



## EMPLOYER AS A SUBJECT OF LEGAL RELATIONS OF PROFESSIONAL TRAINING

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### Summary

The article analyzes provisions of legislation that regulate legal personality of employers in legal relations of professional training. Definition and content of employer's legal status are also considered. The author proposes in addition to general legal status, which is typical for employers as subjects of labour law evolve special legal status that is inherent to employers as subjects of legal relations of professional training. It is specified that the content of a special legal status is formed with rights and obligations that employer acquires through participation in legal relations of professional training.

**Key words:** employer, legal relations of professional training, legal status, employer's right, employer's duties.

### Аннотация

В статье анализируются положения законодательства, с помощью которых осуществляется правовое регулирование правосубъектности работодателя в правоотношениях профессионального обучения, рассматривается понятие и содержание его правового статуса. Предлагается, кроме общего правового статуса, который свойственен работодателям как субъектам трудового права, выделять специальный правовой статус, присущий работодателям как субъектам правоотношений профессионального обучения. Также указывается, что содержание специального правового статуса формируют права и обязанности, которые работодатель приобретает путем участия в правоотношениях профессионального обучения.

**Ключевые слова:** работодатель, правоотношения профессионального обучения, правовой статус, права работодателя, обязанности работодателя.

### Formulation of the problem.

Nowadays one of the ways of promoting and providing employment is availability of effective system of professional training. In this regard, need of effective professional training of employees which will provide them with an appropriate level of professional qualification and ability to compete at the labour market is increasing. Considering this, normative legal regulation of rights and obligations of subjects of legal relations of professional training is urgent problem. In particular, this concerns employer, who is one of the main subjects of these relations.

Relevance of research topic is determined by lack of fundamental works that would concern researching employer as the subject of legal relations of professional training, his rights and responsibilities in science of labour law.

**State of study.** In theory of labour law normative definition of party with which employee concludes labour contract has been researched in the works of such scientists as: N.M. Khutoryan, N.B. Bolotina, P.D. Pylypenko, Z.Y. Kozak, O.H. Sereda, I.V. Zub. However, analysis of legal regulation of employer's rights and obligations as the subject of legal relations of professional training has not been conducted yet.

**The purpose** of article is the research provisions of legislation which regulate legal personality of employer in relations of professional training and clarify his legal status.

### Presenting main material.

The analysis of national legislation indicates that for the first time the term "employer" was enshrined in the Laws of Ukraine "On protection of rights on inventions and utility models" and "On protection of rights on industrial designs" from 15.12.1993. Both of these acts define employer as a person who has hired an employee under a labour agreement (contract) [1].

In other words, these legal acts don't exactly specify what kind of person – physical or legal acts as employer but they stress the fact that labour agreement (contract) is the basis for hiring the employee.

It is also worth mentioning that the first legal definition of employer was made not in labour law but in civil law, concerning relations of intellectual property.

Regarding science of labour law, employer is defined as a person who employs another person under the labour contract in the form of any of its varieties stipulated by law, including the election or appointment [2].

Employer, participating in legal relations of professional training already possesses legal personality, including its components, such as: capacity, capability and legal status.

However, to clarify his role in legal relations of professional training it is worth to focus on one element of his legal personality – legal status.

In modern legal literature, legal status of the employer is usually associated with his rights and obligations.

In particular, I.M. Yakushev under the legal status in labour law understands the system of inalienable rights and duties of subject of law which determine its content, behavior and is a prerequisite for his entry into legal relations [3].

I.I. Shamshina legal status of subjects of labour law defines as a system fixed in normative legal acts and guaranteed by the state rights, obligations and responsibilities under which the subject of labour law coordinates his behavior in public relations with the use of wage labour [4].

Besides general legal status, which is typical for employers as subjects of labour law a special status, that is inherited to employers as subjects of legal relations of professional training can distinguished.

Essence of this special legal status is reduced to the rights and obligations that employer acquires participating in legal relations of professional training.

It should be noted that in valid Labour Code there are just few provisions that outline appropriate rights and obligations of the employer as a subject of these legal relations.

Only the art. 201 states that for professional training and retraining of employees, especially youth, owner or his authorized body organizes individual, brigade, course and other industrial training by costs of enterprise, organization and institution. Art. 202 notes that for employees who are passing industrial training or studying at educational institutions and at the same time remain at the job, owner or his authorized body must create the necessary conditions for combining work with studying [5].



As we can see valid Labour Code of Ukraine imposes on employer the only obligation which regards organization of industrial training and creation for employee all necessary conditions for combining work with studying.

It means that in legal relations of professional training that arise in connection with professional training directly at the enterprise, studying is organized by employer by himself. Considering this, organization, which has in its structure a special educational department provides training directly at the workplace under the supervision of master or mentor.

Such kind of relations arises under the labour contract and the order of employer about training of employee directly at the workplace. Besides, basis of their occurrence can be so-called "student's contract" under which employer is obliged to establish training of a certain qualification and degree. Employee, in turn, should master profession.

Unlike the current Labour Code of Ukraine, the draft of new Labour Code contains more detailed scope of employer's rights and obligations concerning professional training. In particular, art. 323 fix rights and obligations of employers regarding professional training, retraining and increasing of professional skills of employee.

It establishes the right of employer to organize preparation of skilled workers, retraining of workers with giving of another qualification, improvement of professional skills of workers with issuance of the relevant documents under the law. Regarding the obligations, employer must provide at least one time per 5 years professional training, retraining and increasing of employee's qualification with or without termination of labour relations on conditions determined by collective or employment contract or a separate agreement between the employer and the employee [6].

Moreover, in addition to the mentioned minimum period during which employer at least once is obliged to conduct professional training, retraining and increasing of professional qualification of employee, he is also authorized to organize qualification development of employees suiting his own needs.

In fact, art. 323 of the draft of Labour Code duplicates provisions of the current Labour Code of Ukraine, laying on employers a duty to create for employees who are studying directly at the enterprise or at the educational institutions, at the same time remaining at the

job all necessary conditions for combining work with studying, providing for them guarantees and compensation.

From the following provisions of the draft of Labour Code it is not so difficult to verify that training, retraining and increasing of employees qualification is both the duty and the right of employer.

In this regard it seems appropriate to complement art. 25 of the draft of Labour Code with provision that employer is obliged to promote professional training, retraining, increasing qualification and improving the general professional development of employee. This will significantly expand the range of those relations of professional training that flow out from the direct responsibilities of the employer.

On the legal status of employer also influence provisions of the Law of Ukraine "On Employment". According to this act employer has the right to conclude with employees or other persons who are not in labour relations with him, with their consent, agreements on sending them to educational institutions for training, retraining and increasing of qualification [7]<sup>1</sup>.

In the draft of new Labour Code is proposed to fix a possibility of concluding an agreement between employer and employee, which will determine their mutual rights and obligations related to the professional training, retraining and increasing of employee's qualification.

In such agreement, the parties can predict for themselves additional rights and responsibilities. For example, employer may take on himself obligations to pay for studying, to provide for the employee more favorable than those established by legislation and collective agreement conditions for combining work with studying, and so on.

Rights and obligations of employer during professional training of unemployed are fixed in Regulation "On professional training, retraining and increasing of professional qualification of registered unemployed". It enshrines that employer has the right to participate in determination of the content of studying, qualification attestation of unemployed, to ensure passage of industrial training and practice or internship of unemployed.

Regarding obligations, this act lay on employer responsibility within 30 calendar days from the date of completion of studying to employ the unemployed person [8].

Moreover, in case of unreasonable non-execution of obligations determined by the

contract, employer is obliged to compensate to the territorial body of the State Employment Service the total expenditure on professional training, driving to the location of the educational institution and in reverse direction, residence during the studying.

As we can see professional training of unemployed is held to facilitate their employment and provide opportunities to compete on equal terms on the labour market due to obtaining new profession and increasing of professional skills. Basic rights which are provided to employer is opportunity to participate in the professional training of unemployed and to determine the content of such training. The main duty and in general the final goal of professional training of unemployed is his further employment by employer.

In the context of research of legal regulation of employer's rights and obligations in the field of professional training it is interesting to examine the experience of Moldova, Labour Code of which has a separate chapter that in details regulate professional training of employees.

In particular, it is assumed that employer should create all necessary conditions and promote professional and technical training of employees who are studying at the enterprise, improving their qualification or study at educational institutions at the same time remaining at the job [9].

In addition, Labour Code of Moldova obliges employer together with the representatives of employees compose and approve plans for professional training every year. At the same time within 15 days from the date of registration of employees application employer must decide on what conditions he can allow the passage of professional training by employee and whether the costs will be compensated in whole or in part.

It seems that national legislator could borrow the experience of Moldova and fix in the future Labour Code undoubtedly important provisions regarding professional training of employees and in such way strengthen guarantees of their right to professional growth.

**Conclusions.** Consequently, employer as a subject of relations of professional training is endowed with a special legal status. In order to expand his rights and obligations in these relations in the draft of new Labour Code of Ukraine enhance of employer's responsibility of the execution or improper execution of his obligations connected with this special legal status is suggested.

<sup>1</sup> In fact, draft of the new Labour Code at art. 326 duplicate this provision.



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## ПРИНЦИП РАЗДЕЛЕНИЯ ГОСУДАРСТВЕННОЙ ВЛАСТИ И ЕГО ОБЕСПЕЧЕНИЕ В КОНСТИТУЦИОННОМ ПРОЦЕССЕ СОВРЕМЕННОЙ УКРАИНЫ

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### Summary

The article defines the role of the principle of separation of powers in the modernization process of the Constitution of Ukraine. The author reveals the specifics of the current constitutional-legal interpretation of the content of this principle in ensuring that the fundamental requirements of establishing a democratic and legal state. Analyzed the jurisprudence of the constitutional fixing and ensuring the principle of separation of powers and its relationship with the system of checks and balances in modern domestic and foreign constitutional practice.

**Key words:** constitutional process, principle of separation of powers, checks and balances, democratic constitutional system, Constitution of Ukraine.

### Аннотация

В статье определена роль принципа разделения государственной власти в процессе модернизации Конституции Украины. Раскрывается специфика современного конституционно-правового понимания содержания этого принципа в ходе обеспечения фундаментальных требований формирования демократического и правового государства. Проанализирована практика конституционного закрепления и обеспечения принципа разделения власти, а также его взаимосвязь с системой сдержек и противовесов в современной отечественной и зарубежной конституционной практике.

**Ключевые слова:** конституционный процесс, принцип разделения власти, система сдержек и противовесов, демократизм конституционного строя, Конституция Украины.

**Постановка проблемы.** Анализ процессов современного конституционного развития Украины, имеющих целью воплощение и практическое обеспечение фундаментальных принципов демократического и правового государства, актуализирует проблему конституционного закрепления и формирования системы конституционно-правовых гарантий принципа разделения государственной власти [1, с. 23]. Действительно, как справедливо указывает Р. Гринюк, вне контекста обеспечения принципа разделения власти пока нельзя реализовывать такую конституционную цель, как формирование правового и демократического государства. С другой стороны, сам по себе принцип разделения власти является не самоцелью, а лишь средством ограничения государственной власти и предотвращения ее узурпации (тесно связывает этот принцип с принципом народного суверенитета) [2, с. 215].

**Актуальность темы исследования** продиктована нераскрытостью

данной темы. На сегодняшний день нет фундаментальных работ по принципам разделения государственной власти и его обеспечению в конституционном процессе современной Украины.

Научным анализом проблем принципа разделения государственной власти занимались следующие отечественные и зарубежные учёные: К. Бабенко, Р. Гринюк, А. Крусян, В. Речицкий, А. Сегедов, О. Тарасов, В. Чиркин и другие, работы которых создали фундамент для дальнейшего исследования указанной темы.

**Целью статьи** является исследование вопросов разделения государственной власти и обеспечения этого принципа в конституционном процессе в Украине, а также рассмотрение научных взглядов и доктрин касательно данного вопроса.

**Изложение основного материала исследования.** Акцентируя внимание на теоретическом и практическом значении исследуемой проблемы, необходимо также обратить внимание и на те