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ELECTRONIC LABOUR BOOKS AND DATA PROTECTION

Formulation of the problem. Collection, processing, storage, use of personal data and other actions with them are performed in many areas of society and the state: financial and tax, pension, social and medical insurance, labour, operational and investigative activities and more. Personal data is an integral part of information resources at all levels.

Analysis of recent research and publications. In the legal literature, the protection of personal data of the employee has already been subjected to scientific analysis by such domestic and foreign scientists as M. Araceli Mangas, I. Aristova, I. Bachyla, W. Berka, R. Boardman, Z. Bogatyrenko, I. Bochkareva, V. Bryzhko, L. Curren, U. Dammann, P. De Hert, C. Docksey, S. Gutwirth, A. Hamilton, N. Hrytsyak, P. Hustinx, H. Kranenborg, A. Marushchak, R. Morgan, M. Lapchynsky, V. Lipkan, A. Levenchuk, R. Marutyan, A. Minkov, E. Munier, A. Pazyuk, Y. Pouillet, J. Rosemary, A. Semenchenko, V. Tsybalyuk, A. Chernobay, M. Shvets and others.

The purpose of this article is to research issues of ensuring the right to data protection in the context of digitalization.

Presentation of the main material of the study. The right to protection of personal data is one of the fundamental rights. The ILO Code of Practice of 1997, which is of a recommendatory nature, applies to the protection of employees' personal data.

The first international legal act in the field of data protection was the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28.01.1981 № ETS № 108.

Under EU law, data protection has been acknowledged as a distinct fundamental right. It is affirmed in Article 16 of the Treaty of the Functioning of the EU, as well as in Article 8 of the EU Charter of Fundamental Rights.

Directive 95/46 / EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data was adopted on 24 October 1995 in Luxembourg.

The world's first special law on personal data protection was adopted in Germany in 1970. In 1977, the Federal Law of the Federal Republic of Germany "On Personal Data Protection" was adopted (Bundesdatenschutzgesetz (BDSG) [1].

On June 1, 2010 the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Personal Data Protection” [2].

The Law of Ukraine “On Personal Data Protection” defines personal data as information or a set of information about an individual who is identified or can be specifically identified. The broadest definition is used to cover all information that may relate to a person.

The concepts of “personal data” and “privacy information” should not be equated. Their content intersects as follows: all information about private life personifies the individual by reflecting the process of his life in the sphere of private life, therefore, is a segment of the category of personal data. However, there is a large amount of personal data that, although personally identifiable, does not constitute information about privacy. Information technologies allow to convert, combine, systematize electronic data sets from various spheres of social management and services in a short time. Thus, personal data that identifies their carrier, but does not contain information about his private life, in the process of their accumulation and systematization can form an array of information about a person’s private life.

Personal data of the employee contain a number of features that distinguish them from other information about the employee (citizen, person). They contain information that is necessary for the employer and in connection with the employment relationship with a particular employee. Personal data of the employee are primarily related to his employment, and serve as a basis for determining his position as a party to the employment contract with the employer.

Information about the identity of the employee, his career, marital status are purely personal, related only to him, his life and work.

On June 10, the Law “On Amendments to Certain Legislative Acts of Ukraine Concerning the Accounting of Employee Labour Activity in Electronic Form” of 05.02.2021 № 1217-IX [3] (this Law entered into force three months after its publication) entered into force, which amended the Labour Code of Ukraine on the new rules of accounting for employment of the employee.

Among the documents and materials that contain information required by the employer in connection with the employment relationship, the main place is occupied by documents presented at the conclusion of the employment contract.

On June 10, 2021, the official start of work with electronic labour books began. To date, more than 695.7 thousand (of them: by policyholders – 358.6 thousand, by insured – 337.1 thousand) [4] scanned employment documents have been submitted in electronic form. Employers are now required to provide information contained in paper employment records on the employment of their employees for inclusion in the Register of Insured Persons of the State Register of Compulsory State Social Insurance. It should be noted that this can be done not only by employers, but also directly by citizens who have a labour book and a qualified electronic signature.

In other words, June 10 is an intensification of the process of digitization of employment records of all working Ukrainians [5].

The Law “On Amendments to Certain Legislative Acts of Ukraine Concerning the Accounting of Employee Labour Activity in Electronic Form”

№ 1217-IX from 05.02.2021 provides the following: the employee, when hiring him submits a paper version of the labour – only if available – or the transfer of information on employment from the register of insured persons of the State Register of compulsory state social insurance; to an employee who is hired for the first time – a paper version is issued only at his request; information about work (transfer, dismissal), incentives and rewards for success in work is now entered in the paper labour book – obligatorily, and according to the Law № 1217-IX, the employer is obliged to make such entries in the paper workbook only at the request of the employee; on the day of dismissal, the employer is obliged to issue a copy of the dismissal order (instruction) to the employee, to settle with him within the time specified in Article 116 of the Labour Code, and, at the request of the employee, to make appropriate records of dismissal in the employment record. At the same time, Law № 1217-IX does not specify either the form of such a “requirement” of the employee or the mechanisms of its presentation [6].

The state has set a five-year transition period to include information from paper employment records in the Register of Insured Persons. The goal is to transfer all data from paper labour books on the employment of each insured citizen to the Register during these five years. However, according to the Law, at the request of the employee, a paper employment record can be kept after the expiration of the five-year term.

The Pension Fund of Ukraine is already successfully using the technology of translating scanned data into digital format. After the employer or citizen fills out the questionnaire and attaches scan copies, the specialists of the territorial bodies of the Fund translate them into digital format. In addition, the Fund’s specialists reconcile the records of the employment record book with the data already contained in the personal card of the Register of Insured Persons. As a result, the final version of the electronic labour book is formed. When the employment record is successfully digitized, the data on periods of work and available insurance experience can be viewed in the personal account on the web portal of the Foundation’s electronic services.

Information on the employee’s employment is stored as part of the insured person’s personal account card in the register of insured persons of the State Register of Compulsory State Social Insurance for the period provided for in part four of Article 20 of the Law of Ukraine “On Collection and Accounting of Single Contribution for Compulsory State Social Insurance”.

After digitization, the original paper labour book is transferred to the employee for safekeeping. If the employee wishes, the employer will continue to be obliged to make records of employment, transfer to another job and termination of the employment contract in the paper labour book.

For users who are defined in the systems of the Pension Fund of Ukraine as individuals, when logging in with a qualified electronic signature, all data are provided, including personalized (name, date of birth, gender, passport data), data on salary, insurance, pension (for retirees), electronic labour book, data on periods of temporary disability, identity documents, sent inquiries and appeals and information on their processing, etc. After registration in the office of the policyholder for the employer in the section “Policyholder”

opportunities for: review the reporting information of the policyholder; request for the preparation of paper documents; sending appeals (questions, suggestions, complaints, petitions); receipt of data of the policyholder from the Unified Register of Policyholders; review of all their appeals to the bodies of the Pension Fund of Ukraine; sending a request for electronic documents; receipt of data from the Electronic Register of sick leaves of employees [7].

Thus, the electronic labour book is a convenient and accessible service from the Pension Fund of Ukraine. The service allows you to submit through the web portal of electronic services of the Fund (portal.pfu.gov.ua) signed by a qualified electronic signature, scanned copies of paper labour books, and other documents confirming the employment of the employee.

Benefits of an electronic labour book: convenient and quick access of employees to information about work activities; minimization of inaccurate and inaccurate information about work activities; additional opportunities for distance employment; remote registration of pensions according to personal account data without additional documentary confirmation; new opportunities for analytical processing of labour activity data for employers and government agencies; using the data of the electronic labour book for obtaining public services.

However, despite these many benefits, the digital age is also creating challenges for privacy and the protection of personal data, as large amounts of personal information are collected and processed in increasingly complex and non-transparent ways. Technological progress has led to the formation of massive data sets that can be easily compared and further analyzed to identify patterns or to make decisions based on algorithms that can provide an unprecedented view of human behavior and privacy [8].

It is necessary to distinguish between employment records, the procedure for which is determined by the labour legislation of Ukraine, and E-WorkBook, created by IDBS [9], which marked a new chapter in the company's history by releasing The E-WorkBook Cloud, an enterprise, cloud-based platform designed to meet the future challenges of scientific and R&D data management, in 2017.

Combining the very best functionalities of lab-based informatics, E-WorkBook goes beyond traditional lab management software, providing cutting-edge data capture and analysis tools, job requesting and management, inventory management. The advantages are the following: platform to unify, centralize and standardize R&D data; secure environment that accepts data input from any source; cloud technology for access to contextualized data irrespective of location; a scalable and modular platform; intuitive and easy to use for high adoption rate; time-saving and efficient experiment report-writing tool; powerful and versatile search engine, etc.

E-WorkBook, created by IDBS, enables collaborative working by bringing together scientific task management, research content submission and review, and communication, in a single environment.

In the digital age or age of big data, data has been described as “the new oil” of the economy for boosting innovation and creativity [10].

A survey of the most common data protection problems specific to the employment context can be found in a working document of the Article

29 Working Party [11]. The working party analysed the significance of consent as a legal basis for processing employment data. It found that the economic imbalance between the employer asking for consent and the employee giving consent will often raise doubts about whether or not consent was given freely. The circumstances under which consent is relied on as the legal basis for data processing should therefore be carefully considered when assessing the validity of consent in the employment context [12].

Within the framework of Modernised Convention 108 (Article 6) and the GDPR (Article 9), the following categories are considered sensitive data: personal data revealing racial or ethnic origin; personal data revealing political opinions, religious or other beliefs, including philosophical beliefs; personal data revealing trade union membership; genetic data and biometric data processed for the purpose of identifying a person; personal data concerning health.

For instance, Bodil Lindqvist [13] concerned the reference to different persons by name or by other means, such as their telephone number or information on their hobbies, on an internet page. The CJEU stated that “reference to the fact that an individual has injured her foot and is on half-time on medical grounds constitutes personal data concerning health” [14].

Conclusions. The main obvious problem is to ensure a high degree of protection of personal data contained in the employee’s electronic labour book. Security systems are complex IT applications in and of themselves: they communicate on the network and are equipped with all hardware and software components that could be vulnerable to cyber attacks, unless hacking measures are an integral part of the solution. Therefore, the demand for cybersecurity specialists, persons who identify information security threats and risks of data loss, develop and implement measures to counter threats and solutions to protect against information loss, ensure the safety and confidentiality of data, and participate in the development and implementation of IT solutions, increases every year.

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Summary

Lagutina I. V. Electronic labour book and data protection. – Article.

The article considers the protection of personal data as a modern and active law that provides a system of checks and balances to protect the individual if his personal data is processed. Data processing must meet the basic requirements of personal data protection, namely independent control and respect for the rights of the personal data subject.

The development of legislation on personal data protection has been marked by a significant expansion of the rights of their subjects and the legal regulation of all transactions with information from collection to destruction. With the adoption of the Law of Ukraine “On Personal Data Protection” of June 1, 2010, a regulatory framework for the protection of personal data in national legal practice was created.

It is emphasized that the right to protection of personal data is not absolute; it may be restricted as necessary to satisfy the general interest or to protect the rights and freedoms of others. The right to data protection is often interlinked with other rights, such as freedom of expression and the right to receive and impart information.

Any type of information can be personal data, provided that the information relates to an identified person or a person who can be identified.

Personal data are processed legally if they meet one of the following criteria: processing is carried out with the consent of the personal data subject; data processing is required by contractual relationship; data processing is necessary for the controller to comply with a legal obligation; data processing is required to comply with the vital interests of personal data subjects or others; data processing is necessary to perform the task in the public interest; the legitimate interests of the controllers or other persons are the basis for processing, but only if they are not outweighed by the interests or fundamental rights of the data subjects.

It is necessary to develop a sectoral mechanism for the protection of personal data of employees under labour legislation of Ukraine, as the Law of Ukraine “On Personal Data Protection” does not take into account the peculiarities of personal data protection of employees as subjects of labour relations.

Key words: labour rights, employee, personal data, electronic employment record book.

А н о т а ц і я

Лагутіна І. В. Електронна трудова книжка та захист персональних даних. – Стаття.

У статті розглядається захист персональних даних як сучасне й активне право, яке забезпечує систему стримання та протидія для захисту фізичної особи, якщо її персональні дані обробляються. Обробка даних має відповідати базовим вимогам захисту персональних даних, а саме має бути незалежний контроль і повага до прав суб'єкта персональних даних.

Розвиток законодавства про захист персональних даних ознаменувався значним розширенням прав їхніх суб'єктів і правовою регламентацією всіх операцій з інформацією від

збирання до знищення. З прийняттям Закону України «Про захист персональних даних» від 1 червня 2010 року було створено нормативну основу для захисту персональних даних і в національній юридичній практиці.

Підкреслюється, що право на захист персональних даних не абсолютне; воно може бути обмежено за потреби для задоволення загального інтересу або захисту прав і свобод інших осіб. Право на захист даних часто взаємопов'язане з іншими правами, як-от свобода вираження поглядів і право отримувати й передавати інформацію.

Будь-який вид інформації може бути персональними даними за умови, якщо інформація стосується ідентифікованої особи або особи, яку можна ідентифікувати.

Персональні дані обробляються законно, якщо вони відповідають одному з таких критеріїв: обробка здійснюється на підставі згоди суб'єкта персональних даних; обробка даних вимагається договірними відносинами; обробка даних необхідна для дотримання контролером юридичного обов'язку; обробка даних вимагається для дотримання життєво важливих інтересів суб'єктів персональних даних або інших осіб; обробка даних необхідна для виконання завдання в суспільних інтересах; легітимні інтереси контролерів або інших осіб є підставою для обробки, але тільки якщо їх не переважають інтереси або основоположні права суб'єктів даних.

Необхідна розробка галузевого механізму захисту персональних даних працівників за трудовим законодавством України, оскільки Законом України «Про захист персональних даних» не враховані особливості захисту персональних даних працівників як суб'єктів трудових правовідносин.

Ключові слова: трудові права, працівник, персональні дані, електронна трудова книжка.