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Choice of Workplace as a Guaranteed Right of an Employee in the Post-COVID World

Due to the COVID-19 pandemic, humanity has been forced to reduce the instances of leaving one's home. This has caused a number of employees to commence fulfilling their employment obligations via distance work, a development that, many feel, has been a positive for them. At the same time, a position has emerged, that the chance for the employees to work from home has not, in fact, adversely impacted the employers in a significant way. In light of this, the discussion that has begun heating up is whether it would be beneficial to keep such a status-quo even after the pandemic has subsided.

The present article discusses exactly such a possibility. It considers ensuring a guaranteed right for the employee to work from home (or any different locale of their choice). With such a change in place, it may indeed become possible to retain a rare positive aspect of the pandemic and to make a step in the right direction, in the pursuit of better regulation for employment relationships.

The primary subject studied by the article at hand is that of regulating distance work, as well as the associated matters thereto, such as employee rights and contract autonomy.

Key Words: *Employment Law, Pandemic, Distance Work, Workplace.*

1. Introduction

The pandemic caused by the spread of COVID-19 has plunged the modern world into a deep crisis.¹ A number of states and organizations have undertaken significant steps in order to remedy the situation and restore the status-quo that existed pre-pandemic.^{2,3} However, an especially resilient line of thought related to this idea is that the pandemic and those issues unearthed by it may, in fact, present an opportunity of going beyond merely fixing things and can serve as a springboard to creating a better world.^{4,5} It is this fact that has necessitated the need to evaluate employment relationships and to critically analyze the current, modern models thereof.

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¹ *Michie J., Sheehan M., Building Back Better?*, International Review of Applied Economics, Vol. 35(2), 2021, 111-116.

² *Liu K., COVID-19 and the Chinese Economy: Impacts, Policy Responses and Implications* International Review of Applied Economics, № 35(2), 2021, 308-330.

³ *Pinna A. M., Lodi L., Trade and Global Value Chains at the Time of Covid-19*, The International Spectator – Italian Journal of International Affairs, № 56(1), 2021, 92-110.

⁴ *Michie J., Sheehan M., Building back better?* International Review of Applied Economics, № 35(2), 2021, 111-116.

⁵ *Beland D., Marier P., COVID-19 and Long-Term Care Policy for Older People in Canada*, Journal of Aging & Social Policy, № 32(4), 2020, 358-364.

When attempting to utilize a crisis in order to usher in systemic reform, the most realistic approach is to improve the field which had, pre-crisis, already had significant problems⁶ and which, at the same time, was impacted by the crisis in a major way.⁷ Considering such criteria, of the legal fields, possibly the primary candidate for a change for the better should be employment law.

That the extant practices prevalent in the field of employment law are far from optimal is quite an accepted opinion in academic literature.^{8,9} A number of respected articles even focus on the opinion that huge structural changes are both necessary and inevitable.^{10,11} As for the impact of the pandemic, it has been quite widely accepted, that COVID-19 has revealed tremendous weaknesses currently plaguing the field, quite possibly illustrating the greatest amount of such existing issues even in comparison with all other legal fields.¹²

As a result of the above, there is a distinct chance to positively impact employment law via using the effect the pandemic has had on the world. In order to come out better from the unfortunate event at hand, there is the need of significant improvement.¹³ In turn, to achieve this, it is imperative that the law evolves so that it fits best with the post-pandemic world. So, if the changes are aimed at improving the field beyond restoring the pre-COVID status-quo, in turn ensuring that employment law is in line with the needs and the challenges of the modern reality, such amendments will be considered a positive event and a step in the right direction.

At the same time with the aforesaid, in order for any reform to have a chance of success, there is a need to identify the precise matters, which may be improved upon. In line with this, a good manner of identifying exactly such an issue is to analyze the impact of COVID-19. The latter can lead us to a reveal, namely the fact, that possibly the most important positive change enforced by the pandemic has been the chance for a number of employees to work from home.¹⁴ This would have been impossible in

⁶ *Miele M. G., Sales E.*, The Financial Crisis and Regulation Reform, *Journal of Banking Regulation*, № 12(4), 2011, 277-307.

⁷ *Thornton J.*, Post-crisis Financial Reform: Where Do We Stand?, *Journal of Financial Regulation and Compliance*, № 12(4), 2011, 277-307.

⁸ *Shah H.*, Transition to Labor Law Reform: State-Level Initiatives & Informal Sector Labor Relations, *Indian Journal of Industrial Relations*, № 50(1), 2014, 33-50.

⁹ *Kardava E.*, Development of Employment Law during the Euro-Integration Processes, *Journal of Law*, № 1, 2016, 33-50 (in Georgian).

¹⁰ *Santos A.*, Labor Flexibility, Legal Reform and Economic Development, *Virginia Journal of International Law*, № 50(1), 2009, 43-106.

¹¹ *Kardava E.*, Employment Relationships between People, *Journal of Law*, № 2, 2013, 130-145 (in Georgian).

¹² *Soto-Acosta P.*, COVID-19 Pandemic: Shifting Digital Transformation to a High-Speed Gear, *Information Systems Management*, № 37(4), 2020, 260-266.

¹³ *Baldwin C., Boothroyd I., Ross H.*, Convergence and Divergence: Environmental Implications of a Most Unusual Year, *Australasian Journal of Environmental Management*, № 27(4), 2020, 345-350.

¹⁴ *Lord P.*, Changing World, Changing Work, *Contemporary Social Science – Journal of the Academy of Social Sciences*, № 15(4), 2020, 407-415.

the past¹⁵, however, with the technological leaps in place, millions of people are granted the chance to remain indoors, in safety, and still continue to fully and completely fulfill their employment obligations.¹⁶

It should be noted, that even prior to the pandemic, there have been a number of attempts at changing the reality related to office work.¹⁷ Issues such as having the time spent getting to the office count as work hours¹⁸ and the general need to reduce the length of the work week¹⁹ are quite popular in academic literature. However, such changes have always been strongly opposed by the major employers and those representing their interests.²⁰

Hence, it will be correct to say, that the work in an office environment, that has for so long been the norm, is quite problematic for a number of employees, while the pandemic has strongly highlighted both the need for changes thereto, as well as the fact that it is not necessary in order to retain a number of employment relationships that previously depended upon it. Additionally, considering the reluctance to voluntarily eschew office surroundings, it is highly unlikely for a large percentage of employers to themselves make a choice of supporting such a development.

In light of the above, the present article shall provide an analysis of whether, once the pandemic is defeated, it will be possible for the world to no longer return to white-collar work being done in offices as opposed to doing so from the comfort of one's home. In this pursuit, a new employment law concept shall be discussed, which shall grant the employee the choice of their workplace and, potentially, will effectively ensure that the rare positive change brought upon by the pandemic is retained.

2. Practical Issues with Office Work Pre-Pandemic

A major challenge for the legal field in the twenty-first century is the need to reform the rules and regulations governing employment law.²¹ A persistent problem that still remains is the exploitation of workers by their employers²² and in order for this to be fixed, structural changes are

¹⁵ *Hantrais L., Allin P., Kritikos M., Sogomonan M., Anand P. B., Livingstone S., Williams M., Innes M., Covid-19 and the Digital Revolution, Contemporary Social Science, № 15(5), 2020, 595-611.*

¹⁶ *Hite L. M., McDonald K. S., Careers after COVID-19: Challenges and Changes, Human Resource Development International, № 23(4), 2020, 427-437.*

¹⁷ *Travis M. A., Telecommuting: The Escher Stairway of Work/Family Conflict, Maine Law Review, № 55(1), 2002, 262-287.*

¹⁸ *Fleetwood S., Why Work-Life Balance Now?, The International Journal of Human Resource Management, № 18(3), 2007, 387-400.*

¹⁹ *Travis M. A., What a Difference a Day Makes, or Does It?, Work/Family Balance and the Four-Day Work Week, Connecticut Law Review, № 42(4), 2010, 1-44.*

²⁰ *Miller S. D., Revitalizing the FLSA, Hofstra Labor and Employment Law Journal, № 19(1), 2001, 1-124.*

²¹ *Darian-Smith E., The Crisis in Legal Education: Embracing Ethnographic Approaches to Law, Transnational Legal Theory, № 7(2), 2016, 1-29.*

²² *Livne-Ofer E., Coyle-Shapiro J. A. M., Pearce J., Eyes Wide Open: Perceived Exploitation and Its Consequences, Academy of Management Journal, № 62(6), 2019, 1989-2018.*

absolutely necessary.²³ An opinion that has been prevalent in the years leading up to the pandemic has been that work hours are distributed in a somewhat less than optimal manner.^{24;25}

Those wishing to amend the said situation are generally focused on one of two directions. One the one side, some demand for the definition of work hours to be changed, so that the time needed to get to work is contained within.²⁶ On the other hand, harsh criticism has been aimed at the five-day work week and many demand it be reduced²⁷, which is substantiated by the position, that such a regime ensures that the employee will not be an effective worker, and, at the same time, that their work and life balance will be adversely impacted.^{28;29}

Besides the problems discussed above, another aspect of criticism levelled against office work is that employees spend an inordinate amount of time doing nothing productive³⁰, it takes them far too much time to even get to the office³¹ and the effectiveness of their work is negatively impacted by them being in the office as well.³²

The three issues illustrated here may, at first, seem unrelated. However, their analysis clearly shows, that the problem, in all three instances, stems from the same source. The primary subject of the criticism is the fact, that employees are forced to be at their workplace and to spend a lot of time getting there, when, quite possibly, this is not necessary at all.

When analyzing the criticisms, it is indeed quite easy to see, that the aforesaid is the primary target for them.^{33;34} The employee's interests are harmed, because they are required to be present at an

²³ *Rodriguez J. K., Johnstone S., Procter S., Regulation of Work and Employment: Advances, Tensions and Future Directions in Research in International and Comparative HRM, The International Journal of Human Resource Management, № 28(21), 2017, 2957-2982.*

²⁴ *Marcum T. M., Cameron E. A., Versweyveld L., Never Off the Clock: The Legal Implications of Employees' After Hours Work, Labor Law Journal, № 69(2), 2018, 73-82.*

²⁵ *Tucker P. T., Working Time, Health and Safety: A Research Synthesis Paper, Conditions of Work and employment Series, № 31, 2012, 1-68.*

²⁶ *Alexander C. S., Prasad A., Bottom-Up Workplace Law Enforcement: An Empirical Analysis, Indiana Law Journal, № 89, 2014, 1069-1131.*

²⁷ *Travis M. A., What a Difference a Day Makes, or Does It? Work/Family Balance and the Four-Day Work Week, Connecticut Law Review, № 42(4), 2010, 1-44.*

²⁸ *Staines G. L., Pleck J., Non-Standard Work Schedules and Family Life, Journal of Applied Psychology, № 69(3), 1984, 515-523.*

²⁹ *Fleetwood S., Why Work-Life Balance Now?, The International Journal of Human Resource Management, № 18(3), 2007, 387-400.*

³⁰ *Cranwell-Ward J., Abbey A., Organizational Stress, Palgrave MacMillan Publishing, New York, USA, 2005, 47-93.*

³¹ *Hynes M., Mobility Matters: Technology, Telework, and the (Un)sustainable Consumption of Distance, National University of Ireland Publishing: Galway, Ireland, 2013, 11-30.*

³² *Cooke F. L., Earnshaw J., Marchington M., Rubery J., For Better and for Worse? Transfer of Undertaking and the Reshaping of Employment Relations, The International Journal of Human Resource Management, № 15(2), 2004, 276-294.*

³³ *Cranwell-Ward J., Abbey A., Organizational Stress, Palgrave MacMillan Publishing, New York, USA, 2005, 47-93.*

³⁴ *Travis M. A., What a Difference a Day Makes, or Does It? Work/Family Balance and the Four-Day Work Week. Connecticut Law Review, № 42(4), 2010, 1-44.*

office, to spend time, energy and money getting there³⁵, despite the fact that, for a number of cases, this is entirely not needed in order for them to fully do their job.^{36;37}

As a result, if a way is found, which would remedy the situation discussed above by freeing the employee from the obligation to pointlessly sit in an office, this would fix a number of issues and be instrumental in mending the rules that are most often criticized in academic literature. While attempts have previously been made at fixing the very same issue, they were, most often, targeted at treating the symptom and not the underlying issue. It is exactly doing the former, when the initiative of reducing the work week to four days is floated. The same can be said with counting the travel times in the work hours. As for the real problem, which is the time unnecessarily spent in offices, academic literature had previously failed to be concerned with it.

This status-quo was changed in 2020, when the pandemic caused by the spread of COVID-19 forced the world to fundamentally rethink employment relations.³⁸ As a result, this great crisis can be viewed as a potential way out for the problem of office work discussed herein.

3. The Practical Changes Caused by the Pandemic and Their Results

The ramifications of the COVID-19 pandemic are quite diverse³⁹, and, considering the fact that the crisis is still ongoing, rather difficult to evaluate as well.⁴⁰ However, one major change imposed upon the society immediately after its commencement was the need for a lot of people to not leave their homes.⁴¹ This so called “lockdown” especially affected the relationships regulated by employment law.⁴²

In the 21st century, distance work has become more and more attractive, as it allows for the employee to fulfill their obligation in full from the site of their choosing.⁴³ In spite of this, however, the huge majority of employment relationships included the need for the employee to be present at the

³⁵ *Hynes M.*, *Mobility Matters: Technology, Telework, and the (Un)sustainable Consumption of Distance*, National University of Ireland Publishing: Galway, Ireland, 2013, 11-30.

³⁶ *Travis M. A.*, *What a Difference a Day Makes, or Does It? Work/Family Balance and the Four-Day Work Week*, *Connecticut Law Review*, № 42(4), 2010, 1-44.

³⁷ *Rodriguez J. K., Johnstone S., Procter S.*, *Regulation of Work and Employment: Advances, Tensions and Future Directions in Research in International and Comparative HRM*, *The International Journal of Human Resource Management*, № 28(21), 2017, 2957-2982.

³⁸ *Liu K.*, *COVID-19 and the Chinese Economy: Impacts, Policy Responses and Implications*, *International Review of Applied Economics*, № 35(2), 2021, 308-330.

³⁹ *Agostino D., Arnaboldi M., Lema M. D.*, *New Development: COVID-19 as an Accelerator of Digital Transformation in Public Service Delivery*, *Public Money & Management*, № 41(1), 2021, 69-72.

⁴⁰ *Gabryelczyk R.*, *Has COVID-19 Accelerated Digital Transformation? Initial Lessons Learned for Public Administrations*, *Information Systems Management*, № 37(4), 2020, 303-309.

⁴¹ *Kamal M. M.*, *The triple-edged sword of COVID-19: Understanding the Use of Digital Technologies and the Impact of Productive, Disruptive, and Destructive Nature of the Pandemic*, *Information Systems Management*, № 37(4), 2020, 310-317.

⁴² *Lord P.*, *Changing World, Changing Work*, *Contemporary Social Science – Journal of the Academy of Social Sciences*, № 15(4), 2020, 407-415.

⁴³ *Danielsson C. B., Bodin L.*, *Office Type in Relation to Health, Well-Being, and Job Satisfaction Among Employees*, *Environment and Behavior*, № 40(5), 2008, 636-668.

location of the employer's choice.⁴⁴ Even when discounting such jobs where it is impossible to work from a distance (such as positions in retail or restaurants, as well as the medical field, etc.), in practice, prior to the pandemic, most of the so called "white collar" jobs involved going to the office and working from there.⁴⁵ The spread of COVID-19 and the ensuing crisis have made retaining the status-quo unchanged impossible. Due to the threat of the virus, in a number of countries, a lockdown was instituted, which, in turn, outlawed or severely limited office work.⁴⁶ As for those nations, where no such prohibitions were put in place, certain employers still chose to limit the risk by allowing their employees to work from home.⁴⁷ Surveys of the employees that have been conducted after the lockdown began universally show, that people who are allowed to work from home are far happier than they were when they had to commute to work.^{48;49} They point out, that even when doing the same amount of work, the amount of free time available to them has significantly increased.⁵⁰ Moreover, a significant positive effect on the mental health of the employees who work from home has been observed as well.⁵¹ A major purpose of employment law is the protection of the employees' interests⁵², therefore, since there is a change, that considerably alters the situation for the benefit thereof, it is quite necessary that such progress is not wasted and the positive steps undertaken are retained for the future as well.

At the same time, it is important, that the rights of employers are not entirely ignored as well. In this regard, it is important to analyze what adverse effect distance work may have upon the effectiveness of the workers. While there is no final consensus, the rather popular opinion is that the negative impact is minimal.^{53;54} Certain surveys even show, that in some cases, if there is enough infrastructure and support, employees may indeed be more effective or, at least, not lose any

⁴⁴ *Felstead A., Henseke G.*, Assessing the Growth of Remote Working and its Consequences for Effort, Well-Being and Work-Life Balance, *New Technology, Work and Employment*, № 32(3), 2017, 195-212.

⁴⁵ *Ammons S. K., Markham W. T.*, Working at Home: Experiences of Skilled White Collar Workers, *Sociological Spectrum*, № 24(2), 2010, 191-238.

⁴⁶ *Soto-Acosta P.*, COVID-19 Pandemic: Shifting Digital Transformation to a High-Speed Gear, *Information Systems Management*, № 37(4), 2020, 260-266.

⁴⁷ *Gabryelczyk R.*, Has COVID-19 Accelerated Digital Transformation? Initial Lessons Learned for Public Administrations, *Information Systems Management*, № 37(4), 2020, 303-309.

⁴⁸ *Waizenegger L., McKenna B., Cai W., Bendz T.*, An Affordance Perspective of Team Collaboration and Enforced Working from Home during COVID-19, *European Journal of Information Systems*, № 29(4), 2020, 429-442.

⁴⁹ *Agostino D., Arnaboldi M., Lema M. D.*, New Development: COVID-19 as an Accelerator of Digital Transformation in Public Service Delivery, *Public Money & Management*, № 41(1), 2021, 69-72.

⁵⁰ *Kamal M. M.*, The Triple-Edged Sword of COVID-19: Understanding the Use of Digital Technologies and the Impact of Productive, Disruptive, and Destructive Nature of the Pandemic, *Information Systems Management*, № 37(4), 2020, 310-317.

⁵¹ *Kotera Y., Vione K. C.*, Psychological Impacts of the New Ways of Working (NWW): A Systematic Review, *International Journal of Environmental Research and Public Health*, № 17, 2020, 1-13.

⁵² *Gelter M.*, Tilting the Balance between Capital and Labor? The Effects of Regulatory Arbitrage in European Corporate Law on Employees, *Fordham International Law Journal*, № 33(3), 2009, 792-857.

⁵³ *Hite L. M., McDonald K. S.*, Careers after COVID-19: Challenges and Changes, *Human Resource Development International*, № 23(4), 2020, 427-437.

⁵⁴ *Lord P.*, Changing World, Changing Work, *Contemporary Social Science – Journal of the Academy of Social Sciences*, № 15(4), 2020, 407-415.

effectiveness at all.⁵⁵ While there are opposing viewpoints too, there is, as said, no agreement on the matter at hand.⁵⁶ Moreover, it also should be noted, that when employees do not need to be at the office, the employers have lower costs as well, such as having to pay lower fees for utilities and, sometimes, even eschewing the need for massive real estate investments in order to have an office at all.⁵⁷ As a result, it can be seen, that, on the one hand, distance work has a rather significant positive result on the employees' interests while, at the same time, having no adverse impact on those of the employers, actually somewhat benefiting them too. This, in itself, may be enough to reform the field of employment law in order to ensure that the present circumstances are retained.⁵⁸ However, there is one more reason to strive for such an outcome, which makes losing this chance even bigger a lost opportunity, if it does indeed come to pass. The matter in question is the possibility of lowering the risks of discrimination that disabled employees face. While there have undoubtedly been a number of positive steps taken in the later decades⁵⁹, disabled individuals are still significantly discriminated against, part of which deals with access to the workplace.⁶⁰ On the one hand, a number of workplaces are yet to be adapted for disabled individuals, making them inaccessible and, therefore, ensuring that the employment chances of those with disabilities are decreased.⁶¹ On the other hand, even if the employer does everything perfectly and fully adapts the workplace, the fact remains, that merely getting to an office is much harder and fraught with danger for a disabled individual than for their coworkers.⁶² In light of the above, a popular opinion in academic literature is that distance working conditions may play a very positive role in reducing workplace discrimination against disabled individuals⁶³. Considering the fact, that discrimination and the fight against it are hugely important topics for the field of employment law⁶⁴, rooting it out should take precedence over almost

⁵⁵ *Waizenegger L., McKenna B., Cai W., Bendz T.*, An Affordance Perspective of Team Collaboration and Enforced Working from Home during COVID-19, *European Journal of Information Systems*, № 29(4), 2020, 429-442.

⁵⁶ *Hacker J., Brocke J. V., Handali J., Otto M., Schneider J.*, Virtually in This Together – How Web-Conferencing Systems Enabled a New Virtual Togetherness during the COVID-19 Crisis, *European Journal of Information Systems*, № 29(5), 2020, 563-584.

⁵⁷ *Fonner K. L., Roloff M. E.*, Why Teleworkers Are More Satisfied with Their Jobs Than Are Office-Based Workers: When Less Contact Is Beneficial, *Journal of Applied Communication Research*, № 38(4), 2010, 336-361.

⁵⁸ *Yavson R.*, Strategic Flexibility Analysis of HRD Research and Practice Post COVID-19 Pandemic, *Human Resource Development International*, № 23(4), 2020, 406-417.

⁵⁹ *Bonaccio S., Connely C. E., Gellatly I. R., Jetha A., Ginis K. A. M.*, The Participation of People with Disabilities in the Workplace Across the Employment Cycle: Employer Concerns and Research Evidence, *Journal of Business and Psychology*, № 35, 2020, 135-158.

⁶⁰ *Kessler L. T.*, Employment Discrimination and the Domino Effect, *Florida State University Law Review*, № 44, 2017, 261-339.

⁶¹ *Butterfield T. M., Ramseur J. H.*, Research and Case Study Findings in the Area of Workplace Accommodations Including Provisions for Assistive Technology: A Literature Review, *Technology and Disability*, № 16(4), 2004, 201-210.

⁶² *Swinton K.*, Accommodating Equality in the Unionized Workplace, *Osgoode Hall Law Journal*, № 33(4), 1995, 703-747.

⁶³ *Schur L. A., Ameri M., Kruse D.*, Telework after COVID: A “Silver Lining” for Workers with Disabilities?, *Journal of Occupational Rehabilitation*, № 30, 2020, 521-536.

⁶⁴ *Bagenstos S. R.*, The Future of Disability Law, *Yale Law Journal*, № 114, 2004, 1-84.

all other.⁶⁵ Therefore, any change that has the chance of taking the world in such a direction should, at the very least, merit a serious discussion.

In light of all the above, it can be summarized, that allowing the employees the choice of whether to work from home has a clear positive effect on them, has no real negative impact upon the employers and, at the same time, protects a large number of those involved in the workforce from discrimination. Therefore, considering the fact that the field at hand inarguably needs significant reform, the chance that has inadvertently presented itself needs to be utilized. The new normal brought upon by the pandemic, namely the chance for office workers to continue their careers from the locale of their choosing, needs to be retained. As for the method thereof, the seemingly best option that can be utilized is to allow the workers to be in charge of choosing where they want to work from, essentially taking that prerogative from employers and transferring it to the workers.

4. Choice of Workplace, as a Guaranteed Right of an Employee

In modern employment law, whether it be international practice⁶⁶ or Georgian legislation⁶⁷, the choice of workplace is something for the parties to agree upon. However, quite often, the choice is effectively left up to the discretion of the employer, who often can make changes thereto unilaterally, without even consulting the employee.^{68;69} Considering the clear fact, that employment relationships are inherently unequal and that the employer is almost always far more powerful in the relationship as opposed to the much weaker employee⁷⁰ and it can easily be surmised that the choice of workplace is, in effect, left solely to the decision of the employer.

The interests of the employer are, of course, of great importance to the very core of employment law.⁷¹ However, this does not mean that their wishes should always be the decisive factor. If it becomes possible, to change the laws so that they significantly alter the circumstances in a positive direction, it may indeed be a justified choice to take such steps even if the chance of the result thereof is that those creating jobs will have to suffer a loss of certain privileges.⁷²

In the event that the extant dynamic is indeed changed and the choice of workplace, as a right, is transferred to the employee, this will go a long way in protecting the positive impact of the pandemic.

⁶⁵ *Middlemiss S., Downie M., Anglo-American Comparison of Employers' Liability for Discrimination in Employment Based on Weightism, The Equal Rights Review, № 15, 2015, 87-111.*

⁶⁶ *Wilkinson K., Tomlinson J., Gardiner J., The Perceived Fairness of Work-Life Balance Policies: A UK Case Study of Solo-Living Managers and Professionals Without Children, Human Resource Management Journal, № 28(2), 2018, 325-339.*

⁶⁷ Article 14.1.D., Organic Law of Georgia Georgian Labor Code, 4113-RS, 17/12/2010.

⁶⁸ *Bomball P., Statutory Norms and Common Law Concepts in the Characterization of Contracts for the Performance of Work, Melbourne University Law Review, № 42(2), 2019, 370-405.*

⁶⁹ Article 20.4.A., Organic Law of Georgia Georgian Labor Code, 4113-RS, 17/12/2010.

⁷⁰ *Daniel M., Protecting Workers' Rights in a Labour Environment Dominated by Nonstandard Work Arrangements and Unfair Labour Practices: An Empirical Study of Nigeria, International Journal of Interdisciplinary Research and Innovations, № 3(1), 2015, 65-83.*

⁷¹ *Botero J. C., Djankov S., La Porta R., Lopes-de-Silanes F., Shleifer A., The Regulation of Labor, The Quarterly Journal of Economics, № 119(4), 2004, 1339-1382.*

⁷² *Miller S. D., Revitalizing the FLSA, Hofstra Labor and Employment Law Journal, № 19(1), 2001, 1-124.*

Those employees, for whom working from home has been a revelation, will be able to retain this status-quo and continue working from wherever they desire. At the same time, those who would prefer to return to the office will also be able to do so, returning to what was the norm prior to the explosion of the COVID-19 pandemic.

It should be noted, that implementing such a change will not be an easy endeavor. In this regard, it can be described to the fight against sex discrimination. Despite the fact that sex discrimination, both direct and indirect, is essentially prohibited in all major countries⁷³, the problem still remains. More than that, one of the universal issues of employment law is the disparity between the pay of men and women.⁷⁴ Women are paid significantly less, even though the fight against discrimination has been ongoing for a long time⁷⁵ and no real solution has been found yet.⁷⁶ However, no reputable source of academic literature will even consider the position that since this battle has yet to achieve a final victory, the fight against sex discrimination should stop. This is the approach that needs to be kept in mind regarding the right of the employee to choose their workplace as well. Any sort of discrimination based on where the person chooses to work from must be prohibited.

Together with the above, another factor that needs to be specified is that a number of jobs simply require for them to be done at a specific location.⁷⁷ For instance, in the case of those working in the service industry, working from home is essentially impossible.⁷⁸ Therefore, in order to avoid the abuse of the right that may be granted to the employees, the employer should, when absolutely necessary, still be allowed the chance to defined the workplace themselves, as to do otherwise would be to make doing the job in question impossible.

In regards to distance work there is no need to create new regulations about work equipment. However, a matter of significance is to define which party shall be responsible for maintaining contact with the other when there is no office work taking place. Currently, this obligation tends to be either equally divided⁷⁹, or, especially in regards to having and maintaining a working internet connection⁸⁰, which may be necessary to continue fulfilling employment duties, it falls upon the employee.⁸¹

⁷³ *Verniers C., Vala J.*, Justifying Gender Discrimination in the Workplace: The Mediating Role of Motherhood Myths, PLOS One Journal, № 13(1), 2018, 1-23.

⁷⁴ *Rolfson R.*, College Experiences, the Gender Pay Gap, and Men and Women's Attitudes about Gender Roles in the Workplace, Xavier Journal of Politics, № 6(1), 2015, 46-71.

⁷⁵ *Ross J.*, Equal Pay and Sex Discrimination Law in the UK and Europe: The Need for Coherence, Journal of Social Welfare and Family Law, № 18(2), 1996, 147-172.

⁷⁶ *Verniers C., Vala J.*, Justifying Gender Discrimination in the Workplace: The Mediating Role of Motherhood Myths, PLOS One Journal, № 13(1), 2018, 1-23.

⁷⁷ *Bomball P.*, Statutory Norms and Common Law Concepts in the Characterization of Contracts for the Performance of Work, Melbourne University Law Review, № 42(2), 2019, 370-405.

⁷⁸ *Danielsson C. B., Bodin L.*, Office Type in Relation to Health, Well-Being, and Job Satisfaction Among Employees. Environment and Behavior, № 40(5), 2008. 636-668.

⁷⁹ *Michie J., Sheehan M.*, Building Back Better?, International Review of Applied Economics, № 35(2), 2021, 111-116.

⁸⁰ *Lord P.*, Changing World, Changing Work, Contemporary Social Science – Journal of the Academy of Social Sciences, № 15(4), 2020, 407-415.

⁸¹ *Hantrais L., Allin P., Kritikos M., Sogomonan M., Anand P. B., Livingstone S., Williams M., Innes M.*, Covid-19 and the Digital Revolution, Contemporary Social Science, № 15(5), 2020, 595-611.

Considering the fact that the aim of reforming the field is to maintain the positive changes brought about by the pandemic, there is no need to significantly alter the situation discussed. Therefore, it can be stipulated, that in the event that the employee chooses to work from anywhere that is not the office defined by the employer, the said employee should remain responsible for the ongoing contact and clear communication with the employer as well as their coworkers.

In combination with the above, a number of details also need to be discussed in relation with the proposed changes. The idea of the reform discussed herein does indeed have its opponents. Outside of the rather poorly substantiated financial risk issue already considered above, the idea of granting the employee the right to choose their workplace has been opposed by using two main arguments, which shall be evaluated and discussed below.

First of all, there is an opinion that certain employees are unable to concentrate on work at home and, therefore, are much less effective workers, meaning that by allowing them to choose their workplace they themselves, as well as their employer, are bound to suffer.^{82;83} This is a rather popular argument to wield when attempting to block the proposed changes, though, considering the reform in the present article, such criticisms do tend to lose their punch.

The aforesaid is delineated by the fact, that instead of all being forced to always work from home, the proposal is to allow the employee the right to choose. If they find that working from their own house is too distracting, they have the freedom to return to the office and refuse the chance to continue distance working. As a result, they would be afforded the exact same situation as they are now, without any reform being in place. Hence, while those who are quite fine working from home will be able to do so, and those who, on the other hand, are unable to concentrate unless they are at the office, will be free to return to their preferred workplace.

Additionally, the proposed change does not in any way intend to amend anything regarding disciplinary proceedings against employees. Therefore, if someone who works from home loses their focus and their work standards slip, the employer has the full right to discipline them, using whatever sanctions may be available, including, if necessary, dismissing them. This too means that if someone cannot effectively work from home, this fact should in no way invalidate the reform proposed herein.

Resultantly, the risk of the employer causing harm to themselves or to their employer by being distracted or otherwise unable to discharge their duties by distance working is negligible. The threats are minimal and, at the same time, the potential problems that may be caused are easily mitigated by readily available measures. Therefore, this argument cannot be considered as impediment to granting employees the right to choose their workplace.

As for the second grounds for criticism, it stems from the fact that when they are at home, employees are able to use their time for their own needs, as opposed to those of their employers and

⁸² *Toniolo-Barríos M., Pitt L., Mindfulness and the Challenges of Working from Home in Times of Crisis, Business Horizons, № 64(2), 2021, 189-197.*

⁸³ *Yavson R., Strategic Flexibility Analysis of HRD Research and Practice Post COVID-19 Pandemic, Human Resource Development International, № 23(4), 2020, 406-417.*

some consider this to be unfair.⁸⁴ There are two reasons based on which this line of thinking is to be rejected.

On the one hand, it can be stated, that by guaranteeing the employee the right to choose where they work from, nothing will really change. Quite a lot of research has resulted in findings that even when working in the office, people have free time⁸⁵, which they do not use for doing their jobs⁸⁶. The only difference is, that when distance working, they employee is likely to be at their own home and have more freedom in doing what they wish.⁸⁷ Therefore, instead of what they prevalently do today, as in wasting this time in entirely unproductive activities⁸⁸, the employee will actually get a chance to do something useful for themselves.⁸⁹ Moreover, there is also the opinion, that when a person is at home, in comfort, they may have less of a wish to waste time and the employer may actually receive a higher level of productiveness.⁹⁰ In light of the above, the result is, that the only real change in this regard that would stem from granting the employee the choice of their own workplace is that their personal interests may be better protected. As for the employer, they are not affected negatively and may, indeed, reap minor benefits as well.

Additionally, according to a rather widespread idea in the academic literature, when an employee is “available” to the employer, even if they are not tasked with anything specific at the moment, this time should still be considered as work hours.⁹¹ Therefore, any argument that by working from home the employees will be allowed too much free time is devoid of all factual grounds.

⁸⁴ *Tabasum S., Kurasheed M. A., Iqbal M. M., Siddiqui I. H.*, The Impact of Telecommuting on Job Performance, Job Satisfaction, Work Life Balance, and Mental Health of Employees in Pakistan in Covid-19: Analyzing the Moderating Effect of Training, *International Journal of Management*, № 12(1), 2021, 889-928.

⁸⁵ *Kamal M. M.*, The Triple-Edged Sword of COVID-19: Understanding the Use of Digital Technologies and the Impact of Productive, Disruptive, and Destructive Nature of the Pandemic, *Information Systems Management*, № 37(4), 2020, 310-317.

⁸⁶ *Tabasum S., Kurasheed M. A., Iqbal M. M., Siddiqui I. H.*, The Impact of Telecommuting on Job Performance, Job Satisfaction, Work Life Balance, and Mental Health of Employees in Pakistan in Covid-19: Analyzing the Moderating Effect of Training, *International Journal of Management*, № 12(1), 2021, 889-928.

⁸⁷ *Kamal M. M.*, The Triple-Edged Sword of COVID-19: Understanding the Use of Digital Technologies and the Impact of Productive, Disruptive, and Destructive Nature of the Pandemic, *Information Systems Management*, № 37(4), 2020, 310-317.

⁸⁸ *Tabasum S., Kurasheed M. A., Iqbal M. M., Siddiqui I. H.*, The Impact of Telecommuting on Job Performance, Job Satisfaction, Work Life Balance, and Mental Health of Employees in Pakistan in Covid-19: Analyzing the Moderating Effect of Training, *International Journal of Management*, № 12(1), 2021, 889-928.

⁸⁹ *Hantrais L., Allin P., Kritikos M., Sogomonan M., Anand P. B., Livingstone S., Williams M., Innes M.*, Covid-19 and the Digital Revolution, *Contemporary Social Science*, № 15(5), 2020, 595-611.

⁹⁰ *Tabasum S., Kurasheed M. A., Iqbal M. M., Siddiqui I. H.*, The Impact of Telecommuting on Job Performance, Job Satisfaction, Work Life Balance, and Mental Health of Employees in Pakistan in Covid-19: Analyzing the Moderating Effect of Training, *International Journal of Management*, № 12(1), 2021, 889-928.

⁹¹ *Williams J. C., Bornstein S.*, The Evolution of “FReD”: Family Responsibilities Discrimination and Developments in the Law of Stereotyping and Implicit Bias, *Hastings Law Journal*, № 59, 2008, 1311-1358.

In light of all the above, it can be surmised, that all of the main arguments against guaranteeing the employees' right to choose the workplace is insufficiently substantiated. Therefore, rejecting the reform idea based on them would be both unfair and unwise.

Finally, it should be noted, that before the pandemic ends, there is a major opportunity to ensure that the steps undertaken in the direction of allowing employees to work from home are retained. If this is not done, there is a significant risk, that once the crisis caused by the spread of COVID-19 is over, all will return to the status-quo that existed prior to the pandemic, meaning that the resources that are currently available for distance working may no longer be at hand and, as a result, the chances of the reform discussed within this paper would greatly diminish. This means that the timeframe to do what is necessary for the protection of the employees' rights is rather short and the chance afforded to the future of employment law cannot be squandered, otherwise, there may not be another such opportunity in the near future.

5. Choice of Workplace and Contract Autonomy

Employment law is mostly considered to be part of private law.⁹² This field includes the concept of contract autonomy (also referred to as party autonomy)⁹³, which, in essence, means that the parties to any agreement are free to regulate their own relationship in accordance with the rules that they impose upon themselves, basically, doing as they wish.⁹⁴

Contract autonomy is an important aspect of all civil law relationships.⁹⁵ It should not be interfered upon and the parties to an agreement should not be denied their freedom to self-regulate unless there is a legitimate purpose behind such an action.⁹⁶ A dominant position in academic literature related to this question is that, for an interference to be justified, first of all, it needs to be protecting an interest of significant value⁹⁷ and, at the same time, the interference should be of proportional value.⁹⁸ In order for the proposed reform to be justified, the said standard must be satisfied as well.

Firstly, as to the issue of an interest of significant value. A major such component is the rights of the employees. Considering the fact that protecting the latter is considered to be the paramount aim

⁹² *Pipia A.*, Regulating Risk of Negative Outcomes during the Process of Contract Fulfillment – Approach to the Economic Analysis of Law, *Journal of Law*, № 2, 2018, 85-118 (in Georgian).

⁹³ *Jorbenadze S.*, The Concept of the Freedom of Contract, *Journal of Law*, № 1, 2014, 262-288 (in Georgian).

⁹⁴ *Johns F.*, Performing Party Autonomy, *Law and Contemporary Problems*, № 71, 2008, 243-271.

⁹⁵ *Nishitani Y.*, Party Autonomy in Contemporary Private International Law – The Hague Principles on Choice of Law and East Asia, *Japanese Yearbook of International Law*, № 59, 2011, 300-344.

⁹⁶ *Eller K. H.*, Comparative Genealogies of “Contract and Society”, *German Law Journal*, № 21(7), 2020, 1393-1410.

⁹⁷ *Pertegas M., Marshall B. A.*, Party Autonomy and Its Limits: Convergence through the New Hague Principles on Choice of Law in International Commercial Contracts, *Brooklyn Journal of International Law*, № 39(3), 2014, 975-1005.

⁹⁸ *Schwartz A., Scott R. E.*, Contract Theory and the Limits of Contract Law, *The Yale Law Journal*, № 113, 2003, 541-619.

of employment law, it can most definitely be considered as of value⁹⁹, and something that clearly should be protected. Moreover, this action will be a step in preserving the healthy balance of employment market, by ensuring that the rare positive impact that the pandemic has had on the world economy is retained, thereby changing the world for the better.

As for the proportionality of the interference, considering all that has been discussed above, it has been demonstrated, that the negative impact of the reform upon the employers are either nonexistent or negligible. Therefore, even if the change will no longer allow for parties' freedom, as a result thereof there will be one party that benefits and the other that does not suffer at all. Therefore, there is no real violation and the interference most definitely does not outstep its bounds.

Finally, it needs to be noted, that both the proposed amendment as well as the interference in contract autonomy is quite recommended, as, according to the surveys of employers, they fully intend to return to the office regime.¹⁰⁰ This will ensure that the employees' interests will, in a way, suffer, when, as can be clearly seen, their rights are not particularly difficult to protect. Therefore, in order to preserve a healthy employment market and combat the negative ramifications of the COVID-10 pandemic, it is of utmost importance that the reform proposed by the article at hand is put into effect.

6. Conclusion

Protecting the employees is a paramount aim of employment law. In order to achieve such a goal, the greatest crisis of modernity needs to be utilized and the positive ramifications thereof must be retained. This is why the right of the employee to choose their own workplace must be guaranteed, which would be a step taken in the right direction.

Such a change has a definite and major positive effect on a large number of employees, while not affecting others, while having no significant negative impact whatsoever upon the employers. At the same time, this change also offers other opportunities, such as protecting a large number of those involved in the workforce, namely individuals with disabilities, from discrimination.

The COVID-19 pandemic has caused the greatest challenge facing the modern world. In order for it to be surmounted, all measures need to be taken to ensure that not only is the reality of the past rebuilt, but the resultant environment in which humanity is to proceed must be built back better. The world needs to be stronger than before, and a part of such a change can be the mechanism of ensuring that each employee has a guaranteed right to choose their own workplace.

The present article has illustrated the need to protect the interests of the employees as much as possible. Additionally, the position that granting them the right to choose their own workplace bears little to no risk, whilst promising a number of significant boons has also been explored.

Considering the fact that employee protection is one of the primary purposes of employment law, the said purpose will have been neglected in the event that the concept defined above is not considered. While, of course, the drafting and enactment of regulations is a complex process, with its

⁹⁹ *Daniel M.*, Protecting Workers' Rights in a Labour Environment Dominated by Nonstandard Work Arrangements and Unfair Labour Practices: An Empirical Study of Nigeria, *International Journal of Interdisciplinary Research and Innovations*, № 3(1), 2015, 65-83.

¹⁰⁰ *Miller S. D.*, Revitalizing the FLSA, *Hofstra Labor and Employment Law Journal*, № 19(1), 2001, 1-124.

exact details as well as the practical outcomes being impossible to predict, but the essay at hand has shown the soundness of the underlying principle. Workplace choice, as a guaranteed right of the employee, is a valid notion, the study and exploration of which is a necessary stepping stone in the development of both the Georgian and international employment law.

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