

## The influence of labour transformation on development of contemporary labour law science



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**Abstract.** *The article focuses on the analysis of labour transformation manifestations and their influence on development of contemporary labour law science. It establishes that labour law science faces a broad range of issues caused by social development conditions. The peculiarities of an “atypical” employee’s job must become a subject of a specific research, whereas the contemporary employment doctrine urges for its establishment, with the conventional understanding of labour function undergoing changes.*

**Key words:** *labour transformation, non-standard employment forms, adaptive employer, labour law science, labour market, education services market.*

### Problem statement

The transition to post-industrial society is marked by labour transformation as a revolutionary change of existing stereotypes, interests, values, and principles. Practice shows that the worldwide tendency at labour markets is accompanied with a shift of accents from permanent to temporary employment, from full-time to part-time one, from the work at an employer’s enterprise directly to the work from home, from the work as a regular workforce to the free-lance one. The process of emergence and intensive development of telework observed in Europe and other regions of the world economy is not represented in actual exercise of legal policy in Ukraine with reference to regulation of hired labour relations, which may not speak for improvement of quality of operative labour legislation of Ukraine. The draft Labour Code of Ukraine disregards this problem at all. Yet, there are all the pre-requisites to state that telework-based employment does exist in Ukrainian reality, too. The labour law science does not have a concept for elaboration of remote working as a non-standard employment form, proved with absence of accurate definition and distinction of such notions as “distance work”, “remote working”, “telework”, and “work from home”. The legal systems of foreign countries have not

developed a common opinion to the legal nature of distance work phenomenon either. All these issues require both of scientists and legislators' special attention; evoke necessity to provide for due legal regulation to be based on the doctrinal developments of science. The level of economy in any country and formation of the processes of its sustainable development fully depends on the State's attitude to efficient regulation of the use of citizens' labour resources. The shortage of the personnel with required qualification caused by the loss of correlation between labour market and education services market, insufficient professional orientation of citizens, and low professional and territorial workforce mobility have become the key factors of the problem.

The period of legal changes and reformatinal legislative processes makes scientific and research work even more intensive. Labour law science faces a broad range of issues caused by social development conditions. A contemporary scientist must know the global system of scientific knowledge well while generating innovative solutions.

**Analysis of recent publications on issues.** At a time when in many Western countries, the studies dedicated to the problems of regulation of atypical labour relations have become more active and resulted in regulatory acts having been adopted with their specific nature taken into account, in our country, the relations on application atypical employment forms are still beyond legislator's attention. Meanwhile, a range of thematic conferences raised the issues on development of contemporary labour law science. Specifically, it is worth mentioning the following: the VII International Scientific and Practical Conference "The Topical Issues of Improvement of Legislation on Labour and Social Security" (c. Kharkiv, 29 September 2017); the All-Ukrainian Scientific and Practical Conference "Legal Assurance of Social Safety in the Context of European Integration Processes" (c. Kyiv, 20 October 2017); the IV International Scientific and Practical Conference "Establishment and Development of Labour and Social Security Legislation: History, Modernity, and Prospects" (c. Minsk, 27-28 October 2017); the VI All-Ukrainian Scientific and Practical Conference "Trends in Development of Labour Law Science and Social Security Law" (c. Kharkiv, 3 November 2017).

**The purpose of the article.** The objective of the article is to analyse labour transformation manifestations and their influence on development of contemporary labour law science.

**Presenting the main material.** Over several decades, the world has experienced the large-scale phenomena that have changed organization of economic life fundamentally both at global and national levels. Economists distinguish virtualization as a trend of labour market globalization. The existence of virtual

labour markets is actually one of the manifestations of globalization. A virtual global labour market means a system of workforce sale and purchase between employers and employees in a virtual environment. It has a certain structure consisting of an integral system of elements: subjects (individuals and enterprises), and relations and connections between them interacting in special, virtual, space (environment). Specifically, an individual (hired employee) carries out his or her activity at labour market now not in the market environment, but in the virtual reality [1].

Virtualization of the global labour market and IT onrush have predetermined emergence of distance work in various countries of the world. However, each country has its own specific features of legal formalization of distance work rules. Think, for instance, of terminology and definitions of distance work, – the legislations of Great Britain, Hungary, Spain, Peru, the USA, Chile, and Japan are far from being homogeneous ones [2, p. 146-147].

First introduced in 1998, the term e-lancer – "electronic freelancer" was created by analogy to neologisms, like e-mail – electronic mail, e-business – electronic business. One can encounter a similar term such as "web-lancer" – "net freelancer". "Electronic freelancer" shall mean a freelancer who carries out his or her labour activity remotely with the use of IT, or, in other words, freelancer – telecommuter. Consequently, under the influence of computer technologies, the idea of a workplace is transforming. Therefore, a pointful remark was made by Yu.V. Vasylieva and S.V. Shuraliova, as the nature of distance work urges for re-thinking of the classical notion of employment place as set forth in labour law and of the term "workplace" related thereto, extending the

boundaries of perception thereof, including development of the rules on atypical employment taken into account [3, p. 88-97].

For the last years, in the world management practice, the personnel offshoring has become a widespread phenomenon as an innovative technology of human resources management, according to which the workplaces of the same company are transferred from one country to the other for minimizing HR-related and increasing capitalization. The term "offshoring" is a blended form of the English words "outside resource using – outsourcing", meaning the use of external resources, i.e. involving third parties from abroad for fulfillment of certain tasks (business functions), that is why offshoring is very often viewed as outsourcing from abroad. Consequently, there shall be analysed the peculiarities of personnel offshoring as one of the innovative methods of employment and labour relations management.

The peculiarities of labour of "atypical" employees is worth studying as a separate point. This is especially appropriate in view of adoption of ILO's Recommendation No 204 as of 2015 "On Transition from Non-Formal to Formal Economy". The present day employment doctrine requires urgent establishment. The problem calls for ensuring consistent quality labour when applying atypical employment forms. In Ukraine, telework is beyond the legal pale, excluding teleworkers from a legal protection mechanism and leading to existence of the extensive segment of latent employment.

Consequently, the system of relations constituting the subject matter of the labour law branch is undergoing qualitative changes. Contemporary labour shows emergence of new structural characteristics of workforce manifesting the loss of the previous monolithic character and homogeneity of this component of labour market. This affects definition of the scope of labour law, though scientists repeatedly have been attempting to develop universal criteria for differentiation of civil and labour relations. The case law analysis of the cases on re-qualification of the relations from civil into the labour ones shows that courts are more likely to apply a technical approach to solve the question of establishment of a branch-wise nature of legal relations arising from workforce usage. At the same time, the general idea is that capturing clear criteria for

differentiation of civil and labour relations may make the situation even more complicated, as courts will be constrained by the static provision of law. Under the conditions of emergence of atypical employment forms, K.S. Tyshkovych, for instance, suggests legalizing the rule of facts when establishing the legal nature of disputable relations [4, p. 176].

Qualitative changes affect the system of interests and value orientation of social development, interests and values in the labour sector either. The orientation of contemporary motivation systems is undergoing shifts towards post-material values (now labour is viewed not as a means of getting income but as a way to self-fulfillment). An employee expects personal fulfillment from his or her profession today.

Dramatic reduction in life expectancy of production and service technologies (determined by the ongoing implementation of innovative technologies) requires re-training, career enhancement or acquiring new qualification or career switch in any age every 5-7 years (if not oftener). Studying throughout entire life is getting not just a desired but an obligatory thing. A. Toffler in his "Future Shock", anticipated such tendency. He wrote: "In XXI century, tomorrow's illiterate will not be the man who can't read and write; he will be the man who has not learned how to learn" [5, p. 248]. The issue of ongoing professional education becomes actual as well.

The conventional understanding of labour function undergoes changes as well. At the present day development of labour relations, a key role is given to definition of an employee's qualification. Therefore, the domain of education and employment shall be harmonized in order to bring the qualification received by a graduate from an education establishment in line with the level of qualification required for such employees' further carrying out professional activity.

Acceleration of technological advance and emergence of new technologies make allowances for the requirements to be set out to professional qualities of employees. Due to development of contemporary technologies under new social and economic conditions, there is a considerable increase in extent of intellectualisation of labour function for majority of employees. The rate and quality of acquisition of new knowledge and competences that allow for quick adjusting to new tasks and

conditions of activity becomes an integral component of an employee's competence. An adaptive employee shall be a highly qualified and experienced worker who successfully performs labour function taking into account changes in technologies, improvement of technological labour process, its computerization, and IT development. Such employee is capable not only of adjusting to changes but is taking the lead in the latter, i.e. actively promotes improvement of technical and social labour organization. A key feature of an adaptive employee is self-perfection and self-fulfillment in work. Formation of an adaptive employee is possible only if he or she constantly increases the level of employment training. An employer's activity on creation of due labour conditions plays an important role in formation of an adaptive employee [6, p. 16]. Professional competence predetermines the ability of an employee to perform labour function efficiently and reliably in various conditions, which depends on the level of his or her qualification and motivation for work and self-development.

All this predetermines the main directions for development of contemporary labour law science and the necessity for conceptual studies aimed at creating new disciplines.

First, the paradigm, governing rule making and enforcement in the field of labour law regulation, needs transformation. This concept is called the paradigm of administrative ruling. The essence of the Soviet labour law administrative ruling was in direct "manual" management of relations in the labour industry by means of expansively broadened amount of regulatory acts at general public level. In the field of rule making, an employer uses the potential of local regulation not to the full extent, by relying on instructions of general public level.

The operative Labour Code of Ukraine, as rightly mentioned by O.M. Yaroshenko, despite multiple amendments thereto, becomes more and more inconsistent with the social and economic activity in the country. An extremely dangerous gap has emerged and is constantly growing between regulation of various domains of social and economic activity. Operation of regulations aimed at high level of formal legal protection assurance for an employee evokes adverse economic and (what is surprising at first thought) effects social effects [7, p. 41].

A legislator disregards the needs of the society, namely, in enhancement of legal regulation of labour relations. Therefore, now, the theoretical substantiation and active involvement in the process of codification of the labour legislation of Ukraine is the most urgent for the national labour law science. At the same time, the labour law of Ukraine as an integral part of legal science may neither be book-learned nor ivory-towered as to real conditions of the society and the State's life, nor be superior to those possibilities put behind in the course of implementation of economic reforms and new business patterns [8, p. 74-75].

The development of new concept for labour law shall be based on a clear concept of the subject matter of labour law and differentiation of legal regulation of labour. A.M. Yushko has quite a good point in saying that the analysis of the legislation on qualification characteristics and requirements for filling certain positions or advanced training (awarding qualification) shows significant differentiation in this issue and the insufficient substantiation of certain requirements, and unreasonable change thereof [9, p. 205]. Establishment of strict requirements to the persons of legal occupation is insufficiently justified either.

Integration of science and education is a contemporary tendency. The ongoing improvement of each component of education activity and implementation of innovative methods and technologies, apart from appropriate level of academic staff, teaching techniques as well as material and technical support, is an important pre-requisite for assurance of high quality education of specialists. Yet, both foreign and national literature have not elaborated an unambiguous definition of innovative methods. Some scientists consider that innovative learning methods are the methods based on the use of state-of-the-art science and IT in education; whereas others follow the idea that innovative learning methods are the methods of interaction between students and a teacher that have not been previously used in education process.

The education system shall be transformed in response to the innovative economy's needs in a certain type of workforce. The innovative processes in education system may be assessed from two points of view. First, the are caused by the development of innovative

economy which needs human resources capable of productive innovative activity and consumers of innovative products. Second, the transformations are in principle innovative for the education system itself. In general, the education system is getting more and more open and flexible as well as more tailored to the demands of education services consumers.

Adaptivity and openness of the system manifest in distant education forms, extension of education technologies and places for education processes locations, which provides opportunities for those willing to study, irrespective of their age, social and

professional status, citizenship, etc. Flexibility of education system allows for exercising freedom to choose a course unit, a form, the content, and aims of studying, and assessment forms as well. All these peculiarities facilitate access to knowledge, promote their rapid distribution, and allow for synthesizing various branches of knowledge, which encourages emergence of innovations of interdisciplinary character. Flexibility of the education system contributes to efficient development of intellectual and creative abilities of students, increasing thereby the innovative potential of the society.

### Conclusion

Thus, the scope for innovative initiatives in legal domain is immense. There is a need in legal regulation of historically established institute of labour agreement. The actual economic and legal reality prescribes appropriateness of legislative capturing of atypical employment forms, and, consequently, adjustment of views on labour relations. We think that a Ukrainian legislator, in terms of the measures aimed at prevention of unemployment, should consider and analyse possible deviations from the classical employment model and define, which atypical employment forms corresponding to the interests of certain part of population must be legally enshrined.

The legal reform, inter alia, provides for change of the substantive aspect of legal regulation, exercised in the course of creating and mastering new law, enforcement, and construction of law. This, above all, refers to the innovative rule making process. Academic lawyers should be actively involved in development of the labour law provisions not only at the stage of drafting laws, but also much earlier, – at the stage of development of conceptual fundamentals of the branch. The concept of development of labour law in Ukraine shall be based on achievements of the European labour law doctrine, with national realities taken into account in case law. Under the labour transformation conditions, keeping focus of Labour Law of Ukraine on international standards, direct effect and implementation of EU legal rules into national legislation, and updating of labour legislation is essential. At the same time, implementation of legal arrangements that have proved to be efficient in governing of hired labor of the industrially developed Western countries shall be carried out on the basis of a comprehensive and proper assessment of their applicability in Ukrainian conditions and of those social consequences to which they would lead.

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