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ISSUES OF THE LEGAL CATEGORY "DUTY" IN THE FIELD OF LABOR

Abstract.
The purpose of this article is to consider the issues of the place and role of legal categories in the legal system, the significance of the study of the category "duty" in labor law. The study of legal categories allows the use of structured and systematic approaches in the methods of research of legal theoretical and legal concepts. The above method of cognition allowed the authors to come to the following conclusions and results. The category of "duty" in relation to labor law is closely related to the mechanism of labor relations. The development of a specific conceptual apparatus of the category "duty" in labor law is particularly difficult, since this category includes such concepts as "labor duties", "labor function", "duties in the field of labor", "labor obligations", etc. "Duty", as a legal category, undergoes significant changes. changes, especially in the field of labor law. The country's transition to a market economy, general democratization, transparency and globalization of society, on the one hand, gave impetus to the dynamic development of all spheres of social life, determined a new vector of development of labor relations based on the freedom of contractual relations. On the other hand, the increasing influence of civil law, contractual elements of interaction between an employee and an employer leads to the fact that fundamental categories such as "duty" are gradually dissolving in the sphere of work.
Key words: category of rights, labor law, labor relations, labor obligations, labor duties, labor function, labor contract.

Introduction.

The concept of "category" originates from the thinkers of the ancient world. Traditionally, such phenomena occupied the minds of ancient Greek and Roman philosophers and thinkers. Aristotle considered categories as generally accepted predicates or the most common generic terms. With the development of science, the processes of cognition, and general world progress, approaches to understanding many general philosophical categories have changed. Thus, according to Kant, judgments played a decisive role in the construction of categorical constructions. Cognitive and epistemological functions of categories were directly connected by the thinker with the process of "judgment". Hegel held a slightly different view, believing that through a chain of transformations "logical idea-nature-spirit" thought became a category, a kind of absolute conclusion. The main thing, according to the scientist, was the subject, content and essence of a phenomenon to be categorized [1].

The legal concept of category was given by V.O. Tennebaum, according to which categories represent, in addition to general forms of thinking, such fundamental concepts that have the ability to "maximally generalize the special, specific in the object of this science" [2].

A.M. Vasiliev believes that consideration and study of the theory of law from the point of view of its numerous categories makes it possible to define the theory of law as a unique, organic theoretical system of knowledge, "allowing to reproduce in the scientific consciousness the objectively existing content, structure of internal connections and elements of the legal form of social reality" [3]. A.B. Vengerov, agreeing with A.M. Vasiliev, he rightly believes that the categories represent the consolidation of the studied patterns of legal phenomena [4]. I.D. Andreev, drawing parallels with the so-called private scientific concepts, understood the category as a phenomenon that incorporates properties, connections, relationships that can be common to all phenomena studied by this science [5].

In this case, it seems important to study the categories from the point of view of their relationship with various branches of law. Differentiation of concepts by various branches of scientific knowledge, according to P.S. Barinov, is of particular importance, since it allows classification of the entire system

of categories in certain areas [6]. Taking into account the fact that a category, as a phenomenon of philosophical thought, can have signs of both general and particular, nevertheless, we believe that a legal category can also be independently considered in a narrow sense within a particular branch of law. The study of the legal category "duty" entails the need to establish the place and role of the phenomenon of "duty" as a legal category in the system of labor and related legal relations.

Thus, the general category of "duty" within the framework of labor relations is narrowed to the category of "labor obligation", which differs in its specificity from the general category of "duty" inherent in all branches of law. In this case, the question arises: "Can the category of "work obligation" differ from the category of "duty" and be considered as an independent category?". In our opinion, the differentiation of legal categories by areas of law takes place, since different branches of law have those special characteristics that give specific features to narrowly focused categories of law (for example, the general concept of duty and "duty to work" under Soviet labor law).

At the same time, the integration of related concepts does not allow us to delve into the study of certain legal categories only from the point of view of their specific orientation in a particular legal field. Traditionally, the phenomenon of integration can be observed in related, close in the subject of legal sciences [7]. For example, in the science of civil law, integration categories are contract, obligation, transaction, claim, compensation for damage, property right, etc. In criminal law disciplines - crime, punishment, criminal liability, etc. Such categories are usually called interdisciplinary.

It should be noted that at present there are trends of interpenetration and integration of such interdisciplinary categories as duty in the field of labor and civil obligation. In scientific circles, the question of the existence of such a concept as a labor obligation in the field of labor relations is raised. So, S.Yu. Golovina notes that there is a natural connection between civil and labor legislation, which predetermined the reception of civil law norms in labor legislation, in particular, on the issues of the emergence of labor relations, the legal responsibility of the parties, ways to protect violated rights, etc. [8]. A.M. and M.V. spoke about the possibility of using the term "labor law obligation". Lushnikov, who believe that "as generic concepts in labor law, along with labor law transactions, it is possible to offer already approved labor contracts or labor law obligations, the doctrine of which has not yet been developed" [9]. Under labor law obligation, according to S.V. Stepanova, is understood to be a legal measure protected by the norms of labor law of the proper behavior of the obligated party of a relative, coordinating legal relationship, consisting in the need to perform certain actions or refrain from committing them, which corresponds to the right of the claim of the authorized party of the legal relationship [10]. At the same time, the author points out that not every duty in labor law is a labor law obligation.

Thus, the study of "duties" as a category of labor law necessitates the definition of the structure, content, construction and essence of the concept of "duties" in both the broad and narrow sense.

Materials and methods of research.

The following general scientific methods were used in the study of issues of the category "duty" in labor law: the method of scientific analysis and synthesis, general scientific inductive and deductive methods.

The scientific works of L.S. Tal, S.B. Krymsky, V.O. Tenenbaum, A.M. Vasiliev, A.B. Vengerov, I.D. Andreev, P.S. Barinov, S.Y. Golovina, A.M. Lushnikov, M.V. Lushnikova, K.A. Abzhanov, H. Kelsen and others are analyzed and studied in the presented article

The study of any legal phenomenon, including a separate category of law, is impossible without defining its concept. Thus, the concept does not reflect all the qualities and signs inherent in an object, phenomenon or action, but only the general, basic, most essential, which make it possible to distinguish one object or phenomenon from another [11].

The concept of "duty" is a complex, multi-level system of methods, methods and approaches in the study of law, in general, or a particular branch of law, in particular.

As a rule, the concepts of general, legal and legal obligations are divided. According to A.N. Zherebtsov, a legal obligation is a necessary obligation of a legal subject expressed in a rule of law and is by its nature a necessary optien for the future conduct of a person, while a legal obligation finds

expression in a specific human behavior and is carried out within a specific legal relationship [12]. S.S. Alekseyev points out that legal obligations "are not confined to the framework of legal relations, but act in their content and meaning as phenomena that are richer, multifaceted, have independent value, often going beyond legal relations as such" [13].

The category of "duty" in labor law, of course, is an integral part of labor relations.

The Labor Code of the Republic of Kazakhstan (hereinafter referred to as the Labor Code of the Republic of Kazakhstan) gives the concept of labor relations (paragraph 21, part 1, Article 1 of the Labor Code of the Republic of Kazakhstan), as well as relations directly related to labor (paragraph 22, Part 1, Article 1 of the Labor Code of the Republic of Kazakhstan). The latter include relations related to employment, the resolution of labor disputes, etc., i.e. everything that, in general, constitutes labor relations. N.G. Alexandrov in the subject of labor law includes, along with the generally accepted institutions at that time, relations on material security in old age, relations on supervision of labor protection, relations on consideration of labor disputes, etc [14]. Examining the nature of an employment contract as the basis for the emergence of labor relations, K. Abzhanov rightly points out that an employment contract determines the nature and change of legal relations found in other institutions of labor law (for example, legal relations on state social insurance, labor discipline, labor disputes, etc.) [15]. Thus, the category of "duty" in labor law includes not only the direct duties of the employee and the employer stipulated by the employment contract, specified in the Labor Code of the Republic of Kazakhstan as labor duties (paragraph 28 h. 1 Article 1 of the Labor Code of the Republic of Kazakhstan), but also other duties related to other relations directly related to labor.

Thus, according to the Law of the Republic of Kazakhstan dated June 27, 2014 No. 211–V ZRK, trade unions are obliged to inform the employer within three working days from the date of election or re-election about members of elected trade union bodies who are not released from their main work. This duty corresponds to another duty of the employer to take into account the opinion of the trade union body when dismissing an employee under Article 52 of the Labor Code of the Republic of Kazakhstan. The generalization of judicial practice on labor disputes clearly demonstrates the interdependence of the duties of the employer, the representatives of employees in the labor relations between the employee and the employer. According to the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated October 6, 2017 No. 9, the absence of a reasoned opinion of the body of the trade union at the time of termination of the employment contract on the initiative of the employer or bringing to disciplinary responsibility a member of an elected trade union body who was not released from his main job is an unconditional basis for satisfying a claim for reinstatement at work.

V.N. Skobelkin put four groups of connections into the content of "labor relations", noting that when using the term labor relations (legal relations), it is necessary to clarify which connections are meant. Such relationships include: 1. Relations arising from any type of labor activity regulated by any branch of law (labor in the general sense). 2. Relations arising both in connection with the work of workers and employees (employees), and with other activities regulated by labor law (labor — in a broad sense). 3. Related only to the labor of workers and employees (labor in the narrow sense). 4. Arising in the very process of labor activity (labor in the literal sense of the word) [16]. Such a need to isolate and clarify some aspects of labor relations is primarily due to the heterogeneity of the subject of labor law.

According to the subject, "duty" in the sphere of labor, as a measure of proper or necessary behavior, can be conditionally divided into more or less clearly distinct categories from each other: 1. Duties of the employee. 2. Obligations of the employer. 3. Duties of the state. 4. Obligations of other participants in labor and other relations directly related to labor. Let's look at some of them.

The analysis of literary sources showed the absence of a consensus on the interpretation of the concept of labor disputes, summarized a number of scientific sources, in addition, the following approaches to the interpretation of the definition of the analyzed concept were identified:

The first approach is legislative, the authors who adhere to this approach give a definition of labor disputes in accordance with the concept presented in labor legislation, and understand by it various kinds of contradictions of subjects of labor law that arise in the field of practical application of labor legislation, which are considered by the jurisdictional body.

The second approach involves considering the concept of labor disputes from the point of view of disagreements between employees and their employers.

The third approach considers the concept of labor disputes as labor conflicts that have a claim character.

Labor disputes are divided into separate types according to different criteria. We believe that the main classification of labor disputes is their division into subjects of disputed relations. Thus, an individual labor dispute arises between an employer and an individual employee, whereas the parties to a collective labor dispute are employees of an enterprise, institution, organization; employee associations; trade unions, other bodies authorized by employees, on the one hand, and on the other — the employer, employers' associations or their authorized representatives.

The analysis of scientific views, judicial practice and proposals of practitioners provided an opportunity to identify the main features of labor disputes: disagreements regarding non-fulfillment, violation, improper application of labor legislation norms (terms of an employment contract or acts of social dialogue) by one of the parties to the labor relations are the subject of disagreement; these disagreements were not resolved by the participants through direct negotiations; unresolved disagreements were transferred to consideration by certain jurisdictional bodies; the differences are persistent and, as a rule, long-lasting.

In accordance with the above, the concept of an individual labor dispute (hereinafter referred to as ITS) can be interpreted as various kinds of discrepancies formed between an employee and a non - employee regarding the problems of using labor legislation, collective agreement (agreement), labor agreement (contract), which are not resolved in the process of direct negotiations and which are stated to the jurisdictional authority. The main reasons and factors contributing to the emergence of ITS include negative conditions that activate the different assessment of the subjects of labor relations of their own rights and obligations. These reasons can be conditionally divided into objective and subjective. Objective reasons – organizational, legal and economic reasons, subjective – a low level of development of legal culture and legal literacy of citizens.

The procedure for resolving ITS is defined by Chapter 15 of the Labor Code of the Republic of Kazakhstan "Consideration of individual labor disputes" (Articles 159-161), according to which they are considered: 1) conciliation commissions; 2) courts (Article 159).

The most effective way to protect labor rights, in our opinion, is judicial, in which individual labor disputes are considered in civil proceedings. Applying to the court for protection has its advantages: only in court an employee has the opportunity to fully restore his violated rights; the trial has a great educational character and public influence; it allows to identify other violations of workers' rights, to which the court is obliged to respond by issuing a separate ruling, referral to regulatory authorities. Describing the performance by the courts of their constitutional function of administering justice, it is worth noting that they interpret and use sources of labor law, which gives them the opportunity to exercise judicial supervision in this area. When exercising their right to protection in labor relations, employees are increasingly going to court, which indicates, on the one hand, an increase in the legal culture of employees, and, on the other, numerous violations of labor legislation by employers.

Disputes that arise from labor relations are dealt with by the courts according to the general rules of claim proceedings, but at the same time they have some procedural features, which are as follows.

1. Terms of applying to the court for the resolution of a labor dispute (limitation period). The limitation period is a period of time during which a citizen has the right to apply to the judicial authorities with demands for the protection of their rights and interests. That is, a necessary procedural condition for the initiation of a case in court is the timing of the appeal to the court.

Article 178 of the Civil Code of the Republic of Kazakhstan (hereinafter referred to as the Civil Code) establishes a general limitation period of three years. At the same time, the norms of civil legislation also establish a special limitation period for certain categories of cases, which may exceed or be lower than the general limitation period.

According to Article 160 of the Labor Code of the Republic of Kazakhstan, an employee has the right to appeal to the judicial authorities with a claim for reinstatement in the workplace within two

months, the countdown of which begins from the moment when the employee learns or should have learned about the violation of his rights, for other claims in the field of labor relations, this period is 1 year.

For all cases of dismissal, regardless of the grounds for termination of the contract, a two-month period is provided for filing a lawsuit to settle a labor dispute (Article 233).

The employer also has the right to apply to the judicial authorities with a claim for compensation for material damage caused by an employee of the organization, within 1 year from the day when it was established that the employee caused the damage (Part 3 of Article 233).

These short terms have a significant advantage over long-term ones for both employees and the employer. Short deadlines make it easier for both parties to present evidence in the case, contribute to the elimination of shortcomings in the organization of labor or violations of the law, in connection with which this dispute arose.

At the same time, according to the norms of Article 160 of the Labor Code of the Republic of Kazakhstan, the omission of these deadlines will not serve as a basis for refusing to accept a statement of claim if this pass is for a justified good reason. The reasons for missing the established deadlines are determined by the court in each specific case, taking into account all the circumstances of the labor case, which led to an untimely appeal to the court.

The statute of limitations does not apply to claims for damages, other health damage or damage caused by death.

2. Jurisdiction of labor disputes. Jurisdiction is a differentiation of the powers of judicial bodies to consider certain categories of cases. The definition of jurisdiction means the definition of the court that will consider the case. According to the rules of territorial jurisdiction, the case is considered by the court within the territorial jurisdiction of which the offense was committed, or at the location of the party, as a rule, the defendant (general jurisdiction). Thus, according to art. 29 of the Civil Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the CPC), claims against individuals can be brought to court at their place of residence, and against legal entities — at their location.

Alternative jurisdiction has been established for labor disputes. That is, claims on labor disputes can be filed both at the place of residence of the defendant and at the place of residence of the applicant. A claim for compensation for damage caused as a result of causing damage or other damage to health, as well as the loss of a breadwinner, may also be filed by the applicant at the place where the damage was caused (Article 30).

3. The procedural status of the parties and participants in labor cases.

When resolving an individual labor dispute in court, its parties are, first of all, an employee and an enterprise or an employer-an individual (hereinafter referred to as the employer).

The employee who filed a claim in court is the plaintiff, and the employer challenging the employee's claims is the defendant.

The employer acts as a plaintiff in a labor dispute only for compensation by the defendant employee for material damage caused by him to this enterprise.

According to Article 45 of the Civil Procedure Code of the Republic of Kazakhstan, the exercise of their rights in person in court (procedural capacity) belongs to citizens who have reached the age of majority. Minors between the ages of 14 and 18 may personally exercise civil procedural rights and perform their duties in court in cases related to personal relationships in which they participate, unless otherwise provided by law.

Based on the above, minors between the ages of 14 and 18 can personally appear in court on ITS. In cases where the interests of minors are protected, the court may involve the legal representative of the minor.

The employer is represented by his body acting within the limits of authority, or his representative [9. – 452].

4. Proving in the labor court. One of the stages of proof is the formation of the subject of proof.

According to Article 63 of the Civil Procedure Code of the Republic of Kazakhstan, the subject of proof is the facts that substantiate the claims or objections put forward or are otherwise relevant to the

decision on the case and which must be established at the time of the decision. This means that the subject of the proof are: a) the circumstances that substantiate the applicant's claims (the basis of the claim); b) the circumstances justifying the defendant's objections (the basis for denial); c) other factors that are important for the proper settlement of the case.

The burden of proof for ITS is distributed as follows: the applicant must prove the existence of a legal relationship in which a dispute arises and the defendant violates the rights and legitimate interests of the applicant; the defendant must prove the facts to which he refers in support of his objections to the claim. For example, in disputes about reinstatement at work, the subject of proof includes:

- the fact of the conclusion and termination of an employment contract;
- legality of the grounds for dismissal of an employee;
- compliance with the established procedure for the dismissal of an employee from work.

The facts of the conclusion and termination of the employment contract are confirmed, first of all, by the relevant orders of the employer.

On the legality of the grounds and procedure for the dismissal of an employee. Dismissal should be considered lawful if the employee was fired in compliance with the conditions and procedure for applying the grounds for termination of the employment contract. That is, the plaintiff must prove that the defendant violated the established conditions and the procedure for termination of the employment contract with him on a specific basis provided for by the current legislation. Take, for example, the dismissal of an employee under clause 9 of art. 52 of the Labor Code of the Republic of Kazakhstan for finding an employee in the workplace under the influence of alcohol or drugs, which will be possible if the following conditions are mandatory.

The first condition is the presence of the fact of alcoholic or narcotic intoxication of the employee. According to the norms of the NP of the Supreme Court of the Republic of Kazakhstan dated 6.10.2017 No. 9 "On some issues of the application of legislation by courts in the resolution of labor disputes", this fact can be confirmed by a medical report (paragraph 21).

According to the same explanations, the second condition for the application of paragraph 9 of Article 52 of the Labor Code of the Republic of Kazakhstan is to appear at work on the above-mentioned any working day, regardless of whether the employees were suspended or performed their work duties. If an employee has an irregular working day, his time at work in excess of the established duration is also considered a working day.

If at least one of these conditions is absent, the dismissal will be declared illegal, and the employee will be reinstated.

In addition to the specified conditions for the application of clause 9 of Article 52 of the Labor Code of the Republic of Kazakhstan, it is necessary to comply with a certain procedure established by law.

Dismissal in accordance with paragraph 9 of Article 52 of the Labor Code of the Republic of Kazakhstan is a disciplinary penalty requiring compliance with disciplinary penalties provided for in Articles 64-66 of the Labor Code of the Republic of Kazakhstan. Particular attention should be paid to Article 66 of the Labor Code of the Republic of Kazakhstan "Terms of imposition and action of disciplinary penalties", according to which the employer applies disciplinary penalties immediately after the detection of misconduct, but no later than 1 month from the date of its discovery, without taking into account the period of dismissal due to temporary disability of the employee or his vacation. Disciplinary punishment may not be imposed later than six months after the commission of the offense. If these deadlines are not met, the dismissal is considered illegal and the employee is reinstated.

5. Terms of consideration of individual labor disputes. Taking into account the importance for citizens of the right to freedom of labor and its protection, the legislation established not only shortened limitation periods, but also shortened terms of consideration of labor cases.

In accordance with the current law, the judge makes a decision on the initiation of a case or refusal to initiate a case no later than three days from the date of receipt of the application or the expiration of the deadline for the elimination of deficiencies.

In order to determine the possibility of settling the dispute before the start of the trial or to ensure the correct and rapid settlement of the case, the judge holds a preliminary court session within one month, after which, no later than 15 days, the case is scheduled for consideration. According to Article 121 of the CPC, the court considers cases within a reasonable time.

6. The court's decision on an individual labor dispute and its execution. We are talking about ways to protect violated rights and interests. Thus, in accordance with the norms of Article 161 of the Labor Code of the Republic of Kazakhstan, in case of dismissal without legal grounds or illegal transfer to another workplace, an employee must be reinstated at his previous job.

When making a decision on reinstatement at work, the court simultaneously decides on the payment of average remuneration to an employee for the period of forced absence from work or the difference in remuneration for the period of lower-paid work (Part 2 of Article 161 of the Labor Code of the Republic of Kazakhstan).

If an employee is dismissed without legal grounds or in violation of established procedures, but his return to his former position is impossible due to the liquidation of the company, institution, organization, the court obliges the liquidation commission or the owner (institution, organization and, in appropriate cases, the body responsible for managing the assets of the successor) to pay the employee for the entire period absence.

If the employer postpones the court's decision to reinstate an employee who was unlawfully dismissed or transferred to another job, the court decides to pay the difference in average remuneration or remuneration during the delay in compensation.

The Civil Procedure Code defines the specifics of the execution of court decisions on labor issues. Thus, most civil cases are subject to execution after their entry into force. In accordance with Article 240 of the Civil Procedure Code of the Republic of Kazakhstan, decisions on civil cases come into force after the deadline for filing an appeal [8. – 435].

Results and its discussion.

The first group includes all the duties of an employee under labor and other legislation, which an employee, as an employee, is obliged to fulfill directly by virtue of the requirements of the Labor Code of the Republic of Kazakhstan, an employment contract, a collective agreement, agreements and other legal acts, within the framework of labor relations. In the Labor Code of the Republic of Kazakhstan, the direct designation of the employee's duties is found in Article 22 "Basic rights and obligations of the employer", Article 107 "Rights and obligations of the employee in the field of safety and labor protection".

By virtue of paragraph 1 of Part 2 of Article 22 of the Labor Code of the Republic of Kazakhstan, an employee is "obliged" to perform "labor duties" in accordance with agreements, labor, collective agreements, acts of the employer. In this case, it is interesting to use the term "duty" in relation to "work duties". The apparent tautology, in our opinion, is primarily due to the fact that the legislator understands the labor function of an employee by labor duties in the example given. This is confirmed by the indication of the following obligation of the employee to observe labor discipline. Indeed, the separation in art. 22 of the Labor Code of the Republic of Kazakhstan duties to perform labor duties, the obligation to observe labor discipline and requirements clearly demonstrates a different nature of "labor duties" than it is indicated in the conceptual apparatus of the Labor Cody of thy Rypublic of Kazakhstan. Labor obligations are understood as obligations of an employee and an employer stipulated by regulatory legal acts of the Republic of Kazakhstan, an act of the employer, an act of the host party, labor, collective agreements. At the same time, labor obligations are the duties of an employee in the field of labor protection, property obligations, etc. We believe that for a uniform and holistic understanding of labor duties, in order to avoid confusion in the interpretation of terms, it is necessary to introduce a definition of labor function into the conceptual apparatus as work directly performed by an employee under an employment contract, agreement, collective agreement, which is the subject of an employment contract, agreement, collective agreement.

In this group, a separate subgroup of duties of potential employees can be distinguished, since their duties, although not directly of a labor nature, are regulated by labor legislation and are specified in the

Labor Code of the Republic of Kazakhstan. Basically, these include the duties of a potential employee to provide certain documents for employment, to take certain actions, for example, to undergo a preliminary medical examination, etc.

The second group of duties consists of the duties of the employer. They are fixed in paragraph 2 of Article 23, Article 108 of the Labor Code of the Republic of Kazakhstan. The overwhelming number of duties in the field of labor protection, in addition to those listed above, in the Labor Code of the Republic of Kazakhstan and other legal acts are devoted to the duties of the employer, since in the very concept of labor relations, labor contract and labor protection, the employer's obligation to provide working conditions for the safe work of the employee is laid down. Tal, investigating the essence of labor relations between an employee and an employer, rightly pointed out that the employer's obligation to protect the employee's personality from the dangers associated with his actual presence in someone else's business environment follows from the employment contract, as far as the latter himself cannot avoid them [17].

The Labor Code of the Republic of Kazakhstan obliges the employer to organize periodic medical examinations and examinations of employees at their own expense, provided that these employees are engaged in heavy work, as well as work with harmful and (or) dangerous working conditions (Article 185 of the Labor Code of the Republic of Kazakhstan). The procedure for such medical examinations is regulated by the Order of the Acting Minister of Health of the Republic of Kazakhstan dated October 15, 2020. (hereinafter referred to as the Order), according to which, not only workers engaged in heavy work, as well as work with harmful and (or) dangerous working conditions, but also other workers are subject to mandatory periodic medical examinations. In particular, employees of trade, educational institutions of primary, secondary general, higher education, etc.

The main purpose of conducting periodic mandatory medical examinations is to ensure dynamic monitoring of the health status of employees, to identify the initial signs of diseases in time, to prevent the appearance of both general and occupational diseases, including infectious and parasitic. To do this, conditions must be created for employees and appropriate guarantees must be provided by the employer. According to paragraph 7 of art 86 of the Code of the Republic of Kazakhstan No. 360–VI ZRK, employers create conditions for employees to undergo medical examinations, and are also obliged to freely release employees for their passage during working hours while maintaining their place of work (position), wages. However, the Labor Code of the Republic of Kazakhstan does not provide such guarantees to employees. The preservation of the place of work (position) and the average salary is guaranteed only for the duration of periodic medical examinations at the expense of the employer (Article 125 of the Labor Code of the Republic of Kazakhstan). The same applies to the employee's obligations to undergo mandatory preliminary and periodic medical examinations, pre-shift and other medical examinations, as well as, at the request of the employer, to undergo preventive medical examinations in cases provided for by the employer's act, including when transferring to another job. In this case, the norms of the 360–VI SAM Code directly contradict the norms of the TC RK. In order to bring the legislation to uniformity, it is necessary to amend Article 125 of the Labor Code of the Republic of Kazakhstan and exclude the phrase "at the expense of the employer" from the text of the article.

Conclusion.

Despite the relative stability and conservative nature of legal categories, they are subject to periodic revision, are subject to the loss of their value content or, on the contrary, its enrichment. The value of the category "duty" in labor law is directly related to the value of labor activity, labor, its organization and distribution. The importance of calculating and researching duties as an independent category of labor law seems justified, since duties play a key role in labor relations, permeate the system of labor relations. At the same time, the concept of duty in labor law, the concept of labor duties is a multifaceted and complex structure, interweaving many meanings of different branches of law. Duty, as a legal category, is undergoing significant changes, the course of which is influenced by the historical development of the state, policies, approaches and methods of legislative and law enforcement practice. In this connection, the need to study duties in the field of labor law as a legal category is obvious.

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ЕҢБЕК САЛАСЫНДАҒЫ «МІНДЕТ» ҚҰҚЫҚТЫҚ САНАТЫНЫҢ МӘСЕЛЕЛЕРІ

Аңдатпа.

Осы мақаланың мақсаты құқық жүйесіндегі құқықтық санаттардың орны мен рөлі, еңбек құқығындағы «міндет» санатын зерттеудің мәні мәселелерін қарау болып табылады. Құқықтық категорияларды зерттеу құқықтық теориялық және құқықтық тұжырымдамаларды зерттеу әдістерінде құрылымдық және жүйелік тәсілдерді қолдануға мүмкіндік береді. Еңбек құқығына қатысты «міндет» санаты еңбек қатынастарының механизмімен тығыз байланысты. Еңбек құқығындағы «міндет» санатындағы белгілі бір тұжырымдамалық аппаратты әзірлеу ерекше қиындық тудырады, өйткені бұл санатқа «еңбек міндеттері», «еңбек функциясы», «еңбек саласындағы міндеттер», «еңбек міндеттемелері» және т.б. сияқты ұғымдар кіреді. «Міндет» құқық санаты ретінде, әсіресе, еңбек құқығы саласында өзгерістерге көп түседі. Елдің нарықтық экономикаға ауысуына байланысты жалпыға бірдей демократияландыру, жариялылық және қоғамның жаһандануы, бір жағынан, қоғамдық-әлеуметтік өмірдің барлық салаларының динамикалық дамуына серпін берді, шарттық қатынастардың еркіндігіне негізделген еңбек қатынастарын дамытудың жаңа бағытын анықтады. Екінші жағынан, қызметкер мен жұмыс берушінің өзара әрекеттесуінің азаматтық-құқықтық, шарттық элементтерінің артып келе жатқан әсері еңбек саласындағы «міндет» ретінде іргелі категория біртіндеп көпжақты болып келеді.

Негізгі сөздер: құқық санаты, еңбек құқығы, еңбек қатынастары, еңбек міндеттемелері, еңбек функциясы, еңбек шарты.

ВОПРОСЫ ПРАВОВОЙ КАТЕГОРИИ «ОБЯЗАННОСТЬ» В СФЕРЕ ТРУДА

Аннотация.

Целью данной статьи является рассмотрение вопросов места и роли правовых категорий в системе права, значения исследования категории «обязанность» в трудовом праве. Изучение правовых категорий позволяет применять структурированный и системный подход в методах исследования правовых теоретико-правовых концепций. Категория «обязанность» применительно к трудовому праву тесно связана с механизмом трудовых правоотношений. Особую сложность представляет выработка конкретно-определенного понятийного аппарата категории «обязанность» в трудовом праве, поскольку данная категория включает в себя такие понятия, как «трудовые обязанности», «трудовая функция», «обязанности в сфере труда», «трудовые обязательства» и т.п. «Обязанность», как правовая категория, претерпевает значительные изменения, особенно в сфере трудового права. Переход страны на рыночную экономику, всеобщая демократизация, гласность и глобализация общества, с одной стороны, придали импульс для динамического развития всех сфер общественно-социальной жизни, определили

новый вектор развития трудовых отношений, основанных на свободе договорных отношений. С другой — возрастающее влияние гражданско-правовых, договорных элементов взаимодействия между работником и работодателем приводит к тому, что фундаментальные категории, как «обязанность», в сфере труда постепенно становится многоранным.

Ключевые слова: категория прав, трудовое право, трудовые отношения, трудовые обязательства, трудовая функция, трудовой договор.

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