

**NON-STANDARD EMPLOYMENT IN UKRAINE:  
CHALLENGES OF TIME**

**Kokhan V.P.,**

*PhD, senior scientist of Scientific and research institute of providing legal framework for the innovative development of National Academy of Law sciences of Ukraine*

Modern pace of life in comparison with the past is extremely rapid. Even 20 years ago the Ukrainian society was slowly developing by established laws; the main goal of the authorities was timely response to changes in social and economic environment and their legal support. Today public relations became more complicated. The reason is the rapid technological breakthrough that led to the emergence and use of new technologies in industry, economy, and especially in the field of telecommunications.

Development and functioning of the global information and telecommunication infrastructure, the complication of economic connections, innovative way of management have allowed to discuss formation of economy of new type, directed not on extensive production and use of available state resources, but on intensification of science and technique, inventions and new results of scientific researches with the purpose of their further commercialisation.

Reorientation of Ukraine's economy on the innovative way influenced on range of economic and legal phenomena, caused changes in their essence and necessity of their revision. It is also subject to employment relations.

**MODERN LEGAL RESEARCHES**

---

Social and labour sphere had perhaps the greatest influence in connection with the globalisation of economic relations and labour. The labour market is the mobile system, which responds quickly to external factors by changes of its parameters (demand, supply, labour, emergence of new entities and establishments, disappearance of old entities and establishments).

One of the central labour market institutions, which begin the legal regulation of relations of entry of persons to social production, is Institute of employment. That is why it is logical that changes in the economic nature of the employment categories, which occurred as a result of functioning of innovation-oriented economy, require special attention from the point of view of their legal status.

The emergence of new forms of labour, which are different from existing by its organisation, flexibility, use of information and telecommunication technologies and increase of importance of creative component of labour, forced specialists to unite them all under the name of “non-standard employment” in contrast to standard employment. In literature it is also referred to as atypical, non-traditional employment, or atypical labour activity.

Now this phenomenon is widespread and caused a number of legal problems related to lack of legal regulation of non-standard employment by national legislation in effect. Therefore appeal to these issues meets the needs of the time.

The problems of non-standard employment in labour law were examined by many scientists. In their works they addressed as to general issues of such employment (M. Shabanova, O. Motsnaya), so to its separate types, such as: unoriginal labour (I. Shopin, M. Polishchuk), distance employment (A. Lushnikov, V. Lushnikova), labour under the terms and conditions of fixed-term employment contract (S. Silchenko), etc.

**MODERN LEGAL RESEARCHES**

---

The aim of the article is to explore non-standard employment in Ukrainian reality. That is why it is planned to solve such tasks: to define the concept of non-standard employment; to describe its types and special aspects; to adduce positions of main subjects of labour law on this issue (employees, employers, trade unions, government authorities); to determine problems of keeping and protection of labour rights of employees, engaged in non-standard employment.

It is logically to start analysis of non-standard employment with giving of definition to this concept. For this purpose we turn to standard employment, definition of which will serve as the starting point of our research.

Under new Law of Ukraine “On employment of population” № 5067-VI of July 5, 2012, employment is understood as not prohibited by legislation activity of persons, related to satisfaction of their personal and social needs with the purpose of income provision (wages/salary) in monetary or other form, as well as activity of one family members, who are engaged in economic activity or work in economic entities, established on the basis of their property, including gratis (part 1 of article 1) [1].

Without giving specifics to the analysis of the above mentioned definition, it should be noted that standard or typical employment is considered full employment - employment of employee, according to standard working time established by legislation, collective or labour agreement (part 1 of article 1 of Law no. 5067-VI). It is hired labour under the terms and conditions of full-time on the basis of indefinite term labour agreement. If at least one of the listed conditions change it will be reasonable to suggest non-standard employment.

The phenomenon of atypical employment is well known to the legislation in effect related to labour; this legislation regulates, in particular, self-employment, work in conditions of fixed-term labour agreements or part-time working under civil law contracts, etc. These types of employment have been studied by science of labour

**MODERN LEGAL RESEARCHES**

---

rights and have received proper legal support. However, content of category of non-standard employment is not limited by these categories.

Today on the labour market there are new forms of nonstandard work, not regulated by labour legislation in effect, including distance employment (telework) and borrowed labour. In literature number of factors that produce growth of demand on atypical employment is identified, among them: (1) structural changes in the transition from mass conveyor production to the production that is typical for post-industrial economy (economy of knowledge); (2) intensifying of global competition; (3) significant expansion of the services sector; (4) unprecedented scale of use of information and communication technologies; (5) increase of labour market flexibility and production flexibility.

Changes in structure of labour supply are stimulated by the influence of the following factors: (1) growing involvement of women, young people, including students, to active economic life; (2) improving of welfare of households; (3) computerization and growth of technical equipment of households; (4) gradual transformation of the «economic person» into «creative person»; (5) increase of importance of immaterial motives in the behavior of people and their livelihoods as a whole [2, p. 20].

Legal regulation of labour is carried out under the principle of its differentiation, the consequence of which is development of atypical employment. Among the variety of characteristics peculiar to such employment some of its legal characteristics should be noted: (1) in theoretical terms non-standard employment is based on atypical employment legal relationships; (2) the parties to such labour relations adjust conditions of work, not established by labour legislation; (3) between the parties there is no written labour agreement or concluded non-traditional labour agreement, which is different from established by form and content; (4) employer

**MODERN LEGAL RESEARCHES**

---

does work not at the emplacement of employer; (5) high level of individualization of legal labour relations.

The most common types of non-standard employment today are borrowed labour and distance employment (telework). In contrast to permanent employment, which is based on the standard labour legal relationship and provides that any employee should be hired directly by the employer for an indefinite term, these atypical forms of labour activity relate to the irregular employment (unstable). Domination of the concept of permanent employment in the international labour law was cracked because of the rapid prosperity of atypical employment relationships, which until that time, due to its paucity did not have a significant social and economic influence and were ignored by states.

Quantitative and qualitative growth of atypical labour forms happened in Western Europe and the United States of America in the 70s of 20th century, but recognition of existence of non-standard labour relations as the right took place only in late 1990s-early 2000s in the regulations of the International labour organization (for example, in Convention 181 “On private employment agencies”). In 2008 the EU Directive on work in temporary employment agencies No. 2008/104/EC was passed.

In the case of borrowed (acquired) labour employee, while remaining officially hired by the same employer, is passed to another. In modern conditions in the framework of borrowed labour outsourcing, outstaffing and staff leasing are determined.

Outsourcing is the transfer of individual (non-core) functions of the enterprise to external company (outsourcer), which is a specialist in this field, with the purpose of service over an extended time frame. In Ukraine most commonly outsourcing of business processes can be found, it provides transfer of standardized of current operations (for example, handling of telephone calls of clients in specialized call

**MODERN LEGAL RESEARCHES**

---

centres, usually located in areas with lower labour costs). In addition, there are manufacturing outsourcing (manufacture of the product or its components), IT-outsourcing (development, implementation and support of information systems), outsourcing of knowledge management (analytical data processing, formation and management of knowledge bases) [3, p. 3].

Outstaffing is exclusion of employees from the staff of employer-user and official hiring to another employer (the provider), employees continue to work at their current job and bear the same obligations; obligations of the employer towards them bears provider. Providers in the case of outstaffing are private employment agencies, HR agencies. Legally, it looks in such a way.

Between employee and employment agency labour contract is concluded, labour relations appear, in which the agency is a formal employer of the employee. The employee is sent to execute duties to the actual employer, the employment relations between them does not arise, and the official hiring, dismissal, payment of salary, calculation and payment of taxes is carried out by the employment agency. Between private employment agency and actual employer civil agreement on providing services is concluded.

Staff leasing - type of borrowed labour, under which employees of appropriate qualifications and profile are temporarily engaged to execution of certain types of tasks (projects) of another company (actual employer).

According to the conducted researches in Ukraine most commonly such relations are objects of outsourcing: IT services (40,5 %), logistics (35.1 %), resource support of production processes (27 %), marketing services (21,6 %), recruitment (18,9 %), accounting (13.5 %), the calculation of wages (13,5 %), processing and systematization of information (8,1 %), outsourcing of medical representatives (8,1 %), personnel records and personnel support (5,4 %), administration (2,7 %) [4].

**MODERN LEGAL RESEARCHES**

---

Correlation of the use of borrowed labour in Ukraine can be seen in the following data. The most popular are the services of temporary staff for short-term projects - 48,4 %; services on passing personnel on long-term projects are the 35,5 %, services on outstaffing - 29 %; and outsourcing services - 12,9 % [4].

Despite the rapid spread of borrowed labour in Ukraine there is no convergence of views on this issue of social and labour entities. If employers consider borrowed labour positively, the trade unions determine it as a threat to the labour rights of employees [5]. As for the employees, for them borrowed labour often remains the only possible solution in the situation of lack of funds and the

For enterprises engaging of employees can be explained by the following advantages:

1) the use of labour power on terms of borrowing enables enterprises to change quickly employees, which are absent for various reasons (vacation, business trip, illness, etc);

2) borrowing allows to have the desired number of employees for the operative execution of production tasks (urgent, unforeseen, associated with the seasonality, etc);

3) this form of involvement allows changing the quantitative and qualitative structure of employees in the condition of sharp fluctuations in the economic environment, for example, the peak of sales of goods, maintenance of international sport competitions, forums, festivals, etc.;

4) borrowing of staff on terms approved by the employment agency lets not in all, but in many cases to optimize expenses on staff [2, p. 30];

5) since engaged employees are not registered, higher level of labour productivity can be reached – growth of labour productivity through the exclusion of employees out of staff;

**MODERN LEGAL RESEARCHES**

---

6) employer does not bear obligation to pay social due fee for the employee to the system of obligatory state social insurance.

Trade unions of Ukraine note (for example, the Union of metallurgists and miners of Ukraine), that employees on conditions of borrowed labour have worse working conditions, in particular lower wages in comparison with main employees. Other disadvantages are:

1) borrowed employees have lack of guarantee of permanent employment, because, at any time, regardless of the quality of their work they can be transferred to another company or dismissed;

2) temporary nature of labour deprives borrowed employees of payment associated with the duration of working in one place, for example, payments for the experience, social insurance, etc. Such employees do not receive sick pays, maternity benefits and childcare pays. Regular medical examinations and health resort vouchers are also open to question;

3) employee that actually worked for a certain period of time with harmful and hazardous working conditions, loses the right on special pension, as legally he is registered in the staff of personnel agency, where there are no harmful working conditions;

4) borrowed employees are not allowed to join trade union, do not participate in the collective regulation of labour relations at the enterprise. They are deprived of the right on collective protection of their labour rights [6].

The main problem of borrowed labour from the point of view of trade unions is violation of labour rights of employees, since the norms of labour legislation, which establish labour guarantees in the process of hiring and dismissing, are not executed and employees are not covered by compulsory social insurance and lose the right on receiving of adequate social security in case of occurrence of these social risks.

**MODERN LEGAL RESEARCHES**

---

By the way, in the new Law of Ukraine “On employment of population” for the first time attempt of legal determination of borrowed labour in national legislation is made. Norms of the Law cover the provision of personnel both in the form of outsourcing and outstaffing.

So, in part 1 of article 36 of the Law it is referred to the activity of economic entities, which provide services on mediation in employment, and other economic entities, which carry out the recruitment of employees with the purpose of their further carrying out of their work in Ukraine for other employers. Under outstaffing hiring of employees by one employer and referral of them to work in another company, which acts as actual employer, is also conducted.

Another common type of non-standard employment is telework or distance employment. It is characterised by two features: execution of work, not at the employer’s emplacement and use of information and communication technologies. According to opinion of some researchers, telework is a new organisational form of home-based work, which represents the work of highly skilled experts that with the purpose of performance of functional responsibilities use modern information and telecommunication technologies [7, p. 171]. In contrast with telework, traditional home work is mostly hand labour of unskilled level with the help of using of simple equipment.

By definition in Convention of MLS № 177 on home labour, the term “home labour” means work performed by person called home-based worker: 1) at his place of residence or other premises of his choice, but not in the premises of the employer; 2) for reward 3) with the purpose of producing goods or services, in accordance with the instructions of the employer, irrespective of who provides the equipment, materials or other resources that are used, unless this person do not have such level of

**MODERN LEGAL RESEARCHES**

---

autonomy and economic independence, which is necessary to consider him independent worker under national legislation or judicial decisions, [8].

According to researches today there are over 75 million of teleworkers, of which in the United States there are more than 50 mln, in Europe - more than 20 mln, in Russia - more than 3 mln people, and their number is constantly growing [9, p. 13]. The mass distribution of the distance employment resulted passing of a regulatory act on the level of the European Union - Framework agreement on telework of July 16, 2002 [10, p. 1].

Ukraine has no statistics of the number of people working distantly, but number of them is quite significant and continues growing.

Now telework is especially popular among those categories of citizens, who, for objective reasons, are unable or unwilling to work full-time. These are students, women, disabled persons, persons caring for a sick family member, etc

Analysis of non-standard employment in Ukraine and in the world proves the necessity of its legal regulation with the purpose of determination of rights and liabilities of its subjects and responsibility in the case of existence of reasons for this.

The legislative determination of certain types of non-standard employment (borrowed labour) is the first step in the improvement of labour legislation. In this direction state should implement series of measures to fill the gaps of legal regulation of atypical employment. Moreover, examination of these processes in Ukraine showed their relevance and mass. Delay with the decision of this problem can increase the tension in social labour sphere and have a negative influence on the labour market.

**ЛІТЕРАТУРА:**

1. Про зайнятість населення [Текст] : Закон України від 05.07.2012 р. № 5067-VI // Офіц. вісн. України. – 2012. – № 63 – Ст. 256.
2. Ринок праці та зайнятість населення: проблеми теорії та виклики практики [Текст] : кол. моногр. / ред.-координатор М. В. Туленков. – К. : ІПК ДСЗУ, 2010. – 363 с.
3. Новак И. Нестандартная занятость в Украине: социальные риски и контр-стратегии профсоюзов [Электронный ресурс] / Б. Оверковский, И. Новак. – 22 с. – Режим доступа: <http://www.fes.kiev.ua>. – Заголовок з екрана.
4. Украина: Анализ востребованности и оценка качества услуг аутсорсинга [Электронный ресурс] – Режим доступа: <http://www.hrd.com.ua/index.php/news/626-2012-09-03-12-07-04>. – Заголовок з екрана.
5. Робоча нарада щодо дій профспілок проти застосування нетипових форм праці [Електронний ресурс]. – Режим доступу: [http://www.fpsu.org.ua/index.php?option=com\\_content&view=article&id=3285%3A2010-09-28-10-31-54&catid=58%3A2009-07-30-20-01-54&Itemid=34&lang=uk](http://www.fpsu.org.ua/index.php?option=com_content&view=article&id=3285%3A2010-09-28-10-31-54&catid=58%3A2009-07-30-20-01-54&Itemid=34&lang=uk). – Заголовок з екрана.
6. Трошина Т. Нетипові форми зайнятості: ризики для працівників та необхідність правового регулювання [Електронний ресурс] / Тетяна Трошина. – Режим доступу: [http://nspplugansk.ucoz.ua/publ/netipovi\\_formi\\_zajnjatosti\\_riziki\\_dlja\\_pracivnikiv\\_ta\\_neobkhdnist\\_t\\_pravovogo\\_reguljuvannja/1-1-0-20](http://nspplugansk.ucoz.ua/publ/netipovi_formi_zajnjatosti_riziki_dlja_pracivnikiv_ta_neobkhdnist_t_pravovogo_reguljuvannja/1-1-0-20). – Заголовок з екрана.
7. Гаврюшенко Г. В. Надомна форма організації праці – шлях до підвищення рівня зайнятості осіб з інвалідністю [Текст] / Г. В. Гаврюшенко // Демографія та соціальна економіка. – 2008. – № 2. – С. 170–178.
8. Конвекція МОП про надомну працю № 177 від 20.06.1996 р. [Електронний ресурс]. – Режим доступу: [http://zakon2.rada.gov.ua/laws/show/993\\_327](http://zakon2.rada.gov.ua/laws/show/993_327). – Заголовок з екрана.
9. Бородин И. И. Правовой статус телеработника (в порядке постановки задачи) [Текст] / И. И. Бородин // Трудовое право. – 2008 – № 5. – С. 13-20.
10. Коваленко В. Правовое регулирование дистанционного труда в законодательстве Бельгии [Текст] / В. Коваленко // Сравнительное трудовое право. – 2011. – № 5. – С. 1–5.

**MODERN LEGAL RESEARCHES**

---

**REFERENCES**

1. Pro zainiatist naseleunia [Tekst], Zakon Ukrainy vid 05.07.2012, No. 5067-VI (On employment: Law of Ukraine dated 05.07.2012 p. № 5067-VI), *Ofits. visn. Ukrainy*, 2012, No. 63, p. 256.

2. *Rynok pratsi ta zainiatist naseleunia : problemy teorii ta vyklyky praktyky* (Labour market and employment: problems of theory and practice challenges) [Tekst], kol. monohr., red. koordynator M. V. Tulenkov, K., IPK DSZU, 2010, p. 363.

3. Novak I. Nestandartnaya zanyatost v Ukraine : socialnye riski i kontr-strategii profsoyuzov (Non-standard employment in Ukraine: social risks and counter-strategies of trade unions) [Elektronnyi resurs], B. Overkovskiy, I. Novak, p. 22, Rezhim dostupu : [http:// www.fes.kiev.ua](http://www.fes.kiev.ua).

4. Ukraina : Analiz vostrebovannosti i ocnka kachestva uslug outsorsinga (Ukraine: Analysis of the necessity and evaluation of the quality of outsourcing services) [Elektronnyy resurs], Rezhim dostupu : <http://www.hrd.com.ua/index.php/news/626-2012-09-03-12-07-04>.

5. Robocha narada shchodo dii profspilok proty zastosuvannia netypovykh form pratsi (Workshop for action of trade unions against of using of atypical forms of work) [Elektronnyi resurs], Rezhym dostupu : [http://www.fpsu.org.ua/index.php?option=com\\_content&view=article&id=3285%3A2010-09-28-10-31-54&catid=58%3A2009-07-30-20-01-54&Itemid=34&lang=uk.](http://www.fpsu.org.ua/index.php?option=com_content&view=article&id=3285%3A2010-09-28-10-31-54&catid=58%3A2009-07-30-20-01-54&Itemid=34&lang=uk.), Zaholovok z ekrana.

6. Troshyna T. Netypovi formy zainiatosti : ryzyky dlia pratsivnykiv ta neobkhidnist pravovoho rehuliuвання (Atypical forms of employment: risks to workers and the need of regulation) [Elektronnyi resurs], Tetiana Troshyna, Rezhym dostupu : [http://nspplugansk.ucoz.ua/publ/netipovi\\_formi\\_zajnjatosti\\_riziki\\_dlja\\_pracivnykiv\\_ta\\_neobkhidnist\\_ppravovogo\\_reguljuvannja/1-1-0-20](http://nspplugansk.ucoz.ua/publ/netipovi_formi_zajnjatosti_riziki_dlja_pracivnykiv_ta_neobkhidnist_ppravovogo_reguljuvannja/1-1-0-20).

7. Havriushenko H. V. Nadomna forma orhanizatsii pratsi – shliakh do pidvyshchennia rivnia zainiatosti osib z invalidnistiu (Home labor - the way to increase the employment level of people with disabilities) [Tekst], H. V. Havriushenko, *Demohrafiia ta sotsialna ekonomika*, 2008, No. 2, pp. 170–178.

8. Konvetsiia MOP pro nadomnu pratsiu No. 177 vid 20.06.1996 (ILO Convention on domestic labor № 177 dated by 06.20.1996), [Elektronnyi resurs], Rezhym dostupu : [http://zakon2.rada.gov.ua/laws/show/993\\_327](http://zakon2.rada.gov.ua/laws/show/993_327).

## MODERN LEGAL RESEARCHES

---

9. Borodin I. I. Pravovoy status telerabotnika (v poryadke postanovki zadachi) (The legal status of teleworkers (in order of the problem statement)) [Tekst], I. I. Borodin, *Trudovoe pravo*, 2008, No. 5, p. 13-20.

10. Kovalenko V. Pravovoe regulirovanie distancionnogo truda v zakonodatelstve Belgii (Legal regulation of remote labor in Belgium legislation) [Tekst], V. Kovalenko, *Sravnitelnoe trudovoe pravo*, 2011, No. 5, p. 1–5.

### НЕСТАНДАРТНА ЗАЙНЯТІСТЬ В УКРАЇНІ: ВИКЛИКИ ЧАСУ

**Кохан В. П.**

Статтю присвячено проблемам нестандартної зайнятості в Україні. У публікації визначено поняття нестандартної зайнятості; охарактеризовано її види та особливості; наведено позиції основних суб'єктів трудового права із цього питання; визначено проблеми дотримання і захисту трудових прав працівників, залучених до нестандартної зайнятості.

**Ключові слова:** нестандартна зайнятість, запозичена праця, телеробота, аутстафінг, аутсорсинг.

### НЕСТАНДАРТНАЯ ЗАНЯТОСТЬ В УКРАИНЕ: ВЫЗОВ ВРЕМЕНИ

**Кохан В. П.**

Статья посвящена проблемам нестандартной занятости в Украине. В публикации дано понятие нестандартной занятости; определены ее виды и особенности; приведены позиции основных субъектов трудового права по этому вопросу; определены проблемы соблюдения и защиты трудовых прав работников, привлеченных к нестандартной занятости.

**Ключевые слова:** нестандартная занятость, заемный труд, телеработа, аутстаффинг, аутсорсинг.

### NON-STANDARD EMPLOYMENT IN UKRAINE: CHALLENGES OF TIME

**Kokhan V. P.**

The article is devoted to the problems of non-standard employment in Ukraine. This study aims to illuminate the concept of non-standard employment in Ukraine. According to the article there are new forms of non-standard work in the modern labor market of Ukraine that are not regulated by current labor laws. They include remote labor (telework) and labor leasing. The author

**MODERN LEGAL RESEARCHES**

---

goes on to say the features such employment : (1) the basis of non-standard employment is atypical employment relationship, (2) the parties of labor relations agree with each other working conditions not covered by the labor legislation, and (3) there is no written labor contract between the parties of labor relations or the labor contract concludes non-standard conditions, which differs from the established in design and content, (4) the employee performs work not at the location of the employer, (5) a high level of individualization of legal employment. According to the labor leasing employees staying formal employed by one employer transmitted at the disposal of another employer. The article describes 3 types of labor leasing: outsourcing, outstaffing and staff leasing. Despite the rapid spread of labor leasing in Ukraine there is no consistency of views of social and labor subjects on this issue. If employers perceive labor leasing positively, the unions see it as a threat to labor rights. As for the employees, it's often the only way for them to earn money in need to provide their families. The author comes to the following conclusion that the main problem of labor leasing is a violation of the labor rights. The labor laws that establish labor warranty in hiring and firing laws are not enforced, and most workers are not covered by the social insurance system and lose their right to decent social security in case of appropriate social risks.

**Keywords:** non-standard employment, labor leasing, telework, outstaffing, outsourcing.