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Employer's right to labor management: guarantees and restrictions

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Contents

Introduction 3

Chapter 1. The concept and general characteristics of labor management 15

§1. The concept of labor management 15

§2. The employer as a subject of labor management 41

§3. The concept and content of the right to labor management 66

Chapter 2. Guarantees and implementation of the employer's right to labor management 72

§1. The concept and types of guarantees of rights 72

§2. Legal guarantees of the employer's right to labor management 80

§3. Modern problems of the employer's implementation of the right to labor management 93

Chapter 3. Restrictions on the employer's right to manage labor 122

§1. The concept and grounds for restrictions on the employer's right to manage labor 122

§2. Limits of possible restrictions on the right of the employer to manage labor 131

§3. The principle of social partnership as a restriction of the employer's right to manage labor 178

Conclusion 205

List of sources 209

Introduction

Relevance of the research topic. Any economic activity not prohibited by law is inextricably linked with the labor activity that ensures it. At the same time, the implementation of the labor process within the framework of the implementation of economic activity is possible both directly by the person who is the subject of economic activity, and by other persons when the subjects of economic and labor activity do not coincide. At the same time, the implementation of labor activity in the interests of another person who is the subject of economic activity is aimed at ensuring the corresponding economic activity. Moreover, labor activity is the most important factor determining the stability and well-being of both the individual and society as a whole. The possibility of its full implementation is important for both employees and employers.

The employee, realizing his ability to work, is established as a socially significant person and receives earnings, which is the main income to ensure a full life for both himself and his family members. In turn, the employer is the subject of entrepreneurial and other economic activities not prohibited by law, for which the labor of employees is one of the most important factors in achieving the goals of their activities. Their interaction takes place in the form of labor relations, the constituent element of which is the presence of a subordinate relationship, where the employer is the subject of management, and the employee is a subordinate. This means that both employees and employers are interested in finding a management model that meets the interests of each of the parties to labor relations. In turn, the definition of the optimal management model in labor relations is impossible without understanding the content elements of such a phenomenon as “labor management”. This circumstance makes it necessary to analyze the nature of this phenomenon in any historical era, which predetermines the relevance of the subject of this research.

The dynamic development of civil circulation, as well as modern social and economic challenges, are in many ways ahead of the process of improving labor legislation. This leads to the fact that the sphere of labor management becomes largely

devoid of flexibility: employers are unable to quickly change the model of employee management without violating their rights, adapting to the ongoing social, political and economic changes. This negatively affects the state of all public spheres, where various statuses of members of the society are realized, who are simultaneously parties to labor relations. At the same time, an understanding of which basic legal grounds are actually the source of the employer's managerial powers, and which ones are their limiter, and how general legal principles and guarantees are refracted within the framework of the labor law branch, will provide the right vector for determining the legitimacy of certain managerial actions of the employer in conditions gaps in labor laws.

The issues of labor management have repeatedly become the subject of scientific research and currently have sufficient theoretical study. However, in most of the available works, the process of labor management is analyzed through the prism of the public component of labor law as an industry. Insufficient study of the phenomenon of labor management in the context of its private legal nature, as well as the role of the employer as the only entity with the so-called "master's power", does not contribute to the development of legal concepts and approaches to the issue of labor management powers. Therefore, a deep analysis of the power-subordination relations that develop between two private entities, the employer and the employee, is more important than ever.

All this explains the relevance of studying the nature, grounds, limitations and permissible content of the employer's powers to manage labor and the development of a holistic concept of the employer's right to manage the labor of subordinate employees.

The degree of development of the research topic. In domestic science, studies of such a process as labor management are widely represented. However, most of them are devoted to studying the possibilities for the employer to use the tools given to him by the legislator to manage his organization and interact with employees. A significant part of such research was carried out during the Soviet period and is heavily influenced by the Marxist-Leninist ideology, which denied the private nature of the organization and management of labor, and reflected the legislation and practice of managing the economy of Soviet society. There are also works aimed at studying the operation of

basic constitutional principles within the framework of labor relations in order to determine the vector of constitutionalization of labor legislation. Considerable attention is paid to the individual regulation of labor relations. However, this study is focused on analyzing the nature of the employer's right to manage labor, substantiating its private nature and, on this basis, determining the permissible range of employer's powers to manage employees, which he has by virtue of his objective status as a subject of labor management, as well as identifying legal limiters of these powers.

Object and subject of the research. The object of the research is the social relations that develop in the process of using the hired labor of employees by the employer to implement and achieve the goals of its economic activity.

The subject of the study is the substantive aspects of the implementation by the employer of the powers to organize and manage labor.

Purpose and objectives of the research. The purpose of this research is to clarify scientific ideas and identify the nature of the right to manage labor, as well as to propose on their basis options for solving practical problems related to the implementation by the employer of managerial powers in the field of labor relations.

This goal allows us to formulate the following research objectives:

1. To determine the objective reasons for the existence of the phenomenon of labor management, characterize the features of social relations in which it is present, establish the essential features that the subject of labor management should possess.

2. To compare the categories of "master's power" and "the right to manage labor", to determine the constitutive features of the latter.

3. To analyze how at the current stage of the development of the Russian legal system, the ability of the employer to exercise its powers to manage the labor of employees is legalized and guaranteed by the state.

4. To identify legal sources and grounds for restricting the employer's right to manage labor, as well as possible limits for limiting the managerial powers of the latter.

5. To formulate proposals and recommendations for developing an optimal model for managing the work of employees in the economic sphere of the employer.

The methodological base of the research is made up of both general scientific (analysis, synthesis, analogy, classification) and private scientific methods. Among the latter, it is worth highlighting the historical and legal (when considering the evolution of labor legislation, as well as the development of views on the legal aspects of labor management in the pre-revolutionary, Soviet and modern periods), formal legal (for giving an assessment of the quality of legal texts independent of various social factors), as well as to determine the level of legal technique of the current legislation) and systemic (on the example of the conditionality and dependence of a number of social and economic processes on the guarantees of the rights of workers and employers established by law) methods.

The theoretical basis of the research is the works of leading scientists: S.S. Alekseev, N.G. Alexandrov, M.I. Baru, S.P. Basalaeva, N.S. Bondar, K.M. Varshavsky, I.S. Voitinsky, L.A. Ginzburg, S.Yu. Golovina, A.S. Goryachev, A.V. Grebenshchikov, K.N. Gusov, N.I. Diveeva, V.M. Dogadov, O.O. Zorina, T.V. Ivankina, K.D. Krylov, V.V. Korobchenko, A.V. Kuzmenko, A.M. Kurennoy, V.M. Lebedev, A.M. Lushnikov, M.V. Lushnikova, N.L. Lyutov, S.P. Mavrin, E.N. Nurgalieva, A.F. Nurtdinova, Yu.P. Orlovsky, A.E. Pasherstnik, A.S. Pashkov, Yu.V. Penov, Yu.N. Poletaev, M.S. Sagandykov, V.I. Savich, V.A. Safonov, G.S. Skachkova, V.N. Smirnov, T.A. Soshnikova, L.A. Syrovatskaya, L.S. Tal, K.L. Tomashevsky, V.N. Tolkunova, M.M. Kharitonov, G.V. Khnykin, E.B. Khokhlov. The topics of dissertation research by S.P. Mavrin for the degree of Doctor of Law "Labor management: theoretical and legal aspects" (1991), Yu.V. Penov for the degree of candidate of legal sciences "Labor management in a mixed economy: legal problems" (2003) and O.Yu. Bogomolova for the degree of candidate of legal sciences "Modern legal mechanisms for labor management at the local level" (2019), as well as a monograph by V.I. Savich "Labor Management and Labor Law" (1986).

The scientific novelty of the research is, in particular, in the following. Firstly, the dissertation proposed a new approach to determining the grounds for the employer to have the authority to manage labor, which can be called the “activity approach”. This approach assumes that the possession of managerial powers by the employer is due to

the fact that the employer, as a subject of economic activity and as a person who organizes all processes within his autonomous economic sphere, makes a decision to carry out his activities not through his own labor, but through the use of the ability to work. attracted employees, which is objectively possible only through the management of the behavior of employees exclusively by the subject carrying out the relevant economic activity, that is, the employer.

Secondly, this research is devoted to substantiating the private nature of the employer's powers to organize and manage labor in the context of the phenomenon of "labor management" as an element of the implementation of any type of independent economic activity, involving the use of other persons' ability to work to ensure it.

Thirdly, this research is the first in which the employer’s labor management powers are considered from the point of view of the employer’s right to manage the labor of employees in the context of its guarantees and restrictions, including constitutional ones, and not as a set of powers that make up the content of the “master’s authority" of the employer.

The novelty of the research is reflected in the following provisions submitted for defense:

1. The performance by any person of creative, in his opinion, actions (labor process) aimed at achieving a specific goal, represents the implementation of a certain activity by such a person and predetermines the emergence of the status of the subject of this activity in him. Thus, no activity is possible outside the process of labor, which transfers this activity from potential to real. The subject of activity can carry it out through personal labor or by using the ability to work of other people.

The use by the subject of activity of someone else's ability to work to carry out their activities gives rise to the phenomenon of labor management, which implies a relationship of power-subordination between the subject of activity and the carriers of the ability to work, which is due to the following. Any subject of independent activity has an autonomous economic sphere, within which there is an independent organization of all processes associated with the receipt, use and consumption of benefits, including the decision to carry out activities aimed at obtaining such benefits, through the use of

the ability to work of other people. Only the subject of activity, as its initiator and organizer, can know what effect he wants to achieve from the use of someone else's ability to work. Therefore, only he is the only person who knows how to use someone else's ability to work in relation to his economic sphere, which is possible only through the management of those people to whom this ability to work belongs. To do this, their actions must be determined by the will of the subject of activity.

Therefore, the role of the initiator and organizer of the labor process, which is objectively inherent in the subject of activity as a person with an autonomous economic sphere, carried out within the framework of the activity carried out using someone else's ability to work, gives the relations of such a subject with the possessors of the ability to work attracted by him a subordinate character. In such relations, the subject of activity implements a certain power, which is called the master's power and exists regardless of the fact that the state legitimizes these relations.

Accordingly, the basis of this power is the organizational and economic autonomy of absolutely any subject of activity, which is expressed in the possibility of the latter independently, based on their own interests, to choose such a way of carrying out their activities as through the use of the ability to work of other people.

The foregoing speaks of the objective existence of the power of the subject of activity in relations with the carriers of the ability to work, which is subject to management by the subject of activity, which predetermines its private nature.

2. If the process of labor and the goals to which it is directed are legitimate, then the activity represented by such purposeful labor is also legitimate. In this case, the state legitimizes:

1) the implementation by the subject of this activity, recognizing his right to engage in such activity, without prohibiting it by law, which presumes the socially useful nature of such activity;

2) the potential opportunity for the subject of socially useful activity to use someone else's ability to work to carry out this activity, confirming for the subject of socially useful activity the right to manage labor by recognizing him as an employer in the field of labor relations (legitimizing the master's power), but at the same time,

establishing restrictions on this right, which is expressed in the normative regulation of labor relations.

In this regard, legitimate relations built according to the subordination model of interaction between their parties, where labor management takes place, are relations that are part of the subject of the labor law branch. The only person in such relations who objectively has the status of the organizer of the labor process, and, therefore, the power to manage labor, is the employer as a subject of socially useful activity, carrying it out in whole or in part by using the ability to work of one or more employees.

3. The author's definition of the concept of "labor management" is proposed. Labor management is the ordering influence of the employer on the behavior of at least one employee who realizes his ability to work in the interests of the employer on the basis of a voluntary declaration of will and for remuneration, expressed in the organization of the labor process by the employer, providing conditions for the employee to fulfill his duties and lawful instructions from the employer, as well as the exercise of their rights, through which the employer carries out his socially useful activities.

4. The author's definition of the concept of "right to manage labor" is proposed. The right to manage labor is an objectively necessary and existing opportunity for the employer to manage the actions of employees within the constitutionally acceptable limits for the implementation of socially useful activities, without violating the prohibitions and restrictions established by law.

The right to labor management has the following characteristics:

a) has a private character, that is, it is immanently inherent exclusively to the employer as a subject of socially useful activity, and is not delegated to him by the state;

b) is a subjective right of a person who has made a decision to carry out labor activity, which is the content of socially useful activity, through involved persons with the necessary ability to work;

c) has a non-contractual nature, is implemented when concluding an employment contract with at least one employee;

d) is composite: its content is the authority to establish internal order in the sphere of its socially useful activities through local regulation, operational management of labor and control over labor discipline.

5. The basis for restricting the employer's right to manage labor is the need to ensure the implementation of constitutional principles, the rights and freedoms of other persons, implemented within the framework of relations regulated by labor law.

The basic restrictions on the employer's right to manage labor in labor relations with any employee are the fundamental principles, as well as the rights that make up the constitutional and legal status of the employee, which can be divided into two groups:

1) Always having priority over the right of the employer - these are the constitutional principles of the inviolability of life and the protection of human health, the dignity of the individual, the equality of all before the law and the courts.

2) Rights-principles, the restrictive effect of which in relation to the right of the employer is not absolute - these are the constitutional principles of freedom of labor and freedom of association, which has found branch reflection in the principle of social partnership.

In cases where an employer enters into labor relations with a number of certain categories of workers provided for by law, the second group of rights-principles will be supplemented by other components of the constitutional and legal status of these categories of workers (for example, protection of the family, motherhood and childhood, the right to education).

6. One of the manifestations of the principle of social partnership is the voluntary admission by the employer to the sphere of decision-making on labor management of employees' representatives, which in fact is a self-restriction on the part of the employer of the right to labor management within the framework of social partnership.

One of the manifestations of such self-restriction is the voluntary refusal of the employer to exercise certain powers to manage labor, including the establishment of such a procedure for their implementation that excludes the possibility of independent (without the participation of entities that are not management bodies of the employer) adoption by the employer of certain management decisions.

At the same time, the employer cannot refuse to exercise administrative, dispositive and disciplinary powers to manage labor, as this entails a defect in his labor legal personality, leading to unreasonable restrictions or the impossibility of exercising the right to carry out economic activity and the obligation to organize the labor process.

The restrictions adopted by the employer should not lead to the fact that he would lose his independence in the exercise of administrative, discretionary and disciplinary powers, that is, the decision to exercise such powers should not imply their transfer to persons who are not initiators and organizers of socially useful activities. Such restrictions are permissible if the employer is not deprived of the opportunity to make this decision in the form in which it was initiated by him. In this case, the restriction of the implementation of the administrative, dispositive and disciplinary powers of the employer should be considered as a legitimate improvement in the working conditions of employees.

The theoretical significance of the research lies in the fact that the complex of results, theoretical conclusions and provisions obtained by the author as a result of the study makes a certain contribution to the system of scientific knowledge about the nature and essence of the employer's powers to manage the work of employees. The author proposes and substantiates a new conceptual view of the basis for the emergence of a subordinate relationship "employer-employee" within the framework of labor relations, based on the recognition of the paramount importance of the right of any person to carry out economic activities not prohibited by law.

The practical significance of the research lies in the fact that the conclusions and proposals of the dissertator can be used in improving the current legislation, implementing collective contractual regulation of labor relations and implementing other forms of social partnership, as well as in the practical activities of employers in order to increase its socio-economic efficiency.

The reliability and validity of the conclusions obtained as a result of the research is confirmed by the use of appropriate methodology, the study of a sufficient amount of scientific literature, the regulatory framework, as well as the use of empirical data collected in the process of working on the research.

The results of the dissertation research were tested at scientific and practical conferences:

- at the International Scientific and Practical Conference "Labor Law, Social Security Law and Market Economy: Problems of Interaction" (Second Gus Readings), held on 06/29/2016 - 07/01/2016, the topic of the report: "The implementation by the employer of the right to make personnel decisions : some problems" with the publication in the Collection of materials of this international scientific and practical conference (RSCI);

- at the XVII International Scientific and Practical Conference and the XI International Scientific and Practical Conference "Kutafin Readings" on the topic: "Ensuring the rights and freedoms of the individual in the modern world", held on November 21, 2016 - November 24, 2016, the topic of the report: "Compliance with the principle of the dignity of the employee's personality in labor management";

- at the International Scientific Conference "Labor and Society in the Realities of the 21st Century", held within the framework of the St. Petersburg International Labor Forum 2017, held on 16.03.2017 - 17.03.2017, the topic of the report: "The role of the founder in the process of labor management employees of the organization";

- at the sixth Summer School for teachers of labor law and social security law on the topic "The margin of appreciation of the parties in the contractual regulation of social and labor relations", the time of the 22.06.2017 - 24.06.2017, the topic of the report: "The validity and admissibility of the adoption by the employer of some decisions";

- at the XVII International Scientific and Practical Conference and the XIII International Scientific and Practical Conference "Kutafin Readings" on the topic: "Modern Russian Law: Interaction of Science, Rule-Making and Practice", held on November 21, 2017 - November 23, 2017, the topic of the report: "Unilateral withholding by the employer of the amount of material damage as a measure to protect property rights" with publication in the Collection of materials of this international scientific and practical conference (RSCI);

- at the International Scientific and Practical Conference "The Economic Function of Labor Law: Past, Present, Future" ("Eighth Pashkov Readings"), held on 03/02/2018 - 03/03/2018, the topic of the report: "Constitutional restrictions on the employer's right to manage labor . Some aspects";

- at the XIX International Scientific and Practical Conference of the Faculty of Law of the Moscow State University named after M.V. Lomonosov and the XV International Scientific and Practical Conference "Kutafin Readings" on the topic: "The Constitution of the Russian Federation and the modern legal order", held on November 27, 2018 - December 05, 2018, the topic of the report: "Organizational duties of an employee";

- at the V All-Russian scientific-practical conference "Interpretation of legal acts (theoretical-legal, constitutional-legal, civil-legal and labor-legal aspects)", held by the Taurida Academy Institute of the Federal State Autonomous Educational Institution of Higher Education "Crimean Federal University named after V. I. Vernadsky", date of November 25, 2021, topic of the report: "Problems of interpretation of the norm of Part 1 of Art. 34 of the Constitution of the Russian Federation as the basis of the right of the employer to manage labor "with publication in the Collection of materials of this scientific and practical conference (RSCI);

- at the joint XX International Scientific and Practical Conference "Kutafin Readings" of the Moscow State Law University named after O.E. Kutafin (MSAL) and the XXII International Scientific and Practical Conference of the Faculty of Law of the Moscow State University named after M.V. Lomonosov on the topic "The Role of Law in Ensuring Human Well-Being", held on November 23, 2021 - November 26, 2021, the topic of the report: "The employer's right to unilaterally change the employee's job description in the system of authority for labor management" with publication in the Collection of materials of this international scientific and practical conference (RSCI);

- at the International Scientific and Practical Conference "Labor Law and Social Security Law in Conditions of Great Challenges" (VII Gusov Readings), held on 06/03/2022 - 06/04/2022, the topic of the report: "The place for the employer to assess

the "non-business" qualities of an employee in the mechanism of labor management: opportunity, problems, consequences”;

- at the X International Scientific and Practical Conference "Pashkovsky Readings": The role of the employer in the training of qualified personnel, time of 03/16/2023, the topic of the report: "Training of workers in the context of the right to labor management".

The main scientific results of the dissertation research are reflected in four published articles in journals reviewed by the Higher Attestation Commission:

- Sitnikov, A. A. Constitutional grounds of the employer’s right to manage labor / A. A. Sitnikov // Labor law in Russia and abroad. – 2016. – N 4. – P. 48-50.

- Sitnikov, A. A. Responsibilities atypical for the labor function of workers as a means of labor management / A. A. Sitnikov // Labor law in Russia and abroad. – 2019. – N 2. – P. 14-16.

- Sitnikov, A. A. Refusal of the employer to exercise powers to manage labor in acts of social partnership: constitutional and legal analysis / A. A. Sitnikov // Russian Legal Journal. – 2021. – N 1. – P. 164-175.

- Sitnikov, A. A. Abuse by the employer of the right to manage labor / A. A. Sitnikov // Siberian Legal Review. – 2021. – Volume 18. – N 4. – P. 413-422.

The structure of the work is determined by the purpose and objectives of the study. The work consists of an introduction, three chapters including nine paragraphs, a conclusion and a list of sources.

Chapter 1. The concept and general characteristics of labor management

§1. The concept of labor management

Labor management is a special case of management as an activity. But even a simple lexical analysis of this concept gives reason to believe that we are facing a complex and difficult phenomenon. So, in the explanatory dictionary S.I. Ozhegov, the meaning of the verb "manage" is defined as "to direct, direct the activity, the actions of someone / something"[1], and the noun "labor" is understood as "the expedient human activity aimed at creating material and spiritual values with the help of tools of production"[2]. Thus, labor management is a special case of the activity of a certain subject to guide and streamline the actions of someone, namely: the creative activity of certain people. This leads us to the need for a deeper analysis of the content of these concepts. Let's start by answering the question, what is "management".

The systematization and generalization of concepts are part of the tasks of philosophy, in our case - the philosophy of management, which is a section of philosophy associated with understanding, interpreting management processes and management knowledge, exploring the essence and significance of management; including epistemological studies of the science of management, the study of logical, ontological, ethical and other foundations of management practice[3].

There are a large number of definitions of the concept of "management" developed by representatives of this branch of philosophy, but in their formulations, as a rule, the same constitutive features of the phenomenon under consideration are singled out.

For example, D.A. Novikov and E.Yu. Rusyaeva give the following definition of control, which is quite simple, but very accurate from the point of view of the essence

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[1] Explanatory dictionary of the Russian language S.I. Ozhegov [Electronic resource] // URL: http://ozhegov.info/slovar/?q=%D1%83%D0%BF%D1%80%D0%B0%D0%B2%D0%BB%D1%8F %D1%82%D1%8C. (access date: 05/20/2021).

[2] Explanatory dictionary of the Russian language S.I. Ozhegova [Electronic resource] // URL: http://ozhegov.info/slovar/?q=%D1%82%D1%80%D1%83%D0%B4 (access date: 05/20/2021).

[3] Novikov D.A., Rusyaeva E.Yu. Philosophy of management//Questions of philosophy. 2013. № 5. P. 23.

of the process: “Control is the impact on the controlled system in order to ensure its required behavior” [4]. According to A.G. Butkovsky, control is “a purposeful, specially organized input action on an object to keep it in a given state or in a given mode, despite the action of various interferences, disturbances and tasks” [5]. The essential feature of management, according to V.S. Kirpichev, is goal-setting, the conscious influence of the subject of control on the controlled system[6]. Also, the following aspects of management are often noted as significant: 1) management is the process of communication between the control system and the control object based on the exchange of information; 2) management is unthinkable without well-established information processes; 3) management is the impact on the external environment in which the object of management operates and develops, and on the object itself, on the processes that take place in it; 4) management always includes the processes of goal setting, the formation of management goals and management criteria corresponding to the goals[7]. And in essence, all managerial relations can be reduced to two: it is either a subject-object connection (if we are talking about the technical control of mechanisms), which implies the conscious influence of the subject of such control on the material objects of reality, or a subject-subject connection, where the manager is the subject, interested in a certain behavior of another person - a subject that corrects, constructs its activities in accordance with the will of the manager (our further analysis will be devoted specifically to the subject-subject relationship).

Thus, already at the level of definitions, four constitutive features of management as a process can be distinguished: 1) the presence of an external subject of management in relation to the managed object or subject (subjected to influence or subordination); 2) consciously-volitional nature of the influence of the subject of control; 3) the purposeful nature of the impact of the subject of management; 4) finding a managed object in that state, or acceptance by a managed subject of the model of actions that are set by the subject of management.

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[4] Ibid., P. 20.
[5] Butkovsky A.G. To methodology and philosophy of cybernetics. Brief abstracts. M., 2010. P. 80.
[6] Kirpichev V.S. Social management as a science and educational discipline // Social management. Lecture course. M., 2000. P. 706-707.
[7] Subetto A.I. Systemogenetics and cycle theory. PARTS 1-2. M., 1994. P. 243.

The management process is conscious, purposeful, directed at the controlled impact, which is the product of the will of the subject of management. The coincidence of the source of the will and the subject to which this will is directed does not represent control, but is a simple realization of its own properties and functions. For the phenomenon of control, it is necessary that the source of will and its addressee do not coincide. This is due to the fact that the subject of management never coincides with the managed subject.

In this case, one important remark must be made. In the social sciences, there is such a category as "self-government", which is understood as "a state in which the subject and object of control coincide, such a nature of the processes of an object that is a conditionally closed system in which there is no direct control over them - goal setting is carried out by the object itself in accordance with its properties, which can be programmed in a certain way when it is created"[8]. It seems that self-government is not management in the true sense of this concept, since in this case there is no subject-subject relationship between the manager and the managed, and what is called management is actually an independent implementation of their own actions by their subject. Therefore, in our opinion, based on the essence of the process, management is only external management, when the subject of management and the managed subject do not coincide.

The conscious-volitional nature of actions is expressed in the fact that the subject of control consciously influences the controlled, that is, the effect is not reflex. The volitional actions of the manager a priori imply the awareness of influencing the manager. It is impossible to manage without the will to manage, because management implies subordination, and subordination cannot be unconscious on the part of the subject of management. Purposefulness lies in the fact that the subject of control, influencing the controlled, pursues the goal of accepting the state desired by the subject of control. Impact without a goal will not be control, but will only be the reason for the

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[8] KARTASLOV.RU - map of words and expressions of the Russian language [Electronic resource] // URL: https://kartaslov.ru/%D0%B7%D0%BD%D0%B0%D1%87%D0%B5%D0%BD %D0%B8%D0%B5-%D1%81%D0%BB%D0%BE%D0%B2%D0%B0/%D1%81%D0%B0%D0%BC%D0%BE%D1%83 %D0%BF%D1%80%D0%B0%D0%B2%D0%BB%D0%B5%D0%BD%D0%B8%D0%B5 (access date: 20.02.2023).

acceptance by the subject who felt the impact of a forced, but independently determined new state.

In this regard, for the presence of the phenomenon of control, the primary is the presence of the will of the external subject of control to achieve the proper behavior of the controlled, which can both be fully realized by the controlled, and be beyond his awareness (hidden manipulation), but in any case will lead to behavior desired by the manager. Thus, we can talk about the absence of the subject of management, and, therefore, the management itself in two cases. Firstly, when the source of motivation for the adoption of any new state is not a person, but objectively existing processes (physical, biological, economic, etc.), due to the fact that the mind, will and consciousness (components, necessary for the second and third signs of control) only man possesses. Secondly, when actions that encourage the adoption of a new state come from a person, but are committed by him voluntarily or consciously, but without the goal of influencing something or anyone, that is, they should not have prompted the object of influence to accept the necessary state.

The fourth constitutive sign of management is the realization of the goal of the influence of the subject of management. This is manifested in the desired change in the state of the one on whom the impact was directed. If this happened, then the act of management took place, if not, then there was only some activity of the failed subject of management aimed at other objects or subjects.

Despite this, within the framework of the general philosophical interpretation of management, one can find its division into two types: spontaneous and conscious. With spontaneous management, the control effect on the system is the average result of the action of various forces, often contradicting each other, such as, for example, the market - the main regulator of the capitalist economy[9]. Conscious control is understood as a conscious impact on objects, processes and their participants, carried out in order to give a certain direction to activities and obtain the desired results[10], but it is revealed

[9] National Political Encyclopedia [Electronic resource] // URL: http://politike.ru/termin/upravlenie.html (access date: 05/20/2021).
[10] Sladkevich V.P. Chernyavsky A.D. Modern management (in schemes): Reference lecture summary. 3rd ed., Stereotype. K., 2003. P. 147-148.

through the activities of people carried out through specific social institutions (the state, parties, etc.) [11].

An analysis of the constitutive signs of management allows us to speak about the incorrectness of the term "spontaneous management", at least in the sense that the given example gives us. In this case, the control, called spontaneous, is either deprived of the subject of control (if we are talking about the actions of external forces), or the influence of the subject of control on the controlled is unconscious or does not have the goal of changing their state or behavior, that is, at least one of the constitutive signs of control is missing. .

Accordingly, what is called spontaneous management in some sources is not management, it is a change in the activity of the so-called “managed” under the influence of any external factors, of which there can be a whole variety. Composing the environment for the existence of the "managed", they can change, and in accordance with their changes, the "managed" adjust their behavior in order to continue to be subjects of a certain activity. The influence of these factors does not depend in any way on the presence or absence of "managed", their behavior. This influence occurs due to the simple existence of these factors or any phenomena, the consequence of which these factors are objectively. While management activity is a special type of activity that is possible only when the subject of management consciously begins to carry out management activities. In fact, in a situation with the so-called "spontaneous control", speaking of "managed", we can say that we are not talking about control, but about self-regulation occurring under the influence of external factors, which is understood as a property of systems as a result of reactions that compensate for the influence of external influences, maintain internal stability at a certain, relatively constant level[12].

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[11] Mavrin S.P. Labor management: Theoretical and legal aspects: Autoref. dis.... doc. jurid. sciences: 12.00.05. L., 1991. P. 13.

[12] KARTASLOV.RU - map of words and expressions of the Russian language [Electronic resource] // URL: https://kartaslov.ru/%D0%BA%D0%B0%D1%80%D1%82%D0%B0-%D1%
81%D0%BB%D0%BE%D0%B2%D0%B0/%D1%82%D0%BE%D0%BB%D0%BA%D0%BE%D0%B2%D0%B0%D0%BD
%D0%B8%D0%B5/%D1%81%D0%B0%D0%BC%D0%BE%D1%80%D0%B5%D0%B3%D1%83%D0%BB%D1%8F
% D1%86%D0%B8%D1%8F (date of application: 20.05.2021).

We can talk about spontaneous management, but not in a situation where the subject of management unconsciously carries out management activities (which is impossible in itself). And when the actions of such a subject are not subject to one plan and are the result of his impulsive, chaotic decisions, which may not be connected with each other and not subject to one goal. However, even in such a situation we have a conscious-volitional sign. There is not only an organizational component here, which affects the effectiveness of management, but in no way casts doubt on its source - the will of the subject of management.

In connection with the foregoing, management is always a conscious process of the influence of one subject on an object of the material world or another subject, which occurs by giving the object a state necessary for the subject of management, or by somehow conveying its will to the controlled subject, the purpose and consequence of which is the adoption managed by the behavioral model that is necessary for the subject of management to achieve their goals.

The type of management that interests us within the framework of the ongoing study, which is built on the model of the subject-subject relationship, represents social management. The subject of the theory of social management are the laws and principles of management as a social and iteration phenomenon, which are formed in the processes of established activities of people carried out within the framework of relevant social systems (social institutions and organizations) in terms of increasing the efficiency of their activities[13]. The content of social management can be called the relationship of subordination and coordination, ordering and coordination, that is, the interaction of people about the organization of joint activities, life, the production of material goods, the production and reproduction of themselves as subjects of social change[14].

It should be noted that social management as a particular case of management has all the previously identified constitutive features of management as a phenomenon. In this regard, in general, we can agree with the definition of "social management" given

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[13] Mysin N.V. Theory of Social Management. St. Petersburg, 1998. P. 384.
[14] Gerasimov B.N., Chumak V.G. Social technologies in management. Samara, 2014. P. 11.

by S.P. Mavrin: “Social management is a conscious, purposeful impact of managing subjects on managed subjects (society, collective, individual), implemented in the conditions of their democratic interaction in the development and adoption of management decisions, as well as accounting and correcting the results of implementation in order to ensure proper functioning social systems (subjects)" [15]. However, it seems that the influence of the governing subjects on the governed is not always realized (and should be realized) in the conditions of democratic interaction, but, on the contrary, it is the authoritarian model of interaction that prevails.

Now let's move on to the analysis of what constitutes such a phenomenon as labor. While S.N. Bulgakov noted that it is impossible to give an exhaustive concept of labor[16], in scientific circles, the definition of this phenomenon, as a rule, is essentially narrowed down to volitional interactions of a person with objects of the surrounding world in order to obtain resources or other benefits. As an example, here are just a few of these definitions.

N.G. Alexandrov understood labor as a process that takes place between man and nature, where in this volitional relationship to nature, man is guided by known technical rules (norms) that are developed as a result of experience and the development of technical knowledge[17]. Thus, K.N. Gusov and V.N. Tolkunova indicate that labor is an expedient activity of a person who realizes his physical and mental abilities to obtain material or spiritual benefits called the product of labor (production)[18]. According to V.M. Lebedev, work is an expedient human activity, aimed, firstly, at the use of natural resources, and secondly, at the processing of already well-established human activity, the acquisition and distribution of goods, and thirdly, at the creation of spiritual (intellectual) values[19].

The scientist who summarized and gave a comprehensive critical analysis of the existing ideas about labor as a philosophical, social and legal category and presented his

[15] Mavrin S.P. Labor management: Theoretical and legal aspects: abstract. dis. ...doc. legal Sciences: 12.00.05. L., 1991. P. 14.
[16] Bulgakov S.N. Philosophy of economy. Op. in two volumes. M., 1993. T. 1. P. 87-88.
[17] Aleksandrov N.G. Labor legal relations. M., 1948. P. 5-6.
[18] Gusov K.N., Tolkunova V.N. Labor law of Russia: a textbook. M., 2004. P. 8.
[19] Labor law: textbook/under. ed. V.M. Lebedeva. M., 2011. S. 16. (the author of the chapter is V.M. Lebedev).

author's approach to this phenomenon is E.B. Khokhlov. Highlighting the essential signs of labor, he actually gives him the following definition: labor is a rational (mediated by intelligence and will) human activity, which is not a self-sustaining goal for the latter, but is only a means to realize its goals outside of it in the form of achieving any benefit[20]. The merit of this definition is that its formulation summarizes the characteristics of labor as a phenomenon of human activity in principle.

Due to the fact that labor is a rational and purposeful activity[21], , it is inherent only in the human individual. Accordingly, the subject of labor can be an individual who has the ability to carry out this activity, that is, the actual ability to work. E.B. Khokhlov understands the actual ability to work as a system of intellectual and volitional factors, which provides a person with the opportunity, firstly, to realize the meaning of his actions (intellectual moment), and secondly, to lead them (volitional moment) to achieve his goal[22]. It seems that this system must be supplemented with physiological factors that provide a person with the opportunity to physically perform specific actions. From this, two important conclusions can be drawn. First: the ability to work is inseparable from a person, which has been repeatedly pointed out in the scientific literature[23]. So, E.N. Nurgaliyeva very accurately calls the ability to work the exclusive property of a person, and the right to dispose of it - his personal and inalienable right[24]. Second: without the intellectual and volitional moments, the physical activity of a person cannot be called labor, and without the possibility of physical performance of actions determined by the intellect and will of a person, labor itself is impossible (if we are talking about labor, which implies physical activity of a person). Thus, the subject of labor can only be a person who has mental and physical qualities that allow him to voluntarily carry out certain activities, the content of which he is aware of.

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[20] Khokhlov E.B. History of labor and labor law in 3 vols. T. I. St. Petersburg, 2013. P. 35.

[21] Therefore, in the future, the concepts of "labor" and "labor activity" will be used interchangeably.

[22] Russian labor law course. In 3 vols. Vol. 1: General part / Ed. E.B. Khokhlova. SPb., 1996. P. 309 (the author of the chapter is E.B. Khokhlov).

[23] See, for example, Tal L.S. Employment contract: A civilistic study. Part 1: General teachings. Yaroslavl, 1913, p. 38; Pokrovsky I.A. The main problems of civil law. Pg., 1917. P. 246.

[24] Nurgalieva E.N. The mechanism of legal regulation of labor relations in a mixed economy (based on materials from Russia and Kazakhstan): dis. ... doc. legal Sciences: 12.00.05. SPb., 1993. P. 163.

It should be noted that the subject of labor is not identical to the employee as a subject of labor law. To obtain this status, a person must have labor legal personality, which is based on two conditions: material and formal[25]. Possession of the actual ability to work is the fulfillment of a material condition. The formal one consists in recognizing the ability of an individual to participate in labor relations on the part of an external legal authority (which in modern conditions is the state) [26].

Thus, the extent to which labor is socialized can be judged by the conformity of the model of its implementation with the prevailing ideas about this in society. Moreover, for society, only those activities that are useful for society and aimed at achieving moral and reasonable goals from the point of view of the latter will be labor. As you know, public opinion is changeable, and society's assessments are not always fair, and it will be wrong to decide, depending on this, whether a person's activity is labor or not. Therefore, one should agree with E.B. Khokhlov, who pointed out that in order to characterize the activity of the subject as labor, the assessment of this activity by the subject himself should be taken into account, which does not deprive society of the right to evaluate this work: "... if in the eyes of the subject of labor his activity is rational, purposeful and useful, this activity, certainly is work... But this work can be assessed by society as a) focused on achieving insignificant and contrary to moral goals, or b) irrational (inefficient), or c) unhelpful or even harmful to socially significant interests"[27]. Thus, if we consider labor as a social category, then purposeful criminal actions are also labor, for which the physical energy of the person who commits them is expended, because at least this person, and in cases of existence and his like-minded people, regard these actions as positive. Important in this situation is the assessment of this work by the state: whether the state legitimizes such actions or prohibits, recognizing it as an offense. At the same time, such an assessment does not affect the status of human actions as labor: it legitimizes, which means that these actions are

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[25] A fundamental study of such a category as labor personality was carried out by O.B. Zaitseva, which was reflected in her doctoral dissertation (see Zaitseva O.B. Labor personality as a legal category: Dis. ... Doctor of Law: 12.00.05. M., 2008. 474 p.).

[26] Khokhlov E.B. Chapter 4, paragraph 2 // Course of Russian labor law. In 3 vols. Vol. 1: General part / Ed. E.B. Khokhlova. SPb., 1996. P. 310.

[27] Khokhlov E.B. History of labor and labor law in 3 volumes. T. I. St. Petersburg, 2013. P. 36.

labor; it prohibits, which means that human actions have lost the status of labor. Legitimation of these actions by the state can be carried out in two ways: 1) if from the point of view of the state these actions are of some importance for society, then they become the subject of regulatory branches of law, for example, civil, labor law (active legitimation); 2) in the case of a neutral attitude to such actions, the state, although it does not regulate relations related to their implementation, does not prohibit, that is, it actually allows (passive legitimation). A negative assessment of such actions by the state is expressed in their prohibition and makes them the subject of protective branches of law (criminal and administrative law).

Continuing the discussion about the orientation of labor, it is necessary to say what labor as an activity can be directed to, that is, about the objects of labor. Due to the fact that "the phenomenon of human labor manifests itself in exchange, in such a relationship in which a person acts as a subject of conscious and volitional influence on an object in order to creatively change the latter"[28], then the objects of labor are the components of the world around man. Therefore, E.B. Khokhlov distinguishes three types of labor depending on the object of labor: first, the work of a person on nature, secondly, the work of a person on society (and another person), and thirdly, the work of a person on himself[29]. We consider it correct to supplement the proposed classification with the fourth type of labor: human labor on the elements of the environment created by him. In the conditions of the post-industrial, information society, a significant part of the workers is engaged in the production, storage, processing and sale of information. And most of the efforts are aimed at transforming the systems previously created by man, designed to process this information. At the same time, the processes of digitalization of economies that have begun are also aimed at transforming artificially created elements of the human environment. All this makes it justified to single out the fourth type of labor.

It should be noted that the correct understanding of the range of objects of labor is important: the truth of scientific conclusions made in the framework of the study of

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[28] Khokhlov E.B. Labor as a philosophical and legal category // Russian Yearbook of Labor Law. No. 3. St. Petersburg, 2008. P. 18.

[29] Ibid.

labor as a social and legal category is determined, among other things, by their universality, that is, applicability to any type of labor. As a rule, in scientific works, labor is considered exclusively through the prism of production and economics in the industrial sense of these concepts. We propose to move away from the excessive "productivity" of labor and in this work we will consider it not only as an instrument for the production of economic goods, since the use of other people's labor is not limited to the production sphere: labor is used in absolutely all spheres of society. At the same time, we do not deny the fact that it is the production sphere, in the narrowest sense of this concept, that is the main "consumer" of someone else's labor.

Now we turn to the analysis of the phenomenon of labor management. For a correct understanding of the essence of this phenomenon, it is necessary to answer two questions: who is the subject of labor management, respectively, the subject organizing labor, and how is labor management carried out?

First of all, it is necessary to determine the figures of the subject of labor and the organizer of labor, in connection with which we will consider possible situations. First situation. A person who directly realizes his ability to work can at the same time be the organizer of his labor, and in this case the subject of labor coincides with the organizer of labor. Second situation. A person who directly realizes his ability to work voluntarily initiates and carries out the labor process due to his economic, social or creative needs, but at the same time he is not able to organize it, therefore another person is the organizer of labor. In this case, the subject of labor and the organizer of labor are different persons. Third situation. The work of a person who directly realizes his ability to work may be initiated by another person who has the legal or actual ability to organize such work and force the worker to carry it out. In this case, there is a phenomenon of forced labor, in which the subject of labor and the organizer of labor are different persons.

Since forced labor does not imply the voluntary entry into the relevant relationship of a person who realizes his ability to work, in connection with which it represents the content of specific relations that are the subject of certain branches of law (for example, prison labor), or is prohibited and represents an illegal phenomenon (for

example, slave labor), it is not included in the subject of the study[30]. Therefore, further analysis will be devoted to the first two situations considered.

The coincidence or non-coincidence in one person of the subject of labor and the organizer of labor was noticed long ago in the doctrine, which was reflected in the division of labor into independent and non-independent[31]. The immediate basis for such a division is the state of will, as well as the presence of interest and its direction in the person engaged in labor activity[32]. For independent work, it is characteristic that all the main aspects of labor activity are determined by the subject of labor itself: the moment of the beginning and termination of labor activity, its goals, quantitative and qualitative parameters of the result of labor, methods and means of achieving it. And this type of labor received the name “independent” due to the fact that “the will of the subject [of labor] determines all aspects of his labor activity, just as interest covers all these aspects”[33].

Non-independent labor is characterized by the fact that labor activity is subject to the will and is aimed at achieving the interests of a person other than the subject of labor, and all the main parameters of labor are determined by this person. This was correctly noted by E.B. Khokhlov: “Strictly speaking, the very ability to work, insofar as it finds its manifestation outside, i.e. in the form of a specific labor activity, does not belong to the employee, and in this sense he does not belong to himself ... As for interest, its content is of a very peculiar nature: it is associated exclusively with remuneration for labor"[34]. Therefore, in the case of non-self-employed work, “along with the subject of labor activity, a person is always assumed who assumes the function of organizing and managing this activity, and thus, the phenomenon of non-self-

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[30] A comprehensive study of the phenomenon of forced labor and the problems associated with it was carried out by N.V. Pugacheva (Glukhova): see Glukhova N.V. The principle of the prohibition of forced labor in the system of means of legal regulation of labor relations: 12.00.05. Dis. … cand. legal Sciences. SPb., 2007. 169 p.

[31] See, for example, Warsaw K.M. Labor law of the USSR. L., 1924. S. 9-10; Voitinsky I.S. Labor law of the USSR. M.-L., 1925. S. 11-12; Kuzmenko A.V. The subject of labor law in Russia: the experience of systematic legal research: monograph. SPb., 2005. S. 88-89; Basalaeva S.P. Legal nature of the employment contract: Dis.... kand. … cand. legal Sciences: 12.0005. SPb., 2004. P. 69.

[32] Khokhlov E.B. Labor as a philosophical and legal category // Russian Yearbook of Labor Law. No. 3. St. Petersburg. 2008. P. 26-27.

[33] Ibid., p. 27.

[34] Khokhlov E.B. History of labor and labor law in 3 volumes. T. I. St. Petersburg. 2013. P. 39.

employed work always presupposes the existence of a connection - a relationship that develops regarding the realization by a person of his ability to work"[35].

In connection with the foregoing, the subject of labor management can be both the subject of labor itself and another person. Let us analyze in what cases we are dealing with one or another type of labor and, accordingly, with various subjects of labor management.

It should be agreed that the independence of labor is determined depending on whose will labor activity is subject to, and in whose interests it is carried out. However, this statement requires clarification. In fact, the interests on the basis of which labor activity is carried out are the goals of labor activity. And the subordination of labor activity to the will of a person is expressed in the fact that it is this person who determines the goals of labor activity (which makes labor dependent), while the quantitative and qualitative parameters of labor can be determined by another person. In this regard, the question arises, what is meant by the goals of labor?

When defining the main features of labor and formulating its definition, it was pointed out that labor activity is not the goal of a person, but is a means for realizing goals that are outside of it in the form of achieving some benefit. In other words, any labor has a result, but the purpose of labor is not simply to achieve the result of this labor, but to obtain benefits, the extraction of which becomes possible after obtaining the result of labor. Proceeding from the fact that activity is understood as "a purposeful activity of the subject regulated by consciousness, during which the goals set are achieved"[36], work is activity within activity. On the one hand, labor as an activity is the activity of a person aimed at achieving the result of labor. But at the same time, labor, including the result of labor, is a means of achieving other goals, which in essence is also an activity. Therefore, labor is a means of carrying out other human activities with goals other than simply obtaining the result of labor, but directly related to it (their implementation is impossible without the presence of the result of labor). As S.N. very accurately noted. Bulgakov: "A sign that establishes economic activity is the presence

[35] Ibid., p. 41.
[36] Textbook General psychology: personality psychology [Electronic resource] // URL: http://cito-web.yspu.org/link1/metod/met121/node71.html (access date: 04/05/2022).

of effort, labor directed towards a specific goal"[37]. It should be pointed out that the achievement of activity goals can be simultaneously mediated by different types of labor in terms of content and results. At the same time, as in the situation with the definition of the usefulness of labor, this activity will be useful if it is evaluated as such by its subject, and the consequences of legitimizing or prohibiting such activity by the state are exactly the same as in the case of legitimizing or prohibiting one or another labor.

Thus, engaging in any economic (in the broad sense of this concept) activity is impossible without the implementation of the labor process (labor activity), which is actually the content of this activity, and its quantity, quality and direction completely depends on the characteristics of the activity it provides. That is, the labor produced is determined by the parameters of the activities carried out.

The subject of activity can either, through personal labor, perform actions aimed at the implementation of this activity and the realization of its goals, or involve other persons in this process who have the necessary intellectual and physical skills for this, that is, the ability to work, who voluntarily agree to this[38]. In the first case, the subject of activity is simultaneously the subject of labor as a substantive element of this activity, therefore, the work carried out in such a situation is independent work: the same subject determines the parameters of economic activity, which determines the purpose of labor activity, key parameters of labor, including the result of labor , and carries out this labor activity. There are no public relations for labor management here, since there is no subject-subject relationship where there would be a manager and a manager, respectively, such labor is not the subject of legal regulation (except for the situation when the activity of the subject of labor is illegal, which will be the subject of branches of administrative and criminal rights). Therefore, such work is not the object of our study.

Involvement of other persons in the process of carrying out activities is possible in two ways, the choice of which directly depends on the purpose of involvement,

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[37] Bulgakov S.N. Philosophy of economy. M., 2009. P. 81.

[38] In fact, the consent of other persons to the use of their ability to work for someone else's activity means that these persons legitimize such activity, that is, their assessment of this activity as useful.

practical necessity, including economic efficiency, as well as the actual possibility of implementing one or another method.

The first method is based on the following model. The subject of activity and the subject of labor coincide, but either for the purposes of the activity, or for the full implementation of labor, the subject of activity needs to acquire some kind of positive effect, having received which, he will use it to achieve the goals of his activity or to independently carry out labor within the framework of this activity (this can be a material good, and the result of intellectual activity, and services consumed in the process of their provision, etc.). To do this, he turns to other persons who ensure that he has such an effect, using his ability to work. Thus, the result of labor produced by the involved person gives a useful effect. And the subject of activity (he is also the subject of labor within the framework of the ongoing activity) in this situation determines only the parameters of the result of labor, placing an order for it to a person with the appropriate ability to work. The work of the involved person as a process of obtaining a useful effect is not interesting to the subject of activity and is not of value to him from the point of view of engaging in his activity, and there is no need to make this work a meaningful element of the ongoing activity, that is, the process of realizing by the involved person his ability to work is not a way implementation of activities by its subject. The subject of activity himself carries out this activity, being the subject of labor within the framework of this activity, but for the full realization of its goals, he may need the results of labor that he himself cannot create. Therefore, the subject of activity applies for this to persons who can provide him with such a result of labor. At the same time, the involved subject of labor, having received an order for the result of labor, determines the ultimate goal of his labor activity, which is directly related to the result of labor[39], which gives this work its own status. Therefore, despite the fact that there are social relations here regarding the useful effect (result of labor) that is obtained as a result of the use of someone else's labor, these are not relations for the use of labor itself, and, therefore, there is no labor management either. In the case of legitimization

[39] At the same time, the person who attracts him can set the quantitative and qualitative parameters of the result of labor.

of such activities by the state, these relations will be the subject of regulation of the branch of civil law.

With this model of using the result of someone else's labor, the subject of activity performs it directly himself. This model is used in the following cases. Firstly, if the need for obtaining a beneficial effect arises from the subject of activity one-time. Secondly, if there is a constant or systematic need to obtain such a beneficial effect, but there are no actual opportunities to ensure the involvement of the involved persons in engaging in their activities and organizing the implementation by the involved person of their ability to work to obtain a beneficial effect. That is, there is no way to increase the number of labor subjects (other than yourself) within the framework of the activities carried out. Thirdly, if a person who uses someone else's labor to engage in his activity for any reason (economic feasibility, based on efficiency assessment, etc.) does not need to involve other persons in participating in this activity (that is, to do them to labor subjects within the framework of activities), using the very process of their work with obtaining a beneficial effect as one of the forms of conducting their activities.

The second variant of involving persons with the necessary ability to work in the process of carrying out activities by its subject is based on involving the latter in the process of carrying out this activity through the realization of their ability to work. In this case, the subject of activity is its initiator and organizer, but does not carry it out through his own actions (his own labor) in whole or in part, involving other persons for this. That is, in this case, the subject of activity and the subject of labor carried out within the framework of this activity either do not coincide (when the subject of activity does not carry out the labor process), or in addition to the subject of activity, which is also the subject of labor, other subjects of labor appear that do not are the subjects of activity. This situation is caused by constant interest and the need to obtain a beneficial effect from the ongoing labor necessary to achieve the goals of the activity, and the impossibility or unwillingness of its independent implementation by the subject of activity. With this model, the subject of activity, just as in the first case, has an interest in obtaining a beneficial effect from the work of involved persons, therefore he himself sets the quantitative and qualitative parameters of the result of labor. But besides this,

due to the fact that here the involved persons are involved in one way or another in the process of carrying out activities (becoming labor subjects who are actually performers of actions to carry out this activity), it is its initiator and organizer (subject of activity) that determines the goals labor associated with the result of labor. This work is carried out in the interests of the subject of activity: obtaining the results of labor is aimed at achieving its goals, the goal of the involved persons is only to receive payment for their labor. Thus, the discrepancy between the subjects of labor and the subject of activity makes the work of involved persons dependent.

In this regard, the subject of activity is interested in the very fact of the constant realization of the ability to work by persons involved in its implementation and the ability to control and influence the process of this implementation. Therefore, a valuable resource for the subject of activity becomes someone else's ability to work, in the acquisition of which he is interested. From the point of view of economics, this elevates labor as a person's realization of his ability to work to the rank of one of the factors of production.

The ability to work is a property of a person, and labor itself is a process that is an external manifestation of a person's realization of his ability to work. That is why labor is not alienated from a person, but can only be used by another person. The process of using labor will be expressed outwardly by the execution by the attracted person of the assignments and tasks of the attracting person for the purposes and in favor of the latter. Therefore, labor can only be used by influencing the will of a person, directing him, his actions. Based on the concept of labor that we have previously given, its understanding as a factor of production can be defined as the use of the physical and intellectual abilities of people to obtain a beneficial effect from this, and the management of such labor itself is the management of a certain category of people or one person in order to achieve a managerial, being the initiator of any activity, certain results and goals of this activity. Labor management is very well characterized by the statement of Don E. Marsh: “Management (management) can be defined as the process of achieving goals through the use of people's labor. It includes such components as organization,

leadership, the art of communicating with people, the ability to set goals and find means to achieve them"[40].

But why exactly in these respects does the use of labor give rise to the phenomenon of labor management? The objective reason for this is as follows. The subject of activity always has organizational independence, which implies, firstly, the ability to independently make a decision on the start of activities, and, secondly, the presence of an autonomous economic sphere, which is an area of organization of economic processes that ensures the accumulation, use and consumption by the subject of activity in their interests of various benefits, including those obtained in the course of carrying out activities. At the same time, if the activity as such entails consequences that, as a rule, affect external economic processes, as well as the economic spheres of other persons, then the process of organizing the implementation of such activities takes place precisely in the own, autonomous economic sphere of the subject of activity as the only person responsible for such an organization, that is, it is objectively an intraorganizational action of the subject of activity within the framework of its autonomous economic sphere. And the organization of its economic sphere is objectively impossible without the management of all the processes occurring within it, which can be called internal management within the framework of its economic sphere. Therefore, a consequence of the autonomy of the economic sphere of the subject of activity is the objectively existing ability of the latter to independently organize and manage the process of carrying out activities, which, as mentioned earlier, includes labor activity, since no one except the subject of activity will determine what effect and how should be achieved. from his activities. Therefore, the only person who can decide to use someone else's ability to work to carry out their activities, as well as organize and implement the process of managing someone else's labor[41], objectively, due to the autonomy of its economic sphere, is the subject carrying out this activity. And, since the use of someone else's ability to work is possible only through the management of the activities of its owners, the status of the subject of activity, managing its autonomous

[40] Marsh Don E. Modern management. Encyclopedic Handbook of the American Management Association. In 2 volumes. V. 1. M., 1997. P. 20.
[41] As an intraorganizational process of carrying out its activities.

economic sphere, objectively indicates the need to organize the actions of persons involved in labor (subjects of labor performed within the framework of the ongoing activity). Thus, they are included in the autonomous economic sphere of the subject of activity, where, in fact, they become a means by which the subject carries out his activities. For this to happen, the will and actions of such subjects of labor must be determined by the will of the subject of activity, which is the essence of management[42].

In this regard, a person who agrees to use his ability to work in order to carry out someone else's activity becomes controlled by the subject of this activity, that is, actually falls under his authority. This happens regardless of whether the activity of the subject is lawful or illegal: for the actual emergence of power relations, it does not matter whether lawful or illegal activity is carried out through the use of someone else's ability to work, it is important that there is an intermediary (the owner of the ability to work) between the subject of activity and the process of implementing this activity. . This power arises with the organizer of the criminal community, to whom other criminal elements obeying his instructions, possessing the ability for a kind of “labor”, the usefulness of which is shared by an extremely narrow circle of people. The same power and the phenomenon of labor management arises in legal labor relations between the employer and the employee, who realizes his ability to work. More N.G. Alexandrov pointed out the decisive importance of the subordinate relationship between the employee and the employer for qualifying the relationship as labor: “The use of someone else's labor, in contrast to the civil obligation relationship between the customer and the contractor, is a relationship of leadership-subordination regarding the performance of work; it presupposes a connection between people in the form of labor discipline, which constitutes a distinctive feature of an employment relationship in the narrow sense ... So, the main distinguishing feature of an employment relationship is the inclusion of a working subject in the personnel of an enterprise (institution, economy) and the resulting subordination of the worker to the internal regulations of the latter"[43].

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[42] Sitnikov A.A. Constitutional grounds of the employer’s right to manage labor // Labor law in Russia and abroad. 2016. N 4. P. 48.
[43] Aleksandrov N.G. Labor relationship. M., 1948. P. 135, 149.

Power is a social category, the existence of which does not depend on the attitude of the state towards it: this power will not disappear from the non-recognition by the state of the existence of any power. A different assessment by the state of this or that power leads to different consequences: 1) either the right to exercise such power is recognized for the power subject, and the relations for the implementation - legal regulation or actual recognition in the form of the absence of their prohibition by the state; 2) either the exercise of such power is prohibited by the state and is recognized as an administrative offense or a criminal offense.

In this regard, if the activity of the subject is legitimized by the state and is recognized as lawful, then the relationship between the subject of activity and the owner of the ability to work on the use and management of his labor in order to engage in the activity of the subject (in fact, relations on the exercise of power) are subject to legal regulation and are included in the subject of the industry labor law[44]. This was precisely noted by V.I. Savich: "... labor management, like any social management, is a social relationship, which, being regulated by the rules of law, becomes a legal relationship"[45], - and also A.S. Pashkov: "... labor management is reduced to managing people (and their associations) acting as subjects of various social relations, which is why the labor management system is subject to legal regulation" [46]. But in this case, we are no longer just talking about the actual power of the employer over the employee, which received as a result of L.S. Tal monumental study of the nature of labor relations[47] the name "master", which has taken root in scientific circles, but on the recognition by the state of the employer's right to manage the labor of workers[48].

Having indicated that the phenomenon of management as a relationship of power-subordination is inherent only in labor relations, we note why the management

[44] The unified nature of the subordinate relationship in the relationship between the holders of the ability to work and a private subject of activity, as well as a public subject of activity (or a subject with public participation) will be discussed in the next paragraph.
[45] Savich V.I. Labor management and labor law. Tomsk, 1986, P. 56.
[46] Pashkov A.S. Labor law and labor management system // Problems of legal regulation of labor in a developed socialist society. L., 1984. P. 6. Also on the importance of legal regulation of labor relations, see Golovina S.Yu. The role of labor law in ensuring the economic development of the state // Law, politics and economics in the modern world: challenges of the 21st century: Reports of the Executive Committee for the Tenth Session of the European-Asian Legal Congress. Ekaterinburg: Publishing house. House of Ural State Law University, 2016. P. 77-80.
[47] Tal L.S. Employment contract. civil research. Part 1. General teachings. Yaroslavl, 1913. 539 p.
[48] More details about the role of the employer in labor management, as well as the right to labor management will be discussed in the following paragraphs.

processes that can be found in social relations that are part of the subject of civil law are not full-fledged management in terms of the previously put forward criteria. An example of this can be the relationship that develops between members of the team in the performance of obligations under a team contract or between members of a production cooperative: there can be a built hierarchy between these persons, they interact with each other, some can carry out the instructions of others, etc. However, such “management” is not the realization of the objectively existing power of some persons over others, since in this case all persons are subjects of activity and subjects of labor carried out within the framework of this activity. And the emerging management relations are a consequence of the self-regulation of such subjects of activity: the implementation by independent subjects of a mutual agreement on how they will carry out their common activities. Therefore, such management is not the realization of the objectively existing power of one person over another (as in labor relations), but the essence of streamlining the relationship of equivalent subjects of activity.

Earlier it was noted that it is impossible to give an exhaustive definition of the concept of labor, and such an essential characteristic of labor as utility is determined by the subject of labor itself. However, if we are talking about the legal regulation of relations on the use of other people's labor and the recognition of the right of the subject of activity to manage labor, then on the basis of the foregoing, we can say that the only subject that determines which actions are labor in terms of utility, and which activity , for the implementation of which the labor of others is directed, has the status of useful, is the state. And, since there is a presumption that a democratic state expresses the will of the majority of the population living on its territory, it can be said that the state legitimization of certain types of labor and activities represents their assessment by society as socially useful.

In connection with the foregoing, legitimate labor management is inherent only in the subject of activity not prohibited by law, which determines its socially useful nature. The criterion of social utility is achieved only by the fact that this activity is not prohibited by the state, and the fact that this activity can be regarded by some individuals or even social groups as socially harmful cannot be taken into account. At

the same time, both the activity itself and the labor produced as a process of achieving its goals should be lawful[49].

Thus, for the purposes of the study, in the future, socially useful activity will be understood as the process of achieving the goals set by a person in the form of obtaining any benefit, carried out through labor activity and ensured by its results, where labor activity and the goals to which it is aimed are legitimate. .

Although the problems relating to the relationship between the presence of the phenomenon of labor management and the status of the employer as a subject of socially useful activity will be considered in the next paragraph of this work, in connection with the foregoing, two interdependent questions arise, the answers to which must be given now. First: does the existence of the phenomenon of labor management of employees depend on the actual implementation of socially useful activities by its subject? Second: is the status of the subject of socially useful activity and the phenomenon of labor management related to the possibility for such a subject to independently carry out labor activities that ensure the implementation of socially useful activities?

As noted earlier, the role of managing someone else's labor is objectively inherent in any subject of socially useful activity as an autonomous economic entity, which, by virtue of its status as the organizer of all processes in its economic sphere, knows what types of labor, when and how to produce socially useful activities. . Therefore, the status of a managed person, which each attracted owner of a certain ability to work receives, is not associated with the actual implementation of socially useful activities by its subject, but with the consent of the involved persons that only this subject can engage in and organize socially useful activities, the implementation of which is planned to be ensured by the use of their ability to work.

Thus, answering the first question, we can say that for the existence of the phenomenon of labor management, the subject of socially useful activity does not need to actually carry out this activity, it is enough that such a subject has the potential to

[49] The criteria and procedures for classifying an activity as legal or illegal, as well as the phenomenon of controlled labor in the process of illegal activity, do not relate to the subject of this study.

start such an activity, in other words, he must have the right to engage in such activity. activity. A practical example illustrating this conclusion is a legal entity that actually ceased to carry out its activities, but was not excluded from the Unified State Register of Legal Entities, but decided that it would start any activity after recruiting staff. In a situation where labor contracts are concluded between employees and such a legal entity, but the latter for some reason does not start the implementation of activities, the phenomenon of labor management will arise, since the relevant employees have already agreed that they will be subordinate to this legal entity for the purposes of implementation socially beneficial activity: employees must be ready and must begin to perform their work function, regardless of when the socially beneficial activity actually began to be carried out in the context of the time of existence of the employment relationship.

As for the answer to the second question, the status of the subject of socially useful activity and the phenomenon of labor management do not depend on the fact that such a subject has the actual opportunity to carry out labor activity. This is explained as follows. As mentioned earlier, independent labor is personal labor performed by the subject of socially useful activity that ensures this activity. That is, the subject of socially useful activity is the subject of this activity and the subject of labor activity. Also, when answering the first question, we came to the conclusion that in order to obtain the status of a subject of management, it is necessary to have the status of an initiator (can begin to carry out activities) and an organizer (is an autonomous economic entity) of socially useful activities, for which it is necessary to have the right to engage in this activity . At the same time, the physical characteristics of a person, including those that prevent him from performing any actions, do not affect the scope of his legal capacity. The status of the subject of labor activity is determined by the ability of a person to a specific work, which, as a rule, is associated with the physical characteristics of a person. In this regard, a person may be the initiator and organizer of socially useful activities, but at the same time, due to existing physical disabilities, he may be deprived of the opportunity to carry out labor activities, that is, independently, through his actions, he cannot actually carry out socially useful activities. And in this case, the lack

of the opportunity to carry out labor activity is compensated by the labor ability of the persons involved, which gives the subject that attracts them a full-fledged status of the subject of socially useful activity: he has the right to engage in this activity and, thanks to someone else's, dependent labor, carries out socially useful activity, indirectly carrying out activities labor (through the actions of involved persons). Thus, labor management relations can arise precisely due to the fact that the subject of socially useful activity cannot produce labor himself to ensure this activity and attracts other persons for this.

In fact, the answer to the second question posed demonstrates the importance of managing other people's labor and the interest in the possibility of such on the part of society and the state, since this allows you to fully realize all the initiative, organizational and activity potential of the subject of economic activity, which has been repeatedly paid attention to in the scientific literature.

Very accurately expressed the importance of using labor S.N. Bulgakov: “Economy is labor activity. Labor, and forced labor at that, distinguishes the economy. In this sense, the economy can be defined as a labor struggle for life and its expansion, labor is the basis of life, considered from an economic point of view” [50]. In fact, P. Ignatovsky repeats the same idea, only concretizing in a certain way: “... Labor is not just a technological workflow, it is an economy, a sphere of people's relations. And if we take into account materialized labor, it turns out that labor is really the whole economy, all production ... and therefore the management of production, the economy should be, first of all, the management of labor ..." [51]. The complexity of understanding the importance of using someone else's labor is also indicated by S.P. Mavrin blocks of characteristics that define the concept of "labor management": a) a variety of socio-economic management carried out in the process of managing, which has the human factor of production as an object; b) the general productive function of an economic entity, which objectively follows from the collective labor process; c) socio-economic

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[50] Bulgakov S.N. Philosophy of economy. M., 2009. P. 81-82.
[51] Ignatovsky P. Labor and Economics // The Economist. 1995. N. 11. P. 76.

impact on the subjects of labor in order to effectively use the means of production, optimally organize their relationships and meet the needs of society[52].

In the development and expansion of the above positions, we note that labor is not only the economy and all production, but in general the engine of any activity. Without the ability to attract and use the labor of others, the implementation of most of all entrepreneurial (in the broad sense of the concept) initiatives would be impossible. Therefore, in the future, labor will be understood as the process of realizing by a person his physical or intellectual abilities that leads to certain results, used by another person, for the most successful occupation and achievement of the goals of his socially useful activity.

Due to the necessity and extreme importance of the legal regulation of relations between the subject of socially useful activity and the owner of the ability to work regarding its use in order to carry out this activity, they entered the subject of the branch of labor law. And the subject of our study will be labor relations, and the analysis will be directed exclusively to their private component: the implementation of power-subordination relations between the employer and employees subordinate to him. An analysis of the impact of state bodies on the parties to relations on the use of non-self-employed labor (the public component of the labor law branch) will remain outside the scope of our study, although the role of the state in labor relations will be determined.

Due to the fact that management implies a relationship of power-subordination, and the ability to work is a property of the personality of the individual, this means that the personality of the worker is under power. This thesis requires clarification. Falling under the authority of the employer, the employee remains personally free: he has the right to dispose of his free time at his own discretion, to have political and other preferences, which, as a general rule, are indifferent to the employer, etc. Such a part of the personality becomes dependent on the will of the employer[53], as the ability to work, it is precisely this ability that the employer "manages", it is this that the employee

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[52] Mavrin S.P. Labor management: Theoretical and legal aspects: abstract of the thesis. dis. ... doc. legal Sciences: 12.00.05. L., 1991. P. 14.

[53] We conditionally use this term in order to show the freedom of the individual employee as such and limited in relation to the use of labor ability.

“provides” for a fee. Therefore, only a part of the worker's personality is under power and control, but the person's personality is indivisible, in connection with which it will be correct to use the concept of "labor management", which will be understood as power over the worker's ability to work.

But why do employees agree to be subordinate (managed) entities? Any person as a biosocial being has two essential needs: maintaining his physical existence and realizing himself as a person in society. As you know, human labor activity is one of the main ways to meet these needs. First, labor generates income that provides a livelihood. Secondly, labor activity is an external manifestation of social status and the realization of a person's social role. Very accurate in this regard is the statement of G.S. Skachkova, who noted that "the labor of people is the main condition for the existence and development of not only society as a whole, but also each member of society individually, being the basis of its life and development"[54]. But independent work is also labor activity, and without any external control, and, it would seem, such work should be more attractive than managed work. However, independence also has a downside: it is the need to have its own material and technical base, and additional responsibility, and bearing the risks of unprofitability of the business started, and the presence of administrative barriers from the state, etc. The subject of self-employment must also have organizational skills, which are not inherent in everyone. In this regard, most of the Russian population prefers non-independent work to independent work, which is confirmed by the results of surveys published by the All-Russian Public Opinion Research Center: for example, in October 2022, when asked about the desire to become an entrepreneur, only 23% of respondents answered “I would like to”, 65% answered “I would not want to”, 2% found it difficult to answer, the remaining 10% already had their own business[55].

Thus, it can be stated that, on the one hand, the need to satisfy their basic needs, and, on the other hand, unwillingness, inability or lack of opportunity for various

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[54] Skachkova G.S. Expansion of the scope of labor law and differentiation of its norms: Monograph. M., 2003. P. 10.

[55] The results of an all-Russian poll by VTsIOM on the question: “Tell me, do you want or don’t want to open your own business, become an entrepreneur?” [Electronic resource] // URL: https://wciom.ru/analytical-reviews/analiticheskii-obzor/pora-predprinimat-monitoring-1992-2022 (access date: 03/01/2023).

reasons to organize independent labor activity are the reasons that workers agree to recognize the impact of someone else's will that controls their labor.

Based on the foregoing, we can give the following definition of the concept of "labor management". Labor management is the ordering influence of the subject of socially useful activity (the power side) on the behavior of at least one person who has the ability to work and realizes this ability in the interests of the power side on the basis of voluntary will and for remuneration (the subordinate side), expressed in the organization by the power side the process of labor, providing conditions for the performance by the subordinate party of its duties and the exercise of its rights, the execution by the subordinate party of lawful instructions of the authoritative one, through which the authoritative party implements its socially useful activities.

§2. The employer as a subject of labor management

Labor Code of the Russian Federation[56] (hereinafter referred to as the "Labor Code of the Russian Federation") in Art. 20 gives a legal definition and classification of employers: this is an individual (an individual entrepreneur or a person who is not such) or a legal entity that has entered into an employment relationship with an employee, as well as other entities in cases established by law, entitled to conclude employment contracts.

В науке трудового права значительное внимание уделено вопросу трудовой правосубъектности работодателя[57]. The same approach to considering the legal personality of the employer, which was previously used to distinguish between the subject of labor and the employee, seems to be correct: through the analysis of the material and formal conditions of the legal personality of a person.

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[56] Labor Code of the Russian Federation [Electronic resource]: feder. law of 30 Dec. 2001 N. 197-FZ // Collection. legislation Ros. Federation. 2002. - N. 1. Art. 3. (as amended on 4 Aug. 2023). Access from the reference-legal system "ConsultantPlus".

[57] See, for example, Krutova L.A. Employer as a subject of labor law: dis. ... cand. legal Sciences: 12.00.05. M., 2000. 206 p; Boychenko T.A. Legal status of the employer: dis. ... cand. legal Sciences: 12.00.005. Tomsk, 2001. 183 p; Chernykh N.V. Types of employers and their labor legal personality: dis. ... cand. legal Sciences: 12.00.05. M., 2004. 180 p; Kazakova G.V. Problems of labor legal personality of the employer: dis. ... cand. legal Sciences: 12.00.05. SPb., 2005. 170 p.

The whole set of material conditions of the legal personality of the employer can be described by one formula - this is the presence of the employer's own autonomous economic sphere of activity, the area in which the labor activity of the employee would unfold or in connection with which it was carried out[58]. The economic sphere implies the presence of such components as 1) the name of the employer, 2) the purpose for which this sphere is created, 3) the property used to achieve economic goals, 4) the employer has an organization, which implies his will and ability to maintain internal law and order labor participants[59].

Two conditions serve as formal conditions for the legal personality of an employer: 1) an indication of a normative act that defines the general grounds for recognizing the legal personality of an employer, and 2) an administrative act of the state stating the existence of a labor legal personality of a particular person (an act of state registration of a legal entity and an individual entrepreneur or state registration concluded by the employer-individual labor contract)[60].

The definitions of the term “employer” found in the scientific literature indicate that there is no fundamental difference in opinions in the doctrine about the components of the legal personality of the employer: many of them directly or indirectly indicate that the employer is a subject of civil law participating in the economic turnover to meet their needs[61]. So, for example, O.B. Zaitseva notes that the employer is an organizational and managerial structure, formed under the influence of historical reasons and based on civil legal personality, which has a real opportunity to enter into labor relations with individuals[62]. In turn, M.A. Drachuk proposes to understand the employer as “an individual or legal entity or other organization recognized by the state

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[58] Russian labor law course. In 3 vols. Vol. 1: General part / Ed. E.B. Khokhlova. SPb., 1996. P. 401 (the author of the paragraph and the chapter is E.B. Khokhlov).

[59] Ibid., pp. 401 - 404 (the author of the paragraph and the chapter is E.B. Khokhlov).

[60] Labor Law of Russia: Textbook / ed. S.P. Mavrina, E.B. Khokhlova. M., 2012. P. 113 (the author of the chapter is E.B. Khokhlov).

[61] This once again confirms our assertion that at present the labor process and its application have been given an exclusively production character.

[62] Zaitseva O.B. Subjects of an employment contract in the light of changes made to the Labor Code of the Russian Federation: a study guide. Orenburg, 2006, p. 6.

that employs citizens in order to use their labor force (business qualities) to achieve their goals and meet economic needs”[63].

The purpose of this study is not to consider the entire range of issues related to the legal personality of the employer as such. Our task is to determine which component of it is the basis for the employer to have the status of the subject of management of subordinate employees within the framework of labor relations. Therefore, we note the following.

As can be seen from the definitions of the term "employer" existing in the doctrine, the latter is understood as a person who uses someone else's ability to work to achieve certain goals. As was pointed out in the first paragraph, the achievement of the goal through the implementation of labor is an activity. Thus, the employer is always the subject of activity, for the implementation of which he attracts other people with a certain ability to work (workers). But, as was also mentioned earlier, the activity of the subject and its purpose must be lawful in order to be legitimized by the state, respectively, so that these relations become the subject of labor law, and the subject of activity acquires the status of an employer. In this regard, constitutive for obtaining the status of an employer is the legitimacy of the purpose for which the economic sphere was created, and the legitimacy of potential activities aimed at achieving the stated goal. By virtue of the permanently operating principle of legality, we believe that this condition is included in the content of the first type of formal conditions for the legal personality of the employer.

Thus, three important conclusions can be drawn. Firstly, the employer is only the subject of socially useful activity[64], in this regard, the categories of "master's power" and "the right to manage labor" do not coincide. Absolutely all subjects of activity that involve other people for its implementation, regardless of whether this activity is legal or illegal, have the master's power, and the right to manage labor is recognized by the state for the subject of socially useful activity as a result of legitimation by the state of the power under which they fall. possessing the ability to work.

[63] Drachuk M.A. The legal mechanism for managing dependent labor. Omsk, 2015. P. 185.
[64] Once again we repeat the conclusion from the first paragraph of this work: socially useful activity is a lawful activity.

Secondly, since from the position of the state, only relations that are part of the subject of the branch of labor law involve the management of someone else's labor, the recognition in the field of labor relations of a particular person of the status of an employer is the recognition of such a person's right to manage labor. But since an employer is always a subject of socially useful activity, recognition of the status of an employer in the field of labor relations is possible only for a person who is recognized by the state as a subject of socially useful activity, which may require legalization through state registration or in another way permitted for conducting activities in the chosen socially useful area, that is, the main activity, in which wage labor is one of the means of its implementation. Thus, the employer is the legal status of a specific subject of socially useful activity in the field of labor relations, confirming the legitimation of his power, which will arise and be implemented in relations with the attracted owner of the ability to work, which means recognition of the right to labor management for the subject of socially useful activity. Two important interrelated conclusions follow from this: 1) If power appears in the process of indirect implementation of socially useful activities, then for the right to manage labor, the actual implementation of socially useful activities is not necessary: the right to manage labor is recognized for a person who meets all the signs of a subject of socially useful activity , but not necessarily currently actually implementing it; 2) The actual ability of the employer to carry out labor management actions does not affect the existence of the right to labor management: the absence of such an opportunity does not deprive a person of the right to engage in the relevant activity, that is, it does not deprive him of the status of a subject of socially useful activity, and, therefore, does not deprive him of the right to labor management. Therefore, if the subject of socially useful activity initially does not have the actual ability to carry out labor management actions, he will not be deprived of the right to labor management (since it is a component of his status as a subject of activity), he just will not be able to implement it. If the subject of socially useful activity hired workers and began to exercise the right to labor management, but later lost the opportunity to perform actual labor management actions, but did not lose the right to engage in socially useful activities, then, given that the status of the subject of labor

management includes not only rights, but also a set of obligations, the issue of performing labor management actions can be resolved through the use of mechanisms for representing the subject of labor management[65].

Thirdly, the employer is the only subject of labor management, since in relations with employees he is the only subject that uses the ability to work of employees in order to carry out their socially useful activities[66].

Our analysis will be aimed at establishing the grounds for the employer to have legitimized state power in relation to employees. It should be noted that the scientific literature does not use the term "right to manage labor", but the concept of "master's power" is widely used. Therefore, in the future, when citing the scientific works of other authors, the owner's power will be understood as the owner's power legitimized by the state of the employer.

In fact, we have already begun an analysis of the grounds for the employer's power over employees, but it should be noted that this issue has more than once become the subject of research by domestic and foreign scientists. More V.M. Dogadov pointed to three main concepts for determining the nature of the master's power: "a) the legal basis of the master's power is a contractual agreement between the worker and the employer (Caskel, Capitant, Planiol, etc.); b) the legal basis of the master's power is formed by the employer's ownership of the means of production, which is a socially useful function assigned to the owner (Desroys du Roure, etc.); c) the master's power belongs to the employer by virtue of his social position (Germanists, Oriou, Prof. Tal, etc.)" [67]. In the Soviet period, the opinion about the public nature of the power of the employer, delegated to him by the state, became widespread[68].

The conclusions made in the first paragraph of this work help to determine the true root cause of the subordination nature of labor relations. As already noted, an

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[65] Since this work is aimed at analyzing the general grounds for the presence of the phenomenon of labor management in labor relations, the problems of representing the employer in the event of defects in his capacity will not be considered.
[66] This paper does not consider the issues and problems of plurality on the side of the employer, since, in essence, the presence of such plurality does not refute the formulated thesis: the subject of labor management is only the employer. For questions of plurality on the side of the employer, see Kharitonov M.M. Plurality of persons on the side of the employer: dis. ... cand. legal Sciences: 12.00.05. SPb., 2010. 169 p.
[67] Dogadov V.M. Legal regulation of labor under capitalism. M., 1959. P. 50.
[68] Aleksandrov N.G. Labor relationship. M., 1948. P. 48-49.

employer is always a subject of socially useful activity that needs to use someone else's labor to engage in such activity and achieve its goals. Firstly, the employer, having the right to engage in socially useful activities, independently decides whether to start engaging in socially useful activities or not. Secondly, after making a decision to engage in some socially useful activity, having organizational independence, the employer begins to use the labor of employees to carry out socially useful activities. And only the employer, as a subject of socially useful activity, has the right to determine how, when and how, in order to carry out socially useful activity, labor activity must be carried out, ensuring the implementation of socially useful activity. Accordingly, only the employer determines the figures of persons who will realize their ability to work in order to carry out their socially useful activities, forming a team of workers, and manages them.

In this regard, the mere fact that the employer is the organizer of socially useful activities is, on the one hand, the reason for the subordinate nature of labor relations and, on the other hand, leads to the recognition by the state of the right to manage labor. Therefore, the potential possibility of engaging in certain activities and organizational independence (one of the aspects of which is expressed in the possibility of choosing the form of labor activity to ensure socially useful activity: by one's own work or by the work of persons involved)[69] is the main condition, firstly, for the existence of the phenomenon of labor management, and, secondly, the condition for possessing the status of an employer.

Thus, the phenomenon of labor management is caused precisely by the fact that a person has the status of a subject of socially useful activity, which objectively has an organizing component, which is expressed in the complete organization of the labor process. The legitimation of this organizing substratum of the labor process is carried out by the state at the moment that the state associates with the acquisition of the status of a subject of socially useful activity by a person: in the case of legal entities, individual entrepreneurs, as well as a number of individuals whose activities are subject to registration - at the time of state registration, for all other individuals - such

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[69] The organizational independence of the employer is wider than just making a decision to hire other persons with the necessary ability to work, and consists in the independence of determining the structure, principles and forms of management, etc.

legitimation can be passive, which does not require active actions from the state, or active, when such actions are required (for example, the emancipation of a minor) and occurs at the time of the onset of a number of legal facts or the commission of legal acts that actually determine the receipt by an individual of the status subject of socially useful activity[70]. Thus, simultaneously with a person receiving the status of a subject of socially useful activity, the state legitimizes the right to manage labor.

Interestingly, L.S. Tal saw the nature of the master's power in that it is an element of the legal organization of the enterprise: “It [the master's power] is not a subjective right, not part of the individual legal sphere of the owner, but the legal position occupied by him, as the head of the enterprise, in relation to other persons, included in this social unit. To the extent that the owner, by his power, establishes order and determines the behavior of persons employed in the enterprise, he does not show his private autonomy, he acts not as an owner, but as a carrier of the autonomy inherent in the enterprise he manages[71]. At the same time, it is necessary to imagine that L.S. Tal understood by the enterprise: “The enterprise is an authoritatively organized cell of an economic society, which has its own special internal order. The authoritarian nature of the organization is reflected in the fact that the people who make up the enterprise do not occupy an equal position in it, that it is headed by the owner, whom the rest must obey as the bearer of the master's power[72].

According to L.S. Tal, the master's power belongs to the head of the enterprise (which may also be a legal entity) as a person who actually manages the people that make up the enterprise as a social unit. But in this case, the master's power is not the subjective right of the owner of the enterprise, but an objectively inherent component of his legal status as the head of the enterprise.

The activity concept we propose, on the one hand, actually develops the concept of L.S. Tal, taking into account the status basis for the presence of managerial powers, and, on the other hand, gives an answer to the question of their subjective affiliation.

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[70] The categories of such individuals, as well as the moment of legitimation by the state of their organizing substrate, are indicated in Art. 20 of the Labor Code of the Russian Federation.
[71] Tal L.S. Essays on industrial labor law. 2nd ed., add. M., Mosk. scientific publishing house 1918, P. 30.
[72] Ibid., P. 23.

The subject of socially useful activity decides that it will be provided not by his own labor, but by the labor activity of attracted workers, whom he allows into his economic sphere, thus forming an autonomous social community. This community is led by the subject of socially useful activity, which is due to its status as the initiator of activity (the status basis of managerial powers). But the exercise of managerial powers is one of the aspects of the realization of his right to engage in socially useful activities, within the framework of which labor activity will be carried out by persons different from the subject of socially useful activities, therefore, the legitimized master's power manifested in the relationship between the employer and the employee is the realization of the subjective right of the initiator of the activity and part of its individually legal scope. The subject of socially useful activity can be both an individual and a legal entity, therefore, the powers to manage labor, and, hence, the legitimized master's power, belong directly to them, and not to their representatives, including the relevant executive bodies of the legal entity. Since this work is devoted to the study of the basic foundations of the phenomenon of labor management, the issues of the specifics of labor relations with the head of the organization[73], as well as a comparison of models of legal regulation of these relations at the present time and during the life of L.S. Tal, we will not be considered.

Now let's analyze all the other approaches used to resolve the issue of the grounds for the employer's right to manage labor.

It can be stated that the scientific literature has been and remains the prevailing approach, according to which the subordinate state of the employee in relation to the employer is caused by the economic dependence of the employee. More V.I. Savich pointed out that "the managerial attitude at the enterprise, as well as the labor attitude in general, is one of the manifestations of the ownership of the means of production"[74]. In turn, E.N. Nurgalieva notes in her dissertation that “the owner, receiving certain material benefits, becomes the owner of an organizational function, since he has a private right to tools and means of production, private power over others, which is given

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[73] Moreover, by now such comprehensive studies have already been carried out: see, for example, Goryachev A.S. Legal status of the head of a commercial organization: dis. ... Ph.D. Sciences: 12.00.05. SPb., 2005. 197 p.
[74] Savich V.I. Labor management and labor law. Tomsk, 1986, P. 61.

to him as a kind of benefit distributed among members of society” [75]. A.M. and M.V. Lushnikovy single out the lack of independence of labor as the main feature of an employment relationship, which is based on the economic dependence of the employee on the employer[76]. T.M. Ponomarev and K.A. Romanov write: “Labor relations are relations of power and subordination. They show the "economic" dominance of one side over the other"[77]. And E.S. Shukaeva directly points out that "the prerequisite for the master's power in its classical sense is only the economic dependence of the worker"[78]. Let's call this approach "property".

The employer is the owner of all factors of production. Labor is one of such factors, which the employer also acquires “ownership”. But due to the inseparability of labor from the worker, ownership over labor as a factor of production gives rise to power over those who produce this labor. At the present stage of development of the science of labor law, the emphasis of the property approach has shifted towards the presence of certain property by the employer and the absence of such property by employees. It can be represented as follows. Attracting workers for the production of certain benefits in their own interest, the employer admits workers to his economic sphere, where the latter interact with his property. Therefore, being included in the economic sphere of the employer, the employee uses tools belonging to the employer, and generally uses and interacts exclusively with the property of the employer. In this regard, only the employer, as the owner of the property, determines the procedure for its use by other persons, and therefore has the right to manage employees.

Despite its prevalence, this approach has long been criticized. So, even Tal, with reference to the Paul Bureau "Le contrat de travail"[79], pointed out that the owner's right to rule over workers and employees does not yet follow from the ownership of the

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[75] Nurgalieva E.N. The mechanism of legal regulation of labor relations in a mixed economy (based on materials from Russia and Kazakhstan): dis. ... doc. legal Sciences: 12.00.05. SPb., 1993. P. 35.
[76] Tarusina N.N., Lushnikov A.M., Lushnikova M.V. Social contracts in law: Monograph. M., 2017. P. 216 (the authors of the chapter are A.M. and M.V. Lushnikov).
[77] Ponomareva T.M., Romanova K.A. The power of the employer in market conditions of management // Modern trends in the development of legal science: theory and law enforcement practice: Materials of the correspondence international scientific and methodological conference of faculty and graduate students. Belgorod, 2014. P. 100.
[78] Shukaeva E.S. Economic dependence of a worker as a prerequisite for master's power: character and limits // Bulletin of the Voronezh Institute of the Federal Penitentiary Service of Russia. N. 1. P. 97.
[79] Tal L.S. Employment contract: A civilistic study. M., 2006. P. 481.

instruments of production, so he criticized researchers who argued that the entrepreneur buys labor power and from this From the moment he, within the limits of the law and the contract, disposes of it, on a par with the instruments of production and other components of his enterprise. In modern works, this position also does not meet with unambiguous consent: “Economic power is not the cause of legal (master) power. It can only be the basis for a special legal regulation of relations with elements of such power, which do not include the master's power” [80].

We disagree neither with the representatives of the property approach nor with its critics. Let's start with the fact that the property approach has a number of disadvantages. The first and most significant drawback is that it is not applicable to all cases of the use of hired labor, that is, it is not universal. The state of the employee subordinate to the employer (albeit to varying degrees) is inherent in absolutely any type of labor relationship, however, the employee does not always use the employer’s property in the course of performing a labor function, but there are cases when the employee uses personal property, which is directly allowed by the Labor Code. So, the norm of Part 2 of Art. 312.6 of the Labor Code of the Russian Federation says that a remote worker has the right, with the consent or knowledge of the employer and in his interests, to use equipment owned or rented by the employee, software and hardware, information security tools and other means to perform the labor function[81]. A vivid example of this will be the IT-specialists who have been in demand lately. The employer may have two such employees, one of whom works in the office and uses the employer's computer equipment, and the second works from his apartment and uses his personal property, while both can perform the same work function, and both are subordinate to the employer. Otherwise, we would have a situation where labor relations, identical in content and nature, in one case are burdened with a subordinate component, and in the other they are not, which in principle cannot be. At the same

[80] Konshakov V.M. Master's power of the employer: constitutional and legal aspects // Journal of Legal and Economic Research. 2014. N. 2. P. 45.

[81] For a detailed analysis of the relationship regarding the employer’s use of the property of remote workers, see, for example, Skachkova G.S. Remote work: some practical issues of application // Labor law in Russia and abroad. 2021. N 3. P. 28-31; Tomashevsky K.L. Remote (remote) work in the labor legislation of the EAEU countries during the pandemic // Labor law in Russia and abroad. 2021. N 2. P. 30-33.

time, if in a situation where a non-remote worker uses personal property in the performance of a labor function, critics of the above argument could object that in this case the property is transferred from the employee to the employer, and formally the employer transfers the property already temporarily owned by the employee for use. In the situation with remote workers, the employee does not even formally transfer his personal property to the employer, therefore, in the process of performing his labor function, he uses his personal property belonging to him[82].

Secondly, if we assume that the lack of independence of labor and the subordination of the worker are due to the right of ownership[83] employer on the means of production, then why does such lack of independence and subordination not arise in contractual relations and relations for the provision of services, when in the performance of work under a work contract and in the provision of services under a contract of the same name, the contractor and the contractor use the property of the customer?[84] And if in a situation with a contract, representatives of the property approach can still say that in this case there are relations about the result of labor, and not about "live labor", then in the case of paid services, this argument also does not work. Accordingly, if we adhere to the ideal model of the property approach to the end, then in the specified relations of contracting and paid services, the contractor and the contractor should fall under the authority of the customer, but this does not happen.

Thirdly, since the relationship of power-subordination between the employer and the employee is one of the main features of labor relations separating them from civil law, this subordinate component is inherent in the labor relationship from its very inception, that is, from the moment the labor contract enters into force contracts (more

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[82] It should be noted that the provision of art. 188 of the Labor Code of the Russian Federation does not require registration of the transfer of property from a non-remote worker to the employer, therefore, in this case, the employee can receive compensation for the use of his own property when performing a labor function.

[83] Both here and in what follows, we will understand the right of ownership not only in its literal sense, but also by it all possible property rights will be understood. In this regard, in the future, under the owner we will understand persons who own property on any legal right other than property.

[84] The norm of paragraph 1 of Art. 704 of the Civil Code of the Russian Federation is dispositive and gives the right to provide in the work contract that the work will be performed through the use of materials and means of the customer. The norm of paragraph 1 of Art. 783 of the Civil Code of the Russian Federation provides for a rule according to which the provisions on the contract are applied to the relations arising from the contract for the provision of services for compensation, if this does not contradict the essence of the relationship and the specifics of regulation of the provision of services for compensation. It is obvious that paragraph 1 of Art. 704 of the Civil Code of the Russian Federation is also applicable to relations for the provision of services for a fee.

on this later). In this regard, according to the logic of the property approach, at the time the employment contract enters into force, the employer must be the owner of any property that he subsequently must transfer to the employee, which the latter will use in the performance of the labor function, and only in this case can we talk about the presence power component in labor relations. This logic is flawed, since the employer may not have such property on the date the employment contract enters into force, and the power-subordination relationship between the employer and the employee still arises.

To this, representatives of the property approach could put forward two arguments, allegedly proving the impossibility of a situation where the employer does not have property on the date of the employment relationship. The first is that the employer is always a subject of civil law relations, possessing property that ensures his real capacity for delinquency, including in labor relations, which is a necessary component of the labor legal personality of the employer. The second argument is that without the presence of separate property, the employer will not be able to pay for the work of attracted employees, and labor relations are exclusively paid.

Let's examine these arguments one by one. As for the first, there is no doubt and is not disputed by us that tort is an integral part of the legal personality of the employer. However, firstly, despite the fact that the employer is a subject of civil law, does this guarantee in all cases that he actually has any property that could become the basis for the subordinate component of labor relations? We are forced to state that no, it does not guarantee. From the point of view of foreclosure on property, we can speak about property guarantees and conditionally real tort only in relation to business companies, since the law establishes the obligation to ensure the presence of a minimum authorized capital during their creation and throughout the entire period of activity[85]. However, there are no similar requirements for individual entrepreneurs: for state registration as such and the start of business activities, it is not necessary to have a property minimum established at the level of the law, which would ensure the requirements of creditors. And even more so, there are no guarantees of the real availability of property from

[85] Art. 66.2 of the Civil Code of the Russian Federation.

employers-individuals who are not individual entrepreneurs. Secondly, using the logic of the property approach, answer the question whether the presence of an authorized capital in a business entity or whether an employer-individual (whether an entrepreneur or not) will have any property that, in terms of its functionality, is not related to the performance of employees job duties, the basis for the emergence of a subordinate component? No, because the worker in this case does not use other people's factors of production.

As for the second argument, the payment of wages is the fulfillment by the employer of his obligation to pay the employee within the framework of an already concluded and valid employment contract. This means that from the moment of conclusion of the employment contract until the moment of the first payment of wages, the employee performs a labor function under a valid employment contract and was under the control of the employer. In this regard, the failure of the employer to fulfill this obligation in no way changes the subordinate nature of the relationship existing between him and the employee, but is only a violation by the employer of his contractual obligation. Part 2 Art. 142 of the Labor Code of the Russian Federation allows the employee to suspend work for the entire period of time until the payment of the delayed amount of wages, however, this rule actually provides for one of the forms of self-defense of the rights of employees, being a response to a violation of the contractual obligation of the employer, which is fully consistent with the paid nature of labor relations and cannot be considered as a confirmation of the correctness of the property approach on the issue of the subordinate component of labor relations. Moreover, the employee may not suspend work in the presence of wage arrears on the part of the employer, and will, as before, be under the control of the latter. All this demonstrates that timely remuneration of employees is a condition for the employer to fully exercise the right to manage labor, but in no way connects the source of the employer's power with the property component of his status.

As for the criticism of the property approach in connection with the linking of the right to manage labor to the powers of the employer as an owner, we note the following. Those who disagree with this position, firstly, see here the extension of the power of the

owner to the workers (which is perceived through the prism of reducing the worker to an object of labor), and, secondly, they understand the power of the owner only as economic power. But this only shows an incorrect interpretation of this provision.

The employer uses property to conduct socially useful activities and determines the procedure for its use, based on how he carries out his activities. It is precisely being the organizer of the activity and the rightful owner of his property that the employer determines how to manage it in order to achieve the goals of socially useful activity: he decides to whom it will be transferred for use, and how the one to whom it is transferred will use it. Therefore, it is not the economic power of the owner that extends to the worker, but the organizing power of the subject of socially useful activity. By concluding an employment contract, the employee agrees that in the future he will comply with the procedure for using the property established by the employer, including complying with legal orders given to him, based on the fact that only the employer knows how an individual employee and the labor collective as a whole should use his property for the most effective implementation of socially useful activities. Thus, economic power extends to property, and legal power to the worker (by virtue of the agreement), which once again shows that the worker is not reduced to an object of labor or means of labor.

So, the foregoing demonstrates the inconsistency of the property approach in determining the basis of the right to manage labor: the property of the employer is not the reason for the power status of the latter. Despite this, one cannot underestimate the importance of the property component in labor relations (but not in relations of power-subordination!).

Firstly, the property is used by the employer to fulfill his contractual obligations to the employee in the form of payment of wages. Therefore, in this case, the property performs the function of ensuring the fulfillment by the employer of contractual obligations.

Secondly, the property of the employer is used by employees in the performance of their labor functions. Since socially useful activities are carried out through the labor of workers, the need to use any property in the implementation of labor indicates the

impossibility of carrying out socially useful activities without such property. Therefore, here the property performs the function of ensuring the process of implementation by the employer of socially useful activities.

Thirdly, property can be the object of the labor of workers. The employer may, through the labor of employees, own, use and dispose of his property. In this case, the employees are actually the executors of the decisions of the employer on the management of his property. In this regard, a false impression may be created that in this case the basis for the emergence of subordinate relations is the ownership of the property of the employer. Yes, in such a situation, employees follow the instructions of the employer as the owner of the property, but he attracts them to carry out activities to maintain this property, that is, the socially useful activity of the employer is to maintain this property, and the work of employees mediates its implementation. This is what causes the emergence of subordinate relations, and not the fact that the property is owned by the employer, which needs to be serviced.

The second and third property aspects represent one of the components of the so-called economic sphere of the employer, which includes all employees. Firstly, employees take the place of actual performers in the process of carrying out socially useful activities of the employer. Secondly, to be such, they must be located in the place where this activity is carried out and have the resources to carry it out. This leads to the presence of employees in the territory controlled by the employer with access to property belonging to him. Possession of the functional role of the performer of activities, as well as access to the territory and property of the employer, is the involvement of employees in the economic sphere of the employer. In which they can interact with each other regarding their functions or the use of property.

The next fairly common in science approach to determining the basis for the emergence of master's power is the approach, according to which such a basis is an employment contract[86]. This approach was criticized by L.S. Tal, who rightly pointed out one serious flaw. In accordance with the contractual concept of master's power, "the

[86] See, for example, Zaitseva O. B. The historical aspect of labor legal personality as the most important category of labor law // Ros. legal magazine 2006. N. 4. P. 96-108; Shukaeva E.S. The concept of master's power in the domestic school of labor law // Actual problems of Russian law. 2015. N. 10. M., P. 142-150.

entire internal order of the enterprise turns out to be ... nothing more than the content of contracts concluded by its head"[87]. However, the contractual concept does not explain the fact that the employer can act as an independent source of management decisions, when "the order is not the result of a common will, is not created by agreement of the parties"[88].

In this regard, it is extremely important to determine the role of the employment contract that it plays in the issue of labor management of employees[89]. The conclusion of an employment contract does not give rise to the right to manage labor, it only creates the necessary prerequisite for the employer to be able to exercise it. The employer is the organizer of the activity, for the sake of which he creates a labor collective that contributes to the achievement of the goals of this activity. Employees are included in the scope of the employer's activities on the basis of a freely concluded labor contract or free choice of labor activity on other grounds, which in essence enables the employer to organize the work of employees. Employees, through an employment contract, express their consent to submit to the organizational authority of the employer precisely because they are interested in using their ability to work, which ensures the socially useful activity of another person who initiates it. That is, the implementation of the managerial powers of the employer in relation to a particular employee, and not their appearance, is possible thanks to an employment contract concluded on a voluntary basis, without any coercion. Thus, having decided to be an organizer and carry out socially useful activities, the employer gets the opportunity to form a labor collective in order to use it to achieve the goals of the activity (the moment the right to labor management arises[90]), and through the conclusion of an employment contract, by virtue of which the employees agreed to extend the power of the employer to themselves, he proceeds to the stage of realizing the right to manage labor. In this

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[87] Tal L.S. Essays on industrial labor law. 2nd ed., add. M., Mosk. scientific publishing house 1918. P. 19.

[88] Ibid.

[89] For the purposes of this work, it is important to understand the meaning of an employment contract only in the context of the emergence and existence of the employer's managerial powers. A fundamental study of the employment contract as an institution of law, which resolves a complex of problems existing in doctrine and practice, was carried out by N.I. Diveeva: see Diveeva N.I. The role of the contract in labor law: theoretical aspects: dis. ...cand. legal Sciences: 12.00.05. Tomsk, 1998. 171 p.

[90] More details about the characteristics of the employer's right to labor management, including the moment of its occurrence, will be discussed in the second chapter of this work.

regard, it seems interesting to approach to understanding the essence of an employment contract as an employment law transaction, proposed by N.I. Diveeva and F.K. Nogailieva, according to which the conclusion of an employment contract is the determination of the conditions for using the employee's ability to work, and the subordination of the employee to the master's power of the employer occurs during the implementation of the labor legal relationship[91].

In fact, the conclusion of an employment contract by an employee is an agreement to submit to the authority of the employer on the terms agreed between the employee and the employer. Moreover, it is the conditions for using the employee's ability to work, and not the content of power (normative, administrative-dispositive, disciplinary)[92] that are agreed upon. If we assume the opposite, then in a situation with the actual admission of the employee to work, in which the existence of labor relations is not denied, the employer could not exercise any of the managerial powers, since the employee did not recognize their existence for the employer by indicating this in the text of the employment contract . And if we assume that by the actual admission of the employee to work, it is presumed that the employee agrees to the use of all types of managerial powers of the employer in relation to him, then it turns out that these managerial powers objectively exist, regardless of the conclusion and content of the employment contract. The fundamental possibility of the emergence of labor relations, an integral feature of which is the existence of a subordinate relationship between their parties, by actually allowing the employee to work, proves that, through conclusive actions, the employee agrees to fall under the control, that is, the existing power of the employer. In such a situation, questions arise about the conditions for using the employee's ability to work, but there are no questions about the employer's power.

Now consider the latest approach to understanding the foundations of master's power, which has been adopted by some modern authors. It is based on the fact that the power of the employer is of a public nature and is the result of the state delegating public management powers to a private entity - the employer. So, M.A. Drachuk states

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[91] Diveeva N.I., Nogailieva F.K. On transactions in labor law and social security law // Yearbook of labor law. 2023. N 13. P. 108-109.
[92] They will be discussed in more detail in the next paragraph of this work.

the following: “Regardless of which term is used - master, managerial or employer power, it does not affect the essence of what is happening between the employee and the employer in the process of developing labor relations. Such a mutual position of the parties to the employment contract (in which the employee is allowed, for any reason, to determine the technology and / or type of result of his work) is the basis for the delegation by the state to the employer of most of the functions of managing employees"[93].

This approach today does not seem to be entirely accurate and is a consequence of the perception by the modern doctrine of labor law of the Soviet model of empowering the state with its powers of persons who were formally employers at that time[94], which was correctly noted by A.M. Kurennoy: “For decades in our country, in the sphere of labor, it was the public legal aspect in regulating these relations that prevailed. ... That time was characterized by the dominance of public legal regulation in almost all spheres of human activity. The state in one person acted as a legislator and executor of laws, and in the sphere of labor, moreover, it was practically the only employer”[95]. This led to the emergence of theses about the public nature of the powers of the employer, and about the inherent functions of the regulator of labor relations within the framework of the general process of regulating the entire spectrum of social relations.

Before starting an analysis of the specifics of the legal regulation of labor management relations that existed in the Soviet period of the development of our state, we note why the powers of labor management, in principle, cannot be essentially public in a society built on economic independence, pluralism and equality of all forms of ownership. Let us analyze this from the point of view of two positions that can take place when justifying the public nature of the powers to manage labor.

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[93] Drachuk M.A. Legal mechanism for managing dependent labor. Omsk, 2015. P. 207.

[94] A detailed analysis of the legal regulation of labor in the Soviet period was carried out by E.B. Khokhlov in his fundamental three-volume work (see Khokhlov E.B. History of legal regulation of economy and labor in the USSR. Textbook. Volume 1. 2021. 784 p.; Khokhlov E.B. History of legal regulation of economy and labor in the USSR. Educational allowance, Vol. 2. 2021. 256 p., Khokhlov E. B. History of legal regulation of economy and labor in the USSR, textbook, Vol. 3. 2021. 720 p.).

[95] Kurennoy A.M. Law and justice in the Russian system of regulation of labor relations [Electronic resource] // Labor law in Russia and abroad. 2018. N 4. Access from the legal reference system “ConsultantPlus”.

The first position is that the management of employees by employers is an integral part of public administration, which means that the state delegates to employers the authority to manage labor. However, if this is so, then labor management relations are administrative, that is, they are public relations of a managerial nature, in which, due to their direct connection with state management activities, the state (public) interest, the state control will are directly expressed[96]. In the constitutional and legal sense, the source of such powers in a democratic state is the people, and their implementation is aimed at achieving the interests of the whole society. Thus, already in the very process of managing employees, the state will must be realized and the public interest must be achieved. However, this does not happen in a situation with the management of the labor of workers in natural conditions, when the state does not interfere in the economic processes of private entities, does not forcibly monopolize the socio-economic sphere of society, and also does not claim hegemony in the sphere of realization of the personal rights of citizens[97].

In the first paragraph, it was indicated that the reason for the existence of the phenomenon of management in labor relations is the objective need for the subject of socially useful activity as an autonomous economic unit to organize and manage all the processes occurring within its economic sphere. Thus, managing someone else's ability to work, the subject of activity exercises internal management within the framework of his economic sphere, aimed at achieving his interests, including the goals of his activity, this power is not a product created by a public entity, its source is in the economic autonomy of any subject of socially useful activity.

The second position may be as follows. The state does not delegate to absolutely all employers its powers to manage employees; such vesting of public powers is inherent only in situations where the employer is either a public entity or a person with the participation of a public entity. For example, a public law company established by the Russian Federation on the basis of a federal law or a decree of the President of the

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[96] Kozlov Yu.M. Administrative Law: Textbook / Yu.M. Kozlov. M. 1999. P. 6.

[97] The subject of this study is the analysis of labor management in the context of relations between society and the state, as well as between individual members of society, built on a natural law approach. The situation of artificial nationalization of social processes, including labor management, as, for example, in the implementation of the policy of war communism, requires a separate study.

Russian Federation and exercising powers and functions of a public law nature. In this regard, there may be an impression that the powers to manage the labor of employees are delegated to such an employer on the basis of a public act. However, this is a misconception.

In the first paragraph, it was indicated that the subject of socially useful activity is the initiator of such activity. In the situation with legal entities, this thesis requires clarification. In fact, the initiator of the activities of such a legal entity is its founder: it is the founder who determines the goals of creating a legal entity, as well as the list of statutory activities. The legal entity itself only actually implements the activities that the founder has determined. But, since the only participant or the general meeting of such participants is the body of a legal entity, it is conditionally possible to say that the legal entity itself was the initiator of its activities. At the same time, absolutely always any legal entity has organizational independence and is an autonomous economic entity, which is the only one responsible for organizing all processes in its internal economic sphere.

Therefore, when a public entity establishes a legal entity, one can speak of delegation of public powers only in the context of granting such a legal entity the status of a subject of socially beneficial activity, that is, in fact, there is a delegation of the right to engage in relevant socially beneficial activities, which belongs exclusively to the public entity. In this case, the legal entity does receive from the public entity by way of delegation the right to engage in socially useful activities, but such delegation does not concern intra-organizational rights and obligations within the framework of its autonomous economic sphere of the legal entity. A legal entity, having an autonomous economic sphere, which, although it uses to implement public socially useful activities, independently, based on its status as an autonomous economic unit, determines how it organizes the implementation of public activities[98], including by attracting and using the ability to work of other people, that is, labor management. Therefore, in this case, the powers that represent the internal organization of their autonomous economic sphere,

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[98] The independence of a person consists precisely in organizing the implementation of public socially useful activities, which is reflected in the independence of making certain managerial decisions, which does not deny or contradict the fact that the list of such decisions, as well as the procedure for their adoption, can be regulated by a public entity.

which, as was indicated in the first paragraph, include the powers to manage labor, will not have a public character. Regardless of who is the founder of the subject of socially useful activity, a private or public entity, the powers to manage labor will be private in the sense that their presence will not be the result of delegation by a public entity, the reason for their presence is in the objective role of the subject of socially useful activity, possessing the autonomy of its economic sphere, as the organizer of all the processes occurring within it.

Now let us analyze why, as a legacy of the Soviet era, the thesis of delegating powers to manage labor from the state passed into the doctrine of labor law. The Soviet socio-economic model was characterized by the absence, with only one minor exception, of the organizational and activity independence of individuals. The Constitutions of the USSR of 1936 and 1977 proclaimed that the basis of the entire economic system is the socialist economic system and socialist ownership of the means of production[99]. The provisions of both Constitutions also recognized the existence of personal property of citizens for a limited range of property[100], and even the right of independent exercise by citizens of a certain range of individual activities[101]. However, such activities were allowed either exclusively in person[102], either with the involvement of only members of their families, but without exploiting the labor of other Soviet people[103]. This, in turn, meant that the state had a virtual monopoly on the implementation of socially useful activities, most of which were economic activities, with the involvement of the labor of workers. So, E.B. Khokhlov accurately notes that the state "became the single and only economic entity exercising direct state management of the national economic complex as a whole" [104], and in such a situation

[99] See Art. 4 of the Constitution of the USSR of 1936, Art. 10 of the Constitution of the USSR of 1977 [Electronic resource]. Access from the reference legal system "ConsultantPlus".
[100] See Art. 10 of the Constitution of the USSR of 1936, art. 13 of the Constitution of the USSR of 1977 [Electronic resource]. Access from the reference legal system "ConsultantPlus".
[101] See Art. 9 of the Constitution of the USSR of 1936, art. 17 of the Constitution of the USSR of 1977 [Electronic resource]. Access from the reference legal system "ConsultantPlus".
[102] See Art. 9 of the Constitution of the USSR of 1936 [Electronic resource]. Access from the reference legal system "ConsultantPlus".
[103] See Art. 14 of the Constitution of the USSR of 1977 [Electronic resource]. Access from the reference legal system "ConsultantPlus".
[104] Khokhlov E.B. History of legal regulation of economy and labor in the USSR: a textbook in 3 volumes. Volume 1. Economy and labor in the conditions of the formation of a socialist society. M., 2021. P. 217.

"the state is the subject of direct labor management, the worker as a person realizing his ability to work becomes the direct object of this management" [105].

But the state attracted workers to work not directly, but through specially created state enterprises and institutions, which, firstly, were created by the state to carry out the socially useful activities necessary for the state, and, secondly, were endowed with state means of production to carry out this activity. . That is, by carrying out the activities assigned by the state and owning these means of production, state enterprises became, albeit to a very limited extent, but organizationally independent and economically autonomous economic units that directly manage the labor of workers, having the need to systematically use the ability to work to achieve the set goals goal state. This, in turn, was reflected in the normative regulation of the Soviet period: enterprises, institutions and organizations were named as employers of the labor force[106].

In such a situation, it was possible to talk about the state delegating its powers to enterprises, institutions and organizations (but the powers of the subject of socially useful activity, including the owner exercising the powers!), because, firstly, they were socially autonomous, since they carried out socially useful activity assigned to them by the state, and, secondly, the state allocated to them and assigned to them part of its property for the necessary provision of the activity for which they were created. This suggested the objective necessity of having the opportunity to organize the workers involved in the use of their ability to work. But this was not a delegation of public powers, but of powers inherent in any socially and economically autonomous unit, which in this case was the state.

The foregoing demonstrates to us the unified nature and foundations of the right to manage the labor of workers, regardless of who owns it and who implements it: the state or a private entity. Its source is not state power, in the form in which it is understood in the public branches of law. The right to manage labor is always a consequence of the recognition of the power existing independently of the public subject of another subject having an autonomous economic sphere, carrying out socially

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[105] Ibid., P. 218.
[106] See, for example, Article 15 of the Labor Code of the RSFSR of 1971 [Electronic resource]. Access from the reference legal system "ConsultantPlus".

useful activities through the use of the labor of involved persons. In this regard, the right of the employer to manage labor is of a private nature. More L.S. Tal called the master's power an institution of private law[107].

Thus, the state as a public subject is not the source of the employer’s economic power; its role in matters of labor management is to legitimize the employer’s economic power, that is, to recognize his right to manage labor, and to limit this right. This conclusion is shared by authoritative representatives of labor law science. “In modern conditions, state-normative regulation of the master’s power is carried out in two directions: on the one hand, the state, through the law, ensures authorization, in other words, the legal legitimation of the master’s power; on the other hand, it thereby limits the master’s power, its “righting”[108], - notes E.B. Khokhlov. And N.I. Diveeva points out that: “...the labor legal order in a market economy can be interpreted as a private law phenomenon. ... The state in this area of public relations only determines the legal limits (boundaries) of the employer’s power, thereby introducing into it elements of publicity”[109]

This once again confirms that the employer is the only subject of labor management of employees. But suppose the opposite: the employer is not the only possible manager in the field of labor application. What is the alternative in this case? Obviously, in this situation, we can talk about cooperative management, that is, self-government of a team of workers. But in this case, it is the workers who should be the initiators of socially useful activities, and, accordingly, the workers will either use their own labor, which will be independent, or they themselves will hire other workers, which means they themselves become an employer. An example of such a form of organization of self-governing workers-entrepreneurs can be a production cooperative[110], which is understood as a voluntary association of citizens on the basis of

[107] Tal L.S. Essays on industrial labor law. 2nd ed., add. M., Mosk. scientific publishing house 1918. P. 30.
[108] Russian labor law course. In 3 volumes. Vol. 3: Employment contract [Electronic resource] / Ed. E.B. Khokhlova. 2007. (the author of the chapter is E.B. Khokhlov) // URL: https://www.livelib.ru/book/158895/readpart-kurs-rossijskogo-trudovogo-prava-tom-3-trudovoj-dogovor-evgenij- hohlov (date of access: 03/01/2023).
[109] Diveeva N.I., Startsev N.N. On the issue of the concept of labor discipline // Russian Yearbook of Labor Law. 2012. N 7. P. 350.
[110] Self-government here will be provided that the production cooperative itself, as a legal entity, does not hire workers for the purposes of its activities.

membership for joint production or other economic activities based on their personal labor and other participation.

It is also possible that the employer-employee relationship is affected by another external entity (for example, a public one), and such an impact is characterized by an intrusion into the managerial powers of the employer, that is, such an external entity to some extent also manages employees (not the legal regulation of labor relations, but direct control!). But such a model is possible only in a situation where the employer is not an organizationally autonomous unit, in this regard, his independence to engage in any activity is detrimental, therefore, in such a model, the organizational component is divided between two subjects: the employer and someone else. But, firstly, this situation is not natural, but is a derivative product of a certain legal regulation, and, secondly, this model confirms that the main distinguishing feature by which we define the subject of labor management is organizational and activity, and not any else, including property. An example of such a model is the labor management system that developed in the Soviet period. As mentioned earlier, formally, the administrations of enterprises were the subjects that managed the labor of workers, but the state, through a number of state authorities, also took part in labor management: for example, the People's Commissariat of Labor in its acts determined the wages of workers. And this is explained by the fact that it was the state that was the initiator and organizer of economic and other socially useful activities.

Currently, this model cannot be applied to all types of labor relations. As E.N. Nurgalieva: “These features [of the labor management mechanism] are expressed in the impossibility of state management of the labor of an independently economic entity (because this would mean direct interference in its self-government activities), as well as in the exclusion of external control over the forms of realization by people of their ability to work”[111].

In modern conditions, an example of such a model is the labor management system in state and municipal institutions. Thus, the standard form of an employment

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[111] Nurgalieva E.N. The mechanism of legal regulation of labor relations in a mixed economy (based on materials from Russia and Kazakhstan): dis. ... doc. legal Sciences: 12.00.05. SPb., 1993. P. 25.

contract with the head of a state (municipal) institution was approved by the Decree of the Government of the Russian Federation[112]. Accordingly, the state, represented by the Government of the Russian Federation, determines the conditions for concluding labor contracts with the heads of budgetary institutions, the founder of which it is not. Also, by Order of the Ministry of Foreign Affairs of the Russian Federation of September 8, 2010 № 15810[113] approved the Procedure for determining the maximum allowable value of overdue accounts payable of a federal budgetary institution subordinate to the Ministry of Foreign Affairs of the Russian Federation, the excess of which entails the termination of the employment contract with the head of the federal budgetary institution at the initiative of the employer in accordance with the Labor Code. RF code. In accordance with paragraph 7 of this Procedure, on the basis of a joint proposal of the monetary and financial department and the department in charge of the relevant budgetary institution, the Minister of Foreign Affairs of the Russian Federation decides to terminate the employment contract with the head of the budgetary institution.

Thus, only the employer, as a subject of socially useful activity, is the only subject of managing dependent labor. This is what makes the employer responsible for labor management, which must be understood in two senses. Firstly, it is the only entity that is obliged to provide at its own expense the workers introduced into its economic sphere with all the material resources necessary for them to realize their labor ability (and the latter are obliged to observe the procedure for using other people's property). Secondly, the employer is the subject of negative liability for violating the procedure for the use and application of other people's labor, both before the participants in labor and closely related relations, and before the state as a subject performing public functions.

Thus, we have come to a number of important conclusions. The right of the employer to manage the labor of employees is of a private nature and is not a delegation

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[112] On the standard form of an employment contract with the head of a state (municipal) institution [Electronic resource]: post. Government of the Russian Federation of 12 April. 2013 N 329 // Collection. legislation Ros. Federation. 04/22/2013, N 16, art. 1958. Access from the reference legal system "Consultant Plus".

[113] On approval of the procedure for determining the maximum allowable value of overdue accounts payable of a federal budgetary institution subordinate to the Ministry of Foreign Affairs of the Russian Federation, the excess of which entails the termination of an employment contract with the head of a federal budgetary institution at the initiative of the employer in accordance with the Labor Code of the Russian Federation [Electronic resource]: order of the Ministry of Foreign Affairs Affairs of the Russian Federation dated 08 September. 2010 N 15810 // Rossiyskaya gazeta, N 234. Access from the reference legal system "ConsultantPlus".

of public powers by the state to a private entity. The very right to manage labor can only belong to the employer as a subject of socially useful activity. Such aspects of organizational and activity independence as the right to engage in certain activities and the right to attract other persons to carry out labor activities that provide socially useful activities make it the subject of managing someone else's labor.

§3. The concept and content of the right to labor management

Earlier it was noted that the right to manage labor represents the legal registration of the objectively existing economic power of the subject of socially useful activity by recognizing him as an employer in the field of labor relations. Therefore, let us consider how a given subject can exercise his power, in other words, what is the substantive part of the master's power, respectively, the content of the right to manage labor.

In science, the classification of types of master's power has long been established, and represents its division into three types[114]. This classification indirectly confirms the viability of the proposed activity approach to the right to manage labor, since it covers the powers that are objectively necessary for the subject of socially useful activity, which are necessary for the full implementation of socially useful activity in a situation where the labor function within the framework of this activity is not performed by the subject of activity himself, and the persons involved. When the subject of socially useful activity does not independently carry out labor activity within the framework of socially useful activity, or at least is not the only person who uses his labor to ensure this activity, he objectively needs, firstly, to determine the conditions, methods and procedure the implementation of labor activity by involved persons, secondly, in the possibility of direct adjustment of the actions of persons directly engaged in labor activity, and thirdly, in the control and the possibility of responding to the implementation of labor activity by involved persons that do not meet the established conditions. Accordingly, the power decisions of the subject of socially useful activity

[114] See, for example, Tal L.S. Essays on industrial labor law. 2nd ed., add. M., Mosk. scientific publishing house 1918. P. 30-31.; Dmitrieva I.K. Principles of Russian labor law: Monograph. M., 2004. P. 169.

can exercise the powers of local rule-making (normative power), operational labor management (administrative and dispositive power) and bringing employees to disciplinary responsibility (disciplinary power).

In science, administrative-dispositive power is also called directive or administrative power[115]. We believe that the name “administrative-dispositive power” is more consistent with the essence of the powers that it includes: “Administrative-dispositive power (or the right of management) means the right of the employer to manage the work of the employee (administrative aspect), thereby filling in the gaps in the normative and individual-contractual regulation (dispositive aspect)" [116]. Note that the presence of a dispositive aspect once again confirms the concept of the right to manage labor proposed in this paper: only the employer has the authority to fill the gaps in regulation, since the purpose of this is to ensure the proper implementation of socially useful activities, and no one except the employer as the initiator of such activities can do this. not entitled. Therefore, in further analysis, these powers of the employer will be referred to as administrative-dispositive.

A number of scientists[117] consider disciplinary power as a kind of administrative-dispositive one, since the first one is its logical continuation and in content it represents the same operational decisions only with certain specifics. Although from the point of view of content, one can agree both with the unification of the administrative-dispositive and disciplinary powers of the employer, and with their common name of the administrative-disciplinary power of the employer[118], despite this, a difference can be distinguished between them.

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[115] See, for example, Zabramnaya E.Yu. Disciplinary responsibility: cross-sectoral aspect and current problems of the legal institution [Electronic resource] // Labor law in Russia and abroad. 2019. N 3. Access from the reference legal system "ConsultantPlus".

[112] Russian labor law course. In 3 volumes. Vol. 3: Employment contract [Electronic resource] / Ed. E.B. Khokhlova. 2007. (the author of the chapter is E.B. Khokhlov) // URL: https://www.livelib.ru/book/158895/readpart-kurs-rossijskogo-trudovogo-prava-tom-3-trudovoj-dogovor-evgenij- hohlov (date of access: 03/01/2023).

[117] See, for example, Penov Yu.V. Labor management in a mixed economy: Legal problems: dis. ... cand. legal sciences: 12.00.05. SPb., 2003. P. 80.

[118] The concept of administrative and disciplinary power was proposed by N.G. Alexandrov in the monumental work "Labor relationship". In the aspect of labor discipline, this concept was disclosed by V.N. Smirnov in the work "Labor discipline in the USSR", see Smirnov V.N. Labor discipline in the USSR. L., 1972. P. 119.

An analysis of how each type of authority can be used by the employer within the guaranteed limits of the exercise of the right to manage labor will be made in the third chapter of this work, and now we will make a general comparison with each other.

The purpose of these three powers is also the same: their implementation is aimed at ensuring the effective engagement of the employer in socially useful activities and additionally can also be aimed at protecting property, the presence of which ensures the implementation of socially useful activities. But the mechanism for achieving this goal in the exercise of these powers is different. The consequence of the implementation of the employer's regulatory powers is a system of local regulations that establish rules binding on employees, the proper implementation of which is designed to build them into a single mechanism through which the employer conducts its activities, or rules designed in general to establish the procedure for using the employer's property to ensure its safety. The consequence of the use of administrative and dispositive powers is the implementation by the employer of the powers for the operational management of the labor of employees, through which the control and management of the socially useful activities of the employer takes place. We can say that this is a “live” reaction of the employer to certain circumstances that confront him. There is no rule-making here, there is the realization of law, this is their fundamental difference from normative powers.

The difference between administrative-dispositive and disciplinary powers is as follows. Administrative and dispositive powers can be called “implementation”, since they affect the employee as a functional unit[119] in the mechanism for the implementation of socially useful activities, through which the implementation of labor activity takes place within the framework of socially useful: the degree of involvement of the employee in the labor process is determined, his tasks are determined, there is a removal, dismissal, hiring of employees. That is, within the framework of the implementation of administrative and dispositive powers, labor is managed as a resource that ensures the implementation of socially useful activities. And disciplinary powers are addressed directly to the impact on the minds of employees and their attitude

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[119] Naturally, taking into account the fact that workers are living people, not machines.

to the performance of labor duties, which ultimately should ensure proper observance of the order in the employer's organization established within the framework of the implementation of regulatory powers, as well as the execution of the employer's orders within the framework of operational labor management. Moreover, this is ensured by negative and positive incentives for employees.

In its absolute (unlimited) form, the master's power is able to lead to the attraction and use of the ability to work of workers by any means, which the state cannot allow, since the employer is a private entity, on the part of which the possibility of abusing his power is always probable. In this regard, the legitimation of the economic power of the subject of socially useful activity, and, therefore, giving it the form of the right to manage labor, occurs on the part of the state through the determination of reasonable and fair limits for the implementation of the employer's power to manage the labor of workers through legislative regulation[120]. Therefore, the right to manage labor is a fundamental opportunity to manage the labor of workers within the limits and forms legalized by the state.

In other words, all those powers of the employer (in their content related to regulatory, administrative-dispositive or disciplinary) that are given to him by the Labor Code or other regulatory acts, such as, for example, making a decision to reduce the number of employees, introducing a part-time work regime, adopting local regulations, changing working conditions unilaterally, etc., are components of the employer's right to manage labor, and their use are examples of the possible implementation of the right to manage labor. Such a restriction of the employer's right to manage labor is one of the manifestations of the social policy of the state in its broadest sense[121], since it is actually intended to contribute to the achievement of optimal alignment of the interests of the employee and the employer[122].

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[120] The question of the grounds and permissible limits for restricting the employer's right to manage labor will be considered in the third chapter of this work.

[121] For more information about this, see A.M. Kurennaya. Does the state realize the real need for effective legal regulation in the field of social policy? // Labor law in Russia and abroad. 2012. N 4. P. 2-6; Skachkova G.S. Social policy of the Russian state and labor legislation // Labor law in Russia and abroad. 2017. N 4. P. 3-6; Tomashevsky K.L. The concept of labor law policy of flexible protection and its implementation in the Republic of Belarus // Justice of Belarus. 2011. N 11. P. 52-54.

[122] Nurgalieva E.N. Labor law as a form of implementation of the social policy of the Republic of Kazakhstan [Electronic resource] // Labor law in Russia and abroad. 2015. N 4. Access from the reference legal system "ConsultantPlus".

Thus, the right to labor management implies the existence of a system of specific managerial powers, which will constitute the content of this right. That is, the right to manage labor by definition is a composite one, which is also confirmed by the practice of the Constitutional Court. When analyzing certain managerial powers of the employer[123], the Constitutional Court pointed out that the guaranteed Art. 8, part 1, art. 34 and part 2 of Art. 35 of the Constitution of the Russian Federation[124], rights imply that the employer has a number of specific powers that allow him to make the necessary personnel decisions. As examples of which, as a rule, the highest court cites the selection, placement and dismissal of personnel. In the norms of labor legislation, we will not find the concept of "personnel decision". However, Article 22 of the Labor Code of the Russian Federation enshrines the right of the employer to conclude, amend and terminate employment contracts with employees in the manner and on the terms established by the Labor Code of the Russian Federation and other federal laws. Based on the position of the Constitutional Court, this authority is the main element of the concept of “employer's personnel decisions”, which is an integral part of the labor management mechanism.

In this regard, personnel decisions should be understood as specific actions that do not contradict the law, in which the master's power of the employer is realized, and, therefore, the powers (rights) belonging to him for labor management are realized: determining the number of employees, distributing the volume of work performed, the need to move, transfers, making a decision to reduce the number or staff of employees, etc. Thus, a personnel decision is the implementation of a specific authority (right) of

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[123] With regard to the powers to reduce the number or staff, see: Resolution of the Constitutional Court of the Russian Federation of January 24, 2002 N 3-P, Rulings of the Constitutional Court of the Russian Federation of January 15, 2008 N. 201-O-P, of February 24, 2011 N. 236-O-O, N. 1690-O dated September 24, 2012 [Electronic resource]. Access from the reference-legal system "ConsultantPlus". With regard to the unmotivated unilateral termination of the employment contract with the head of the organization, see: Resolution of the Constitutional Court of the Russian Federation of March 15, 2005 N. 3-P [Electronic resource]. Access from the reference-legal system "ConsultantPlus". With regard to the right of the employer within the framework of Article 74 of the Labor Code of the Russian Federation to unilaterally change the terms of the employment contract, see: Determination of the Constitutional Court of the Russian Federation of September 29, 2011 N. 1165-O-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus". See also, for example, Decree of the Constitutional Court of the Russian Federation of December 15, 2011 No. 28-P, Rulings of the Constitutional Court of the Russian Federation of March 5, 2013 N. 435-O, N. 160-O-P of January 16, 2007, N. 201 of January 15, 2008 - O-P, dated July 11, 2006 N. 213-O, dated November 4, 2004 N. 343-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[124] The meaning of these constitutional principles for the employer's actual right to manage the work of employees will be discussed in detail in the next chapter.

the employer, which is a manifestation of the general right of the employer to manage labor (included in its content).

Thus, the right to manage labor is an objectively necessary and existing opportunity for the employer as a private person to manage the actions of employees within the constitutionally acceptable limits for the implementation of socially useful activities, without violating the prohibitions and restrictions established by law.

Chapter 2. Guarantees and implementation of the employer's right to labor management

§1. The concept and types of guarantees of rights

In the first chapter, it was concluded that the phenomenon of labor management is objectively inherent in the relationship between the subject of socially useful activity and persons who are involved by the latter to carry out labor activities within the framework and for the purposes of the socially useful activity being carried out. But does the mere existence of this fact of objective reality give rise to the right to manage labor in the subject of socially useful activity, giving him the status of an employer? Obviously not. In this regard, the question arises of guarantees that the subject of socially useful activity has the right to manage labor. Due to the fact that the subject of socially useful activity is either individuals or their associations[125], including legal entities, it is necessary to understand what guarantees of human rights are.

Explanatory Dictionary V.I. Dahl defines the meaning of the word "guarantee" as a guarantee, surety, security, assurance, safety, security, and "guarantee", respectively, how to ensure, vouch, assure, secure[126]. In this regard, in the literature there are definitions of guarantees of rights and freedoms that are similar in content.

A.A. Uvarov writes in his work that in the broad sense of the word, guarantees of rights are understood as the means by which the realization of these rights and freedoms is ensured[127].

N.I. Lavrinenko notes that guarantees of rights and freedoms are a set of means, methods and procedures that ensure the ability of an individual to exercise his rights and freedoms[128].

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[125] The Constitutional Court of the Russian Federation has repeatedly pointed out that legal entities are associations of individuals. See, for example, the Resolution of the Constitutional Court of the Russian Federation of October 16, 2020 N. 42-P, of April 14, 2020 N. 17-P [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[126] Explanatory Dictionary of the Living Great Russian Language V.I. Dalia [Electronic resource] // URL: http://slovardalja.net/ (access date: 07.22.2021).

[127] Uvarov A.A. Constitutional bases for ensuring human rights in the Russian Federation // Bulletin of OSU. N. 3. 2005. P. 180.

[128] Lavrinenko N.I. Constitutional guarantees of the rights and freedoms of man and citizen // Legal Bulletin of the Rostov State Economic University. N. 36. 2005. P. 15.

N.V. Vitruk defined guarantees as conditions and means that ensure the actual realization of rights and freedoms and their reliable protection[129].

There is also an opinion that the concept of “guarantees” covers the entire set of objective and subjective factors that are aimed at the full implementation and comprehensive protection of rights and freedoms, at eliminating possible causes and obstacles for their incomplete implementation[130].

The listed definitions are suitable for application, however, they all focus on the fact that guarantees are what helps to realize already existing human rights and freedoms. But none of the above definitions directly says that guarantees create the actual security of persons with certain rights, while being a guarantor not only and not so much of the realization of rights, but of their availability in principle. Therefore, we offer our own definition of the concepts of guarantees of human rights and freedoms: “Guarantees of human rights and freedoms are a set of conditions and factors created or conditioned by society that ensure the real existence of rights and freedoms, the full possibility of their implementation by all members of society, preventive protection against encroachments on them, as well as effective protection in the event of their violation.”

Now let us turn to the types of guarantees of rights and freedoms. But in order to correctly establish their spectrum, it is necessary to understand the process of the emergence of rights, which can be summarized as follows.

It all starts with the fact that between the individual members of society in any of the spheres of life, new relationships are formed. As they spread, these relationships become the subject of evaluation by the whole society, which either approves or condemns them. Approval occurs when, from the point of view of society, these new relationships are useful, censure occurs when they are harmful. Approval of the emerging relations between members of society means the legitimation by society of a certain type of social structure. After a certain type of social structure is legitimized by society, the state, as a subject with public power and acting in the interests of the public

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[129] Vitruk N.V. Fundamentals of the theory of the legal status of the individual in a socialist society M., 1979. P. 194.

[130] Grudtsina L.Yu. Features of constitutional guarantees for the implementation of human rights in Russia: on the example of civil proceedings: dis. ... cand. legal Sciences: 12.00.02. M., 2004. P. 7.

majority, must legalize it. Such legalization has two levels. The first level implies ensuring the fundamental possibility of the existence of social relations, which are the content of the type of social structure. Legally, this happens through the recognition of a number of rights and freedoms for members of society at the constitutional level, the implementation of which makes it possible to have certain social relations. At the second level, the procedure for the implementation of these constitutional rights and freedoms should be determined and specified, and a system of organizational and legal means should be created to ensure the actual implementation of these social relations. Legally, this happens through normative regulation at all levels below the constitutional one.

In this regard, the most traditional and most often distinguished classification in the scientific literature is the division of guarantees into socio-economic, political and legal. Socio-economic guarantees are understood as the level of development and stability of the state economy, the efficiency of the tax system, the existence of effective social programs, etc. As a political one, as a rule, they consider the democratic nature of power, a political regime that ensures political stability, a high level of political culture of the authorities and citizens, as well as the development of civil society institutions. These types of guarantees are also called actual guarantees[131], emphasizing their existence without the necessary preliminary giving them an additional special form (objectification), thereby separating them from legal guarantees, the analysis of which will be made in the future.

S.A. Avakyan proposed the following classification of guarantees of "the exercise and protection of fundamental rights and freedoms, the performance of the duties of a person and a citizen"[132]:

1) Material guarantees;

2) Organizational guarantees;

3) Spiritual guarantees;

4) Legal guarantees.

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[131] Uvarov A.A. Constitutional bases for ensuring human rights in the Russian Federation // Bulletin of OSU. N. 3. 2005. P. 183.

[132] Avakyan S.A. Constitutional law of Russia: Training course. In 2 vols. T. 1. M. 2005. P. 686-687.

Obviously, in this case, socio-economic guarantees are called "material", since the essence of both is the same. Organizational guarantees include political guarantees, forming a block of means organizing all social processes. From the point of view of the role of legitimation by the society of this or that model of relations, it is correct to single out spiritual guarantees. They represent the moral level of development of society, on which the acceptance or non-acceptance of newly emerging models of relations directly depends.

R.P. Sipok offers a double classification of guarantees of the rights and freedoms of man and citizen. First, he divides these guarantees into general and special ones. He refers to general guarantees: economic, social, political and ideological (spiritual) guarantees. To special - legal (legal) guarantees. Secondly, he proposes the division of all guarantees of the rights and freedoms of man and citizen into "guarantees that ensure the realization of the right" and "guarantees of state protection"[133]. “Guarantees of implementation are aimed at the use by citizens of their rights, the fulfillment of their duties and the legality of bringing them to justice. They create conditions for the rights and freedoms of man and citizen to be put into practice. Guarantees of protection operate, as a rule, in case of violation of the right, the emergence of obstacles to its use”[134], - concludes the author of the proposed classification.

L.Yu. Grudtsyna also supports the division of guarantees into general ones, which are understood as a set of political, ideological and socio-economic conditions that make citizens' rights real, and special ones, which constitute legal guarantees[135].

It seems incorrect to divide the guarantees of human and civil rights and freedoms into general and special, which is prevalent in the scientific literature, when legal guarantees are understood as special. In essence, guarantees of the rights and freedoms of a person and a citizen are factors and conditions that, firstly, create a material base that can ensure the existence and realizability of rights and freedoms, and in this case,

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[133] Sipok R.P. Features of constitutional guarantees for the realization of the rights and freedoms of man and citizen in Russia: on the example of constitutional proceedings: abstract of the thesis. dis. ... cand. legal Sciences: 12.00.02. Chelyabinsk, 2006. P. 14.
[134] Ibid., P. 13.
[135] Grudtsyna L.Yu. Features of constitutional guarantees of the implementation of human rights in Russia: the example of civil proceedings: dis. ...cand. legal Sciences: 12.00.02. M., 2004. P. 7.

material means all existing social conditions that create the basis to recognize certain rights. And, secondly, these are factors and conditions that, on the one hand, express the recognition by the state of certain rights, including by formulating their content, and, on the other hand, oblige the state to ensure the implementation of rights and prohibit their violation. As a result, the first group of factors reflects the potential of the society, showing what rights and freedoms should be, recognized and can be ensured, and the second group of factors formalizes the recognition of these rights and freedoms. The second group of factors is the legal guarantees, the first - all the others, called "general guarantees" in the literature. As we can see, this is not a correlation between the general and the special.

As for the existing definitions of legal guarantees, they all correctly emphasize their main feature: normative fixation. However, the existing definitions, as a rule, formulate the essence of legal guarantees as a guarantee of the realization of rights and freedoms, but do not cover the moment of possession of rights in their content. Thus, in most textbooks, legal guarantees are understood as means based on the prescriptions of normative legal acts that ensure the implementation and protection of the rights and freedoms of man and citizen[136].

Based on the algorithm for the emergence of rights and freedoms, their guarantees can be divided into two groups: guarantees of legitimation and guarantees of legalization. The first group provides legitimization of the newly emerging social relations on the part of society[137], the second provides legal registration of rights that guarantee the possibility of entering into these relations. The first group includes social, economic and political guarantees, the second - legal.

Social guarantees are a social environment, the internal structure of society, which contributes to the development of the individual's personality, forms the mentality of society and the model of relations in it, thereby indirectly providing a "social attitude" to the recognition, respect and observance of the rights of members of

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[136] See, for example, Russian Constitutional Law: Textbook. In 2 vols. V. 1 / Ed. I.V. Mukhacheva. Stavropol, 2007, P. 128; Kozlova E.I., Kutafin O.E. Constitutional Law of Russia / Textbook. 3rd ed. revised and additional M., 2003. P. 585.

[137] Social in the narrow sense, since all of the listed guarantees are conditions and factors that are the product of society, as mentioned earlier.

such a society. Such social factors include social stratification and its foundations, the level of social mobility in society, the development of social lifts, the possibility and existing obstacles to the socialization of the individual, and social stability. Social guarantees should also include the cultural, moral level of society, its spirituality, ideas about morality, religious attitudes prevailing in society, etc.

Economic guarantees should be understood as the general development of economic ties in society that support its well-being as a whole, as well as the material potential of the state, which ensures the possibility of exercising certain rights (usually related to the social security of individuals).

Political guarantees are the activities of public administration institutions and public authorities, demonstrating the nature of the relationship between society and the state, the effectiveness of their interaction, openness and accessibility of dialogue with the authorities. One of the most important political guarantees of rights and freedoms is the state ideology, which actually determines the vector of development, possible recognition and protection of rights and freedoms. Here, the rule-making and law enforcement activities of the state remain outside the scope. We deliberately narrow the concept of political guarantees to state activity, since, although the state is a social child, however, it is a factor of external influence on society, while other public institutions influence society from the inside.

Legal guarantees of rights and freedoms should be understood as:

- firstly, the recognition by the state at the constitutional level of the inalienable rights and freedoms of a person legitimized by society (legal guarantees that ensure the first stage of legalization of public relations) and the determination at all other levels of regulatory regulation of the forms, methods and procedures for their implementation (legal guarantees that determine the procedure for implementation of legitimate rights, providing the second stage of legalization of public relations).

- secondly, fixing at the constitutional level and ensuring at the legislative level the possibility of restoring violated rights by applying victims to the court and other state, non-state and international bodies, institutions, organizations and officials, as well

as by self-defense of violated rights (legal guarantees, protecting and restoring violated rights).

Therefore, we agree with E.N. Khazov, who formulated the concept of legal guarantees as "recognition and consolidation of the rights, freedoms and duties of a person and a citizen in the Constitution and other normative acts of the state and ensuring their implementation by all law enforcement activities of this state, socio-political organizations, their officials and the person himself"[138].

Due to the fact that this work is devoted to determining the basis of the relationship of power-subordination between the employer and the employee, our analysis will be aimed at legal guarantees that ensure the fundamental existence of these relations, that is, formalizing the public recognition of relations legitimized by society (the first stage of legalization). And since this happens at the constitutional level, we will actually talk about the constitutional guarantees of the employer's right to manage labor. This does not exclude the possibility that in the course of our study, the subject of our analysis will also include normative regulation at a level below the constitutional one, representing legal guarantees that ensure the realization of the right to manage labor (the second stage of legalization).

We will start from the general concept of legal guarantees, the definition of which was given earlier. In this regard, constitutional guarantees should be understood as the norms of the Constitution. All norms of the Constitution of the Russian Federation can be divided into norms that speak about the rights, freedoms and duties of a person and a citizen, and norms that affirm the foundations of the state structure and the functioning of the bodies of each of the branches of government. In a broad sense, all the norms of the Constitution of the Russian Federation are to ensure the legal status of a person and a citizen, including the principles and procedure for their interaction with public authorities. In other words, in a broad sense, the constitutional guarantee of rights and freedoms is the constitutional legal regime, under which, as M.M. Sultygov, is understood as "established on the basis of the norms of constitutional acts and supported

[138] Khazov E.N., Khazova V.E. Legal guarantees of the rights and freedoms of a person and a citizen and the mechanism for their implementation // Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia. 2017. N. 5. P. 120.

by legal means and methods, the order that develops regarding the state structure, organization of state power, interaction between the individual and the state"[139]. But such a general approach is not suitable for the purposes of this study. Therefore, we propose to use a narrow approach to understanding the constitutional guarantees of the rights and freedoms of man and citizen.

However, even using a narrow approach, it would be wrong to confine oneself within the framework of the issue of constitutional guarantees only to the norms of the Constitution of the Russian Federation, ignoring the legal positions of the Constitutional Court of the Russian Federation formulated in its decisions. So, E.V. Gritsenko, analyzing the main areas of activity in judicial constitutional control, in which a rule-making principle is seen (implementation of an abstract and casual interpretation of the Constitution, as well as understanding the constitutional meaning of sectoral norms), notes the following: , the hidden meaning of the norm, but also the choice of several possible interpretations of any one. The exercise of this choice leads to the emergence of normative novelty[140]. Without going into controversy, whether de facto the Constitutional Court of the Russian Federation has norm-setting powers, it cannot be denied that the interpretation of the norms of the Constitution of the Russian Federation and dynamic filling them with a new meaning also represents a legal guarantee of the existence of rights and freedoms at the constitutional level.

Thus, for the purposes of the study, legal guarantees that ensure the first stage of legalization of public relations legitimized by society (constitutional guarantees) will be understood as the norms of the Constitution of the Russian Federation, which recognize fundamental rights and freedoms for every person, as well as acts of the Constitutional Court of the Russian Federation containing legal positions on about the content of constitutional norms, the implementation of which leads to the emergence of relations legitimized by society, the normative regulation of which specifies the fundamental

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[139] Sultygov M.M. Constitutional and legal regime of state power limitation: dis. ... doc. legal Sciences: 12.00.01. SPb., 2005. P. 79.

[140] Gritsenko E.V. Limits of rule-making of the Constitutional Court of Russia // Bulletin of St. Petersburg University. Ser. 14. Issue. 2. 2012. P. 27.

rights and freedoms by establishing a set of rights and obligations of the parties to such relations.

§2. Legal guarantees of the employer's right to labor management

Earlier it was stated that the basis for managing other people's labor is the ability of the subject of socially useful activity to implement this activity, without independently carrying out the necessary labor in order to ensure it, but to involve other persons for this. In other words, in the process of implementing socially useful activities, indirectly carry out labor activities in the form of using the labor of involved persons. In this regard, the legal guarantees of the employer's right to manage labor should be the norms of the Constitution of the Russian Federation, recognizing for each private entity the right to carry out socially useful activities and independently organize them, which, among other things, implies the right to choose the method of carrying out socially useful activities.

In the first chapter of this work, it was indicated that socially useful activity is a process of achieving a certain benefit through labor activity. In fact, the very implementation of socially useful activity is labor, and the possibility of engaging in any type of labor is one of the foundations of socially useful activity. The implementation of any labor is a natural need and a necessary process to ensure the normal life of any person, both in terms of the source of satisfaction of their primary needs, and in terms of its personal implementation. Therefore, it can be stated that natural and inherent in everyone from birth is such a personal non-property right as the right to free choice and engage in any labor activity. In fact, we are talking about freedom of labor, which means, firstly, the right of everyone to make a decision on the realization or refusal to realize their ability to work, secondly, the right to independently determine the area of realization of their ability to work, thirdly, the right choice to realize their ability to work independently, in their own interest, or as an employee.

The Constitution of the Russian Federation proclaims in the first part of Article 37 the principle of freedom of labor. It is formulated as follows: “Labor is free.

Everyone has the right to freely dispose of their abilities to work, to choose the type of activity and profession". Due to the fact that, in accordance with the traditional approach for legal science, the right to work and freedom of labor are attributed to the second generation of rights, namely, to socio-economic rights[141], the effect of the principle of freedom of labor proclaimed in the first part is often attributed exclusively to the sphere of wages, that is, non-self-employment.

But such a narrow approach is wrong, both from the point of view of the content of the question, and from the point of view of the formulation of the norm of the Constitution. Firstly, the concept of "labor" covers all types of creative human activity, and the very need and desire for work is a natural need. So, even I.A. Ilyin attributed the right to work to a part of the status of the individual, as an opportunity to "participate in the life of the God-created fabric of the world"[142]. Secondly, grammatical interpretation allows us to say that the text of the norm of Part 1 of Art. 37 of the Constitution of the Russian Federation literally speaks of the free disposal of one's ability to work and the free choice of the type of activity. And we have already said that the independent implementation of labor activity in one's own interest (independent labor) is one of the forms of realizing one's ability to work. Therefore, the approach to the principle of freedom of labor, which considers it as a guarantee of engaging in any creative activity, both independent and subordinate to someone, is correct, and finds support in scientific circles[143]. So, T.A. Soshnikova points out that the principle of freedom of labor includes, firstly, a free choice for a citizen - to work or not to work; secondly, free choice of type of activity and profession; thirdly, the free use of one's abilities and property for any economic activity, creativity, teaching; fourth, the constitutional prohibition of forced labor[144].

The Constitutional Court of the Russian Federation also supports this position, therefore, in its decisions it has repeatedly stated the following: "Freedom of labor is

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[141] See, for example, Alekseev S.S. Collected works: in 10 volumes. M., 2010. V. 9. P. 123; Hertenhuber H. Basic social rights [Electronic resource] // Journal of Constitutional Justice. 2015. N 5. Access from the reference legal system "ConsultantPlus".

[142] Ilyin I.A. The path to clarity. M., 1993. P. 317-318.

[143] Anishina V.I., Poponov Yu.G. Freedom of work or the right to work? // Journal of Russian Law. N. 4. 2007. P. 88.

[144] Soshnikova T.A. Legal mechanism for the protection of constitutional rights and freedoms in the sphere of labor: dis. ... dr. legal. sciences: 12.00.05. M., 2005. P. 27-28.

manifested, in particular, in the citizen's ability to freely dispose of his abilities for work, that is, to choose both the type of occupation and the procedure for formalizing the relevant relations and determine whether he will carry out entrepreneurial activities, enter the civil service, conclude an employment contract, or prefer to perform work (render services) on the basis of a civil law contract. In the case of choosing a contractual legal form, he has the right, by agreement with the person providing the job, to dwell on the model of their interaction that will meet the interests of both of them, and determine what kind of contract will be concluded - labor or civil law"[145]. It should be noted that the use of the term "entrepreneurial" by the Constitutional Court in such decisions means the implementation of independent labor without entering into contractual relations. The Supreme Court of the Russian Federation also referred to the definition of the content of the principle of freedom of labor, where it repeated what was said by the Constitutional Court of the Russian Federation[146].

But does the existence of freedom of labor guarantee the possibility of attracting other persons for the actual implementation of this labor for other people's purposes? Obviously not. Freedom of labor ensures the recognition of a person's right to take the initiative to engage in labor activity (to independently choose the type and start personal implementation of the activity), but does not guarantee recognition by the state of the organizational potential of the individual, aimed at other persons: include another person in the "subject-activity" connection, through the use of the labor of which this activity will be carried out. Therefore, the following logical connection is built before us. Any person has from birth the right to work, through which socially useful activities are carried out. As indicated in the first chapter, the implementation of socially useful activity implies two statuses for its subject: the subject of socially useful activity and the subject of labor, through which this socially useful activity is carried out. And, due to the fact that specific types of labor are the content of socially useful activities, then,

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[145] Determination of the Constitutional Court of the Russian Federation of May 19, 2009 N 597-O-O. See also Rulings of the Constitutional Court of the Russian Federation of June 27, 2017 N 1318-O, of July 17, 2014 N 1704-O, of June 19, 2012 N 1077-O, of January 17, 2012 N 122-O-O, of 10/13/2009 N 1091-O-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[146] Decision of the Supreme Court of the Russian Federation dated February 20, 2013 NAKPI12-1768 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

depending on who produces this labor (the subject of socially useful activities or an involved person), we can say that the implementation of socially useful activities has two forms: personal implementation and indirect implementation (using the labor of involved persons). At the same time, when labor activity is carried out by involved persons, the subject of socially useful activity is still the person who initiated and organizes it. Freedom of labor provides the first of them. In this regard, it is necessary to determine what provides the right to attract and organize someone else's labor for the indirect implementation of socially useful activities?

The Constitution of the Russian Federation in part 1 of Art. 8 proclaims as the foundations of the constitutional system, and in part 1 of Art. 34 formulates and clarifies the principle, which in the doctrine received two names: the first is the freedom to engage in economic activity, the second is the right to entrepreneurship, and it sounds as follows: “Everyone has the right to free use of his abilities and property for entrepreneurial and other activities not prohibited by law economic activity"[147]. If we compare the wording of this principle and the substantive characteristics of freedom of labor, they differ in only one thing. Both the principle of freedom of labor and the principle of freedom to engage in economic activity assume that a person will use his ability to work to carry out any socially useful activity, however, only part 1 of Art. 34 of the Constitution of the Russian Federation recognizes the right of a person to a comprehensive organization (in the broad sense of the word) of the activity begun. This conclusion can be drawn due to the fact that Part 1 of Art. 34 of the Constitution of the Russian Federation contains the term "entrepreneurial activity". The verb "undertake" is a synonym for the word "organize", which, among other things, means to establish (establish), found (establish) by attracting social forces[148]. Therefore, it is the proclamation in Part 1 of Art. 34 of the Constitution of the Russian Federation of freedom to engage in economic activity, in other words, the right to entrepreneurship,

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[147] Noting that the principle of freedom of economic activity is the basis of the constitutional system, as evidenced by Part 1 of Art. 8 of the Constitution of the Russian Federation, in the further analysis of this principle in the context of the problem of labor management, we will make references only to part 1 of Art. 34 of the Constitution of the Russian Federation, as formally proclaiming this principle as a personal right of everyone.

[148] Explanatory Dictionary of the Russian Language, ed. D.N. Ushakova [Electronic resource] // URL: http://feb-web.ru/feb/ushakov/ush-abc/15/us284504.htm?cmd=0&istext=1 (access date 09/01/2021).

says that the state recognizes a person's right to indirectly engage in an activity chosen by a person by attracting other persons.

This conclusion finds support in the constitutional and legal doctrine. So, G.A. Gadzhiev, not only points out that one of the constituent elements of the freedom of entrepreneurial activity is the freedom to be an employer[149], but moreover, defines the main content of entrepreneurial activity as economic creativity and initiative: an entrepreneur, from the point of view of constitutional law, performs important social functions, uniting the efforts of people for the purposes of economic development, in connection with which, there is no doubt the thesis that entrepreneurial activity, within the meaning of Article 34 of the Constitution of the Russian Federation, is an important socially useful managerial and creative activity[150].

Also, the state itself is interested in the initiative, activity and organizational independence of citizens. Yu.V. Penov rightly notes that the employer's power is legally recognized by the employer for the sake of successfully performing the necessary and expedient, from a social point of view, functions[151]. The recognition by the state in the Constitution of the Russian Federation of the freedom to engage in economic activities not prohibited by law ensures the appropriate business-productive activity, through which the development of the state economy will be ensured. And the non-independent work of employees ensures the realization by the employer of his business-organizational potential. Thus, the state is interested in the accumulation of human and material resources by the employer to achieve publicly significant goals through the ability of employers to fulfill their tasks. This means that the proclamation of freedom of economic activity legitimizes the process of hiring and managing workers, which is possible in the course of its implementation. And the management of employees is actually becoming one of the most important means of ensuring economic freedom. Therefore, the principle of freedom of entrepreneurship is understood as the main idea

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[149] Gadzhiev G.A. Economic Constitution. Constitutional guarantees of freedom of entrepreneurial (economic) activities // Constitutional Bulletin. 2008. N. 1(19). P. 250.

[150] Commentary on the Constitution of the Russian Federation (item-by-article) [Electronic resource] / ed. V.D. Zorkin. 2nd ed. revision. M. 2011. Access from the reference legal system "ConsultantPlus" (the author of the commentary on Article 34 of the Constitution is G.A. Gadzhiev).

[151] Penov Yu.V. Labor management in a mixed economy: Legal problems: dis. ... cand. legal sciences. SPb., 2003. P. 72.

that allows and guarantees individuals and their associations to freely decide on the use of property, capital and means of production in order to create their own business, as well as to freely organize entrepreneurial activities in any area of the economy[152].

In turn, one cannot agree with the statement of A.A. Malinin that the right to entrepreneurial activity follows and is implied from the existence of the right of private ownership of property and the right to freedom of labor[153]. By itself, freedom of work does not imply organizational capacity in relation to others. The use of privately owned property for the implementation of any activity is also not a basis for the possibility of involving third parties in labor, since the presence of property only materially provides the opportunity to engage in socially useful activities. This is very clearly seen in the model of Soviet regulation of this issue. For example, the 1977 Constitution of the USSR in Article 13 recognized the right of personal ownership of a certain list of property for citizens, and in Article 40 it guaranteed the right to work. However, there was no question of any right to entrepreneurial activity among Soviet citizens, because, firstly, Article 14 of the Constitution of the USSR of 1977 recognized as possible only labor free from exploitation by another person, and the right to work was formulated as the right to obtaining a guaranteed job, with wages in accordance with its quantity and quality. We see that for the possible engagement of Soviet citizens in entrepreneurial activities, it was necessary for the state to recognize their right to independently initiate and organize labor activity, that is, organizational and activity independence, which is fully proclaimed by Part 1 of Art. 34 of the Constitution of the Russian Federation.

At the same time, the Soviet stage of development of our state confirms the model of the emergence of rights and guarantees from the state given in the first paragraph of this chapter. The model of the Soviet, socialist society did not imply a private organizational and activity initiative, therefore, the legitimation by society of relations for the exploitation of man by man could not occur. Also, the society could not

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[152] Vaypan V.A., Egorova M.A. Problems of implementation of the principles of law in entrepreneurial activity: monograph, team of authors / otv. ed. V.A. Vaypan, M.A. Egorova. [Electronic resource]. Moscow State University named after M.V. Lomonosov, RANEPA under the President of the Russian Federation. Yustitsinform. M., 2016. Access from the reference-legal system "ConsultantPlus".

[153] Malini A.A. The right to freedom of entrepreneurial activity: concept, content and implementation problems [Electronic resource] // Constitutional and municipal law. 2019. N 9. Access from the reference legal system "ConsultantPlus".

support the activities of a private entity aimed at other goals not set by public interests (in fact, state ones). The collapse of the Soviet Union was due, among other things, to the rejection by society of the existing socio-economic structure and the adoption of a new model of social relations, where private initiative and independent activity not only began to be encouraged, but also received the status of an engine of socio-economic progress. This was reflected in the norms of the adopted Constitution of the Russian Federation.

In the first chapter of this work, a direction was set to move away from the vector of studying labor relations that is dominant in the science of labor law, passing through the prism of the sphere of industrial production and economic activity. And the area of analysis was indicated by general categories inherent in any sphere of employment of wage labor, both related to production and the economy, and not related to them. This is due to the need to define the universal principles underlying the management of labor as such[154], regardless of what activities are carried out through it. In this regard, the following should be noted. There are no objections to the fact that the organizational and activity potential of an employer engaged in industrial or other commercial activities is ensured by the right proclaimed in Part 1 of Art. 34 of the Constitution of the Russian Federation. But what about employers who use other people's labor not for economic activity? For example, in the case of an employer who is an individual who is not an individual entrepreneur, employees for personal service? Is the right specified in Part 1 of Art. 34 of the Constitution of the Russian Federation as a universal guarantee of the right to manage labor?

The specified norm of the Constitution of the Russian Federation speaks of the right to engage in entrepreneurial and other economic activities not prohibited by law. This formulation allows us to say that entrepreneurial activity is a kind of economic activity. In this regard, it is necessary to answer the question whether non-commercial socially useful activity not related to production is either entrepreneurial or economic activity?

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[154] The importance of this issue was repeatedly pointed out by A.M. Kurennoy: see, for example, Kurennoy, A.M. Some current problems of legal regulation of labor relations // Russian law: education, practice, science. 2020. N 4(118). P. 4-12.

If this activity is aimed at self-sufficiency of the subject of activity with certain material goods, respectively, for their production, then this activity will be economic, but only within the framework of one economic unit - the family. This approach is also shared at the doctrinal level. So, I.V. Ershova, classifying economic activity as one of the types of economic activity, indicates that "economic activity can be carried out both with the aim of making a profit or income, and without it, and it can also be carried out for the subject's own needs in order to meet his needs without leaving To the market"[155].

But if the indicated non-commercial socially useful activity is not related to the production of economic benefits even within the smallest economic unit, can it be classified as entrepreneurial? The problem here is the definition of entrepreneurial activity given in paragraph 1 of Art. 2 of the Civil Code of the Russian Federation[156], which is understood as an independent activity carried out at one's own risk, aimed at systematically making a profit from the use of property, the sale of goods, the performance of work or the provision of services. It should be noted that the activities carried out through employees by an employer who is an individual who is not an individual entrepreneur does not meet the signs of entrepreneurial activity listed in the Civil Code of the Russian Federation. Moreover, what about the huge number of non-profit organizations that use the labor of attracted workers to carry out their activities, a striking example of which are religious organizations? Does the absence of the purpose of making a profit deprive this activity of the status of entrepreneurial in the sense of the validity of attracting hired labor through the prism of Part 1 of Art. 34 of the Constitution of the Russian Federation?

In our opinion, in the constitutional sense, the entrepreneurial aspect should be considered more than just an activity aimed at making a profit and producing any material goods for the market of goods and services, which a priori makes it a kind of economic activity. This is, first of all, a property of any activity, which follows from the

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[155] Ershova I.V. Economic activity: concept and relationship with related categories // Lex russica. 2016. N 9. P. 50.

[156] Civil Code of the Russian Federation (part one) [Electronic resource]: federal. law of 30 Nov. 1994 N. 51-FZ // Collection. Russian legislation Federation. 1994. N. 31. art. 3301. (as amended Feb. 25, 2022). Access from the reference legal system "ConsultantPlus".

constitutive properties of entrepreneurship, which consist in organizational and activity independence. These properties can have different types of activities from commercial and purely industrial to non-commercial. In connection with the prevailing attitude that entrepreneurship is only production and commerce, the position we have expressed may seem contrary to the very essence of entrepreneurial activity. However, it is fully consistent with the theory and history of the development of entrepreneurship. So, E.F. Chebreko notes the following: “... it should be noted that at first it was about entrepreneurial activity as a social phenomenon and its place in social relations. And only with the emergence of economic theory and the theory of entrepreneurship, the entrepreneur began to be considered as a subject of economic relations, isolated from non-economic aspects[157]. As one of the examples of "non-commercial entrepreneurship" can be called the currently actively developing, especially abroad, social entrepreneurship, the purpose of which is not to make a profit or other economic benefits. Thus, a broad approach to social entrepreneurship is presented in the USA, where social enterprises (Social Enterprise Alliance) are engaged in protecting the environment, serving the disabled, and carrying out innovative activities[158].

Thus, the essence of entrepreneurship is the ability to initiate socially useful activities and organize the process of its implementation, including through the involvement of other persons (employees) in the labor activity carried out within its framework. That is, any independently organized activity of the subject, the implementation of which is the realization of any right of the subject, for example, the right to engage in economic activity when organizing the production and sale of goods, the right to freedom of conscience and religion when creating a religious organization and practicing religious cults, the right to property when the creation of an organization that carries out activities for the trust management of this property, from the position presented by us, can be called entrepreneurial. The use of the term "entrepreneurial" in this vein is possible only when analyzing the completeness of its constitutional content,

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[157] Chebreko E.F. Fundamentals of entrepreneurial activity. History of Entrepreneurship: Textbook and Workshop for SPO. M., 2018. P. 23.

[158] For more details, see Rubtsova N.V. Legal Nature of Entrepreneurial Activity: Axiological Approach // Journal of Russian Law. 2020. N 12. P. 66-78.

which in no way encroaches on the use of this term in the sectoral, civilistic sense. Indirectly, this approach to understanding the nature of independent activity is also confirmed by judicial practice. This can be illustrated by the Resolution of the Federal Arbitration Court of the North-Western District of September 27, 2006 № A56-57150/2005[159], but with one caveat: in this case, the court approaches the term "economic activity" in a broad way, and not the characteristic "entrepreneurial" , which is terminologically incorrect, based on the previously stated arguments, however, the final conclusion regarding the essence of the guaranteed Part 1 of Art. 34 of the Constitution of the Russian Federation activity coincides with ours. In this decision, the court noted that, by virtue of the provisions of Article 34 of the Constitution of the Russian Federation and Article 2 of the Civil Code of the Russian Federation, the economic activity of citizens and legal entities cannot be considered as identical to the entrepreneurial activity of the relevant subjects of law, but should be interpreted more broadly as a set of systematically performed actions aimed at achievement of a certain economic and socially useful result and not having the sole purpose of making a profit.

Moreover, if we proceed from the contrary and assume that the current legal order guarantees only organizational independence only in the economic and commercial spheres, then this would be evidence of a clear discriminatory approach to the implementation of individual rights, which would be manifested in the infringement of the choice of the form of non-commercial socially useful activities for compared with commercial, when the mediated form of implementation is inherent only in the latter.

In connection with the foregoing, the norm of Part 1 of Art. 34 of the Constitution of the Russian Federation speaks of an entrepreneurial initiative in the broad sense of this concept, not limited to the signs subsequently set by the Civil Code of the Russian Federation. Entrepreneurial activity may or may not be associated with the extraction of economic benefits. Therefore, in fact, the norm of Part 1 of Art. 34 of the Constitution of the Russian Federation, as a form of legalization of public relations at the first level, recognizes the right of individuals to organize and engage in any

[159] Resolution of the Federal Arbitration Court of the North-Western District dated November 27, 2006 N A56-57150/2005 [Electronic resource]. Access from the reference legal system "ConsultantPlus".

socially useful activity[160]. The consequence of this is the legalization of the second level: the subsequent regulatory regulation at the level of laws, which ensures that such activities are carried out, regardless of whether the activity of the person attracting someone else's labor is of a production and economic nature. A particular example of this is the right to manage labor.

Norm, Part 1, Art. 34 of the Constitution of the Russian Federation is a legal guarantee (constitutional level) of the right to manage labor. There are situations when, in addition to this norm, additional legal guarantees of the right to manage labor in terms of employment and organization of activities carry a number of other constitutional norms. We are talking about situations where a particular activity or status of a person, due to their importance, is separately identified among the constitutional rights of the individual, for example, the right to freedom of conscience and freedom of religion (Article 28 of the Constitution of the Russian Federation), the right to association, including the right to create trade unions (part 1, article 30 of the Constitution of the Russian Federation), when it comes to trade unions as employers, the right to own property in private ownership and exercise the triad of powers of the owner (part 2, article 35 of the Constitution of the Russian Federation), when the employer attracts employees to manage your property, etc. In such cases, these constitutional rights will be an additional legal guarantee of the right to manage labor, from the point of view of the organizational and activity aspect, as providing the very possibility of carrying out certain activities.

Earlier it was pointed out that the prevailing approach in the doctrine to determining the basis of the right to labor management is the property approach. Therefore, we separately emphasize in the status of the subject of labor management the constitutional significance of the possibility for the employer to own property on the right of ownership (and other property rights, as derivatives of the right of ownership), which is guaranteed by the norm of part 2 of Art. 35 of the Constitution of the Russian Federation.

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[160] In this regard, in the future we will call the right proclaimed in Part 1 of Art. 34 of the Constitution of the Russian Federation, the right (freedom) to engage in socially useful activities.

In the first chapter, three functions of the property component of the employer were indicated. For the purposes of direct labor management, the second (property ensures the process of carrying out socially useful activities) and the third (property management is itself a socially useful activity) are important. To implement the second function, the employer transfers his property to the use of employees so that they can carry out labor activities. The implementation of the third function is the exercise by the employer of the triad of powers of the owner through the use of the labor of employees. In none of these cases, property is not the basis for the emergence of subordinate relations between the employer and employees, but determines the purpose of management decisions made by the employer. When it comes to the third function, then, as in any other socially useful activity, the purpose of the employer's decisions will be the implementation of the activity. But when it comes to the second function, the property component sets the second possible goal for the employer to make managerial decisions: the protection of property rights. Employees are included in the economic sphere of the employer, where they use his property, which means that they can harm him in the process of labor as part of socially useful activities. Accordingly, the employer, as the owner of this property, must be able to ensure its safety. The foregoing leads to a very important conclusion: all decisions of the employer on labor management can be aimed either at the effective implementation of socially useful activities, or at protecting their property from illegal actions of other persons, including employees who directly use this property.

Thus, the legal guarantee of the right to labor management is recognized in Part 1 of Art. 34 of the Constitution of the Russian Federation, the freedom to use one’s abilities and property for entrepreneurial and other economic activities not prohibited by law, which contains the possibility of managing involved persons for organizing and indirectly carrying out any socially useful activity (when labor activities within the framework of socially useful activities are carried out by socially different from the subject useful activity of a person). Also, in a number of cases, an additional legal guarantee in terms of organizing certain types of activities are constitutional norms that

guarantee individual rights and freedoms of the individual, for example, freedom of conscience and religion.

The proclamation of the freedom to engage in entrepreneurial activity in the Constitution of the Russian Federation confirms its natural character, as well as its objective existence, and obliges the state to refrain from violating and unreasonably restricting it. In this regard, the right of the employer to manage labor is objectively inherent in the employer as a subject of socially useful activity. In other words, it is in a latent state for each subject of socially useful activity and becomes active when such a subject attracts at least one hired worker to indirectly engage in this activity. Therefore, as indicated in the first chapter, an employment contract is not the basis for the emergence of the right to manage labor, but only formalizes the actual and creates a legal possibility for its implementation.

The foregoing allows us to say that at this stage of its development, society has legitimized relations on the use by one private subject of the labor of another private subject, and the state has recognized for all private subjects the possibility of carrying out socially useful activities through the use of the labor of other people. This was reflected in the first stage of the legalization of such public relations in the form of Part 1 of Art. 34 of the Constitution of the Russian Federation.

But, as was indicated in the first chapter of this work, in order to avoid cases of abuse by the employer of its power, the state, carrying out the second stage of legalization of these relations, sets limits for the exercise of the right to manage labor through legislative regulation. In this connection, the Labor Code of the Russian Federation and other regulations governing labor relations, on the one hand, represent the second stage of legalizing the employer's right to manage labor, defining the mechanism for its implementation, and, on the other hand, at the same time, they are actually its limiter. The third chapter of this work will be devoted to restrictions on the employer's right to manage labor, including at the level of the Labor Code. Therefore, now we will only indicate how part 1 of Art. 34 of the Constitution of the Russian Federation from the point of view of the right of the employer to manage labor is reflected in the norms of the Labor Code.

In the first chapter of this work, it was indicated that the right of the employer to manage labor consists of a certain set of powers: regulatory, administrative, dispositive and disciplinary, the presence of which is optimal for the possibility of the employer indirectly engaging in socially useful activities. The Labor Code of the Russian Federation does not contain an article where the concept of "the right to manage labor" would be given and its content would be disclosed. But there is a norm of Article 22 of the Labor Code of the Russian Federation, where among the main rights the employer is listed, which in the system form the mentioned trinity of the right to manage labor (these are the rights listed in Article 22 of the Labor Code of the Russian Federation to conclude, amend and terminate an employment contract; the right to encourage and involve employees in disciplinary responsibility; the right to adopt local regulations; the right to require employees to fulfill their labor duties). It is this provision of Art. 22 of the Labor Code of the Russian Federation is an example of the second stage of legalization of the right to labor management, determining the mechanism for its implementation by the employer.

§3. Modern problems of the employer's implementation of the right to labor management

Now let's proceed to a detailed analysis of how each type of managerial authority can be used by the employer within the guaranteed limits of exercising the right to manage labor. Let's start our analysis with normative powers.

More L.S. Tal pointed out that "from the employment contract follows the obligation of the hired person to coordinate his behavior with the procedure established by the employer (owner)"[161]. As a rule, in labor relations there is cooperative labor, which was correctly defined by L.Ya. Ginzubrg as the labor of several or many

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[161] Tal L.S. Essays on industrial labor law. M., 1918. P. 97; Tal L.S. Employment contract. civil research. Yaroslavl, 1913. Part 1. P. 80.

persons[162]. The organization of cooperative labor is impossible without the establishment of rules for the implementation of labor activity. Employees included in the economic sphere of the employer interact with each other. Without any external guiding force, the issue of their interaction can become the subject of their own self-organization, which will not always be in the interests of the employer. Therefore, in fact, the employer objectively needs to carry out rule-making in the sphere of labor, the forms of which he chooses independently within the framework of the law.

Legislatively, the rule-making powers of the employer are enshrined in Part 1 of Art. 8 of the Labor Code of the Russian Federation, which also lists the main legal features of a local regulatory act, from which in the educational literature it is proposed to understand it as a "legal act of an internal corporate nature, issued by the employer within its competence in accordance with labor legislation and other regulatory legal acts containing labor law norms , collective agreements and agreements"[163]. Also worthy of attention is the author’s definition of a local regulatory act given by K.L. Tomashevsky, who conducted a fundamental study of the sources of labor law, including local regulatory acts of the employer, which is reflected in a number of his works[164]: “... a local regulatory (legal) act is a document adopted by the employer individually, taking into account the opinion or in agreement with the representative body of employees, containing local rules of law governing labor and directly related relations"[165]. The positive side of the definition given by K.L. Tomashevsky is that it emphasizes the ownership of regulatory powers exclusively by the employer, thereby

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[162] Ginzburg L.Ya. Socialist labor legal relationship. M. 1977. P. 38. Also on the meaning and consequences of cooperative labor in modern conditions, see Grebenshchikov A.V., Diveeva N.I., Kuzmenko A.V. Labor relations with an Internet aggregator: tomorrow's reality? // Yearbook of labor law. 2020. N 10. P. 53-66.

[163] Labor law of Russia: Textbook for bachelors / Ed. ed. E.B. Khokhlova, V.A. Safonov. 8th ed., revised. and additional M., Yurayt, 2018. P. 178-179 (the authors of the chapter are V.V. Korobchenko and V.A. Safonov).

[164] See, for example, Tomashevsky K.L. Local regulations on labor in Belarus, Russia and Ukraine // Justytsyya Belarusi. 2011. N 4. P. 39-41; Tomashevsky K.L. Local regulatory legal acts as sources of labor law in Belarus, Russia and Ukraine: a comparative aspect // International, Russian and foreign legislation on labor and social security: current state (comparative analysis): materials of the VII International. Scientific-practical conf. / under. edited by K.N. Gusova. M., Prospekt, 2011. P. 508-514; Tomashevsky K.L. Local normative legal acts in the sphere of labor: legal nature and definition // Development of legislation on law and social security: health problems and problems: additional abstracts. that sciences. povidoml. participant IV Mizhnar. Scientific and practical conf., Kharkiv, 5-6 zhovt. 2012 r. / per ed. V.V. Zhernakova. Khakov: Pravo, 2012. P. 85-93.

[165] Tomashevsky K.L. Systems of sources of labor law of the EAEU member states: theory and practice: dis. ... doc.. legal. sciences: 12.00.05. M., 2017. P. 231.

distinguishing local regulatory acts from acts of social partnership, which will be discussed in the third chapter of this work.

Also interesting is the new conceptual idea of K.L. Tomashevsky "on the advisability of using in scientific circulation and in legislation a broader generic concept of "local legal act", which would include internal documents of several types adopted by the employer: local regulatory legal acts (rules, regulations, etc.), local individual legal acts (work schedules, shifts, vacations) and local legal acts of a mixed nature"[166]. All these acts of the employer form the core of the internal order in his organization; they are mandatory for execution by all employees to whom they concern. The process of their creation is the implementation of the regulatory powers of the employer's right to manage labor.

Due to the fact that regulatory powers are an integral part of the employer's right to manage labor, the adoption of local regulations is a right, and not an obligation of the employer[167], which is periodically found in the literature[168]. By local regulations, the employer establishes a set of labor rights and obligations of employees, both related to the performance of the labor function and determining the general procedure for the behavior of employees on the territory of the employer, which together constitutes a certain regime in the employer's organization, which represents the norm of labor discipline of employees. This follows from the constitutional nature of the employer's right to manage labor and the goals that the employer's management decisions can be aimed at[169]. Firstly, the employer has the right to determine how employees should carry out their labor function, so that this contributes to the overall increase in the efficiency of the socially useful activities of the employer. This is done through the establishment

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[166] Ibid., P. 18-19.

[167] It is positive that the jurisprudence shares this view on the regulatory powers of the employer. See, for example, Appeal Ruling of the Moscow City Court of December 10, 2012 N 11-29540/12, Appeal Ruling of the Judicial Chamber for Civil Cases of the Smolensk Regional Court of October 3, 2012 in case N 33-2943, Appeal Ruling of the Judicial Collegium on civil cases of the Rostov Regional Court of August 8, 2012 in case N 33-9917 / 2013, Cassation ruling of the Judicial Collegium for Civil Cases of the Supreme Court of the Altai Republic of February 8, 2012 in case N 33-108, Cassation ruling of the Judicial Collegium on Civil Cases of the Supreme Court of the Republic of Tatarstan of November 17, 2011, Appellate ruling of the Judicial Collegium for Civil Cases of the Yaroslavl Regional Court of June 21, 2013 in case N 33-2330/2013 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[168] See, for example, Article-by-article Commentary to the Labor Code of the Russian Federation / Ed. N.G. Gladkov, I.O. Snigirev. M., 2006. P. 449.

[169] For more information about this, see Sitnikov A.A. Responsibilities atypical for the labor function of employees as a means of labor management // Labor Law in Russia and Abroad. 2019. N 2. P. 14-16.

of binding standards of conduct within the employer's organization. Secondly, in local regulations, the employer can actually determine the procedure for using his property in order to most effectively involve him in his activities and prevent damage to it.

An exception to the general rule on the voluntary acceptance or non-acceptance by the employer of local regulations are cases established either by the Labor Code of the Russian Federation or by another law that the employer must have one or another local regulatory act. This is due to certain restrictions on the right to manage labor, which will be discussed in the next chapter of this work. As S.P. Mavrin points out, this is, firstly, the schedule of annual paid holidays, approved by the employer no later than two weeks before the calendar year (Article 123 of the Labor Code of the Russian Federation)[170]; secondly, documents of the organization that establish the procedure for processing personal data of employees (clause 8, part 1, article 86 of the Labor Code of the Russian Federation); thirdly, instructions for workers on the protection of their labor (Article 212 of the Labor Code of the Russian Federation)[171]. As can be seen, local regulations are mandatory for adoption, which provide guarantees and the implementation of certain constitutional rights of employees. Therefore, the obligation of the employer to have these acts is a reasonable intrusion into his private sphere by the state. But the state cannot force the employer to act in his own interest. The employer himself decides what local regulations he needs, based on his ideas about how his activities should be conducted, how much he is interested in the safety of his property, how real the risks of losing it are, what kind of relations develop within the labor collective, how much they need regulation and etc. In principle, an employer can do without local acts (with the exception of mandatory ones), relying only on the level of individual and collective contractual regulation, however, this will not contribute to the effective organization of employees into a coherent mechanism for the employer to

[170] The perception of the annual vacation schedule as a local regulatory act of the employer is a prevailing position, both in the doctrine and in law enforcement practice. However, in the scientific literature it was indicated (see, for example, Sergeeva I. Ministry of Labor and Rostrud on the vacation schedule // Personnel service and enterprise personnel management. 2021. N 11. P. 11-30.) The existence of a position, in accordance with which the schedule annual leave is not a local normative act due to the lack of rules of law in it, that is, rules of conduct that are mandatory for an indefinite circle of people and are designed for repeated application. We share the first position.

[171] Commentary on the Labor Code of the Russian Federation (item-by-article) [Electronic resource] / ed. A.M. Kurennogo, S.P. Mavrina, V.A. Safonova, E.B. Khokhlova. 3rd ed. revision. M., 2015. Access from the reference legal system "ConsultantPlus".

effectively conduct his activities, therefore, neglect local regulation is simply inappropriate.

The importance of the normative aspect of labor management lies in the fact that the further implementation of the administrative, dispositive and disciplinary powers of the employer depends on it[172]. The local regulatory framework is a source of norms that employees must comply with when they are included in the process of carrying out the activities of the employer, therefore, local regulations define the framework for possible management of employees: there is a definition of areas within which the employer can carry out operational management of the work of employees, measures that the employer can apply (we are not talking about disciplinary sanctions), and the grounds for bringing employees to disciplinary responsibility are specified. In this regard, local regulations are valid only when they are brought to the attention of employees. Therefore, part 3 of Art. 68 of the Labor Code of the Russian Federation obliges the employer, when hiring, to familiarize the employee with the current local acts relating to the labor activity of the employee, the importance of which was emphasized by the Constitutional Court[173]. Obviously, such familiarization should take place not only when hiring, but also in all cases of changing old or adopting new acts.

In the context of the obligation to familiarize the employee with the local regulations of the employer, it is necessary to say about the concept of the terms of the employment contract proposed by E.B. Khokhlov, who divided all the terms of the employment contract into essential, ordinary and random. So, E.B. Khokhlov characterizes the master's power of the employer as dispositive, that is, extending to the employee only to the extent that the employee agrees to be under this power, in connection with which he proposes, in a fundamental sense, to consider an employment contract as a contract of accession, where, in addition to the essential conditions formulated by the parties, there are conditions ordinary: "... an employee, by concluding

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[172] This aspect has been repeatedly pointed out by the Constitutional Court of the Russian Federation: see, for example, Rulings of the Constitutional Court of the Russian Federation of September 28, 2017 N 2053-O, July 18, 2017 N 1554-O, June 27, 2017 N 1271-O, of January 26, 2017 N 32- O, dated December 24, 2013 N 2063-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".
[173] See, for example, Determination of the Constitutional Court of the Russian Federation of March 20, 2007 N 217-O-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

an employment contract, thereby assumes the fulfillment of the rights and obligations arising from the internal labor regulations and other local acts of the employer, and therefore joins those conditions that, before the conclusion of the contract, were unilaterally formulated by another party, due to which these conditions constitute an element of the concluded employment contract as its usual conditions"[174]. Thus, "familiarization of the employee against signature with the legal acts directly related to his labor activity that are in force in the economic sphere of the employer is one of the moments associated with the conclusion of an employment contract"[175], or a change in such conditions. In this regard, "on the one hand, indeed, unilaterally, the employer cannot cancel the rules established by him ... on the other hand, as we know, with the consent of the employee, the employer may well deviate from the rules issued by him, and this will mean nothing more as an innovation in the content of the relevant labor contract"[176]. In this case, familiarization of the employee with the local regulatory act is the fact of obtaining his consent with the extension of the provisions of such an act to their relations with the employer[177].

It should be noted that from the point of view of law, the employer is really free to determine the conditions for the employees to perform their labor function, stay on the territory of the employer, use his property, etc., but we must not forget that labor management is a kind of social management, that is the object of management are living people who cannot be treated exclusively as one of the factors of production. Therefore, when adopting local acts, the employer must also take into account the psychological and moral aspects, the effect of which is a limiter of his rights, which will be discussed in the next chapter. Also, in order to establish the necessary psychological connection with employees, it is advisable for the employer to adopt acts that are really necessary for one reason or another for the implementation of socially useful activities, and in

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[174] Russian labor law course. In 3 volumes. Vol. 3: Employment contract [Electronic resource] / Ed. E.B. Khokhlov. 2007. (the author of the chapter is E.B. Khokhlov) // URL: https://www.livelib.ru/book/158895/readpart-kurs-rossijskogo-trudovogo-prava-tom-3-trudovoj-dogovor-evgenij- hohlov (date of access: 03/01/2023).
[175] Ibid.
[176] Ibid.
[177] For more information about the problems of unilateral changes by the employer to job descriptions, see Zorina O.O. Labor function: the principle of certainty or the property of being filled? // Labor law in Russia and abroad. N 4. 2020. P. 27-30; Tomashevsky K.L. The principle of certainty of the labor function and the problem of the limits of discretion of the employer in its modification // Justice of Belarus. 2020. N 5(218). P. 10-13.

certain cases explain the logic of their adoption to employees. Only then will the mechanism for the implementation of activities bring the employer closer to the desired results.

In this regard, the issue related to the content of the local regulations of the employer is important. We are not interested in standard questions concerning the conditions for using the working capacity of employees, such as the regime of work and rest, wages, specific labor duties related to the labor function, etc. Since we are talking about the management of a work collective, which consists of people interacting both with each other and with the employer, the question of the possibility of regulating the interpersonal relations of employees by the employer, as well as establishing duties that are not directly related to the implementation of the labor function by employees, is interesting.

The answer to this question is important, since it will give an understanding of whether, in addition to the duties related to the performance of the labor function, the procedure for interacting with other employees, representatives of the employer, the use of the employer's property, other completely unrelated duties, consisting in the performance of certain tasks of the employer that are not related to the labor function. In this case, we can talk, for example, about the mandatory participation of employees in the corporate events of the employer that have been very common recently.

An analysis of the sources existing on this topic shows that the understanding of the category of "labor duties" is for the most part very narrow, and it boils down to the following. Permissible will be only such labor duties that are due to the labor function defined in the employment contract, staff list and job description, and are directly related to the production process at the employer. That is, the mandatory involvement of employees in any other activities, abstracted from the direct performance of the labor function, is a priori not covered by the concept of "labor duties". Based on this, some authors believe that it is impossible to entrust employees with the performance of such duties not only by issuing local regulations by the employer, but also by contract[178], and

[178] Bobrovskaya E. Responsibility of an employee for refusal to participate in corporate events // Labor Law. 2016. N 12. P. 93.

an indication of the possibility of voluntary participation in such events can only be in acts of social partnership[179]. Others allow the adoption of these obligations within the framework of individual and collective contractual regulation[180].

Such an approach to the indicated problem seems to us to be erroneous, based on ignoring the constitutional and legal meaning of the employer's powers to manage labor, which leads to an artificial narrowing of the spectrum of his possible legal enforcement actions.

In our opinion, the labor duties of an employee can be divided into two types: firstly, related to the performance of a labor function, let's call them "functional", and, secondly, related to compliance with the internal order in the employer's organization, as well as setting and providing a certain the level of interaction (relationships) within the labor collective between employees, let's call them "organizational". The former include job responsibilities stipulated by the employment contract, job description and other local regulations. These duties actually clarify the content of the labor function, therefore, they cannot contradict it or supplement it in such a way that they actually replace it with another or create a situation where the employee is actually obliged to perform several labor functions: one is provided for in the employment contract, the subsequent ones appear in connection with such "Additions" of the duties of the main labor function. For example, an employee is hired as a lawyer who provides legal support for one of the employer's activities. In the employment contract, his job function is not specified, but the employer can do this in the job description, indicating that such a lawyer is engaged in claim work (accompanying claim disputes, preparing the text of claims, organizing their dispatch to counterparties). This is an example of an acceptable functional responsibility. But, if the employer imposes on such an employee the obligation only to physically deliver claims drawn up by other lawyers to counterparties, then such a lawyer will actually perform the labor function of a courier,

[179] Anikeeva O.E. Theme of the issue: Labor relations: questions and answers [Electronic resource] // Taxes and financial law. 2016. N 5. Access from the reference legal system "ConsultantPlus".
[180] Baydina O. Participation in corporate events: a duty or a right? [Electronic resource] // Labor law. 2017. N 5. Access from the reference legal system "ConsultantPlus".

which is not provided for by the employment contract. Therefore, this is not a functional obligation, but a way out of the scope of the subject of the employment contract.

The second ones consist of a block of duties that determine the procedure for the interaction of employees with each other and with representatives of the employer, contain instructions on the procedure and method for performing (but not the content!) of the employee’s labor function, determine the mechanism and sequence of involving employees in solving the tasks set by the employer, establish the procedure for using the property of the employer, etc. The purpose of these duties is twofold: firstly, to properly organize the labor process, which is the engine of the employer's socially useful activity, and, secondly, to determine the scope and procedure for the permitted use of the employer's property.

In this regard, the employer has the right, within the framework of the process of organizing and managing labor, to establish certain rules for the communication of employees in the labor process, the procedure for document circulation, establish regulations for the interaction of services and departments operating within the organization, the provision of reports on work, etc. All this is aimed at ensuring that the activities of the employer are most effective, that is, these steps of the employer are the implementation of his right, provided for in Part 1 of Art. 34 of the Constitution of the Russian Federation. But these obligations must be properly formalized and put into effect by the employer: they must be enshrined in the local regulatory act of the employer, with which all employees must be familiarized. Therefore, the employer does not go beyond his powers, adopting various codes of corporate ethics or rules of conduct within the organization that prohibit obscene expressions and other behavior bordering on hooliganism, since the emotional atmosphere within the work team is one of the keys to productive work[181]. Judicial practice also follows the path of recognizing such local regulations as legal, and their violation is the basis for bringing the employee

[181] For more details, see, for example, Zabramnaya E.Yu. To the question of the nature of the norms of corporate ethics and the possibility of bringing its violators to disciplinary responsibility according to the norms of labor law // Labor Law in Russia and abroad. 2016. N 3. P. 33-36.

to disciplinary responsibility[182]. This position is also shared by the Ministry of Labor and Social Development[183].

These examples are a clear demonstration of such a side of organizational responsibilities as the establishment of internal order in the employer's organization. The duty of the employee to participate in corporate events looks differently: if the previous examples were purely organizational in nature, then these duties are more similar in content to duties within the framework of the labor function, which, at first glance, denies the possibility of the employer to unilaterally supplement the list of work duties of the employee. Such a categorical judgment is hasty in connection with the following.

The organizational powers of the employer, in the narrow sense, involving the unification and coordination of the actions of individual employees, need to be looked at more broadly. If the team of employees is cohesive, there is understanding, support, respect between them, there are mutual interests, then they perform the assigned work more smoothly, respectively, the efficiency of labor increases, the attractiveness of the employer as a counterparty increases, and this leads to an increase in the performance indicators of the employer as an entrepreneur, and, therefore, he is interested in the cohesion of the labor collective.

In this regard, such an obligation as participation in corporate events, such as joint holidays, games, sports days, trips to bases, visits to cultural events, etc., also relates to the organizational duties of an employee and is a demonstration their focus on ensuring the level of relationships between employees necessary for the employer. But the important conditions for the legitimacy of imposing duties of this kind on employees are the following. Firstly, the involvement of an employee in the performance of such a duty takes place within the framework of working hours. Secondly, this obligation must be fixed in the local regulatory act of the employer, with which the employee must be

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[182] See, for example, the Appellate Rulings of the Sakhalin Regional Court of September 27, 2016 in case N 33-2371/2016, of the Moscow Regional Court of August 17, 2016 in case N 33-22354/2016, of the Moscow City Court of July 18, 2016 in case N 33 -27638/2016, Sverdlovsk Regional Court of 01/20/2017 in case N 33-510/2017(33-23405/2016) [Electronic resource]. Access from the reference-legal system "ConsultantPlus".
[183] See, Letter of the Ministry of Labor of Russia dated September 16, 2016 N 14-2 / V-888 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

familiarized. Thirdly, such organizational responsibilities should apply to all employees or to a reasonably selected group of employees: compliance with this condition will indicate that these responsibilities are really aimed at organizing employees and maintaining a certain level of relationships within the labor collective and that the establishment of these responsibilities is not discrimination against individual workers[184]. Otherwise, participation in corporate events cannot be mandatory and will not meet the signs of the employee's organizational labor duties.

This position finds support in some judicial decisions. For example, the Moscow Federal Arbitration Court, establishing in the actions of employees such a feature as acting in the interests of the employer and on his behalf, classifies participation in corporate events as the performance of labor duties by employees and regards the offsite nature of such events as a business trip[185]. Also interesting are the decisions of the St. Petersburg City Court.

So, refusing to satisfy the requirements of the social insurance authority to recognize the act of an accident at work as invalid, which believed that at the time of drawing up the act of an accident at work, the employee did not fulfill his labor duties under an employment contract or the task of the employer (participated in a sports competition), St. Petersburg City Court pointed out: “From the materials of the case, it directly follows that the actions (participation in competitions) the plaintiff performed lawfully (on behalf of and in the interests of the employer, related to increasing the marketing attractiveness of the company, increasing the level of business reputation among potential business partners, increasing productivity of the team through the development of corporate culture), and these actions were due to the employment relationship with the defendant in the context that the sporting event was held between employees of the same industry. The court’s references to the fact that K. did not fulfill his official duties, as a basis for concluding that the stated claims are justified, the

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[184] The prohibition of discrimination as a special case of the operation of the constitutional principle of equality of all before the law will be discussed in more detail in the next chapter.

[185] See, for example, Resolution of the Federal Antimonopoly Service of the Moscow District dated March 12, 2012 N A40-35658/10-4-154, Resolution of the Federal Antimonopoly Service of the Moscow District dated November 18, 2010 N KA-A40/14213-10 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

judicial board finds erroneous, since, within the meaning of the order of September 14, 2016 No. 2483 labor activity"[186].

However, earlier the St. Petersburg City Court refused to recognize the case of an employee's injury during the Olympics as insurance[187] for a number of reasons, some of which we can agree with, but not others. The court indicated that participation in the Olympics was based on an oral order from the employer (there was no local regulation establishing such an obligation) - and this is a reasonable observation. But the decision was also based on the arguments of the following order: although the Spartakiad was held during working hours, the employees were present with family members and did not perform their job duties, but participated in recreational activities. These arguments cannot be accepted. Participation in corporate events is the organizational labor duties of an employee, which have a different purpose, in contrast to the direct performance of a labor function, which distinguishes them from functional ones in content. Therefore, neither the presence of family members, nor the entertaining nature of the actions performed by employees can affect the essence of the obligation to participate - this is the organization of the labor collective, which has the ultimate goal of achieving the most beneficial result by the employer as a subject of socially useful activity.

We see that organizational responsibilities can be divided into two types. Firstly, organizational responsibilities that are directly related to the performance of functional ones (for example, compiling reports on the work done, the procedure for interacting with related departments regarding the assigned tasks covered by the labor function, etc.). Secondly, all other organizational duties, which are essentially related to the establishment of certain respectful and trusting relationships between employees, as well as between employees and the employer (for example, participation in corporate events). The constitutive differences between them are as follows. The first group of organizational duties for their full implementation does not require additional qualifications or skills, and in order to fulfill the organizational duties included in the

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[186] Appeal ruling of the St. Petersburg City Court dated July 12, 2017 N 33-13388/2017 in case N 2-4911/2017 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[187] Appeal ruling of the St. Petersburg City Court dated September 15, 2016 N 33-18413/2016 in case N 2-286/2016 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

second group, such skills may be needed. The quality of the performance of the first duties always, to one degree or another, affects the implementation of socially useful activities by the employer. The quality of performance of the second duties does not affect the process and results of the implementation of socially useful activities, this effect is exerted by the very fact of involving employees in the performance of such duties.

To make it clearer, let's illustrate this with an illustrative example. Many employers currently have software services to record the performance of tasks by the employee, as well as the implementation of the procedure for coordinating actions and documents. These services help the employer to plan the implementation of socially beneficial activities. For example, an employer is going to conclude an agreement with a counterparty, thanks to such services, he sees the stage of internal coordination with all internal divisions, respectively, he can plan and agree with the counterparty on the actual time of concluding such an agreement, plan payments and obtain any results. Ignoring the use of such a service by an employee or entering false information into it can have negative consequences for the employer. Therefore, such behavior of the employee will be improper performance of labor duties, which will be the basis for bringing to disciplinary responsibility.

The situation is different with the organizational responsibilities of the second group. For example, the employer considered that ties in the workforce would be strengthened by holding joint intellectual games-competitions at the end of the working day. However, not all workers can have a good level of versatile intelligence. But a positive result for the process of implementing socially useful activities will be that the employees took part in this event in a relaxed atmosphere. Even if everyone answered incorrectly, then a positive effect from the fulfillment of the obligation was achieved. Therefore, the employer cannot bring to disciplinary responsibility for improper performance of labor duties of employees who answered incorrectly.

A correct understanding and attribution of organizational duties to labor duties is of great practical importance. Firstly, their failure to comply allows employees to be subject to disciplinary liability, which in the future can be used as the basis for dismissal

on a number of discrediting grounds at the initiative of the employer (clause 5, part 1, subparagraphs “a”, paragraph 6, part 1 of Art. 81 of the Labor Code of the Russian Federation) or be the basis for non-payment of bonuses included in wages. Secondly, participation in such events is often associated with travel outside the administrative-territorial point where the employee’s workplace is located, which means that participation in them will be a business trip, which affects the payment of such work to the employee and the taxation of travel expenses[188]. Thirdly, as in the case of the performance of labor duties in their traditional sense, the performance of organizational duties can lead to injuries, which means that all accidents that occur to employees while participating in such corporate events should be recognized as insurance, and the employee should be guaranteed all relevant payments.

In connection with the foregoing, given the ambiguity of positions, both in doctrine and in law enforcement practice, on the issue of the legality of imposing duties on employees that are atypical for their work functions, and the importance of the consequences that depend on a correct understanding of the nature of organizational duties, we consider it necessary to give The Supreme Court in the Decree of the Plenum clarified the content of the labor duties of employees and the possible inclusion in their number of mandatory participation of employees during working hours in corporate events held by the employer, by their nature not related to the performance of the labor function, but designed to unite the labor collective, increase labor productivity , improve the image of the employer, etc.

Now let's move on to the analysis of the actions of the employer in the operational management of the labor of employees, that is, to the administrative and dispositive power (administrative and dispositive powers) of the employer. The essence of giving operational instructions to employees on how to perform their function, to what extent, what materials and equipment to use, etc. there is control and adjustment of the course of his socially useful activities. Since the actions of employees are always

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[188] This conclusion is supported by some courts (see, for example, Decree of the Federal Antimonopoly Service of the Moscow District dated March 12, 2012 N A40-35658 / 10-4-154 [Electronic resource]. Access from the ConsultantPlus legal reference system.) and authors (see ., for example, Sitnikova E.G., Senatorova N.V. Labor activity: guarantees and compensations [Electronic resource]. M., 2016. Issue 8. Access from the ConsultantPlus legal reference system.

reflected in the process and results of the employer's activities, and without being able to give operational instructions, the employer would lose control over the process of carrying out his activities.

Administrative and dispositive powers are aimed at direct management of the work of employees. They can manifest themselves in issuing orders containing specific tasks within the framework of the work function performed, or determining the method of performing work, or organizing the labor process, in distributing the workload among employees, in managing the number and staff of employees, removing employees from performing work duties, changing conditions labor, termination of labor relations, etc. Therefore, we agree with the data of V.N. Smirnov's definition of this type of employer's power as "a set of numerous administrative powers of the leaders of the labor process"[189].

Only the employer can make this or that administrative decision, and the expediency of such decisions is also determined only by the employer. It is the employer who has the exclusive right to exercise these powers. However, this does not exclude situations where a complicated procedure for making a managerial decision is established for the employer (for example, prior notification of the primary trade union organization and the employment service body when deciding to reduce the number or staff of employees) or a ban on its adoption (for example, dismissal of a pregnant woman on the initiative employer), which is a consequence of the action of constitutional principles restricting the right of the employer, which will be discussed in the next chapter.

It should be noted that administrative and dispositive powers are the actions of the employer specifically for the operational management of the labor of employees, which are law enforcement actions. They do not create the existing legal order in the employer's organization, they directly manage labor at the moment, including in the event of gaps in the regulatory regulation of the situation that has arisen within the framework of labor management. That is, this is the legal implementation activity of the

[189] Smirnov V.N. Internal labor regulations at the enterprise. L., 1980. P. 82.

employer, within which he cannot establish new norms of behavior, which occurs within the framework of the implementation of regulatory powers.

Thus, the administrative acts of the employer are the actions of the employer, which are the implementation of the powers exclusively owned by the employer, which do not contradict the law, the powers for the operational management of the labor of employees, by nature aimed at ensuring the effective conduct of the socially useful activities of the employer, as well as the management and adjustment of the course of this activity or protection his property rights.

The range of powers of the employer in the field of operational labor management is quite wide. A study of some of them will be carried out in the next chapter as part of the issue of the operation of principles that limit the right of the employer to manage labor. This paragraph proposes for consideration those administrative and dispositive powers that ensure the normal implementation of the right to manage labor and clearly illustrate the proposed activity concept of the right to manage labor. These are the powers to recruit personnel and to terminate labor relations with employees.

It was previously stated that labor management is the management of a part of the employee's personality that is "responsible" for the ability to work, which is actually manifested in the execution of the latter's orders by employees subordinate to the employer. In this regard, the question arises whether the right of the employer to form the personal composition of employees (in other words, the right to conclude an employment contract) is a power constituting the right to manage labor? Since at the time of the conclusion of the employment contract, the person who wishes to conclude the contract on the part of the employee is independent and generally does not yet realize his ability to work, so that it is managed by the employer.

In the decisions of the Constitutional Court considered earlier on the grounds for the managerial powers of the employer, the highest court repeatedly cited such power as recruitment as an example of personnel decisions. Also earlier, a definition was given to the concept of "personnel decisions", by which it was proposed to understand the legal actions of the employer to exercise managerial powers. Thus, at the first address to this

issue, based on the constitutive sign of management (the presence of a subordinate relationship), the employer's exercise of the right to conclude an employment contract cannot be attributed to the exercise of labor management powers. However, this approach overlooks one very important point: yes, the recruitment of employees to the employer's staff does not occur through unilateral power actions of the latter, however, the formation of the personal composition of employees is mediated by the conclusion of employment contracts with each of them. The process of concluding an employment contract involves the formation of its conditions, and the conditions of an employment contract are both an integral part of the rule of law in the employer's organization and the rules for regulating the labor of a particular employee, which are elements of labor management. Yes, in fact, the implementation of the relationship of power-subordination between the employer and the employee does not occur at the time of the conclusion of the employment contract, but it is then that the conditions for managing the employer's ability to work of a particular employee are determined, which is similar in terms of the mechanism of action to the regulatory powers of the employer, only here the employer is not the only one the person who establishes these conditions. Despite the fact that such an establishment occurs jointly with the employee, in this case this does not discredit the managerial nature of the adopted regulations, the implementation of which will take place in the future (the issue of employees' participation in managerial decision-making will be discussed in detail in the third chapter of this work in relation to the analysis of the action principles of social partnership). Thus, the powers of the employer to form the personal composition of employees are an integral part of the right to labor management.

Moreover, this authority is a security guarantee for the employer to exercise the right to manage labor, since an employment contract must be concluded before the onset of management relations. It was also noted that the right to entrepreneurship, which is guaranteed by Part 1 of Art. 34 of the Constitution of the Russian Federation, includes the authority to attract other persons for the indirect implementation of socially useful activities, and its importance is great, due to the fact that this particular authority guarantees the employer the ability to determine the persons through whom his

activities will be carried out. In this regard, although the power to conclude labor contracts cannot be called the power to manage labor, it is a guarantee of the right to manage labor, therefore the logic and consequences arising from the constitutional guarantees of the right to manage labor are fully applicable to recruitment powers, that is, the right to conclude or refuse to conclude an employment contract.

Now let's move on to an analysis of the employer's powers related to the exercise of the right to unilaterally terminate labor relations with employees. And here we again face a question similar to the recruitment of personnel: do the employer's powers to terminate labor relations with employees have the character of power and management?

Termination by the employer of labor relations means the termination of the employment contract unilaterally, which entails the termination of the obligations of its parties. Is there a subordination of the employee to the will of the employer when he receives a notification from the latter that he no longer has to fulfill his obligations? In civil law, there is also an institution of unilateral refusal to fulfill obligations, and the Civil Code of the Russian Federation in certain cases allows the parties to unilaterally, out of court, withdraw from the contract. However, the parties to civil legal relations, unlike the parties to labor relations, are independent throughout the entire period of validity of the civil law contract, and there are no subordinate relations. Accordingly, they do not arise even if one of the parties unilaterally refuses to execute a civil law contract.

Is there a difference between the unilateral refusal of the customer from the contract of work or the provision of services and the unilateral termination of the employment contract by the employer? Despite the apparent absence at first glance, there is a difference.

Civil law separates the categories of unilateral refusal to fulfill obligations, also referred to as refusal of a contract or refusal to fulfill a contract (Articles 310, 450.1 of the Civil Code of the Russian Federation), and unilateral termination of the contract (Article 451 of the Civil Code of the Russian Federation). Unilateral cancellation of the contract is possible out of court in cases provided for by law or by the contract, if both

parties to it are entrepreneurs. Its procedure consists in notifying the party to the agreement of the refusal to fulfill obligations by the second party, and, as paragraph 2 of Art. 451 of the Civil Code, in this case the contract is considered terminated. Unilateral termination of the contract is possible only if there is a significant change in circumstances on the basis of a relevant court decision issued at the request of one of the parties to the contract. In the civilistic doctrine, these grounds are also shared. So, R.S. Bevzenko points out that termination of the contract is understood as a way to terminate the contract, which is allowed either by agreement of the parties or by a court decision, and the refusal of the contract is a way to terminate the contract, the implementation of which occurs through a unilateral declaration of will[190]. n turn, a number of researchers note that a unilateral refusal to fulfill an obligation should entail the termination of the corresponding obligation, but not the transaction agreement, since the unilateral refusal to fulfill the obligation does not affect the transaction agreement in any way[191]. Also, the Supreme Arbitration Court of the Russian Federation developed an approach in which, if the parties indicate in the contract the right of any of them to unilaterally terminate the contract, the courts should consider this condition as providing for the right to unilateral extrajudicial cancellation of the contract[192].

The foregoing demonstrates that none of the parties to a civil law contract can perform a unilateral action that would simultaneously terminate the obligations of both parties. The basis for unilateral termination of the contract will always be a court decision issued at the request of one of the parties. Unilateral refusal of the contract is a refusal to fulfill obligations, which entails a situation where one party withdraws from the contract, and the other remains with valid obligations. But, since the contract, by virtue of its definition, cannot be unilateral, it terminates, therefore, paragraph 2 of Art.

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[190] Bevzenko R.S. Some issues of judicial practice in the application of the provisions of Chapter 29 of the Civil Code of the Russian Federation on the amendment and termination of the contract [Electronic resource] // Bulletin of Civil Law. 2010. N. 2. Access from the reference legal system "ConsultantPlus".

[191] Krupina N.V. Unilateral renunciation of obligation and contract // Bulletin of the Magistracy. 2015. No. 2 (41). Volume III. S. 33.

[192] See Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation of February 16, 2010 N 13057/09 [Electronic resource]. Access from the reference-legal system "ConsultantPlus". Also, for more details on the practice of arbitration courts on this issue, see Contractual and obligation law (general part): article-by-article commentary on articles 307–453 of the Civil Code of the Russian Federation [Electronic resource] / Resp. ed. A.G. Karapetov. 2017. Access from the reference legal system "ConsultantPlus".

451 of the Civil Code of the Russian Federation and says that in case of a unilateral refusal to fulfill obligations, the contract is considered terminated. Thus, termination of the contract is possible due to an act of an authority (court), which is binding on both parties.

Another situation with the termination of the employment contract. Unlike civil law relations, the employee does not just perform work to obtain the result of the work and transfer it to the customer, through the employee the employer carries out his socially useful activities, which entails the inclusion of the employee in the organizational and activity structure of the employer, which the latter manages. By virtue of the principle of freedom of labor, which will be discussed in more detail in the next chapter, the employee has the right to withdraw from the employment relationship at any stage, thus, in fact, having made a unilateral refusal to fulfill obligations under the employment contract. The employer, by virtue of the previously described reasons relating to his status as a subject of socially useful activity, has the right to terminate the obligations of both parties by unilaterally performing an act of termination of the employment contract that is full in terms of consequences, thereby exercising his imperious authority. Unlike an employee, an employer does not just withdraw from an employment relationship, but by its unilateral action, including withdrawing an employee from it against the will of the latter. It can be said that the legal relationship that has arisen on the basis of a specific employment contract becomes an integral part of the process of carrying out socially useful activities, the implementation of which can only be influenced by the employer as its initiator. Therefore, the employee only has the right to refuse intermediary participation in its implementation, and the employer has the right to terminate a specific labor relationship, thereby changing the process of carrying out its activities. This difference is based on the autonomy of the employer's activity sphere (including economic), which implies its change only by the organizer. However, the social function of labor law imposes significant restrictions on the procedure and grounds for making such changes.

This conclusion is confirmed by the existing normative regulation of this issue. Despite the fact that in the relevant articles of the Labor Code of the Russian

Federation, the legislator calls the termination of an employment contract both at the initiative of the employer and at the initiative of the employee as termination of the employment contract, the wording "termination of the employment contract at the initiative of the employee" is a lack of legal technique, and it would be right to call this process refusal to fulfill the employment contract. First, in part 1 of Art. 80 of the Labor Code of the Russian Federation it is said that the employee has the right to terminate the employment contract, however, part 3 of the same article, which contains possible cases of notice of dismissal different from the two-week notice, says that it is the employer who is obliged to terminate the employment contract. Secondly, the consequences of the provisions of Part 4 of Art. 80 of the Labor Code of the Russian Federation of the employee's withdrawal of his letter of resignation is formulated as "dismissal is not carried out", and this implies that it is the employer who has the right to dismiss the employee, that is, terminate the employment contract by terminating the employment relationship. Thirdly, the norm of Part 6 of Art. 80 of the Labor Code of the Russian Federation establishes that if the employee continues to work outside the term for notifying the employer of dismissal, then the employment contract continues if it has not been terminated, and the employee does not insist on dismissal. This again indicates that the employment contract is terminated by the employer, and not by the employee, since it is clear that an unrevoked notice of dismissal does not terminate the employment relationship, this requires an appropriate decision of the employer. At the same time, if the employer, in violation of the requirements of the law, does not dismiss the employee, this does not affect the employee's right to withdraw from the employment relationship that the employer has not terminated by virtue of the principle of the prohibition of forced labor.

Our conclusion is also confirmed by the presence as a basis for terminating the employment contract at the initiative of the employer after the employee's absence from work after three months after the end of his military service for mobilization or military service under the contract, or the expiration of the contract on voluntary assistance to the armed forces of the Russian Federation (p. 13.1 part 1 article 81 of the Labor Code

of the Russian Federation), during which the employment contract is suspended[193]. In this case, the employee does not return to the performance of the labor function, however, the employment contract is not terminated due to this fact, for its termination, the decision of the employer is necessary.

The current legislation proceeds from the presumption of long-term labor relations and considers them as, firstly, the main source of the employee's livelihood, and, secondly, as a way for a person to realize himself as a person, therefore, it provides for a number of measures aimed at maintaining the duration of labor relations: As a general rule, an open-ended employment contract is concluded with an employee, and a closed list of grounds for dismissal of employees at the initiative of the employer is established. In modern Russian realities, the presence of a closed list of grounds for terminating an employment contract at the will of the employer is an extremely important guarantee of both a certain maintenance of the well-being of citizens and a reduction in social tension in society due to economic problems.

The general grounds for the exercise of these powers are provided for by the norms of Article 81 of the Labor Code of the Russian Federation, and all of them can be grouped into the following groups: 1) due to the inconsistency of the worker's ability to work with the work function performed; 2) in connection with violation of labor discipline by the employee; 3) in connection with changes in the status of the employer as an initiator of socially beneficial activities or decisions made regarding the implementation of socially beneficial activities; 4) associated with the qualities of the employee's personality that are essential for the employer; 5) related to the employee's refusal to continue the employment relationship.

As for the first group (clause 3, 13, part 1, article 81 of the Labor Code of the Russian Federation), its presence is objectively due to the importance of the figure of the employee for the employer as a person through the use of whose labor the socially useful activity of the latter is carried out. We have included here the grounds provided for in the employment contract with the head of the organization, since, based on the

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[193] For more details on the construction of suspension of an employment contract and its consequences, see Golovina, S.Yu. Transformation of labor law in the era of global political and economic challenges of our time [Electronic resource] // Labor law in Russia and abroad. 2023. No. 3. Access from the legal reference system “ConsultantPlus”.

characteristics of this position, the legislator allows the employer to determine in a contractual manner important conditions for him related to the implementation of the labor function of the head of the organization, the occurrence of which for the purpose of proper implementation of socially useful activities of the employer may lead to the termination of the employment contract with such an employee.

The grounds of the second group (clause 5, clause 6 (with the exception of clauses “d”), 7, 9, 10 - 11, part 1 of article 81 of the Labor Code of the Russian Federation) are the grounds for applying the dismissal by the employer as a measure of disciplinary responsibility, about which more will be said when considering the disciplinary powers of the employer.

The third group of grounds for unilateral termination of an employment contract (clauses 1, 2, 4, part 1 of article 81 of the Labor Code of the Russian Federation) differs from the rest in that these grounds do not depend on the figure of the employee, including the quality of his ability to work. They are associated exclusively with changes in the status of the employer as the initiator of socially useful activities or essential conditions affecting its implementation, and therefore emphasize the activity concept of the right to manage labor at the legislative level. This conclusion is also confirmed by the legal positions of the Constitutional Court of the Russian Federation, for example, on issues of termination of an employment contract due to a reduction in the number or staff of employees[194], as well as in connection with a change in the owner of an organization[195].

The fourth group (clauses “d”, clause 6, clause 8, 11, part 1 of article 81 of the Labor Code of the Russian Federation) includes a list of grounds related to situations when the employer became aware of certain facts that characterize the employee as a person, which is allowed before the implementation of socially useful activities of the employer. At the same time, the attribution of paragraphs. "g" p. 6 h. 1 art. 81 of the

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[194] See, for example, Rulings of the Constitutional Court of the Russian Federation N 930-O dated April 24, 2018, N 351-O dated February 27, 2018, No. 350-O dated February 27, 2018, No. 2691-O dated November 23, 2017, N 2691-O dated November 23, 2017 2690-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[195] See, for example, Resolution of the Constitutional Court of the Russian Federation N 3-P of March 15, 2005, Rulings of the Constitutional Court of the Russian Federation N 2059-O of September 28, 2017, No. 1232-O of June 27, 2017, N 1106-O of May 25, 2017 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

Labor Code of the Russian Federation to the grounds for bringing to disciplinary responsibility does not seem to be very true, since bringing an employee to disciplinary responsibility is a measure of the employer's response to the rules established by him for finding an employee in his organizational and activity area, and theft of property that does not belong to the employer does not apply to violation labor discipline in the employer's sphere. However, the presence of these grounds once again confirms our conclusions that it is necessary to look at the labor duties of employees more broadly, and that the personal qualities of the employee, as well as the relationship between employees in the work collective, are important for the employer, which, based on the constitutional foundations of the right to manage labor, allows for the regulation of interpersonal relations between employees in this area, as well as regulation aimed at a certain education of the employee, which is necessary for the employer as a subject of socially useful activity.

As for the fifth group of grounds, it has already been said about it: clause 13.1 of part 1 of Art. 81 of the Labor Code of the Russian Federation.

We now turn to the consideration of the disciplinary powers of the employer. Labor Code of the Russian Federation in Part 1 of Art. 181 gives a legal definition of labor discipline, understanding it as obligatory for all employees to obey the rules of conduct defined in accordance with the Labor Code, other federal laws, a collective agreement, agreements, local regulations of the employer and an employment contract. In this case, subordination must be understood not as purposeful actions of the employer (subordination on the part of the managing entity), but as a permanent state of employees (subordination on the part of managed entities): firstly, the state of compliance with the employer's actions established in those listed in Part 1 of Art. . 181 of the Labor Code of the Russian Federation, acts containing rules of conduct relating to both functional and organizational duties of employees, and, secondly, the implementation of the employer's legal orders for the operational management of the work of employees, that is, compliance with the procedure for performing a labor function.

Thus, labor discipline is the observance by employees of the existing procedure for the performance of a labor function and the rules of conduct in the organizational and activity sphere of the employer. The employer, on the other hand, creates either independently or together with employees (including in cooperation with employees' representatives) these rules of conduct, which is a manifestation of not disciplinary, but normative powers for labor management. Or the employer gives operational instructions regarding the performance of the labor function by employees, which is also not a manifestation of disciplinary powers. But in the future, the employer ensures that employees comply with these rules and specific instructions given to them, which is the implementation of his disciplinary powers. Thus, disciplinary powers in the direction of their purpose are security actions: their function is to maintain labor discipline.

In this regard, the maintenance of labor discipline by the employer, and, consequently, the implementation of the employer's disciplinary powers, is possible, firstly, by encouraging (stimulating) employees aimed at complying with the employer's rules of conduct and performance of the labor function, and, secondly, by holding workers accountable for the latter's violation of labor discipline.

Article 191 of the Labor Code of the Russian Federation is devoted to the authority to encourage employees for observing labor discipline, which, in part one, establishes possible types of incentives, saying that the employer encourages employees who conscientiously perform their labor duties by declaring gratitude, issuing a bonus, awarding them with a valuable gift, an honorary diploma, submission to the title of the best in the profession. But this list is not closed. Part two of this article states that other types of incentives are determined by the collective agreement or internal labor regulations, charters and regulations on discipline.

In essence, this authority of the employer and the meaning of Article 191 of the Labor Code of the Russian Federation, such incentive measures can be provided not only in the acts indicated therein. This article contains an open list of sources of such incentive measures: the employer is free to provide them in any of his regulations. The availability of certain stimulating and incentive measures completely depends, firstly, on the employer’s financial capabilities, and, secondly, on the relationship that develops

between employees and the employer, and on his ability and desire to use such a method as persuasion in managing workers. The main problem in the implementation by the employer of the powers to stimulate and encourage employees is the problem of discrimination in the choice of employees and ways to reward them for conscientious work. This issue will be considered in the next chapter.

Now consider the powers of the employer to bring employees to disciplinary responsibility. A.V. Polyakov, as one of the constitutive signs of legal responsibility, notes its state-coercive nature: the state determines legal responsibility regardless of the will and desire of individual subjects, and state coercion is both mental and physical coercion to enforce the sanction of the rule of law[196]. In a situation with disciplinary responsibility, we are not talking about a state-coercive, but an employer-coercive nature, and this is connected with the following.

Non-fulfillment by employees of the decisions of the employer is a break in the connection between the process of socially useful activity and the employer, because the link between the employer and the activity - the employee - has ceased to obey the will of the organizer of the activity. That is, the object of encroachment in this case is the autonomous activity sphere of the employer and the public order created by him, and not protected by the state, and the subject of the offense is a person who is in a contractual (labor) relationship with the employer on the basis of power-subordination. The consequences of this offense for the employer (in terms of carrying out socially useful activities) suggest that he should be able to quickly respond to violations of discipline by employees, and a preliminary appeal to the jurisdictional body would significantly increase the response time. Thus, since the status of the employer substantively presupposes the existence of the authority to respond, the state recognizes the employer (does not delegate!) The right to bring the offender to legal liability, while limiting the employer's capabilities to the procedure established by law and preclusive deadlines. The absence of the public nature of disciplinary liability is also indicated by

[196] Polyakov A.V., Timoshina E.V. General theory of law. Textbook. SPb., 2015. P. 442 (the author of the chapter is A.V. Polyakov). Also, for more details about such an element as coercion within the framework of relations about bringing an employee to disciplinary liability, see Syrovatskaya L.A. Responsibility for violation of labor laws. M., 1990. P. 23.

the fact that all the adverse consequences experienced by the offender do not go beyond the scope of contractual relations and have consequences only for their participants.

Articles 192 - 195 of the Labor Code of the Russian Federation provide for the procedure for bringing an employee to disciplinary liability and a list of disciplinary measures. These norms fit well into the proposed activity concept of the right to manage labor and correspond to the appointment of disciplinary powers.

The employer is powerful and controls only the worker's ability to work. When bringing an employee to disciplinary responsibility, the impact on the personality of the employee is aimed at inducing him to better work, that is, any power influence on the employee has an impact on his personality, however, the purpose of influencing the personality is labor management (the employee is influenced so that he, as the employer needs, used his ability to work). Accordingly, in order to apply any of the disciplinary measures to the employee, the employer must make sure that there really was a violation of his existing labor standards: the fact of a disciplinary offense, the employee's fault and all the circumstances that characterize the labor "part of » the identity of the employee, which gives the employer a complete picture of what happened and the opportunity to assess how this violation affected the implementation of his socially useful activities. Only after that, the employer can begin to apply the existing disciplinary measures, which, in terms of content, as a general rule, come down to two[197]: an expression of moral reprimand of the employee, which should encourage him to correct his labor behavior (clauses 1, 2, part 1, article 192 Labor Code of the Russian Federation - remark, reprimand); and termination of contractual relations between the employee and the employer at the initiative of the latter (clause 3, part 1, article 192 of the Labor Code of the Russian Federation - dismissal on appropriate grounds).

[197] Laws for employees of specific sectors of the economy or for certain categories of civil servants may provide for other types of disciplinary sanctions related to demotion in class ranks, warnings about inconsistencies in their positions, suspension from performing a labor function, deprivation of received awards, etc. See, for example, clause 3, part 1, article 57 of the Federal Law of July 27, 2004 N 79-FZ "On the State Civil Service of the Russian Federation" [Electronic resource]. Access from the reference-legal system "ConsultantPlus"; art. 47.1. Federal Law of January 17, 1992 N 2202-1 "On the Prosecutor's Office of the Russian Federation" [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

Obviously, the remark is no different in its legal consequences from the reprimand, one can only assume that the reprimand has a more negative emotional connotation. The use of any of them performs three functions. Firstly, it serves as a measure of the employer's censure of the employee and influence on his mind in order to improve the quality of the latter's work. This is aimed at ensuring that the employee ceases to violate labor discipline, and the connection between the subject of socially useful activity and the person through whose labor this activity is carried out is restored. Secondly, it fixes the fact of bringing the employee to disciplinary responsibility, that is, it performs a procedural role, and in the event of repeated application of these penalties, it creates a legal fact for the possible application of dismissal on the grounds provided for in paragraph 5 of part 1 of Art. 81 of the Labor Code of the Russian Federation. Thirdly, as in a situation with any other measure of responsibility, the consequence of issuing a reprimand and remark is the obligation to endure negative consequences for the employee, in this case these are mostly negative psychological consequences, since these penalties are primarily aimed at the consciousness of the employee. Also, as another negative consequence that the employee will undergo, is the fact of realizing the possibility of his dismissal under paragraph 5 of part 1 of Art. 81 of the Labor Code of the Russian Federation in case of repeated violation of discipline.

In connection with the importance for the employee of the state in labor relations, dismissal is the most severe measure of disciplinary action. Dismissal acts as a recognition that through the impact on the personality of the employee, it is impossible to improve the quality of work. The employer dismisses the employee not because his personality does not suit the employer, but because this personality does not meet the labor standards set by the employer himself. Therefore, in this case, the impact on the personality as such is of secondary importance, the main importance is to influence the use of the ability to work that the employer needs. This once again demonstrates that under the control (power) is the ability to work of the employee, and not completely his personality.

It is important to note that the application of these measures is carried out by the employer at his discretion, it is he who carries out actions to enforce compliance with

labor discipline. This was repeatedly emphasized by the Constitutional Court of the Russian Federation, noting that the employer independently applies a disciplinary sanction to the employee, while observing the principles of legal responsibility, and the court only checks the legality of bringing the employee to disciplinary liability and applying a specific disciplinary sanction to him, based also on general principles of legal and, consequently, disciplinary responsibility (such as, in particular, justice, proportionality, legality) and establishes the fact of committing a disciplinary offense, evaluates the entire set of specific circumstances of the case, the previous behavior of the employee, his attitude to work and others[198].

[198] See Rulings of the Constitutional Court of the Russian Federation of September 23, 2010 N 1091-O-O, of April 23, 2013 N 675-O and of December 24, 2013 N 2063-O, of February 20, 2014 N 252-O, of October 26, 2017 N 2332-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

Chapter 3. Restrictions on the employer's right to manage labor

§1. The concept and grounds for restrictions on the employer's right to manage labor

Explanatory Dictionary of S.I. Ozhegov gives the following definition of the verb "limit": "Limit - put in some framework, boundaries, define some conditions, and also do less, reduce the coverage of someone something"[199].

There are a large number of scientific works devoted to the issue of restriction of rights, which presents various approaches to understanding such a phenomenon, where the author's concepts of legal restrictions are given. Such a variety of approaches to the category of restriction of rights was united in one classification by A.A. Kondrashev, who divided the existing approaches into five groups[200].

The first approach is to understand the restrictions on rights as a set of certain special measures that are considered as obstacles to citizens exercising their rights (non-recognition of rights, suspension of rights, deprivation of rights, complicating the procedure for their implementation) and ensuring the necessary balance of interests of the individual, society and the state[201].

The second approach is to reveal the concept of restriction as a narrowing of the scope of rights and freedoms. A.A. Kondrashev as the most striking example of an apologist for this position is cited by A.A. Podmarev, indicating that restrictions are “limits (boundaries) established by law for the implementation of the exercise by a person (citizen) of rights and freedoms, expressed in prohibitions, intrusions, duties, responsibilities, the existence of which is determined (predetermined) by the need to

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[199] Explanatory dictionary of the Russian language S.I. Ozhegova [Electronic resource] // URL: http://ozhegov.info/slovar/. (date of access: 09/01/2021).

[200] Kondrashev A.A. Restrictions on constitutional rights in the Russian Federation: theoretical approaches and political and legal practice [Electronic resource] // Constitutional and municipal law. 2014. N 7. Access from the reference legal system "ConsultantPlus".

[201] See, for example, Moskalenko T.O. Constitutional and legal grounds for restricting the rights and freedoms of man and citizen in order to ensure the security of the Russian Federation: author. dis. ... cand. legal Sciences: 12.00.02. M., 2012. P. 10.

protect constitutionally recognized values and the appointment which is to ensure the necessary balance between the interests of the individual, society and the state"[202].

In accordance with the third approach, restrictions are considered as certain exemptions from the rights and freedoms of man and citizen[203].

Adherents of the fourth approach consider restrictions on rights as limits established by law for a person (citizen) to exercise his rights (freedoms), expressed in prohibitions, intrusions, duties, and responsibilities[204].

According to the fifth approach, restrictions are singled out and divided according to the goals they pursue. And here, as an example, A.A. Kondrashev refers to I.D. Yagofarova, who believes the following: “restriction of human rights (freedoms) is caused by objective and subjective factors, mainly of a political and legal nature, pursuing certain goals, carried out by both legal and non-legal means and methods, quantitative and (or) qualitative derogation by subjects authorities of human rights and freedoms"[205]. In this connection, such goals of restriction are distinguished as the protection of morality and morality, public interests, ensuring due recognition and respect for the rights and freedoms of other citizens, maintaining public order.

Proposed by A.A. Kondrashev’s classification is not entirely correct, since in fact the content of the second, third and fourth approaches is homogeneous: in one way or another they talk about the reduction of powers to exercise the right, only in relation to the second approach it is called narrowing, in the third - withdrawal, and in fourth - by establishing the limits of the implementation of the right, but the essence is the same everywhere. The allocation of the approach, based on the purpose of the restrictions, does not seem appropriate at all, since any restriction of the right pursues a specific goal, which means that this property is inherent in each restriction, which excludes

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[202] Podmarev A.A. Constitutional bases of restriction of the rights and freedoms of the person and the citizen in the Russian Federation: author. dis. ... cand. legal Sciences: 12.00.02. Saratov, 2007. P. 28.

[203] Malyutin N.S. The role of judicial interpretation in the delimitation of theoretical and legal structures of legal regulation, restriction and derogation of the rights and freedoms of man and citizen // Constitutional and municipal law. 2014. N 3. P 20-27.

[204] Kvitko A.F. Constitutional and legal foundations for restricting the rights and freedoms of man and citizen in the Russian Federation: author. dis. ... cand. legal Sciences: 12.00.02. M., 2007. P. 6; Rassolova E.Sh. Restrictions on the rights and freedoms of man and citizen in the Russian Federation: constitutional and legal research: author. dis. ... cand. legal Sciences: 12.00.02. M., 2009. P. 12.

[205] Yagofarova I.D. The main characteristics of the restriction of human rights and freedoms: theoretical and legal aspect [Electronic resource] // Academic legal journal. 2002. N. 4 (10). Access from the reference-legal system "ConsultantPlus".

allocation to a separate classification group. Therefore, in essence, there are two types of legal restrictions: the first is in the form of establishing “obstacles” or additional conditions for the implementation of a particular right, and the second is a direct deprivation of a right or a narrowing of its content.

The most appropriate definition of legal restrictions is given by B.S. Ebzeev, who defined them, firstly, as exceptions allowed by the Constitution and established by federal law from the constitutional status of a person and citizen, and, secondly, as an exception from the circle of powers that make up the normative content of fundamental rights and freedoms[206]. This definition seems to be the most attractive, as it emphasizes the dual nature of possible restrictions: a general restriction, when the possibility of exercising a particular right as a whole is blocked, and a partial restriction - a situation where a person, for one reason or another, cannot exercise the entire range of powers that make up the content of a particular rights, and implements only a part of them or implements all the powers, but to a limited extent. In this regard, one should agree with L.L. Belomestnykh, who points out that under restrictions of the second type “it is not freedom itself that is limited as a benefit provided by this or that right, but the duration, completeness and quality of its use”[207].

These types of restrictions are implemented in the normative regulation of certain relations at the level of laws and by-laws. Thus, the right of the employer to manage labor in a “pure”, unlimited form assumes that the employer himself determines all the conditions for the use of the labor of his employees, and there is no limit to the implementation of his regulatory, dispositive and disciplinary powers, except for the contractual one. However, the legislator puts it in a strict framework, defining the permitted exercise of these powers, establishing in the Labor Code of the Russian Federation a set of obligations, prohibitions, instructions and procedures necessary for compliance. In fact, the Labor Code is a system of existing restrictions on the employer's right to manage labor.

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[206] Ebzeev B.S. Man, people, state in the constitutional system of the Russian Federation. M., 2005. P. 231-232.
[207] Belomestnykh L.L. Restriction of human rights. M., 2003. P. 8-9.

Such restrictions must have a reason for their establishment, therefore their appearance is a consequence of the existence of serious grounds, which are constitutional rights and values, for the protection and implementation of which, at the level of laws and by-laws, certain exemptions from the powers of persons are provided, or corresponding duties are established. Therefore, it can be argued that the basis for the existence of restrictions on the rights of individuals at the level of laws and by-laws is constitutional norms. In this regard, let us turn to the concept of "constitutional restriction".

In the scientific literature, the view of constitutional restrictions, as a rule, comes down to considering them as narrowing the limits of the implementation of the law of the norms established either in the Constitution of the Russian Federation or in federal laws adopted on the basis of such constitutional norms. So, G.A. Maistrenko defines constitutional and legal restrictions on fundamental rights and freedoms as a certain system of standards of conduct enshrined in constitutional and legal norms, establishing a reduced (narrowed) scope of norms of constitutional rights and freedoms or suspension of their action, which prescribe specific proper lawful behavior to subjects of law within strictly established boundaries[208].

E.Sh. Rassolova gives the following concept of constitutional restriction of rights and freedoms: “... this is the limit (boundary) established by law for the realization of rights and freedoms by a person, which is expressed in prohibitions, intrusions, duties, responsibilities, the existence of which is predetermined by the need to protect constitutionally recognized values, and the purpose is to ensure the necessary balance of interests of the individual, society and the state"[209].

A.V. Malko proposes to understand as constitutional restrictions the boundaries established in the Constitution, within which subjects must act, use their rights and freedoms[210].

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[208] G.A. Maistrenko. Constitutional and legal restrictions on the fundamental rights and freedoms of man and citizen and the practice of their application by bodies and institutions of the Federal Penitentiary Service of Russia: author. dis. ... cand. legal Sciences: 12.00.02. M., 2006. P. 24.
[209] E.Sh. Rassolova. Restrictions on the rights and freedoms of man and citizen in the Russian Federation: Constitutional and legal research: author. dis. ... cand. legal Sciences: 12.00.02. M., 2009. P. 25.
[210] Malko A.V. Incentives and restrictions in law. Saratov, 1994, P. 59.

Within the framework of the issue under consideration, we propose to take a broader look at the grounds for restricting rights. The Constitution of the Russian Federation proclaims the operation of fundamental principles, fixes in the content of its articles the fundamental rights and freedoms of man and citizen, which is not their establishment (“gift”) on the part of the state, but marks the recognition of their objective existence and direct action. These rights and freedoms are the basis for a certain model of behavior and the performance of specific actions, however, the possible permitted content of this behavior is determined at the level of the law and by-laws, which are adopted in pursuance of the relevant constitutional norms. And a situation is possible when the constitutional rights of one person, during their implementation, come into contact with the constitutional rights of another person, and due to the multidirectional goals of these rights, the simultaneous full implementation of their rights by both persons becomes impossible, and priority must be given to one of them, which is the prerogative of the Constitutional Court of the Russian Federation in accordance with paragraph. 1 h. 1 Article. 3 of the Federal Constitutional Law of July 21, 1994 No. 1-FKZ "On the Constitutional Court of the Russian Federation"[211].

Thus, the implementation of one constitutional right is limited by the implementation of another constitutional right, which allows us to conclude that the basis for restricting the rights and freedoms of a person and citizen is the need to ensure the implementation of other constitutional rights. It is at this level that the “sharp corners of contact” of certain constitutional principles, rights and freedoms are exposed, from which it becomes clear that the implementation of one of them acts as a limiter to the implementation of the other. That is, legal norms adopted at a level below the constitutional one are a mechanism for the implementation of constitutional rights and become a means of restricting rights, however, the restriction itself is the implementation of the constitutional right itself in cooperation with the implementation of another constitutional right by another person.

[211] On the Constitutional Court of the Russian Federation [Electronic resource]: feder. constitutional law of the Russian Federation of July 21. 1994 N 1-FKZ // Collection. legislation Ros. Federation. - 1994. - N. 13. - Art. 1447. - (as amended on July 31, 2023). Access from the reference-legal system "ConsultantPlus".

Such an understanding of constitutional restrictions in the scientific literature has not been given much attention, since everything is more concentrated on explicit constitutional restrictions: prohibitions, exemptions and liability established at the level of the Constitution of the Russian Federation. But it is the proposed approach that requires special attention, since the Constitution of the Russian Federation does not contain many norms that fix direct, "classical" restrictions on rights and freedoms, and all controversial situations with the validity of restrictions arise precisely when the constitutional rights of different persons collide.

Therefore, when analyzing constitutional restrictions on the rights and freedoms of man and citizen, one should proceed from the following construction. Constitutional restrictions are distinguished based on the form of the act in which they are enshrined - in the Constitution of the Russian Federation, therefore, such restrictive norms are the norms contained in the Constitution of the Russian Federation. They can be divided into constitutional norms-limiters of two types:

1) Constitutional norms that directly or indirectly establish restrictions on the exercise of rights and freedoms: these are norms that provide for prohibitions, duties, or establish liability.

2) Constitutional norms proclaiming principles, rights and freedoms that may conflict with other constitutional rights and freedoms when they are implemented within the framework of specific legal relations.

Thus, for the purposes of the study, it is necessary to determine the constitutional rights and values that the employer comes into contact with when exercising the right to manage the labor of absolutely any employee[212], and by analyzing to assess the possibility and limits of limiting the implementation of some in favor of others (which will be done within the second paragraph of this chapters).

[212] Our analysis will be devoted to determining the basic set of constitutional rights and values with which the law proclaimed in Part 1 of Art. 34 of the Constitution of the Russian Federation, in absolutely every case of labor relations, regardless of their specifics, caused by the characteristics of various categories of workers. At the same time, we do not deny that in the process of labor management, in conflict with the right specified in Part 1 of Art. 34 of the Constitution of the Russian Federation, other, in addition to basic rights, rights and principles that make up the constitutional and legal status of an employee may enter.

The first group of rights is determined by the labor and legal status of the employee: these are directly the labor rights of the employee, arising from the norm of Art. 37 of the Constitution of the Russian Federation. The second group consists of rights and values that are a priori subject to protection by the state: the right to inviolability of life and health protection, the right to respect for the dignity of the individual, the protection of the family, motherhood and childhood, the right to education, the right to association, the right to participate in governance state affairs, etc. The special significance of these rights is determined by the fact that the quality of their implementation depends, firstly, on the status of an employee in areas other than labor and legal spheres of life, and secondly, on the interest of the state in the implementation by the employee of social functions that are provided by these rights. Therefore, it can be assumed that it is the protection of these values that predetermines a more severe restriction of the employer's rights.

Thus, the fundamental rights that make up the constitutional and legal status of an employee are the right to inviolability of life and health protection, the right to respect for the dignity of the employee’s personality, the equality of all before the law and the court, freedom of labor and freedom of association in trade unions[213]. It is these rights of the employee that stand out as fundamental for the following reasons. First, labor relations are subordinate in nature. Secondly, the employee, actually becoming a person, using the ability to work of which the employer carries out his activities, is included in the organizational sphere of the employer. In fact, the achievement of the results of the employer's activity depends on the intensity of the use of the employee's ability to work, the volume of tasks and the nature of the work performed. This increases the risk that the employer will want to "use" the employee, not paying attention to his physical and moral condition, put his life and health at risk for the sake of his own interests, etc. In this regard, the right to inviolability of life and health protection becomes an integral part of the constitutional status of an employee.

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[213] Hereinafter, we are talking only about employees who are citizens of the Russian Federation, since the legal regulation of labor and the management of foreign employees has certain specifics and is not included in the subject of our study.

Secondly, since the employee is a person dependent on the employer, it is likely that the latter will abuse his position of power in the process of creating conditions for the employee to stay in his organization. This may entail such consequences as the humiliation of the employee and the unfair distribution of certain benefits within the workforce. The principles of respect for the dignity of the employee's personality and the equality of all before the law become guarantees against this arbitrariness of the employer.

Thirdly, due to the fact that the employee is involved in the organizational and activity sphere of the employer for a significant part of his life, then, based on the proclaimed ideas of humanism and the principle of individual freedom, he should be able to determine the course of his life himself. Therefore, the employee must be able to stop working, to which the employer may object. This right of the worker is ensured by the freedom of labor.

Fourthly, given the subordinate and economically weak position of the employee, not one employee, but a group or labor collective as a whole, can more effectively resist an economically stronger employer, which is ensured by the operation of the constitutional principle of freedom of association in trade unions.

It should be noted that not a single restriction of the rights and freedoms of a person and a citizen can be arbitrary, and, therefore, unfounded. Also, no restriction can not have limits, which, as G.A. Gadzhiev "emasculation of the right"[214], in other words, such a restriction will go into the category of "deprivation" of the right, therefore, the Constitutional Court of the Russian Federation developed criteria (or they are also called principles), in compliance with which the restriction of rights should be carried out.

So, A.A. Kondrashev, on the basis of an analysis of the legal positions of the Constitutional Court of the Russian Federation, identified the following criteria-

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[214] Gadzhiev G.A. Constitutional principles of market economy. M., 2004. P. 75.

principles that guide the highest court in deciding the issue of proportionality of the restriction of rights and freedoms[215]:

1) The establishment of restrictions on rights and freedoms must be proportionate to the values of the rule of law state protected by the Constitution of the Russian Federation and laws[216].

2) If it is permissible to restrict a particular right in accordance with constitutionally approved goals, the state should use not excessive, but only necessary and strictly conditioned by these goals measures[217].

3) Restrictions on rights must be adequate to the socially necessary result[218].

4) Restrictions must take into account the necessary balance of interests of the individual, society and the state[219].

5) The legislator cannot carry out such regulation that restricts the rights and freedoms of a person and a citizen, which would infringe on the very essence of a particular right and would lead to the loss of its real content[220].

It is in the case of compliance with the specified criteria of the restrictions imposed by the legislator on the employer's right to manage labor, such restrictions will correspond to the goal of special protection of the relevant constitutional rights and values.

In connection with the foregoing, the task set in this chapter is to determine when the right of the employer to manage labor as a result of the exercise of freedom to engage in entrepreneurial and other economic activities not prohibited by law (that is, any socially useful activity) conflicts with labor and specially protected constitutional rights and values of an employee, and to determine the situations when and in what

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[215] Kondrashev A.A. Restrictions on constitutional rights in the Russian Federation: theoretical approaches and political and legal practice [Electronic resource] // Constitutional and municipal law. 2014. N 7. Access from the reference legal system "ConsultantPlus".

[216] See, for example, Determination of the Constitutional Court of the Russian Federation of July 14, 1998 N 86-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[217] See, for example, Resolution of the Constitutional Court of the Russian Federation of 13.06.1996 N 14-P [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[218] See, for example, the Resolution of the Constitutional Court of the Russian Federation of February 18, 2000 N 3-P [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[219] See, for example, Determination of the Constitutional Court of the Russian Federation of July 14, 1998 N 86-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[220] See, for example, the Resolution of the Constitutional Court of the Russian Federation of October 30, 2003 N 15-P [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

forms the realization of the right to labor management may be a higher priority, and when such realization should be blocked due to the inadmissibility of derogating the constitutional rights of workers.

§2. Limits of possible restrictions on the right of the employer to manage labor

Now let's proceed directly to the analysis of each of these rights-principles that determine the constitutional status of workers, separately. Let's start with the principle of inviolability of life and health protection of the worker. Article 3 of the Universal Declaration of Human Rights of 12/10/1948[221] proclaims the most important personal right of any person - the right to life. Echoing it, the International Covenant on Civil and Political Rights[222] in Part 1 of Art. 6 calls the right to life the inalienable right of every person, which he cannot be deprived of arbitrarily. The Constitution of the Russian Federation also, adhering to the natural law approach, recognizes in Part 1 of Art. 20 the universal right to life, and allows to deprive him only in connection with the application of the death penalty, established by federal law for the commission of especially serious crimes, in compliance with a certain judicial procedure, the application of which is subject to a moratorium[223]. This allows us to state that human life is the highest value among personal human rights, and it is impossible to deprive the right to life or limit it in any way under normal conditions.

Naturally, the constitutional right to health protection is closely connected with the right to life, since a person's life mainly depends on the state of health. Therefore, it is correct to consider the right to protection of human health as a derivative of the right to life. Accordingly, it cannot be limited or diminished.

[221] Universal Declaration of Human Rights [Electronic resource]: adopted by resolution 217 A (III) of the UN General Assembly of December 10. 1948 // Russian newspaper. - 1995. - August 5. - N 67. Access from the reference legal system "ConsultantPlus".
[222] International Covenant on Civil and Political Rights [Electronic resource]: Adopted by Resolution 2200 (XXI) of the UN General Assembly of December 16. 1966 // Gazette of the Supreme Soviet of the USSR. - 1976. - 28 April. N 17, art. 291. Access from the reference legal system "ConsultantPlus".
[223] See Resolution of the Constitutional Court of the Russian Federation of February 2, 1999 No. 3-P, Determination of the Constitutional Court of the Russian Federation of November 19, 2009 N 1344-O-R [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

The Constitutional Court of the Russian Federation has repeatedly pointed out the importance of respecting the inviolability of life and protecting human health. For example, in Decree No. 2-P dated February 9, 2012[224], he noted that human health is the highest inalienable good, without which many other benefits and values lose their significance, and, therefore, its preservation and strengthening play a fundamental role in the life of society and the state[225].

As for the relationship between the employer's right to manage labor and the right to the inviolability of life and health of the employee, violating these rights means depriving the employee of life or health, which is a criminal offense, and this goes beyond normal labor relations. Therefore, there is no question of violation of these rights by the employer. But the employer, as a subject of socially useful activity, is interested, firstly, in maximizing the use of the labor of employees to increase the effectiveness of their activities, and, secondly, in ensuring the safety of their property and preventing damage or loss, which may be associated with a risk to life and health of workers. For employees, on the contrary, it is more important to preserve their life and health than to increase the performance of the employer and ensure the safety of his property. In this regard, it may seem that a situation arises when the implementation of these rights comes into conflict with each other due to the diverging interests of their holders. But it's not.

The values provided by these rights are already arranged by the norms of the Constitution in order of priority and importance: Art. 2 of the Constitution of the Russian Federation proclaims a person the highest value, respectively, his life and his health, and part 2 of Art. 7 of the Constitution of the Russian Federation says that labor and health of people are protected in the Russian Federation. Therefore, the right to the inviolability of life and health protection of an employee does not conflict with the right of the employer to manage labor, but is its absolute limiter. The consequence of this is the inability of the employer to make management decisions that may endanger the life

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[224] Decree of the Constitutional Court of the Russian Federation of 09.02.2012 N 2-P [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[225] See also, for example, Resolution of the Constitutional Court of the Russian Federation of December 24, 2013 N 30-P, Rulings of the Constitutional Court of the Russian Federation of October 4, 2012 N 1833-O, of May 19, 2009 N 816-O-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

and health of employees. And if accepted, employees have the right not to comply with them without negative consequences for themselves. This conclusion does not apply to those employees whose work function is directly related to the risk to life and health: security guards, employees of the federal fire service, stuntmen, industrial climbers, etc. The point is that only those employees whose labor function does not imply the presence of such a risk can refuse to perform assignments dangerous to life and health.

The legislator proceeds from the same understanding of the priority of the rights of the employee and the employer, which is clearly seen in the example of the norms of the Labor Code of the Russian Federation. Thus, part 2 of article 4 of the Labor Code of the Russian Federation is understood as forced labor, including the performance of work in conditions of an immediate threat to the life and health of an employee due to violation of labor protection requirements, in particular, failure to provide him with collective or individual protective equipment in accordance with established standards. The norm of Article 370 of the Labor Code of the Russian Federation gives the right to trade union labor inspectors to demand employers to suspend work in cases of a direct threat to the life and health of workers. Part 1 of Article 379 of the Labor Code of the Russian Federation, as a self-defense, allows employees to refuse to perform work that directly threatens their life and health.

This was the first aspect of the manifestation of the restriction of the right to manage labor to the right to life and health, obliging the employer to refrain from actions that threaten employees. But there is a second one, which requires the employer, as the organizer of the collective of workers and their labor, to take active actions aimed at protecting the right to life and health protection from possible violations. This aspect of such a restriction of the employer's right is manifested, firstly, in the presence in the Labor Code of the Russian Federation of section X, referred to as "Labor protection", which is understood as a system for preserving the life and health of workers in the course of labor activity, which includes legal, socio-economic, organizational and technical, sanitary and hygienic, medical and preventive, rehabilitation and other measures. The norms of this section of the code impose a number of obligations on the

employer, the fulfillment of which allows us to ensure the most favorable working conditions for the health and life of workers.

It is the employer, as the subject organizing the labor process and the team of workers, that bears adverse consequences for non-compliance with labor protection requirements, since it is he who is the responsible person for conducting his socially useful activities. First of all, the employer must ensure the safety for the life and health of employees who are involved in its activities to achieve its goals and cannot influence its organization themselves. But workers are not mechanisms, but people, therefore, the use of such a specific resource as the ability to work is possible while ensuring normal conditions for life and health, and this is a matter of organizing socially useful activities, for which the employer is responsible.

The foregoing is clearly demonstrated when deciding on the subject of public liability for violation of labor protection requirements. So, the subjects of administrative responsibility for such an offense as violation of labor protection requirements are employers and persons authorized by them to exercise control over compliance with labor protection requirements. As for criminal liability for violation of labor protection standards, the Supreme Court of the Russian Federation indicated in paragraph 3 of the Decree of the Plenum of 04/23/1991 No. 1 (as amended on 03/03/2015) [226] that here, the subjects of responsibility will be identical to the situation with administrative responsibility, in if it is established that an ordinary employee is involved in a violation of labor protection and the guilt of an ordinary employee in this, he must be held accountable for the corresponding crime against a person (when it comes to consequences in the form of harm to health and death of people), in which case the employee’s actions will not constitute crimes in content representing a violation of labor protection requirements. Moreover, even if we do not touch on issues of public responsibility, then the employer’s improper performance of his duties to ensure and organize control over compliance with labor protection standards entails extremely unfavorable consequences for him: the state labor inspector has the right to send

[226] Decree of the Plenum of the Supreme Court of the Russian Federation dated April 23, 1991 N 1 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

demands to the court for the liquidation of organizations or the termination of activities its structural divisions due to violation of labor protection requirements (clause 7, part 1, article 357 of the Labor Code of the Russian Federation). In this regard, the employer should be able to influence employees in addition to removing them from work, therefore, the norm of paragraphs. "e" p. 6 h. 1 art. 81 of the Labor Code of the Russian Federation recognizes a violation by an employee of labor protection requirements, which entailed grave consequences as a gross violation and gives the employer the right to terminate the employment contract with such an employee on its own initiative.

Also, the employer, as the organizer of the labor process, is obliged to maintain general safety for the life and health of workers in his organization. So, the norm of Art. 76 of the Labor Code of the Russian Federation obliges the employer to remove from work an employee who appeared at work in a state of alcoholic, toxic or drug intoxication, did not undergo training and knowledge testing in the field of labor protection, and a mandatory medical examination. Such an employee can harm both the activities and property of the employer, as well as the life and health of other employees. And when the labor function of an employee involves interaction with dangerous units, then the life and health of completely unauthorized persons can be endangered, which is a priority compared to the interests of the employer associated with the results of his activities. This is indirectly confirmed by the fact that Art. 76 of the Labor Code of the Russian Federation establishes precisely the obligation to remove such employees from work, which is the clearest example of forcing an employer to make a management decision. These conclusions are confirmed by the practice of the Constitutional Court of the Russian Federation. So, in the Ruling of November 17, 2009 N 1375-O-O[227], he indicated that the suspension from work in the cases indicated above is one of the guarantees of the right to work in conditions that meet the requirements of safety and hygiene, is aimed at ensuring labor protection as the employee himself , as well as other persons[228].

[227] Determination of the Constitutional Court of the Russian Federation of November 17, 2009 N 1375-O-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".
[228] See also Determination of the Constitutional Court of the Russian Federation of May 29, 2007 N 357-O-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

The foregoing allows us to conclude that the constitutional principle of the inviolability of life and protection of human health restricts the rights of the employer not only by the impossibility of making managerial decisions that could damage the health or life of the employee, but also carries with it a number of serious obligations imposed on the employer as a subject that organizes socially useful activities.

Now let's move on to the principle of respect for the honor and dignity of the individual. This principle permeates all spheres of public relations: Part 1 of Art. 21 of the Constitution of the Russian Federation proclaimed that the dignity of the individual is protected by the state, and nothing can be the basis for its derogation[229]. As for labor relations, the European Social Charter of 1996[230] guarantees in Art. 26 the right of all employees to protect their dignity during work. Echoing it, the Labor Code of the Russian Federation in the second article among the principles of legal regulation of labor relations lists such as ensuring the right of workers to protect their dignity during the period of employment.

At the same time, there is no normative concept of honor and dignity of the individual. Usually in the doctrine, honor is understood as a social assessment of the qualities and abilities of a particular person, dignity - self-assessment of one's qualities and abilities, reputation (Latin reputatio - reflection, reflection) - an opinion formed about a person based on an assessment of his socially significant qualities, including professional ones. (in the latter case, it is customary to talk about business reputation)[231].

In this regard, the violation of the principle of dignity of the individual will be the managerial actions of the employer, aimed, firstly, at belittling the employee's own value and significance, as an accomplished member of society, a full-fledged employee who is a member of the labor collective, and, secondly, aimed at creating such a

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[229] It is also guaranteed at the international level: the preamble to the Universal Declaration of Human Rights of 1948 states: "...recognition of the inherent dignity and equal and inalienable rights of all members of the human family is the basis of freedom, justice ..."; The International Covenant on Civil and Political Rights of 1966 in Part 1 of Article 17 also contains a provision prohibiting unlawful encroachments on the honor and reputation of every person.

[230] European Social Charter [Electronic resource]: adopted in Strasbourg on May 3. 1996 // Bulletin of International Treaties. - 2010. Apr. With. 17 - 67. Access from the reference legal system "ConsultantPlus".

[231] Commentary on the Civil Code of the Russian Federation. Part one: Educational and practical commentary (item-by-article) [Electronic resource] / ed. A.P. Sergeyev. M., 2010. Access from the reference legal system "ConsultantPlus".

deformed image of the employee in the eyes of any other persons. Since the employee is a person dependent on the employer, violations of the principle of personal dignity should include unlawful actions of the employer related to the exercise of the right to manage labor, with the aim of humiliating the employee, emphasizing his helplessness or creating an image of the employee's insignificance in their own eyes or in the eyes of other persons. Here it is necessary to make an important reservation: not any actions that cause moral suffering to an employee can be regarded as violating the principle of respect for the honor and dignity of the employee on the part of the employer. Obviously, the lawful bringing of an employee to disciplinary responsibility, a statement of the fact that the employee does not have the necessary qualifications, etc. lead to a decrease in the self-esteem of the individual and a change in its assessment by other people, but there is nothing illegal in this. Therefore, the fundamental feature of such actions of the employer is their specific focus on the humiliation of the honor and dignity of the employee in order to cause moral suffering to the employee.

The reasons for such unlawful behavior of the employer may be different, and they have no legal significance: personal dislike for the employee, the “inconvenience” of the employee, etc. As particular examples of the actions of the employer that degrade the honor and dignity of the employee, the following stand out: exposing the employee to isolation (a ban on communication with him by other employees, a workplace deliberately equipped remotely from other employees); changing work tasks precisely for the purpose of punishment, that is, the employer does this solely to harm the employee, knowing the latter’s subsequent reaction to his actions (the employee is given tasks that are much lower than his capabilities or qualifications, or difficult to complete due to lack of qualifications, or meaningless tasks, or the employee is not given any tasks); damage to the authority of the employee (the employer incorrectly or disparagingly assesses the work performed by the employee, the employer constantly criticizes the tasks performed by the employee, the employer limits the employee's ability to speak out)[232].

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[232] Konovalova V. Mobbing as mobbing: sources and consequences of psychological terror // Kadrovik. Personnel management. 2011. N 3. P. 111.

A number of researchers[233] reasonably believe that the right to respect for the dignity of the person also includes the right to the inviolability of the person, and this is absolutely true. Accordingly, the scientific literature provides examples of the violation of the principle of the dignity of the employee's personality through infringement on the principle of personal inviolability, and identifies a number of areas, any intrusion into which will be an attack on the honor and dignity of the employee, these are: 1) the inviolability of the means of personal communication of the employee, if at the official address , official means of communication of the employee receives information of a private nature; 2) inviolability of the employee's private documentation; 3) inviolability of the external appearance of the employee; 4) prohibition of the use of means of audiovisual control of the behavior of an employee at the workplace; 5) the physical integrity of the employee (searches, examinations, etc.); 6) prohibition of the use of means of special control over the reliability of information provided by the employee (for example, the use of a "lie detector")[234].

Before giving an analysis of this thesis, it is necessary to make an important remark. At the beginning of this chapter, the task was set to find out where and when the right of the employer to manage labor conflicts with the basic constitutional rights of workers, and when certain forms of its implementation go beyond acceptable limits and lead to a violation of the constitutional rights of workers. The first part of the analysis of the right to respect for the dignity of the individual was a demonstration of that side of it where there is no conflict, and it is impossible to limit the right to dignity in the interests of labor management, and all such managerial actions of the employer are a clear violation of this right. But in certain cases, when the actions of the employer are aimed at the inviolability of the person, the conflicting sides of the constitutional rights of the employer and employees are just exposed, therefore, one cannot agree with A.M. and M.V. Lushnikov, who attribute all the previously listed measures that infringe on the inviolability of the individual to violations of the right to respect for the dignity

[233] See, for example, Bezrodnova K.V. Honor and dignity as theoretical and legal concepts (historical and legal research): dis. ... cand. legal Sciences: 12.00.01. Chelyabinsk, 2014. P. 118.

[234] Lushnikov A.M., Lushnikova M.V. The rights of an employee to protect labor honor and dignity and ensure equal opportunities for promotion at work (theoretical and applied analysis of article 2 of the Labor Code of the Russian Federation) // Labor Law. 2009. No. 2. P. 108.

of a person. Such a conflict in the interaction of the right to manage labor and the right to the inviolability of the person is possible when understanding labor duties not only as duties related to direct actions to perform the labor function, but with a broader view of this issue.

Previously, all the duties of employees were divided into functional and organizational. It was pointed out that organizational responsibilities can be expressed in certain personal restrictions and "obligations" of the employee when he is in the organizational and activity sphere of the employer. The employer is interested in the effectiveness of their activities. Therefore, as mentioned earlier, the managerial actions taken by him can be aimed either at improving the efficiency of activities, or at protecting the property that ensures this activity, and, due to the specifics of social management, cannot but affect the personal aspects of employees. This is what brings to the conflict of the right to respect for dignity and the right to manage labor.

An indisputable violation of this principle will be the actions of the employer aimed at violating the inviolability of the employee’s private documentation (it is not related to the employee’s performance of labor duties in the organizational and activity sphere of the employer), the use of special means against the employee, for example, a polygraph, which encroach on the physical integrity of the employee (this will be a direct violation of part 1 of article 22 of the Constitution of the Russian Federation), as well as a violation of his physical integrity in the form of searches and searches (which also directly violates part 1 of article 22 of the Constitution of the Russian Federation). Even in the case when the employer knows for sure that the employee has stolen his property and is trying to remove it from the territory of the employer, the latter cannot resort to a personal search and search. It seems that in this case, the employer should call law enforcement officers, and before they arrive, he can restrict the employee's movement by blocking the latter on his territory, which will not be illegal imprisonment, since these actions are an emergency.

It should be noted that there will be a violation of the right to respect for the dignity of the individual here if these measures are coercive for the employee and are mandatory for execution or mandatory for consent under the threat of negative

consequences in the form of disciplinary liability in case of refusal. If any of these actions are carried out with the prior consent of the employee, and are not mandatory, then the right to respect for the dignity of the individual is not violated.

However, it is incorrect to refer to the violation of the principle of respect for the honor and dignity of the individual, firstly, the violation of the inviolability of means of personal communication, in the case of using work e-mail, work means of communication, etc. for personal interests and purposes contrary to the objectives of the employer, as well as for illegal purposes, and, secondly, the use of audiovisual control over employees, for the following reasons.

With regard to the inviolability of the means of personal communication, two aspects must be borne in mind here. The first aspect is that employees use the property of the employer, transferred to them for use, in realizing their ability to work. It was transferred to them for use for specific purposes - to perform a labor function, through which socially useful activities of the employer are carried out, and only the employer, as the owner of such property, can determine the procedure for its use, and, accordingly, control compliance with such an order. The second aspect is that the employer has the right to protect information that is related to his activities, including by checking the relevant devices for sent (for example, with confidential information) or received (for example, infected with special virus programs) messages, or checking the content of calls (installing certain applications allows you to provide this). The foregoing allows us to conclude that the use by an employee of the technical means entrusted to him may either simply violate the procedure for use established by their owner, or may pose a serious threat to the rights and legitimate interests of the employer, and is a disciplinary offense on the part of the employee, which can be identified through control, aimed at preventing misconduct. In this regard, “violating the inviolability of means of communication”, the employer acts in order to implement and protect the rights provided for in Part 1 of Art. 34 and part 2 of Art. 35 of the Constitution of the Russian Federation, which cannot be a violation of the principle of respect for the honor and dignity of the individual.

In this case, the norm of Part 2 of Art. 23 of the Constitution of the Russian Federation, which allows limiting the secrecy of correspondence and negotiations only on the basis of a court decision. Part 1 Art. 23 of the Constitution of the Russian Federation speaks of the right to privacy, as well as personal and family secrets. In this regard, the norms of both parts of Art. 23 of the Constitution of the Russian Federation must be considered in the system: a court decision is a mandatory basis for limiting the secrecy of negotiations and messages that contain information about personal, family life, etc. The employer's control over the means of communication provided to the employee, including the content of negotiations and messages, is not intended to obtain facts about the employee's private life. Therefore, in these cases, the restriction provided for by Part 2 of Art. 23 of the Constitution of the Russian Federation, does not apply.

But here another question arises: will it be lawful to familiarize yourself with the content of a personal message or fix it in the documents of the employer on bringing the employee to disciplinary responsibility? There is no violation of employee rights here. How can an employer control the correct use of e-mail or entrusted electronic means of communication by an employee? Only by actually looking at the information that they receive and store in order to establish the content of this information. And to establish the fact that any message does not relate to work, but to the personal life of an employee, is possible only by reading this message, since its nature is not always clear from the name / title of the addressee or the subject of the message. As for fixing the message in the documents of the employer about bringing the employee to disciplinary liability, then such documents in the future, if the employee resorts to judicial appeal, will constitute the evidence base of the employer, which may affect the outcome of the trial, which has extremely important consequences. Therefore, the employer should also be able to record information indicating the severity of the violation of labor discipline in documents drawing up the prosecution of the employee. Naturally, a violation of the employee's rights will be a situation when the employer discloses to third parties in written or oral form the personal information that the employee received through the official means of communication. The violation here will be precisely disclosure among persons who are not related to the procedure for bringing to disciplinary responsibility

and not within the framework of the procedure for such bringing, for example, among other employees for public censure.

However, it will not be a violation of the employee's rights that the employer place information about a personal message in the materials of disciplinary proceedings and then familiarize third parties with the contents of this message as part of the trial, when the employee appeals against the fact of bringing him to disciplinary responsibility. In this case, the content of the personal message becomes known to third parties as part of the evidentiary substantiation by the employer of the decision taken in the framework of disciplinary proceedings and is a direct fulfillment of the obligations provided for by the norms of parts 1 and 3 of Art. 56 of the Civil Procedure Code of the Russian Federation[235], which oblige the party to the process to prove the circumstances and disclose the evidence to which it refers as the basis for its claims and objections. Otherwise, it would be impossible for the employer to provide evidence to substantiate his position in this category of cases.

However, when organizing audiovisual monitoring of employees, in order to comply with the legality of this procedure, the employer must comply with two mandatory requirements. The first requirement: workers must be notified that the premises in which they are located are video or audio recorded. This requirement stems from Art. 6 of the Federal Law of August 12, 1995 No. 144-FZ "On operational-search activities"[236], which prohibits the covert use of video and audio recording tools. The second requirement is that these technical means should not be installed, and the recording should not be kept in places that are functionally intended for processes during which workers appear in the nude and semi-naked form (changing rooms, showers, toilets), since it can be said that in In this case, the physical inviolability of the worker will be indirectly violated: personal physiology hidden from third parties is revealed and becomes available consciously. It differs from this and is permissible to

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[235] Civil Procedure Code of the Russian Federation [Electronic resource]: feder. law of 14 Nov. 2002 N 138-FZ // Collection. legislation Ros. Federation. 2002. N 46. Art. 4532. (as amended on June 24, 2023). Access from the reference-legal system "ConsultantPlus".

[236] On the operational-search activity [Electronic resource]: feder. law of 12 Aug. 1995 N 144-FZ // Collection. legislation Ros. Federation. - 1995. - N 33. - Art. 3349. - (as amended on December 29, 2022). Access from the reference-legal system "ConsultantPlus".

carry out audio and video recording in rooms intended for smoking, heating and eating. The difference in this case is that these premises are not intended for performing actions that in themselves are not intimate and initially hidden by the employee from third parties.

It seems that it would be unlawful for the employer to limit the number of methods used to monitor employees. For example, if the conversations of call center employees are recorded, then nothing prevents the employer from installing video surveillance in addition to this, if he believes that this will somehow protect his rights or ensure that employees fulfill their duties. The question of the number of applicable measures is a matter of expediency, not legal possibility, and therefore should not be the basis for restricting the right of the employer.

Now, with regard to the inviolability of the external appearance of the employee. Since the management of the socially beneficial activities of the employer occurs through the use of the labor of employees, one of the possible directions in improving the efficiency of the employer's activities is the impact on the consciousness of employees: awakening in them a sense of duty, attitude towards their work (even if it is insignificant within the framework of the activities of the entire organization) , as a very important activity, contributing to the overall cohesion of the team and creating a certain atmosphere within the employer's organization, discipline, etc. The presence of employees in the economic sphere of the employer implies interpersonal relationships within the corporation, which ensures the development of this corporation, which is headed by the employer. Based on the meaning of Part 1 of Art. 34 of the Constitution of the Russian Federation, the employer has the right to make decisions aimed at the development of his corporation. The appearance of a person in certain clothes has always had a serious emotional impact, both on the wearer of the corresponding clothes and on others. Therefore, if the employer considers it expedient for the development of interpersonal relations within the team, which will be expressed in an increase in the indicators of its socially useful activity, one cannot deprive him of the right to regulate issues of the appearance of employees.

The regulation by the employer of the issues of the appearance of employees can be divided into two areas. Firstly, clothing, established as mandatory, can directly ensure the performance of the employee's labor function or the safety of the life and health of the employee during its performance. We are talking, for example, about special overalls for workers that allow you to conveniently carry tools, protective clothing, this type can also include military uniforms and uniforms of other law enforcement agencies, since direct association by other persons of such employees with the relevant law enforcement agencies, including their job function. Let's call this type of clothing "workwear". The obligation to comply with the requirements for overalls established by the employer refers to functional duties.

Secondly, the established requirements for clothing may not be related to the direct performance of the employee's labor function and are not caused by labor protection requirements, but are an establishment due to the employer's decision to develop interpersonal relations in the team, establish a certain atmosphere, etc. Let's call such requirements for clothes "dress code". The obligation to comply with the dress code established by the employer is an organizational responsibility.

The main difference between workwear and a dress-code is the basis for establishing: if the main reason for the introduction of workwear is an objective necessity in terms of the employee's performance of a labor function, then the reason for establishing a dress-code is the appropriate decision of the employer, solely based on the latter's understanding of the issue of the impact of the clothing being introduced on the minds of employees and the effectiveness of the implementation of socially useful activities. It is important to note that the issue of the advisability of introducing a particular dress-code is decided only by the employer, and no one else can evaluate the appropriateness of the decision made. It is possible that the established dress-code will be stupid, and in fact will not lead to the goals desired by the employer, and may be assessed by the majority as inappropriate, but this cannot be a basis for recognizing the establishment of such a dress-code as unlawful. In the situation with overalls, the question of expediency does not arise, since the issue of introducing overalls is based on

an objective premise, which cannot always be found in the establishment of a dress-code. In this regard, this issue leads to disagreements and disputes.

Judicial practice recognizes the possibility for the employer to regulate issues of appearance and establish a dress-code[237]. Separately, we note the Decision of the Industrial District Court of Smolensk No. 2-2473 / 2017 dated 08.24.2017[238], due to the fact that, while examining the case of bringing an English teacher to disciplinary responsibility for refusing to wear a white medical coat during lectures, correctly noted that although the employer’s ability to establish requirements for employees’ clothing is not regulated by law, the employer had the right to establish such a duty in the local code of ethics, and this is not discrimination against the employee, since this rule applies to all college teachers. However, at the end, the court makes a completely wrong conclusion that although there is a local norm, the employee has the right not to comply with it, since in this case the white coat does not affect the employee's performance of his labor function. That is, in the end, the court began to evaluate the appropriateness of the decision of the employer.

When solving both the issue of overalls and the issue of the dress-code, it is important to note two essential conditions that make it possible for the employer to establish a mandatory form for employees. Firstly, since the obligation to wear a certain form of clothing is the responsibility of employees, and it is aimed at ensuring the most effective implementation of the socially beneficial activities of the employer, therefore, the provided form of clothing is no different from other property that is used by employees in the performance of labor functions. In this regard, it is the employer who must provide the appropriate clothing to the employee or provide him with funds so that the latter can purchase this clothing himself. Otherwise, the employee will not be required to comply with the employer's existing dress-code or wear the work clothes

[237] See, for example, Ruling of the Seventh Court of Cassation of General Jurisdiction dated December 1, 2020 in case N 88-18312/2020, Appeal ruling of the Moscow City Court dated July 10, 2018 in case N 33-30134/2018, Decision of the Raychikhinsky City Court of the Amur Region N 2 -288/2017 of May 24, 2017, Decision of the Leshukonsky District Court of the Arkhangelsk Region N 2-131/2017 of June 1, 2017, Decision of the Sormovsky District Court of Nizhny Novgorod N 2-3788/2011 of December 28, 2011 // Judicial and normative acts of the Russian Federation. URL: https://sudact.ru (date of access: 04/02/2018).

[238] Decision of the Industrial District Court of Smolensk N 2-2473 / 2017 dated August 24, 2017 // Judicial and regulatory acts of the Russian Federation. URL: https://sudact.ru (date of access: 04/02/2018).

introduced, even if the corresponding obligation is established in the local regulatory act. If overalls ensure the safety of the employee in the performance of the labor function, then its absence allows the employee to refuse to perform his duties, which is a manifestation of the principle of protecting life and health.

Secondly, although the employer has the right to regulate the issues of clothing of his employees, and he himself determines the appropriateness of such regulation, but when choosing a uniform for employees, he must not violate the right of employees to respect their dignity. The established form of clothing should not aim to humiliate the employee, deliberately make his stay with the employer uncomfortable, etc. But to prove to the court the fact that the uniform is designed to humiliate his dignity, the employee will have to in each case. We do not offer any criteria for determining when the introduction of a dress-code or overalls is a violation of the right to dignity of the individual, since the purpose of the study is to establish the legal nature of the right to manage labor and analyze the consequences arising from this, and this cannot be done without reference to specific situation. For example, the employer introduced the obligation to wear strict business suits and provided some of the employees with beautiful, modern suits, and the employer gave out-of-size, poor quality, torn, with patches, stains that cannot be removed, and etc., wearing which employees look ridiculous and ridiculous, and in this way they appear before their colleagues and contractors of the employer, which gives the latter a certain impression of them.

Thus, the obligation to comply with the requirements established for clothing will be legal when the employer financially provided the employee with appropriate clothing or the opportunity to purchase it, and also when the purpose of introducing such clothing is not to insult or humiliate employees.

As for the ways to protect the employee in such cases, here, as a rule, they call the employee’s right to compensation for moral harm caused by any illegal actions or inactions of the employer (part 1 of article 237 of the Labor Code of the Russian Federation), and by virtue of the principle of ensuring the protection of the right employee to the dignity of the person, any actions that detract from him should be considered a priori as unlawful. Also, the protection of the dignity of the employee is

ensured by compensation for material damage. Such damage is compensated, in particular, if the reason for dismissal is incorrectly formulated in the work book, insulting the dignity of the employee[239]. The foregoing demonstrates that the Labor Code does not provide for any special powers of an employee aimed at protecting honor and dignity. In the literature, this has been criticized more than once, called a gap in the legislation, it was indicated that the employee does not have the arsenal of means to protect honor and dignity, which is provided for by the Civil Code of the Russian Federation, including cannot require the employer to prohibit such actions[240]. One cannot agree with this.

The main mistake of the authors who adhere to this position is that they misunderstand the nature of legal relations for the protection of the honor and dignity of workers, singling them out as a separate category of relations for the protection of labor and legal honor and dignity, and therefore look for ways to protect only in industry regulations. In their opinion, there are civil-legal honor and dignity, there are labor-legal ones, and so on. This is not true. The fact that the norms regulating relations for the protection of honor and dignity are in Ch. 8 of the Civil Code of the Russian Federation “Intangible Benefits and Their Protection”, does not make the nature of these relations civil law, just as it would not make it labor law if the relevant articles were in the Labor Code. Also at M.I. Baru traces the idea that the principle of respect for honor and dignity is a supra-branch principle that is present within the framework of every legal relationship, regardless of industry affiliation, and was singled out by M.I. Baru separately labor honor only because he associated with this category the emergence of a number of subjective rights for an employee: the right to promotion and the right to promotion[241]. As for modern researchers, the position that the principle of respect for

[239] Commentary on the Labor Code of the Russian Federation (item-by-article) [Electronic resource] / ed. Yu.P. Orlovsky. 7th edition, corrected, enlarged and revised. M., CONTRACT, KNORUS. 2015. Access from the reference legal system "ConsultantPlus".

[240] Kiselev A. Preventing danger [Electronic resource]. EZH-Yurist, 2016. N 31. Access from the reference legal system "ConsultantPlus"; Petrov A.Ya. Controversial aspects of the principles of Russian labor law // Labor Law. 2008. N 11. P. 65-72; Zherukova A.B. Ensuring the right of workers to protect their dignity during the period of employment: author. dis. ... cand. legal Sciences: 12.00.05. L., 1991. P. 13.

[241] See, Baru M.I. Protection of labor honor according to Soviet legislation. M., 1966. P. 102.

the dignity of the individual is general legal and pervades all industries is also reflected in the scientific literature[242].

It should be agreed that the principle of respect for the dignity of the individual is equally valid in any legal relationship, regardless of their sectoral affiliation, since the dignity of the individual cannot be diminished by anyone and nowhere. The allocation of the categories of "honor and dignity" with reference to specific industries performs only a technical function and refers to the "place" where this principle should be observed, or in which relations the honor and dignity were diminished, but nothing more. In any case, meaningfully, these will be relations for the protection of honor and dignity, so there is no reason to separate the manifestation of this principle by industry. In fact, these are protective legal relations that can be “applied” to any legal relationship. The legislator provides a mechanism for the protection of honor and dignity, technically placing it in the chapter of the Civil Code. It doesn't matter in what sphere of public relations honor and dignity were belittled, a person has the right to choose any suitable method of protection from the arsenal of Ch. 8 of the Civil Code of the Russian Federation, if they are suitable in a particular situation, labor relations are no exception. In this case, it is not the norms of civil law that are applied, but the norms found in civil legislation, to legal relations that are not labor relations, but are independent: legal relations regarding the protection of the honor and dignity of the individual. In this regard, there should be no fears and doubts about the application of the norms of the Civil Code of the Russian Federation in such cases. It seems that this conclusion may cause criticism from some representatives of the labor law doctrine in the form of an accusation of encroaching on the independence of labor law as a branch. But as a response to such criticism and a possible way out of the situation for law enforcers, the justification for using the relevant norms of the Civil Code in their decisions will be the analogy of the law. However, in our opinion, there are no obstacles to the direct application of these norms in the relevant labor relations.

[242] See, for example, Cherkasova T.V. Civil legal protection of honor, dignity and business reputation as a form of social and legal protection of citizens: based on the materials of the judicial practice of the North Caucasus region: author. dis. ... cand. legal Sciences: 12.00.03. L., 1991. P. 13.; Paladiev M.A. Constitutional human right to honor and dignity: foundations, content, protection: author. dis. ... cand. legal Sciences: 12.00.02. Samara, 2006. P. 5.

Paragraph 2 of Art. 150 of the Civil Code of the Russian Federation says that intangible benefits are protected by the most appropriate, based on the nature of the violation, in the ways provided for in Art. 12 of the Civil Code of the Russian Federation. Of these, given the specifics of labor relations, the following are suitable: recognition of the right; suppression of actions that violate the right or create a threat of its violation; self-defense rights; indemnification; compensation for moral damage. It is necessary to take into account paragraph 3 of Art. 152 of the Civil Code of the Russian Federation that if defamatory information is contained in the document of the organization, then such document is subject to withdrawal or replacement (thus, the order or instruction of the employer can be changed or canceled), the rules on the refutation of defamatory information in the media are also applicable. But of greatest interest is the suppression of actions that violate the law, and self-defense of the right, since they actually give the employee the opportunity not to comply with the decisions of the employer, which detract from the honor and dignity of the employee, and this will not be a failure to fulfill labor duties on the part of the latter, and, therefore, will not grounds for bringing the employee to disciplinary liability. Let us illustrate this with the examples found in the case law, which is not so extensive on this issue.

Thus, in the Cassation ruling of the Rostov Regional Court dated November 21, 2011 in case No. 33-15566/2011[243], the court regarded the difficult birth of the employee’s wife, the pathology of the newborn child, the subsequent death of the newborn, the moral and physical need for the employee to provide support to his family members as good reasons Absence from work if there is a refusal to grant leave without pay for the employee to fulfill family responsibilities in an extreme situation for the latter. The refusal to grant leave in such a situation, especially of which the employer was notified, was recognized as a violation of the employee's right to protect his human dignity. In the case, based on the results of the consideration of which the Ruling of the Tomsk Regional Court of December 30, 2011 in case № 33-4101/2011[244] was issued, an

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[243] Cassation ruling of the Rostov Regional Court dated November 21, 2011 in case N 33-15566/2011 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[244] Determination of the Tomsk Regional Court dated December 30, 2011 in case N 33-4101/2011 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

ambulance doctor considered it degrading to his honor and dignity a memo crossed out by the head doctor with a black felt-tip pen, with corrections made by a felt-tip pen them text.

At the top, right in the text, it was written: “Once again, clearly write an explanatory note: why did you independently hospitalize the patient without calling the dezh. doctor?" A little lower, “gggo” was written with the same felt-tip pen, which the worker regarded as a written designation for laughter. The court agreed with the employee and partially satisfied the claims for compensation for non-pecuniary damage. In both decisions, the courts referred to Part 19 of Art. 2 of the Labor Code of the Russian Federation (the principle of ensuring the right of employees to protect their dignity) and Art. 237 of the Labor Code of the Russian Federation (the right to compensation for moral damage caused by the unlawful actions of the employer). This confirms the possibility of protecting the honor and dignity of the employee on the basis of Art. 2 of the Labor Code of the Russian Federation. But of the methods of protection, the Labor Code of the Russian Federation contains only the possibility of compensation for moral harm, and the Civil Code contains a number of other remedies, and, based on the specific situation, the employee can choose how to protect the violated right. This is indirectly confirmed in the first decision: the employee’s absence from work in the current difficult life situation in the conditions of the employer’s refusal to provide unpaid leave was not regarded by the court as a basis for bringing to disciplinary liability, which means that this can be regarded as self-defense of the right to protect one’s human dignity of an employee (although there are no references to the Civil Code of the Russian Federation in the decisions).

In this regard, if the nature of the violations involves the use of the methods of protection provided for by the Civil Code, then the employee can use them without any restrictions, which is confirmed by judicial practice[245]. But, as a rule, the nature of violations of the principle of respect for the honor and dignity of an employee in the

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[245] See, for example, the Appellate ruling of the Moscow City Court dated March 10, 2017 in case N 33-8040/2017, the Appeal ruling of the Murmansk Regional Court dated June 10, 2014 in case N 33-1611, the Cassation ruling of the Tula Regional Court dated August 18, 2011 in case N 33-2793 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

framework of labor relations is such that the methods provided for by the Labor Code are sufficient to protect and restore the violated right of an employee: recognition of the actions and decisions of the employer as illegal, refusal to fulfill the illegal requirements of the employer as part of self-defense rights and compensation for non-pecuniary damage[246].

Despite the fact that the employee has the right to use the methods provided for by the norms of the Civil Code of the Russian Federation to protect the honor and dignity, in order to avoid problems and disputes related to the fears of the courts and regulatory authorities to apply these norms to the relationship between the employee and the employer, as well as the fact that that the employer is the power side of labor relations, which, as practice shows, gives a certain sense of impunity and self-will, and makes the employee more vulnerable, one should agree with the need for separate provisions in the Labor Code of the Russian Federation to protect the honor and dignity of the employee.

In this connection, we propose to include in the text of the Labor Code of the Russian Federation the norm of the following content:

“Article 352.1. Ways to protect the personal non-property rights of an employee.

When carrying out labor activities, the employee is recognized and protected by all intangible benefits belonging to the employee from birth or by virtue of the law, including honor, dignity and business reputation.

To protect personal non-property rights, an employee has the right to use the following methods:

applying to the court for recognition of the right;

applying to the court or body exercising control and supervision over the observance of the labor rights of the employee, with the requirement to suppress or prohibit actions that violate the personal non-property rights of the employee, or create a threat of their violation;

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[246] See, for example, the Appeal Ruling of the Moscow City Court dated March 10, 2017 in case N 33-8040/2017, the Appeal Ruling of the Khabarovsk Regional Court dated July 13, 2017 in case N 33-4847/2017, the Ruling of the Moscow City Court dated December 20, 2010 in the case N 33-39781 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

applying to the court or body exercising control and supervision over the observance of the labor rights of the employee, with the requirement to cancel the local regulatory or non-normative act of the employer that violates the personal non-property rights of the employee, including containing information that humiliates the honor and dignity of the employee or discredits his business reputation;

self-defense of the right, including the independent implementation by the employee of actions aimed at suppressing the actions of the employer that violate the personal non-property rights of the employee, or create a threat of their violation;

indemnification;

compensation for moral damage.

In order to protect personal non-property rights, an employee has the right to use the methods of protection provided for by this Code, as well as other federal laws, if the essence of the violated intangible benefit, non-property right or the actions of the employer aimed at violating them allow this.”.

Thus, having considered the ratio of the employer's right to manage labor and the right of employees to respect their honor and dignity, we can conclude that this right of employees is an absolute limiter of the employer's right, and any encroachment on it will be a violation on the part of the employer, with the exception of such manifestations of the right to dignity, as the inviolability of the person. Here, the right to dignity may come into conflict with the right to labor management, in situations where the managerial powers of the employer begin to affect the personal non-property sphere of the employee. But such an invasion by the employer is legitimate, since it is a consequence of the implementation of Part 1 of Art. 34 of the Constitution of the Russian Federation.

We now turn to the consideration of the principle of equality of all before the law and the courts. Part 1 of Article 19 of the Constitution of the Russian Federation reads: “All are equal before the law and the courts”, repeating in general terms the provisions of Art. 23 of the Declaration of Human Rights of December 10, 1948, which says: “Equality of rights for men and women, equality of all from birth and regardless of race, equality before the law and the courts, equal right to the protection of the law, access to

public service in their country, equal pay for work of equal value…”. This both international and constitutional principle has sectoral refraction in labor and legal relations. Article 2 of the Labor Code of the Russian Federation, among others, lists such principles as equality of rights and opportunities for employees and ensuring equal opportunities for employees without any discrimination for promotion at work, taking into account labor productivity, qualifications and work experience in the specialty, and article 3 is separately devoted to one of the basic international principles of labor law[247] - the prohibition of discrimination against workers on any grounds. Thus, speaking about the correlation of the principle of equality of all before the law and the court with the right of the employer to manage labor, the problem of discrimination in social and labor relations arises.

In the scientific literature, a lot has been said about discrimination in social and labor relations, and, as a rule, the problem of discrimination is raised, firstly, on the part of the legislator in situations when it comes to legal norms that unreasonably restrict the rights of a particular category of persons, second, on the part of the law enforcer (public authorities and courts), and, thirdly, on the part of the employer. Based on the subject of the study, the third case of discrimination will be analyzed.

Discrimination is a form of violation of the principle of equality, the content of which in labor relations was correctly formulated by S.G. Sagandykov. The content of this principle includes: firstly, equal opportunities for obtaining a job, secondly, equal working conditions for all employees; thirdly, equal opportunities for advancement at work; fourthly, the legal equality of men and women, fifthly, taking into account the state of health, skill level and other subjective and objective factors, while observing the principle of equality[248].

From part 2 of article 3 of the Labor Code of the Russian Federation, a legal definition of discrimination can be derived, which means a restriction in labor rights or the receipt of any advantages depending on circumstances not related to the business

[247] Clause “d” part 2 of the Declaration of the International Labor Organization “On Fundamental Principles and Rights at Work” dated June 18, 1998.

[248] Sagandykov M.S. Constitutional principles of regulation of labor and directly related relations in the Russian Federation: dis. ... cand. legal Sciences: 12.00.02. Chelyabinsk, 2004. P. 116.

qualities of the employee. According to K.D. Krylov, the object of discrimination is equality, which appears in three of its aspects: equality of rights, equality of opportunity and equality of treatment[249]. This once again confirms the interconnection between the principles of the prohibition of discrimination and the equality of all before the law and the courts.

V.M. Konshakov, based on the theses of K.D. Krylov and S.G. Sagandykov, singled out the “triple possible content” of discriminatory actions:

- actions of the legislator or the employer to establish, limit the rights of employees, the imposition of additional duties (violation of equality);

- actions, acts that deprive some of the opportunity and provide additional opportunities for others to exercise certain rights or avoid fulfilling an obligation or incurring responsibility (violation of equality of opportunity);

- actual actions that do not establish, change or terminate labor rights and obligations, and are not prerequisites for such rights and obligations, with the exception of those related to discrimination (violation of equality of treatment) [250].

In the plane of labor management, actions and acts included in the first and second groups of manifestations of discrimination will be expressed in the adoption by the employer of local regulations that discriminate against a particular group of employees, or the commission of administrative actions that will lead to a violation of the existing rights of the employee, reducing the range of established rights and the establishment of additional obligations in comparison with all other employees, which demonstrates their constitutive feature - illegality, violation of the rights of employees. Such local acts of the employer from the moment they are adopted, and administrative actions from the moment they are committed, will be considered illegal, as they violate the labor rights of employees, which gives the latter an effective opportunity to appeal them to the supervisory authorities and the court.

[249] Krylov K.D. The principle of prohibition of discrimination, its legal protection and problems of differentiation in labor regulation // New Labor Code of the Russian Federation and problems of its application (Materials of the All-Russian Scientific and Practical Conference) / Ed. ed. K.N. Gusov. M, 2004. P. 47-48.
[250] Konshakov V.M. Problems of constitutionalization of legal regulation of social and labor relations: dis. ... cand. legal Sciences: 12.00.05. SPb., 2014. P. 86.

The third group of actions represents the most difficult situation: it includes the administrative actions of the employer, which, from the point of view of the employee, distinguish him from other employees in a negative way, thereby causing him moral suffering or other inconvenience. For example, setting vacation days in the vacation schedule at a time that is inconvenient for the employee, non-payment to the employee of a bonus that is not included in the remuneration system when paid to other members of the workforce, bringing the employee to disciplinary liability in a situation where several employees have committed the same disciplinary offense and only one is held accountable.

Why are these examples the most difficult? To do this, you first need to answer the question, what is the constitutive sign of an act of discrimination? An analysis of part 2 of article 3 of the Labor Code of the Russian Federation allows us to conclude that acts of discrimination on the part of the employer will be administrative actions aimed at violating the principle of equality and violating the rights of the employee. That is, discriminatory actions are always unlawful actions. However, the ILO Convention No. 111 “Regarding Discrimination in the Field of Employment and Occupation” dated May 22, 1958[251] gives a broader concept of discrimination, which differs from that contained in the Labor Code of the Russian Federation, which was noted in the scientific community[252]. It also calls discrimination any distinction, exclusion, or preference which results in the elimination or restriction of equality of treatment in labor and occupation. And in the scientific literature there is a strong opinion that discrimination will be not only inequality that leads to violation of rights, but also, in principle, a situation of violation of equality in general, without concomitant violations of rights[253]. A number of scientists come to the same conclusion based on the

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[251] Regarding discrimination in the field of work and occupation [Electronic resource]: Convention No. 111 of the International Labor Organization of June 25. 1958 (ratified by the Decree of the Presidium of the USSR Supreme Council of 01/31/1961) // Bulletin of the USSR Armed Forces. 1961 N 44. Art. 448. Access from the reference legal system "ConsultantPlus".

[252] Nikita Lyutov. Russian law on discrimination in employment: can it be compatible with international labor standards? // Russian Law Journal. 2016. № 3. P. 7-50.

[253] See, for example, Nevezhina M.V. The prohibition of discrimination in the field of labor relations // Journal of Russian law. 2017. No. 4. C. 83-90.; Gerasimova E. S., Saurin S. A., Lyutov N. L. The effectiveness of protection against discrimination in labor relations on the basis of sex in legislation and practice in Russia: an analytical report: [Electronic resource]. URL :

practice of the European Court of Human Rights (hereinafter referred to as the "ECHR")[254].

Such a broad interpretation of the concept of "discrimination" is not entirely correct. Firstly, in the systemic interpretation of parts 1 and 2 of Art. 3 of the Labor Code of the Russian Federation, discrimination is actions that lead to a violation of the rights of an employee, which is confirmed by the logic of the norm of part 4 of this article, which calls the restoration of violated rights as the consequences of discrimination. Secondly, although the ECHR notes that discrimination is a situation of unequal treatment of employees, but at the same time, it considers a complaint under Art. 14 of the European Convention on Human Rights[255] (hereinafter referred to as the "ECHR") on the prohibition of discrimination only in combination with a complaint about the violation of one of the substantive rights provided for by the ECHR, which is confirmed by the practice of the ECHR[256].

Let us analyze the given examples for the presence in the actions of the employer of signs of violation of the rights of the employee. Is the employee's right to leave violated in a situation where the employer constantly provides leave on days that are inconvenient for the employee? Obviously not: the employee is exercising this right, but with less beneficial effect for himself. In a situation where the employee was not paid a bonus that was not included in the remuneration system, none of his rights was violated, since the employee does not have the right to receive a bonus bonus. The same is true in the case of bringing to disciplinary responsibility only one of the employees who

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http://trudprava.ru/images/files/research/Discrimination%20on%20grounds%20of%20sex%20in%20labour%20relations%202015.pdf (accessed May 14, 2021).

[254] See, for example, Sychenko E.V. Practice of the European Court of Human Rights in the field of protection of labor rights of citizens and the right to social security. M., 2014. P. 36.; Timoshenko R.I. Discrimination and labor legislation // Labor law in Russia and abroad. M., 2017. N 3. P.11-15.

[255] Convention for the Protection of Human Rights and Fundamental Freedoms [Electronic resource]: concluded in Rome on 04 November. 1950 // Collection of Legislation of the Russian Federation. - 1998. - N 20. - Art. 2143 - Access from the reference legal system "ConsultantPlus".

[256] See, for example, the ECHR Ruling of July 30, 2009 in the case "Danilenkov and other applicants v. Russia" [Danilenkov and others v. Russia] (complaint N 67336/01) Electronic resource] // URL: https://hudoc.echr.coe.int/rus#{%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]}(date access: 04/20/2020); ECHR ruling of July 12, 2005 in the case "Moldovan and others v. Romania (N2) [Moldovan and others v. Romania (no. 2)] complaints NN 41138\98 and 64320\01) [Electronic resource] // URL: https://hudoc.echr.coe.int/rus#{%22documentcollectionid2%22:[%22GRANDCHAMBER%22 ,%22CHAMBER%22]}(date of access: 04/20/2020); ECHR ruling of 05/03/2007 in the case "Baczkowski and others v. Poland" [Baczkowski and others v. Poland] (complaint No. 1543/06) [Electronic resource] // URL: https://hudoc.echr.coe.int/rus#{%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]} (date of access: 04/20/2020).

committed disciplinary offenses: no labor rights of the employee are violated, since there are all legal grounds for bringing the employee to responsibility.

Based on the foregoing, the following conclusion can be drawn: in order for such actions to be recognized as discriminatory, they must be aimed specifically at the right of the employee. In the above examples, we talked about the presence or absence of labor rights of an employee, but the latter, in addition to the status of a party to labor relations, has other social statuses, and the employer's right to manage labor during its implementation may come into contact with rights and values specially protected by the state. Therefore, do these actions of the employer violate other rights of the employee as an individual (non-labor rights)?

The fact of non-payment of a bonus that is not part of the salary does not violate the employee’s non-labor rights, since the payment of such a bonus is probabilistic in nature, and the employee objectively, when planning his ordinary life, cannot take into account its receipt. The impossibility of the employee to exercise non-labor rights in connection with bringing the latter to disciplinary responsibility cannot be qualified as a violation of his labor rights by the employer, since the employee himself is guilty of a disciplinary offense.

The situation with the provision of leave is more complicated. Suppose an employee has minor children, and he wants to combine vacation with the time of any of the school holidays in order to fully spend time with his children and fulfill all the functions of a parent, and the employer blocks this every time by refusing to provide vacation days in desired dates for the employee. The right to leave is not violated, but are the rights of the employee as a parent violated here, and is family and childhood protection ensured in this case? It seems that in such and similar situations, these actions of the employer do not violate the employee's non-labor rights, but create adverse consequences that reduce the quality of the employee's realization of these non-labor rights. At the same time, the motive of the employer's actions is discriminatory, that is, unlawful. Thus, we are faced with formally lawful actions of the employer, which do not violate the rights of the employee, but are aimed at causing other harm to the latter.

Thus, the content of the described actions corresponds to such a phenomenon as the abuse of the right, so we will consider this category in more detail.

In the scientific literature[257], attention has been repeatedly paid to the absence in the Labor Code of the Russian Federation of separate provisions on the abuse of the right in labor relations and pointed to the general legal nature of the principle of prohibition of the abuse of the right[258]. This conclusion was also confirmed by the practice of higher judicial instances[259]. In this regard, we should agree with the proposal of A.M. Kurennoy about supplementing the norms of the Labor Code with provisions on the principle of prohibiting abuse of rights in order to avoid controversial situations in practice: "... it is desirable to consolidate this principle at the legislative level, since not every employer knows that there is a position of the judicial community. But not all cases reach the court, but the Labor Code of the Russian Federation is still closer and more accessible to the ordinary "consumer of law" (to whom, in fact, the provisions of the law are addressed)."[260]

It should be noted that in foreign literature the problem of abuse of the right is also reflected: both on the part of the employer[261], and on the part of employees[262] and trade unions[263]. But in the doctrine there is still no consensus on the nature of this phenomenon.

The discussion on this issue has been going on for a long time, having migrated from civil science to labor law, and the most complete review of all existing opinions on this issue is presented in the dissertation of E.M. Ofman[264]. All of them can be reduced to three main positions. Adherents of the first attribute the abuse of the right to illegal

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[257] See, for example, Sitnikova E.G., Senatorova N.V. Termination of an employment contract (analysis of current judicial practice, recommendations (issue 13). M., 2019. P. 160; Grabovsky I.A., Lilikova O.S. Abuse of the right: a legal category in labor relations // Scientific sheets. 2013. No. 23 (166), P. 147-150.
[258] Orlovsky Y.P., Nurtdinova A.F., Chikanova L.A. Desk book personnel: legal aspect. M., 2018. P. 372.
[259] Clause 4.3 of the Resolution of the Constitutional Court of the Russian Federation of March 15, 2005 N 3-P, clause 27 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of March 17, 2004 N 2 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".
[260] Kurennoy A.M. Principles of labor law: theory and problems of application in practice // Labor law in Russia and abroad. 2020. N 4. P. 3.
[261] Brian Bercusson. European Labour Law. Cambridge: Cambridge University Press, 2009. 752 p. (690).
[262] Barry Cushway. The employer's handbook 2009-10: an essential guide to employment law, personnel policies, and procedures. London and Philadelphia: KOGAN PAGE, 2009. 376 p. (226).
[263] Davies, A. C. L. (Anne C. L.). Perspectives on labour law. Cambridge: Cambridge University Press, 2009. 257 p. (72).
[264] Ofman E.M. Abuse of the right by the subjects of labor relations: dis. ... cand. legal Sciences: 12.00.05. Ekb., 2006. 189 p.

actions[265]. In accordance with the second, abuse is the legitimate implementation of the rule of law in contradiction with their purpose and goals[266]. According to the third, abuse is neither a lawful act nor a crime[267]. But more important for the purposes of the study is the question of the consequences of abuse of the right. There are two points of view on this matter in the doctrine: the first is that the abuse of the right may entail a violation of the subjective rights of other persons, in accordance with the second, in case of abuse, there is no violation of subjective rights, in this case it is only a violation of the legitimate interests[268] or moral principles of society[269], that entails moral harm to the victim.

We cannot agree that the abuse of a right is an offense and, accordingly, that the abuse entails a violation of other people's subjective rights for the following reasons. Actions that are abuse are the realization by a person of his right, but with the aim of causing harm to another person. The exercise by one person of the right within the formally provided framework cannot violate the right of another person, otherwise it would be the implementation of unlawful actions that cannot be the content of the right that is being abused. Therefore, any violation of the rights of third parties is the result of illegal actions, and, therefore, the offense cannot be an abuse of the right. In this regard, in case of abuse, the subjective right of another person is not violated, but his interests are harmed outside the scope of the spectrum of rights possessed. Therefore, we can agree with S.A. Burmistrova, who pointed out that the abuse of the right forms an unlawful legal interest that is not subject to protection and at the same time violates the legal interests of other participants in the legal relationship[270].

Thus, based on the proposed definition of the right to manage labor, abuse by the employer of this right will be cases of exercising the powers to manage labor in order to

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[265] Maleina M.N. Personal non-property rights of citizens: concept, implementation, protection. M., 2000. 244 p.
[266] Milushev D.F. The construction of "abuse of the right" in the economic sphere // Legal technique. 2013. N. 7. P. 484.
[267] Ofman E.M. Legal consequences of abuse of the right of the employer and employee // Kadrovik. Labor law for personnel officer. 2010. N. 10. P. 64-72.
[268] Biryukova L.A., Polyakova V.A. Abuse of the right. Theoretical aspects // Arbitration courts: theory and practice of law enforcement: Sat. articles for the 75th anniversary of the State Arbitration - the Arbitration Court of the Sverdlovsk Region. Ekaterinburg., 2006. P. 268.
[269] Antonov V.F. Content characteristics of the abuse of the right // Laws of Russia: experience, analysis, practice. 2018. N. 1. P. 83.
[270] Burmistrova S.A. On the application of the category of good faith in resolving conflicts of interest // Russian Journal of Law. 2019. N. 2. P. 135-143.

harm the interests of employees and moral harm. In this regard, it seems incorrect when, as examples of abuse of the right on the part of the employer, some scientific articles cite cases of imaginary layoffs (when a new employee is immediately taken in place of the laid-off employee)[271] or the employer's evasion from drawing up an employment contract[272]. In the second case, the employer does not abuse the right, but violates the provisions of Part 2 of Art. 67 of the Labor Code of the Russian Federation, the obligation to draw up an employment contract. As for the alleged reduction, as the practice of the Supreme Court of the Russian Federation[273] shows, the employer has the right to terminate employment contracts in connection with a reduction in the number or staff of employees, when such a reduction is economically justified. That is, the employer is forced to reduce his expenses for the maintenance of employees, while reduction without economic grounds will be an offense on the part of the employer. Therefore, the examples given are not abuse of the right, but offenses.

Thus, it will be correct to distinguish between acts of discrimination and abuse of the right according to the consequences of these actions: if, as a result of the actions of the employer aimed at negatively distinguishing the employee from other employees, there is a violation of the rights of such an employee, this is discrimination, if not, then the abuse of the right[274]. Therefore, the examples given earlier are the implementation of lawful actions that do not violate the rights of employees, but their motives are discriminatory, therefore, these actions are an abuse of the right by the employer. Otherwise, it would lead to the merging of the concept of "discrimination" with the concept of "abuse of the right", which is not true, since the latter, unlike the former, does not have the form of an offense.

Additionally, it should be noted that both the Constitutional and the Supreme Court of the Russian Federation in their legal positions share the prohibition of abuse of the right and the prohibition of discrimination, referring to them as two independent

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[271] Akopov D. Abuse of the right by the parties to the labor relationship // Kadrovik. Labor law for personnel officer. 2011. N. 9. P. 12.

[272] Ponomareva Y. Methods of self-defense from ... an employee // Practical Accounting. 2019. N. 11. P. 50.

[273] Ruling of the Supreme Court of the Russian Federation of March 21, 2008 N 25-B07-27, Ruling of the Supreme Court of the Russian Federation of December 3, 2007 N 19-B07-34 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[274] Sitnikov A.A. Abuse by the employer of the right to manage labor // Siberian Legal Review. 2021. N 4. P. 418.

principles. So, the Constitutional Court of the Russian Federation in clause 4.3. Decree No. 3-P of March 15, 2005 directly lists these principles as independent ones. The fact that the Supreme Court of the Russian Federation considers these principles also as independent ones is evidenced, for example, by par. 3 p. 9 of the Decree of the Plenum of 06/02/2015 No. 21[275].

In this regard, the question arises: if the discriminatory actions of the employer entail a violation of the rights of the employee, then the latter can receive protection and restoration of his rights in court, recognizing the discriminatory actions of the employer as illegal, but how can the employee protect his interests from the employer's abuse of the right to manage labor?

The difficulty of implementing the protection of the injured party from abuse by the other party to the labor relationship, precisely in connection with the formally lawful nature of the latter's actions, was pointed out by S.Yu. Golovina[276]. In connection with the industry-wide nature of the principle of prohibition of abuse of the right and the explanations given by the Supreme Court in paragraph 27 of the Decree of the Plenum of March 17, 2004 No. 2 "On the application by the courts of the Russian Federation of the Labor Code of the Russian Federation" in relation to the abuse of the right by the employee, the general consequence of the abuse is possible denial of judicial protection of the right that the party has abused. Obviously, such an approach will be effective only when the right is abused by the employee, because the employer, using his powers, does not, as a general rule, need judicial protection. Failure to provide judicial protection for the administrative actions of the employer, aimed at establishing inequality among employees, will in no way protect the interests of the latter.

Let's try to find possible ways out of this problematic situation. To qualify the employer's actions as resulting from the abuse of the right to manage labor, his motive takes on a constitutive meaning: in fact, it must be discriminatory. In accordance with paragraph 2 of Art. 278 of the Labor Code of the Russian Federation, the employer may

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[275] Decrees of the Plenum of the Supreme Court of the Russian Federation dated June 2, 2015 N. 21 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[276] Golovina S.Yu. Ways to overcome gaps and other defects in labor legislation by courts // Labor law in Russia and abroad. 2018. N. 4. P. 13.

terminate the employment contract with the head of the organization if the authorized body of the legal entity or the owner decides to terminate the employment contract with the head. This ground for terminating the employment contract, in contrast to the situation with a reduction in the number or staff, does not require any justification: it is simply enough for the person concerned to make such a decision[277]. However, the Constitutional Court of the Russian Federation, in Resolution No. 3-P of March 15, 2005, indicated that if, when deciding to terminate the employment contract with the head of the organization, the principles of inadmissibility of abuse of the right and prohibition of discrimination in the exercise of rights and freedoms were violated, then the head of the organization may apply for protection violated rights. The Supreme Court of the Russian Federation in paragraph 9 of the Decree of the Plenum dated 02.06.2015 No. 21 "On some issues that arose from the courts in the application of legislation regulating the work of the head of the organization and members of the collegial executive body of the organization" noted that in this case, the dismissal can be recognized as illegal. In this case, the legal consequences, both for the employee and for the employer, in the form of recognizing the dismissal as illegal, are precisely the unlawful, discriminatory motive of the latter when making a formally lawful managerial decision.

This is an interesting position of the highest judicial instances: the actions of the employer are recognized as illegal if they do not violate the rights of the employee, but are aimed at causing harm to the latter. Do the Constitutional and Supreme Courts go beyond the normative framework here, trying to protect the interests of the employee? You can understand this problem by referring to the norms of the Civil Code of the Russian Federation. So, paragraph 1 of Art. 10 of the Civil Code of the Russian Federation, defining the abuse of the right, refers to such unfair exercise of civil rights. In turn, paragraph 3 of Art. 1 of the Civil Code of the Russian Federation, as one of the principles of civil law, establishes the principle of good faith. In accordance with this, we can conclude that the principle of prohibition of abuse of the right includes the

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[277] Nurtdinova A.F., Chikanova L.A. Procedural norms in the mechanism of legal regulation of labor relations // Journal of Russian law. 2019. N. 9. P. 97.

principle of good faith of the subjects of legal relations, which is confirmed by the practice of the Supreme Court of the Russian Federation[278]. It was previously stated that the principle of the prohibition of abuse of rights is a general legal one, and, despite the absence of relevant norms in the Labor Code of the Russian Federation, its effect fully applies to labor and legal relations, therefore, based on the foregoing, it can be concluded that the principle of good faith is a general legal one and operates in labor relations. This conclusion is also supported by the scientific literature[279].

In civil law, the mechanism for implementing the principle of good faith and protecting the parties to civil law relations from dishonest behavior is regulated at the level of the norms of the Civil Code and developed in subsequent legal positions of the Supreme Court, which made the protection of subjects of civil circulation from manifestations of bad faith of other persons to a certain extent effective. The mechanism of protection here is not limited to the refusal to protect the right of a person who abused the right or behaved in bad faith. If the dishonest behavior of one of the parties is established, other measures may be taken in court to ensure the protection of the interests of the bona fide party from the bad faith behavior of the other party, for example, recognition of the condition that this party unfairly prevented or contributed to, respectively, occurred or did not occur; an indication that the statement of such party about the invalidity of the transaction has no legal significance; recognition of a transaction in which the party behaved in bad faith, invalid[280].

Unfortunately, this is not the situation in labor law: the Labor Code of the Russian Federation contains neither norms that would establish special consequences for the abuse of the right by the employer, nor norms that ensure the refraction of the principle of good faith of the parties in the field of labor relations. Therefore, the

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[278] Thus, an analysis of the answer to question No. 6 given in the Review of the Judicial Practice of the Supreme Court of the Russian Federation N. 1 (2015), approved by the Presidium of the Supreme Court of the Russian Federation on March 4, 2015, allows us to conclude that the extreme form of bad faith is an abuse of the right.

[279] Sitnikova E.G., Senatorova N.V. Termination of an employment contract (analysis of current judicial practice, recommendations (issue 13). M., 2019. P. 160.

[280] See paragraph 1 of Resolution No. 25 of the Plenum of the Supreme Court of the Russian Federation dated June 23, 2015 “On the application by the courts of certain provisions of Section I of Part One of the Civil Code of the Russian Federation”, question 6 of the Review of Judicial Practice of the Supreme Court of the Russian Federation N. 1 (2015), approved by the Presidium of the Supreme Courts of the Russian Federation 03/04/2015 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

employee remains unprotected from the unfair actions of the employer, including in the situations that were given as examples. However, in the previously mentioned rulings on the issue of termination of the employment contract with the head of the organization, both the Constitutional and the Supreme Courts, without directly naming it, actually offer a way to protect the employee, which is a relevant response to the unfair actions of the employer, applying a different measure (not a refusal to protect the right of the abuser) that ensures the protection of the interests of a conscientious employee: recognition of the dismissal as illegal. Only in contrast to civil law relations, where all the consequences of dishonest behavior are listed in a number of norms of the Civil Code of the Russian Federation, in this case an example of judicial lawmaking is demonstrated. This position can formally be applied only to cases of dismissal of the head of the organization, but how to protect the interests of other employees? We have to state that in the current situation, employees are an unprotected party from the unfair actions of the employer.

This problem can be resolved by supplementing the content of the Labor Code of the Russian Federation with norms on the prohibition of abuse of the right by the parties to labor relations, the principle of good faith of the parties to labor relations and the consequences of their dishonest behavior. To do this, it is necessary to determine which protection mechanism in this case will be the most adequate. This can be done on the basis of the legal positions of the Constitutional and Supreme Courts, as well as the existing civil law regulation. The considered examples allow us to conclude that an adequate protective mechanism in this case is the cancellation, leveling of those negative consequences of the actions of an unscrupulous party, with which it wanted to harm the other side of the legal relationship. We will illustrate with the examples we have already given. For example, several employees commit a disciplinary offense, and only one is held accountable. In this case, the measure of protection will be the abolition of the disciplinary sanction, and not the bringing to disciplinary responsibility of other employees, because the harm to the employee is caused precisely by bringing him to justice, and not by the fact that others are not punished. Another example: all employees except one were paid a bonus that was not included in the wage system. The measure of

protection in this case will be the payment of such a bonus to the deprived employee, and not the abolition of the bonus to everyone else, since the harm to the employee was caused precisely by the non-payment of the bonus to him, and not by the payment to the rest.

Thus, we propose to supplement the Labor Code of the Russian Federation with the following article:

“Article 15-1. Limits of the exercise of rights by the parties to labor relations.

When establishing, exercising, protecting rights and performing duties, the parties to labor relations must act in good faith, taking into account the rights and legitimate interests of the other party.

No one has the right to take advantage of their illegal or dishonest behavior.

Any abuse of the right by the parties to an employment relationship is not allowed: the exercise by a party of an employment relationship of rights solely with the intent to harm the other party to the employment relationship, actions bypassing the law with an unlawful purpose, as well as other unfair exercise of their rights and performance of duties.

In the event that an employee fails to comply with the requirements provided for by Part 3 of this Article, the court, taking into account the nature and consequences of the abuse committed, denies the employee the protection of his right in whole or in part, and also applies other measures provided for by law.

If the employer commits actions that violate the requirements provided for in part 3 of this article, such actions are recognized as illegal, and the employer is obliged to eliminate all the negative consequences of these actions that have arisen for the employee. If the consequence of these actions was that the employee did not receive material provision or received it in an amount less than that provided to other employees, then the employer is obliged to eliminate the situation of inequality in the actual situation of employees by providing or increasing the amount of the corresponding provision”.

Unfortunately, an illustrative example of discrimination and violation of the principle of equality is the widespread practice of non-payment of permanent bonuses

included in the wage system. Here, unlike the previous cases, we are dealing with a violation of the rights of employees: the employee has the right to receive incentive payments of this kind if the criteria and conditions specified in the local acts of the employer are met, but due to the fact that these criteria are usually formulated by employers is extremely uncertain, then it becomes possible to “justify” the non-payment of these amounts in situations where the employee actually acquired the right to receive them. As an analysis of the decisions of the St. Petersburg City Court shows, employees are unable to prove the discrimination of non-payment of such a bonus, due to the fact that employers justify their decision on non-payment by the fact that the employee could not fulfill all the requirements necessary for bonuses[281].

Another example of discrimination is the situation when an employer sets employees of the same position with the same job duties, different wages. Thus, one of the obligations of the employer, listed in Article 22 of the Labor Code of the Russian Federation, is to provide employees with equal pay for work of equal value. Accordingly, employees are entitled to equal pay in situations where their ability to work is used equally by the employer. In this regard, the employer cannot pay in a different amount for the work of employees of the same position with the same job responsibilities, this affects both the initial setting of wages for employees of the same position, and the impossibility of further increasing it for only a part of employees occupying the same positions as the rest. These conclusions are confirmed in the practice of the Constitutional Court of the Russian Federation. In the Ruling of 06.03.2001 № 52-O[282], he pointed out the unlawfulness of the differentiation of wages for employees of one position, based on the urgency or indefiniteness of labor contracts concluded with them. This position is also supported by judicial practice, which

[281] See, for example, Appellate rulings of the St. Petersburg City Court N 33-17013/2014 of December 16, 2014, N 33-2868/2014 of March 4, 2014 in case N 33-2868/2014, N 33-12325/2013 of August 21, 2013 in case N 33-12325/2013, N 33-6481/2013 of May 22, 2013 in case N 33-6481/2013 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[282] Determination of the Constitutional Court of the Russian Federation of March 6, 2001 N 52-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

recognizes the legitimacy of a difference in wages only in the event of a difference in positions or the presence of additional duties for individual employees[283].

In connection with the foregoing, we can draw the following conclusion about the relationship between the constitutional principle of equality of all before the law and the court and the right of the employer to manage labor. These categories are not conflicting: there is no need to talk about situations where, during the duration of labor relations, the legal equality of employees could be violated for the sake of organizational and property interests, as well as the rights of the employer. The principle of legal equality is an absolute prohibition for the managerial actions of the employer, which are aimed at unlawfully restricting or depriving employees of the possibility of exercising their rights, and not only labor rights, during the duration of the employment relationship.

Now let's move on to an analysis of the relationship between the employer's right to manage labor and the constitutional principle of freedom of labor, which has already been discussed, but in the context of determining the constitutional basis of the employer's right to manage labor.

The principle of freedom of labor is constitutive in the labor law of the post-Soviet period. Part 1 of Article 37 of the Constitution of the Russian Federation says: “Labor is free. Everyone has the right to freely dispose of their abilities to work, to choose the type of activity and profession, ”and in part two, forced labor is banned. The Labor Code of the Russian Federation, as the first principle of legal regulation of labor relations, names the principle of freedom of labor, by which it understands the right to work, which everyone freely chooses or freely agrees to, the right to dispose of their abilities for work, to choose a profession and type of activity. As part of the analysis of this principle in the context of restricting the employer’s right to manage labor, only two components of labor freedom are important: this is “the ability of a person to choose

[283] See, for example, Ruling of the St. Petersburg City Court of November 14, 2011 N 33-16864, Ruling of the St. Petersburg City Court of May 19, 2011 N 33-7400/2011, Ruling of the Leningrad Regional Court of November 24, 2010 N 33-5569/ 2010 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

whether to work or not work at all", "the right to determine what kind of work will be if the choice is made in favor of first option"[284].

Let's start with the first aspect of freedom of labor. As G.S. Skachkova, "the principle of freedom of labor in labor relations is manifested primarily in the contractual nature of labor, causing the freedom of the labor contract"[285]. The employee is included in the organizational and activity sphere of the employer, and the latter is fully able to exercise his powers to manage the work of the employee on the basis of a freely concluded labor contract or free choice of labor activity for other reasons (for example, alternative civil service). At this stage, the employee exercises his right to freely enter into labor relations, and the employer receives the resource necessary to ensure his activities in the form of the ability to work of a particular employee, so here the principle of labor freedom not only does not conflict with the employer's right to manage labor, but and vice versa, it is a link between the employee's ability and the employer's need. The employee is included in the organizational and activity sphere of the employer, and the latter is fully able to exercise his powers to manage the work of the employee on the basis of a freely concluded labor contract or free choice of labor activity for other reasons (for example, alternative civil service). At this stage, the employee exercises his right to freely enter into labor relations, and the employer receives the resource necessary to ensure his activities in the form of the ability to work of a particular employee, so here the principle of labor freedom not only does not conflict with the employer's right to manage labor, but and vice versa, it is a link between the employee's ability and the employer's need.

Thus, the legal relationship between the ability to work of a particular employee and the organizational ability of the employer is an employment contract. It follows that the legal expression of the constitutional principles of freedom of labor and freedom of socially useful activity is the principle of freedom of contract, which, having a constitutionally universal character, is of decisive importance for the scope and use of

[284] Konshakov V.M. Problems of constitutionalization of legal regulation of social and labor relations: dis. ... cand. legal Sciences: 12.00.05. SPb., 2014. P. 59.
[285] Skachkova G.S. The role of modern labor law in the implementation of social and labor rights of citizens [Electronic resource] // Labor law in Russia and abroad. 2014. N 1. Access from the reference legal system "ConsultantPlus".

any type of labor activity, including those carried out on the basis of an employment contract[286]. It is this aspect of the principle of freedom of labor, together with the operation of the principle of equal rights of workers, that can directly limit the exercise by the employer of his managerial powers.

Firstly, as mentioned earlier, recruitment powers are essentially managerial, because when they are implemented, the conditions for the employment of a particular employee are determined. But since the implementation of the principle of freedom of labor occurs in the offer by the employee to the employer of his labor and the desire to conclude an employment contract, the terms of this employment contract, and, therefore, the conditions for the application and use of the employee's ability to work, are determined by the employer and the employee jointly. Accordingly, the conclusion of an employment contract is impossible, and, therefore, the exercise of power by the employer in the future is also impossible, unless the consent of the employee is obtained on all the stipulated terms of the employment contract.

Secondly, a situation is possible when some condition of an employment contract with a specific employee differs from the condition contained in the local regulatory act in force with the employer, while improving the position of the employee, but similar conditions are not contained in employment contracts with other employees, and they are subject to the terms of the local regulation. In such a situation, if any of the other employees object to such positive discrimination, the employer will be obliged to bring the local regulation into line with the condition that improves the position of the employee contained in the individual employment contract

Also, speaking about the operation of the principle of freedom of labor as a restrictor of the right to manage labor within the framework of contractual regulation of labor relations, it is necessary to say about the possibility of exit from labor relations of the parties to the employment contract.

In contract law, the principle of "pacta sunt servanda" (contracts must be respected) applies. One of the terms of the contract is its term, and the absolute effect of

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[286] Commentary on the Constitution of the Russian Federation (item-by-article) [Electronic resource] / ed. V.D. Zorkin. 2nd ed. revision. M., 2011. Access from the reference-legal system "ConsultantPlus".

this principle implies the impossibility of unilateral termination of the contract before the expiration of its validity. Turning to the norms of the Civil Code, we will see that for the construction of work contracts and paid services, there are exceptions to this principle. So, the customer, within the framework of these contractual structures, has the right at any time during the term of the contract to unilaterally refuse to fulfill it, compensating the other party for the costs incurred in connection with the fulfillment of obligations (Article 717, clause 1 of Article 782 of the Civil Code of the Russian Federation). And under the contract for the provision of services for a fee, the contractor also has the right to an unmotivated unilateral refusal to fulfill his obligations, subject to full compensation to the customer for the losses incurred in connection with this (clause 2, article 782 of the Civil Code of the Russian Federation). Thus, the general rule of these contractual structures is that the customer has the right to unilaterally refuse to fulfill obligations.

A different situation with labor relations: one of the consequences of the operation of the constitutional principle of freedom of labor is the right of the employee (that is, the essence of the contractor or performer) to an unmotivated unilateral refusal to fulfill his obligations within the framework of labor relations at any time during the validity of the employment contract. At the same time, the employer does not have the right to prevent the employee from refusing to work, since otherwise it would lead to the phenomenon of forced labor, possible examples of which are given to us by the norms of parts 2 and 3 of article 4 of the Labor Code of the Russian Federation. This legal regulation is explained as follows. The labor activity of a person, as a rule, is the main or one of the main components of his life activity, which determines the conditions for his existence as a person. In this regard, forcing a person to work means forcibly determining the scope of his personal life. And such an invasion of the personal rights of an employee does not correspond to the natural-legal concept that underlies the Constitution of the Russian Federation.

In this there is competition between Part 1 of Art. 34 and part 1 of Art. 37 of the Constitution of the Russian Federation[287], priority in which is given to freedom of labor. But this priority is not absolute, as, for example, in the situation with the principle of inviolability of life and health protection. The employee cannot terminate the fulfillment of obligations under the employment contract from the moment such a decision is made, he must notify the employer about this in advance (as a general rule two weeks in advance[288]). The validity of such regulation has been repeatedly confirmed by the Constitutional Court of the Russian Federation. So, for example, in the Ruling of July 3, 2014 No. 1487-O[289], he indicated that the requirement addressed to the employee to notify the employer of his dismissal, as a general rule, no later than two weeks in advance, is due to the need to provide the employer with the opportunity to promptly select a new employee for the vacant position .

Such a relatively free exit of an employee from labor relations is equally possible[290] both with an open-ended and fixed-term employment contract. However, for example, the Labor Code of the Republic of Belarus[291] does not allow unreasonable withdrawal of an employee from an employment relationship arising on the basis of a fixed-term employment contract. Norm, Part 1, Art. 41 of the Labor Code of the Republic of Belarus allows you to do this only in case of illness or disability of an employee, his entry into military service under a contract, the occurrence of other good reasons that prevent the performance of work under an employment contract, as well as in case of violation by the employer of labor legislation, a collective agreement, labor contracts. It seems that the Belarusian legislator proceeds from the fact that the term of the employment contract is one of the conditions voluntarily accepted by the employee, which must be fulfilled. In other words, the employee consciously agreed to organize

[287] The employee may, at his own discretion, actually reduce the employer's arsenal of opportunities to carry out socially useful activities.
[288] See part 1 of Art. 80 of the Labor Code of the Russian Federation.
[289] Determination of the Constitutional Court of the Russian Federation of July 3, 2014 N 1487-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".
[290] Only with a difference in terms of the notification of the employer.
[291] Labor Code of the Republic of Belarus [Electronic resource]: law of July 26. 1999 N 296-Z // National Register of Legal Acts of the Republic of Belarus. – 1999. – N 80. – 2/70. – (as amended on June 30, 2023). – URL: https://etalonline.by/document/?regnum=HK9900296 (date of access: 09/17/2023).

his life in a certain way, so an unreasonable exit from the employment relationship in this case will be a violation of the terms of a fixed-term employment contract.

It should be noted that the history of the development of Russian labor legislation and doctrine were the same proposals[292]. However, in our opinion, this approach is largely based on civil law principles, without taking into account the specifics of labor relations. Since the employer's ability to work falls under the control of the employee, that is, part of his personality, which determines the lifestyle of the employee as a person, it is impossible to make the possibility of changing one's lifestyle dependent on the duration of the factor that determines this lifestyle. Moreover, an employment contract can be concluded for a period of up to five years, and therefore, it cannot be said that the significance of the impact of the presence of labor relations on the life of an employee under a fixed-term employment contract concluded for five years is less than under an open-ended employment contract, according to to which the employee has not yet completed a year. Therefore, we believe that in resolving the issue of the possibility of an employee to withdraw from labor relations, limited only by the period of notification of the employer, priority should be given to the constitutional principle of freedom of labor. To minimize the negative consequences that come on the side of the employer in connection with the departure of the employee, the model chosen by our legislator for compensation of the material costs incurred by the employer for the development of the employee seems to be appropriate. Such cases can be established at the level of the Labor Code, taking into account the specifics of labor relations with a particular category of workers, which will constitute a restriction of the principle of freedom of labor in order to ensure the legitimate interests of the employer. However, at the same time, as G.S. Skachkov, differentiation of labor law cannot be carried out indefinitely in order to avoid a situation where, being not fully justified from an objective point of view, it will be discriminatory[293].

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[292] For more details see Ivanov A.B. Termination of an employment contract at the initiative of an employee in Russian practice: a historical and legal perspective // Bulletin of the YarGU. Series Humanities. Volume 16. N 3. 2022. P. 454-467.

[293] Skachkova G.S. Differentiation in labor law and the Labor Code of the Russian Federation [Electronic resource] // Civilist. 2012. N 2. Access from the reference legal system "ConsultantPlus".

So, for example, part 3 of Art. 348.12 of the Labor Code of the Russian Federation provides for the possibility of establishing in an employment contract with an athlete[294] a condition on the athlete's obligation to make a monetary payment in favor of the employer in the event of termination of the employment contract at the initiative of the athlete without good reason, as well as in the event of termination of the employment contract at the initiative of the employer on grounds that relate to disciplinary penalties. The presence of this norm is due to the following. Relations regarding the use of the labor of athletes have great specifics, and the specifics are that the employer needs not only the ability to work of an athlete, he needs this ability to work to be higher than that of athletes of other employers. Therefore, he is objectively forced to "invest" in an athlete more and more costly than a simple employer in an ordinary employee, ensuring the development of an athlete as such: providing training, equipment, sports equipment, improving his sports skills, etc.

Everything is aimed at ensuring that the employer's athletes win competitions. This can lead to a situation where an athlete, having formed as a professional with one employer, having received all the necessary skills at his expense, decides to terminate his employment relationship without bringing the employer the benefit that he expected to receive by developing the athlete. It is precisely in order for the employer to have the opportunity to at least compensate for the costs or part of the costs of training such an athlete, in Part 3 of Art. 348.12 of the Labor Code of the Russian Federation provides for the possibility of contractually providing for a fine for an employee. This norm is not unreasonably restrictive of the principle of freedom of labor, since, firstly, the establishment of such a fine is possible in a contractual manner, and is not a mandatory establishment of the law, and, secondly, its payment does not depend on the possibility of terminating the employment contract: an employment contract is terminated, and the fine is paid after the termination of the employment contract, as evidenced by Part 5 of Art. 348.12 of the Labor Code of the Russian Federation. At the same time, one should agree with S.Yu. Golovina, who correctly noted that in order to avoid contradiction of

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[294] For more information about the regulation of the work of athletes, see Skachkova G.S. Features of the regulation of labor relations in the field of physical culture and sports // Labor law. 2002. N 5. P. 65-73.

such a condition of an employment contract with an athlete with the norms of Part 2 of Art. 9 and part 4 of Art. 57 of the Labor Code on the non-application of terms of an employment contract that worsen the position of the employee, the text of the relevant articles must be supplemented with the phrase “Unless otherwise established by this Labor Code”[295].

Having said about the possibility of an employee leaving the employment relationship, we will make a small comment on the regulatory regulation of such an opportunity for the employer. Unlike the employee, the employer cannot freely withdraw from the employment relationship: in order to terminate the employment contract on his initiative, it is necessary to have any of the grounds provided for by the Labor Code, which can also be considered a restrictive effect of the principle of freedom of labor. The employee represents the economically weaker side in the labor relationship, which predetermines the obligation of the welfare state to ensure the proper protection of his rights and legitimate interests. More L.S. Tal, pointing out the importance of the stability of the employment relationship, emphasized that, unlike civil law contracts, the close connection of the employment contract with the personality of the worker has a particularly strong effect on the rupture of the employment relationship[296]. Echoing him, K.M. Varshavsky noted that the worker has the right to terminate the contract at any time, and the employer "turns out to be bound by the grounds for termination of the employment contract provided for by law", the stability of the employment contract lies in the fact that "until the worker is guaranteed against arbitrary termination of the employment contract, he will never equal to the employer"[297].

Thus, emphasizing the freedom and voluntariness of entry and status in labor relations, as the freedom of a person to determine his lifestyle, and also, compensating, from the point of view of K.M. Varshavsky, the economic inequality of the employer and the employee, the law allows for a relatively free exit of the employee from labor

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[295] Golovina S.Yu. Employment contract as a legal structure [Electronic resource] // Bulletin of Perm University. Legal sciences. 2013. N. 3(21). Access from the reference legal system "ConsultantPlus".
[296] Tal L.S. Essays on industrial labor law. M., 1918. P. 165.
[297] Varshavsky K.M. Labor law of the USSR. L., 1924. S. 169.

relations and to a fairly wide extent restricts the operation of the principle of freedom of the employment contract in relation to the grounds for terminating the employment contract of the employer, which, with rare exceptions related to the specifics of the labor function, are established only by law, which is a serious intrusion into the right to manage labor.

Now let's move on to the second aspect of the principle of freedom of work: the right of the worker to determine what work he will do. The practical expression of this aspect of the principle of freedom of labor is manifested in the fact that the labor function of an employee is the subject of an agreement between the parties to an employment contract: the employer offers the performance of certain work, and the employee agrees to perform it, thereby exercising the right to freely choose the labor function. That is, no one can force an employee not only to conclude an employment contract, and, therefore, to carry out labor activity as such, but no one can force him against the will of the employee to choose a specific type of labor activity, both when concluding an employment contract and further. Otherwise it would mean a violation of the principle of freedom of labor. This is reflected in Art. 60 of the Labor Code of the Russian Federation, which prohibits requiring an employee to perform work not stipulated by an employment contract, with the exception of cases provided for by the Labor Code and other federal laws.

There are three such exceptions: Part 2 and Part 3 of Art. 72.2. Labor Code of the Russian Federation and Art. 30 of the Federal Law of July 27, 2004 No. 79-FZ "On the State Civil Service of the Russian Federation"[298]. Since the norm of Federal Law No. 79-FZ is similar to the norm of Part 3 of Art. 72.2. Labor Code of the Russian Federation, and the specifics of the regulation of labor relations within the framework of the civil service is beyond the scope of this study[299], only cases provided for by the Labor Code of the Russian Federation will be considered.

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[298] On the State Civil Service of the Russian Federation [Electronic resource]: Feder. law of 27 Jul. 2004 N 79-FZ // Collection. legislation Ros. Federation. - 2004. - N 31. - Art. 3215. - (as amended on July 24, 2023). Access from the reference-legal system "ConsultantPlus".

[299] For more details on the specifics of regulating the labor of state civil servants, see, for example, Ivanov S.A., Ivankina T.V., Kurennoy A.M. and others. Legal regulation of relations in the sphere of civil service // EZh-Jurist. 2004. N 6. P. 8-10.

Let's start with the provisions of Part 2 of Art. 72.2 of the Labor Code of the Russian Federation, which says that in the event of extreme situations that threaten people's lives or the onset of other serious consequences, the employer can transfer employees for up to one month without their consent to work not stipulated by an employment contract to prevent these situations or their consequences. This norm actually gives the employer the right to manage the work of employees for the implementation of new socially useful activities, different from the one for which the employees were initially involved, as a result of which the employer has the authority to unilaterally change the labor functions of employees. It should be noted that the employer carries out this socially useful activity not to achieve personal goals and benefits, but for publicly significant goals. Of course, from the point of view of ordinary human logic, any employer is interested in ensuring that no disasters happen (since the employer himself can suffer from them), and if they do occur, then their consequences are leveled as soon as possible. However, situations are possible when these extreme events do not directly affect the employer, but the latter nevertheless carries out this transfer of workers for the common good. The employer can completely independently decide on such a transfer, since the norm of Part 2 of Art. 72.2 of the Labor Code of the Russian Federation does not make the exercise of this authority dependent on the availability of special instructions, orders or sanctions from public authorities.

All this demonstrates the possibility of independent (from the point of view of initiative and management) use by the employer of the ability to work of employees with a preliminary change in their labor functions to carry out activities that are useful from the point of view of public interests. This is what distinguishes this situation from the possible management of labor under the state of emergency. Yes, Art. 13 of the Federal Constitutional Law of May 30, 2001 No. 3-FKZ "On the State of Emergency"[300], as measures introduced during a state of emergency, involves the mobilization of resources of organizations regardless of organizational and legal forms and forms of ownership, changing their mode of operation, reorienting these

[300] On the state of emergency [Electronic resource]: Feder. constitutional law of the Russian Federation of 30 May. 2001 N 3-FKZ // Collection. legislation Ros. Federation. - 2001. - N 23. - Art. 2277. - (as amended on May 29, 2023). Access from the reference-legal system "ConsultantPlus".

organizations to the production of the necessary in the conditions of the state of emergency of products and other changes in production and economic activities necessary in the conditions of the state of emergency. Difference from part 2 of Art. 72.2. The Labor Code of the Russian Federation is that the initiator and subject of making appropriate management decisions in this case are representatives of public authorities: the employer loses its organizational and activity autonomy for a while.

Now let's turn to the norm of Part 3 of Art. 72.2 of the Labor Code of the Russian Federation, which allows the employer to transfer employees for a period of not more than a month to work not stipulated by the employment contract upon the occurrence of downtime, in order to preserve the property of the employer or replace a temporarily absent employee when the above circumstances were the result of emergencies. Unlike part 2 of Art. 72.2 of the Labor Code of the Russian Federation, this norm does not imply a change by the employer of socially useful activities and the use of the ability to work of previously attracted employees to carry out this new, socially significant activity. In this case, the employer receives the authority to unilaterally change the labor function of employees in order to minimize the impact exerted on his socially useful activities by the negative consequences caused by emergency situations, as well as to reduce the material damage caused in connection with this. In this regard, provided h. 3 Article. 72 of the Labor Code of the Russian Federation, the authority has a clearly expressed compensatory nature: the possibility of a unilateral change in the labor function of an employee as an exception to the principle of freedom of labor is a way to restore damage in the organizational, activity and property areas of the employer through the use of the labor management mechanism.

Thus, the norms of parts 2 and 3 of Art. 72.2 of the Labor Code of the Russian Federation are examples of restricting the principle of freedom of labor, and a demonstration that in these cases the employer's right to manage labor has priority. At the same time, the legislator tries to balance the interests of the employer and the employee through the fact that, firstly, the change in the labor function in both cases is temporary, and secondly, despite the change in the content of job duties, the transferred

workers are provided with a salary for performing a new job function. wages not lower than the average earnings in the previous job.

It is interesting to note that the real possibility of exercising the powers provided for by the norms of parts 2, 3 of Art. 72.2 of the Labor Code of the Russian Federation is blocked by the principle of inviolability of life and health protection of the employee. So, part 7 of Art. 216.1 of the Labor Code of the Russian Federation allows an employee to refuse to perform work with dangerous working conditions that are not provided for by an employment contract, freeing him from disciplinary liability for such a refusal. And the Supreme Court of the Russian Federation, in paragraph 19 of the Decree of the Plenum dated March 17, 2004 No. 2, indicated that this refusal of an employee with the indicated consequences is possible, and when the employee was transferred to another job in the manner prescribed by Parts 2, 3 of Art. 72.2 of the Labor Code of the Russian Federation. And, given that these situations are very often associated with a risk to the life and health of employees, the range of possible cases of the employer exercising these powers to unilaterally change the employee's labor function is significantly narrowed.

After analyzing the relationship between the principle of freedom of labor and the right of the employer to manage labor, it can be noted that they really come into conflict with each other, since they are opposite in the direction of protected and guaranteed rights and legitimate interests. But the principle of freedom of labor is not absolute and not subject to limitation.

§3. The principle of social partnership as a restriction of the employer's right to manage labor

Let's move on to the consideration of the last constitutional principle, which is a restriction of the employer's right to manage labor - the freedom of workers to organize into trade unions and protect their interests through them (part 1 of article 30 of the Constitution of the Russian Federation), which has found industry reflection in the

principle of social partnership. Analysis of the correlation of these categories in a separate paragraph in connection with the following.

The operation of this principle limits the right of the employer to manage labor in a special way, different from the effect of its previously considered constitutional restrictions. Considering the principle of the inviolability of life and health, respect for the honor and dignity of the employee, equality of all before the law and the court, as well as freedom of labor, there was a situation either of a conflict of principles with the right of the employer, which was resolved in favor of the rights of workers, or there was a general prohibition of these principles. That is, when making managerial decisions, the employer is obliged to correlate them with the indicated principles, and in case of their conflict, these decisions from the moment they are made are illegal and have no consequences. Consequently, the previously considered restrictions on the right to manage labor by their existence establish a permanent ban on the adoption of certain managerial decisions, that is, they set the framework for the possible actions of the employer.

The situation is different with the mechanism of action of the principle of social partnership. The restrictive effect of this principle in relation to the right of the employer to manage labor is manifested in the following. Firstly, the legislator obliges the employer to make managerial decisions that are the embodiment of the implementation of regulatory and administrative-dispositive powers, taking into account the opinion of employee representatives. Secondly, the legislator obliges the employer (employers) to participate in collective negotiations on the conclusion of collective agreements, agreements under which not the sole decision of the employer is made, but a decision in which representatives of employees participate. Thirdly, within the framework of these negotiations, the employer himself agrees to the joint adoption of one or another managerial decision or limits himself in exercising the powers that belong to him, which is a contractual self-limitation of the employer's right to manage labor.

Thus, the restrictive effect of the principle of social partnership in relation to the right of the employer to manage labor is not expressed in the creation of an existing

regime of prohibition on the adoption of certain managerial decisions, but in a certain encroachment on the organizational independence of the employer in making these decisions. At the same time, the employer is not relieved of the rights and obligations to make managerial decisions, but the procedure for making them becomes more complicated (either due to the provisions of the law, or due to self-restriction within the framework of collective agreement regulation). That is, there is a retreat from the model of the employer's sole labor management, as the initiator and organizer of socially useful activities, and the transition to a consultative or joint model of labor management, when in the process of exercising his managerial powers to one degree or another (given that the consulting and joint models are fundamentally different) includes persons who are not the initiators of socially useful activities for which they are hired, and, therefore, a priori do not have management rights.

It is also impossible not to note the fact that the employer and employees have diverging interests (which leads to conflicts between the employer's right to manage labor and the basic rights of employees), and the concept of "partners" still implies a commonality of goals for persons referred to as such[301]. Therefore, for example, A.M. Kurennoy proposes to call this institution "social dialogue", since it is dialogue that allows for the search for some kind of compromises even in the presence of opposing points of view[302]. S.P. Mavrin and V.A. Safonov adhere to the same logic, proposing to talk in this case not about "social partnership," but about "social cooperation,"[303] with which we will agree.

The problem of the validity of the introduction of the principle and institution of social partnership into the normative regulation was developed in detail by V.A. Safonov, who substantiated the objectivity of the need to allow workers to participate in

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[301] On the direction and significance of the goals and interests of the parties to labor relations, see N.I. Diveeva. On the consensual nature of the labor relationship // Law and Law. 2008. N 2. P. 54-55.

[302] Kurennoy A.M. Questions of the effectiveness of representation of the interests of workers in the field of hired labor [Electronic resource] // Law. 2019. N 11. Access from the legal reference system "ConsultantPlus".

[303] See, Mavrin S.P. Social partnership in labor relations: the concept and mechanism of implementation // Russian labor law at the turn of the millennium: All-Russian scientific conference / Collection of materials, ed. E.B. Khokhlova, V.V. Korobchenko. SPb., 2001. Part 2. P. 38; Safonov V.A. Social partnership: a textbook for undergraduate and graduate studies. M., 2015. P. 37.

the management of their labor[304]. Therefore, the analysis will be focused on the reasons that prompt the employer to agree to allow employees to make managerial decisions, while paying attention to the very apt remark of E.N. Nurgalieva and L.Z. Akhmetzhan that "at present, labor relations are more than ever characterized by the opposition of the interests of their parties, being the cause of labor disputes, in connection with which it is considered correct to admit employees to the procedure for making managerial decisions"[305].

Since wage labor usually has a cooperative character, in a situation where the interests of workers and the interests of the employer are opposite (the so-called "opposition of labor and capital"), it is objective and natural for workers to unite in order to improve working conditions. Ignoring collectively put forward demands as a result of such an association of workers is fraught with conflicts, which, as historical experience shows, cannot always be resolved in a peaceful way that satisfies both sides of the conflict. In this regard, in order to avoid the uncontrolled development of conflicts, the employer needs to agree with employee representatives on future working conditions, which will be easier and less costly than an endless struggle.

It should also be borne in mind that employees whose opinion is taken into account when making management decisions and who are informed about changes in the world of work work more actively, creatively approaching the fulfillment of the tasks assigned to them by the employer. And the employer, like no one else, is interested in increasing labor activity and unlocking the creative potential of employees, because thanks to this, the socially useful activity of the employer will be more effective, and its results will be achieved in a shorter period of time.

An equally important reason that encourages employers to allow employees into the process of making managerial decisions is the fact that each member of the team of

[304] See Safonov V.A. Social partnership: a textbook for undergraduate and graduate studies. M. 2015. P. 23-27. See also: Resolution of the Constitutional Court of the Russian Federation of October 24, 2013 N 22-P [Electronic resource]. Access from the reference-legal system "ConsultantPlus"; Opinion of the judge of the Constitutional Court of the Russian Federation N.S. Bondar to the Determination of the Constitutional Court of the Russian Federation of July 18, 2017 N 1551-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[305] Akhmetzhan L.Z., Nurgalieva E.N. On the question of the participation of workers in the management of production in the Republic of Kazakhstan [Electronic resource] // Labor law in Russia and abroad. 2020. N 2. Access from the reference legal system "ConsultantPlus".

workers, although selected taking into account certain qualities, is still the work team itself is a group of different personalities, possibly with certain disagreements and contradictions, with divergent interests, etc. And with a group of such different people, the employer needs to establish contact and organize them into a workable, united, but not disparate team. It is in such a situation that the presence of a common representative of all employees, who first resolves disagreements among members of the labor collective, identifies common interests, forms a common will and clearly communicates it to the employer, helps the employer himself to choose the appropriate management model for such a collective of employees and build a further personnel in the right vector politics. Another advantage of the employer's social dialogue with employees' representatives, closely related to the above, is that the employees' representatives who participated in the discussion or adoption of a managerial decision, in turn, also explain to the employees the motives for the decision, which makes the employer's decisions understandable and acceptable to other employees.

The main task and goal of workers' associations, including trade unions, is to protect the interests and rights of their members. How can a trade union[306] implement this? Firstly, he can prevent such a violation by taking preventive actions, and secondly, to carry out direct protection within the framework of a situation where the rights of workers have already been violated. It is obvious that the form of implementation of the second type of protection is the representation of workers by the trade union in resolving labor disputes. As for the first, it is possible to prevent a potential violation of the rights of workers, perhaps by preliminary agreeing on the actions of the employer for their compliance with the interests of the employer and workers, or by proposing by the trade union any changes in the conditions for using the ability to work of workers. And in order to start the procedure for agreeing on any decisions, it is necessary that employees know about the possibility of their adoption by the employer, which means that the latter must inform them about this. Moreover, the fact that employees are informed about the employer's plans cannot be underestimated, since the effectiveness

[306] Here and in the future, we will use the term "trade union", meaning both directly trade unions and other associations of workers, since a trade union is not the only form of exercising the right to association by employees.

of the latter's activities directly depends on this, to which A.M. Kurennoy correctly drew attention: "Paradoxically, the experience of countries with advanced economies indicates that effective management just suggests a fairly wide range of options for attracting employees, primarily through their representatives, to discuss the most important issues of organizations. The main thing here is the mechanism for informing employees about the employer's plans"[307].

Based on the foregoing, it can be concluded that the nature of the content of the norms that mediate social partnership relations can be of three types: firstly, to inform those preparing to make management decisions, and secondly, to discuss these decisions and, if possible, find a compromise that suits both thirdly, these may be norms that allow trade unions to be the first to initiate negotiations with the employer on the conditions for the employment of workers. V.A. Safonov calls this the principle of "partial participation" of workers in labor management[308].

This understanding of the nature of the norms that ensure the presence of the principle of social partnership in labor relations is fully consistent with the principle of effective recognition of the right to collective bargaining proclaimed in the Declaration of the International Labor Organization "On fundamental principles and rights in the sphere of work and the mechanism for its implementation" of June 18, 1998[309]. Of course, any sane employer, in order to increase the efficiency of his activities, must himself be aware of the need to take into account the interests of his employees and go into dialogue with them. But in the current realities, this issue cannot be left to the discretion of the employer, relying on his entrepreneurial rationality. Therefore, it seems reasonable to oblige him to conduct a social dialogue in the event that the will of employees is expressed for this, and to establish specific forms of interaction with employees within the framework of social partnership. The absence of such public

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[307] Kurennoy A.M. Questions of the effectiveness of representation of the interests of workers in the field of hired labor [Electronic resource] // Law. 2019. N 11. Access from the legal reference system "ConsultantPlus". The importance of information rights and obligations of the parties to the social partnership was also pointed out by E.N. Nurgalieva: see Nurgalieva E.N. Protection of personal data of an employee under the legislation of the Republic of Kazakhstan // Labor law in Russia and abroad. 2019. N 1. P. 52-55.

[308] Safonov V.A. Social partnership: a textbook for undergraduate and graduate studies. M., 2015. P. 30.

[309] On the fundamental principles in the sphere of labor [Electronic resource]: declaration of the International Labor Organization of June 18. 1998 // Russian newspaper. - 1998. - 16 Dec. - N 238. Access from the reference legal system "ConsultantPlus".

enforcement of these actions would cause the risk that the right to collective bargaining would be “dead”, as the employer would ignore any activity on the part of employees and simply would not enter into dialogue with them.

In this regard, the norm of Article 53 of the Labor Code of the Russian Federation quite reasonably and lawfully defines the possible forms of participation of employees in making managerial decisions that correspond to the principle of "partial participation". It should be noted that this list is not closed and can be supplemented both at the legislative level and at the level of collective agreements and contracts, as well as at the corporate level of a particular employer. These forms of employee participation in the employer's managerial decision-making can be classified for various reasons, but the most important in the context of this work is the classification by the presence or absence of initiative in making managerial decisions among employees. In this regard, we will analyze and compare in more detail the procedures for taking into account the opinions of employees' representatives, obtaining their consent to make individual decisions, as well as the content of the collective bargaining regulation process.

The obligation of the employer to take into account the opinion of employees representatives extends to cases of exercising a number of administrative, dispositive and disciplinary powers (for example, involving employees in overtime work or work on weekends and holidays, dismissal of employees who are members of the trade union on a number of grounds) and some regulatory powers (for example, adoption of internal labor regulations, vacation and shift schedules, labor protection rules and instructions). All cases of exercising these powers, burdened with the obligation to take into account the opinion of employees' representatives, are established in the Labor Code and other laws, which does not exclude the expansion of their list within the framework of local regulatory regulation or through collective agreements and agreements. The very procedure for taking into account opinions is regulated by the norms of articles 372 (when adopting local regulations) and 373 of the Labor Code of the Russian Federation (when dismissing members of trade unions due to layoffs, negative certification results

and repeated failure to fulfill labor duties) and boils down to the following[310]. The employer is obliged to send for consideration by the representative body of employees a draft order formalizing the implementation of any authority for the operational management of labor, or a draft local regulatory act. And the representative body of employees must express its opinion, expressed in agreement or disagreement with the decision being made, and in case of disagreement, offer the employer options for a modified management decision that the employer may not accept, and implement the original draft of his decision. In this case, the representative body of employees may appeal against the actions of the employer in court.

The presence of this procedure is designed to ensure the consistency of the actions of the employer with the interests of employees, the expression of which is carried out by their representative body. The request for opinion is aimed at ensuring that the employer can get an idea of how the implementation of a management decision can affect the labor process and what consequences it can cause, which gives him the opportunity to adjust the management decision, thereby ensuring its compliance with his interests and the interests of employees. Therefore, this procedure is not unnecessarily restrictive or violating the rights of the employer, with which the Constitutional Court of the Russian Federation also agrees[311].

The obligation to obtain the consent of the representative body of employees extends to the exercise by the employer of dispositive and disciplinary powers. The Labor Code establishes three cases for obtaining such consent: 1) when trade union leaders are dismissed due to a reduction in the number or staff of employees, as well as when they do not comply with the results of certification; 2) upon dismissal of representatives of employees at the initiative of the employer, participating in collective bargaining, during the period of their conduct, except for cases when dismissal is a measure of disciplinary action; 3) when exercising in relation to employees participating in the resolution of a collective labor dispute, the authority to bring to disciplinary

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[310] It seems that in all other cases, the consideration of opinion in the exercise of dispositive powers will be carried out by analogy with the procedure provided for in Art. 373 of the Labor Code of the Russian Federation.

[311] Determinations of the Constitutional Court of the Russian Federation dated June 19, 2012 N 1082-O dated December 24, 2012 N 2304-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

liability, transfer to another job or dismissal at the initiative of the employer. Also, by virtue of the provisions of Part 3 of Art. 8 of the Labor Code of the Russian Federation, the provisions of collective agreements and agreements may provide for the obligation of the employer to obtain the consent of the representative body of employees for the adoption of local regulations. The procedure for obtaining consent is provided for by the norm of Art. 374 of the Labor Code of the Russian Federation in relation to the dismissal of trade union leaders, and will be applied by analogy to other cases of obtaining consent. It consists of the following set of actions. The employer decides to exercise one of these powers and sends a draft act formalizing such an implementation to the appropriate representative body of employees, which either agrees or refuses to exercise dispositive or disciplinary powers by the employer. In case of refusal, the employer has the right to appeal against the actions of the representative body of employees in court, while the exercise of managerial authority in violation of the refusal will be illegal.

It is important to note that the procedure for obtaining consent for the employer to exercise disciplinary or administrative-dispositive powers[312] does not give the representative body of employees the right to arbitrarily block the legal actions of the employer, but is designed to protect the rights of a certain category of employees whose actions may prevent the employer from realizing his unfair and illegal interests, and does not deprive the latter of the right to make an appropriate decision if the refusal of the representative body of workers is recognized as illegal. This logic in determining the meaning of this restrictive procedure was confirmed by the Constitutional Court of the Russian Federation, which can be seen from the example of the employer obtaining consent to the dismissal of trade union leaders on the grounds provided for in clauses 2, 3, part 1 of Art. 81 of the Labor Code of the Russian Federation[313].

Thus, the common between the procedures for taking into account the opinion and obtaining the consent of the representative body of employees is that in both cases,

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[312] The possibility to provide in acts of social partnership the obligation to obtain consent to the adoption of a local normative act will be analyzed when considering such a form as collective agreements and agreements.

[313] See Determination of the Constitutional Court of the Russian Federation dated 04.12.2003 N 421-O [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

employees are not the initiators of a management decision, their will does not form this decision, they either express their opinion about the appropriateness, effectiveness of this decision and its impact. on the rights and legitimate interests of employees, or in the case when it is aimed at violating the latter (and only in this case!), block its adoption. They differ in that, as a general rule, the law provides for the obligation to obtain consent only for the implementation of dispositive and disciplinary powers, and the opinion should also be taken into account on the issue of the implementation of regulatory powers. This is due to the fact that the implementation of operational powers may entail a violation of the rights of employees, the prevention of which also requires prompt action. As for regulatory powers, firstly, the norms that detract from or violate the rights of workers are invalid from the date of their adoption, and, secondly, the legislator quite logically and correctly gives the issue of obtaining the consent of the representative body of workers to the adoption of local acts at the mercy of the parties social partnership and does not provide for any list of such cases at the level of the code, based on the essence of regulatory powers and the meaning of acts of collective agreement regulation[314].

Part 1 Art. 40 of the Labor Code of the Russian Federation gives a legal definition of a collective agreement, which is understood as a legal act regulating social and labor relations in an organization or with an individual entrepreneur and concluded by employees and the employer represented by their representatives. It is important to note that a collective agreement can be the result of both collective bargaining and a collective labor dispute initiated by employees' representatives. The use by the legislator in the definition of the words "legal act" and the nature of the extension of its action to an indefinite circle of employees within the employer's organization gave rise to the existence in the literature of two radically opposite points of view on the account of the public or private nature of the collective agreement[315]. An analysis of the nature of

[314] Further considerations will be limited to the analysis of the regulation of labor relations through collective agreements. Despite the fact that the regulation of labor relations through collective agreements has a number of differences from regulation through collective agreements, the conclusions that will be made in the development of the principles under consideration and the proposed ideas are fully applicable to collective agreements.

[315] See, for example, Diveeva N.I. Contractual basis of labor law in Russia. Barnaul, 1999. P. 48.; Volk E.A., Kostevich K.S., Tomashevsky K.L. Collective agreements and agreements as sources of modern labor law (theory and practice). Minsk, 2012, P. 40-43; Safonov V.A. Collective agreements as legal acts of social partnership [Electronic resource] //

regulatory contracts is beyond the scope of this study. Also, the determination of the possibilities of collective contractual restriction of the employer's right to manage labor does not require a detailed analysis of the procedures for conducting collective bargaining, resolving collective labor disputes and the procedure for concluding collective agreements. For the purposes of this study, the following should be noted.

First, in contrast to the procedure for taking into account opinions and obtaining consent to make a management decision from a representative body of employees, a collective agreement is the form of participation of employees in making a management decision, when it is the employees, and not the employer, who can initiate this decision.

Secondly, the range of issues that may be included in the content of the collective agreement is quite wide, and is approximately determined by the norm of Part 2 of Art. 41 of the Labor Code of the Russian Federation, which includes additional guarantees, and issues related to the conditions of employment, and the assumption of various obligations, etc. And the very definition of the collective agreement, and its content shows that its main function is in the implementation of contractual and regulatory regulation, on the one hand, the conditions for the realization by employees of their ability to work, and, on the other hand, the realization by the employer of the right to manage labor.

Based on this, it can be concluded that through collective bargaining regulation, employees are allowed into the sphere of decision-making on labor management that belongs exclusively to the employer, in fact, gaining the right to initiate and participate in the implementation of the employer's regulatory powers. Such an understanding of the collective agreement is fully consistent with the provisions of the ILO Convention No. 154 "On Facilitating Collective Bargaining" dated 19.06.1981.[316]

At the beginning of this work, it was concluded that the right of the employer to manage labor is of a private nature and is not a public authority delegated by the state.

Actual problems of Russian law. 2015. N 2. Access from the reference legal system "ConsultantPlus"; Tarusina N.N., Lushnikov A.M., Lushnikova M.V. Social contracts in law: Monograph [Electronic resource]. M., Prospect. 2017. Access from the legal reference system "ConsultantPlus"; Labor Law / Ed. O.V. Smirnov. M., 1996. P. 600.

[316] On the facilitation of collective bargaining [Electronic resource]: Convention N 154 of the International Labor Organization of June 19. 1981 (ratified ratified by the Federal Law of July 1, 2010 N 138-FZ) // Collected Legislation of the Russian Federation. 2011. N 51. Access from the reference legal system "ConsultantPlus".

The conclusion of a collective agreement represents the consent of the employer to increase the level of guarantees of the rights of employees in their organization or the admission of employees to their own sphere of management decision-making within their organization. Thus, the employer as the right holder himself limits his private right to manage labor in his organizational and economically autonomous unit - the enterprise, assuming a number of obligations, which indicates the absence of a public aspect in the situation of the employer's self-restriction of his right. The extension of the effect of the collective agreement to an indefinite circle of employees does not make it public, this is only its specificity, aimed at maintaining the situation of equal rights for all employees with one employer. Local regulations of the employer also apply to an indefinite number of employees, but they do not have a public nature due to the private nature of the employer's right to manage labor.

In this regard, it is necessary to highlight the factors that affect the limits of self-restriction of the employer's right in a collective agreement. Based on the previously defined nature of the right to manage labor, the employer, as the right holder, is authorized to self-limit it in a contractual manner in any amount, without violating or restricting thereby the rights of employees. First, at the same time, it cannot reduce the level of employee guarantees that already existed before the adoption of the collective agreement and impose on them additional responsibility for management decisions made with their participation in exchange for the participation of employees in making such decisions. Secondly, such self-restraint should not create discriminatory situations when the position of some workers will be unreasonably more advantageous than the position of the rest. The first restrictive aspect is the manifestation of Part 2 of Art. 9 of the Labor Code of the Russian Federation. The second is a logical consequence of the operation of the constitutional principle of the equality of all before the law and the courts.

However, would it be true to say that due to the private nature of the employer's right to manage labor, the employer can assume absolutely any restrictions, up to the refusal to exercise any powers that make up the content of the right to manage labor, for example, to refuse in a collective agreement from dismissal of employees for any

reason? Therefore, the issue of the possibility of the employer's refusal of his managerial powers in the manner of collective contractual regulation should be considered. Understanding the constitutional nature and basis of the employer's right to manage labor, as well as the significance of collective contractual regulation of labor relations, will help to come to the right decision.

The right to manage labor is a consequence of the exercise of the constitutional right to freely engage in entrepreneurial activities not prohibited by law (part 1 of article 34 of the Constitution of the Russian Federation) and consists of a certain set of powers: regulatory, administrative-dispositive and disciplinary, which, as indicated in the second chapter of this work, are legalized in the norms of Art. 22 of the Labor Code of the Russian Federation through the transfer of a number of specific powers of the employer. It is the specific powers of the employer to manage labor that are the components of the right of the employer to manage labor, and their use are examples of the possible implementation of the right to manage labor.

In accordance with the foregoing, the restriction or refusal to exercise the managerial powers of the employer is the restriction or refusal of those possible powers through which the right to manage labor is exercised. For complete clarity, we illustrate how this might look. So, in accordance with Part 1 of Art. 22 of the Labor Code of the Russian Federation, the employer has the right to terminate employment contracts. One of the acceptable forms of termination of an employment contract is the procedure for reducing the number or staff of employees. But the collective agreement may contain a condition that a certain category of workers is not subject to reduction, or it may contain a ban on the dismissal of all workers for any reason. Thus, there is a refusal to exercise the authority to terminate employment contracts with employees on a certain basis. The following can be cited as an example of limiting the exercise of the managerial authority of the employer. Part 2 of Article 22 of the Labor Code of the Russian Federation gives the employer the right to bring employees to disciplinary responsibility, and the norms of Chapter 30 of the Labor Code specify this right and give the employer the authority to apply disciplinary sanctions to employees, up to and including dismissal, in compliance with the procedure established by law. However, a condition may be

included in the collective agreement that the application by the employer of dismissal as a disciplinary sanction can be carried out only after preliminary consultations on this issue with the representative body of workers or even after obtaining its consent to these actions.

There are many examples of such a collective contractual refusal of the employer from certain managerial powers or their restriction: in fact, the employer can refuse or limit their implementation from any authority that exercises the basic rights of the employer provided for in Article 22 of the Labor Code of the Russian Federation. Such restrictions on the employer's right to manage labor, contained in acts of social partnership, can be of several types. Firstly, a ban on the exercise of any of the managerial powers may be introduced for the employer. Secondly, the employer may be required to obtain the consent of the representative body of employees to exercise managerial powers. And, thirdly, the employer may be entrusted with the obligation to first request an opinion from the representative body of employees on the implementation of managerial powers.

The first case - the establishment of a ban on the adoption of managerial decisions - is the employer's refusal to exercise its powers in its purest form: the employer voluntarily assumes obligations not to perform certain managerial actions. That is, the employer remains the only entity that has the ability to initiate and make a management decision, but does not voluntarily make such a decision under the threat of recognizing it as unlawful as contrary to the conditions of the act of social partnership.

The second case - the establishment of the obligation to obtain consent to the exercise of their powers - can be implemented in two ways. The first involves obtaining a reasoned consent from the representative body of employees, the purpose of which is to protect employees from the employer's exercise of their powers to achieve unlawful goals, and implying the right of the employer to appeal the refusal in court. Such a procedure is similar to the cases of obtaining consent established in the Labor Code, which were considered earlier, and is admissible. The second type implies the impossibility of exercising managerial authority without formally obtaining the consent of the representative body of employees, which does not imply the obligation of the

latter to justify the refusal and does not allow the employer to appeal against his actions in court[317]. Although formally this case is a limitation of the managerial powers of the employer and is not a waiver of them, it can lead to the impossibility of their implementation by the employer, which will lead, as in the case of a refusal, to the loss of a certain authority of the employer to manage the work of employees from the set of possible ones. In this case, the employer acts only as a full-fledged initiator of making a managerial decision, offering to make it, after which he is obliged to obtain the consent of the representative body of employees to make this decision, and only if a positive response is received, the employer will be able to make a final decision on the implementation of his powers. This restriction option leads to the fact that the implementation of managerial powers belonging to the employer as the subject of management of subordinate employees is completely dependent on another person who does not have these powers. This option of limiting powers actually deprives the employer of independence in making managerial decisions[318].

The third case - the obligation of the employer to first request the opinion of the representative body of employees - is an example of limiting the employer's powers to make managerial decisions by burdening the process of implementing the managerial decision by the employer with an additional procedure that does not entail a defect in the employer's independence. The subject initiating the management decision and finally making it is only the employer, who is only obliged in this situation, after the initiation of the management decision, to find out the opinion of the team of employees on this matter and in the future either take it into account or not take it into account when making a decision. Unlike the second case considered, in this situation the fundamental possibility of the employer exercising the authority to manage labor does not depend on the will of third parties.

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[317] In further analysis, obtaining consent to exercise the authority to manage labor will be understood as precisely this type of obtaining consent.

[318] Speaking about the deprivation of independence, we understand that in the end, the employer himself decides whether to exercise the managerial authority allowed by the representative body of employees or not to exercise it. This means that if the employer is not initially going to refuse to exercise his authority to manage labor, then in fact the final decision on its adoption comes from the representative body of workers.

Due to the fact that, although the parties to social partnership have opposite interests, but at the same time, the conclusion of collective agreements and agreements should serve to harmonize labor relations, therefore, acts of social partnership should not contradict the constitutional goals that are achieved when the employer manages the labor of employees and on the achievement of which the operation of the principle of social partnership is directed. These constitutional goals need to be considered in the system. The possibility of exercising the entire set of managerial powers constituting the right to manage labor allows the employer to properly carry out socially useful activities as an entrepreneur through employees.

Will the loss of at least one of the elements of labor management as a result of the refusal to exercise managerial authority through the adoption by the employer of appropriate obligations within the framework of an act of social partnership lead to the inability to fully respond to a change in the situation in the business sphere? Such consequences may result from the waiver of not every one of the powers. As mentioned earlier, the employer has the right to adopt local regulations and is not obliged to do so (with the exception of a number of cases), and a subject of socially useful activity can begin to carry out the functions of an employer without an approved system of local regulations. It was also noted that the implementation of regulatory powers in a broad sense is aimed at determining the conditions for using the ability of the labor of employees who, like the employer, are directly interested in this, and, by virtue of the essence of the collective agreement, have the right and are allowed to initiate and process the implementation of regulatory powers. Thus, due to the fact that the implementation of regulatory powers does not directly affect the possibility of carrying out socially useful activities[319], it cannot block it or deprive the employer of the possibility of promptly responding to the actions of the employee as an intermediary carrying out this activity, in case of a breakdown in communication between him and employer, the employer may, within the framework of collective agreement regulation, refuse to exercise sole regulatory powers, assuming the obligation to adopt all local regulations only with the consent of the representative body of employees, which is also

[319] That does not negate the indirect impact on the process of its implementation, as mentioned earlier.

confirmed by the relevant norm in part 3 of Art. 8 of the Labor Code of the Russian Federation[320]. Otherwise, it would simply devalue and level the right of workers to collective bargaining and collective disputes, the consequence of which is the emergence of a new normative act regulating labor relations, taking into account the will of both parties. Moreover, as it was indicated in the first chapter of this work, the dispositive aspect of the administrative and dispositive powers of the employer makes it possible to eliminate the existing gaps in the regulation of the labor management process. Therefore, the employer's loss of independence in the exercise of regulatory powers will be compensated through the exercise of administrative and dispositive powers. Thus, the employer will not lose the opportunity to influence the process of carrying out socially useful activities.

A completely different situation is with the administrative, dispositive and disciplinary powers of the employer, the implementation of which is an operational impact on employees in the framework of labor activity, which directly affects the implementation of socially useful activities. In this connection, the refusal or impossibility of making one or another administrative-dispositive or disciplinary decision will lead to negative consequences at the level of socially useful activity. For example, refusal to dismiss due to the liquidation of the organization will lead to problems in the implementation of this process, refusal to give employees operational instructions leads to disorganization of labor and violates the scenario desired by the employer for the implementation of socially useful activities, refusal to dismiss employees for disciplinary offenses (an employee as a representative of the employer discredits the latter before the counterparty) may entail significant losses for the employer, etc. In this vein, all the administrative, dispositive and disciplinary powers of the employer can be (and should be!) Considered, since their ultimate goal is to ensure successful engagement in socially useful activities.

Therefore, the refusal of the employer to exercise administrative, dispositive and disciplinary powers within the framework of the composite right to manage labor

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[320] On the problems of implementing Part 3 of Art. 8 of the Labor Code of the Russian Federation, see G.V. Khnykin. Decision-making by the employer taking into account the opinion of the trade union body // Labor law in Russia and abroad. 2011. N 3. P. 48-53.

destroys the very mechanism of labor management, which forms the basis of the labor and legal status of the employer, which will lead to the impossibility of exercising the constitutional right to engage in entrepreneurial activity, and, therefore, destroy the activity itself[321].

Due to the fact that only the employer can initiate administrative, dispositive and disciplinary powers, the same consequences await him in a situation in which he ceases to be the sole subject of management decision-making, when the representative body of employees is empowered to allow or prohibit the employer from implementing administrative dispositive or disciplinary powers. For example, by limiting itself to the application of dismissal as a disciplinary sanction only after obtaining the consent of the representative body of employees, the employer finds himself in a situation where, realizing the damage he receives from the violation of labor discipline by employees, he cannot properly respond to destructive for him activity factors by dismissal of the relevant employees, if the representative body of employees will exercise its right in bad faith and will not give consent to the dismissal. Such a situation will distort the mechanism of labor management, which will lead to the problem of exercising the right to engage in socially useful activities, and, accordingly, the implementation of the activity itself will be in jeopardy. These unfavorable consequences are a consequence of the fact that dispositive and disciplinary decisions are not made by the subject of labor management, which is the initiator and organizer of socially useful activities.

We assume that those who disagree with the advanced position may point out that the norms of Art. 53.1. The Labor Code of the Russian Federation allows, at the level of acts of social partnership, to provide for the right of employees' representatives to participate in meetings of the organization's collegiate management body with the right to consultative vote, which implies the possibility of employees' participation in making operational decisions related to both labor activity and directly socially useful. However, not so. If representatives of employees are admitted to the collegiate management body of the employer, then the initiator of management decisions will still

[321] Sitnikov A.A. Refusal of the employer to exercise powers to manage labor in acts of social partnership: constitutional and legal analysis // Russian Legal Journal. 2021. N 1. P. 168.

be the employer represented by his body, and not the employees. Employees in such a situation will be only one of the persons influencing the formation of the will of the employer, but in the end, the will to make this or that decision will be formed and expressed by the employer himself.

On the basis of the foregoing, two criteria can be distinguished, which, based on the constitutional understanding of the goals of the powers to manage labor and the institution of social partnership, must meet the obligations that improve the situation of employees by limiting the employer in exercising their managerial powers, assumed within the framework of acts of social partnership.

Firstly, the employer cannot refuse to exercise administrative, dispositive and disciplinary powers to manage labor, as this entails a defect in his labor legal personality, leading to unreasonable restrictions or the impossibility of exercising the constitutional right to engage in entrepreneurial activity.

Secondly, the restrictions adopted by the employer should not lead to the fact that the employer would lose independence in the exercise of administrative, discretionary and disciplinary powers, when the principal decision on the exercise of such powers passes from the employer to persons who are not initiators and organizers of socially useful activities. Such restrictions are permissible if, despite the fact that they complicate the procedure for implementing a managerial decision, the employer is not deprived of the opportunity to make this decision in the form in which it was initiated by him. Such a restriction on the implementation of the administrative, dispositive and disciplinary powers of the employer in labor management should be considered as a legitimate improvement in the working conditions of employees. Anything else would be contrary to the spirit of the norms that mediate the managerial aspect in labor relations.

Thus, we can conclude that conditions that prohibit the employer from exercising administrative, dispositive and disciplinary powers or his refusal to do so, as well as conditions that do not allow the employer to exercise these managerial powers without obtaining the consent of the representative body of workers.

Despite the fact that this paragraph is devoted to the analysis of the restrictive effect of the principle of social partnership, to complete the study of the issue of self-restriction by the employer of the right to manage labor, we will consider the possibility of such within the framework of individual labor contracts[322]. It is obvious that, as in the situation with acts of social partnership, the same legal logic should be applied here: the employer cannot refuse to exercise administrative, dispositive and disciplinary powers, but can limit himself in the exercise of regulatory powers. Therefore, we will answer the question, what can be the subject of regulation of an employment contract? Working conditions of a particular worker. In view of the foregoing, it will be unacceptable for the employer to assume obligations to refuse to exercise any administrative, dispositive and disciplinary powers in relation to a particular employee. Moreover, if such a condition is included in the employment contract with one or more employees, but not with the rest, this will create a situation of differences in the legal status of different employees with one employer. And this is nothing but an act of discrimination, which is prohibited, as was discussed in detail in the last paragraph of this work. As for the self-limitation of the employer's regulatory powers, an individual labor contract, by virtue of its essence (part 1, article 56 of the Labor Code of the Russian Federation), cannot be a source of regulation of such issues. Therefore, it can be stated that by means of an individual labor contract, self-restriction and waiver by the employer of any of his powers to manage labor is impossible.

Now let's turn to the situations encountered in practice and analyze what conditions are included in the acts of social partnership, and what consequences this has.

Most often, the text of collective agreements includes a provision that disciplinary action against employees holding certain trade union positions is possible only after obtaining the consent of the trade union. For example, point 9.4. The collective agreement of the Federal State Budgetary Institution of Science INSTITUTE OF METALLURGY of the Ural Branch of the Russian Academy of Sciences (IMET Ural

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[322] A fundamental study of the possible content of individual labor contracts was carried out by N.I. Diveeva: see Diveeva N.I. Theoretical problems of individual legal regulation of labor relations: dis. ... doc. legal Sciences: 12.00.05. SPb., 2008. 396 p.

Branch of the Russian Academy of Sciences), concluded for the period from 2020 to 2023[323], provides for a similar condition: “[The employer has the right] to bring to disciplinary responsibility employees who are members of the trade union committee, and those not released from their main work, only with the prior consent of the trade union committee, and the chairman of the primary trade union organization and his deputies - with the prior consent of the higher trade union body. And paragraph 66 of the Industry Agreement between the Trade Union of Civilian Personnel of the Armed Forces of Russia and the Ministry of Defense of the Russian Federation for 2020-2022[324], which was extended until the end of 2025, contains a rule that the employer does not bring to disciplinary responsibility the authorized trade union for labor protection and representatives trade union in the joint committees (commissions) on labor protection created in military units, as well as civilian personnel elected to trade union bodies without the prior consent of the relevant trade union body.

It can be seen from the above that the employer cannot in this case independently bring certain employees to disciplinary responsibility, and in fact the trade union becomes the subject of this decision. That is, there is such a limitation of the disciplinary authority of the employer to manage labor, in which the fundamental decision on its implementation or non-implementation passes from the only possible subject, the employer, to another person.

A similar provision was contained until July 2010 in paragraph 1 of Art. 25 of the Federal Law of January 12, 1996 No. 10-FZ “On trade unions, their rights and guarantees of activity” [325] and was the subject of consideration by the Constitutional

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[323] Collective agreement of the Federal State Budgetary Institution of Science INSTITUTE OF METALLURGY of the Ural Branch of the Russian Academy of Sciences (IMET Ural Branch of the Russian Academy of Sciences), concluded for the period from 2020-2023 [Electronic resource] // URL: http://webcache.googleusercontent.com/search?q=cache:GQc45ug9Fb0J: imet-uran.ru/files/profkom/%25D0%25BA%25D0%25BE%25D0%25BB%2520%25D0%25B4%25D0%25BE%25D0%25B3%25D0%25BE%25D0%25B2%25D0%25BE%25D1 %2580%25202020-2023_12.02.2020%2520-%2520%25D0%2598%25D0%259C%25D0%2595%25D0%25A2%2520%25D0%25A3%25D0%25A0%25D0%259E%2520 %25D0%25A0% 25D0%2590%25D0%259D-1.docx+&cd=3&hl=ru&ct=clnk&gl=ru (date of access: 12/20/2022).

[324] Industry agreement between the Trade Union of Civil Personnel of the Armed Forces of Russia and the Ministry of Defense of the Russian Federation for 2020-2022 (approved by the Trade Union of Civil Personnel of the Armed Forces of Russia on December 24, 2019, the Minister of Defense of the Russian Federation on December 27, 2019) [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[325] On trade unions, their rights and guarantees of activity [Electronic resource]: federation. law of January 12 1996 No. 10-FZ // Collection. Russian legislation Federation. – 1996. – N 3. – art. 148. – (as amended on June 11, 2021). – Access from the reference and legal system “ConsultantPlus”.

Court of the Russian Federation. Thus, in the Ruling of December 17, 2008 No. 1060-O-P, the Constitutional Court, referring to the previously mentioned Resolution of January 24, 2002 No. 3-P[326], indicated that neither dismissal nor the application of softer disciplinary measures against employees-members of trade unions cannot be made dependent on the consent of the trade union, and other legal regulation is a disproportionate restriction of the rights of the employer as a party to the employment contract and at the same time the subject of economic activity and the owner, since such a restriction is not due to the need to protect the rights and freedoms enshrined in Part 1 of Art. 30, part 1, art. 37 and part 1, 2 art. 38 of the Constitution of the Russian Federation, violates the freedom of entrepreneurial activity, the right to property, distorts the essence of the principle of freedom of labor and therefore contradicts the provisions of the Constitution of the Russian Federation. This legal position of the Constitutional Court was also supported in the doctrine[327].

In the context of the stated problem, it is necessary to understand whether the essence of this restriction on the employer's right changes the fact that this ban on dismissal is introduced in the manner of collective agreement regulation, and not on the part of a public entity? Changing the form of establishing such a ban on the dismissal of an employee without prior consent of the trade union body does not affect the nature and consequences of the restriction of the employer's right to manage labor that it entails. This model of interaction between social partners does not comply with the principle of "partial participation" of employees in labor management. Changing the form of establishing such a restriction on the exercise by the employer of his powers from legislative to collective agreement does not change the essence and consequences of such a restriction.

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[326] See Resolution of the Constitutional Court of the Russian Federation of 24.01.2002 N 3-P, Ruling of the Constitutional Court of the Russian Federation of 03.11.2009 N 1369-O-P [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

[327] Orlovsky Yu.P., Nurtdinova A.F., Chikanova L.A. 500 Topical Issues on the Labor Code of the Russian Federation: Comments and Explanations: A Practical Guide [Electronic resource] / ed. Yu.P. Orlovsky. M., 2007. Access from the reference legal system "ConsultantPlus"; Glukhov A.V. Actual issues of protection of labor rights and legitimate interests of workers - members of trade unions in the practice of the Constitutional Court of the Russian Federation [Electronic resource] // Labor Law. 2009. N 7. Access from the reference legal system "ConsultantPlus".

It should be noted that in relation to this issue there is no unity in judicial practice: some courts, with reference to the aforementioned decision of the Constitutional Court[328], recognize that the employer should not have received such consent, since the collective agreement or agreement in this part is contrary to the law; other courts continue to consider the presence of such conditions in acts of social partnership as not contrary to law[329]. It would be correct to accept the position of the courts, which consider that in this situation the collective agreement or agreement in the relevant part is contrary to the law.

The second most frequently included in collective agreements and agreements is the condition on the prohibition of the reduction of a certain category of workers (as a rule, we are talking about the prohibition of the simultaneous reduction of members of the same family).

For example, the Sectoral Agreement on Forestry for 2022-2024[330] contains clause 8.7, which imposes on the employer the obligation not to dismiss one of the reduced spouses within six months from the date of reduction: “In the event of a reduction in the number or staff of Employees, the employer does not dismiss one of the spouses working in one organization within six months from the date of dismissal of the other spouse.

In this case, the employer is deprived of the exercise of the authority to dismiss certain employees on a specific basis, which, although dictated by good goals to protect employees from a situation where several members of their families lose their earnings at once, nevertheless, from the point of view of law, is the refusal of the employer from the possibility of exercising the authority to reduce a certain category of workers.

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[328] See, for example, Decision of the Sverdlovsk District Court of Kostroma dated February 22, 2019 in case N 2-4608/2018, Decision of the Tomsk District Court dated August 27, 2015 in case N 12-170/2015, Decision of the Vilyuchinsky City Court dated June 20, 2014 in case N 9-240/2014, Appeal ruling of the Moscow Regional Court dated January 22, 2013 in case No. 33-1035/2013 [Electronic resource] // Judicial and regulatory acts of the Russian Federation. URL: https://sudact.ru (access date: 04/02/2020).

[329] See, for example, the Decision of the Verkhnebureinsky District Court of August 11, 2015 in case N 2-513/2015 // Judicial and regulatory acts of the Russian Federation. [Electronic resource] // Judicial and regulatory acts of the Russian Federation. URL: https://sudact.ru (access date: 04/02/2020).

[330] Industry agreement on forestry for 2022-2024 [Electronic resource] // URL: https://rulaws.ru/acts/Otraslevoe-soglashenie-po-lesnomu-hozyaystvu-Rossiyskoy-Federatsii-na-2022---2024- gody/ (date of access: 10/09/2022).

However, if we turn to certain decisions of the Constitutional Court of the Russian Federation, we may get the impression that the definition in the acts of social partnership of categories of workers not subject to reduction is legitimate. Thus, in Ruling No. 840-O-O of 01.06.2010, the Constitutional Court expressly stated that the prohibition established by paragraph 19 of Article 29 of the Federal Law “On the Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” [331] on the dismissal of an employee who in accordance with the established procedure, the powers of a voting member of the election commission are vested, by reducing the number and staff of employees during the election campaign does not violate the right of the employer to make personnel decisions. And in the Determination of 04.11.2004 N 343-O, the Constitutional Court made the same conclusion regarding the prohibition in part 1 of Art. 261 of the Labor Code of the Russian Federation on the dismissal of pregnant women at the initiative of the employer, including in connection with a reduction in the number or staff.

In both cases, the Constitutional Court assessed the norms that single out two categories of special subjects from all employees: in the first case, the employee is assigned public functions, the performance of which during the election campaign is a priority over the interests of the employer, and in the second, the state gives priority to the protection of motherhood and childhood . Therefore, it cannot be said that the ban on the reduction of ordinary workers established in the acts of social partnership will not violate the right of the employer to manage labor.

But judicial practice is on the path of recognizing such conditions as legitimate, as improving the position of employees, and, therefore, valid and subject to application, and their failure to comply is a violation on the part of the employer[332]. Interesting and different from most courts is the position of the Supreme Court of the Republic of

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[331] On the basic guarantees of electoral rights and the right to participate in a referendum of citizens of the Russian Federation [Electronic resource]: federation. law of June 12 2002 No. 67-FZ // Collection. Russian legislation Federation. – 2002. – N 24. – art. 2253. – (as amended on July 31, 2023). – Access from the reference and legal system “ConsultantPlus”.

[332] See, for example, Decision of the Kirovskiy District Court of Ufa of 09.11.2018 in case N 2-8077/2018, Decision of the Zheleznodorozhny District Court of Rostov-on-Don of 09.07.2018 in case N 2-1340 /2018, Appeal ruling of the Chelyabinsk Regional Court dated August 18, 2016 in case N 11-11505/2016. Appeal ruling of the Kirov Regional Court dated January 31, 2012 in case No. 33-334 [Electronic resource] // Judicial and regulatory acts of the Russian Federation. URL: https://sudact.ru (date of access: 04/02/2020).

Karelia. He considered the case when the employee was laid off, despite the condition of the current collective agreement that the employer undertakes not to allow the dismissal of two employees from one family at the same time when reducing the staff. The court pointed out that this condition can only be applied in a system with the norms of Art. 179 of the Labor Code of the Russian Federation, and, therefore, consider it as expanding the grounds for the pre-emptive right to remain at work with equal labor productivity. In the case under consideration, the labor productivity of workers whose candidacies were proposed for reduction was different, and, therefore, the specified condition of the collective agreement could not be applied[333].

We cannot agree with the prevailing jurisprudence regarding the application of such conditions on the prohibition or restriction of reduction, for the reasons stated earlier. It is also difficult to agree with the position of the Supreme Court of the Republic of Karelia, since the parties to the collective agreement directly determined the prohibition on the simultaneous reduction of members of the same family, and did not expand the list of grounds that give only the preferential right to leave at work with equal productivity.

It can be stated that at the moment there is no adequate decision on what to do with such conditions of social partnership acts: to apply or not to apply, if not to apply, then on what basis, etc. There is a degree of probability that in situations when it comes to the application of conditions similar to the norms of laws that the Constitutional Court found to be contrary to the Constitution of the Russian Federation, the courts will refuse to apply them on the grounds that they are contrary to the law, although there is no certainty in this. And it is completely unclear what decisions the courts will make in all other cases.

The substantive and procedural legislation does not contain any rules governing the procedure for challenging the current collective agreement or agreement or some of their conditions, as well as declaring them invalid. This was emphasized by the

[333] See the appeal ruling of the Supreme Court of the Republic of Karelia dated June 5, 2015 in the case N 33-1964/2015 [Electronic resource] // Judicial and regulatory acts of the Russian Federation. URL: https://sudact.ru (access date: 04/02/2020).

Supreme Court of the Russian Federation[334] and thus formed the identical practice of courts of general jurisdiction.

And even if they were, it would hardly solve the existing problem: it is unlikely that the courts would recognize such provisions as invalid, basing their decision on a constitutional legal analysis, given that the Constitutional Court did not consider the issue of the possibility of refusal by the employer from specific managerial powers provided for by the Labor Code. Therefore, it would be advisable to include the following provision in the Labor Code:

“Article 15-2. The limits of the employer's exercise of his powers to manage labor.

Labor management is carried out through the implementation by the employer of regulatory powers, the powers to encourage and bring employees to disciplinary responsibility, as well as the powers of operational labor management.

The regulatory powers of the employer are understood as the rights of the employer, provided for in Article 8 of this Code, and aimed at their implementation.

The powers to encourage and bring employees to disciplinary responsibility are understood as the rights of the employer, provided for in Chapter 30 of this Code, and aimed at their implementation.

The rights of the employer that are not related to the rights specified in parts 2 and 3 of this article, with the exception of the rights provided for in Chapter 39 of this Code, relate to the powers of the employer for the operational management of labor.

Refusal of the employer in individual labor contracts, as well as collective agreements and agreements from the exercise of the authority to encourage and bring employees to disciplinary responsibility, as well as the authority for the operational management of labor, or the assumption of obligations, according to which these powers cannot be exercised without the consent of representative body of employees is invalid and does not entail the impossibility of exercising these powers.”.

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[334] See Determination of the Supreme Court of the Russian Federation dated May 14, 2010 N 1-B10-1 [Electronic resource]. Access from the reference-legal system "ConsultantPlus".

The presence of this norm would be the basis for making decisions in individual labor disputes on the application or non-application of the relevant terms of collective agreements or agreements.

Thus, having considered the institution of social partnership, we can say that its restrictive effect, directed towards the right of the employer to manage labor, is manifested only if there is activity on the part of employees exercising the right to association guaranteed by the Constitution of the Russian Federation to effectively protect their interests. But the limits of restricting the right to manage labor in this case fully depend on the degree of social dialogue between employees and the employer, as well as the ability of the employer to compromise. In turn, contrary to the constitutional content of the right to labor management and the meaning of the institution of social partnership will be the refusal of the employer from his dispositive and disciplinary powers or their restriction, which actually makes employees the subject of making appropriate managerial decisions.

Conclusion

The analysis of doctrinal sources, legislative material and legal positions of the Constitutional Court of the Russian Federation on issues related to constitutional guarantees and restrictions on the employer's right to manage labor, as well as the study of the social and economic side of such a phenomenon as labor management, led to the following conclusions:

1. The performance by any person of creative, in his opinion, actions (labor process) aimed at achieving a specific goal, represents the implementation of a certain activity by such a person and predetermines the emergence of the status of the subject of this activity in him. Thus, no activity is possible outside the process of labor, which transfers this activity from potential to real. The subject of activity can carry it out through personal labor or by using the ability to work of other people.

The use by the subject of activity of someone else's ability to work to carry out their activities gives rise to the phenomenon of labor management, which implies a relationship of power-subordination between the subject of activity and the carriers of the ability to work, which is due to the following. Any subject of independent activity has an autonomous economic sphere, within which there is an independent organization of all processes associated with the receipt, use and consumption of benefits, including the decision to carry out activities aimed at obtaining such benefits, through the use of the ability to work of other people. Only the subject of activity, as its initiator and organizer, can know what effect he wants to achieve from the use of someone else's ability to work. Therefore, only he is the only person who knows how to use someone else's ability to work in relation to his economic sphere, which is possible only through the management of those people to whom this ability to work belongs. To do this, their actions must be determined by the will of the subject of activity.

Therefore, the role of the initiator and organizer of the labor process, which is objectively inherent in the subject of activity as a person with an autonomous economic sphere, carried out within the framework of the activity carried out using someone else's ability to work, gives the relations of such a subject with the possessors of the ability to

work attracted by him a subordinate character. In such relations, the subject of activity implements a certain power, which is called the master's power and exists regardless of the fact that the state legitimizes these relations.

Accordingly, the basis of this power is the organizational and economic autonomy of absolutely any subject of activity, which is expressed in the possibility of the latter independently, based on their own interests, to choose such a way of carrying out their activities as through the use of the ability to work of other people.

The foregoing speaks of the objective existence of the power of the subject of activity in relations with the carriers of the ability to work, which is subject to management by the subject of activity, which predetermines its private nature.

2. If the process of labor and the goals to which it is directed are legitimate, then the activity represented by such purposeful labor is also legitimate. In this case, the state legitimizes:

1) the implementation by the subject of this activity, recognizing his right to engage in such activity, without prohibiting it by law, which presumes the socially useful nature of such activity;

2) the potential opportunity for the subject of socially useful activity to use someone else's ability to work to carry out this activity, confirming for the subject of socially useful activity the right to manage labor by recognizing him as an employer in the field of labor relations (legitimizing the master's power), but at the same time, establishing restrictions on this right, which is expressed in the normative regulation of labor relations.

In this regard, legitimate relations built according to the subordination model of interaction between their parties, where labor management takes place, are relations that are part of the subject of the labor law branch. The only person in such relations who objectively has the status of the organizer of the labor process, and, therefore, the power to manage labor, is the employer as a subject of socially useful activity, carrying it out in whole or in part by using the ability to work of one or more employees.

3. The author's definition of the concept of "labor management" is proposed. Labor management is the ordering influence of the employer on the behavior of at least

one employee who realizes his ability to work in the interests of the employer on the basis of a voluntary declaration of will and for remuneration, expressed in the organization of the labor process by the employer, providing conditions for the employee to fulfill his duties and lawful instructions from the employer, as well as the exercise of their rights, through which the employer carries out his socially useful activities.

4. The author's definition of the concept of "right to manage labor" is proposed. The right to manage labor is an objectively necessary and existing opportunity for the employer to manage the actions of employees within the constitutionally acceptable limits for the implementation of socially useful activities, without violating the prohibitions and restrictions established by law.

The right to labor management has the following characteristics: a) has a private character, that is, it is immanently inherent exclusively to the employer as a subject of socially useful activity, and is not delegated to him by the state; b) is a subjective right of a person who has made a decision to carry out labor activity, which is the content of socially useful activity, through involved persons with the necessary ability to work; c) has a non-contractual nature, is implemented when concluding an employment contract with at least one employee; d) is composite: its content is the authority to establish internal order in the sphere of its socially useful activities through local regulation, operational management of labor and control over labor discipline.

5. The basis for restricting the employer's right to manage labor is the need to ensure the implementation of constitutional principles, the rights and freedoms of other persons, implemented within the framework of relations regulated by labor law. The basic restrictions on the employer's right to manage labor in labor relations with any employee are the fundamental principles, as well as the rights that make up the constitutional and legal status of the employee, which can be divided into two groups:

1) Always having priority over the right of the employer - these are the constitutional principles of the inviolability of life and the protection of human health, the dignity of the individual, the equality of all before the law and the courts.

2) Rights-principles, the restrictive effect of which in relation to the right of the employer is not absolute - these are the constitutional principles of freedom of labor and freedom of association, which has found branch reflection in the principle of social partnership.

In cases where an employer enters into labor relations with a number of certain categories of workers provided for by law, the second group of rights-principles will be supplemented by other components of the constitutional and legal status of these categories of workers (for example, protection of the family, motherhood and childhood, the right to education).

6. One of the manifestations of the principle of social partnership is the voluntary admission by the employer to the sphere of decision-making on labor management of employees' representatives, which in fact is a self-restriction on the part of the employer of the right to labor management within the framework of social partnership.

One of the manifestations of such self-restriction is the voluntary refusal of the employer to exercise certain powers to manage labor, including the establishment of such a procedure for their implementation that excludes the possibility of independent (without the participation of entities that are not management bodies of the employer) adoption by the employer of certain management decisions. At the same time, the employer cannot refuse to exercise administrative, dispositive and disciplinary powers to manage labor, as this entails a defect in his labor legal personality, leading to unreasonable restrictions or the impossibility of exercising the right to carry out economic activity and the obligation to organize the labor process. The restrictions adopted by the employer should not lead to the fact that he would lose his independence in the exercise of administrative, discretionary and disciplinary powers, that is, the decision to exercise such powers should not imply their transfer to persons who are not initiators and organizers of socially useful activities. Such restrictions are permissible if the employer is not deprived of the opportunity to make this decision in the form in which it was initiated by him. In this case, the restriction of the implementation of the administrative, dispositive and disciplinary powers of the employer should be considered as a legitimate improvement in the working conditions of employees.

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