual contractual level.

As you can see, the differentiation is positive differentiation of the legal status of workers. Even if in some cases it leads to decline the level of guarantees of employees or limit their labor rights, it is carried out on the grounds specified by law. In other words differentiation has legitimate character. Discrimination, in its turn, is illegal in nature. According to the M. Lushnikova any discrimination constitutes an offense with all the consequences.<sup>8</sup>

V. Prokopenko said that the differentiation of labour legislation did not contradict the idea of social equality, as set differences in the content and scope of the rights and obligations of workers and employers aimed at not creating a separate social class privilege but achieving greater compliance of labor law features to labor relations. The differentiation is justified because it aims to establish such a level of social equality, which is higher than the level specified the principle of equality. This allows to equalize social situation of certain social groups, which in actual working condi-

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<sup>6</sup> Lushnikova AM *The course of labor law: Tutorial*: In 2 t. V.1 essence of labor law and History of ego development. Labor rights in the system of human rights. General part, 2nd edition, rev. and add, Moscow 2009, p.294.

<sup>7</sup> *Ibidem*, p.344.

<sup>8</sup> *Ibidem*, p.344

tions or because of other circumstances, found themselves in state of social constraints.<sup>9</sup>

Most of the working population of our country is working on the ground of the employment contract. Thus there are substantial differences between the various categories of workers, depending on their individual characteristics (age, sex, state of health), the location, climatic conditions, where the employees live, the severity and danger of working conditions and so on. That differentiation reflects specific labor regulation of certain categories of workers, taking into account features due to both objective factors (that are not dependent on the individual peculiarity of the employee) and subjective (which caused by the individual characteristics of the employee). That is, in our opinion, the legislator considers the severity, harm, danger of employee working conditions and individual characteristics of the latter (age, sex, state of health) to protect worker health, saving his life and disability.<sup>10</sup>

Differentiation promotes unity of legal regulation of labour relations, and the unity creates conditions for the differentiation of legal regulation of labour. In this case, this relationship assumes no opposition unity by means of differentiation but differentiation – through unity. The unity of the legal regulation of labour relations predicts differentiated legal regulation by which it is provided the concrete application of law taking into account both objective factors that characterized by the place and conditions of work and personal qualities that relate directly to the employee. Tasks which must be solved by differentiation lie in individualization of general legal rules concerning certain categories of workers, which have various individual characteristics or they work in different conditions. The implementation of these objectives provides the most effective impact on labour law relations regulated by it.<sup>11</sup> M.Baru notes that differentiation

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<sup>9</sup> Prokopenko VI *Employment Ukraine: Textbook*, Kharkiv 2002, p.84

<sup>10</sup> Scherbyuk NY *Differentiation of labor relations in Ukraine : Dis. for obtaining sciences. degree candidate. Legal. sciences, specialty 12.00.05. – Labor Law; social security law*, Lutsk 2013, p.101.

<sup>11</sup> Ivanov SA *Soviet трудовое право: theory questions*, Moscow 1978, p.344-354

certainly improves process of law regulation, increases its effectiveness, providing coverage and penetration of different relations in their essence.<sup>12</sup>

In modern conditions the functional orientation of labor law should not remain one-sided. Indeed, in this case labour law will hinder the development of market relations and inflict normal functioning of economic relations in the country.

It is worth noting that between economic and social factors of production there has never been the harmony. They are characterized by permanent contradictions that caused by polarity of interests of production participants. Such contradictions are typical for employment relationship because the employer's interests objectively constitute the industrial side of these relations and the employee's interests take social side. For this reason, the main functions of labour law can be regarded as economic (production) and social (protective).

In modern conditions in parallel with the interests of the workers labour law is also designed to take into account the interests of employers to ensure the balance of interests of labour relations.

We share the position of authors who believe that government policy on the providing the rights and legitimate interests of workers and employers should not be built on only one basis. Equality is unacceptable. The employee is weaker that's why he should receive more support from the state than the employer.<sup>13</sup> But it does not mean that one has to somehow restrict other not labor rights of employers. The grounds and the degree of restriction of constitutional and other rights of workers and employers are not the same. Limiting the rights of employers may be based on protecting both public and private interests (in this case the interests of the employee). As for the restrictions on the rights and freedoms of the worker, they are only possible in the case of protection the state and public interests, but not the interests of the employer.

As S.Mavrin noted the protective function of labour law should be realized primarily by the law on the fundamental rights of workers, fix-

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<sup>12</sup> Bahru MI *Unyfykatsyya and dyfferentsyatsyya of labor law* , Soviet State and Law 1971, vol.10, p. 46.

<sup>13</sup> Stasiv AV *The social nature of modern labor law and its constitutional origins*, "Scientific notes University" 2009, vol 1 (29), p. 176.

ing the defense mechanisms and the establishment of effective forms and methods of state supervision and control over their observance.<sup>14</sup>

P. Pylypenko observes that the owner must provide interests of production (and it is quite natural, since it follows from the purpose of business – profit). And that fact that he achieved this not by over-exploitation of workers, there must be a labour legislation that will protect the interests of the latter. However, it must take into account the interests of the owner as the subject of not only employment, but also property interests.<sup>15</sup> Thus, in our opinion, this is possible only when the state provides the whole complex of labour law principles, which in some cases must be differentiated.

Social activity is divided into statutory employer (compulsory) and non-statutory (voluntary).<sup>16</sup> The first is defined by law and means the contributions to the statutory funds, the second is determined independently by the employer or by the collective agreement.

The improvement of worker status should not be accompanied by negative effects on production, because its development promotes these improvements. As M. Lushnikova noted, economic opportunities of the employer must meet the level of social guarantees. Otherwise, these “guarantees” can turn into its opposite.<sup>17</sup> Therefore, for the realization of social activities (both statutory and non-statutory) the state should create favorable conditions for business that will be able to grow and meet its obligations to society on the labour market, by means of the favorable investment climate and the adequate tax system. One of the important directions of such activities should be stimulating of corporate social responsibility of businesses structures. We believe that the latest manifestation has the following areas: 1) relations of a socially responsible employer with employees; 2) relationship of a socially responsible employer with the state and the public.

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<sup>14</sup> *Course Rossiyskogo labor law: Textbook* : Ed. SP Mavrina, AS Pashkova EB Khokhlova, In 3 volumes, Volume 1. General part, Petersburg, 1996, p.225.

<sup>15</sup> Pylypenko PD *Some comments on the draft Code of Ukraine on Labour*, “Right Ukraine” 1996, vol 9, p. 63.

<sup>16</sup> Lushnikova AM, op. cit., p. 358.

<sup>17</sup> Ibidem, p. 357-358.

A socially responsible employer has the following obligations before its employees: to create proper and safe working labor conditions and to provide decent wages; to introduce modern methods of work organization and to develop the corporate culture, to follow the high safety standards; to give employees equal opportunity, to value the contribution of everybody to the success of the business fairly; to invest in human resources, to train the staff and to provide them with development opportunities in such a way that everyone could realize their full potential.

The socially responsible business structure as a “corporate citizen” should certainly follow the following principles in relations with the state and public: to fulfill all legal obligations to the state, including in the area of labour market and employment; to cooperate with all interested parties (consumers, customers, business partners, shareholders, investors, employees of the company, state and local government authorities, local communities, etc.) honestly; to follow the modern standards of corporate governance and transparency.

In our opinion, an important measure of formation of socially responsible business structures is their participation on the basis of partnership with all interested parties (employees and their representatives, state agencies and local governments) in social programs aimed at improving the situation of employees, improving the ecological condition and rational use of natural resources in regions where their company operates.

Unfortunately in Ukraine there is one more economic and simultaneously social problem – the shady employment (employment of employees without a contract) and shady wages (the so-called “cash in hand”) – phenomena that became part of our life and had wide distribution. In order to reduce the level of shadow business on the labour market socially responsible business environment can and should initiate and lobby for the development and implementation of government regulations that aimed at reducing the tax and administrative pressure on business by the state and development the atmosphere of a comprehensive social responsibility.<sup>18</sup>

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<sup>18</sup> Dmitriev-Zarudenko V. *Social responsibility of businesses in the labor market of Ukraine* “Economy and the State”, 2012, vol 6, p. 48-50.



It will facilitate the application of social standards defined in the labor law by the employer and the possibility of improving the situation of workers at collective agreements and contracts.

#### SUMMARY

Proceeding from the above, the objectives of the differentiation of labour relations in modern conditions are:

- 1) alignment of the legal status of different social groups and protection from discrimination;
- 2) protection of worker's health, saving his life and disability;
- 3) ensuring the balance of interests of parties in labor relations while maintaining social character of labour law;
- 4) ensuring the effective regulation of labour relations;
- 5) direct implementation of industrial and protective function of labour law.

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