Artemenko.D.S.
student
group ЮД -943
Dnipropetrovsk' State
University of Internal Affairs
Academic advisor:
Zolotukhina L.O.,
Doctor of Law, associate professor
Dnipropetrovsk' State
University of Internal Affairs

COMPARISON OF THE LEGAL REGULATION OF WORK IN UKRAINE AND FOREIGN COUNTRIES

Improvement of labor legislation and labor discipline is one of the important institutions in the field of labor law of Ukraine, as it is one of the main needs of our time. A special place in this process belongs to the systematization of regulations governing the labor discipline and the use of foreign legal experience in the development and adoption of new rules of law in this area. Improvement and systematization of legislation in the field of employment is aimed at stabilizing the rule of law in the field of labor relations, transforming the legislation into a tool to ensure the effectiveness of relations between the parties to the employment contract in the market relations.

According to S. I. Kozhushko, the system of legislation on labor relations can be defined as an ordered set of normative and legal acts that regulate the provision of proper work process by the parties of labor relations. The differentiation of the legal regulation of labor and closely related relations by employee category is carried out as follows By including special provisions in general laws and regulations on work in relation to a particular group of employees; by adopting special regulations applicable only to a particular category of employees; By eliminating the possibility of applying certain general rules of labour legislation to certain categories of employees. [1, 6-7]

In my opinion, the systematization of current legislation in the field of labor discipline should be reflected in the new Labor Code of Ukraine. It is important to emphasize that this codified act must contain not only general rules of labor discipline, as it exists at this time in the current Labour Code, but must also govern the differentiation of the legislation on labor discipline in accordance with the methods presented by Kozhushko S. I.

In most countries of the world, the sources of legal regulation of labour disciplines are state regulations (e.g. France), internal labour standards and provisions of collective agreements (contracts), i.e. there is a combination of central and local acts and the integration of legislative and contractual methods.

In countries with a developed market economy, two theories are most prevalent: institutional and contractual, which derive indirectly from the principles of civil law. [2, 39-47]

Institutional theory (which has been given the name of management law) explains the disciplined power of the entrepreneur by the fact that he or she owns the company, is responsible for its successful operation and protects the interests that arise for individuals and organizations associated with the activities of the company. This gives rise to its right to set the rules of internal labour order, control the production process and exercise disciplinary control.

Contractual theory is based on the fact that the discretionary power of the employer derives from the employment contract, which places the employee in a subsidiary position and thus gives the employer the right to take over the work assigned to a certain person.

In practical terms, the difference between these two theories is that, under the contractual theory, the employer must have the legal right for any discretionary influence on the employee, whereas, according to the constitutional theory, he theorist, he is free to impose any penalty which is not expressly forbidden by the law. In Austria, Belgium, the FRN, Switzerland, the treaty theory has been adopted. Austria, Belgium, France, Germany, Switzerland and Switzerland adopted a treaty theory, whereas India, Canada, the United States, France and Japan adopted an institutional theory. In Australia and New Zealand, neither theory is favoured. of these theories. [4, 728]

It should be noted that some countries do not allow discriminatory actions by the employer which would affect the employee's honour. For example, in France and Switzerland it is not allowed to put a notice of retaliation on a company's notice board indicating the name of the employee and the nature of the offence. Austria has taken a tentative route in this regard: the use of such a procedure is allowed in principle, but the formulations do not have to be formulaic.[3]

The basis for the regulation of labor discipline in Ukraine must be the legislation, and the legislation on labor discipline must be properly systematized, which must be reflected in the new Labor Code of Ukraine. This codified law should not only contain general standards for labor discipline, but should also define the reasons and strains of differentiation of the legal regulation of labor discipline at the present stage.

The list of sources:

1. Кожушко С. І. Становлення, сучасний стан та перспективи розвитку законодавства про дисципліну праці в Україні: Автореферат на здобуття наукового ступеня кандидата юридичних наук. Харків. 2007.

2. Шерегов С. А. Производственная дисциплина и трудовой рас порядок в странах с развитой рыночной экономикой. Трудовое право. 2002. № 1. С. 39-47.

3. Code du travail.Livre III, Titre II. Paris, Dalloz, 1997.

4. Киселев И. Я. Сравнительное и международное трудовое право. Дело, 1999. 728 с.