

LEGAL STATUS OF PLATFORM WORKERS IN RUSSIA: RIGHT ON UNEMPLOYMENT AND SOCIAL ASSISTANCE

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Abstract

Purposes: Russian Federation as many other States experience the growth of the “gig economy”. The number of people working via platforms grows with every year. As a result, it brings up a new form of employment. Consequently, national law and social security systems have to adapt to new challenges in order to provide from one hand, efficient regulation of such relations, from another hand – to protect the rights of crowd-workers.

Methodology: Russian legislators introduced in 2013 the new concept of “distance work”, which partially covers platform workers. Since late 2019 new regulations concerning non-registered self-employed persons will come into force. Nonetheless, the discussion on the place of crowd-workers remains to be open within practitioners and scholars and still shows the uncertainty.

Result: In this paper, we tried to determine the legal status of platform workers and identify their place within the system of Labour and Social Security Law with a detailed focus on access to Unemployment Benefit and Social Assistance.

Implications/Applications: As a general rule, digital platforms do not impose concrete requirements for the crowd-worker, for instance as the obligation of having registered status as individual entrepreneurship. In this case, any physical person showing the will to work can register with a platform and provide services.

Novelty/Originality: We will try to give the legal definition and to find out the recognition of so-called Platform Workers within the national Labour Law. After the research will be focused on a social cluster: the right of Platform Workers to access to Unemployment Benefit and Social Assistance.

Keywords: Platform Workers, Social Security, Distance Work, Unemployment, Social Assistance.

INTRODUCTION

Platform work involves work offered by a customer through an online platform and performed by an individual. The work can be performed offline (e.g. Uber, Deliveroo, TaskRabbit, Amazon Flex) or online (e.g. Amazon Mechanical Turk). Depending on the platform, there are different levels of control over the legal relationship that is created and/or over the delivered result ([Schoukens et al., 2018](#)).

Labour services provided by digital labour platforms can be broadly distinguished as services performed digitally (i.e. micro-tasks, clerical and data entry, etc.) or services performed on-location (i.e. transport, delivery, housekeeping, etc.). On average half of the overall platform, workers perform both digital and on-location services ([Pesole et al., 2018](#)).

The main legal act in the field of labour law is the Labour Code of the Russian Federation, adopted in 2001 and in force since February 2002. According to Article 11 of the LC, the labour law regulations in the Russian Federation are applicable to all workers who have entered into employment relationships with employers. Labour Code does not give the definition of “work” but refers to the term “labour relations”. “Labour relations shall be the relations based on an agreement between an employee and an employer on the personal performance by the employee of a work function for payment (work of a certain specialty, with a qualification, in a position), on the employee's compliance with the internal working regulations with the employer providing the working conditions stipulated by the labour law, collective contract, agreements, labour contract.

METHODS

In this paper, authors have used the following methodology: doctrinal research, comparative approach, empirical research and socio-legal approach.

In the European doctrine, a platform worker is defined as a person selected online from a pool of workers through the intermediation of a platform to perform personally on-demand short-term tasks for different persons or companies in exchange for income.

The legal classification of platform workers within the meaning of Russian Law is rather blurred. Determination of status of crowd-worker in the understanding of labour and social security law depends on the character of activities performed, whether those activities can be recognized as employment relations or not, if the third party is involved, on the character and time frameworks of performed work. The possible legal qualification of platform workers within Russian Law includes ([Lyutov & Gerasimova, 2017](#)).

- The employee under the scope of the meaning of distance work, regulated by Labour Code,

- Self-employed persons, registered in accordance with the procedure established by law (status of Individual Entrepreneur) or
- Self-employed persons without official registration.

An employee within the meaning of distance work

Chapter 49.1 “Distance Work” was introduced in 2013, regulating non-standard forms of employment. In order to be qualified as distance work; work activities should fulfill 3 requirements:

- Should be performed out of the office, representative, branch of the employer,
- Should be performed online (via internet-platforms),
- Labour contracts, as well as supplementary documents, should be signed using highly secure digital signatures.

Within the meaning of normative rules of Chapter 49.1 distant worker is recognized the same as if he/she was a standardly employed worker. As following, the distant workers rights under the scope of Labour Law would be: the same rights and obligations as for standard-employed workers performing the activities of the same nature, the right to manage the hours of work and rest, unless it is negotiated an employment contract, no obligation of insertion the reference about distance work in “employment history” of the employee.

From some scholar's point of view, so-called crowd-work platforms can be internal for a company's in-house operations and the workers of the company complete the tasks or they can be external, so the work is posted for workers in the wild range - “across the globe” to complete. Critical analyzing of the legal norms of Chapter 49.1 of the Labour Code gives the ground to affirm that distance workers can be recognized as platform workers ([Pesole et al., 2018](#)).

A new dimension for self-employed persons

Even though Russian Law determines the definition of distance work, the majority of crowd-workers do not fall under the scope of application of Chapter 49.1 of the Labour Code. We will try to identify and describe the possible legal status of platform workers below.

Some of the crowd-workers are officially registered as individual entrepreneurs, which gives them official status and within it, they have the complex of rights and obligations, like tax obligations, obligations as an employer for other physical persons (if applicable in each concrete case) and obligation to pay compulsory contributions.

According to the Russian Federal Agency of Statistics 15,4 million citizens providing services as self-employed, it is not necessarily persons registered as individual entrepreneurs, but also persons having full-time or part-time work and working as self-employed on a side as well. However, Russian Law allows performing as employed and self-employed at the same time, unless a person is a civil servant, military or police personnel. For the latter categories of citizens, it is allowed to be involved in teaching, educational processes only.

As a general rule, a self-employed person is defined as a physical person, independently performing individual work activities (based on his/her financial and commercial risk) for other physical persons with the aim of receiving systematically based income, who is not registered as an individual entrepreneur ([Berg, 2016](#)). As follows, *self-employed persons cannot do work or provide services for companies (LLC) and cannot be employed for other physical persons*.

The category of self-employed persons remains in the grey zone for legal regulation. According to law, any physical person receiving income should pay income tax, which is equal to 18% ([Berg, 2016](#)). In 2017 only 32% of self-employed have paid taxes and obligatory contributions. According to the latest data, the Pension Fund of Russia has not received more than 500 billion RUB of contributions.

There were so-called “tax holidays” in Russia lasting until summer 2019. From December 2019 the status of self-employed will be legalized due to the changes in Art.2 on the personal scope of application of Federal Statute “On employment of the population in Russian Federation” and Chapter 26.5 of Tax Code of RF. Self-employed will have to register at the tax office (territorial principle- based on place of residence) and once in the financial year pay the fees for a license or so-called “patent”. Compulsory contributions will be 3% to Pension Insurance and 2% to Health Insurance.

Currently, the majority of platform-workers remain in the grey zone for legal regulations. The best example would be the situation with taxi-drivers working for digital platforms. As a rule, there is no contract of employment provided. More than that, there is no official contract of providing services between the digital platform and a driver, but with a third party providing information about online orders. As a result, payments to the driver are not considered as “passenger's transportation” but payment for information services. To declare such income and pay compulsory contributions (Pension Insurance and Health Insurance) according to Art.346.16 of Tax Code the character of the payment should be at least under the agreement of providing services (Art.779 of Civil Code), so those payments to driver do not fall under the scope of application of Civil Law. As it's noted in the literature, such contract relations between platform and driver are most likely will be considered by the Court as false-agreement ([Nechuikina 2008](#); [Baimatov, 2014](#); [Balashova & Vovnjakova, 2017](#); [Davidov, 2017](#)). As a consequence, such relations will be defined as illegal entrepreneurship and

person- false self-employed (due non-declared income). So, that category of citizens is out of the scope of the contributory social security system. At the same time, they might be still entitled to non-contributory schemes, as in unemployment and social assistance. However, the status of false self-employed will be legalized after coming into force with new changes in legislation concerning self-employed persons.

The legal status of crowd-workers under the scope of Social Security Law

As we have explained above, distance workers having the same rights and obligations as standardly employed persons were performing work activities of the same nature ([Chesalina, 2018](#)). It means distance workers are normally entitled to the national social security system and have rights to claim for social security benefits. However, distance workers are not entitled to schemes of occupational diseases and accidents at work. Normally contributions for the latter mentioned schemes are paid on a compulsory basis by employers. In this case, legislators waived such obligations. As noted by some authors, the possibility to make a link between the accident at work and distance work is rather minimal.

Self-employed persons, who do not have a status of individual entrepreneurs, normally do not fall under the scope of application of contributory Social Security System. Since December 2019, however, that category will be obliged to pay 5% of declared income for compulsory contributions- such as Pension Insurance 3% and Health Insurance 2%. Taking into account the universal character of the unemployment scheme in Russia, self-employed still falls under the personal scope of application of that scheme. Self-employed persons also might be entitled to social assistance under certain conditions (socially vulnerable category of citizens, special state programs)

Social Cluster: Unemployment Benefit

Constitution of RF in Art 37 (3) guarantees the right to freely use labour capabilities, to choose the type of activity and profession. On one hand, the Constitution guarantees fair work conditions and on another hand- provides protection in case of unemployment. According to Art.3 of Federal Statute "On Employment in Russian Federation," unemployed person is able-bodied physical person, who is not involved in labour relations and does not have income, registered with authorities with the will to find work. Personal scope of application: all citizens of RF. Universal scheme.

Qualifying conditions: Person has to be registered at an employment office, have 26 weeks of full-time employment in the last 12 months (or the 26-week equivalent for part-time employment) and be willing and able to work.

- Benefits may be reduced, postponed, suspended, or terminated if the worker is dismissed because of misconduct, leaving employment without good cause, violating conditions for job placement or vocational training, or filing a fraudulent claim.

- Unemployed persons who do not meet the coverage conditions or persons who have never worked may be eligible for reduced benefits. -75% of the previous average monthly wage is paid for the first three months,
- 60% for the next four months, 45% for the next five months, and thereafter (for a further 12months) the local minimum subsistence level increased by a factor that varies according to the region (Federal Statute from 28.12.2013).

The benefit is increased by 10% of the regional minimum subsistence level for victims of radiation and persons living in radiation-contaminated zones. Legislators set up minimum and maximum range of unemployment benefits -from 850 RUB up to 4900 RUB.

For unemployed persons who do not meet the coverage conditions or for persons who have never worked, the benefit is 30% of the regional minimum subsistence level for the first six months and 20% of the regional minimum subsistence level for the next six months, but not less than 100 rubles a month.

Dependent's supplement: The benefit is increased by 10% of the regional minimum subsistence level for each dependent, up to 30%. If both parents are unemployed, both are entitled to claim a supplement for the same dependent.

Early pension: Paid to unemployed older workers aged 58 to 59 (men) or aged 53 to 54 (women). The benefit is the same as the old-age insurance pension under Old Age, Disability, and Survivors.

Social Assistance

Art. 39 of the Constitution of the Russian Federation guarantees the rights of citizens to social security by age in case of illness, disability, loss of a breadwinner, for raising children and in other cases established by law.

Social Assistance traditionally belongs to the non-contributory scheme within the national Social Security System. Social Assistance is based on 5 main principles- social partnership, solidarity, adaptation to the economic situation, guaranteed by the state, prevention of new social risks ([Nechuikina, 2008](#)).

Social Assistance scheme is adapted to support the most socially vulnerable categories of citizens, as in those, who would, otherwise, experience difficult life situations. Elderly people living alone, invalids of war, persons with I, II, III

categories of invalidity, victims of Chernobyl disaster, refugees, orphans, families without sufficient financial sources, multi-child families, single mothers, persons with positive HIV, homeless persons ([Baimatov, 2014](#)).

For mentioned categories, Social Assistance would be determined as the complex of measures guaranteed and provided by the state to provide support (in cash or in-kind) in difficult life situations. Social Assistance is provided according to administrative procedures established by law and always addressed directly to the beneficiary.

The forms of Social Assistance: Benefits in cash and in-kind (food supplies, transportation, pharmaceutical supplies, equipment for invalids etc.), help at the place of residence of the beneficiary (cleaning services, medical and nursing care), Therapy and Asylum, Shelters, Daycare for elderly people.

Below we described the most common social assistance programs and qualification requirements. State social old-age pension: Required age for men is 65 and age for women is 60. Provided for persons, who do not qualify the requirements for state insurance pension (Federal Statute from 17.12.2001). The state social pension is not payable abroad. It has to be noted that retirement is not necessary; also there is no income test for a working pensioner. The amount for 2019 is 9045 RUB. State social disability pension - Benefits are provided to persons with the invalidity of Group I, II, III having no employment history or being disabled since childhood, or younger than 18 years old. Amount of benefits are:

- 11 903, 51 RUB a month for persons with Invalidity of Group I and who are disabled since childhood.
- 9919, 73 RUB with Invalidity of Group I and not disabled since childhood, or with Invalidity of Group II and disabled since childhood.
- 4959 RUB with Invalidity of Group II and not disabled since childhood.
- 4215 RUB with Invalidity of Group II.

State social survivor pension: Paid if the deceased did not qualify for an old-age or disability insurance pension. The social survivor pension is not payable abroad. The pension is set by the government according to different categories of beneficiaries and is split equally among all eligible survivors.

- 4,959.15 rubles is paid to each eligible orphan;
- 9,991.51 rubles to full orphans or to orphans of single mothers

SUMMARY

Russian national legislation is on the stage of adaptation with new challenges “gig-economy” brings. Determination of legal status of crowd-workers remains to be an open discussion ([Shevchuk & Strebkov, 2017](#); [Chesalina, 2018](#)). Even though legislators tried to define and regulate these completely new relations via introducing the term “distance work”, the majority of platform-workers do not fall under the scope of Labour Code regulations. In order to be considered as a “distance worker,” a person should have official employment relations with employer- significant contract of employment. The positive part is that distance workers enjoy the same rights as standardly employed persons, and they are fully covered by Social Security Schemes. That category of workers may claim as for contributory as for non-contributory schemes as well. However, nowadays more and more companies develop their own internal platforms and employ distance workers. According to relevant data, in 2020 every 5th employee will be counted as a distance worker.

Thus, most of the crowd-workers are not officially employed by the platforms and perform their activities or as individual entrepreneurs or as false self-employed. As it was described in the paper, individual entrepreneurs are less protected in comparison with distance workers. However, they still can upgrade social security protection by subscribing to voluntary schemes- such as maternity and sickness leave.

CONCLUSIONS

Currently, self-employed persons without the status of individual entrepreneurs stay in the grey zone for legal regulations. After 2019 they will be legally recognized and partially covered- but only will be entitled to Pension Insurance and Health Insurance. Furthermore, reminding the example with taxi-drivers working for the digital platforms, who cannot declare their incomes due to the collision of norms and as in, pay compulsory contributions, shows us that not only social security systems should adapt, but the whole national legal system. In general, unemployment and social assistance schemes having a universal character and *de jure* cover all citizens of Russia. But usually, platform-workers do not fulfill the requirements in order to be entitled to unemployment and social assistance schemes. To solve this, state authorities and legislators should work together in order to establish new techniques to make the social security system flexible and adaptable to face new challenges.

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