

FUNDAMENTAL DIFFERENCES, AS WELL AS SIMILAR FEATURES OF PART-TIME WORK AND COMBINATION OF PROFESSION (POSITIONS)

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ABSTRACT

The article discusses one of the main institutions of Labor Law, in particular, part-time work, as well as its differences from combining a profession (positions). It is noteworthy that often in practice there are cases of incorrect use of the terms "part-time work" and "combination" that are close in meaning. In order to avoid the unlawful application of the norms of labor legislation, it seems relevant to consider and identify, through a comparative legal analysis, similar and distinctive features of the indicated terms. In addition, the article also reflects the same changes in the new Labor Code of the Republic of Uzbekistan.

During the study, the author studied problematic cases from practice, and proposed ways to resolve them. In addition, the criteria necessary for comparison are proposed, and proposals are made for further improvement of labor legislation.

Keywords. Part-time, combination, difference between part-time and combination, working hours of part-time workers, vacation, internal part-time, external part-time, form of payment.

ASOSIY FARQLAR, SHUNINGDEK YARIM KUNLIK ISH VA KASB (LAVOZIM) KOMBINATSIYASINING O'XSHASH XUSUSIYATLARI

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ANNOTATSIYA

Maqolada mehnat qonunchiligining asosiy institutlaridan biri, xususan, o'rindoshlik asosidagi ish, shuningdek, bir necha kasbda va lavozimda ishlalshning o'zaro farqlari ko'rib chiqiladi. Shunisi e'tiborga loyiqki, amalda ko'pincha ma'no jihatidan yaqin bo'lgan " o'rindoshlik asosidagi ish" va "bir necha kasbda va lavozimda ishlalsh" atamalarini noto'g'ri ishlatish holatlari mavjud. Mehnat qonunchiligida aks ettirilgan normalarni noqonuniy qo'llashning oldini olish uchun qiyosiy huquqiy tahlil orqali ko'rsatilgan atamalarning o'xshash va farqli xususiyatlarini ko'rib chiqish va aniqlash maqsadga muvofiqdir. Bundan tashqari, moddada O'zbekiston Respublikasining yangi Mehnat kodeksiga ham xuddi shunday o'zgartirishlar kiritilgan.

Tadqiqot davomida muallif muammoli vaziyatlarni amaliyotdan o'rganib chiqdi, shuningdek ularni hal qilish yo'llarini taklif qildi. Bundan tashqari, taqqoslash uchun zarur bo'lgan

mezonlar taklif etilib, mehnat qonunchiligini yanada takomillashtirish bo'yicha takliflar ishlab chiqilmoqda.

Kalit so'zlar. o`rindoshlik, o`rindoshlarning ish vaqti, bir necha kasbda va lavozimda ishlalsh, o`rindoshlik asosidagi ish va bir necha kasbda va lavozimda ishlalshning o'rtasidagi farq, o`rindoshlik asosidagi ish laydigan xodimlar ta'tili, ichki o`rindosh, tashqi o`rindosh, o`rindoshlarga mehnat haqi to`lash.

ПРИНЦИПАЛЬНЫЕ ОТЛИЧИЯ, А ТАКЖЕ СХОЖИЕ ЧЕРТЫ РАБОТЫ ПО СОВМЕСТИТЕЛЬСТВУ И СОВМЕЩЕНИИ ПРОФЕССИИ (ДОЛЖНОСТЕЙ)

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АННОТАЦИЯ

В статье рассматривается один из основных институтов Трудового права, в частности работа по совместительству, а также его отличия от совмещения профессии (должностей). Примечательным является тот факт, что зачастую на практике не редко встречаются случаи не верного применения близких по значению термины «совместительства» и «совмещения». Во избежание неправомерного применения норм трудового законодательства, представляется актуальным рассмотреть и обозначить путем проведения сравнительного правового анализа схожие и отличительные черты обозначенных терминов. Помимо этого, в статье также нашли свои отражения те самые изменения в новом Трудовом кодексе Республики Узбекистан.

При проведении исследования автором были изучены проблемные казусы из практики, а также предложены способы их урегулирования. Кроме того, предложены критерии, необходимые для сравнения, а также выдвигаются предложения для дальнейшего совершенствования трудового законодательства.

Ключевые слова. совместительство, совмещение, отличие совместительства от совмещения, рабочее время совместителей, отпуск, внутреннее совместительство, внешнее совместительство, форма оплаты.

INTRODUCTION

Most HR specialists pursue such a task as the optimal use of labor resources. The implementation of this task is accompanied primarily by the observance of the interests of the organization and their employees [1. P.97]. However, it is not uncommon for organizations to fill emerging or existing job vacancies with appropriately qualified personnel. Often the search for such employees takes a long time. Considering these points, employers are increasingly providing the opportunity for employees to engage in additional work.

There are the following types of additional work:

1. Part-time work (additional work on external and internal part-time work);
2. Combination of positions (additional work in another position). For example, a lawyer of an organization can perform not only his duties, but also the duties of a personnel officer (combines two positions);
3. combination of professions (additional work in another profession). For example, an electrician performs his duties, as well as the duties of a plumber (combines professions);
4. increase in the volume of work (additional work in the same position or profession). For example, in the absence of a teacher, another may perform his work along with his duties;
5. expansion of the service area (additional work in the same position or profession). It is used if the work involves a clear division of the service area. For example, a family clinic doctor serves an assigned site, as well as another;
6. performance of the duties of a temporarily absent employee without release from his own duties.

In practice, there are often people who consider the concepts of "combination" and "combination" to be identical [2. P.115]. However, even more fear is caused by employers, who also consider these concepts to be consonant, which often leads them to terminological confusion. Such interpretations are not allowed. The labor legislation specifically designates the signs of "part-time work" and "combination". In accordance with the Regulation on the procedure for part-time work and the combination of professions and positions (hereinafter referred to as the Regulation on part-time work), the above terms are different forms of labor organization, with their fundamental differences and regulatory features. Next, we will look at their distinguishing features.

First of all, it seems appropriate to understand the definition of "combination" and "combination". Part-time employment - the right of employees to carry out other labor activities in their free time from their main work, subject to the conclusion of a separate employment contract. And the performance by an employee, along with his main job, stipulated by an employment contract, of additional work in another profession and position in the same organization during the duration of working hours established by law in the main profession and position is called combination.

Based on these definitions, it becomes obvious that in case of combination, in contrast to combination, an employee can conclude an employment contract with several employers. For a more complete justification of this conclusion, it is necessary to consider the procedure for registering part-time jobs and combining professions.

The procedure for registering an employee for part-time work depends on its type: external and internal part-time work. The basis for registration of part-time workers is the existence of a separate employment contract [3. P.20]. Unlike external part-time work, with internal part-time work, personnel specialists may not ask the employee for the documents necessary to provide, since it is possible to obtain them from the employee's personal file in the personnel department. The procedure for hiring an external part-time worker should be perceived as hiring a completely new employee, but with only one difference [4. P.91]. The part-time partner must provide all those documents specified in Art. 80 of the Labor Code of the Republic of Uzbekistan (hereinafter referred to as the Labor Code of the Republic of Uzbekistan), with the exception of the work book. Instead of this document, they should receive a copy of the work

book certified at the place of their main work. It should be noted that starting from January 1, 2020, an electronic work book has been introduced in Uzbekistan by entering information on the my.mehnat.uz website. [5. P.54] The introduction of this procedure greatly simplifies the procedure for registering the employment of employees, including part-time workers.

In the case of the registration of workers combining professions, the procedure looks a little simpler, since in this case there is no need to conclude a separate employment contract. It is enough to conclude a combination agreement, i.e. the performance of a particular position along with the main one, on the basis of which employers issue an appropriate order.

It is impossible to miss the working time of part-time workers and persons combining professions. [6. P.330] Despite the apparent similarity, there are certain differences that are not always taken into account by the employer. Regardless of the type of part-time job, they work only in their free time from their main job. For example, let's say that work at the main place starts at 9:00 and ends at 18:00, then only after this time it will be possible to work part-time. While when combining professions, employees need to fulfill the additional functional duties assigned to them along with the main job for the corresponding set time.

Accounting for the use of working time for a part-time position is kept separately from accounting for the use of working time for the main position

Combination work is not displayed in the time sheet.

Having considered the working hours of each of the parties, it became obvious that when combining positions, the employee performs both positions simultaneously during the working day, while the part-time worker needs to wait for the end of working hours for the main job, and then proceed to perform duties for another job. Based on this, a quite relevant question arises - can employees work part-time at 2 full-time jobs? As noted in paragraph 7 of the Regulation on part-time work, the duration of part-time work cannot exceed half the norm of working hours established for this category of workers at part-time work (with the exception of medical personnel of healthcare organizations). [7. P.3]

As you know, one of the principles of labor law is that every work is subject to payment. Studying the working hours of the parties, a number of differences were found in their duration, therefore, it becomes necessary to study the remuneration of part-time workers and persons combining professions.

In accordance with paragraph 25 of the Regulations on part-time jobs when combining professions, the amount of additional payment in budgetary organizations cannot exceed 50 percent of the official salary (tariff rate), except for cases established by the Cabinet of Ministers of the Republic of Uzbekistan, and is paid within the funds provided for in the wage fund budget organizations. Note that this statement applies only to budgetary organizations, therefore, the legislation allows non-budgetary organizations the right to agree with employees on the amount of remuneration for combining professions.

Next, consider the procedure for remuneration for persons working part-time. As previously noted, the duration of part-time working hours cannot exceed half of the norm of working hours established for this category of workers. However, remuneration in accordance with clause 11 of the Regulations on part-time employment is made in accordance with the employment contract for the actual work performed (with a piecework form of remuneration) or in proportion to the hours worked (with a time-based form of remuneration).

Therefore, when determining the amount of remuneration, it is necessary to clarify in what order they will be carried out. If in the employment contract of the lawyer of the organization it was stipulated that he would be paid wages in proportion to the time worked, then he cannot apply for a different order. In other words, if the salary of a lawyer's position in this organization is 10 million soums, and he works at a 0.25 rate, then remuneration will be made in the amount of 2.5 million soums, taking into account personal income tax (12%). But there is another category of workers, for example, accountants who have concluded an employment contract with the condition of remuneration for the work actually performed. Let's say that the salary of the position of an accountant is 10 million soums, then a part-time job can receive the full amount for the performance of his functional duties. At the same time, it does not matter how many hours he works.

The main thing that employers need to know is the list of jobs that are not considered part-time jobs, contained in the Regulations on part-time jobs.

Another difference is also found when sending an employee on a business trip within and outside Uzbekistan.

During an internal business trip, persons who combine professions and internal part-time workers are guaranteed the preservation of the average monthly salary, while such a business trip may harm their income.

It is known that in August 2022, a new Regulation on business trips within the Republic of Uzbekistan was adopted. [8. P.7] In accordance with paragraph 12 of this Regulation, the employee's business trip is carried out by reaching an agreement between employers. However, the average monthly salary for an employee is retained only at the main place of work.

The main regulator of business trips for employees outside Uzbekistan is the Regulation on the procedure for issuing funds for travel expenses during business trips of employees of ministries, departments, enterprises and organizations outside the Republic of Uzbekistan.

[9. P.6] However, this Regulation, although it does not contain a special rule regarding the preservation of the salary of a part-time worker when he is sent on a business trip outside Uzbekistan, it can be concluded that the state of a part-time worker will not change in any way compared to an internal business trip.

Let's take a look at the issue of leave. In this case, we will not talk about differences, but most likely about the features of granting holidays. The provision of leave for persons combining professions and internal part-time workers has no differences and is carried out in a general manner. Of greatest interest is the procedure for granting vacations to external part-time workers.

Labor legislation provides external part-time workers simultaneously with annual labor leave at the main place of work. Moreover, part-time workers have the right to take a vacation even if they have worked less than 6 months. Thus, employers are forced to provide leave in advance. However, part-time workers have such a right, provided that they were actually granted leave at their main place of work. Therefore, employers should request a certificate from the main place of work of the part-time job, which indicates the specific time of use of the vacation, as well as its duration, an extract from the vacation schedule and a copy of the vacation order. Regarding holiday payments, they can be paid in proportion to the paid time.

Often there is a case when the duration of vacations at the main place of work exceeds the duration of part-time work, or vice versa, which may slightly change the employee's plans. [10. P.921] In this case, part-time workers have the right to apply for a leave without pay. In her article, a specialist in the field of labor law Lenara Khikmatova gives the following decision. For example, the labor leave granted to a part-time worker (15 working days) is shorter than the leave at the main place of work (21 working days). At the written request of the employee, he is given leave without pay for the remaining days of leave at the main place of work. In this case, for 6 working days ($21 - 15 = 6$). [11. P.1]

Finally, the last difference is in the procedure for terminating the labor activity of part-time workers and persons combining professions. [12. P.122] In the case of combining professions, the termination of such activities is carried out by issuing an appropriate order. But the main question is whether there is a difference in the initiatives of the parties?! Unfortunately, this moment is not regulated by either the Regulation on part-time employment or the Labor Code of the Republic of Uzbekistan. Therefore, it seems appropriate to introduce an appropriate amendment or addition to the Regulations.

In contrast to combining professions with part-time employment, the termination procedure has a more specific procedure. Termination of an employment contract at the initiative of a part-time worker is carried out in the same manner as specified in Art. 99 TC RUz. In other words, the part-time worker has all the rights and guarantees provided to the main employees. In accordance with Art. 100 of the Labor Code of the Republic of Uzbekistan, the employer has the right to terminate the employment contract with part-time workers in connection with the employment of another employee who is not a part-time job, as well as due to the restriction of part-time work due to working conditions. However, Art. 102 of the Labor Code of the Republic of Uzbekistan does not contain a warning period upon termination of an employment contract with part-time workers.

Issues regarding the termination of an employment contract with part-time workers were provided for by the new Labor Code. And so, in accordance with Art. 441 of the Labor Code, employers, in case of hiring an employee for whom this work will be the main one, must notify the part-time workers in writing at least two weeks in advance about the termination of the employment contract with them or pay him a commensurate monetary compensation.

The presence of this provision in the new Labor Code indicates that the current unfavorable situation of persons working part-time is taken into account.

Conclusion

Combination and part-time work, despite some similarities, are two different forms of additional workload for an employee, entailing different labor consequences and differing in design. In the course of studying this topic, we managed to find out that the difference between them is quite significant - in the first case, this is a temporary increase in responsibilities, in the second, a new position or workplace.

Part-time employment must be formalized by an employment contract, combination - no (you only need an additional agreement to the existing contract). Restrictions have been established for persons wishing to work part-time. It is impossible to deal with these workers in hazardous industries, civil servants, security forces, minors and some other categories of persons.

Such work should not cause damage to health and degrade the quality of the main activity. You can not force an employee to work in combination without his desire.

The legislation does not establish a minimum working time for part-time workers, so “part-time work” can be of any duration - half an hour, two or three. But no more than four hours a day.

Having considered the procedure for remuneration of part-time workers and persons combining professions, it was found that:

First, an additional payment is made for combining professions, and wages are paid for part-time jobs.

Secondly, the combination of professions (positions) is based on the fact that the combined position is in the staffing table of the organization, but remains vacant, that is, the position generates savings in the wage fund, due to which the additional payment is established. In the absence of a vacancy, it is impossible to establish an additional payment for combining. The additional payment for combining a vacant position can be set for one employee or distributed among several employees, depending on the amount of additional work performed.

The employer should not forget that the part-time worker has the same rights as all other employees. In this regard, registration for work or his dismissal should be carried out on a general basis.

Close attention should be paid to the employment contract, it is its provisions that play a decisive role when the question of dismissal of a part-time job arises. Otherwise, the procedure will be the same as for the main employees.

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