

# opción

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## **Peculiarities of labor relations of state employees**

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### **Abstract**

The purpose of this study is to identify and analyze the characteristics of labor relations in public service via the comparative analysis of legislation and doctrinal developments in the field under study. As a result, a feature of labor relations is the restriction of certain constitutional human rights in connection with civil service work. According to the results of the study, it can be concluded that relations in the field of labor of civil servants are included in the scope of labor law.

**Keywords:** Labor, Public service, Civil servant.

## Peculiaridades de las relaciones laborales de los empleados estatales

### Resumen

El propósito de este estudio es identificar y analizar las características de las relaciones laborales en el servicio público a través del análisis comparativo de la legislación y los desarrollos doctrinales en el campo en estudio. Como resultado, una característica de las relaciones laborales es la restricción de ciertos derechos humanos constitucionales en relación con el trabajo del servicio civil. Según los resultados del estudio, se puede concluir que las relaciones en el campo laboral de los funcionarios públicos están incluidas en el ámbito de la legislación laboral.

**Palabras clave:** Trabajo, Servicio público, Funcionario.

### 1. INTRODUCTION

Civil servants are a special category of employees. This is due to the specifics of the activities of state bodies in which they work. Civil servants perform the functions of a state body, assigned to the latter by the state, and solve problems in the economic, social and political spheres (INSHYN, 2015). Admission to the public civil service, the work itself, termination and implementation of the legal status of a civil servant are carried out through organized professional activities. Such activities are public in nature, are performed by employees of state bodies, on a professional, paid, permanent basis. That is, these activities have all signs of public labor.

The activities of public servants should be organized, regulated and evaluated taking into account that this service is carried out in the form of professional labor. This service also contains a social component and therefore needs adequate means and methods of organization, management, professional and personal motivation, incentive, control. It implies the use of legal instruments in its regulation, i.e. ways of legal regulation of labor. Civil servants are a special category of employees with specific rights and obligations. They are subject to the appropriate procedure for appointment and dismissal, special material and social guarantees are provided for them.

The public administration sector in Ukraine has been undergoing a reform process over the past few years. The most important decisions were the adoption of the new Law on public service at the end of 2015 and the Strategy for reforming the public administration of Ukraine for 2016–2020. In general, the law complies with European principles of public administration and is aimed at solving the main problem areas of public service (INSHYN, 2012). However, as of 2019, the system is still far from being perfect: an effective mechanism for remunerating civil servants does not allow recruiting new professional staff, despite the considerable costs of taxpayers.

For public sector workers in Ukraine, there is a centralized wage system based on the tariff scale. The salary consists of basic, temporary and bonus components. The basic components are official

salary plus guaranteed salary rise with the increase in seniority and rank of public service. In addition, public servants are entitled to two types of financial assistance, which in fact are also guaranteed bonuses: social/family assistance and health/medical assistance received along with annual vacation pay (GUILLEMOT & JEANNOT, 2013). Bonuses and prepayments are additional incentives that depend on the conditions and complexity of the work, as well as on the results of work.

The following distinguishes civil servants from other categories of employees:

- a) They hold positions only in government bodies;
  
- b) They carry out power activities (organizational, administrative, managerial, control) and therefore are endowed with the appropriate organizational and administrative powers;
  
- c) They may apply state coercive measures (DICKENS & HALL, 2009).

Despite the special position of civil servants in comparison with other categories of workers engaged in certain jobs at various enterprises, institutions, and organizations, civil servants are hired workers who perform public functions (KIZILOV, 2016). The emergence, change and termination of relations of public service are

carried out in accordance with applicable legal requirements, which, although they have a state-legal and administrative-legal nature, at the same time relate to labor law.

Understanding the characteristics of labor relations of public servants is important primarily for the public servants themselves. There are a number of issues that civil servants need to understand during civil service:

- What law they should use while defending their rights;
- To what court they should apply in the event of unlawful dismissal (general or administrative court);
- Which rights of ordinary workers are guaranteed to civil servants, and which are limited and so on. Unfortunately, not all applicants for civil service are aware that this work has certain specifics.

Finally, public sector labor relations are deeply and inextricably permeated by politics. The activities of all trade unions are political in nature. Politicization is much higher in the public sector. What is typical for Ukraine, new political forces bring some personnel changes in state bodies (KIZILOV, 2016), as well as their working methods, despite the fact that this particular labor sector should be stable and follow a single long-term strategy. In such circumstances, civil

servants must take full responsibility to protect their rights, know the features of their implementation and the range of ways to protect them. Thus, the objectives of this study are:

- a) Determining the main features of the labor relations of public servants that distinguish them from ordinary workers;
- b) The search for ways to improve labor legislation, which directly relates to the rights of civil servants;
- c) Analysis of foreign experience in the field of legal regulation of public servants' labor activity and ways of implementing such experience in the legislation of Ukraine.

## **2. METHODOLOGY**

The labor relationship of public servants is an issue that is being explored in different dimensions. The understanding of the subject of labor law in different countries of the CIS, Europe, countries of the Anglo-Saxon legal system is different (MARS DEN, 2013). This leads to difficulties in the comparative analysis of legislation and doctrinal developments in the field under study.

Data analysis, international comparisons of the employment of public servants are complicated by the fact that some countries include



teachers and/or health workers in the public service, while others do not. Some countries include contracted and seasonal government employees, while others not. Local government employment may or may not include workers paid from the state budget. European Union law defines even wider borders. The term emanation of the state is used to define a public service body under the control of the government, which has special powers for this purpose that go beyond the usual norms applicable to relations between people (DERLIEN, 2003). Thus, this definition does not only cover what is commonly regarded as public sector organizations, but it also covers privatized industries, transport, and some institutions, such as prisons, which are managed by the private sector (GALLIE, 2013).

In this article, to identify key differences in the labor relations of civil servants and those who are not related to public service, the author studies the legislative acts in the field of public service of Ukraine, as well as the Labor Code. This facilitated the comparison of such aspects of service as the rights of workers, guarantees provided by the state, restrictions, and privileges for ordinary workers and public servants. Despite some differences in definitions, a statistical method is used to compare the characteristics of labor relations in the civil service in developed countries.

For a more in-depth study of the characteristics of civil servants' labor relations, this issue is considered not in statics, but in dynamics, which allowed considering its historical aspect (DEMKE, 2005).

Considering statistics for previous years, as well as analyzing previous regulatory legal acts, it is possible to determine the success of reforms in the field under study.

### **3. RESULTS**

The Law of Ukraine On Public Service dated 10 Dec 2015 establishes that the effect of labor legislation is applicable to civil servants in terms of relations not regulated by this Law. This situation further exacerbates the discussion that has been going on for a long time about the branch of law that regulates the employment relations that arise between public servants and government bodies, institutions, and organizations.

The provisions of the Law of Ukraine on public service of December 16, 1993, established that labor relations of public servants are regulated by the Labor Code of Ukraine, taking into account the features provided for in this Law (CARRÉ, TILLY, VAN KLAVEREN & VOSS-DAHM, 2010). In other words, the provisions of the 1993 Law differentiated the legal regulation of labor relations of civil servants in comparison with other categories of employees. While the approach established in the 2015 Law of Ukraine On Civil Service separates its position from labor legislation without considering that the provisions of the Law are indeed part of labor legislation. Between a public servant and the state body in which he/she works, labor

relations arise. The civil servant is the employee with whom the labor contract is concluded, and the state body is the employer. In addition, the introduction of this approach significantly reduces the level of protection of public servants' labor rights.

According to part 2 of Article 1 of the Law of Ukraine on public service, a public servant is a citizen of Ukraine who holds the position in a public authority, its apparatus, receives a salary at the expense of funds of the state budget. Public servant exercises the powers established for this position, directly related to the performance of the tasks and functions of such a state body, and adheres to the principle of the public service (SADEGHPOUR ET AL., 2017).

Thus, the law already introduces its peculiarities into the labor relations, concerning the hiring, the work itself, and gives prerequisites for establishing additional reasons for dismissal. First, there is the criterion of citizenship, as in other labor relations foreigners have equal rights with citizens of Ukraine. Another feature is compliance with public service principles. The Law sets out 10 principles that should be followed by all civil servants, including:

- The rule of law;
- Legality;
- Professionalism;

- Patriotism;
- Efficiency;
- Decency;
- Ensuring equal access to public service;
- Political impartiality;
- Transparency;
- Stability.

As can be observed, some of these principles are quite evaluative, which can lead to disagreements in case of a civil servant being brought to disciplinary responsibility for violation of public service principles.

The mistake of separating the provisions of the Law on Civil Service from the labor legislation is also manifested in the fact that no aspect of the work of civil servants is regulated as fully as in the labor legislation. For example, in the case of termination of public service due to the reduction of staff, or the reorganization of a public authority, the Law lacks the following provisions. The provisions about the obligation of personal notice of such dismissal and the

obligation to take into account the pre-emptive right to remain in the current position. In this case, the standards of the Labor Code of Ukraine will be applied.

The nature and purpose of public service are determined by the nature and purpose of the state. This service not only reflects the tasks, functions and basic features of the state but also aims to ensure their practical implementation (BUELENS & VAN DEN BROECK, 2007). That is why a civil servant always acts on behalf of the state within the scope of his/her competence.

Civil service as a type of professional activity means the continuous, hereditary and competent performance of powers of state bodies by persons in public positions. Thus, the civil service requires special training and professional education. They are employed on a permanent basis, they are assigned qualifications, ranks, etc.

In the sense used in European Union law, the status of a civil servant is determined by two criteria: the exercise of powers conferred by public law and the duty to protect the public interests of the state or civil society (DEMKE, 2004). In most European countries, this means jobs corresponding to certain positions or missions related to national sovereignty: judges, military, tax officials, customs officers, police officers (CLARK, DOBBS, KANE & WILDING, 2009). In Ukraine, however, the Law on Civil Service lists the categories of posts that belong to civil service, and there is a list of those posts to which the

law does not apply (Article 3). This helps to avoid the ambiguity, conflict, and complexity of applying the requirements of the law.

Features of remuneration, guarantees, and preferences that distinguish civil servants from other employees are illustrated in Table 1.

**Table 1: Support for civil servants**

		Contractual components:		Motivational component
		Monetary	Non-monetary	
Current salary	Key component	<p>Official salary</p> <p>Bonuses:  <u>permanent</u>:                      - for seniority;                      - for the rank of public service.</p> <p>Financial assistance for solving social and domestic issues.</p> <p>Financial assistance for recovery.</p> <p>Bonus based on results (optional):                      monthly/quarterly/yearly.</p>		<p>Permanent employment (the service system actually provides for lifelong employment).</p> <p>Social Security:                      - labor relations in accordance with the Labor Code;                      - departmental health and recreation facilities;                      - opportunity to get service-provided accommodation;                      - longer paid leave (30 days compared with 24 days in accordance with general labor law).</p>
	Additional component	<p>Bonuses:  <u>temporary</u>:                      - for the additional workload (fulfillment of duties of a temporarily absent worker/fulfillment</p>		

		of duties of a vacant position); - for especially important work; - for labor intensity.		
	Preferential component		Health care (centralized); service-provided accommodation.	On-the-job training, training at the expense of the employer.
Potential benefits		Pension (comes earlier for some categories)	Privatization of service-provided accommodation	

Thus, it can be seen that public service has its advantages over other work. A feature of the labor relations of civil servants in this context is their support from the state (financial, social), as well as benefits and other guarantees.

However, in addition to the positive aspects of public service, civil servants are distinguished from other workers by some limitations. The latter is caused, first of all, by such a principle of public service as political impartiality. According to Article 10 of the Law of Ukraine on Public Service, a public servant is not entitled to:

- 1) Be a member of a political party if such a public servant holds the position of public service category A. For the period of public service in the category A position, a person stops his/her membership in a political party;

- 2) Hold positions in governing bodies of a political party;
- 3) Combine public service with the status of a deputy of the local council, if such a civil servant holds the position of public service of category A;
- 4) Involve, using his/her official position, government officials, local government officials, public sector workers, other persons to participate in election campaigning, actions and events organized by political parties;
- 5) In any other way to use his/her official position for political purposes. In the case of registration of a civil servant as a candidate for deputy by the Central Election Commission (election commissions formed in the prescribed manner); he/she is obliged to inform the head of the civil service in writing in one day. Upon his/her application, a civil servant is granted unpaid leave for the duration of his/her participation in the election process. The specified vacation is granted by the decision of the head of the civil service from the day the head is informed about participation in the election process until the day it is completed in accordance with the election legislation. A civil servant does not have the right to organize and participate in strikes and campaigns (except as provided above).

Thus, a feature of labor relations is the restriction of certain constitutional human rights in connection with civil service work.



However, this is primarily due to the quality of civil service, the professionalism of the civil servant and the protection of the public interest.

If drawing a parallel between ordinary hired employees and employees of the state apparatus, civil servants, there are determinants of the special legal regulation of civil servants' activities. Such activities are due to:

- The specifics of professional activities related to the implementation of state functions, as well as the importance and complexity of the tasks that public service is facing;
- The nature of the duties assigned to employees and their significance in the matter of socio-economic and political-legal changes in the country.

#### **4. DISCUSSION**

In order to comprehensively understand the area under study, the author turns to the experience of developed democracies. As mentioned above, in the United States, Europe, the countries of the Anglo-Saxon legal system, the concept of public servants differs significantly from one in Ukraine. Former Soviet Union countries and

closest (to Ukraine) western neighbors have more or less similar views on civil servants to Ukrainian ones.

Thus, in the countries of the Anglo-American legal system, civil service is most often understood as a collective term. That term encompasses the government sector, which consists mainly of professional bureaucrats, who were employed based on their professional qualities, and not as a result of political changes. A public servant is a person who works in the public sector, in a government department or agency. Civil servant primarily represents the interests of CITIZENS (LAWLER, 2008).

Today in the United States, more than 110 separate laws regulate labor relations in the public sector, supported by numerous local decrees, court decisions, general opinions of lawyers and executive orders. This policy shows a significant discrepancy. For example, in one state, firefighters are civil servants, while in another state – they are not. The earliest legislation governing relations between employers and state workers attempted to abolish strikes of government officials. Shortly after World War II, eight states passed laws prohibiting strikes, with severe fines for offenders. In other states, since 1951, laws have been enacted that establish the right of public service workers to join workers' organizations (unions). Those laws provide a limited degree of support for the development of bilateral relations between some public sectors and their employees.

Since American law is characterized by its stability, many laws, that have been adopted in the last century continue to be valid, including those that regulate labor relations and guarantees of civil servants (see Table 2).

Table 2: Basic federal laws on labor in the public service

<b>Title of Act</b>	<b>Content</b>
Civil Rights Act of 1964	It prohibits discrimination based on race, color, sex, religion or national origin.
Equal Employment Opportunity Act of 1972	The Enhanced Civil Rights Act of 1964 sets requirements for state employers and expands the powers of the Commission to ensure equal employment opportunities.
Employee Retirement Income Security Act (1974)	Regulates pensions, health care, disability, and accident plans.
Social Security Act of 1935	Special personnel policy for state and local employees, subsidized from the state budget.
Fair Labor Standards Act (as amended)	Regulates the issue of wages and working hours in the public service.
Family and Medical Leave Act (1993)	Establishes the right to leave for civil servants for medical and urgent family reasons.

## 5. CONCLUSIONS

According to the results of the study, it can be argued that relations in the field of labor of civil servants are included in the scope of labor law. The civil servant performs the labor function personally and must obey official discipline, special rules established both at the

local and state levels. The labor relations of civil servants take into account work specifics, duties, official functions of civil servants and their responsibility.

Features of labor relations of public servants are determined by the following factors:

- The procedure for accepting and promoting a civil service;
- Certain requirements for persons who enter the civil service and apply for public service posts;
- The rights and obligations of public servants;
- Guarantees for public servants;
- Restrictions related to civil service;
- The disciplinary proceedings;
- Grounds for termination of public service.

All of the above features not only differ in each country, but also for each individual branch of public service. This is especially true for those countries where the legislation regulating the civil service is not codified and also completely lacks systematization.

The characteristic elements of labor relations of civil servants are as follows:

- Labor relations based on a contract;
- Appointment to most positions based on competition;
- Recognition of professional experience;
- Long internship period preceding appointment to the post;
- A legislatively established career development system;
- A special pension system;
- A system of social guarantees for civil servants.

Ukraine's proclamation of the course towards European integration and the need to meet the criteria and requirements for candidates for EU accession highlight the following task. Namely, the creation of a highly professional civil service as a key element of an effective public administration system. The latter requires taking into account the experience of developed countries during the substantiation of the parameters of the public service model in accordance with the requirements of the current stage of development of the state.

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