

PROHIBITION OF UNREASONABLE REFUSAL IN EMPLOYMENT

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Every citizen has a number of fundamental rights that cannot be violated. One of the most important is the right to work, which is enshrined in the Constitution of Ukraine and in the acts of the labor legislation of Ukraine [1-4].

One of the guarantees of the right to work is the prohibition of unreasonable refusal in employment, which is vital today in the context of the current war. The employers themselves have the right to choose whom to hire, often they refuse to employ people for reasons, which are illegal. By setting particular restrictions or advantages conneted with the sphere of the fundamental human rights, they demonstrate their disrespect to the rights of the citizens. For example, when an employer does not want to give a job to a person because of his/her religious beliefs or the color of the skin, regardless of the professional competence and skills. Therefore, it is quite important to research this problem, analyze the opinions of the scientists and lawyers, highlight the main legal guarantees in the sphere of employment and, find out how such offenses can be prevented.

Not so many scientists investigate this problem. Yu. Dmytrenko, N. Kokhan, O. Protsevskyi, O. Sytnytska and others consider the problem of unreasonable refusal in employment in their works [5]. According to O. Protsevskyi the refusal in employment is resonable only in case when the employee's health or his/her business and professional qualities do not meet the requirements of the job for which the employee is applying [5]. For example, a person, who does not have an appropriate legal education cannot work as a lawyer. Yu. Dmytrenko believes that an employer can refuse to hire a person only on the grounds of the lack of vacancies, the lack of necessary qualifications, as well as health and age restrictions [5]. All other reasons he considers as unreasonable.

Both the norms of labor legislation and the statements made in the works by the scholars in the field of labour law determine that a justified refusal in employment takes place when the employee lacks the required level of professional competence and skills. Therefore, I think it is quite important to understand what is meant by the notion “professional competence and skills”. The notion of professional competence and skills denotes the appropriate level of professional knowledge and certain organizational skills, which help to cope with the tasks easily and persistantly, as well as to cope with difficulties and hardships on the way to achieve the determined professional results [6].

Refusal in employment must be based on reasonable and fair facts. Of course, an employer cannot hire a person who does not have the required skills, professional education and training, necessary qualifications and work experience. The employer's refusal in employment is fully justified if a person has certain

problems with health due to which the job is prohibited or the person does not meet the age requirements specified in the legislation [6]. But when a person is not employed because of his/her nationality, race, religion we qualify such a refusal in employment as illegal.

Taking into account the opinions of these scholars in the sphere of employment law, we can highlight the reasons when the refusal in employment is legal: 1) the lack of vacancies; 2) the lack of the required level of education, professional training, proper qualification; 3) restrictions stated in the legislation: age, hard and harmful working conditions, etc.; 4) health restrictions [5].

In order to realize the right to work, additional legal guarantees should be introduced. In particular, the current labor legislation prohibits refusing employment to certain categories of persons. According to the Labor Code of Ukraine, it is forbidden to refuse in employment to: 1) employees invited to work because of the transfer from another enterprise, institution, organization; 2) young specialists who have graduated from a higher educational institute; 3) pregnant women, women who have children under the age of three or a child with a disability, and single mothers (fathers) – if they have a child under the age of fourteen; 4) elected employees after the end of their term of office; 5) employees who are granted the right to return to work; 6) other persons with whom the employer is obliged to conclude an employment contract in accordance with the current legislation [2].

Summing up, we can make the following conclusions: the employers need to pay more attention to the professional competence and skills of the employee, only when the employer establishes that the person does not meet the requirements of the proposed job he/she has the right to refuse this person in employment.

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