

**Николай Михайлович
АРТЕМОВ,**

доктор юридических наук,
профессор кафедры
финансового права
Университета имени
О.Е. Кутафина (МГЮА)
nmartemov@msal.ru
125993, Россия, г. Москва,
ул. Садовая-Кудринская, д. 9

**Наталья Федоровна
ЕЖОВА,**

кандидат
филологических наук,
доцент кафедры
английского языка
Университета имени
О.Е. Кутафина (МГЮА)
nfezhova@gmail.com
125993, Россия, г. Москва,
ул. Садовая-Кудринская, д. 9

**Юлия Владимировна
МУХИНА,**

юрист, адвокатское бюро
г. Москвы
«БГП Литигейшн»
yuliafly99@mail.ru
123112, Россия, г. Москва,
Пресненская наб., д. 6,
стр. 2, ДЦ «Империя»,
оф. 1802

Дистанционный труд как веяние времени: правовое регулирование дистанционного труда, практика и перспективы (на англ. яз.)

Аннотация. В статье освещается процесс развития новой формы трудоустройства — удаленной работы в России, касающийся ряда основных правовых вопросов регулирования дистанционного труда, возникающих со стороны как юридических лиц (работодателей), так и сотрудников, работающих удаленно (физических лиц). Актуальность темы исследования связана с быстрым развитием новых технологий и активным использованием сети Интернет в нашей повседневной жизни. Более того, удаленная работа становится все более востребованной из-за пандемии коронавируса. Особое внимание в статье уделяется анализу практики применения удаленной работы в России и за рубежом, проблемам правового регулирования удаленной работы в России и опыту европейских стран в регулировании дистанционного труда.

В статье рассматриваются некоторые проблемы контроля рабочего процесса сотрудников, работающих удаленно, основные трудности, связанные с процессом неконтролируемой работы со стороны как работодателя, так и работника. Также анализируются существующие противоречивые мнения о целесообразности удаленной работы, ее достоинствах и недостатках. Авторы представляют некоторые возможные решения текущих проблем.

Ключевые слова: удаленная работа, правовое регулирование удаленной работы, информационно-телекоммуникационная сеть Интернет, трудовые отношения, трудовой договор.

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N. M. ARTEMOV,

*Dr. Sci. (Law), Professor of the Department
of Financial Law of the Kutafin Moscow
State Law University (MSAL)*

nmartemov@msal.ru

9, ul. Sadovaya-Kudrinskaya, Moscow, Russia, 125993

N. F. EZHOVA,

*Cand. Sci. (Philology), Associate Professor of English Faculty
of the Kutafin Moscow State Law University (MSAL)*

nfezhova@gmail.com

9, ul. Sadovaya-Kudrinskaya, Moscow, Russia, 125993

Yu. V. MUKHINA,

lawyer, Moscow attorney firm BGP Litigation

yuliafly99@mail.ru

*of. 1802, business centr Empire, 6, str. 2, Presnenskaya nab.,
Moscow, Russia, 123112*

Remote Work as Zeitgeist: Legal Regulation of Remote Work, Practice and Prospects

Abstract. *The article highlights the process of developing a new form of employment — remote work in Russia, regarding a number of basic legal issues related to legal entities and the regulation of the work of remote employees. The topic of the article is currently important due to the situation in the world related to the rapid development of new technologies and the usage of the Internet in our daily life. Moreover, remote work becomes highly sought due to the pandemic of coronavirus. Special attention is paid to the analysis of the practice of remote work in Russia and abroad, to the problems of legal regulation of remote work in Russia, and the European experience of its regulation. The article discusses some problems on control the working process for remote employees, the main difficulties connected to the process of working uncontrolled by both employers and employees. The article also considers the existing controversial opinions about the reasonability of remote work, its advantages, and disadvantages. The authors present some possible solutions to the current problems.*

Keywords: *remote work, legal base of remote work, information and telecommunication network, labor relations, employment contract.*

The modernization of the economy, the emergence of a flexible labor market, the increasing role of intellectual labor associated with the creation and processing of information, the rapid development of telecommunication and information technologies and their application in economic life and business have contributed to the improvement of labor relations, the emergence of new unconventional forms and



types of employment, and more flexible labor activity — remote work. Although, by now, remote work has already been sufficiently tested, problems and disputes regarding it do not cease to appear. This makes it the subject of this research.

The reviewing a number of studies and publications of A. V. Slepov, I. Shendrik, E. B. Morgunova¹ on the concept, features and specifics of remote work, A. S. Terentyeva², A. A. Malysheva, N. V. Zakalyuzhnaya,³ N. L. Lyutov⁴ on legal regulation and the problems of regulation of remote work in Russia, familiarization with the opinions of experts, as well as the practice of using remote work by various organizations, have shown that the topic still needs further research. Currently, the need for remotely working employees for various companies is growing and jobs for them are increasing every year.

Remote work today is becoming increasingly popular, because with a free schedule outside the work office people with any education, with disabilities, women on parental leave, students, pensioners, specialists who want to earn some extra money, those living in distant regions can work practically anywhere. This way, issues of registration, regulation and payment spark interest of different groups of the population.

Remote work is also instrumental in solving social problems and employment in various regions, as «it increases business activity and employment of the population, a person gets the opportunity to work without leaving home, the territory of his stay».⁵ It is also useful to familiarize with world experience in the use of remote work of employees, where an annual increase of about 20—30 % takes place. It is interesting to find out the reasons for Russia's lag in this regard.

While studying the history of the development of this labor process, it turns out that remote work, also called telework, began to gain momentum from the late 70s of the XXth century. Americans became the experimenters. Remote work quickly took root in Europe and is now the most popular practice in Denmark, Sweden, the USA, Canada, the Netherlands and the UK, Finland, where the number of teleworkers makes up about a third of the total working population. The reason for such way of working is mainly transport problems.

In Russia, homeworkers initially worked remotely in the manufacturing sector, but recently they began to work on the Internet, and Russian researchers attribute the reasons for its emergence and development to economic crises that forced people to take up any temporary, remote, home-based work in order to survive. With the improvement

¹ *Morgunova E. B.* Models and methods of personnel management // Russian-British textbook. Moscow : CJSC «Usiness School "Intel-Synthesis"». 2001. P. 208.

² *Terentyeva A. S., Oborina O. A.* Practical problems of legal regulation of distance labor // Scientific community of students of the XXI century. Social Sciences : Sat Art. by mat. XLIII Int. Stud. scientific-practical conf. No. 6 (42) // URL: [https://sibac.info/archive/social/6\(42\).pdf](https://sibac.info/archive/social/6(42).pdf).

³ *Zakalyuzhnaya N. V.* Remote work and similar legal relations // Law. Journal of the Higher School of Economics. 2015. No. 2. P. 76—91.

⁴ *Lyutov N. L.* Remote work: the experience of the European Union and the problems of legal regulation in Russia // Improving the law. 2018. No. 10 (143). October. P. 30—39.

⁵ *Abramova M., Bryantsev A., Pchelkina P., Reizman E., Svistunova N., Sinitsina Yu.* Remote workers: conversation with experiments // Personnel service and personnel management of the enterprise. 2013. No. 6.

of the economic situation in the country, it almost disappeared. At the beginning of the XXI century, another crisis resulted in a considerable part of highly qualified specialists again switching over to remote work. First, economists and accountants, then designers, translators, architects, journalists, programmers, system administrators, copywriters, marketing and advertising specialists, mobile operators and many other non-productive professions began to fill the niche of remote cooperation.

Remote work, for an ordinary Russian, is at first a new phenomenon, not entirely clear in many respects. The uncertainty and risks of both parties were considered worrying, as there was, at that time, no single document in our legal legislation that would regulate the activities of remotely working citizens. Sometimes remote employees were registered as homeworkers, although this was completely untrue, or they entered into a civil law contract, but most of all labor relations with remote employees were not formalized at all, everything rested on what is referred to as a «word of honor», and fees were also received illegally. Therefore, even if the cooperation lasted long, the employee did not have any guarantees and security, and often the companies shied away from registering such legal relations. It was not until the Federal Law, dated April 5, 2013 No. 60-FZ «On Amending Certain Legislative Acts of the Russian Federation», called the Remote Work Law, that the employment terms and characteristics of remote workers were defined and some clarity was introduced into the process of registering remote workers.⁶

The very concept of remote work was enshrined in Article 312.1 of the Labor Code of the Russian Federation — the fulfillment of a labor function outside the location of the employer or its separate unit, using public information and telecommunication networks (the Internet) to carry out activities and interaction between the employer and the employee. Chapter 49.1 of the Labor Code of the Russian Federation defines general provisions on a remote employee, regulates the specifics of concluding and terminating employment contracts, organizing labor protection and determining working hours and rest periods. Thus, the law made remote work more secure, gave remote employees sufficient guarantees, and now everyone can work on the Internet without running the risk of being deceived.

However, as judicial practice shows, not all legal issues related to the organization of work of distance workers are sufficiently clear for both the employer and the employee. There are still many subtleties and intricacies in organizing remote work. Thus, the Omsk Regional Court, by an appeal ruling of January 22, 2014 No. 33-187/2014, in accordance with the Labor Code of the Russian Federation, considered it illegal to terminate an employment contract on the application for dismissal filed in electronic form, but without a qualified electronic signature of the employee, although this is what is clearly stated in the legislation. Still there are questions of registration of an employee under an employment or civil law contract. (Decision of the Federal Antimonopoly Service of the Volga Region on February 8, 2010 in case No. A55-35154/2009).⁷

The issue of opening a remote office still remains unsettled, when several people work in one locality, because if the office is legally registered with the tax authority,

⁶ Federal law «On Amending Certain Legislative Acts of the Russian Federation» dated April 4, 2013 No. 60-ФЗ // URL: http://www.consultant.ru/document/cons_doc_LAW_144640/.

⁷ Remote work: pros, cons, technology // URL: <http://volgogradcci.ru/page/udalennaya-rabotaplyusy-minusy-tehnologii>.



employees are to lose the status of «remote», and the organization incurs large material expenses and additional security duties are laid upon it. Article 312.2 of the Labor Code of the Russian Federation establishes the specifics of concluding and amending an employment contract on remote work, but does not provide for restrictions or prohibitions on changing a labor contract previously concluded with an employee by including conditions on distance work in it.

The problem in concluding an employment contract between a remote employee and an employer is the issue of a stationary workplace (see judicial practice of the North Caucasus District).⁸ It is also impossible for Russia to attract highly qualified foreign workforce, since the Ministry of Labor, in the Letter dated August 7, 2015 No. 17-3/B-410, forbids entering into an employment contract with a foreigner on remote work if he/she resides outside the territory of the Russian Federation. These examples indicate that some issues on the legal regulation of distance work are not yet clearly defined and require the improvement of legislation and access to the world level.

The specifics of telework related to the use of electronic equipment at the European Union level are more clearly spelled out in the 2002 European Framework Agreement. Under the EU law, it is possible to conclude an employment contract without specifying a place of work. Named the requirements for the installation of equipment and labor protection, and privacy (Art. 6), and in Art. 5 the responsibility for taking the necessary measures for the safety of the data provided to employees for working in electronic form is laid on the employer, the responsibilities of both parties are clearly spelled out. Article 10 gives equal opportunities to a teleworker and a staff employee, consolidates the passage of training and telework management practices. Nevertheless, some questions, for example, such as about the time of presence at the workplace, are substantiated by the practice of the Court of Justice of the European Union.

In case people work remotely, they are paid with e-money. It is convenient for both employers and the employees. Nowadays electronic transactions are becoming more and more popular. They take place while buying or selling something.

According to the statistics, more than 80 percent of employers all over the Russian Federation pay salaries for their employees with e-money. This allows the employees to get money on the appointed day and time, there are no more delays in the issuance of salary, since all operations are carried out by banks. People no longer have to stand in line to get their salary, as they can withdraw it at any ATM and at any time convenient for them. Electronic money is convenient not only to use, but also to accumulate. With the help of phone apps, people can independently open an account and save a part of their salary.

However, the usage of e-money sometimes may be risky. For instance, there are a lot of cases of theft of bank card data, when scammers disguised as bank employees call and try to deceive people. In this case, both employees and employers always need to be on the alert. It is always best to call the bank back and clarify some information. Moreover, the employer must carefully check the accounts and estimate the payroll of employees. When an arithmetic error is made and the employee receives a more or less sum of money as a salary, the fault will always lie with the employer. If

⁸ *Leshukova N.* Actual problems of the organization of labor of distance workers // URL: <http://www.top-personal.ru/lawissue.html?2539>.

the employer pays a large amount of money to the employee, he/she has the right not to return it. In such a situation it all depends on the willingness of the employee. Otherwise, the employer will have to go to court to resolve the problem. If the employee is paid an amount less than what they should pay under the employment agreement, then he/she also has the right to apply to the court for the protection of his/her rights.

Thus, it is indisputable that e-salary is very useful for both employees and employers, and for the future lies with it, but it is fraught with a number of dangers, so both employers and employees should all be extremely careful.

One of the problems which is still controversial and rather difficult to solve, both in Europe and in Russia, is remuneration for remote work. Indeed, the paying procedure for remote work is very complicated, since all employees are different in intensity and performance, in their mental abilities, endurance, stress resistance, etc. One can quickly and efficiently do any work of high complexity, while others are less able to meet deadlines and perform fewer complex tasks. In the UK, for example, specially designed pay programs for Halsey, Rowan and Gantt are used.

Analysis and clarification of the advantages and disadvantages of these systems⁹ allowed us to conclude that it is necessary to pay special attention when concluding an agreement and to discuss, in all detail, the constant and variable portions of fees. However, in any cases, when promoting, it is important to take into account the professional status of the remote employee, the complexity of the functions performed by him/her, and other factors that depend directly on the employee. It seems that in the organization of remote work, the principle of fair and decent payment for the final result and a significant contribution to the development of the company is crucial.

So, for the successful development and use of distance labor, one of the conditions is a clear-cut legal regulation, legislative execution of the contract, which should reflect all the details of the work and responsibilities of both parties, the organization of payment and labor incentives, the creation of a transparent payment mechanism for the result, encouraging maximum use of its potential for effective functioning of the entire business system.

Despite the fact that remote work is regulated by law, and a flexible work schedule appeals to many, and not all companies find it advantageous for any occasion. Considering the statements of Russian employers about the practice of remote work, its problems and prospects, we have found that the expert opinions are contradictory. Some believe that remote work is the most promising practice. An employee is given a free schedule and a certain autonomy, and the company gets the opportunity to pay for nothing but the work done. The practice of remote work has proven effective. There are opinions that remote work is not always economically justified: employees are treated with remote work cautiously, this is a process that is quite difficult to control, since it takes fairly transparent qualitative and quantitative indicators to evaluate.

According to the expert of the MIRBIS Institute, professor, Natalia Krasnova, an MBA — «Human Resource Management» program teacher, the interaction mechanisms in the remote work format «are not worked out, the technologies are still in their embryonic stage. But an ever-increasing transition to just such a format of employment

⁹ Shendrik I. Magazine «Personnel service and personnel management of the enterprise». October 2011 // URL: <http://www.delo-press.ru/articles.php?n=8917>.



is inevitable. Therefore, we all need not to discuss whether this is necessary or not, but to develop methods and approaches for such interaction».¹⁰

There is a controversial attitude to the remote work of employees and in the global management practice. Some companies, like Yahoo, Hewlett-Packard, Best Buy, Google refused to have their employees work remotely, believing that the company's effectiveness is in unity, while a large number of huge corporations prefer employees with a remote schedule: Automattic, Alconost, American PricewaterhouseCoopers, Apple. At the same time, the model of communications and management at Apple is based on tight control and the completion of a four-day intensive training course. The company checks the fact of the physical presence of an employee at the workplace by using special software, and all activities are monitored. In addition, an employee may be asked at any time to turn on the camera or answer an important question. Other companies opting for telecommuting, like Alconost, instead, give their staff total freedom and get a high return.

Thus, an analysis of pros and cons of the use of remote work showed that first of all, remote work is considered as a positive trend, and, despite the problematic implementation, it is increasingly used by companies. A broader development of such practices can be predicted, considering the use of remote work on a large scale in the European world. One may disagree with what follows but, it seems necessary to take into account the mentality and psychology of Russian citizens, for whom communication, comfort, recognition of their merits in the team, and the desire to show themselves to the best advantage has always been a stronger motivator. This quite often has been an incentive to achieve good performance and high results. A Russian employee is less traditionally individualistic than his European counterpart; he/she often has common interests with his co-workers not only at work, but also outside it. In this connection, it is necessary to develop its own Russian technology for introducing remote work into the company's activities, combining both traditional labor and more flexible, remote work, which will enhance the corporate culture and team spirit stimulate new ideas and quality of work. Remote work should be opted for only at will, and not at the suggestion, or even less insistence of the employer. Undoubtedly, remote work will increase in popularity in future and the legislation regulating it will improve, though it will probably not reach such a large scale, as it has reached in Europe.

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