

LABOR PROTECTION OF MEDICAL WORKERS DURING THE COVID-19 PANDEMIC

Valentyna Goncharuk^{*}; Inna Ogienko², Maryna Shevchenko³

¹Kharkiv National University of Internal Affairs, Ukraine

²Kharkov University, Ukraine

³Zaporizhzhia State Medical University, Ukraine

*goncharuk.v@gmail.com

Abstract

Labor legislation regulates the professional status of a medical worker in great detail. However, current trends in medicine are well ahead of outdated legislation, which raises a number of unresolved issues. Over the past two decades, people have become more aware of their rights to safe workplace conditions. Labor protection laws and regulations are developed and implemented to protect workers and improve their well-being. Regardless of the context of the work environment, the importance of ensuring health and safety in the workplace for everyone has now become a reality and is guaranteed by the Constitution of Ukraine and other regulations. This fact is also true for the health sector, as the health services sector is one of the sectors that pose significant risks in terms of occupational hygiene and safety precautions. Labor protection of medical workers is one of the most acute problems at the present stage not only in Ukraine but also in many countries around the world, as COVID-19 has a negative impact on the health and lives of medical workers in general. It devalues the results of labor protection aimed at caring for the health and lives of all working people of working age.

Keywords: *labor relations, medical workers, working conditions, labor protection, COVID-19 pandemic*

Introduction

The pandemic outbreak of coronavirus disease, caused by the acute respiratory syndrome SARS-CoV-2 (hereinafter - COVID-19) has become a global trial not only for the healthcare system but also for social, legal, economic guarantees of provision of medical staff. The financial unpreparedness of most countries (both developed and developing) for the pandemic development of COVID-19 has had extremely negative consequences for the realization of their labor rights by medical workers. First of all, it is a question of ensuring safe and harmless conditions, in particular, providing medical workers with appropriate safety equipment (which prevents the possibility of infection with COVID-19), as well as the creation of appropriate working conditions. The COVID-19 coronavirus pandemic has once again drawn public and state attention to the medical sector, hitting its weak points. The most important element in its area is the medical staff. The work of medical workers in healthcare facilities is regulated, for the most part, by the same legislation as in the other sectors of the economy. However, due to the specifics, labor relations in the medical field have a number of features.

Methods

The methodology of the chosen problem is a systematic approach, as well as dialectical, formal-logical and structural-functional methods and other general scientific research methods, as well as special legal methods: comparative law and formal law.

Results

The Constitution of Ukraine guarantees employees the protection of their lives and health in the course of work, appropriate, safe, and healthy working conditions, regulates with the participation of relevant public authorities the relations between employer and employee on safety, work hygiene, and working environment questions [1]. Of course, the problem of the virus is mainly in its virulence and mortality, but there are other consequences, such as closing borders, complete isolation, closing most existing businesses, and changing working conditions during quarantine, which is the subject of

our report today. The state policy on labor protection is represented by the Law of Ukraine on labor protection.

According to Art. 1 of the Law of Ukraine "On labor protection" dated October 14, 1992, №2694-XII and amended on September 1, 2020, labor protection is a system of legal, socio-economic, organizational-technical, sanitary-hygienic and therapeutic-preventive measures and means aimed at preserving human life, health, and ability to work in the working process. The Law of Ukraine "On labor protection" declares the basic principles of state policy and comprehensive solutions to labor protection tasks [2]. Modern science especially emphasizes the multifaceted phenomenon of labor protection, which is perceived as both a social and economic phenomenon that is important for the harmonious development of each employee, the prosperity of society, and the state. However, the current state of scientific and technological progress is not able to create favorable conditions for ensuring human well-being, maintaining their health.

The need for effective national measures to combat the pandemic of acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2 (hereinafter - "COVID-19") directly affected the changes in the modern legal regulation of healthcare workers. During the COVID-19 pandemic, the domestic medical industry faced a shortage of medical personnel. It is preconditioned by the fact that the number of patients, including severe ones, has increased significantly, and the fact that a large number of medical workers also suffer from COVID-19 and are unable to perform their duties. If at the beginning of the pandemic it was assumed that specialized care for patients with COVID-19 would be provided only by anesthesiologists, infectious disease doctors, physicians, pediatricians, then with the increase in the number of patients it became clear that the aforementioned specialists are not enough to provide medical care to everyone who needs it. Due to this, the possibility of involving doctors of other specialties in the treatment of patients with COVID-19 was enshrined at the legislative level. Thus, in particular, the Procedure for implementing the program of state guarantees of medical care in the II-IV quarters of 2021, approved by the Cabinet of Ministers of Ukraine on

February 15, 2021, № 133 [3] provides that anesthesia and non-anesthesia teams may be set up in healthcare facilities to provide medical care to patients with COVID-19, which may include one and three doctors of any specialty, respectively. Non-anesthesia teams may also include interns who work under the guidance of a doctor of the relevant team. Such changes are due to the need to provide medical care to all those who need it but are not fully consistent with other normative legal acts. Interestingly, the qualifications of not all specialists in the “Tasks and Responsibilities” section contain provisions for participation in anti-epidemic measures, not to mention the provision of care to infectious patients in general. Formally, the involvement of non-specialist doctors in the treatment of patients with COVID-19 contradicts Art. 74 of Fundamentals of the Legislation of Ukraine on Healthcare of November 19, 1992, № 2801-XII [4], which established that medical activities may be carried out by individuals who meet the uniform qualification requirements, and uniform qualification requirements for certain types of medical activities are established by the central body of executive power, which ensures the formation of state policy in the field of healthcare. From the point of view of labor legislation (Articles 32-33 of the Labor Code of Ukraine [5]), it should be noted that non-specialist doctors may not be involved in providing medical care to patients with COVID-19 without their consent, except when there is a transfer of an employee to another job for up to one month to prevent or eliminate the effects of the COVID-19 pandemic. In this case, such a temporary transfer must be properly executed and the work of the doctor must be paid not less than the average salary for the previous position. In other cases, the transfer must be agreed upon by the doctor, moreover, initiated by them in order to avoid the need to follow the rule about warning the doctor about the change of their essential working conditions for 2 months in advance.

Also, the Procedure for involving interns in the implementation of measures related to counteracting the spread of coronavirus disease (COVID-19), approved by the Order of the Ministry of Health of Ukraine on December 7, 2020, № 2820 [6], established the possibility of involvement in the implementation of measures related to

counteracting the spread of COVID-19, in healthcare institutions and other institutions, agencies, points, organizations that carry out relevant activities, on a volunteer basis of interns, as well as medical specialists without the requirements for certification for assignment or confirmation of the qualification category. What is important here is the voluntary nature of the participation of these medical workers (volunteering - voluntary, socially-oriented, non-profit activity), i.e. they are not hired and, accordingly, they are not subject to labor legislation. According to Art. 39 of the Law of Ukraine “On the protection of the population from infectious diseases” of April 6, 2000, № 1645-III [7], infectious diseases of medical workers associated with the performance of professional duties in conditions of increased risk of infection with infectious diseases, in particular, the provision of medical care to patients with infectious diseases is an occupational disease, and workers are subject to compulsory state insurance against infectious diseases. It is established that the state provides insurance benefits to employees of state and municipal healthcare institutions in the amounts specified by law. What is more, additional payments for medics are being introduced at the local government level [8]. Due to the increased burden on medical workers and the increase in risk to their lives and health during the provision of medical care to patients with COVID-19, the issue of increasing wages has been resolved at the legislative level [9]. Thus, in particular, the Resolution of the Cabinet of Ministers of Ukraine “Some issues of remuneration of medical and other workers directly involved in the elimination of acute respiratory disease COVID-19 caused by coronavirus 499 SARS-CoV-2” of March 23, 2020, № 246 [10], an after-payment of up to 300 percent of the salaries of medical and other workers directly involved in the provision of medical services to patients with COVID-19 and working in healthcare facilities that provide medical care to patients with COVID-19 and concluded an agreement on medical care for the population under the program of state guarantees of medical care for the population according to the relevant list and scope of medical services with the National Health Service of Ukraine, etc. The issue of labor protection of medical workers has become extremely important. Thus, in addition to the usual risks in their work, there was

an increased risk of COVID-19 infection. In this regard, it is worth emphasizing the employer's obligation to provide employees with personal protective equipment and the possibility of doctor's refusal of the assigned work if there is a production situation threatening the life and health of such an employee on the basis of Art. 153 of the Labor Code of Ukraine. Unfortunately, even two years after the start of the COVID-19 pandemic, not all medical workers are fully provided with personal protective equipment and are forced to purchase it at their own expense. Let us recall that the labor legislation provides for compensation payments to employees who were forced to purchase personal protective equipment at their own expense. In practice, unfortunately, this provision is not usually implemented [11-17]. The Verkhovna Rada of Ukraine is currently considering a draft Law of Ukraine "On the public health system", which, in particular, provides for mandatory preventive vaccinations against infectious diseases not included in the vaccination calendar for employees whose activities may lead to their infection or spread of infectious diseases and the possibility of dismissal of unvaccinated workers. This rule has infuriated many, as it effectively restricts the employment rights of workers who do not want to be vaccinated. At the same time, it is consistent with the norm of Art. 46 of the Labor Code of Ukraine, which provides for the possibility of dismissal of employees in cases provided by law [18-23].

The analysis of acute occupational diseases among healthcare workers in the region, as healthcare workers belong to the group at high risk of contracting acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2. Among the main circumstances contributing to the causes of acute occupational diseases of medical staff, commissions establish the following organizational and psychophysiological ones:

- insufficient effectiveness of personal protective equipment, in particular, medical masks (surgical), which most often protect the respiratory system of most employees of medical institutions during work;
- unsatisfactory (incorrect) usage of protective masks (including ineffective self-made ones) by patients and sick people who visit healthcare facilities on a daily basis;

- high infectivity (virulence) of coronavirus SARS-CoV-2 and the state of the coronavirus disease pandemic;

- high infectious dose of viral particles in the air of work areas of the CHP (especially in winter, when ventilation is limited), due to the daily flow of a large number of patients, including patients with the acute respiratory disease with the asymptomatic course and those who intensively secrete the virus before the onset of symptoms;

- personal negligence of victims during dressing, usage, removal, replacement, and collection for disposal of personal protective equipment.

First of all, the prophylaxis of diseases and prevention of acute occupational diseases includes the usage of personal protective equipment, usage of sanitizers and disinfectants, physical and social distance, systematic wet cleaning with detergents, intensive ventilation, specific immunization - vaccination.

If the working conditions of medical workers endanger the health or health of the people around you, and the employer does not comply with labor protection legislation and the terms of the collective agreement on these issues, they have the right

- To refuse the assigned work. Apply to the health department of the healthcare institution. Specialists of this department together with the representative of the trade union and the representative of the labor collective should investigate and confirm this fact. During this period, the medical worker retains the average salary (Art. 153 of the Labor Code of Ukraine).
- terminate the employment contract at their own will. In this case, the employee is paid severance pay in the amount provided by the collective agreement, but not less than three months' earnings (Part 3 of Art. 38, Art. 44 of the Labor Code of Ukraine).

But in all these cases, it is necessary to prove that the medical worker has unsatisfactory working conditions, namely

- working conditions at the workplace;
- safety of technological processes, machines, mechanisms, equipment, and other means;
- the state of means of collective and individual protection;
- sanitary and living conditions.

If improper working conditions have caused damage to health, a doctor, nurse, or any other health professional has the right to claim compensation for material and moral damage. If a medical worker has lost his or her ability to work due to inadequate working conditions, they may claim compensation for lost earnings (or a corresponding part thereof) and/or reimbursement for medical and social assistance (enhanced nutrition, prosthetics, outpatient care, etc.). In case of the death of a medical worker, family members and dependents receive a one-time payment.

In addition, medical workers are entitled to compensation for moral damage. This type of compensation is granted regardless of the purpose or amount of compensation for property damage. They can file a complaint about the violation of the rights of medical workers directly to the court - within three months from the day when they learned about the violation of their rights. The defendant is the owner of the healthcare facility.

Discussion

As we can see, the development of the medical field creates new legal problems in the clinic-doctor relationship, which conservative legal science does not have time to solve, and therefore the legal regulation of labor relations in medicine still needs to be improved.

Appropriate conditions for the professional activity of medical workers, according to Ukrainian legislation, must be provided by the employer, i.e. the head of the healthcare institution. It does not depend on the type of healthcare facility or subordination. It is the head of the healthcare facility (director, general manager, or chief doctor) who is responsible for the safety of medics in the workplace, so that doctors, nurses, and other healthcare workers have all the means to perform their work, proper sanitation and if necessary - means of individual or collective protection - overalls, footwear, gloves, protective screens, etc. Doctors, nurses or patients should not buy gloves, hats, tools, etc. - this should be taken care of by the head of the medical institution. Similarly, the head of the medical institution together with the owner of the institution (at the level of primary care - local

authorities, at other levels - according to subordination) must ensure that facilities are equipped according to the equipment table, make repairs in the healthcare institution and take care of the safety of doctors and patients.

Thus, summarizing the above, it is clear that some medical institutions help their employees and ensure proper compliance with the requirements of labor protection, sanitation, civil protection. Unfortunately, not all employers are role models and ignore the rules of labor protection in the conditions of the epidemic. Employees themselves also need to be more responsible in their rights and require employers to comply with the requirements of the Law of Ukraine on Labor Protection and other legal acts. Given the aforementioned facts, we believe that, first of all, according to the law and labor protection requirements, workers have the right to safe working conditions, as defined by law, so it is advantageous for the employer to provide workers with proper working conditions and safety. Thus, the main task for employers is to provide medical workers with the necessary resources during the epidemic. This is better than being responsible for non-compliance with the provisions of the Law of Ukraine on labor protection. The provision of conditions will reduce the spread of the epidemic.

References.

1. Constitution of Ukraine - [E-resource], URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.
2. Gandziuk, M.P., Zhelibio, Ye.P., Khalimovsky, M.O. Fundamentals of labor protection: a textbook. Kyiv: Kavela, 2011. 384 p.
3. The procedure for implementing the program of state guarantees of medical care in the II-IV quarters of 2021, approved by the Resolution of the Cabinet of Ministers of Ukraine of February 15, 2021 №133. Official Gazette of Ukraine of March 12, 2021. 2021. №19.
4. Fundamentals of the legislation of Ukraine on healthcare of November 19, 1992 № 2801-XI. Information of the Verkhovna Rada of Ukraine. 1993. №4. Art. 19.

5. Code of Labor Laws of Ukraine of December 10, 1971. Information of the Verkhovna Rada of the USSR. 1971. Supplement to №50. Art. 375.
6. Procedure for involving interns in the implementation of measures related to combating the spread of coronavirus disease (COVID-19): Approved. Order 500 of the Ministry of Health of Ukraine of December 7, 2020 №2820. Official Gazette of Ukraine. 2021. №20. P. 51. Art. 865.
7. On protection of the population from infectious diseases: Law of Ukraine of April 6, 2000 № 1645-III. Information of the Verkhovna Rada of Ukraine. 2000. №29. Art. 228.
8. The city target program for the provision of social services and other types of assistance to vulnerable groups of the city of Odessa for 2021-2023, approved by the decision of the Odessa City Council of December 24, 2020 № 19-VII. <https://omr.gov.ua/ru/acts/council/182420>
9. Procedure for providing one-time care to healthcare workers who have suffered from acute respiratory disease COVID-19 caused by SARS-CoV-2 coronavirus and to families of healthcare workers who have died of acute respiratory disease COVID-19 caused by coronavirus-coronavirus-SARSC order 2 Odessa Mayor of January 27, 2021. №32. <https://omr.gov.ua/ua/acts/mayor/182644>
10. Some issues of remuneration of medical and other workers directly involved in the elimination of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2: Resolution of the Cabinet of Ministers of Ukraine of March 23, 2020 № 246. Government courier from April 1, 2020. №62.
9. On the public health system: the draft Law of Ukraine of September 22, 2020.
11. Iasechko, S., Bratsuk, I., Petrechenko, S., Kazanchuk, I., & Liashenko, R. (2020). Development of the Doctrine on Certain Personal Incorporeal Rights in European Countries. *Journal Of Advanced Research In Law And Economics*, 11(4), 1169-1174. doi:10.14505/jarle.v11.4(50).12.
12. Iasechko S., Zaitsev O, Kozhevnykova V, Melnyk K, Kuldhii O. Transactions with the Personal Non-Property Right. *SRP*. 2020; 11(10): 49-52. doi:10.31838/srp.2020.10.10
13. Iasechko S., Haliantych M.K, Skomorovskyi V.B, Zadorozhnyi V, Obryvkina O, Pohrebniak O. Contractual Relations in the Information Sphere. *SRP*. 2020; 11(8): 301-303. doi:10.31838/srp.2020.8.46
14. Iasechko S., Puzyrnyi V., Puzyrna N., Kostyuk N., Bakhnovska I., & Litvinova, I. (2020). The Investigation Of Peculiarities Of The Occurrence Of Subjective Civil Rights In Registration Of A Patent. *Journal Of Advanced Research In Law And Economics*, 11(3), 844 – 849. Doi:10.14505/Jarle.V11.3(49).17
15. Iasechko S., Stepanenko T., Korolova V., Makovetska N., Chernetchenko O. "Features of Legal Regulation Transplantations in Ukraine" *JCR*. 2020; 7(13): 430-432. *Journal Of Critical Reviews*, 7 (13), 430-432. Doi:10.31838/Jcr.07.13.76
16. Iasechko, S., Zaitsev, O. (2021). Granting a compulsory license for patent rights in the context of the covid-19 coronavirus pandemic. *Pharmacologyonline*. Vol. 2. pp. 385-397
17. Iasechko, S., Skomorovskyi, V., Andronov, I. et al (2020). Features of the subjective civil rights on patent. *Journal Of Critical Reviews*, 7 (13), 297-299. Doi:10.31838/Jcr.07.13.50
18. Melnyk, K.Y., Tsesarsky, F.A. Environmental safety of enterprises activity as a precondition for compliance with the required working conditions. *Ekoloji*, 2019, 28(107), стр. 463–469.
19. Melnyk, K.Y., Tsesarsky, F.A. Ecological problems of chemobyl exclusion zone and their effect on labor regulations. *Ekoloji*, 2019, 28(107), стр. 5049–5053.
20. Melnyk, K.Yu. Current state and trends in the legal regulation of trade unions in Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine*, 2020, 27(2), стр. 107–118.

Concepts, motives, beneficial and adverse consequences. *International Journal of Criminology and Sociology*, 2020, 9, стр. 2674–2680.

22. Gusarov, S.M., Melnyk, K.Yu. New approaches to legal regulation and organisation of labour in Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine*, 2021, 28(1), стр. 169–178.
23. Melnyk, K., Tsesarsky, F., Zhdan, M., Vlasenko, M., Fatieiev, Y. Distance Work And Its Significance In Terms Of Quarantine Restrictions Aimed At Preventing The Spread Of The Covid-19. *Journal of Legal, Ethical and Regulatory Issues*, 2021, 24, стр. 1–8

21. Melnyk, K., Tsesarsky, F., Zaitsev, O., Yatsenko, T. Abuse of rights in labor relations: