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LEGAL REGULATION OF THE DISCIPLINARY RESPONSIBILITY OF THE EMPLOYEE

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Abstract:

This article is devoted to the characteristics of the concept of "labor discipline", "disciplinary offense", "disciplinary responsibility". The article reveals their main features and characteristics, as well as the types of disciplinary measures applied in the Republic of Uzbekistan. The analysis of the legislation of foreign countries in this area is carried out. In addition, this article contains provisions on problematic procedures for bringing an employee to disciplinary liability under the labor legislation of the Republic of Uzbekistan and makes proposals on the need for amendments and additions to the current legislation in the field of employee disciplinary liability.

Keywords: labor discipline, disciplinary offense, disciplinary liability, disciplinary measures, fine, reprimand, termination of an employment contract.

Currently, one of the effective ways to increase the productivity of enterprises, institutions, organizations, regardless of the form of ownership, is the correct organization of the labor process and regulation of the responsibility of employees of the enterprise for the performance of their labor functions.

Due to the fact that in practice, violations are very often committed by an employee in the performance of his work duties, it is necessary to study this issue taking into account the experience of the legislation of the Republic of Uzbekistan and foreign countries.

It should be pointed out that today in the field of labor discipline there are a number of problems that directly lead to a decrease in the effectiveness of the legal regulation of disciplinary responsibility of an employee.

So, firstly, among all the grounds for termination of an employment contract provided for in Part 2 of Article 100 of the Labor Code of the Republic of Uzbekistan, a large number of labor disputes are directly related to termination of an employment contract for "systematic violation of the employee's labor duties" and "one-time gross violation of labor duties". In particular, according to statistics for 2021, the number of appeals of individuals to the Federation of Trade Unions of the Republic of Uzbekistan was 3842, of which 1146 complaints, 2682 applications and 14 proposals [1]. It should be noted that in most cases the main problem lies in the correct interpretation of the differences of the above-mentioned grounds for termination of the employment contract at the initiative of the employer.

Secondly, the Labor Code of the Republic of Uzbekistan does not contain some norms, the absence of which contributes to the emergence in practice of problematic situations between an employer and an employee when applying disciplinary penalties and the procedure for their imposition.

Thirdly, the incorrect arrangement of the norms of labor legislation regulating the discipline of an employee creates difficulties and optimal use of them in practice;

Fourth, given that the Labor Code of the Republic of Uzbekistan does not generally regulate the main issues of employee labor discipline, there are other by-laws that include reference norms, which in turn creates the presence of some kind of duplication of legal norms. Here it is also necessary to consider the expediency and effectiveness of the application of disciplinary measures.

It should be noted that the correct organization of labor discipline at the enterprise is one of the main factors in ensuring labor order.

The term "discipline" is directly related to the discipline of workers' work. As one of the separate institutions of labor law, labor discipline implies the existence of norms of behavior established by local acts, the fulfillment of which is required from persons carrying out their activities at this enterprise, organization[2].

As N. G. Alexandrov emphasizes, labor discipline is the rules of conduct established by the collective agreement of the enterprise, the subordination and

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fulfillment of which is assigned directly to the employee[3].

V. N. Tolkunova, N. K. Gusov believe that labor discipline as a fundamental principle of labor law means that an employee fulfills his labor duties, taking into account compliance with the rules of internal labor regulations, as one of the components implies direct subordination to local acts of the enterprise, as a branch of labor law is a set of norms governing the relationship between employer and employee in particular, when applying disciplinary measures[4].

Professor V.A. Protsevsky in his work characterizes the concept of labor discipline as the careful attitude of an employee to the employer's property, the ability to conscientiously perform their work functions, the correct organization of the workflow, the success and effectiveness of the labor process[5].

Combining the opinions of all scientists, we can come to the general conclusion that the main essence of the concept of labor discipline lies primarily in the correct organization of the labor process at the enterprise.

For the first time, A. T. Barabash drew attention to the peculiarities of the employee's labor discipline, who saw the specifics of labor discipline in the presence of mutual rights and obligations of the employer and employee.

In his opinion, timely and conscientious performance of work duties by an employee is one of the ways to ensure the organization of the working process at the enterprise. He divided these duties into two groups, taking into account the subjective side, which includes the duties of both the labor collective and the employer himself, and the value, which includes the main and additional duties, taking into account certain situations.

So the main duties of the employee were classified into several categories[6]:

1. Voluntary and timely performance of labor functions that lead to the achievement of certain results, in particular:

a) rational use of labor at your workplace;

b) comply with the established labor standard;

c) undergo a medical examination in the prescribed cases;

d) pass an exam for knowledge of safe working methods;

e) improve their qualifications.

2. Performance of labor functions in accordance with the working hours. In this case, special attention is paid to the manifestation of the qualities of an employee in the presence of a shift work schedule, under the circumstances to replace his work colleague, the performance of overtime and work that is required in irregular working hours. All of the above conditions are components of the concept of "labor discipline".

3. Performance of works affecting the quality of products and services, which is the main responsibility of the employee.

4. Performance of works taking into account compliance with safety regulations, hygienic and production factors.

5. Purposeful use of the employer's property.

6. Timely execution of the employer's orders related to ensuring the labor process.

It is necessary to focus on the fact that the labor legislation of the Republic of Uzbekistan does not contain the concept and meaning of a disciplinary violation. If we pay attention to other legislation of the Republic of Uzbekistan, such as criminal, administrative, civil, we can see the fact that the codified acts of the above areas clearly indicate the concept of an offense, their types and classification, composition, grounds and types of these types of offenses. But the labor legislation of the Republic of Uzbekistan does not contain such a concept, which is the reason for a lot of questions in practice when determining a violation committed by an employee, a disciplinary offense.

The basis for recognizing an employee's actions as a disciplinary offense is insubordination to the rules of internal labor regulations, in particular, non-compliance with the orders of the employer, the use of obscene words in the workplace, disregard for sanitary rules[7], etc. The main purpose of disciplinary punishment is to ensure the discipline of work at the enterprise.

It follows from this that a disciplinary violation is the basis for bringing an employee to disciplinary responsibility and applying penalties to him.

Thus, H. V. Burkhankhodzhayeva believes that "a disciplinary offense in labor law is a culpable unlawful, excluding criminal liability, failure to fulfill labor duties that ensure the labor process by a person who is in labor relations with a specific organization"[8].

As Sh. Ismoilov emphasizes: "Improper performance by an employee of his work duties with the subsequent application of disciplinary measures to him is recognized as a disciplinary offense"[9].

From the above opinions, we can come to the general conclusion that an employee's insubordination to the rules of the internal labor regulations of an enterprise, institution or organization (in particular, absence from work, lateness, appearance of an

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employee at work in a drunken state, etc.) is a disciplinary offense.

So, the characteristic signs of a disciplinary violation (misconduct) are[10]:

1) non-fulfillment or improper fulfillment of work obligations;

2) the presence of unlawful actions of an employee is the basis for bringing him to disciplinary responsibility;

3) illegal actions of an employee implies non-fulfillment of his/her work obligations stipulated by the contract;

4) for violation of labor discipline, disciplinary penalties are imposed on the employee in accordance with the procedure and in accordance with the legislation.

As M. Khodzhabekov emphasizes, in case of violation of labor discipline, the employer brings the employee to disciplinary responsibility and imposes on him only those penalties that are directly specified in the law [11].

A similar opinion was also indicated in other works of the applicant, where it was noted that disciplinary liability is associated both with the existence of an employment relationship that arose between the employee and the employer, and with the imposition of disciplinary measures by the employer on the employee[12].

According to Yusupov N., this type of responsibility implies the deprivation of any advantages for allowing him to commit a disciplinary offense at the enterprise[13].

It should be noted that the institution of disciplinary responsibility is one of the types of legal responsibility, implying:

1) bringing an employee to disciplinary responsibility due to improper performance of the work duties assigned to him;

2) the application of disciplinary penalties provided for by law to a person who has not fulfilled or improperly fulfilled his/her labor duties.

It follows from the above that the employee is obliged to bear responsibility for the admission of a disciplinary offense at the enterprise.

Taking into account the above provisions, it can be said that when bringing an employee to this type of responsibility, the severity of the act, the amount of damage caused, the circumstances under which this violation was committed by the employee should be taken into account.

The Labor Code of the Republic of Uzbekistan strictly establishes that only one of the types of disciplinary measures should be applied to an employee who has committed a disciplinary offense[14]. In particular, it takes into account only the failure of the employee to fulfill the duties assigned to him in the appropriate manner, namely, non-compliance with hygiene, safety regulations, internal labor regulations, job descriptions, etc.

For example, actions related to the refusal of an employee to perform work that was illegally transferred to another job, or refusal to perform overtime work cannot be considered grounds for bringing an employee to disciplinary responsibility [15].

Article 181 of the Labor Code of the Republic of Uzbekistan lists the types of disciplinary penalties: reprimand, fine and termination of an employment contract.

It is necessary to agree with the opinion of M. Y. Hasanov that, in comparison with the previously existing Labor Code, disciplinary penalties are given in accordance with international legal acts.

For example, such a type of disciplinary punishment as transfer to a lower-paid job was excluded from the Labor Code of the Republic of Uzbekistan due to the existing contradictions with the norms of the ILO Convention No. 105 of 1957 "On the abolition of Forced Labor"[16].

Among all types of disciplinary punishment, a fine is expedient and effective for application, since the amount and guarantees are provided for withholding the fine from the employee's salary [17].

I. Ya. Kiselyov believes that the application of a fine to an employee is practiced in many countries. The main purpose of applying this sanction is primarily to send the amount to charitable foundations[18].

Next, we will focus on the features of this type of disciplinary punishment as termination of an employment contract in connection with a systematic violation (paragraph 3, part 2 of Article 100 of the Labor Code of the Republic of Uzbekistan) and a single gross violation by an employee of labor duties (paragraph 4, part 2 of Article 100 of the Labor Code of the Republic of Uzbekistan).

It should be noted that if in the Republic of Uzbekistan labor discipline is considered as one of the institutions of labor law, then according to the legislation of foreign countries this phenomenon is not observed.

But today, in many foreign countries, there has been a direct application of the institute of disciplinary responsibility of employees [19].

So, for example, in countries such as the USA, Canada, Great Britain, France, an employee can not only

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be brought to disciplinary responsibility for non–compliance with internal labor regulations, but also for causing damage to the interests of the employer, and in Japan - his reputation.

According to the legislation of Belgium and Japan, it is provided that an employee can be brought to disciplinary responsibility only for committing those offenses that are prescribed in regulatory legal acts, and in the UK, Germany, Austria, Switzerland, in addition to the violations provided for, an employee can also be brought for violations provided for in local acts.

In the USA, Canada, France, Australia, New Zealand, this requirement is not observed, since the list of disciplinary offenses "have countless forms of manifestations in practice" [20].

"Violation of labor and official duties", "any omission in the performance of labor and official duties" as the main duty of an employee acts as a basis for applying disciplinary penalties to them.

In Japan, the USA, Canada, the concept of disciplinary violations is considered as "immoral acts".

For example, in France there are no compositions of disciplinary offenses and when certain disputes arise, this issue is directly resolved by the court, in Spain, compositions are established only for serious offenses of employees [21].

Thus, in accordance with Part 1 of Article 192 of the Labor Code of the Russian Federation, disciplinary penalties are a remark, reprimand and dismissal for disciplinary misconduct. According to part 3 of Article 193, the employer has the right to bring the employee to disciplinary responsibility within 1 month from the moment of detection of the violation. When bringing to this type of responsibility, the employer can also simultaneously bring the employee to financial responsibility.

According to Article 1331-1 of the French Labor Code, any sanction, with the exception of an oral remark, applied by an employer to an employee for the actions of the latter, and found guilty by the employer, is considered a disciplinary penalty. In addition, the employer, at his choice, also has the right to establish a list of disciplinary penalties in the local acts of the enterprise. Thus, according to Article 1332-4, an employee is brought to disciplinary responsibility within 2 months from the moment the employer discovers the misconduct. For causing harm to the employer, the court may, by its ruling, compensate the employer for the damage by collecting from the employee's salary.

For the United States, there is its own peculiarity, namely, disciplinary liability is not provided for by law. That is, if the employee admits any violations, the employer verbally warns the employee about the possibility of termination of the employment contract with him in the presence of an unfair attitude of the latter with the duties performed. It follows from this that US law grants the employer the right to terminate an employment relationship without explaining any reasons.

In the UK, Germany, Austria, Switzerland, the employer is given the right to hold an employee accountable for violations not specified in local acts[22].

In Canada, France, Australia and New Zealand, disciplinary liability is also allowed for misconduct not recorded in regulations.

After analyzing and comparing the specifics of the legislation on employee disciplinary liability, we can clearly see that the list of disciplinary penalties applied to employees largely coincides, which confirms the complex nature of this type of legal liability. In particular, considering the specifics of disciplinary measures in Western and CIS countries, we can come to the general conclusion that the main purpose of disciplinary responsibility of an employee as a type of legal responsibility is the correct organization of the labor process at the enterprise, the main source of which are local acts, including internal labor regulations and collective agreements.

Thus, having drawn conclusions, we can say that it is necessary to make a number of changes to the labor legislation of the Republic of Uzbekistan in order to avoid the situations mentioned above.

1. The law should more clearly define the concept of a "disciplinary offense" and for which offenses certain types of disciplinary penalties can be imposed.

2. The norm concerning the employee's familiarization with the materials of the disciplinary (official) investigation must necessarily be fixed in the Labor Code of the Republic of Uzbekistan. Since the employer has an obligation to familiarize the employee with the order on bringing to disciplinary responsibility, it would be logical to fix the employer's obligation to familiarize the employee with all the materials of the disciplinary (official) investigation. This is necessary so that the employee has the opportunity to appeal not only the employer's order, but also any evidence contained in the materials of the disciplinary (official) investigation.

3. The employee must also have the right to demand that the defense evidence be attached to the case materials, including characterizing materials, the right to make various kinds of petitions, the right to give explanations an unlimited number of times, as well as a clearly recorded right to get acquainted with the

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materials of the internal investigation, make extracts from them, make copies, get a copy of the final act of the employer. While the legislation on the disciplinary responsibility of the employee should be recognized as far from perfect. In this regard, the main mistakes when bringing an employee to disciplinary responsibility are usually as follows: there is no evidence of a disciplinary offense; there is no evidence of guilt; the severity of the punishment is not comparable to the offense; a month period for application is missed; when bringing to disciplinary responsibility, it is not taken into account that one disciplinary penalty has been lifted or repaid; when familiarizing with the order (order) about bringing an employee to disciplinary responsibility, there is no date of familiarization, and many others.

It seems that only an optimal balance of mutual interests, detailed regulation of procedural activities will allow achieving objectivity, fairness in bringing to disciplinary responsibility, which ultimately will solve one of the main problems of labor legislation – the problem of labor discipline.

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