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FEATURES OF SEAFARERS EMPLOYMENT CONTRACTS

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Abstract

This article has explored the features of the employment contract of seafarers. The parties to this contract are the seafarer and the shipowner, who have their own subjective rights and obligations, which are defined as contracts of tax and labor law in general. Legal regulation of contracts is carried out by both international and labor legislation of the sailor's country. Objective features of seafarers' labor relations necessitate the establishment of special norms regulating working crew members of seagoing vessels, because they perform the labor functions of seafarers, attract grounds for sectoral differentiation of legal regulation of their work. Certainly, seafarers must be very attentive when concluding a contract, pay attention to the minimum list of clauses of the employment agreement, do not sign an incomplete agreement, make sure about the specified wages, compensation payments, and other conditions, show legal literacy.

Keywords: employment contract; labor legislation; shipowner; legal literacy; legal regulation; crew member; sailor; a sea vessel.

ОСОБЛИВОСТІ ТРУДОВИХ ДОГОВОРІВ МОРЯКІВ

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Анотація

В статті досліджено, особливості трудового договору моряків. Сторонами в даному договорі є моряк та судновласник, які мають свої суб'єктивні право та обов'язки, що визначаються як договором так і трудовим законодавством в цілому. Правове регулювання договорів найму здійснюється як міжнародним так і трудовим законодавством країни моряка. Об'єктивні особливості трудових відносин моряків породжують необхідність у встановленні спеціальних норм, що регламентують працю членів екіпажів морських суден, тому що саме умови виконання трудової функції моряками служать підставою для галузевої диференціації правового регулювання їхньої праці. Зазначено, морякам при укладанні контракту потрібно бути дуже уважними, звертати увагу на мінімальний перелік пунктів трудової угоди, не підписувати не заповнену угоду, пересвідчитися в зазначенні заробітної плати, компенсаційних виплатах та інших умовах, тобто проявляти юридичну грамотність.

Ключові слова: трудовий договір; трудове законодавство; судновласник; юридична грамотність; правове регулювання; член екіпажу; моряк; морське судно.

Presentation of the basic material. The employment contract is the main institution in the system of labor law. It is considered as the basis for the emergence of labor relations and at the same time as a form of employment. The employment contract is widely used in all market economies countries to hire labor.

By its legal nature, an employment contract is an agreement between an employer and an employee. This main feature is characteristic of all species. Employment contract - a universal model of employment, the work of a turner, head of enterprise, sailor, artist, the employee is carried out by this agreement. On the basis of an employment contract, the employee leases his work's ability to the owner of the means of production (employer). It should be emphasized that from the point of view of law there is no difference whether a

person works under an employment contract at a state enterprise, institution, collective farm, or an individual. All employees have the same legal status, and any employer is obliged to comply with all rules and guarantees regarding them provided by labor legislation [1].

After all, one of the sources of legal regulation of seafarers' work is an employment contract - a contract. The parties to the employment contract for the performance of work on a seagoing vessel are the employer and the employee - a seafarer, a member of the ship's crew, who own a special labor legal personality, due to the requirements determined by the principles of differentiation of legal regulation of labor, age, citizenship, health, the level of education of certain categories of workers.

Each of the parties to the employment contract has its own subjective rights and obligations, which are determined by the individual employment contract and labor legislation as a whole. The content of the contract is determined by mutual agreement of its parties, which is a set of conditions establishing mutual rights and obligations of the parties, without which it can not be considered concluded, it is employment function, internal work schedule (ie working hours and rest time), wages, etc. The only restriction on this freedom is provided by Art. 9 of the Labor Code of Ukraine, the rule according to which the parties to the employment contract may not reduce the level of rights and guarantees established by labor legislation [2].

"Universal Declaration of Human Rights" on December 10, 1948. Article 23 states that everyone has the right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment. Also, in Article 6 of the Covenant "On Economic, Social and Cultural Rights", dated 16.12.1966. (Ratified by Ukraine) it is established that the states participating in this pact (more than 130 countries participate in it) recognize the right to work, which includes the right of every person to have the opportunity to earn a living by work which he freely chooses or freely agrees and will take appropriate steps to ensure this right. Therefore, one of the forms of realization by citizens of the right to work is the conclusion of an employment contract. One of the fundamental types of employment contracts is the employment contract. The terms "employment contract" and "employment hiring" are in fact homogeneous concepts, because they have the same object - the labor function of the worker, the same parties - the worker and the employer, the same essence (rights and responsibilities parties). In this case, there are sufficient grounds to argue that in a market economy, the employment contract and hiring employment - the same [3].

Thus, the employment contract is a kind of generic concept of employment contract, which distinguishes between labor relations of employees and labor relations of other

categories of workers, as the difference between a worker - not a co-owner of the means of production from the working owner. This determines the degree of contractual freedom of the parties to the employment contract in the specified working conditions of the worker, namely the limits of the principle of freedom of contract in the field of labor relations. In this regard, it is possible to identify such terminological pairs as "employee" and "worker", "employer" work, and" hired "work, which is integral to this contract.

One of the most important institutions of labor law is the employment contract. Almost all authors distinguished the employment contract from related civil law contracts (contracts, powers of attorney, etc.), which is especially important for seafarers' employment contracts, where there is often a foreign element and the possible use of autonomy of the parties. The employment contract is the central concept of the institute of labor law, which groups issues such as labor discipline and work schedule, wages, working hours, breaks, and part of labor protection, so based on the method of systematic analysis and synthesis can identify the characteristics of employment contracts [4].

The main characteristics of an employment contract or employment hiring, first of all, are voluntariness, remuneration, and equality of the parties. But today we do not have to talk about equality of the parties in the traditional sense of the word. The parties are considered equal and independent in fact only at the stage of concluding the contract. Here the employee (the person hired), and the employer have the right to independently choose the contractors of the futures contract and to put forward conditions which each of them considers necessary to display in the contents [1].

Article 21 of the Labor Code defines an employment contract as an agreement between an employee and the owner of an enterprise, institution, organization, or its authorized body or individual, under which the employee undertakes to perform the work specified in this agreement, subject to internal labor regulations, and the owner undertakes to pay employee wages and provide working conditions necessary for the performance of work provided by labor legislation, collective agreement, and agreement of the parties. The parties to the employment contract are the employee and the employer [5].

At the same time, the condition of the labor function is obligatory - the range of work assigned to the employee under personal responsibility and accepted by him when entering into employment. The Labor Code of Ukraine specifies two possibilities for determining the job function: by appointment to a position, profession, specialty or clarification of a specific type of assignment of the employee [6].

In the maritime sector, the legal relationship between worker and employer is very

specific and involves a number of features of its legal regulation. In time, this can be seen in the employment contracts of the Navy. International legal regulation of employment contracts of ship's crew members was considered by the ILO at an early stage of its existence. This problem was submitted to the 9th session, which took place in Geneva (June 7-24, 1926), the result of which was the adoption on June 24, 1926. Convention № 22 "On employment contracts of seafarers", which entered into force on April 4, 1928. (as of December 31, 2001, ratified by 58 states, the country is not a party to the convention). The Convention contains special provisions concerning employment contracts for this category of workers, but most of its articles contain reference rules to national law. Also, it does not define the concept of "employment contract of a seafarer", but calls it a "contract of employment", however, the Convention "On Labor in Maritime Navigation" of 07.02.06 clearly defines this concept.

The lease agreement, according to the provisions of Art. Under Convention № 22, signed by the shipowner or his representative, on the one hand, and by the seafarer, on the other. In this part, the Convention and the Ukrainian legislation coincide. In this case, the national legislation provides for appropriate measures to ensure that the seafarer understands the contract, ie he is given time to study the contract before signing it, in accordance with the law of the ship's flag. Specific benefits for seafarers and shipowners when signing a charter agreement are also established by national law. St. 2 of this Convention defines one of the parties to a seafarer's charter as any person working onboard a ship and enrolled in a ship's role. This general definition needs to be concretized and should be formed so that the proper and clear concept - the sailor [7].

Work on a ship is associated with the combined impact on the body of many production factors: noise, vibration, change of time and climate zones, ship wobble, electromagnetic fields of radio frequencies, overheating, cramped workplaces, increased nervous and emotional stress due to the need to make immediate decisions. , increased attention, stressful and extreme situations, a high level of responsibility, etc. Since the seagoing vessel, being a vehicle, is a long time away from the location of the organization of maritime transport and land infrastructure. Objective features of seafarers' labor relations necessitate the establishment of special norms regulating the work of crew members of seagoing vessels because it is the conditions of seafarers who perform the labor function that serve as a basis for sectoral differentiation of legal regulation of their work. Today, at the international level and in Ukraine, a significant number of acts on the work of seafarers. The content of many of them is not consistent with each other or with the general rules of labor law, which often gives rise to various conflicts. A number of problems arise due to the fact

that the work of seafarers is regulated not only by labor legislation but also by-laws that are complex (intersectoral) in nature (one example of which is the Merchant Shipping Code). The large regulatory framework creates certain difficulties in law enforcement practice, contributes to violations of the law [8].

For example, Article 54 of the KTMU establishes that the procedure for hiring ship's crew, their rights and responsibilities, working conditions on board and wages, as well as social and domestic services at sea and in port, and the procedure and grounds for their dismissal regulated by the legislation of Ukraine, this Code statute of the service on sea and fishing vessels, general and sectoral tariff agreements, collective and employment agreements (contracts).

The UN Convention on the Law of the Sea of December 10, 1982, State 91 stipulates that a vessel, including its crew, is subject to the law of that state. Therefore, within the framework of the modern deliberate action of the national legislation of public administration, including several works. This shows that the Ukrainian sailor works best in the crew of a ship under the flag of Panama, which is related to the rules of Panamanian labor law [9].

National legislation, Article 21 of the Labor Code of Ukraine defines one of the parties to the employment contract of the employer. This concept is new for labor law because it has not been properly enshrined in labor law. But in some acts, its definition is given: Article 10 of the Law of Ukraine "Fundamentals of the legislation of Ukraine on compulsory state social insurance" of January 14, 1998, № 16/98-VR - "employer", is defined as the owner of the enterprise, institution, organization or the body authorized by it, regardless of ownership, type of activity and management and individuals who use hired labor, owners of foreign enterprises and organizations located in Ukraine, branches and representative offices that use the labor of employees; Art. 1 of the Law of Ukraine "On trade unions, their rights and guarantees of activity" from 15.09.99 № 1045 - XIV - employer refers to the owner of an enterprise, institution or organization, regardless of ownership, type of activity, industry affiliation or his authorized body or individual, who in accordance with the law use hired labor. Various pieces of legislation are quite ambiguous in defining the concept of the employer. For example, in contrast to the Labor Code of Ukraine, the Labor Code of the Russian Federation, which came into force on February 1, 2002, contains a definition of "employer", calling it a natural or legal person.

Obviously, this definition fully reflects the legal nature of the employer as a party to the employment contract in a market economy. It is the legal entity that is the owner of the enterprise that establishes the organization and acts in legal relations through the authorized

bodies (director, manager, voice management, etc.), leaving before that the actual side of contractual relations, including labor. If the hire job under an employment contract an individual makes, an individual considers as an employer.

The second party to the employment contract is an employee, this status he acquires upon concluding the employment contract. Therefore, at the stage before the emergence of labor relations, the legislator, regulating the stage of employment, use the term citizen or person. St. 24 of the Labor Code of Ukraine stipulates that when concluding an employment contract, a citizen must provide a passport or other identity document, employment record book, document on education (specialty, qualification), health status, and other documents. Establishing guarantees at the employment of separate categories of citizens the legislator in the same article wrote that the person invited to work by way of transfer from another enterprise, establishment, the organization by coordination between heads of the enterprises, establishments, the organizations, cannot be refused in making an employment contract [1]

In light of the issue under consideration, the problem of determining the employer in drawing up an employment contract in such cases is interesting. For example, if a seafarer enters into an employment contract directly in the personnel department of the shipowner to work on one of its vessels, then in this case there is an employment relationship between the seafarer (worker) and the shipowner (employer). And in the case when a seafarer is hired, enters into a contract with a charter agency for a ship under a foreign flag, there are conflicts in the established employer, as well as in determining which state legislation should be followed when concluding this employment contract, as well as when deciding disputes arising from it [8]. After concluding an employment contract, the employee becomes subject to disciplinary dependence on the employer. He is obliged to follow all the instructions of the latter, if it is necessary to carry out the work stipulated in the employment contract. If the employee violates his obligations under the contract, the employer has the right to apply disciplinary sanctions against him. However, this very dependence or subordination of the employee to the employer is not due to state and legal regulations, but exists as a result of his voluntary obligations to comply with the rules of internal labor regulations. Moreover, this disciplinary dependence of the employee is compensated for by the unconditional right to terminate the employment contract concluded for an indefinite period, while similar rights of the employer are limited by law. Therefore, when the equality of the parties to the employment contract is emphasized, it emphasizes their equality as participants in labor relations, endowed with mutual rights and obligations upon signing the employment contract. We can assume that the sign of equality of the parties to the employment contract is very

close or even derived from such a sign as voluntariness [4].

In world practice, there are different options for labor relations between a seafarer and his employer. For example, it is possible that the person responsible for the financial responsibilities to the workers is the shipowner himself, who manages the vessel and decides on the employment of seafarers. For a seafarer, the concept of the shipowner is important in terms of payment of wages. According to Article 20 of the Merchant Shipping Code of Ukraine, a shipowner is a legal or natural person who operates a vessel on his own behalf, regardless of whether he is the owner of the vessel or uses it on other legal grounds.

Therefore, there may be situations where the shipowner is not the owner of the vessel, and the reason for this situation is primarily the desire of the shipowner to minimize their costs for the maintenance of the vessel and crew. One of the cost reduction mechanisms is the establishment of direct contacts between the shipowner and the vessel operator. Firms - operators, as a rule, are in the countries which are classified by the international societies as offshore territories. They provide technical and commercial management of ships, including dealing with the hiring of crews.

An additional link in the legal relationship between the shipowner and the crew is sometimes the charterer. It can operate on the terms of the bareboat - charter, which means renting a boat without a crew. In this case, the charterer, as a rule, has enough qualified personnel or instructs the crewing agency to staff the crews. The situation is different when chartering a vessel under a time - charter agreement. In this case, the charterer receives a vessel with a manned crew from the company - the operator of the vessel or from a specific company - the operator of the crewing agency. The employee pays the crew of the company, as the charterer decides exclusively on the use of the vessel. In practice, when building other forms of contracts, for example, the number of the ship's captain is fully oriented in all organizational and legal conditions related to the relationship between shipowners and crew.

At the same time, the world practice of litigation of debt arrears by courts shows that shipping companies always object to the claims of seafarers and very often refer to the fact that they are not proper defendants in this category of cases. Courts usually impose debt collection obligations on appropriate defendants. [10] The right to apply to a court of general jurisdiction on the territory of Ukraine with claims arising from employment, to recover the debt on wages, provided for in part one of Article 110 of the Civil Procedure Code of Ukraine. It states that lawsuits arising from employment relationships may be filed at the registered place of residence or stay of the plaintiff. The answer to the question of which state's law is applicable to the disputed legal relationship must be clarified from the text of the

seafarer's employment contract, where most often the law of Ukraine is indicated as the applicable law. If the contract does not contain rules on applicable law, one should refer to the international agreement of Ukraine with the state under whose flag the seafarer works, comparing it with the norms of the Law of Ukraine "On Private International Law" № 2709 - IV of 23.06.05. If there is no such agreement, Art. 52 of this Law, which states that the law of the state in which the work is performed shall apply to labor relations unless otherwise provided by law or an international agreement of Ukraine. Such a state is the "ship's flag state". The procedure for establishing the content of the law of a foreign state is provided by Art. 8 of the same Law, that when applying the law of a foreign state, a court or other body establishes the content of its norms in accordance with their official interpretation, practice, and doctrine in the relevant foreign state. In order to establish the content of the law of a foreign state, a court or other body may, in accordance with the procedure established by law, apply to the Ministry of Justice of Ukraine or another competent body or institution in Ukraine or abroad or involve experts. Persons involved in the case have the right to submit documents confirming the content of the rules of foreign law, to which they refer in support of their claims or objections, or otherwise assist the court or other body in establishing the content of these rules. If the content of the norms of the law of a foreign state is not established within the established term, despite the measures taken in accordance with this Article, the law of Ukraine shall apply. According to the first part of Article 116 of the Labor Code, upon dismissal of an employee, payment of all amounts due to him is made on the day of dismissal. According to Part I of Article 117 of the Labor Code in case of non-payment due to the fault of the employer due to the dismissed employee in the period prescribed by law or contract, in the absence of a dispute over their size, the employer must pay the employee his average salary for the entire period of delay. Although the statute of limitations does not apply to claims for recovery of wage arrears (Part 2 of Article 233 of the Labor Code), for claims for recovery of compensation for late payment set a three-month statute of limitations, which begins on the day when the employee learned or should was to learn of a violation of his right. This term may be restored by the court if the plaintiff requests it and if the reasons for his omission will be recognized by the court as valid on the basis of Part I of Article 234 of the Labor Code. In cases where the late payment of wages to the seafarer caused moral damage, he must demand compensation from the shipowner on the basis of the rules (Part I of Article 9, paragraph 3 of Part 2 of Article 11, paragraph 9 of Part 2 of Article 16, Article 23) of the Civil Code of Ukraine (CCU). The norms of multilateral and bilateral international agreements on legal assistance in civil cases, to which Ukraine is a party, allow to avoid

extremely high costs for enforcement of decisions of Ukrainian courts abroad. The order of execution of these agreements is determined by the "Instruction on the order of execution of international agreements on legal assistance in civil cases on service of documents, obtaining evidence and recognition and execution of court decisions", approved by the order of the Ministry of Justice of Ukraine and the State Judicial Administration of Ukraine from 27.06.2008. № 1092/5/54. Thus, based on experience and practice, we can say that Ukraine has created an effective mechanism to protect the rights of seafarers to receive unpaid wages and compensation for late payment, but it does not always work. [11]. Ukrainian sailors sign contracts that do not guarantee social security. According to the results of monitoring (the project was supported by the International Renaissance Foundation) employment agreements concluded with seafarers by brewing agencies, more than 40% of them do not contain social guarantees for seafarers. Seafarers sign contracts where there is no sickness insurance, no death benefits, they agree to work conditions that do not guarantee social security, so the labor rights of seafarers are often violated. They are often put in such market conditions when they are forced to accept any vacancies offered. This forces them to sign employment contracts without reading. In turn, ignorance of the terms of the contract leads to significant consequences: non-payment of wages, non-payment of insurance cases (death of a sailor in the service, disability, injury, loss of personal belongings as a result of a pirate attack or other force majeure). We can say that at best, sailors look at the last page of the employment agreement and the number of wages and voyage. In 90% of cases, seafarers do not leave a copy of the employment contract with their family members at sea, and family members do not even know the name of the chartering agency, the shipowner, and the flag of the state under which the ship operates.

The first and simplest rule for preventing violations of seafarers' labor rights should be legal literacy and care when concluding an employment agreement. Seafarers should, regardless of the conditions they agree to work onboard, pay attention to the minimum list of clauses of the employment agreement: never sign an empty employment agreement; make sure that the term of the agreement is clearly stated; the specified amount of the basic salary and the conditions of payment of compensation for overtime work; not to sign an agreement that allows the shipowner to delay the payment of wages and which provides for travel to the ship at his own expense and repatriation [12].

Conclusion. Thus, today, when Ukrainian seafarers are still forced to work only for foreign shipowners, and domestic law does not fully protect their rights, the main

responsibility for their safety and observance of their rights lies with the seafarer himself, in particular by signing an employment agreement and giving consent. to fulfill its conditions. Because, thousands of nautical miles from the Ukrainian borders, aid is very expensive and limited. At the same time, the state needs to: encourage intermediaries in concluding employment agreements, strengthen guarantees of legal and social protection of seafarers, inform seafarers who wish to conclude such an agreement about potential risks, as well as ways to protect their rights. Strengthening the legal capacity of seafarers, above all, will increase their legal literacy, then they will begin to understand their rights to employment.

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