Жамият ва инновациялар –
Общество и инновации –
Society and innovations
Journal home page:
https://inscience.uz/index.php/socinov/index

International standards of legal regulation of working hours

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ARTICLE INFO

Article history:
Received September 2022
Received in revised form
25 October 2022
Accepted 20 November 2022
Available online
25 December 2022

Keywords:
working time,
international standard,
normal working time,
working time mode,
part-time,
convention,
night work.

ABSTRACT

This article is devoted to the consideration and study of international standards of legal regulation of working hours, the significance of international labor acts on the labor legislation of the Republic of Uzbekistan, the relationship of international labor standards with national legislation.

As a result of comparative legal research, working time is considered as an institution of labor law, which is a separate set of legal norms regulating this area of social relations within the branch of labor law. Centralized and contractual methods of legal regulation of working time are considered, the ratio of which provides greater flexibility and dynamism of labor relations under modern economic conditions.

As a result of comparative legal research, the features of establishing various types of working time both in the Republic of Uzbekistan and in certain foreign countries are considered, the distinctive features of normal working hours are considered, the features of establishing reduced and part-time working time are identified. The article considers the widespread use of non-standard working time modes in foreign countries, in addition to standard working time modes, on the basis of which proposals aimed at improving the labor legislation of the Republic of Uzbekistan on working time have been developed and formulated.

2181-1415/© 2022 in Science LLC.
DOI: https://doi.org/10.47689/2181-1415-vol3-iss11/S-pp184-191

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Иш вақтини ҳуқуқий тартибга солишнинг халқаро стандартлари

Калит сўзлар:
иш вақти,
халқаро standart,
normal иш вақти,
иш вақти режими,
ярим кунлик,
Конвенция,
тунги иш.

АННОТАЦИЯ

Ушбу мақола иш вақтини ҳуқуқий тартибга солишнинг халқаро стандартлари, халқаро меҳнат актларининг Ўзбекистон Республикаси меҳнат қонунчилигидаги аҳамияти, халқаро меҳнат стандартларининг миллий Қонунчилик билан ўзаро боғлиқлигини кўриб чиқиш ва ўрганишга бағишланган.

Қиёсий ҳуқуқий тадқиқотлар натижасида иш вақти меҳнат ҳуқуқи институти сифатида қаралади, бу меҳнат ҳуқуқи соҳасидаги ижтимоий муносабатларнинг ушбу соҳасини тартибга солувчи ҳуқуқий нормаларнинг алоҳида тўпламидир. Иш вақтини ҳуқуқий тартибга солишнинг марказлаштирилган ва шартномавий усуллари кўриб чиқилади, уларнинг нисбати замонавий иқтисодий шароитларда меҳнат муносабатларининг мослашувчанлиги ва динамикасини таъминлайди.

Қиёсий ҳуқуқий тадқиқотлар натижасида Ўзбекистон Республикасида ҳам, айрим хорижий мамлакатларда ҳам иш вақтининг ҳар хил турларини белгилаш хусусиятлари, нормал иш вақтининг ўзига хосликлари кўриб чиқилади, қисқартирилган ва ярим кунлик иш вақтини белгилаш хусусиятлари аниқланади. Мақолада standart иш вақти режимларидан ташқари хорижий мамлакатларда ностандарт иш вақти режимларидан кенг фойдаланилади, улар асосида Ўзбекистон Республикасининг иш вақти тўғрисидаги меҳнат қонунчилигини такомиллаштиришга қаратилган таклифлар ишлаб чиқилган ва шакллантирилган.

Международные стандарты правового регулирования рабочего времени

Ключевые слова:
рабочее время,
международный стандарт,
нормальная продолжительность рабочего времени,
режим рабочего времени,
неполное рабочее время,
конвенция,
ночной труд.

АННОТАЦИЯ

Настоящая статья посвящена рассмотрению и изучению международных стандартов правового регулирования рабочего времени, значение международных актов о труде на трудовое законодательство Республики Узбекистан, соотношение международных стандартов труда с национальным законодательством.

В результате сравнительно-правового исследования рассмотрено рабочее время как институт трудового права представляющий собой обособленную совокупность правовых норм, регулирующих данный участок общественных отношений внутри отрасли трудового права. Рассмотрен централизованный и договорные методы правового регулирования рабочего времени, соотношение

которых обеспечивает большую гибкость и динамичность трудовых отношений при современных условиях хозяйствования.

В результате сравнительно-правового исследования рассмотрены особенности установления различных видов рабочего времени как в Республики Узбекистан, так и в отдельных зарубежных странах, рассмотрены отличительные черты нормальной продолжительности рабочего времени, выявлены особенности, установления сокращенного и неполного рабочего времени. Рассмотрено широкое применение помимо стандартных режимов рабочего времени нестандартных режимов рабочего времени в зарубежных странах на основе которого разработаны и сформулированы предложения, направленные на совершенствование трудового законодательства Республики Узбекистан о рабочем времени.

Working time is one of the central institutions of labor law, it is a set of legal norms established in order to ensure employees the right to rest and limit working hours, as well as to consolidate the measure of labor. Due to the combination of a number of economic, political, social and cultural factors, it is of crucial importance at the present stage.

Assessing the impact of international legal regulation of labor relations on the legislation of the Republic of Uzbekistan, it is impossible not to take into account the content of Article 10 of the Labor Code of the Republic of Uzbekistan, which states that “if an international treaty of the Republic of Uzbekistan or a convention of the International Labor Organization ratified by Uzbekistan establishes more preferential rules for employees compared to legislative or other normative acts on labor of the Republic of Uzbekistan, then the rules of an international treaty or convention apply” [1]. Taking into account this provision, the significance of the relevant international acts, and first of all the ILO acts, is determined.

The UN acts are of fundamental importance among these acts. These are, first of all, the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.

In turn, in accordance with article 7 of the International Covenant on Economic, Social and Cultural Rights (1966) [2], the States participating in this Covenant recognize the right of everyone to fair and favorable working conditions, including, in particular, the right to rest, leisure, reasonable limitation of working time and paid periodic leave.

Article 32 of the Convention on the Rights of the Child (1989) [3] provides that the participating States, guided by the provisions of relevant international instruments, establish a minimum age for employment and determine the necessary requirements for working hours and working conditions.

According to Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women (1979) [4] in order to prevent discrimination against them on the grounds of marriage or maternity and to guarantee them an effective right to work, the participating States shall take all measures to introduce paid leave or leave with comparable social benefits for pregnancy and childbirth without losing the previous place of work.

Also, one of the main sources of international legal regulation of labor are acts adopted by the International Labor Organization (hereinafter the ILO).

The ILO adopts conventions and recommendations. And although the procedure for the adoption of these acts is the same, their legal force and the order of application are different.

The Convention acquires the status of a multilateral international agreement after it has been ratified by at least two ILO member States, and from that moment it imposes certain obligations on both ratifying and non – ratifying States.

The State, having ratified the ILO Convention, is obliged to adopt legislative and other acts to implement this convention. In addition, the ratification of the convention gives rise to the obligation of the State periodically (once every 2-4 years, depending on the importance of the convention) to submit reports to the ILO on the implementation of the provisions of the relevant convention and the measures taken for this purpose. In relation to non-ratified conventions, the State is still obliged to inform the ILO, at the request of its Administrative Council, about the state of national legislation and practice in relation to the non-ratified convention and about the measures that are supposed to be taken to give it force [5].

The recommendation also contains international legal norms, but unlike the convention, it does not require ratification and is designed for its voluntary application in the national legislation of an ILO member state. It is necessary to agree with the opinion of Professor I.Y. Kiselyov that the recommendation is a source of information and a model for improving national legislation. It details, clarifies, and sometimes supplements the provisions of the convention, makes their content completer and more flexible, and expands the possibilities of choice for States when deciding on borrowing international norms [6].

International treaties concluded by the Republic of Uzbekistan with other states must comply with the provisions of the Vienna Convention on the Law of Treaties (1969). It should also be noted that this Convention applies to any treaty adopted within the framework of an international organization without prejudice to the relevant rules of this organization [7].

The issues of working hours in the ILO acts have always been given the closest attention. In this regard, it should be noted that the first Convention, the ILO, was devoted to working time in industry. This Convention provided that the working hours of persons employed in industrial enterprises should not exceed eight hours.

The establishment of a 40-hour working week as a normal working time is enshrined in ILO Convention No. 47 “On Reducing Working Hours to 40 Hours per Week” (1935) and ILO Recommendation No. 116 “On Reducing Working Hours” (1962), which specifically highlights such a concept as normal working hours – the number of hours established by law, in excess of which any work performed is paid at the rates of overtime hours.

In turn, the hours worked in excess of the normal working hours are regarded by the ILO acts as overtime work, the maximum duration of which must be determined in each country. The involvement of employees in overtime work is possible only in exceptional cases and is subject to additional payment (at least 25% higher than work during normal working hours) [8]. It can also be said that part-time work is also an object of international legal regulation in the field of working time.

ILO Convention No. 175 (1994) “On the Protection of Part-time Workers” establishes the obligation of States to establish equal protection and equal labor protection for part-time and full-time workers. The remuneration of part-time employees should be determined in proportion to the time worked or depending on the output. The transition from full-time to part-time and vice versa is possible only on a voluntary basis.

ILO Recommendation No. 182 (1994) specifies and supplements the provisions of Convention No. 175. Thus, this Recommendation provides that part-time employees should be informed in writing about specific working conditions. In accordance with this Recommendation, the length of service required to apply labor protection standards to part-time workers should not be longer than for those who work full-time, etc [9].

According to the ILO Convention No. 171 (1990) “On night work” night work this is any work that is carried out during a fixed period of at least 7 hours in a row, including the interval between midnight and 5 o’clock in the morning. This Convention allows the use of night work for workers, with the exception of those for whom the ILO acts on the protection of youth and women’s work establish restrictions on working at night. The Convention in question enshrines the obligation of States to take specific measures in relation to night workers aimed at protecting the health of workers, facilitating their family and social responsibilities, ensuring professional growth, occupational safety, etc. Appropriate compensation should be paid for working at night.

The ILO Convention No. 89 (1948) “On Women’s Night Work” and the Protocol of 1990 supplementing it are devoted to the restriction of women’s night work in industry. In accordance with this Convention, women, regardless of age, are not employed at night. An exception is made only in relation to women working in family enterprises, cases of force majeure (force majeure) and the threat of loss that are in the process of processing perishable materials.

Convention No. 89 does not apply to women in administrative positions of responsibility, as well as those working in the health and welfare system, who usually do not engage in physical labor.

According to the Russian legal scholar I.Y. Kiselyov, “The provisions of Convention No. 89 are often criticized as insufficiently flexible and contrary to the principle of equality of men and women” [10]. As noted by the Russian scientist in the field of labor law Yu.P. Orlovsky.

In order to make the provisions of this Convention more flexible, the 1990 Protocol was adopted. This Protocol supplements Convention No. 89, and simplifies the adoption of exceptions to this Convention. In particular, the Protocol under consideration allows, in certain cases, exceptions to the ban on working at night. At the same time, these exemptions cannot be established in relation to pregnant women and within a specified time after the birth of a child.

At the same time, many developed countries, especially EU members, have denounced Convention No. 89 in recent years, believing that it is outdated and considering that Convention No. 171 (1990) “On Night Work” is more flexible and appropriate to modern conditions [11].

ILO Convention No. 90 (1948) “On the Night work of Adolescents in Industry” and No. 79 (1946) “On the night work of adolescents in non-industrial work” contain prohibitive and restrictive measures related to the night work of adolescents. As a general rule, night work of teenagers is prohibited until they reach the age of 18.

ILO Convention No. 189 (2011) “On Decent Work of Domestic Workers” provides that each State that has ratified this Convention takes measures to ensure that domestic workers are properly informed about their working conditions and employment, including normal working hours. Domestic workers are referred to as employees employed by individuals in the household, provided that such work is not related to the employer’s entrepreneurial activity and profit-making. Such employees may be, in particular, nannies, nurses, cooks, gardeners, secretaries hired to assist in household management or to provide technical assistance in the implementation of literary or other creative activities by the employer [12].

ILO Recommendation No. 162 (1980) “On older workers” contains a whole range of measures aimed at alleviating the situation of older workers at work. In particular, it is recommended to use the following measures: reduction of the normal working hours of older workers, primarily those who are engaged in heavy, harmful and dangerous work; gradual reduction of the working hours of all older workers at their request during the established period preceding retirement age; permission to determine the working hours at its discretion, including working part-time, on a rolling schedule, etc.; transfer of elderly workers working shift jobs to work in the day shift.

As M.Y. Hasanov emphasizes, when comparing international labor standards with national legislation, the minimum of labor rights and guarantees must be observed, which is mandatory by virtue of generally recognized principles and norms of international law, international treaties of this state, including the ILO conventions ratified by it [13].

The reduction of labor rights and guarantees in comparison with this level is unacceptable. At the same time, national legislation may establish more preferential working conditions, a higher level of labor rights and guarantees compared to those enshrined in international standards.

It should be noted that the labor legislation of the Republic of Uzbekistan as a whole has been brought into line with these conventions, and in some cases provides for a higher level of guarantees for employees compared to the minimum guarantees provided for by these conventions.

For example, according to the ILO Convention No. 47 of 1935, it is unacceptable to establish working hours in excess of forty hours per week. The Labor Code also provides that the duration of working hours should not exceed forty hours per week, and for certain categories of employees establishes a reduced working time without reducing wages. In accordance with the aforementioned Convention and ILO Recommendation No. 116, hours worked beyond the normal working hours are considered overtime and are subject to increased pay.

In addition, a number of additional guarantees, including in the field of working hours, are provided for by the ILO Convention No. 103 (1952) “On Maternity Protection”, to which Uzbekistan has also acceded.

Article 124 of the Labor Code provides that overtime work is considered to be work in excess of the working time established for the employee (this is a more preferential approach for the employee than provided for in the above-mentioned international legal acts). Overtime allowances may be applied only with the consent of the employee. There are also restrictions on the involvement of certain categories of employees in overtime work (part three of Article 124 of the Labor Code).

Article 157 of the Labor Code establishes an increased amount of overtime pay compared to the minimum fixed by the ILO Convention No. 47. Article 125 of the Labor Code, in turn, defines the maximum duration of overtime work.

The norm providing for the inadmissibility of discrimination is contained in the General part of the Labor Code (Article 6). The legislator emphasizes that the provision on the inadmissibility of discrimination should apply to all aspects of work: the conclusion and termination of an employment contract; transfers to another job and changes in working conditions; remuneration; guarantees and compensation; liability of the parties to the employment contract; discipline Of course, discrimination is also not allowed in the field of working time and rest time.

According to M.Y. Hasanov, Article 6 of the Labor Code not only proclaims the inadmissibility of discrimination, but also establishes a mechanism for protecting and restoring employee rights [14]. According to the third part of this article, a person who believes that he has been discriminated against in the sphere of work can apply to the court for the elimination of discrimination and compensation for material and moral damage caused to him. The above provisions comply with the requirements of the ILO Convention No. 111 (1958) "On Discrimination in Employment and Occupation" ratified by the Republic of Uzbekistan [15].

In conclusion, we would like to note that the implementation of international labor standards into the legislation of the Republic of Uzbekistan is a rather complex, multifaceted and continuous process directly related to the further integration of our country into the world community.

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