

BRINGING

TO DISCIPLINARY RESPONSIBILITY OF EMPLOYEES AND EMPLOYERS ON LABOR LAW

LLEVANDO A LA RESPONSABILIDAD DISCIPLINARIA DE EMPLEADOS Y EMPLEADORES EN DERECHO LABORALPh. D. Kseniya E. Kovalenko¹E-mail: kovalenko1288@mail.ruMSc. Natalia E. Kovalenko¹E-mail: kke@email.asu.ruMSc. Eugene V. Kovalenko¹E-mail: kke@email.asu.ru¹ Altai State University. Barnaul. Russian Federation.**Suggested citation (APA, sixth edition)**

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ABSTRACT

The work deals with the issues of attracting employees and managers to material liability for inflicting last damage on the employer, and the regulation of the provisions on the liability of the parties to the employment contract. The objectives of labor legislation are the establishment of state guarantees of labor rights and freedoms of citizens, the creation of favorable working conditions, the protection of the rights and interests of workers and employers. The main tasks of the labor legislation are the creation of the necessary legal conditions for achieving optimal coordination of the interests of the parties to labor relations, the interests of the state, as well as the legal regulation of labor relations and other directly related relations. Based on the current civil law, the jurisdiction of labor disputes about the material responsibility of employees has been established. Based on judicial practice, the issues of establishing the damage caused, cases of limited, full and collective material liability are covered.

Keywords: Labor law, employee, employer, liability, compensation for harm.

RESUMEN

El trabajo se ocupa de los problemas de atraer empleados y gerentes a la responsabilidad material por infligir el último daño al empleador, y la regulación de las disposiciones sobre la responsabilidad de las partes en el contrato de trabajo. Los objetivos de la legislación laboral son el establecimiento de garantías estatales de los derechos laborales y las libertades de los ciudadanos, la creación de condiciones de trabajo favorables, la protección de los derechos e intereses de los trabajadores y los empleadores. Las principales tareas de la legislación laboral son la creación de las condiciones legales necesarias para lograr una coordinación óptima de los intereses de las partes en las relaciones laborales, los intereses del estado, así como la regulación legal de las relaciones laborales y otras relaciones directamente relacionadas. Con base en la ley civil actual, se ha establecido la jurisdicción de las disputas laborales sobre la responsabilidad material de los empleados. Con base en la práctica judicial, se cubren los problemas de establecer el daño causado, los casos de responsabilidad material limitada, total y colectiva.

Palabras clave: Ley laboral, empleado, empleador, responsabilidad, compensación por daños.

INTRODUCTION

The labor legislation establishes requirements of careful attitude of workers to the property of the employer. In cases where the employee causes damage, the law establishes the possibility of bringing him to liability. The objectives of labor legislation are the establishment of state guarantees of labor rights and freedoms of citizens, the creation of favorable working conditions, the protection of the rights and interests of workers and employers.

The guilty unlawful conduct in the labor process is a labor offense, a disciplinary offense. Consequently, liability is directly related to a labor offense, a disciplinary offense, unless otherwise provided by law. It is a possible consequence of a disciplinary offense.

The employer, as a party to an employment contract that caused damage to the other party, is also obliged to reimburse it in full.

The financial responsibility of the employer to the employee is regulated by Ch. 38 of the Labor Code of the Russian Federation. In accordance with it the offense of material liability of the employer is possible in the following cases.

1. Compensation to the employee of material damage caused as a result of unlawful deprivation of his ability to work.

Responsibility comes in the amount of the average earnings of the employee for the entire period of his unlawful removal from work, as a result of illegal transfer, due to unlawful dismissal, the employer's refusal to perform or untimely execution of the decision of the labor dispute review body or the state legal labor inspector to restore the employee to the previous work, as well as in case of delay in issuing a work record book or entering into the workbook an incorrect or inconsistent formulations. The reasons for the dismissal of work impeding employment.

2. Compensation of damage caused to the property of the employee.

The grounds for attracting the employer to liability under this article include: damage to clothing while performing labor duties; loss of things from the wardrobe or in places reserved for storage; loss or damage to other personal property that, with the consent or knowledge of the employer, is used in the course of work. The damage is compensated in full. With the consent of the employee, the damage can be compensated in kind. The employer is obliged to consider the employee's application for damages and take a decision within ten days. If the worker disagrees

with the employer's decision, the worker has the right to apply to the court.

3. Compensation for moral damage caused to the employee by illegal actions (or inaction) of the employer.

The employer is obliged to reimburse in monetary form the moral damage caused to the employee by unlawful actions (for example, in case of illegal transfer, unlawful dismissal, in the case of discrimination in the field of work). Moral harm is physical and moral suffering caused by actions that violate the personal property rights of a citizen or encroach on other intangible goods belonging to him. The amount of moral damage must be determined by the parties to the employment contract. In the event that the employer refuses to compensate for moral damage voluntarily, the employee has the right to apply to the court. The presence or absence of property damage does not affect the employee's right to apply for compensation for moral harm.

4. Compensation for damage in case of violation of the established period of payment of wages and other payments due to the employee.

The Labor Code of the Russian Federation in Art. 236 established the rules of material liability of the employer to the employee for delay in payment of wages. In this case, the employer is obliged to pay all the money amounts due to the employee (wages, vacation pay, dismissal payments) with interest (cash compensation) in the amount not less than one three hundredth of the current refinancing rate of the Central Bank of the Russian Federation from unpaid amounts for each day of delay, starting from the next day after the due date of payment on the day of actual calculation inclusive. Collective or labor contract compensation amount can be increased. The presence or absence of the employer's guilt in delaying wages does not matter.

Accrual of interest due to late payment of wages does not exclude the right of an employee to index the amount of delayed wages due to their depreciation due to inflationary processes, since such an indexation is not an independent measure of the employer's responsibility, but a technical mechanism for restoring the purchasing power of money not timely received by the employee.

DEVELOPMENT

By the provisions of Art. 338 of the Russia Federation (LC RF) Labor Code, the direct actual damage caused to the employer is directly compensated for the real damage caused to the employer, which constitutes a real reduction in the available property of the employer, or worsening of his condition (including the property of third parties held by the employer for the safety of which the latter

is responsible). In addition, direct actual damage includes the need to incur costs or excessive payments not to purchase, restore property or reimburse damage caused to employees by third parties. For this reason, direct real damage can be attributed to the shortage of monetary or property values, damage to equipment, furniture or materials of the employer, as well as the costs of repairing the damaged property of third parties, the amount of fines paid that were imposed on the organization through the fault of the employee.

Thus, the damage is only real damage or loss of property of the employer or third party and the costs necessary to repair, restore property, compensation costs. This type of loss, like lost profits, can not be collected from employees.

The employee is liable for material liability in the presence of a set of certain conditions: the reality of the damage suffered (as it is understood in paragraph 2 of Article 238 of the Labor Code of the Russian Federation), the guilt of the employee proved and the fact that the damage resulted from an unlawful act. (Compliance with the conditions necessary to attract an employee to liability is reflected in Article 233 of the LC RF).

Attraction of employees to material liability excludes the presence of one of the following circumstances:

- The damage was a consequence of extreme necessity, necessary defense, normal economic risk.
- The employer did not ensure proper storage of the property entrusted to the employee.

The right of an employer to apply to a court for disputes about compensation for damage caused by an employee during labor relations both during the employment contract and after its termination was granted to the employer and on the basis of the provisions of Part 2 of Art. 392 of the Labor Code of the Russian Federation is valid for one year from the date of the discovery of the damage caused. The day of causing damage should be considered the day when the employer became aware of its presence.

Between the employer and the employee an agreement on compensation of damage with payment by installments for a period not exceeding one year may be concluded. In this case, the possibility of applying to the court arises from the employer from the moment of discovery of a violation of the right to compensation of damage, that is, from the moment when the employee ceased to fulfill the terms of the agreement - this position is determined in judicial practice.

Unlike most labor disputes for which pre-trial order is provided, the cases of material liability of employees are

dealt with directly in court. The current civil law legislation relates labor disputes to the jurisdiction of district courts.

As a rule, based on the provisions of Art. 241 of the Labor Code of the Russian Federation, employees bear limited liability, established within the average monthly salary. On this basis, courts reasonably decide on partial satisfaction of the claims of employers in cases of material liability of workers.

According to paragraph 10 of Resolution No. 52 by Part 2 of Art. 243 of the Customs Code of the Russian Federation, full liability may be assigned to the deputy head of the organization or to the chief accountant, provided that this is established by an employment contract. If the employment contract does not provide that the specified persons bear material responsibility in full in the event of causing the damage, then in the absence of other grounds entitling them to bring such persons to such responsibility, they can only be liable within their average monthly earnings.

In the list of posts there is no post of chief accountant, from which it can be concluded that the chief accountant can not conclude a written contract on full liability. However, according to Part 2 of Art. 243 of the Labor Code of the Russian Federation, material liability to the full extent of the damage caused to the employer can be established by an employment contract concluded with the chief accountant.

The Supreme Court of the Russian Federation in its Decision No. 78-B06-39 of July 31, 2006 indicated that the chief accountant, not being a materially responsible person, can not be dismissed based on clause 7, part 1 of Art. 81 of the LC RF in connection with the commission of the guilty actions by an employee directly serving monetary or commodity values, if these actions give rise to a loss of confidence in him by the employer.

So, the decision of the Central District Court of Barnaul on May 15, 2016 partially satisfied the claim of "CenterTrans" in Barnaul about compensation for damage caused to the employer through the fault of the employee. Based on the materials of the case, driver, when performing a flight on a technically sound bus when the latter stopped, did not take the necessary measures to exclude spontaneous traffic. As a result, the driver made a trip to the stationary barrier, and the vehicle was mechanically damaged. Based on the above, the "CenterTrans" was damaged in connection with the damage to his property. Based on the results of the examination of the case materials, the court satisfied the claimed claims within the average monthly earnings of the employee, taking into account the fact that for him there was no material liability in the amount greater

than established by law (Article 241 of the Labor Code of the Russian Federation).

When establishing full liability in the duties of the employee includes compensation for the damage caused to the employer (direct and actual) in full. The full liability to the employee can be imposed only in cases that are directly provided for by the Labor Code of the Russian Federation or by other legislative norms (paragraphs 1 and 2 of article 242 of the Labor Code of the Russian Federation).

CONCLUSIONS

Thus, the main reason for the occurrence of this type of liability is the fact of causing damage to the employer or to third parties, if the employer is obligated to compensate for the damage caused by the employee. Moreover, the employee must compensate for the damage, even if there is no separate contract on liability. The employment contract, and other document may contain specifying conditions on the specified issue. The most applicable type of liability is limited, in which the employee pays damages only within the limits of his average monthly earnings. However, there are exceptional situations in which full liability arises, that is, when the employee is obliged to compensate for the entire amount of damage. If the amount is more than a monthly salary, it is collected in installments.

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