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**LABOR TRANSACTION
(ABOUT CORRELATION OF CIVIL LAW AND LABOR LAW NORMS)**

Theory of civil law allows us to trace the history of formation of labor transaction institution. In the early 20th century a labor contract was interpreted as an institution of civil law being a contract of work and labor, i.e., a transaction with a specific composition of subjects. When labor law hived off civil law there emerged a visible tendency to negate best practices of civilists in the specification of definition and subject matter of labor contract. This article is an attempt to analyze a labor contract as a labor transaction using the relevant groundwork of civil law theory.

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**ТРУДОВАЯ СДЕЛКА
(О СООТНОШЕНИИ НОРМ ГРАЖДАНСКОГО И ТРУДОВОГО
ПРАВА)**

В теории гражданского права можно проследить историю становления института трудовой сделки. В начале XX в. трудовой договор трактовался как институт гражданского права – договор личного найма, т.е. сделка с особым составом субъектов. С отпочкованием трудового права от гражданского наметилась тенденция отрицания наработок цивилистов в характеристике определения и содержания трудового договора. В предлагаемой статье предпринимается попытка проанализировать трудовой договор как трудовую сделку, используя соответствующие наработки теории гражданского права.

Ключевые слова: трудовая сделка, трудовой договор, сделка в ГК РФ.

There are two tendencies in the history of formation of legal institution “labor contract”. First, labor contract developed as an institution of civil law. Second, the accumulation of regulatory legal material, enhanced public importance of labor transactions took it out of the frames of civil law thereby establishing conditions for the labor law to be separated and hived off to form an independent branch.

In the late 19th century - in the early 20th century labor contract was named “contract of work and labor”. It was defined as “an agreement in which pursuance, for remuneration, one person acquires the right to temporarily employ services of another person [1. P. 552]. Literature of that time stressed that law singularizes such an agreement to form a special group of commitments. It is characterized by a special composition of subjects whose personality “plays a particularly important role” [1. P. 559]. Contract of work and labor “involves liberal agreement of the parties” [1. P. 552]; it is compensated; the services delivered under the agreement “are inseparable from the person himself and consequently, usage of his labor

power, his working abilities, his talents is indirectly extended to their bearer" [1. P. 553]. Under such an agreement the employee "made his labor force available to the employer", i.e., subordination of the employee to the employer was presumed; he was supposed to preserve "those amicable agreements which are called closeness of the counterparties"¹.

In 1985 a contract of work and labor acquired the following definition in Russian legislation: "Contract of work and labor is an agreement about assuming by the employee of performance of his personal works, his service, jobs and personal labor in general, either manual or mental"². In other words, civil law accentuated the characteristic features of a contract of work and labor, i.e., special subjects of the contract; services rendered by the employee are not separable from his personality; compensatory nature; making employee's own labor power available to the employer; personal performance of work by the person who hired himself out. They were summarized in Russian and German civil literature. In 1908 L.S. Tal wrote that German civil literature was enriched with a new major and essential work, i.e., by essay by Professor Lotmar titled *Der Arbeitsvertrag nach dem Privatrecht des deutschen Reiches* (labor contract under civil law of the German Empire). According to F. Lotmar, labor contracts created numerous problems, difficult to solve both by science and by legislation³. Turning to their solution, F. Lotmar highlighted two elements of content of the labor contract: 1) promise of work by the employee; promise of remuneration by the employer. These elements made it possible for him to simultaneously trace relevant specifics of this sort of agreements.

L.S. Tal enlarged the scope of labor contract particularities that make a labor contract different from civil law agreements by formulating the employee's duty to obey the internal law and order instituted by the owner (employer). It is impossible therefore to unambiguously accept the implications by A.M. Lushnikov and M.V. Lushikova that it was L.S. Tal who was the pioneer in disclosing the criteria of

¹ According to G.F. Shershenevich, in their general character norms of factory law: "are distinguished by their tendency to limit the agreement freedom in reality capable of entailing the required subordination of the worker to the orders of the employer" G.F. Shershenevich. *Manual of Russian Civil Law*. St. Petersburg: Bashmakov Brothers, 1910. P. 561).

² See Code of Cassational Rules Regarding Substantive Civil Law of 1866–1910. St. Petersburg, 1911. P. 471.

³ According Terms are certainly not disputed. However, one of the scientific problems is the problem of choosing, from among all the optional terms, that specific one that would conform to the substance of the relevant phenomenon, action, state, etc. better than any other term. From this point of view, in its precision, the term "labor contract" cedes terms like "individual labor contract", "contract of work and labor", "contract of labor". The principle of terms conditionality does not avoid the need to update them and make them more specific. Not without reason, depending on the political regime, they used terms like "socialist labor contract", "capitalist labor contract". And it is far from being mere extravagancy of the authors of the last century. They reflected specific contents of these agreements, their subject matter, procedure, and form of execution. Reference can be made to Voitinsky's work *Labor Regulations*. Learning guide for higher educational institutions. Part I. Bourgeoisie Dictatorship and Labor Regulations. Moscow: State Publishing House "Soviet Legislation" 1934, P. 13–16; to manual *Soviet Labor Regulations* /under the editorship of K.L. Gorshenin, R.P. Orlov, V.M. Dogadov, Ya.A. Karasev. Moscow: Legal Publishing House of People's Commissariat of Justice of the USSR, 1939, P. 23 which denounce categorically the efforts of certain authors to interpret Soviet labor regulations as one of the forms of bourgeois law making it identical with factory legislation. In this regard it is notable how topical, under economic crisis conditions, is K. Marx's scientific heritage, his assessment of a labor contract under capitalism. (see: Marx, K. Capital; Marx, K. Criticism of Gothic Program; Marx, K. Compensation, Price and Profit and other works).

labor contract; that he is believed to have personally exposed such characteristic properties of a labor contract as 1) the person hired out under a labor contract promises a provision of his labor force in the favor of a household not owned by him; 2) the person hired out under a labor contract is required to perform the work personally; 3) the hired out person has the right to remuneration for his labor which does not depend on whether the employer has availed of his labor or not [2. P. 16]. It would be more correct to say that L.S Tal represented these properties in a more accurate way.

The formulation of labor contract concept and definition has been investigated thoroughly enough in labor law science¹. Modern Russian science defines labor contract as an agreement between an employee and an employer where the employee undertakes to personally perform the employment functions (work in a specific occupational field, qualification or capacity) abiding by the rules of internal code of conduct adopted by the particular employer while the employer undertakes to give work in accordance with specified employment functions, to provide labor conditions envisaged by labor legislation and other normative legal acts that contain labor law norms and by collective employment agreement, by arrangements, local statutory enactments and labor contract; to pay out wages to the employee in due time and in full scope².

This definition departs to a certain degree from the labor contract concept enshrined in Article 56 of Labor Code of the Russian Federation. We are certainly not talking - figuratively speaking - only about transposition of summands, i.e., about the order of enumerating the obligations of the parties to the agreement. In legislator's opinion, the employee undertakes to personally perform the "labor function specified by this agreement" and not to work in a specific occupational field, qualification or capacity. The legislator is right in that too. In market conditions of economic management the labor function cannot be determined as work in a specific occupational field, qualification or capacity. This becomes evident when analyzing labor contracts with employers – natural entities. Article 303 of Labor Code of the Russian Federation quite reasonably emphasizes that the employee undertakes to "perform work identified by this agreement and not prohibited by this Code or any other Federal law". In small businesses it is often absolutely impossible to hire an employee that would perform a labor function within a clear-cut occupational field, specialist field or qualification. Small business is sphere of application of labor mostly by an adaptive worker³, i.e., a performer who, apart from being qualified in several professional fields, is, due to his qualification, capable to adapt himself to updating labor conditions, i.e., new machinery, processes, to improve the technological process of producing goods, rendering services, performing works.

¹ See, e.g., L.Yu. Bugrov. Key Development Stages of Norms Governing Labor Contracts in Russian and in Foreign Legal Systems before Russian October Revolution // Russian Yearly of Labor Law. 2007. No. 3. PP. 127-137; Ye.M. Akopova. Agreement and Labor contract: Historic-and-Legal Aspect// the above periodical. PP. 54-61; A.M.Lushnikov. Generation and Development of Labor Law Science and Social Security Right Science in Russia (late 19th century - early 20th century). Yaroslavl. 2001. PP 105-114.

² Labor Law of Russia: manual for higher educational institutions// A.V.Zavgorodny [et al.]; under the general editorship of Ye.B. Khokhlov, V.A. Safonov. M.: Yuright-Izdat, 2008. P.271 (A.V. Zavgorodny is the author of the chapter).

³ Adaptive worker, see in detail in: V.M. Lebedev. Labor Law and Acirbiology (Special Part). M.: Statute, 2008. PP 9, 56-59 and other pages.

Neither can we agree with the statement saying that the employer is obliged to secure labor environment for the worker stipulated by “labor legislation and other normative legal acts that contain norms of labor law”. While providing proper working conditions for the worker, the employer is obliged for example, to observe requirements affirmed in environmental law acts that are binding on the employer’s enterprise. As we know, environmental law acts do not contain any norms of labor law but it is particularly these acts that predetermine specific working conditions.

The legislator, followed by quite a number of representatives of labor law science, started to combine a transaction and a legal relation in the definition of labor contract. It is commonly known that the contents of legal relation are the rights and obligations of the parties, of the employer and the employee, which they become only after concluding a labor contract. In Article 20 of LC RF the legislator enacted that “an employee is a natural person who entered into labor relations with an employer” while “an employer is a natural or legal person (organization) who entered into labor relations with an employee”. At the same time the legislator regards a labor contract as the basis for emergence of employment relationship at law (Part 1 of Article 16 of LC RF). Consequently, with the best will in the world, it is impossible to combine labor contract and employment relationship at law in one definition.

If we turn to the formulation origins of “labor contract” concept we can easily notice that, as far back as at his time, F. Lotmar did not determine labor contract via the rights and obligations of the parties but via their promise of certain actions to be performed already after conclusion of the agreement. As was mentioned before, L.S. Tal believed that the person hired under a labor contract promises a provision of his labor force in the favor of a household not owned by him.

In point of fact, labor contract is a labor transaction on individualization and delimitation of labor interests of the parties to the agreement; it is a mere basis of emergence – after signing the labor contract – of certain rights and obligations (employment relationship at law). The parties to a labor contract are not yet an employee and an employer who acquire certain labor rights and obligations as a result of its conclusion and as a rule after executing a relevant document and signing it. The parties to a labor contract and the parties to an employment relationship at law are ranked differently. According to Article 57 of LC RF a labor agreement mainly contains details that can hardly be interpreted as rights and obligations of the parties: full name of the employee and description of the employer; information about the documents certifying the identity of the employee and the employer-natural person; identification number of a tax-payer; information about the employer’s representative who signed the labor contract and the grounding for vesting him with authority; place and date of labor contract conclusion; starting date of employment, etc. Only in part 5 of Article 57 of LC RF the legislator mentions about the possibility of including in the labor contract of rights and obligations of the employee and the employer that have already been established in labor legislation, other normative legal acts containing employment and labor laws, local statutory enactments, collective employment agreement, arrangements. However their presence in the labor contract is not compulsory because their absence in the text of the agreement “cannot be regarded as refusal from enjoyment of these rights or from performance of these obligations”.

Specific agreements implement the legislator's idea of making a labor contract equivalent to an employment relationship at law. This is one of the cases when science should not patiently follow in the wake of administration of law or of a legislative organ.

Labor agreement is a synallagmatic, private-law, consensual transaction. Instead of confirming the rights and obligations of the employer and the employee, a labor contract should confer the promise of the hired person to provide his labor force at the employer's disposal, the promise to work abiding by the rules of internal code of labor conduct adopted by the organization. The employer in his turn should promise to provide the employee with a possibility to perform his agreed labor function and to provide adequate conditions and payment of employee's work¹.

Proceeding from this interpretation of a labor contract we can explain why the employer does not pay any salary to the employee who has not commenced his work, why in such cases the employer can cancel the labor transaction (part 4 of Article 61 of Labor Code of the RF). Once again it is a confirmation of the argument stating that a labor contract does not establish an obligation to perform a certain labor function, to obey master's dictatorship of the employer but instead, a labor contract is merely the employee's promise to perform the above terms of labor transaction.

It is reasonable to distinguish between the objective and the function of a labor contract. The main objective of a labor contract is to actuate norms of objective right, to involve the employer and the employee in the scope of application of the norms. Supporting objective of the above labor transaction is to perform as a document, in the form of a written labor contract, as a rule, which determines the promise of the parties to abide by the agreement terms established in its text. The main function of a labor contract is to perform as a labor transaction, i.e., as a legal act with which the legislator associates the emergence of rights and obligations of the transaction parties, that is, the emergence of employment relationship at law. Supporting function of a labor contract is the function of individual legal act which records the delineation, personification, detailing of interests of its parties².

¹ It is notable that the contents of an agreement in civil law science is not considered as an aggregate of rights and obligations of the parties to the agreement but instead, as "conditions under which the parties' agreement is reached" (*Civil Law. Manual. Volume 1. M.: Prospect. 2001. P. 489*). Also see *Civil Law of the Russian Federation. Manual. Volume 1 / Under editorship of O.N.Sadikov. M.: Contract: Infra-M. 2010. P. 349*.

² N.I. Diveyeva believes that an agreement performs a function of individualization of behavior of specific subjects when it "appears as a relationship at law or more specifically, as a "model" of relationship at law. There is an interesting point in a labor contract: bringing a relationship at law to birth by the moment of agreement conclusion it does not terminate its legal status. The agreement turns into the form that clothes the relationship at law and the labor contract maintains this form at the available level as long as is desired. We can speak about an agreement-relationship at law in that specific context" (N.I. Diveyeva. *Theoretic Problems of Individual Legal Regulation of Labor Relations. Synopsis of a thesis of Doctor of Juridical Science. St-Petersburg., 2008, P. 32*). The above quotation contains some theoretical and practical incorrectness. First, it is commonly known that labor contract is not and cannot be a model of relationship at law because it is, as N.I. Diveyeva acknowledges, is brought to birth by the "moment" of labor contract conclusion. Moreover, a labor contract may be terminated

(Part 4, Article 61 of LC of RF). In these cases "moment" of signing a labor contract occurred while an employment relationship at law did not appear. Moreover, it is difficult to understand the correlation of labor

Labor Code of the Russian Federation (Articles 56, 57) distinguishes a labor contract between an agreement (labor transaction) and an individual legal act, a document. Moreover, the legislator does not equate the information and the conditions that form the subject matter of a labor contract. As was mentioned before, if during conclusion of a labor contract it did not include certain information and/or conditions from among those envisaged by part 1 and part 2 of Article 57 of Labor Code of the Russian Federation, this is not the ground for identifying the labor contract as unsigned or for its dissolution. The labor contract may be expanded by including lacking information and/or terms. In this case the lacking information is entered directly in the text of labor contract while the missing terms are appended as an exhibit to the labor contract or as a separate written agreement appended to the labor contract, both becoming an integral part of the labor contract. It cannot be otherwise because in the latter case the contents of labor contract as of an agreement between the parties changes, every time due to the alteration and specification of declaration of will of the subjects of labor transaction, i.e., of essential condition¹ for any agreement including a labor contract.

We can also discuss an alternative function of labor contract, i.e., its atypical function; the one beyond the normal limits of labor transaction function, that is, to formulate the labor conduct rules not contained in labor legislation, collective employment agreement, local statutory enactments and only in the cases when it is permitted by the law or does not contradict the law. Labor contract may contain normative terms² whose scope of application is limited both by duration and place of work and by labor function performed by the employee.

Labor contract or, to be more exact, the employment relation at law emerging based on labor contract is rather a dynamic phenomenon in market economy environment. In its course there may be situations causing a necessity to make changes in the initially agreed employment terms, the changes being usually executed in a relevant transaction.

law and employment relationship at law – as form and content – if the author proposes a single conceptual unit structure of “agreement-relationship at law”.

¹ The problem of classification of labor contract terms (compulsory, supplementary) in the labor law literature acquires a new accent due to the introduction by the legislator of a new concept, concept of compulsory terms. Quite an acceptable solution was proposed by M.A. Drachuk (M.A. Drachuk. Types of Terms in a Labor Contract // Newsletter of Omsk State University. “Law” series. 2005. 31. PP 81-83).

Besides compulsory and supplementary terms of a labor contract the legislator of the Republic of Belarus also makes provision for a list of essential labor conditions: “system and amount of remuneration of labor, guarantees, working time pattern, labor grade, description of the profession, post, establishment or cancellation of part-time working hours, combining of professions and other terms set up in accordance with this Code (Article 32 of Labor Code of the Republic of Belarus).

For making the distinction between compulsory, supplementary and essential terms of the contract we can make use of the know-how by civilists “conditions that are necessary and sufficient for concluding a contract are acknowledged to be essential” (Civil Law. Volume 1. Under the editorship of O.M. Sadikov. M.: 2010. P. 362).

² According to N.I. Diveyeva, in such cases we are talking about supplementation/ administration of law. “It is connected with individual vigorous activity of labor subjects who establish new (special) additional power and authority for themselves. This provides a unique nature of individual legal regulation, the subject matter of relationship at law gets expanded as compared with the “basic” model, specified by the legislator. Supplementation /administration of law results in an individual legal norm which is not “created”, but is protected by the state” (N.I. Diveyeva. Theoretic Problems of Individual Legal Regulation of Labor Relations. Synopsis of a thesis of Doctor of Juridical Science. P. 9–10).

The new chapter in the Labor Code of the Russian Federation, Chapter 12 "Modification of Labor Contract", is not quite a correct implementation of concept of a labor contract as an employment transaction established in Article 56 of the Labor Code of the Russian Federation. Modification of labor contract envisages conclusion of a new labor transaction which replaces the existing labor contract or emendates the labor contract appropriately.

However, apart from transaction, the legislator includes dismissal from work (Articles 72.1, 76 of the Labor Code of the Russian Federation) in the modification of labor contract; dismissal is usually an arbitrary decree of the employer that does not require respective declaration of will by the employee, i.e., it is an individual legal act that excludes labor transaction.

Labor Code of the Republic of Belarus also contains Chapter 3 "Modification of Labor Contract" but dismissal from work is not included in this institution.

Legislator of the Republic of Kazakhstan does not provide a special institute "Modification of Labor Contract". Article 32 of Labor Code of the Republic of Kazakhstan specifies "procedure of conclusion, modification and supplementation of labor contract" where, in accordance with Item 2, the modifications and supplementations of labor contract are made by the parties in writing in accordance with the procedure of signing a labor contract. This structure makes it possible to analyze the dismissal from work within the system of labor contract without considering it to be a modification of labor transaction.

Transfer to another job is usually understood to be a permanent or temporary change in the labor function of the employee and/or of structural subdivision in which he works (if the structural subdivision was mentioned in the labor contract) and the employee continues to work for the same employer; or it can be transfer to work at some other locality together with the organization (Article 72.1 of Labor Code of the Russian Federation).

According to Article 30 of Labor Code of the Republic of Belarus "work in a different profession, specialist field, qualification, post (with the exception of changes in the description of the profession, post) as compared with those specified in the labor contract, committed by the employer to the employee, is admitted to be transfer to another job as well as commission of work to the employee at premises of a different employer or in a different locality (excluding travel on official business)". This is a more precise definition because as transfer to another job can also be admitted the commission of work to the employee in a different locality without changing the already existing structure of the organization, for example, work in a shop or branch situated in a different town (different locality).

As a rule, the distinctive feature of transfer to another job on the initiative of the employer is a written consent of the employee to this sort of changes in the labor contract terms. In other words, what is meant here are changes, agreed upon by the parties, in compulsory (essential) terms of the labor contract. It is not difficult to notice that in such cases it would be more exact, instead of speaking about modifying the labor contract, to mention signing of a new labor contract or at least conclusion of an additional labor transaction. This deduction is confirmed for example, by Methodic Recommendations on the Introduction of New Systems of Remuneration of Labor in Federal Budgetary Establishments which were approved by Order

No. 663¹ of October 22, 2007 by Ministry of Health and Social Development. The document quotes the form (recommended reference sample) of a supplementary agreement to the labor contract with an employee due to introduction of new systems of remuneration of labor (appendix). The same practices are exercised currently in budgetary establishments of the Russian Federation.

Article 72 of Labor Code of the Russian Federation gives an even wider interpretation of changes in the labor contract. According to Russian legislator, any “modification to labor contract terms specified by the parties, including transfer to another job, is permitted only by mutual consent of the parties to the labor contract with the exception of cases envisaged by this Code”. Such an agreement “is concluded in writing”. Consequently, this is not the case of “correcting” the previously signed labor contract but it means an independent labor transaction which, the same as a labor contract is a legal fact, basis for emergence of a new legal relation. This sort of consummated labor transactions, with a certain degree of abstraction, may be regarded as a modification to the labor contract. However, from the theoretical and practical points of view it is difficult to understand the necessity, appropriateness of this sort of interpretation. Complex legal composition may be the bases not only for emergence of employment relation at law but of its modification, of its improvement, including limitation or expansion of scope of labor rights and obligations of the parties, i.e., of their legal state. At the same time terms of Article 9 of Labor Code of the Russian Federation must be observed. According to this latter article labor relations may be regulated by the employee or the employer by way of signing, modifying or extending the labor contract. But this act cannot contain terms limiting the rights or reducing the level of guarantees for the employees as compared to those established by labor law or other normative legal acts containing labor law norms. If such terms are nonetheless included in the labor contract, they are not subject to application. This part of labor transaction is void. Differentiation of types of labor transactions, including void and voidable ones, is waiting to be handled by its researchers. We can't fail to see practical significance of this problem because as a rule, void transactions are revealed only when an employee applies to jurisdictional bodies. Labor law contains no instrument of recognizing a transaction as void therefore the employee is forced to “turn” every void transaction into a voidable one. Complications connected with applying and consideration of labor cases in judicial bodies, moral and financial damage provoke an employee to accept conditions contained in void, and quite often, in voidable labor transactions.

Literature registered other deficiencies from the point of view of a legislator. Ye.B. Khokhlov, for instance, believes that not each novation in the composition of a subject can be regarded as modification of labor contract. In some cases such novation entails a termination of effect of the previous labor contract and signing a new labor contract. Suspension of an employee from work is not modification of labor contract; it is temporary suspension of the operation of a contract [3. P. 351–352].

In Article 72 of Labor Code of the Russian Federation it would be well to clarify the wording “modification of labor contract terms specified by the parties” by

¹ Bulletin of Labor and Social Legislation. 2008. No. 1. P. 3031.

reference to Part 2 of Article 57 of Labor Code of the Russian Federation. These should be compulsory terms of labor contract, i.e., terms as provided for in the labor legislation, other normative legal acts in which employment and labor laws are contained¹.

It would be more precise to interpret modification of a labor contract as suspension and renewal of employment relationship at law. Thus, in the case of temporary transfer of an employee to another job the legislator permits the employer to suspend the employment relationship at law for a specified period. By agreement of the parties made in writing an employee may be temporarily transferred to another job at the premises of the same employer for the period of up to one year. For the same period of time the previous employment relationship at law is suspended and is resumed at the termination of the period of transfer (Part 1 of Article 72.2 of Labor Code of the Russian Federation). Similar suspension of employment relationship at law takes place in cases specified in Parts 2 and 3 of Article 72.2 of Labor Code of the Russian Federation in the case of natural or technogenic catastrophe, industrial accident, occupational accident, fire, flood, famine, earthquake, epidemic or epizootic and in any exceptional cases that pose a threat to life or normal living conditions of all of the population or of part of the population (Part 2 of Article 72.2 of Labor Code of the Russian Federation) and in the case of down time (temporary interruption of work due to economic, technological, technical or organizational reasons); when it is necessary to prevent destruction or damage of property, or take the place of employee who is temporarily absent from office due to extraordinary circumstances (Part 3 of Article 72.2 of Labor Code of the Russian Federation).

At the end of temporary transfer period the suspended employment relationship at law is resumed. By mutual consent of the Parties the employment relationship at law may be terminated. If an employee who was transferred to replace the temporarily absent person did not request resumption of previous employment relationship at law at the end of the transfer period and he continues to work, then the term "of agreement about temporary nature of the transfer becomes inoperative and the transfer is regarded to be permanent". Consequently, in such cases a new employment relationship at law emerges while the old one is terminated.

Multiplicity and motley of reasons for partition of types of labor contract modifications have an impact on their form and implementation procedure. Moreover, for some reason suspension from work is also treated as modification of labor contract by Russian legislator (Article 76 of Labor Code of the Russian Federation). "Employer is compelled to suspend from employment (to keep away from work)" quite a number of persons enumerated in the list specified in the article. In these cases the labor contract remains in force. Temporary suspension of his employment function by the employee, for instance, in the cases when he "did not receive training or assessment of knowledge and skills in the sphere of occupational health and

¹ In the initial version of Labor Code of the Russian Federation of 2001 the legislator meant modification of existing labor conditions whose scope was specified in Article 73 of Labor Code of the Russian Federation for the cases of transfer. When the denotation regarding modification of only essential conditions of labor was excluded from Article 72, it caused depletion of this definition. Most probably, in the 2006 version of Labor Code of the Russian Federation "essential conditions" concept was replaced by the concept "compulsory conditions".

safety or compulsory or periodical medical examination (screening) through no fault of his” (Part 3 of Article 76 of Labor Code of the Russian Federation) most probably has no concern with modification of the labor contract. The contents remain the same. If we follow the position of the legislator, then any case of absence of an employee from his workplace can be treated as modification of labor contract. Though, to be honest, the legislator limits these cases of absence by four factors. First, the employer undertakes suspension from work at the request of bodies or officials authorized by law. Second, such suspension is compulsory for the employer. Third, it is temporary. The employee is suspended from performing his employment function “for the whole period of time till the moment circumstances causing suspension of work or dismissal from work are eliminated” (Part 2 of Article 76 of Labor Code of the Russian Federation). Fourth, suspension of an employee from job does not require ascertaining (proving) his guilt each time.

The employer is obliged to suspend from work (debar from employment) the persons who: a) came to work in a condition of alcoholic or any other intoxication or under the influence of drugs; b) did not receive training or assessment of knowledge and skills in the sphere of occupational health and safety in accordance with the established procedure; c) did not have compulsory or periodical medical examination (screening) in accordance with the established procedure or compulsory psychiatric examination if it is required in accordance with current legislation of the Russian Federation; d) have medical contradictions established in the medical assessment report to perform work specified in the labor contract; e) in the case when a special right of the employee (license, driver’s license giving the right to operate motor vehicles, the right to bear arms etc.) was suspended for the period of up to two months and it results in the impossibility to perform obligations under the labor contract by the employee or if it is impossible to transfer the employee – with his written consent – to a different job available at the employer’s premises; f) at the request of bodies or officials authorized by law of the Russian Federation. The list of items is open. It can be modified by federal laws or by other normative legal acts of the Russian Federation.

Dismissal from work may also be interpreted as suspension of employment relation at law for a specified period of time, at the end of which period its validity is resumed.

The foregoing makes it possible to draw certain conclusions. First, transaction is a general theoretical concept. It is investigated by civilists thoroughly enough. Theory of transactions is lawfully developed currently by representatives of sectoral sciences taking into account best practices of civilists.

Second, apart from the concept of transaction it is necessary to distinguish a transaction as an aggregate of certain norms, i.e., as a legal institution. No intersectoral transaction institution exists. Transaction institution, or, to be precise, its varieties are objectified in each separate branch of law. It concerns, first of all, contracts and other types of agreements established in the legislation of separate branches.

Third, conclusion of a specific transaction requires equality of subjects who in the current situation possess comparatively equal possibilities of choosing the prospective variant of their behavior.

Fourth, even unilateral transactions (gift agreement, one-time incentive remuneration of an employee by the employer, etc.) do not envisage anticipatory subordination of one party to another. In those cases though, when relations of domination and subordination exist, a legal individual act takes place instead of a transaction.

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ТРУДОВАЯ СДЕЛКА (О СООТНОШЕНИИ НОРМ ГРАЖДАНСКОГО И ТРУДОВОГО ПРАВА)

Ключевые слова: трудовая сделка, трудовой договор, сделка в ГК РФ.

There are two tendencies traced in the history of formation of “labor contract” institution. First, for quite a long time labor contract was developing as an institution of civil law. In early 20th century labor contract was interpreted as a contract of work and labor, i.e., as a transaction with a specific composition of subjects, as an agreement by virtue of which one person acquires the right to make temporary use of the services of another person. Civil literature of that time stressed that this kind of agreements was singularized by law into a special group of commitments.

Second, accumulation of statutory and regulatory materials, of their practical use, increasing social significance of labor transactions make labor contract relatively independent and it is taken beyond the framework of civil law. This forms conditions necessary for an independent branch, labor law, to hive off civil law. Then labor contract becomes foundational institution of a new branch of law where its concept, contents, bases for emergence and termination are investigated. These are the problems analyzed in this article. Meanwhile the article stresses the close relationship of theory and practice in civil and labor laws.

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