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Research Article

Pre-contractual Relations and Incomplete Legal Compositions in Labor Law: Their Interrelation

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Abstract

The author's goal was to examine legal cases where an employer, in accordance with the Labor Code and other laws, is obligated to enter into an employment contract with an individual. This is primarily, of course, Directly related to labor relations, the relations preceding them, as defined in Article 1 of the Labor Code of the Russian Federation. However, very similar situations arise, for example, in cases of unfinished legal acts, as listed in Article 16 of the Code. These acts are completed by the conclusion of an employment contract exclusively with a specific employer specified in the law and the contract. In other words, one could say, with a given employ When examining relations preceding employment and other situations involving a special, so to speak, unique subject—a "given" employer in certain circumstances (in Articles 1 and 198 of the Labor Code of the Russian Federation), it appears that the understanding of the law logically yields a clear definition of "given" as an employer obligated to conclude an employment contract. In this capacity, it is found not only in a group of directly related relations, including those preceding employment, but sometimes even within the employment relationship itself. For example, an incomplete legal structure—in terms of its formation—also precedes the emergence of an employment relationship, but in a slightly different sense—as an as-yet-unfulfilled employment relationship, one that has not yet become an employment relationship due to its incomplete, unfinished structure, characterizing a single subject—the employee er. Since the law uses but does not define this term (a given employer), it makes sense to legalize it and define the circumstances in which it may be applied.

Keywords

Employment Relationship, This Employer, Legal Structure, Directly Related

1. Introduction

As is well known, the subject of labor law consists of two groups of relationships: labor relations proper and those directly related to them. The latter includes a subject known as "the employer." The contractual nature of the relationship precludes the obligation to enter into a specific employment contract. However, exceptions to categorical rules, primarily in the interests of the weaker party to the contract—the employee—are found in both the Code and in decisions of higher judicial bodies. These are specified in specific articles of the law (below), but it appears they are not the only exception. Let's consider other situations.

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2. Analysis

2.1. "The given" Employer as a Type of Employer

When examining relations preceding employment and other situations involving a special, so to speak, unique subject—a "given" employer in certain circumstances (in Articles 1 and 198 of the Labor Code of the Russian Federation), it appears that the understanding of the law logically yields a clear definition of "given" as an employer obligated to conclude an employment contract. In this capacity, it is found not only in a group of directly related relations, including those preceding employment, but sometimes even within the employment relationship itself. For example, an incomplete legal structure—in terms of its formation—also precedes the emergence of an employment relationship, but in a slightly different sense—as an as-yet-unfulfilled employment relationship, one that has not yet become an employment relationship due to its incomplete, unfinished structure, characterizing a single subject—the employee. Its "history" culminates in a "final" legal fact—the employment contract (or fails to do so due to a defect in the structure or the refusal of one or another subject).

2.2. This Employer as a Party to a Contract Within the Con-text of Incomplete Legal-fact Compositions Legal Elements

Pre-employment relationships and unfinished legally constitutive agreements are distinct legal entities. Their comparison is made solely for the purpose of identifying the employer identified by the legislator as "this employer." Upon examination of this issue, it becomes clear that this employer (in this sense) is encountered not only in the relationships specified in Articles 1 and 198 of the Labor Code of the Russian Federation, but also in other cases.

2.3. Specifics of the Employer'S Position in Incomplete Legal-fact Compositions

Since the definition of this concept in some cases clearly extends beyond the aforementioned relations, the significance of its definition is important both theoretically and practically. The order of accumulation of legal facts within an employment contract is legalized, but the legislator, as follows, for example, from such grounds as confirmation to a position or non-election to a position (Part 2 of Article 83 of the Labor Code), allows for the possibility of legal consequences (that is, the emergence of an employment relationship) arising from an unfinished contract. However, if the missing legal fact does not emerge, then an employee already employed but not confirmed or elected is dismissed for the corresponding reason, and then "this employer" no longer exists, because the previous contract was found to be incomplete or defective.

2.4. Let Us Examine Complex Legal Configurations Involving This Employer

Let us consider complex compositions in comparison with previous employment relationships in terms of the participation of this employer in them.

2.4.1. Quota Article 16

"A complex factual composition, including an act of referral to work, is usually used in cases where the employer is legally obligated to hire within the established quota for individuals with a clearly reduced competitiveness in the labor market." [1].The quota for hiring disabled persons and the procedure for establishing it are specified in Article 21 of Federal Law No. 181-FZ of November 24, 1995 (as amended on December 29, 2025) "On the Social Protection of Disabled Persons in the Russian Federation"as well as Article 38 of the Law "On Employment of the Population in the Russian Federation" and the Methodological Recommendations [1]. Importantly, this refers to the legal obligation to hire within the established quota, which, in effect, refers to "a given employer." In this case, the interests of society prevail over the interests of the employer.

Briefly about job quotas for minors. A law has been signed that update and expands labor guarantees for minors under 18. Article 11 of Federal Law No. 124-FZ of July 24, 1998 (as amended on December 29, 2025) "On the BasicGuarantees of Children's Rights in the Russian Federation"[2] of the updated law "Protection of the Rights and Legitimate Interests of Children in the Sphere of Career Guidance, Vocational Training, and Employment" further establishes the right to reserve certain types of jobs (professions) for the employment of minors under 18, effective November 4, 2025.

This means that the employer can determine in advance the types of work suitable for teenagers (courier, assistant, laborer).In Moscow, the Law of the City of Moscow dated 22.12.2004 N 90 (as amended on 15.12.2021) is in force. Quotas are imposed on: minors aged 14 to 18 years, as well as orphans under 23 years of age.

Employers are obligated to create or allocate jobs at their own expense. Refusal to accept a quota position is prohibited. Here, as we can see, the issue is essentially resolved. For them, this employer is any employer that has a suitable position for the teenager.

[1]Order of the Ministry of Labor of Russia dated August 9, 2024 No. 399 "On Approval of Methodological Recommendations for Establishing a Quota for Hiring Disabled Perso.

[2]"On the Basic Guarantees of Children's Rights in the Russian Federation Federal Law of July 24, 1998 N 124-FZ (as amended on December 29, 2025), "Collection of Legislation of the Russian Federation" August 3, 1998, N 31, Art. 3802.

2.4.2. Employment Contract and Court Judgment

According to Article 16 of the Labor Code of the Russian Federation, an employment relationship arises on the basis of an employment contract as a result of a court decision. The multifaceted nature of these legal facts, which form part of a complex legal framework, is obvious, as the court decision is of a civil procedural nature. This clearly combines substantive and procedural rules governing the emergence of an employment relationship.[3]

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There's a whole complex of preliminary relationships that precede the final employment contract. In this case, an employer who has unlawfully dismissed an employee and subsequently reinstated by the court is certainly obligated to conclude a new employment contract with them. A court ruling may also be issued in another case, where the employee was not dismissed but was unjustifiably denied employment (Article 64 of the Labor Code of the Russian Federation). The question may arise: under what conditions should such an employment contract be concluded? There is no definitive answer, as the circumstances surrounding an unjustified refusal to hire can vary greatly from case to case [1]. L. A. Chikanova writes that the legislator has not provided for the consequences of a court finding such a refusal unjustified or illegal [3].

It's unclear from what date such a contract should be considered concluded: the day the citizen applies to the employer or the day the court finds the refusal to enter into the contract unfounded or illegal; what should be done if another employee is hired for the disputed position during the labor dispute review period; and other questions that remain unanswered in practice and academia [3].

2.4.3. Combination of Contracts

Article 19.1 of the Code establishes the possibility of recognizing relations connected with the use of personal labor and arising on the basis of a civil law contract as labor relations. That is, the relationship already exists, but is incorrectly classified. The reason is irrelevant. Moreover, such reclassification can be carried out not only by the person using their own labor, but also by a court if the individual party to the contract has filed a lawsuit; or based on labor inspectorate documents or other competent bodies with powers established by federal law.

Here, too, the legal structure is complex, consisting of a concluded "incorrect" civil contract; an appeal to court; a court decision; and, finally, a contract concluded with the previous, obligated, and precisely "given" employer. A court decision on the conclusion of an employment contract is a legal fact, forming the basis for the emergence of an employment relationship (Article 16 of the Labor Code of the Russian Federation). The employee may limit themselves to recognizing the dismissal as illegal and receiving the wages due to them and, perhaps, compensation for moral damages, if this was included in the claim.

It is possible to do without a court and, consequently, a court decision, since the relationship can be recognized not as civil, but as labor, according to Part 1 of Article 19.1, the customer or another competent authority named in the article may recognize it. Incidentally, the State Duma has developed a draft amendment to Article 19.1 and a new Article 360.2 clarifying the participation of the Labor Inspectorate in situations where a civil contract is recognized as an employment contract, but the draft has not yet been submitted for consideration.[3]

However, it is important that the employee re-signs one contract for another according to its industry-specific content and remains with the same employer, not some "counterparty" who, through intent or negligence, was the customer, but the actual "given" employer in the employment contract by law. Naturally, the court must determine whether "there were in fact..."signs of labor relations and an employment contract specified in Articles 15 and 56 of the Labor Code of the Russian Federation. This is also important in cases of so-called mixed-type inter-industry contracts. These are employment contracts with elements of a civil law contract, or vice versa. The law does not prohibit the conclusion of such contracts. However, the fact of their conclusion requires special attention to the selection and formulation of the terms of the labor law portion of such contracts. Thus, despite the freedom to choose the type of contract concluded, the parties are not allowed to disguise specific employment relationships as different types of civil law contracts. The negative consequences have been elaborated by the legislator and are actively applied in judicial practice. Officials are fined in accordance with Part 4 of Article 5.27 of the Code of Administrative Offenses of the Russian Federation, and the legal relationship is recognized as an employment relationship.

2.4.4. Actual Admission of an Employee to Work

Labor relations between an employee and an employer also arise on the basis of the actual admission of the employee to work with the knowledge or on the instructions of the employer or his authorized representative in the event that the employment contract was not properly executed (part three introduced by Federal Law No. 90-FZ of June 30, 2006, as amended by Federal Law No. 421-FZ of December 28, 2013).

When an employee is admitted to work by a competent person, no proof that this employer is not "the given" is required. This is, of course, provided that an employment contract is

[3]The text of the document is presented in accordance with the publication on the website https://regulation.gov.ru/ as of November 13, 2025.

presumed. Here, indeed, flaws in the form of employment contracts do not invalidate their terms. In such cases, the employment relationship between the employee and employer is considered to have arisen from the date of the individual's actual admission to perform the duties stipulated by the civilcontract, and any unresolved doubts in court disputes regarding the recognition of relationships arising on the basis of a civil contract as employment relationships are interpreted in favor of the existence of an employment relationship.

If the employer or their authorized representative refuses to acknowledge the relationship, the employer in whose interests the work was performed is obligated to pay the individual for the time actually worked (the work performed). But an interesting question arises: on what basis, one wonders?

An employer representative who exceeds their authority or is incompetent is subject to liability, including financial penalties, in accordance with the procedure established by this Code, as stated in the article, and other federal laws. So, is there a presumption of an employment relationship?

In this case, there is, of course, no "given" employer. However, if an employment relationship was intended (as strongly suggested by financial liability, rather than, say, property liability), the employer is nonetheless not obligated to enter into an employment contract.

The presumption of employment relationships and several other related issues have received attention in the academic literature [4-6]. Scholars have written about the clarifications provided in Resolution No. 15 of the Plenum of the Supreme Court of the Russian Federation dated May 29, 2018, "On the application by courts of legislation regulating the labor of employees working for individual employers and for employers who are small business entities classified as microenterprises". Are those authors correct in pointing out that, by virtue of actual admission to workunder Article 16 of the Labor Code of the Russian Federation, a user enterprise can be recognized as an employer by a court?

Failure by the employer or his authorized representative, who actually admitted the employee to work, to formalize a written employment contract within the time period established by Article 67 of the Labor Code of the Russian Federation, despite the employee's intention to formalize the employment contract, may be considered by the court as an abuse of the employer's right to conclude an employment contract." [7]

If such an employee has started work and is performing it lege artis, the existence of an employment relationship is presumed, and the employment contract is considered concluded. Therefore, the employer must provide evidence of the absence of an employment relationship.

Tsypkina I. S. points out the need to clarify the new chapter of the Code concerning the specifics of regulating the labor of employees temporarily sent by the employer to other individuals or legal entities under an agreement on the provision of labor of employees (personnel). [8]

Indeed, if we examine Chapter 53.1 of the Labor Code of the Russian Federation, taking into account the amendments made to it, the right to carry out activities to provide labor to workers is granted to private employment agencies that have accreditation, and other entities named in Article 341.1-1 of the Code.

It's difficult to even distinguish between the client and the other parties in the personnel provision relationship, even determining who is the actual employer and who is the client of the workers. By law, the one who is formally the employer fails to fulfill their legally prescribed obligations, and the one who actually fulfillsthe employer's obligations is de jure not a party to the employment relationship. Searching for "this employer" is futile here. This should be addressed separately, and then the search for "this" employer should be pursued.

2.4.5. Termination by Way of Transfer

The next situation in the current Labor Code, in which the subject can only be the "given" employer, concerns the so-called dismissal by transfer, and its absurd formulation has confused more than one generation of labor workers.

Part 4, Article 64 of the Labor Code of the Russian Federation, "Guarantees when concluding an employment contract," stipulates that "It is prohibited to refuse to conclude an employment contract with employees invited in writing to work by transfer from another employer within one month from the date of dismissal from their previous place of employment." Upon the written request of the person refused to conclude an employment contract, the employer is obligated to provide the reason for the refusal in writing no later than seven working days from the date of such request. Refusal to conclude an employment contract may be appealed in court. Keeping in mind the purpose of our study, we quote the esteemed V. I. Mironov. He writes that an employer cannot refuse to hire a transferred employee without legal grounds (which is what needed to be proven: the employer is "this"!). Therefore, if a dispute arises, it is the employer who must prove the existence of legal grounds for refusing to hire, for example, the expiration of the one-month period or the employer's failure to employ the employee [9].

2.4.6. Article 375. Guarantees for Full-Time Trade Union Workers

The elected body of the primary trade union organization (hereinafter also referred to as a full-time trade union worker), upon expiration of its term of office, is provided with its previous job (position), and in its absence, with the written consent of the worker, another equivalent job (position) with the same employer. Thus, the guarantee provided for in Part One of Article 375 of the Labor Code of the Russian Federation is the opportunity to conclude an employment contract with the previous, that is, in the sense under study, "this" employer. As stated in the Ruling of the Constitutional Court of the Russian Federation, "The establishment of such a guarantee is aimed at providing full-time trade union workers with paid work so that the trade union activities they carried out in the past do

not entail for them adverse consequences associated with the loss of future work and earnings." Thus, these persons are provided with the opportunity to conduct trade union activities.

3. Conclusions

1) Directly related to labor, the preceding relations end with the conclusion of an employment contract
2) “This” employer is the one who, in accordance with the procedure established by law, is obliged to conclude an employment contract with an individual.
3) “This” employer is the subject of the preceding employment relationship, no matter what article of the Code they are in, and can also complete the complex legal structure of the employment relationship.

Author Contributions

Bondarenko Elvira: Conceptualization, Data curation, Formal Analysis, Investigation, Methodology, Writing – original draft, Writing – review & editing

Conflicts of Interest

The author declares no conflicts of interest.

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