

ТРУДОВЕ ПРАВО



Galiakbarova Guzal Gazinurovna,
*PhD in Law, Associate Professor of the Civil,
Labor and Environmental Department,
L.N. Gumilyov Eurasian National University,
Kazakhstan, Nur-Sultan*
e-mail: galiakbarova_gg@enu.kz
ORCID 0000-0001-9375-1134

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PECULIARITIES OF LABOR OF MEDICAL AND PHARMACEUTICAL WORKERS: A COMPARATIVE ANALYSIS OF LEGISLATIONS OF KAZAKHSTAN AND SOME OECD COUNTRIES

This article discusses some issues of labor regulation of medical and pharmaceutical workers, the peculiarities of health systems in some countries of the Organization for Economic Cooperation and Development, a comparative analysis of their experience and Kazakhstan is carried out.

The specificity of the legal status of medical and pharmaceutical workers is also considered, which is explained by the fact that its regulation is based not only on general norms of labor law, but also on special regulations affecting various features of the activities of this category of workers. At the same time, it is noted that the basis of the legislative regulation of the work of medical and pharmaceutical workers is the generally recognized principles and norms of international law, as well as the norms of national legislation.

The article focuses on the fact that among the variety of sources concerning the legal status of various categories of workers, there is no separate comprehensive study devoted to the peculiarities of legal regulation of both medical and pharmaceutical workers, in connection with which the chosen topic of scientific research is updated.

Keywords: medical worker; pharmaceutical worker; health care system; labor force; OECD countries; international legal norms; national legislation.

Галиакбарова Г. Г., кандидатка юридичних наук, в.о. доцента кафедри цивільного, трудового та екологічного права, Євразійський національний університет імені Л. Н. Гумільова, Казахстан, м. Нур-Султан.

e-mail: galiakbarova_gg@enu.kz ; ORCID 0000-0001-9375-1134

Особливості праці медичних і фармацевтичних працівників: порівняльний аналіз законодавства Казахстану і деяких країн Організації економічного співробітництва та розвитку

Розглянуто деякі питання регулювання праці медичних та фармацевтичних працівників, особливості системної охорони здоров'я у низці країн Організації економічного співробітництва та розвитку (далі – ОЕСР), здійснено порівняльний аналіз їх досвіду із досвідом Казахстану.

Окреслено специфіку правового становища медичних та фармацевтичних працівників, яка пояснюється тим, що його регулювання ґрунтується не лише на загальних нормах трудового права, а також на спеціальних нормативних актах, які стосуються різних особливостей діяльності вказаних категорій працівників. Зазначено, що основою законодавчої регламентації праці медичних та фармацевтичних працівників є загальновизнані принципи і норми міжнародного права, а також норми національного законодавства.

Наголошено, що серед різноманіття джерел, які стосуються правового становища різних категорій працівників, бракує окремого комплексного дослідження, присвяченого особливостям правового регулювання як медичних, так і фармацевтичних працівників, цим і визначено актуальність обраної теми публікації.

Ключові слова: медичний працівник; фармацевтичний працівник; система охорони здоров'я; трудові ресурси; країни ОЕСР; міжнародно-правові норми; національне законодавство.

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Problem statement. Undoubtedly, for every person, health is an inalienable blessing, in the absence of which the significance of many other values is lost. At the same time, it must be understood that for the state, the protection of the health of its citizens is important, and it should not be attributed only to the personal benefits of a person, since it has an important social character.

The constitutions of many countries define the value of human life and health, the right of everyone to health care and medical care. The Constitution of the Republic of Kazakhstan is no exception, according to which citizens of the Republic of Kazakhstan have the right to health protection, to receive a guaranteed volume of medical care free of charge established by law (Article 29) [1].

In this regard, it is obvious that the level of public health is influenced by various factors, including, and especially, medical and pharmaceutical activities, their development and reform, equipping with the latest technological equipment, organization of work of workers, training of specialists, etc. all the more so in the new realities, in which the whole world has been for a year already. But even the latest technological equipment will not be able to solve the tasks set for protecting the health of citizens, providing medical and pharmaceutical assistance to the population at a high quality level without highly qualified specialists in the field of protecting the health of citizens.

Thus, the most important role in the provision of medical and pharmaceutical assistance to citizens around the world, in general, and in Kazakhstan, in particular, belongs to medical and pharmaceutical workers. Undoubtedly, this circumstance imposes a high professional responsibility on this category of workers, and thus increased requirements are imposed on their qualifications, skills and abilities to perform the work of a doctor and other specialists, chemist, pharmacist, etc. The degree of risk to which their life and health are exposed, the complexity of work are

determined in many regulatory legal acts aimed, among other things, at providing them with favorable working conditions. So, in connection with the adoption in July last year in conditions associated with the emergence and spread of the coronavirus infection COVID-19 pandemic, the new Code of the Republic of Kazakhstan “On Public Health And Healthcare System” (hereinafter – the Code of the Republic of Kazakhstan on health) [2] and further reforming national legislation, studying the features of labor regulation of medical and pharmaceutical workers at the present stage not only acquires special relevance, but also requires the study of advanced foreign experience, including the countries of the Organization for Economic Cooperation and Development (hereinafter – OECD).

Recent research and publications analysis. In general, in the science of labor law, research has been carried out on labor regulation issues, mainly of medical workers. At the same time, there is no separate comprehensive study devoted to the peculiarities of legal regulation of both medical and pharmaceutical workers, in connection with which this study is updated and is of both scientific and practical interest. The separately studied works include: the work of E.V. Astrakhantseva (2008), which deals with the regulation of health workers and their social security; T.A. Belokolodova (2017), which investigates the labor law status of a medical worker and its features. Also, individual scientific articles of such authors as Zh.B. Auelbekova, T. Kantsidailo, B.K. Sorokin, M. Tanner and others are considered.

The purpose of this article is to study the features of labor regulation of medical and pharmaceutical workers, the health care system in some OECD countries.

Presentation of the main material. Medicine and pharmaceuticals for a long time of their development have been closely interrelated areas that underlie the protection of the health of citizens, since the main means of treating a doctor have been and remain drugs. At the initial stage, the activities of a doctor and a pharmacist did not have an obvious separation, since the “doctor” was also a manufacturer of medicinal drugs (means). Over time, pharmaceuticals, as an independent direction, and its representatives do not lose their connection with medical activities, interact with medical professionals [3, p. 3]. This is also evidenced by the fact that the above Kazakhstani Code applies equally to both medical and pharmaceutical workers.

According to Article 1 of the Code of the Republic of Kazakhstan on Health, a medical worker is an individual who has a professional medical education and carries out medical activities; and pharmaceutical workers are individuals with a pharmaceutical education and carrying out pharmaceutical activities [2].

It is noteworthy that in international practice there is often a generalized concept – «healthcare workers». For example, according to the WHO definition, health workers are people whose main activity is aimed at improving health. These include health care professionals (doctors, nurses, pharmacists and laboratory technicians) as well as administrative and support workers [4].

In the course of this study, the use of Kazakh and international terminology will be considered the same in its meaning.

So, there are about 60 million healthcare workers in the world. About two thirds of them provide health services (providers), and one third perform administrative and

support functions. According to data recently presented in the annual report of WHO, as of the end of March 2020 [5], in general, there are approximately 16 doctors and 38 nurses for every 10 thousand people worldwide (including midwives in most countries).

Distinctive features of the health workforce in Kazakhstan are higher rates of provision of medical personnel, along with lower rates of provision of average personnel in comparison with world data. For example, more than 248 thousand medical workers work in Kazakhstan, including 72 877 doctors, 175 705 paramedical workers. The provision of doctors in Kazakhstan is 39.6, in the OECD – 33, the provision of paramedical personnel in Kazakhstan is 95, 5, in the OECD – 91 per 10 thousand population [6].

Nevertheless, the personnel crisis in healthcare is recognized by the world community. Modern problems in the development of health personnel in the world are associated with a shortage of personnel providing primary health care, an excess of narrow-profile specialists, an imbalance in the number of doctors and nursing and midwifery personnel, and an excessive concentration of medical workers in large cities.

It is well known that there is a direct relationship between the ratio of the number of health workers to the population and health indicators.

The global shortage of workers is exacerbated by the existing imbalance within the country. In rural areas, compared to cities, there is a shortage of competent personnel.

WHO estimates that a minimum of 2,360,000 health workers and 1,890,000 administrative and support workers are required to fill the gap, for a total of 4,250,000 health workers [7].

The specificity of the legal status of medical and pharmaceutical workers is also explained by the fact that regulation is based not only on general norms of labor law, but also on special regulations affecting various features of their activities. The basis of the legislative regulation of the work of medical and pharmaceutical workers is the generally recognized principles and norms of international law, as well as the norms of national legislation.

Turning to the direct description of regulatory sources, it should be noted that international legal norms in the field of labor relations, in which medical and pharmaceutical workers are participants, are declarative for Kazakhstan. This is due to the fact that they are created by intergovernmental associations, international organizations, such as, for example, the World Health Organization (hereinafter – WHO), the European Medicines Agency, the World Medical Association. These acts are of a recommendatory nature and proclaim the general principles of regulation of these legal relations, establish universal rules and standards. A striking example of such acts is the Geneva (1948) [8] and Helsinki (1964) [9] declarations of the World Medical Association, the International Code of Medical Ethics (1949) [10].

However, human resource development strategies are a critical building block of health systems strengthening. All over the world, the effectiveness of health care systems and the quality of medical services depend on the performance indicators of workers, which are determined by their knowledge, skills and motivation, the normative regulation of labor relations, taking into account the specifics of their work.

International experience, in particular the experience of WHO, shows that among organizational changes related to improving the efficiency of health systems, the most successful are actions taken in the field of personnel management, creating favorable conditions for the latter to carry out their work functions.

There is a lot of data showing the positive influence of the quantity, quality of training of health workers, their density of distribution on the results of various activities in the health sector and on the health of people in general.

Different countries are characterized by a variety of skill levels, the ratio of the number of junior medical personnel to the number of doctors. The disparities in the range of major specialties and qualifications, as well as the level of job satisfaction, also remain significant. The latter has negative statistics even in some OECD countries. For example, according to the Health Workers' Union of the Republic of Korea, in 2019, eight out of ten nurses wanted to quit their jobs due to poor working conditions and high workload. Among the reasons why employees wanted to quit were: poor working conditions and high workload (80.2%), relationships in the team and employer's policy (25.9%). Also, 56.8% of respondents reported that the workload per nurse is very high, and 31.3% complained that due to the high workload, they do not even have time to eat. Seven out of ten medical workers reported that due to lack of staff and heavy workload, their well-being worsens, and more than 65% of those surveyed reported that they were prone to accidents [11].

This situation is also explained by the fact that over the past 30 years in most industrialized countries there has been an increase in the role of administrative workers, economists in the field of medical services, thereby not paying due attention directly to the doctors themselves, nurses, etc.

So, let's look at the experience of some OECD countries.

The Swedish health care system can be considered one of the best because of its high efficiency at a moderate cost. Healthcare in Sweden is 92% public, characterized by a high degree of decentralization with the division of responsibility for health care between the state, the Landstings (political bodies) and municipalities.

The main coordinating body is the state, which regulates the work of local authorities, the formation of policies, strategies and principles in the field of health care, the adoption of laws. In particular, the Law on Health and Medical Assistance defines the responsibilities of the Landstings and municipalities and grants autonomy to local governments. All medical professionals are supervised by the State Council for Health and Welfare. The governing bodies also include the Department of Medicines – controls the quality and efficiency of the use of medicines, the State Institute of Public Health – controls prevention, the State Pharmaceutical Corporation, which controls the activities of pharmacies, provides medicines, the State Council on Social Insurance - pays insurance benefits and compensation, the Association of Municipalities and Landstings, which represents the interests of the regions at the central level [12, p. 41].

In Germany, the regulation of the health care system is carried out by the central government and regional authorities. At the same time, the existing price restrictions and flat fee rates in this country lead to the fact that doctors, who are forced to

work in conditions of rigid tariffs, and in the absence of financial incentives, do not seek to provide assistance to patients beyond the necessary minimum. This raises questions of the quality of their services [13].

It is also worth noting that the personnel policy of most developed countries is aimed at introducing methods of managing the effectiveness of available resources, strengthening the role of administrative workers, the rapid evolution of the nursing profession and expanding the functions of nursing personnel, training specialists in the field of public health, increasing requirements for the training and retraining of personnel. ...

The territory of Kazakhstan is characterized by extremely high unevenness in the distribution of medical personnel: from 20 to 45.7 per 10 thousand population. The provision of rural health care doctors remains low. The lack of qualified health workers in remote and rural areas makes it difficult for a large proportion of the population to access health services. The persistent trend observed in recent years towards an increase in the proportion of doctors over 50 years old indicates the risk of a possible increase in the shortage of personnel in the next decade [14].

The existing problems associated with a shortage of personnel, an uneven geographical and territorial distribution, as well as a structural imbalance in personnel, are also aggravated by the insufficient qualifications of the existing personnel, which often determines the low quality of medical services.

The situation is aggravated by the fact that the current system of forecasting and planning personnel is not very effective. Human resource planning has historically not been a health policy priority.

Problematic are inadequate technical equipment of workplaces, weak support from management personnel, outdated principles of HR services, unattractive social infrastructure of rural settlements, low salaries of medical and pharmaceutical workers in comparison with OECD countries. Thus, the ratio of the average salary of a doctor to the average salary in the economy in 2018 was 0.93:1 in Kazakhstan, while in OECD countries this ratio was 2.6:1. The difference in the value of the salaries of a doctor in Kazakhstan and an OECD doctor was 6.9 times: a Kazakhstani doctor with his monthly salary can buy 2.4 consumer baskets, while a doctor in OECD countries can buy 16.4 consumer baskets [6].

Conclusions. On the basis of the study, we have to state that the lack of a clear state personnel policy in the field of Kazakhstani health care has led to a quantitative and qualitative crisis of labor resources. Lack of motivational incentives to work, low wages, and insufficient social protection of health workers have led to a decrease in the inflow of personnel into the health sector. At the same time, not only the human resources management system, the lack of qualified managerial potential, but also the complex labor law regulation of the healthcare sector associated with an extensive system of regulatory legal acts, imperfection of norms, gaps in legislation, give rise to problems of legal regulation of labor relations with medical and pharmaceutical workers.

In connection with the above, we believe it is advisable to use the experience of some OECD countries, including in improving the regulatory legal framework in the field of labor legal relations and the use of new effective methods of management in the field of healthcare.

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Галиакбарова Г. Г., кандидат юридических наук, и.о. доцента кафедры гражданского, трудового и экологического права, Евразийский национальный университет имени Л. Н. Гумилева, Казахстан, г. Нур-Султан.

e-mail: galiakbarova_gg@enu.kz ; ORCID 0000-0001-9375-1134

Особенности труда медицинских и фармацевтических работников: сравнительный анализ законодательств Казахстана и некоторых стран Организации экономического сотрудничества и развития

В статье рассматриваются некоторые вопросы регулирования труда медицинских и фармацевтических работников, особенности систем здравоохранения в отдельных странах Организации экономического сотрудничества и развития, проводится сравнительный анализ их опыта и опыта Казахстана.

Также рассматривается специфика правового положения медицинских и фармацевтических работников, которая объясняется тем, что его регулирование базируется не только на общих нормах трудового права, но и на специальных нормативных актах, затрагивающих различные особенности деятельности указанной категории работников. При этом отмечается, что основу законодательной регламентации труда медицинских и фармацевтических работников составляют общепризнанные принципы и нормы международного права, а также нормы национального законодательства.

В статье делается акцент на то, что среди многообразия источников, касающихся правового положения различных категорий работников, отдельного комплексного исследования, посвященного особенностям правового регулирования как медицинских, так и фармацевтических работников, нет, в связи чем актуализируется выбранная тема научной публикации.

Ключевые слова: медицинский работник; фармацевтический работник; система здравоохранения; трудовые ресурсы; страны ОЭСР; международно-правовые нормы; национальное законодательство.

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