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К ПРОБЛЕМЕ ЗАКОНОДАТЕЛЬНОГО УСТАНОВЛЕНИЯ МИНИМАЛЬНОГО ВОЗРАСТА НАСТУПЛЕНИЯ ТРУДОСПОСОБНОСТИ

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Аннотация

Законодательное установление минимального возраста наступления трудоспособности относится к сложнейшим проблемам современного российского трудового права. Трудовой кодекс РФ содержит некоторые противоречия, которые и определяют исследовательский интерес к данной теме. Предусматривая право гражданина на заключение трудового договора с 16 лет, законодатель тем не менее, вводит и ряд случаев, позволяющих гражданину заключать трудовой договор до достижения 16 лет, в чем видятся явные противоречия. В статье проводится обзорный анализ норм трудового законодательства, регулирующих вопросы возрастных ограничений для несовершеннолетних граждан в части заключения трудовых договоров. Отмечаются некоторые противоречия в регулировании указанных аспектов. Подчёркивается неконкретность определения понятие «трудоспособность». Автор также обращается к советскому опыту нормативного закрепления понятий общей и профессиональной трудоспособности, обосновывая при этом целесообразность первоочередной ориентации именно на общую трудоспособность в вопросе допуска несовершеннолетних лиц к трудовой деятельности. Также автор соглашается с важностью особой заботы о подрастающем поколении и сохранении определённых ограничений на допуск к труду данной категории граждан. Подводя итоги, автор предлагает конкретизировать критерии, на базе которых должна определяться

трудоспособность (вне контекста инвалидности или временной нетрудоспособности), с учетом не только формального, но и фактического аспекта готовности к выполнению трудовой деятельности.

Ключевые слова: дееспособность, субъекты трудовых отношений, наступление трудоспособности, несовершеннолетний, трудовые отношения, трудоспособность, трудоспособный возраст

Original article

ON THE PROBLEM OF THE LEGISLATIVE ESTABLISHMENT OF THE MINIMUM AGE FOR THE ONSET OF WORKING CAPACITY

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Abstract

The legislative establishment of a minimum age for the onset of working capacity is one of the most complex problems of modern Russian labor law. The Labor Code of the Russian Federation contains some contradictions that determine the research interest in this topic. While providing for the right of a citizen to conclude an employment contract from the age of 16, the legislator nevertheless introduces a number of cases that allow a citizen to conclude an employment contract before the age of 16, which clearly contradicts. The article provides an overview of the norms of labor legislation governing age restrictions for minors in terms of concluding employment contracts. There are some contradictions in the regulation of these aspects. The ambiguity of the definition of the concept of "ability to work" is emphasized. The author also refers to the Soviet experience of normative consolidation of the concepts of general and professional ability to work, while justifying the expediency of prioritizing general ability to work in the issue of admission of minors to work. The author also agrees with the importance of taking special care of the younger generation and maintaining certain restrictions on the admission of this category of citizens to

work. Summing up, the author suggests specifying the criteria on the basis of which working capacity should be determined (outside the context of disability or temporary disability), taking into account not only the formal, but also the actual aspect of readiness to work.

Keywords: legal capacity, subjects of labor relations, onset of working capacity, minor, labor relations, working capacity, working age

Introduction

В системе основных прав, гарантированных гражданам, особое место занимает право на труд, предусмотренное 7 and 37 of the Constitution of the Russian Federation [1] and detailed in the norms of the Labor Code of the Russian Federation [3] (Labor Code of the Russian Federation). The exercise of this right, both in general and in some individual components, is associated with the onset of a citizen's ability to work due to reaching the age specified in the law. And the issue of the legislative establishment of the minimum age at which the ability to work arises and the right to enter into an employment relationship appears, having concluded an employment contract, is the cause of lively discussions. This forced the author to address this problem as one of the most relevant for modern Russia.

The main part

Guided by the general rule set out in Part 1 of Article 63 of the Labor Code of the Russian Federation, we note the right to enter into an employment contract upon reaching the age of 16. The establishment of this age characteristic is due to the onset of working age: it is when a citizen reaches the age of 16 that he is recognized as able-bodied [6].

But the Labor Code of the Russian Federation in Article 63 also contains a number of exceptional cases when an employment contract can also be concluded by a citizen who has not reached the age of 16. This means that the issue of determining the age of disability is not unambiguous, even from the point of view of the legislator.

Upon reaching the age of 15, in accordance with Part 2 of Article 63 of the Labor Code of the Russian Federation, citizens have the right to enter into labor relations, but only if they "perform light labor that does not harm their health." At the same time, in certain cases, it is also important that there is no damage to the development of the educational program, if a citizen belonging to the specified age category of employees left the educational organization or was expelled from it.

That is, the first and main condition for deviating from the general rule, which allows reducing the minimum threshold for the onset of working age, is the absence of harm to health. This condition is particularly important given that in many cases working conditions, although within the legal framework, do not provide adequate safety. Formal confirmation of this is, for example, Article 14 of the Federal Law "On special assessment of working conditions" [5]. Based on this standard, working conditions can be: optimal, acceptable, harmful and dangerous. And, of course, the legislator cannot fail to take into account this specific nature of labor activity, which is especially important in conditions when the state seeks to provide the younger generation with proper care, the most favorable (possible) conditions for growth, development, education, and the formation of the individual as a whole.

Here, an important condition and an important nuance is that there is no obligation to obtain the consent of the parents and the guardianship authority. That is, since the age of 15, the legislator has provided a certain freedom to enter into labor relations, albeit limited. This gives the right to fully assert the emergence of working capacity, at least partially or limited, in 15 years.

In addition, Part 3 of Article 63 of the Labor Code of the Russian Federation allows the conclusion of an employment contract with a person who has reached the age of 14, but only with the written consent of one of the parents (guardian) and only for performing light work that does not cause harm to health. And if such an employee receives a general education, then labor activity can be carried out exclusively in his free time from receiving education and without prejudice to the development of the educational program.

The fact that the legislator allows entering into an employment relationship after reaching the age of 14, even if it requires the consent of legal representatives, also indicates that there is a certain ability to work at such an early age, although this ability to work is less pronounced in comparison with the ability to work of persons who have reached the age of 15 or 16. And it is obvious that the key condition for the formal emergence of working capacity at the age of 14 is the consent of the parents or guardian.

Tsch. 5 of Article 63 of the Labor Code of the Russian Federation in relation to work in cinematography organizations, theaters, theater and concert organizations, circuses also allows the conclusion of an employment contract with citizens who have not reached the age of 14, if the work consists in creating and (or) performing (exhibiting) works and does not cause damage to health and moral development. In this case, the parent or guardian of the minor employee is authorized to sign the employment contract. Moreover, it is mandatory to obtain permission from the guardianship and guardianship authority, which is also authorized to determine the maximum allowable duration of daily work, as well as other working conditions.

The considered norm indicates the possibility of even more limited working capacity at an earlier age. And the fact that the employee himself, who de jure enters into an employment contract, does not have the right to sign it, raises some questions, in particular, the question of the appropriateness of considering him as a full-fledged subject of labor relations. Nevertheless, the very fact of recognizing the ability to perform certain labor duties means that even before the age of 14, a citizen can be de facto able to work, at least partially, with very significant restrictions.

This means that the concepts of "ability to work" and "able-bodied citizen", including in the age aspect, are very contradictory in Russian legislation, and the contradictions are largely due to the presence of some additional conditions for concluding an employment contract in relation to persons under the age of 16.

Another reason for the contradictions is seen in the discrepancy between the formally established age criteria for the onset of working capacity and legal capacity.

The latter is determined by a citizen reaching the age of majority (18 years) in accordance with Article 21 of the Civil Code of the Russian Federation [2].

That is, the onset of disability cannot be directly correlated with the onset of adulthood, at least formally. Although, if we take into account the existence of significant restrictions and specifics of regulating the work of persons who have reached the age of 16, but have not reached the age of 18, we can see a certain conditionality of working capacity and adulthood, although this conditionality is not so obvious.

A citizen becomes fully capable from the age of 18, while he becomes fully capable de jure from the age of 16. However, until the age of 18, the legislator still provides additional guarantees that reflect special concern for the safety of such persons (Chapter 42 of the Labor Code of the Russian Federation). Upon reaching the age of 18, additional guarantees no longer apply to a citizen. This makes it possible to question the emergence of full working capacity at the age of 16. It seems that it occurs precisely with the attainment of adulthood.

If we ignore the norms of the Labor Code of the Russian Federation and other legislative and bylaws, asking the question on the basis of which the legislator set the appropriate age criteria for working capacity, it is unlikely that we will be able to answer it accurately. Here it is appropriate to emphasize the ambiguity of the definitions of working capacity presented in the legislation and literature, as indicated, for example, by E. Y. Belogradov and A. E. Panov [9, p. 47].

It is interesting that some official documents, where the issues of working capacity are considered in sufficient detail, do not reflect exactly the specific criteria on the basis of which the issue of recognizing a person as able to work is resolved (outside the context of establishing disability and assessing temporary disability). For example, Letter No. 14-6 / 10 / B-8769 of the Ministry of Labor of the Russian Federation dated 30.05.2024 [7] contains a section on the legal grounds for entering into an employment contract with minors. And in this section, only the provisions are mentioned, based on which it is allowed to enter into an employment relationship after

reaching a certain age. However, it does not say on the basis of what criteria the ability to work is determined in relation to persons under 18 years of age.

As a result of studying the federal legislation, it was possible to find only one case of clarifying the concept of working capacity, where it is understood as the ability of an employee to carry out labor activity [4]. However, there is no detail in this case. Moreover, it is not entirely clear what kind of working capacity is implied by the legislator both in a particular case and in general when mentioning the corresponding concept.

And here it is impossible not to pay attention to the fact that in the USSR, since 1961, some ideas about working capacity have been formulated, and they are fixed in the standard: first, professional ability to work, interpreted as the ability to work in one's profession, and secondly, general ability to work, defined as a person's ability to perform unskilled labor, has been singled out. [8]. And despite the fact that the document in which these definitions were presented has now lost its legal force, the definitions themselves are of interest from the point of view of scientific understanding.

Taking into account the above, we consider it important in terms of legal regulation of the work of minors in general, including in determining the age of disability, to understand the ability to work as the ability to perform unskilled labor, that is, any work that does not require special knowledge, skills, special training, or vocational education. And it is this approach that makes it possible to see the appearance of working capacity at the earliest possible age, including before a citizen reaches 14 years of age.

However, the legislator, including in order to exclude the excessively early involvement of minors in work, which may negatively affect their educational activities, development and health, is in no hurry to introduce any rules that would reduce the sixteen-year-old age of disability.

In science, the question of determining the ability to work has broader views. Within their framework, two approaches that have gained considerable popularity have been formed. In one case, medical criteria are taken as a basis, according to which a

person's fitness for work is assessed. In this case, the main attention is paid to the absence of risk for the person himself when carrying out work. In other words, if a person is able to carry out labor activity and this work does not entail a significant risk for him, then the presence of working capacity is recognized. The second approach is based on a whole system of heterogeneous criteria, which are grouped into 4 levels and assume: first, an assessment of the functional characteristics of a person (health, physical, mental characteristics); second, acquired knowledge, skills, skills, experience; third, motivation; fourth, the working environment [10, pp. 20-21].

Of course, combining both concepts gives a more comprehensive view of the ability to work. However, if we talk about the formal aspect, the Russian legislator focuses primarily on the medical criterion.

Given the obvious desire of the Russian legislator to limit the work of minors as much as possible, it also becomes clear that when determining the ability to work, he takes as a basis indicators of physiological (functional) and intellectual indicators of human development as a person. In other words, the functional aspect of the state of the human body is taken into account, including the state of the cardiovascular, respiratory, musculoskeletal systems, as well as the central nervous system [10, p.22]. And this condition is obviously caused, among other things, by reaching a certain age, first of all, 16 years. Of course, reaching the specified age characterizes a person's compliance with certain characteristics that are important for work, but only conditionally.

Therefore, the emergence of working capacity reflects two aspects: actual and legal: actual means the ability to perform a particular labor activity, regardless of the type of work performed. As for the legal aspect, it reflects the existence of the corresponding right to become a subject of labor relations. And the fact that a citizen who has not reached the age of 16, for example, is not recognized as able to work *de jure* does not mean that in fact he is not able to perform any work.

Conclusion

In the current legislation, the actual aspect of working capacity is not reflected in any way, but there is only a purely formal aspect, on the basis of which it is customary to associate the onset of working capacity with the achievement of the age of sixteen. This approach of the legislator is dictated by the desire to provide first of all conditions for personal development and education, but not by the actual inability of minor citizens to perform any work. In this regard, we consider it necessary to regulate the issue of setting the minimum age of working capacity in the norms of labor legislation on the basis of certain criteria that take into account, first of all, the actual readiness of a citizen to work, and not the formal aspect of working capacity expressed by the fact of reaching the age of 16.

The presented conclusion is based, *inter alia*, on the existence of contradictions between the formally established age of sixteen when the right to conclude an employment contract arises and the possibility of concluding an employment contract at an earlier age, as well as the appearance of actual working capacity before reaching the age of 16.

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