

Discussion Issues Of Legal Regulation Of Labor Of Persons Working Part-Time

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Abstract

The article examines the legislative regulation and law enforcement practice of part-time work in Uzbekistan. This article pays great attention to the legal features of part-time work, in particular the concept of part-time work, the definition of the legal status of part-time workers, the specifics of their hiring, rationing and remuneration, provision of guarantees and compensation, as well as termination of employment relations with this category of employees. The author analyzes various approaches to part-time work in the science of labor law and in practice. In the course of studying part-time work, the author used a number of methods, as well as practical experience from labor relations between employee and employer.

Keywords: *part-time work, maximum working hours for part-time workers, features of remuneration for part-time workers, payment of temporary disability benefits.*

INTRODUCTION

The labor legislation of the Republic of Uzbekistan pursues such tasks as creating the necessary legal conditions to achieve optimal coordination of the interests of the parties to labor relations, the interests of the state, as well as the legal regulation of labor relations and other relations directly related to them.

Currently, most of the population is interested in finding another additional job. Such work at several enterprises is part-time work.

In accordance with band 2 of the resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On approval of the regulations on the procedure for part-time work and combination of professions and positions” (here in after referred to as the Regulations on Part-Time Jobs), part-time work should be understood as other paid work performed by an employee, in addition to his main job, under the terms of an employment contract, in his free time from his main job. Thus, a person who worked part-time has at least two employment contracts: one for the main job, the other for part-time work [1. P.20].

With the adoption of these Regulations, a procedure has been established for regulating labor relations between an employer and a part-time worker in accordance with an employment contract at enterprises, institutions, and organizations of all forms of ownership (here in after referred to as the organization).

The possibility of part-time work provided for in labor legislation is the implementation of the right of everyone enshrined in Article 42 of the Constitution of the Republic of Uzbekistan to decent work, to free choice of profession and type of activity, favorable working conditions that meet safety and hygiene requirements, to fair remuneration for work without any there was no discrimination and not lower than the established minimum wage, as well as protection from unemployment in the manner prescribed by law [2. C.11].

An employment contract for part-time work can be concluded by an employee with the same or another employer, but it must indicate that the work performed by the employee is part-time. Consequently, the condition of part-time work is an additional provision of the employment contract concluded with the employee to perform other work. [3. P.311].

There are internal and external part-time jobs. Clause 5 of the Regulations stipulates that part-time work is allowed at the main place of work (internal part-time work) or in another organization (external part-time work), unless otherwise provided by these Regulations. [4. C.3].

In case of internal part-time work, it is necessary to conclude another employment contract and perform work only in a different specialty, profession or position than the main job, with the exception of cases where the law provides for the possibility of part-time work in the same profession, position, specialty - medical and teaching workers.

External part-time work is working under an employment contract with another employer. Work can be performed in any specialty or position, including the one in which the employee works at his main job, in his free time from his main job, with the obligatory conclusion of an employment contract. When hiring an external part-time employee and concluding an employment contract, the employer is obliged to demand, and the employee is obliged to present to the employer, a number of documents that are listed in Art. 124 Labor Code.

1. Paragraph 4 of the Regulations contains a ban on part-time work for certain categories of citizens. However, in Art. 433 of the Labor Code provides for a ban on part-time work for persons under the age of eighteen in jobs with unfavorable working conditions, if the main job of the part-time worker is related to the same conditions. Analysis of this norm shows its contradiction with paragraph 4 of the Regulations on part-time work. Of course, to resolve this legal conflict, you should contact the Law of Ukraine “On Regulatory Legal Acts”. This Law contains a list of normative legal acts that are established in hierarchy, and determines the superiority of laws (and codes equivalent to them) over the Resolutions of the Cabinet of Ministers of the Republic of Uzbekistan [5. C.8]. In this regard, the question arises: “Why, since the new Labor Code was adopted, have all previously adopted legal acts not been brought into compliance with it?” To be fair, it is worth noting that in the Regulations on Part-Time Employment, the list of persons for whom the law prohibits part-time work was drawn up much better than in the Code.
2. Another omission in the harmonization of regulations can be seen in paragraph 7 of the Regulations on part-time work, which allows employees of the healthcare system only to work at two rates. However, in accordance with the Decree of the President of the Republic of Uzbekistan “On additional measures for the further development of the

sphere of culture and art” dated 02.02.2022 No. PP-112, teachers in the subject “Music” who have the skills to play at least three national musical instruments, It is also allowed to work at two rates [6. C.4].

In order to avoid disputes between the employee and the employer on the issue of providing documents required for employment for part-time work, it seems necessary to bring paragraph 6 of the Regulations into line with Article 434 of the Labor Code of the Republic of Uzbekistan, since the latter contains additional documents.

3. Part one of Article 437 of the Labor Code allows for double interpretation and can lead citizens astray. Nevertheless, among “labor specialists” this norm is understood as the right of an employee to enter into several part-time employment contracts (including with the same employer), provided that the total duration cannot be more than half the standard working time.

However, in order to comply with the principle of maximum clarity and conciseness in the formulation of legislative norms, part one of Article 437 of the Labor Code is proposed to be stated as follows:

“The duration of working hours when working part-time should not exceed four hours a day, except in cases provided for by law.”

4. As we have previously noted, part-time work allows citizens to improve their level of financial situation. In this regard, the question arises whether it is possible and what negative consequences it may have to grant citizens on leave without pay the right to part-time work full time.

It should be noted that part-time work means that an employee, in addition to his main job, performs other paid work under the terms of an employment contract, in his free time from his main job. A detailed analysis of the definition of part-time work suggests that such work can be performed in free time from the main job. In theory, given that the employee is on leave without pay, this means that he is free from his main job throughout this entire period. Therefore, it is permissible to allow the employee to work part-time at full time throughout the entire vacation period without pay. However, the practical implementation of this right gives rise to a number of difficulties in registration, in particular when registering such agreements in the UNST. In this regard, we believe that until this issue is resolved at the legislative level, allowing employees to work full time while on vacation without pay appears to be illegal.

5. Transformation of part-time work into the main job.

It is not uncommon in practice for an employment contract to be terminated with part-time workers, after which the further fate of the contract for the second place of work becomes relevant [7. P.82]. It is a mistake to think that upon termination of the employment contract at the main place of the part-time worker, the contract at the second place of work will automatically become the main one. As you know, when concluding an employment contract, the parties need to clarify the type of employment (main job or part-time job). In other words, all terms and main points of the contract must be agreed upon by the parties [8. P.554]. Consequently, there can be no talk of any automatic transformation of the part-time contract. The transformation of a part-time employment contract into the main place of work must be carried out in strict accordance with Art. 136 of the Labor Code of the Republic of Uzbekistan.

6. Another difference also occurs when sending an employee on a business trip within and outside of Uzbekistan.

During an internal business trip, persons combining professions and internal part-time workers are guaranteed to maintain their average monthly salary, while for external part-time workers, such a business trip can harm their income.

It is known that in August 2022, a new Regulation on business trips within the Republic of Uzbekistan was adopted. In accordance with paragraph 12 of this Regulation, the employee's business trip is carried out by reaching an agreement between employers. However, the employee's average monthly salary is retained only at his main place of work [9. P.57].

The main regulator of business trips for employees outside of Uzbekistan is the Regulations on the procedure for issuing funds for travel expenses when traveling on business trips of employees of ministries, departments, enterprises and organizations outside the Republic of Uzbekistan. However, although this Regulation does not contain a special rule regarding maintaining the salary of a part-time worker when he is sent on a business trip outside of Uzbekistan, we can conclude that the condition of the part-time worker will not change in any way compared to an internal business trip.

The current state of external part-time workers compared to internal ones is quite difficult, given that only internal part-time workers do not have to worry about maintaining wages when sent on a business trip. In other words, when going on a business trip, the only thing an external part-time worker can count on is maintaining the average monthly salary in the organization that sent him. In this regard, it is worth carefully studying this issue from the point of view of both the employee and the employer.

If we start from the position of an external part-time worker, then we must take into account that he has entered into a separate employment contract, therefore, in theory, he should have all the rights that the main employees have. Thus, it seems appropriate to introduce a norm into labor legislation that guarantees external part-time workers the preservation of the average monthly salary both at the main place of work and at the part-time place when sent on a business trip. However, this is just a guess.

But on the other hand, the position of the employer must also be taken into account. Because, maintaining the average monthly salary for an employee who was sent on a business trip in the interests of the employer at the main place of work looks unfair to the employer at the part-time place.

Labor legislation grants part-time workers the right to receive unemployment benefits, and women, in addition, maternity benefits [10. S.1].

When considering the issue of paying benefits to part-time workers, it is necessary to study both internal and external part-time work. In case of internal part-time work, it is enough for the employee to receive one certificate of incapacity for work and provide it to the employer. In the situation with an external part-time worker it looks a little different. If the procedure is identical, he must receive a sheet and provide a certified copy of the certificate of incapacity for work issued by the health care institution. The employer is obliged to pay sick leave to a part-time worker. Therefore, employees working part-time in an organization have the full right to receive temporary disability benefits.

As we noted earlier, women working part-time are entitled to receive not only disability benefits, but also maternity benefits. This benefit is paid when a part-time employee receives maternity leave. Therefore, first it is necessary to clarify the procedure for granting these leaves.

Annual main leave as noted in Art. 227 of the Labor Code of the Republic of Uzbekistan for the first working year is provided after six months of work. However, there is a category of persons who are granted leave before the expiration of six months. These workers also include part-time workers, who are granted leave simultaneously with leave from their main place of work with payment in proportion to the time they work part-time. This article obliges employers to provide part-time workers with leave upon their written request.

To receive maternity leave, part-time women must present a copy of the certificate of incapacity for work. Only this document is the basis for granting maternity leave. By accepting such costs, employers may prefer to stay away from them. However, labor legislation has already addressed these issues in some detail. For example, if an employer refuses to hire employees, then in accordance with Art. 119 of the Labor Code of the Republic of Uzbekistan, his actions will be recognized as unlawful, and this, in turn, threatens to bring him to administrative liability under Art. 49 of the Code of Administrative Responsibility (hereinafter referred to as the Code of Administrative Responsibility). But if the employer hired a pregnant woman who, after a certain time, went on maternity leave, and refuses to pay child care benefits, then in accordance with Art. 493 of the Code of Administrative Offenses, a fine of ten to fifteen basic calculated amounts will be applied to him. The same offense, committed again within a year after the application of an administrative penalty, entails a fine of fifteen to thirty basic calculation amounts [11. P.17].

Conclusion

To summarize the consideration of the legal regulation of part-time work, we formulate the following proposals aimed at eliminating existing shortcomings of labor legislation and increasing the efficiency of the legal regulation of part-time work.

Firstly, in fulfilling the requirements of the Law of Regulations “On Regulatory Legal Acts”, it seems necessary to bring paragraph 4 of the Regulations on part-time work into line with Art. 433 Labor Code of the Republic of Uzbekistan;

Secondly, paragraph 6 of the Regulations, which provides for the obligation of employees who wish to work on a part-time basis to provide the documents necessary for hiring, should be brought into compliance with Art. 434 Labor Code of the Republic of Uzbekistan;

Thirdly, in order to avoid double interpretation, as well as to comply with the principle of maximum clarity and conciseness of the formulation of legislative norms, part one of Article 437 of the Labor Code is proposed to be stated as follows:

“The duration of working hours when working part-time should not exceed four hours a day, except in cases provided for by law.”

Fourthly, the labor legislation of the Republic of Uzbekistan does not contain a specific rule regarding the rights of part-time workers to work full time during the period of leave without pay. Based on the terminological definition of “part-time work,” one can grasp the right of part-time workers to carry out additional work in their free time from the main working time. However, for more specific legislative regulation of this issue, it seems quite reasonable to introduce a rule into labor legislation allowing part-time workers to work full time during the designated period. But if the employee is on paid leave, then paragraph 7 of the Regulations on part-time work will apply as before;

Fifthly, the transformation of an employment contract at the place of part-time employment into the main one must be carried out in strict compliance with the conditions of Article 136 of the Labor Code of the Republic of Uzbekistan;

Sixth, part-time workers have equal rights as main employees. However, when sending part-time workers on a business trip, especially external part-time workers, part of the guarantee seems impossible to provide. Namely, maintaining wages at the main place and at the part-time place. In this regard, it is worth carefully studying this issue.

There are no claims regarding the rights of part-time workers to payment of disability benefits. The legislation addresses this issue very specifically and fairly.

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