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Organisation of Labour Protection in Farms: Certain Aspects of Legal Regulation

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Abstract

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The study is devoted to the investigation of the state of legal regulation of the organisation of labour protection in farms of Ukraine. The relevance of the work is due to the need to increase the level of protection of persons engaged in the activities of farms from the influence of harmful and dangerous industrial factors, to reduce the level of industrial injuries in this area. The purpose of the study is to examine the achievements of legal science and analyse the current state of regulatory regulation of relations in the field of labour protection organisation in farms to identify key problematic issues and develop proposals for their solution. The following methods of scientific knowledge are used to achieve this goal: dialectical, analysis, formal legal, and comparative legal methods. As a result of the study, it was concluded that the organisation of labour protection in farms is unsatisfactory. A number of changes are proposed to the legislation regarding the method of organising labour protection on small farms and those where hired labour is not used to improve the situation, in particular, regarding the possibility of assigning the duties of the labour protection service to a member (members) of a farm. The procedure for granting such powers is defined. The necessity to expand the range of issues that are included in the training programmes on labour protection for managers of enterprises, in particular, heads of farms, is justified. Namely, to introduce a mandatory investigation of: systems and standards of health management and ensuring the safety of employees; features of introducing a risk-oriented approach to the organisation of labour protection. Proposals for the implementation of information and advisory projects (using internet technologies) for labour protection specialists are formulated. Further work in the field of reforming the legislation on the organisation of labour protection in farms (both in theoretical and practical terms) should be focused on the preparation of normative acts that would define a clear simple algorithm of actions for the heads of farms to ensure law enforcement work, considering the specific features of this form of business activity of citizens. The conclusions obtained in the study will be useful for lawmakers when developing regulations on labour protection in agriculture, and for researchers when investigating the problems of labour protection relations in this area

Keywords: agriculture, labour safety, farm member, employee, labour protection service, industrial injuries

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Introduction

Ukraine is traditionally recognised as a state where the agricultural sector is one of the leading in the economy. This industry is providing the population with food, the industry with raw materials, and plays an extremely important role in society. Being one of the largest industries, agriculture provides employment for a substantial number of people, primarily the rural population, which has an absolutely positive social significance.

Therewith, agriculture is one of the most dangerous industries, where work imposes substantial risks to the life and health of the employee.

Despite the national policy aimed at reducing the level of occupational injuries and improving the level of labour protection both in Ukraine in general and in the context of individual sectors of the economy, statistics show a disappointing picture. Figure 1 illustrates the dynamics of occupational injuries for the period 2018-2021.

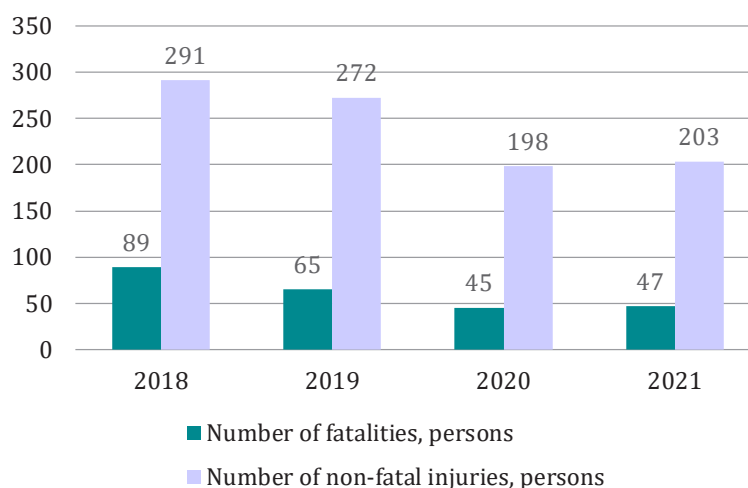


Figure 1. Industrial injuries in agriculture, fishery, and forestry of Ukraine

Source: the histogram is based on the latest published official data of the State Statistics Service of Ukraine, which allow tracing this indicator collectively in agriculture, forestry, and fishery [1]

According to the State Labor Service of Ukraine [2], agriculture ranks third among the types of economic

activity in terms of the number of deaths due to accidents as of 06/28/2022 (Fig. 2).

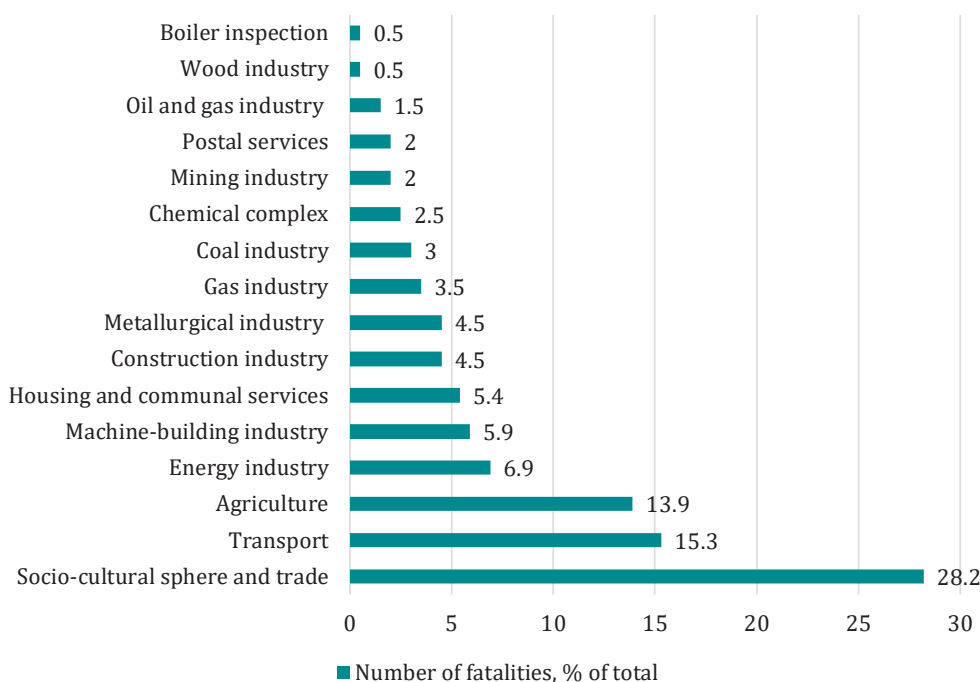


Figure 2. Number of victims of fatal accidents related to production, by type of activity

Source: [2]

There are a number of reasons for this state of affairs. First of all, these are objective reasons that follow from the specific features of technological processes: a high degree of chemicalisation of agricultural production, the use of technologically complex equipment and devices, direct contact with animals and plants, work in adverse weather conditions, in closed ground conditions, the presence of peak periods (sowing, harvesting, etc.). Due to the inability to completely eliminate these causes, persons engaged in agriculture may be exposed to the full range of harmful and dangerous production factors: physical (noise, temperature, humidity, electromagnetic fields, vibration, dust, and aerosols, working equipment elements, etc.); chemical (pesticides, agrochemicals, etc.); biological (viruses, bacteria); psychophysiological (contact with animals, overexertion, etc.). However, there are also subjective reasons, primarily organisational ones. As practice

shows, they dominate among the causes of occupational injuries. According to the generalisations of the State Labor Service of Ukraine, in 2021, among all causes of fatal accidents, organisational accounted for 73.6%, technical – 13.2%, psychophysiological, technogenic, natural, environmental, and social – 13.2% [3]. As inherent in all branches of economic activity, for agriculture, the organisational causes of production-related accidents are combined (and amplified) by the specific features of the organisation of business entities and the regulation of labour protection relations in them. This refers to agricultural cooperatives and farms that use the labour of their members.

Given the limited amount of work, the study emphasises the problems of legal support for the organisation of labour protection in farms. According to the latest officially published data [4], they now prevail in structure of the agricultural enterprises (Fig. 3).

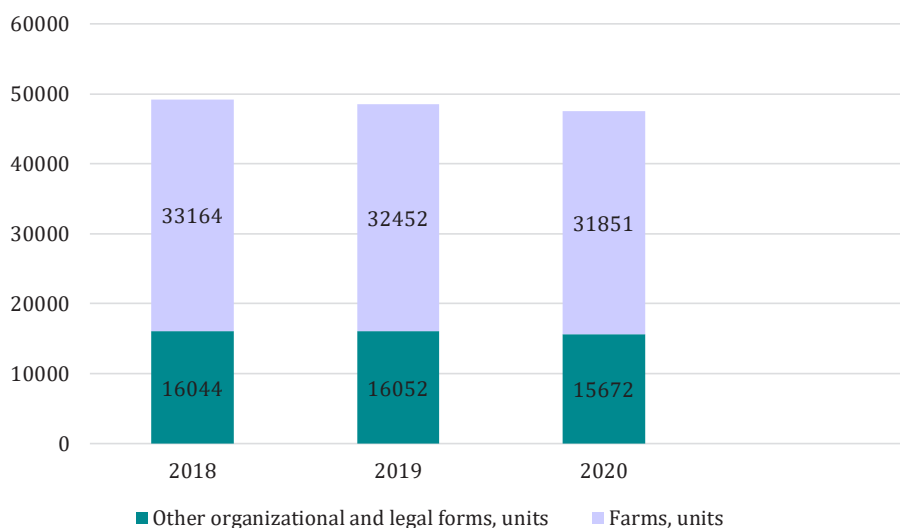


Figure 3. Number of agricultural enterprises in Ukraine

Source: [4]

Considering the importance of labour protection for preserving human life and health in the course of work, the issue of its organisation is constantly in the field of view of researchers – specialists in various fields. Recently, more and more attention has been paid to determining the impact of the level of labour protection on the effectiveness of investments in the organisation of work of enterprises [5], analysing the relationship between labour protection and financial results of socially responsible companies [6], evaluation of the enterprise labour protection management system efficiency [7], and the impact of the competence of labour protection specialists on the occupational risk management state [8]. Researchers are also interested in questions about new (for Ukraine) aspects of labour protection activities. For example, a risk-oriented approach to the organisation of labour protection [9], etc. As for research on the legal aspects of the organisation

of labour protection in such a narrow area as farms, so far there are no up-to-date findings. This issue was indirectly addressed in the works of V.Yu. Urkevich [10], O.A. Miroshnychenko [11], K.E. Danshina [12], and others. The author of this study also considered the problems of labour protection in agriculture [13]. However, these findings have largely lost their relevance due to changes in the legal field. Therefore, it is safe to say that today there is no separate study of the problems of organising labour protection in farms under the legislation of Ukraine and the development of proposals for their solution. Filling in this gap is the purpose of the study.

Materials and Methods

The methodological basis of the research were such methods of scientific knowledge as: dialectical; analysis; formal-legal and comparative-legal methods. The dialectical method was used as the basis for clarifying the

state of ensuring labour protection in agriculture. The use of the analysis method allowed examining the positions of researchers regarding the legal nature of relations on the use of labour of persons in farms, including relations on labour protection. The analysis method was also used to identify legal conflicts and gaps in the legislation regulating the methods of creating a labour protection service depending on the number of employees on the enterprise. The comparative-legal method was used to develop proposals for considering the positive international experience of legal regulation of relations on the organisation of labour protection in small enterprises (including farms). Clarification of the content of legal provisions regulating relations in the field of labour protection in farms and development of the author's proposals for improving their legal support was conducted through the use of the formal-legal method.

The study has as a regulatory basis on the current legal regulations of Ukraine and acts of international legislation. First, these are the basic normative acts of labour legislation and legislation on labour protection: the Labour Code of Ukraine [14] and the Law of Ukraine "On Labor Protection" [15]. The Law of Ukraine "On Farming" [16] as a normative basis for determining the principles of formation and implementation of activities of farms as a form of activity of citizens for the purpose of making a profit in the field of agriculture – in terms of regulating labour relations (including relations on labour protection) in such business entities. The bylaw level of legal regulation of labour protection organisation was analysed to identify problems and determine prospects for improving the mechanism of labour protection organisation in farms – the content of the Standard Regulation on the Labor Protection Service [17] and the Standard Regulation on the Procedure for Conducting Training and Testing Knowledge on Occupational Health and Safety Issues [18]. Considering the European integration course of Ukraine and the important role of international standards in the field of labour protection, the study processed the provisions of such international regulatory documents as Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work [19] and ISO 45001:2018 "Occupational Health and Safety Management Systems – Requirements with Guidance for Use" [20]. The study also considered the provisions of programme documents – the Concept of Reforming the Labor Protection Management System in Ukraine [21] and the EU Strategic Framework on Health and Safety at Work 2021-2027 [22].

The generalisation of the level of industrial injuries in agriculture, distribution of the number of victims of fatal accidents related to production, by type of activity and by the number of farms in the structure of agricultural enterprises is based on the official data of the State Statistics Service of Ukraine [1; 4] and the State Labor Service of Ukraine [2; 3].

Results and Discussion

Farming, being a form of entrepreneurial activity of citizens, is specific from the standpoint of relations on the use of the labour of persons, since it provides for both the labour involvement of its members in the activities of the economy and the labour activity of employees. The problem of labour relations in farms has repeatedly become the subject of study [23-25], and for now, it is not necessary to dwell on this aspect. The only thing that is notable is that today the regulation of labour relations in farms for members of such entities is conducted based on the norms of the Law of Ukraine "On Farming" [16] and acts of local rulemaking (charters and agreements (declarations) on the creation of family farms). Therewith, the degree of detail of regulation is very low, which does not contribute to the proper level of guaranteeing the rights of farm members in the use of their labour. In contrast, labour relations between a farm and employees are regulated by labour legislation.

As for relations in the field of labour protection, according to part 3 of Art. 3 of the Labour Code of Ukraine [14], they are regulated both for members of farms and employees in compliance with the guarantees established by labour legislation.

According to Art. 153 of the Labour Code of Ukraine [14] and Art. 13 of the Law of Ukraine "On Labor Protection" [15], the employer is obliged to guarantee safe and harmless working conditions/organisation of labour protection. The Law of Ukraine "On Farming" [16] in part 5 of Art. 27, imposes this duty on the head of the farm. Its practical implementation occurs, first of all, through the creation of a labour protection service at the enterprise. According to Art. 15 of the Law of Ukraine "On Labor Protection" [15] and the Standard Regulation on the Labor Protection Service [17], the labour protection service as a separate structural division is created at enterprises with a number of employees fifty or more people. This provision can be implemented without complications in farms with such a substantial number of employees for this organisational and legal form. Moreover, with a high (full) probability, it can be assumed that employees are necessarily present in such farms since it is very difficult to provide over 50 members of a farm exclusively with relatives/members of the same family.

If the number of employees at the enterprise is less than fifty people, it is allowed to assign the functions of the labour protection service to persons with appropriate training, having registered such relations as part-time work. In designing this regulatory requirement for farms, certain difficulties are present due to the possibility of two scenarios.

The first option. If a farm uses hired labour, then the issue is solved simply: a person/persons from among employees are determined, they receive appropriate training on labour protection issues, and a part-time employment contract is concluded with them. Since neither the Law of Ukraine "On Labor Protection" [15] nor the

Standard Regulation on the Labor Protection Service [17] contain clarification regarding the type of part-time work (external or internal), it is allowed to assign the duties of the labour protection service to persons who are external part-timers in farms.

The second option. The farm has less than fifty employees and does not use the labour of employees, limiting itself to the labour involvement of its members. Then it is impossible to implement the considered option of organising labour protection based on the following. Part-time work, according to the theory of labour law, is the performance by an employee under the terms of an employment contract, in addition to the main job, of other regular, paid work. This work is performed in the free time from the main work. In other words, part-time work is possible only within the framework of an employment relationship and is excluded in a membership relationship. As L.Yu. Velychko rightly proves, persons who are relatives or family members of the head of a farm can be employees of such a farm, but simultaneously should not be its members [26, p. 117]. In turn, erroneous is the statement of V.V. Yeryomenko about the possibility of labour relations with members of the farm through the legal composition (the act of joining the farm as a member and concluding an employment contract with such a person) [24, p. 48-49].

Considering all the above, it is impossible to assign the duties of the labour protection service to a member/members of a farm on a part-time basis. However, remains the option of applying for a job as an external part-time specialist. Then it is necessary to consider restrictions on the use of the labour of employees in family farms: according to part 5 of Art. 1 of the Law of Ukraine "On Farming" [16], under an employment contract, only seasonal workers can work in a family farm, and individuals can be involved in performing certain works that require special knowledge/skills and are directly related to the activities of a family farm. On the one hand, work in the field of labour protection falls under these criteria, which allows hiring a specialist under an employment contract to perform them. However, on the other hand, the presence of at least one employee excludes a family farm from the circle of subjects entitled to additional financial support under Art. 13-1 of the Law of Ukraine "On State Support of Agriculture of Ukraine" [27].

Finally, if an enterprise (in this case, a farm) has less than twenty people, it is allowed to involve third-party specialists with appropriate training in performing the functions of the labour protection service through the conclusion of a contract with them. The legal nature of such a contract is not specified, but based on the fact that the regulation of labour relations is mediated either through an employment contract or through a civil contract, part 3 of Art. 15 of the Law of Ukraine "On Labour Protection" [15] and paragraph 1.4 of the Standard Regulation on the Labor Protection Service [17] refers specifically to a civil contract for the

provision of services. Then the question arises: Can a person with whom such a contract has been concluded fully perform the functions of the labour protection service? It is advisable to turn to the distinction between labour and civil law relations to answer this question. Notably, the discussions on this issue were completed by the Supreme Court of Ukraine, which in its decision in case No. 640/1099/19 of 14.05.2020 [28] clearly defined their features. For an employment contract: legal independence of labour, execution of instructions and orders of the employer in the course of work, the guarantee of remuneration, determination of labour function, perpetuity (as a rule), defined rules and conditions of material and disciplinary responsibility, provision of social guarantees. For a civil contract: focus on a certain result, non-interference of the customer in the process of performing work/providing services, urgency, and freedom of the parties in resolving issues of payment of remuneration for work. Hence, under a civil contract, it is permissible to perform non-systematic, periodic tasks related to labour protection on a farm. This may include consultations, explanations on the organisation of labour protection, assistance in preparing draft documentation on labour protection, local regulations in this area, assistance in formulating reports on labour protection, conducting information and educational activities with employees, etc. Therewith, systematic, constant work on labour protection, which should be conducted on a farm, meeting all the signs of labour relations, cannot be conducted under a civil contract, because then there will already be a concealment of labour relations with corresponding negative legal consequences in the form of legal liability. Thus, according to the current legislation, in farms with less than twenty employees, the duties of the labour protection service can only be assigned to an employee/employees, in particular, part-timers.

To resolve the issue of the method of Organisation of the labour protection service in farms where there are no employees, the author of the study proposes to supplement Art. 15 of the Law of Ukraine "On Labour Protection" [15] and paragraph 1.4 of the Standard Regulation on the Labor Protection Service [17] with the following content: "In farms that do not use the work of employees, with the number of members of fifty or fewer persons, the functions of the labour protection service can be performed by members of such farms that have received appropriate training. The decision on the appointment of such persons is made by the head of the farm in coordination with the members of the farm."

In studies, the opinion is expressed about the possibility of transferring safety and labour protection techniques on small farms to self-organisation. In particular, V.O. Ivanchenko considers it correct, within the framework of self-organisation, to assign all responsibilities for ensuring safety, organising training, obtaining permits provided for by law, etc. to the owner (head of the farm) [29, p.50]. The author of the study

categorically does not support this view based on the following. The current legislation does not directly prohibit the combination of an employer and a labour protection service in one person, from which it would be possible to conclude that the head of a farm can perform these duties. However, a deeper analysis of regulations in the field of labour protection organisation shows the fallacy of this approach. According to part 4 of Art. 15 of the Law of Ukraine "On Labour Protection" [15] and paragraph 1.3 of the Standard Regulation on the Labor Protection Service [17], the labour protection service is directly subordinate to the employer (in a specific case, to the head of the farm). The above version of "self-organisation" creates a situation when the head of a farm independently performs the functions of the labour protection service and controls their implementation, reports, and approves documents on labour protection, which were developed by the head themselves, etc. In the course of such activities, there may be a contradiction between the private interest of the head of the farm and their powers as a manager, which may result in subjective and biased decision-making, performing certain actions or refraining from performing them during the execution of the powers of the head of the farm. That is, a conflict of interest under part 1 of Art. 1 of the Law of Ukraine "On Prevention of Corruption" [30], which is a negative phenomenon with corresponding legal consequences.

The above does not exclude the involvement of the head of the farm in the organisation of labour protection. On the contrary, a wide range of his duties regarding the management of labour protection is enshrined in Art. 13 of the Law of Ukraine "On Labour Protection" [15].

Notably, in international, primarily European labour protection legislation, the head of an enterprise or employer is assigned an important role in ensuring safe and healthy working conditions. Thus, Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work [19], applying, in particular, to private agricultural enterprises, defines the principles by which an employer introduces measures for labour protection. These are the principles: avoiding risks; assessing those risks that cannot be eliminated; overcoming risks directly at the source of their occurrence; adapting production processes to the needs and capabilities of employees; adapting production to technological progress; giving preference to safe and less dangerous substances used in production through the replacement of hazardous substances; prioritising collective means of protection over individual ones; proper training of employees. In Ukraine, work has begun on developing a legal framework for the implementation of these principles. The concept of reforming the "On the Approval of the Concept of Reforming the Labor Protection Management System in Ukraine" was adopted [21] and the action plan for its implementation was approved. However, this process is very slow and far from complete [31, p. 93].

A number of other tools have been developed to improve the level of labour protection. In particular, the ISO 45001:2018 Standard "Occupational Health and Safety Management Systems – Requirements with Guidance for Use" was developed and put into effect [20]. It offers a unified, simple approach to improving the level of industrial safety, reducing the level of industrial injuries, and developing the reputation of an enterprise or organisation as a "safe place to work". Additional advantages of using the standard in the activities of the country are reducing the duration of days of temporary disability of employees, reducing the cost of paying fines for violating labour protection legislation, improving the image of the company as socially oriented, etc.

For the effective implementation of such progressive practices at the level of farms, it is necessary to inform their heads as much as possible about the advantages of this system, ways of organising labour protection measures, and algorithms of actions in a particular situation. According to the author of the study, for this purpose it is necessary to supplement the standard thematic plan and training programme on labour protection of officials, given in the standard regulation on the procedure for conducting training and testing knowledge on labour protection issues [18] with the following subjects: a) introduction of a risk-oriented approach in the organisation of labour protection; b) health management systems and ensuring the safety of employees.

In addition, the methodology of so-called benchmarking has recently been gaining popularity. In the field of labour protection, a process of "monitoring" of industrial injuries is implemented to assess and compare the effectiveness of the functioning of the occupational health and safety management system among different subjects, investigating their experience in this area, considering other people's mistakes to improve the level of safety and labour protection at the enterprise, organisation. This is not just copying the actions of other enterprises, but a continuous process of learning and improvement [32, p. 40]. The main obstacle to the widespread use of benchmarking in farms is the lack of relevant knowledge among the heads of farms. It also complicates or even makes impossible benchmarking the lack of free access to the necessary amount of information about industrial injuries in agriculture, the causes of accidents and occupational diseases, and measures introduced by specific business entities to eliminate them in the field under study. In fact, only limited quantitative indicators of industrial injuries in the agricultural sector are published free of charge to the general public.

Raising awareness of the risks associated with accidents at work is currently recognised as one of the priorities for implementing the EU Strategic Framework on Health and Safety at Work 2021-2027 [22]. As part of this strategy, it is planned to implement the "Zero mortality" approach, that is, to minimise the number of industrial accidents with fatal consequences. The prerequisites for

its implementation are recognised as: 1) raising awareness of employers and employees about the risks associated with industrial accidents, occupational diseases; 2) training and education of employers to increase their ability to ensure an appropriate level of labour protection; 3) responsible strict implementation of labour protection rules and the inevitability of legal liability in case of their violation [22].

Considering the European integration course of Ukraine and the need to develop an effective strategy for reducing the level of occupational injuries, our state should focus on the mentioned EU Strategic Framework on Health and Safety at Work for 2021-2027 [22]. All the outlined areas of implementation of the "Zero mortality" approach can (and should) be implemented in Ukraine.

Conclusions

As a result of the study, the following generalisations can be made.

It was established that the state of labour protection in farms of Ukraine at the present stage is unsatisfactory, which is confirmed by high indicators of occupational injuries. The reasons for this are both objective features of agricultural production with its inherent risks, and subjective reasons, primarily organisational ones.

A number of proposals have been formulated to improve the level of organisation of labour protection in farms. Firstly, it is proposed to clarify the provisions of the legislation regulating the procedure for creating a labour protection service, indicating the possibility of assigning the functions of the labour protection service to members of a farm. It is a mandatory requirement for such persons to determine the presence of appropriate training in occupational health and safety. Secondly, the expediency of expanding the range of issues that are covered during the training of heads of enterprises, in

particular, heads of farms, in the field of labour protection through the inclusion in the training programmes of subjects on health management systems, ensuring the safety of employees, and on the specific features of implementing a risk-oriented approach to the organisation of labour protection was justified. Thirdly, it is proposed to conduct work on raising the level of awareness of employers in the field of agriculture about the risks associated with industrial accidents, occupational diseases, and mastering progressive methods of organising labour protection measures, such as benchmarking. For this purpose, it is proposed to: 1) restore the sector of labour protection and fire safety in the structure of the Ministry of Agrarian Policy and Food of Ukraine; 2) provide free access to data on accidents, occupational diseases that occurred at enterprises, institutions and organisations of the agricultural sector, to analytical materials on the causes and consequences of such events; 3) start systematic work with managers and persons responsible for labour protection in agricultural enterprises, including farms (for example, in the form of information and advisory projects, trainings, webinars, etc.) in an online format using internet resources of state authorities.

The results obtained can be considered when improving the content of legal provisions in the field of labour protection in agriculture, and used in works devoted to theoretical problems of legal regulation of relations in this area. It is considered appropriate to focus the attention of researchers on the problematic aspects of monitoring the state of occupational injuries in agriculture, the specific features of labour protection measures for agricultural sub-sectors and the most dangerous types of work (for example, work with chemicals, mechanised work), opportunities to consider the best international experience in organising labour protection in agricultural production.

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Організація охорони праці у фермерських господарствах: окремі аспекти правового регулювання

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Анотація

Стаття присвячена дослідженню стану правового регулювання організації охорони праці у фермерських господарствах України. Актуальність роботи зумовлено потребою підвищити рівень захищеності осіб, зайнятих у діяльності фермерських господарств, від впливу шкідливих та небезпечних виробничих факторів, знизити рівень виробничого травматизму в цій сфері. Метою дослідження є вивчення надбань юридичної науки та аналіз сучасного стану нормативно-правового регулювання відносин у сфері організації охорони праці у фермерських господарствах задля визначення ключових проблемних питань та вироблення пропозицій щодо їх вирішення. Для досягнення поставленої мети використано такі методи наукового пізнання: діалектичний метод, метод аналізу, формально-юридичний метод та порівняльно-правовий метод. У результаті проведеного дослідження зроблено висновок про незадовільний стан організації охорони праці у фермерських господарствах. Для покращення ситуації запропоновано низку змін до законодавства в частині способу організації охорони праці на малих фермерських господарствах та таких, де не використовується наймана праця, зокрема щодо можливості покладання обов'язків служби охорони праці на члена (членів) фермерського господарства. Визначено порядок надання таких повноважень. Обґрунтовано необхідність розширити коло питань, які входять до програм навчання з охорони праці керівників підприємств, зокрема голів фермерських господарств. А саме запровадити обов'язкове вивчення: систем та стандартів менеджменту охорони здоров'я і гарантування безпеки працівників; особливостей запровадження ризикоорієнтованого підходу до організації охорони праці. Сформульовано пропозиції з реалізації інформаційно-консультативних проєктів (з використанням інтернет-технологій) для спеціалістів з охорони праці. Подальшу роботу у сфері реформування законодавства про організацію охорони праці в фермерських господарствах (як у теоретичній, так і в практичній площині) варто зосереджувати на підготовці нормативних актів, що визначали б чіткий простий алгоритм дій для голів фермерських господарств щодо забезпечення правоохоронної роботи з урахуванням специфіки цієї форми підприємницької діяльності громадян. Отримані в дослідженні висновки стануть в пригоді законотворцям під час розробки нормативних актів з охорони праці в сільському господарстві, науковцям під час вивчення проблематики працезахоронних відносин у цій галузі.

Ключові слова: сільське господарство, безпека праці, член фермерського господарства, найманий працівник, служба охорони праці, виробничий травматизм
