

National Research University
Higher School of Economics

as a manuscript

Demchenko Maria Vladimirovna

LEGAL REGULATION OF TRAINING AND ADDITIONAL
VOCATIONAL EDUCATION OF EMPLOYEES

PhD Dissertation Summary for the purpose of obtaining
academic degree Doctor of Philosophy in Law

Academic supervisor:
Buyanova Marina Olegovna,
Doctor of Science, professor

Moscow - 2019

The thesis was completed at the Department of Labor Law and Social Security
Law of the Faculty of Law of the National Research University
'Higher School of Economics'

The text of the thesis is deposited and available on the website of the Higher
School of Economics: <https://www.hse.ru/sci/diss/>

12.00.05 - Labor law; social security law

General characteristics of the research

The relevance of PhD thesis topic. At the present stage of the Russian economy's development, when the problem of its technological modernization is quite burning, knowledge and skills acquired by an employee in the course of vocational training are highly important, since they are instrumental to raising labor productivity and the efficiency of the performance of both an individual enterprise and the country's economy as a whole. The knowledge and skills of the employee, the quality of his vocational education and the level of his training also determine the competitiveness of the employee in the labor market and are an important condition for improving his quality of life. Thus, the employee vocational training is very significant from socio-economic perspective. The qualification of an employee is a factor determining the scope of its rights and duties. It affects the size of his/ her salary, should be taken into account while making a decision on his/ her transfer to another job, promotion or dismissing, etc. It determines the legal significance of the vocational education of the employee and enhances the role of its legal regulation in better ensuring the labor rights of an employee.

In recent years, Russian laws in the field of vocational education has undergone significant changes. In 2012, the Federal Law "On Education in the Russian Federation" was adopted, which changed the existing system of vocational education. According to the Federal Law No. 236-FZ of December 3, 2012, the RF Labor Code introduced the concept of employee qualification, and Federal Law No. 122-FZ of 02.05.2015 introduced the provisions regulating the procedure for the development and approval of professional standards, which are intended to replace a single tariff qualification manual of works and professions of workers and a single qualification manual of the positions of managers, specialists and employees. Changes in the legal regulation of vocational education issues are designed to meet the urgent practical needs of training skilled

workers. At the same time, not all the problems have been solved. In particular, the right of an employee to pass an independent qualification assessment is ensured insufficiently, and the norms of labor laws establishing guarantees and benefits for apprentices receiving vocational education should be improved. These problems require academic understanding, and their solution calls for conducting a special academic research.

This determines the relevance of the subject of the present thesis research.

Degree of scientific development of Ph.D. thesis research. In academic legal literature, the specific aspects of the legal regulation of vocational education of employees were covered in the studies of such Russian legal scholars as N.G. Aleksandrov, V.G. Glebov, V.L. Geikhman, S.Yu. Golovin, O.B. Zaitseva, D.L. Kuznetsov, R.Z. Livshits, A.M. Lushnikov, M.V. Lushnikova, A.F. Nurtdinova, Yu.P. Orlovsky, A.E. Pasherstnik, A.Ya. Petrov, Yu.N. Poletaev, L.V. Seregina, V.N. Smirnov, O.V. Smirnov, V.G. Soifer, V.N. Tolkunova, K.P. Urzhinsky, G.V. Khnykin, L.A. Chikanova, etc.

At the same time, the problems of the legal regulation of training and further vocational education have not been adequately studied. N.V. Zakalyuzhnaya's study (2006) is devoted exclusively to the legal forms of determining employees' qualification. A.V. Ivashkovskaya's Ph.D. thesis (2007) examines the issues of legal regulation of the relations in the field of vocational training of employees in the context of the reforms in vocational education system. The problems of the legal regulation of further vocational education have not been studied in it. In N.V. Novikova's Ph.D. thesis (2007), the problems of regulatory framework of the relations in the field of further training are highlighted in terms of the trends in the development of these relations in market economy and the possibility of implementing international standards of further vocational training of employees. Zandanova I.V.'s Ph.D. thesis (2011) is devoted only to the issues of the apprenticeship contract.

In addition, all these works were carried out on the basis of the previous laws, which was seriously amended by Federal Law No. 236-FZ dated December, 03, 2012.

At present, there are practically no monographs in which the problems of the legal regulation of the training and further vocational education of employees are investigated comprehensively and which take into account the latest amendments to the labor laws.

Thus, the complexity and severity of the practical problems facing the Russian legislator to improve the legal regulation of training and further vocational training of employees accompanied with lack of theoretical development in academic legal literature have determined our choice of the subject of our thesis research.

Thesis purpose and objectives. Based on the analysis of current laws and judicial practice, the research work is chiefly designed to identify the peculiarities of the legal regulation of the training and additional vocational education of employees at the present stage and to determine the ways for its improvement.

Realization of this objective implies the solution of the following tasks:

- identifying trends in the development of laws on vocational education;
- clarification of the essential concepts of training and additional vocational education of employees, taking into account the latest amendments to labor laws;
- identification of the features of contemporary Russian laws on the training and additional vocational education of employees;
- determining specific features of legal regulation in the field of professional requirements for employees and the specifics of existing professional standards;
- Establishment of the specificity of the employees' rights to training and additional vocational education:
- identification of the ways to strengthen guarantees for the enforcement

of employees' rights to training and additional vocational education.

Theoretical and methodological basis of the research. The theoretical base of the research was made by the academic works of the leading Russian scholars, dealing with the problems of labor law.

The methodological basis of this thesis research was the dialectical method of cognition. When writing this work, we also used such specific methods of academic research as historical, legal, systemic and structural, concrete sociological, comparative legal, formal legal, statistical methods.

Normative and empirical basis of the PHD thesis. The provisions and conclusions of the thesis research are based on the provisions of the Russian labor laws, interdepartmental and departmental regulatory legal acts. The empirical base of the thesis research was made by the judicial practice materials.

Target and scope of research. The scope of this thesis research is a complex of social relations that arise and operate in the sphere of training and additional vocational education of employees (including the legal regulation of professional standards).

The target of the thesis is legislative and subordinate regulatory legal acts governing the issues of training and additional vocational education of employees, including professional standards.

The scientific novelty of Ph.D. thesis is manifested in the fact that on the basis of a systematic approach, we have comprehensively revealed the features of legal regulation of training and additional vocational education of employees at the present stage. The study enabled to reveal specific features of the formation and development of laws on training and additional vocational education of employees, and to determine general characteristics and differences between the content of the professional standard and that of uniform qualification and tariff-qualification manuals. The author has also determined the prospects for the development of laws for the training and additional vocational education of employees.

In addition, the scientific novelty of the research is determined by the provisions that are submitted to the thesis defense procedure.

The main findings and arguments to be defended:

1. The following stages can be distinguished in the development of Russian laws on the training and additional vocational education of employees:

1) IX - XV centuries - estates and professional system of education emerged. The relationship between the master and the apprentice were governed by a civil law contract;

2) XV century - early XVIII century - provisions that establish relations with respect to apprenticeship are fixed in the form of separate norms in legal acts regulating a wider range of social relations (labor and civil law);

3) early XVIII century - early XX century. - two-component system of vocational training of workers was formed: a) state educational institutions and the totality of schools and colleges associated with plants and factories; b) Institution of craft apprenticeships. A system of regulatory legal acts serving as a regulatory framework of the relations in the sphere of vocational education was formed;

4) The October Revolution of 1917 - early 1930s - the process of forming the Soviet laws on vocational education. Two systems of employee training emerged: a) system of training workers in the field of industrial production; b) a system for training workers in the field of non-agricultural producers' cooperatives. Special regulatory legal acts were adopted to regulate vocational training in schools of factory apprenticeship and apprenticeship among handicraftsmen, artisans, in non-agricultural producers' cooperatives, and cooperative craft societies/ artels. Norms establishing the requirements for the qualification of certain categories of workers were introduced into regulatory legal acts;

5) early 1930s- end of 1950s - streamlining the legal regulation of training and retraining of employees and qualification requirements for employees. A

system of tariff qualification manuals is formed, containing qualification requirements for employees;

6) end of 1950s - early 1990s - three-link system of vocational training, including vocational education, secondary specialized education and higher education is legally consolidated, further guarantees of workers' rights to vocational education were provided, organizational forms of vocational training were improved;

7) the dissolution of the USSR (December 1991) - 2012 - the reform of the vocational education system. State educational standards were introduced, which determined the mandatory minimum content of basic educational programs, the maximum amount of academic workload of students, the requirements for the level of vocational training of students. Three legal forms of educational institutions were consolidated: governmental, municipal and non-government (including private) and their legal status is established;

8) 2012 – till present - the system of vocational education undergoes changes. Today, it consists of 2 components: secondary vocational education and higher education. The former system of primary vocational education is transformed into a vocational training system. The system of tariff-qualification manuals is replaced by a system of professional standards. The norms on the professional standard are introduced in the Labor code of the Russian Federation (LC RF).

2. For the development of Russian laws of the training and additional vocational education of employees are typical following trends :

1) a rather high degree of continuity. Continuity in the legal regulation of vocational training was reflected in the reception by Soviet laws of individual ideas and provisions of laws of the Russian Empire and in the perception by the laws of the Russian Federation of the legal norms developed during the Soviet period and their adaptation to new socio-economic conditions;

2) the responsiveness of regulations, defining the content of the educational process, the requirements for students and the terms of instruction, and the relative stability of the regulations establishing the legal forms of vocational training;

3) increasing the role of legal regulation of retraining, additional vocational education and training of employees in ensuring the functional stability of labor relations.

3. The content of the concepts of qualification and additional vocational education is clarified.

Qualification is a characteristic of an employee that determines his ability to perform work of a certain profession and includes the following components:

a) A set of information required to perform work according to a particular profession (level of knowledge);

b) A set of skills necessary to perform work of a particular profession, as well as the degree of his proficiency (level of skills and professional skills);

c) Job experience in the profession (level of experience).

Additional vocational education is the process of an employee having professional knowledge, competencies and skills in any profession, obtaining professional knowledge, competencies and skills in another profession (professional retraining) or professional knowledge, competencies and skills in the previous profession, but of higher level (advanced training).

The criterion of the difference between the two varieties of additional vocational education - the further training and professional retraining - is a sign of the connection of the vocational training an employee is receiving with the one he has already obtained. This feature is inherent to further training, but is lacking in professional retraining.

4. Analysis of the professional standard as an official document showed that it meets all the features of a regulatory legal act recognized by a legal doctrine, but it is adopted not by a government body but by another entity having

the powers of a government body. This requires expanding the concept of a regulatory legal act.

It is proposed to treat a regulatory legal act as an official document adopted by the authorized government body or other entity endowed with the powers of the government body, within its competence and containing norms aimed at regulating public relations and binding on the parties.

5. It is necessary to distinguish between the concept of a professional standard as a qualification characteristic and the concept of a professional standard as a regulatory legal act. At the same time, there is a close relationship between these concepts.

The professional standard as a qualification characteristic can be defined as a model (formal), formalized qualification of an abstract employee expressed in the aggregate of mandatory requirements for the level of knowledge, competencies, skills and experience of the employee and determining the employee's ability to perform a particular type of work or a specific labor function. These requirements are consolidated in the special regulatory legal act called the "Professional Standard".

Thus, the professional standard sets normative principles for the qualification of the employee and serves as a criterion for assessing the professional qualities of employees.

6. At the present stage of development, the right of an employee to training and additional vocational education is a right - an opportunity, and is not a right - assertion. At the same time, in present-day conditions in the field of the legal regulation of the right of employees to training and additional vocational education, there is a tendency of transformation : the right-opportunity into the right- assertion, which is expressed in the extension of the requirement of continuity to additional vocational education of certain categories of employees.

7. The right of an employee to pass an independent evaluation of qualifications is declarative. Its implementation depends on the will and discretion of

the employer. However, linking the implementation of the employee's labor rights with the will of the employer creates conditions for the violation of employee's rights. Therefore, it seems expedient to stipulate legally that the employer is liable for ensuring independent evaluation of employee's qualification at the employee's request in cases when this employee has a certificate of higher level of qualification and (or) actually performs work corresponding to a higher qualification level.

8. The scope of the rights granted by the Russian labor laws to an employee receiving additional vocational education is somewhat narrower than the scope of the rights granted to the employee that undergoes training. Thus, the current labor laws restrict the employee's ability to improve his level of qualification, which unreasonably limits his rights to obtain proper vocational education;

The legal regulation of additional vocational education requires differentiation of the norms of labor law, the separation of provisions on further vocational education into independent articles of the LC RF. It is proposed to expand the scope of the employee's rights for additional vocational education, particularly including a possibility of compensating him for the costs of raising his qualification at his own expense, if he cannot continue to perform the assigned labor function without further training.

9. Russian labor laws does not fully regulate the issues of guarantees for the enforcement of employees' right to additional vocational education. The right of employees for additional vocational education, established in the Labor Code of the Russian Federation, does not correspond to the corresponding duty of the employer. Therefore, it is proposed:

a) to legislatively fix the duty of the employer to refer an employee to obtain additional vocational education when it is needed to ensure that employee continue performing his labor function;

b) to make a provision to the law stipulating that when an employee obtains additional vocational education at his own cost, his training expenses are compensated by the employer, if without additional vocational education the employee cannot continue to perform the assigned labor function.

The theoretical and practical significance of the research is that the theoretical provisions formulated in it can be used to further study the problems of the legal regulation of training and additional professional education of employees. The author has revealed the peculiarities of the legal regulation of the training and additional vocational education of employees taking into account the latest changes in the laws, the analysis of the legal status of the subjects of training and additional vocational education of employees, the ways of improving the laws on training and additional vocational education of employees. Similarities and differences in the legal regulation of professional standards under the laws of Russia and foreign countries have been also revealed.

Thus, this study contributes to the development of the theory of labor law. The practical significance of the study is that the instructional and methodological provisions contained therein have been brought to the level of practical recommendations and can be used further in the developing target measures aimed at improving the legal regulation of training and further vocational education of employees.

Approbation of research results. The thesis has been executed, discussed and approved at the Department of Labor Law and Social Security Law at the Faculty of Law of the National Research University the Higher School of Economics.

The main points and conclusions obtained in the course of the thesis research have been presented by the author at the Twelfth Interuniversity Scientific and Practical Conference at the NRU HSE “Current Trends in the Development of Labor Law and Social Security Law”, held in 2017; at the International Scientific and Practical Conference at the Academy of Labor and Social

Relations "Contemporary Labor Law: from theory to practice (The Smirnov readings)" in 2018 and other conferences of young researchers, round tables, and also presented by the author in 4 academic publications. The materials of the research were used in the preparation of curricula and teaching the branch of science "Labour Law" at the Department of Labor Law and Social Security Law of the NRU HSE.

The scope and structure of PH.D. thesis The thesis is executed in a volume corresponding to the requirements of the Higher Attestation Commission of Russia. The work consists of the introduction, three chapters, including eight paragraphs, conclusion, and a bibliographic list.

CONTENT OF THE RESEARCH PAPER

In the introduction, the urgency of the thesis research subject is substantiated, the subject, goals and objectives of the study are determined, methodological approaches are outlined, scientific novelty is substantiated, the main provisions of the thesis put forward for defense, data on the scientific, theoretical and practical significance of the thesis research have been formulated, the data on approbation of the research results have been provided.

In the first chapter "The concept and formation of laws on training and further vocational education" the emergence and development of laws on training and additional vocational education of employees are analyzed and overall characteristics is given.

In the first paragraph of the first chapter, the history of the development of Russian laws on the training and additional vocational education of employees is analyzed.

At the early stages of the development of the Old Russian state, the relationship between the master and the apprentice (his legal representatives) was governed by a civil-law contract that determined the period of apprenticeship,

the duties of the apprentice, the obligations of the master, etc. By the XV century, the relations regarding apprenticeship had reached such a degree of development that individual norms aimed at regulating them started to be established by the law (see, for example, Article 102 of the Pskov Court Charter). Further development of the laws on vocational education led to establishment of system of workers' training for industrial needs in early 20th century in the Russian Empire. It comprised state educational institutions, training specialists of engineering and technical profile and management personnel; as well as the totality of schools and colleges at factories and enterprises that provided general education of workers in specialties, graduates of which started to discharge labor functions not necessitating high qualification level. The legal regulation of the training of workers for the needs of industry was governed by separate norms enshrined in various regulatory legal acts governing firstly, labor relations (for example, the Charter on Industrial Labor, the Rules for Supervision of Institutions of the Factory Industry, etc.) and, secondly, the activities of educational institutions (for example, the Provisional Regulations on the Technical School of the Postal and Telegraph Office). At the same time, the system of training workers for the needs of handicraft industry was operating in parallel in the form of craft apprenticeship institution that was regulated by the Crafts Charter, as well as by civil law standards.

A new stage in the development of laws on the vocational training of employees began with the formation of the Soviet state. In the early 30-ies in the USSR there were two main and independent systems of training employees, but they had similar features. 1) system of training workers in the field of industrial production; 2) a system for training workers in the field of nonagricultural producers' cooperatives. Both systems had two legal forms of operation: in the form of factory schools, etc. apprenticeship/ discipleship and in the form of a team training order. The legal regulation of the training of industrial and fishing cooperation workers was carried out by various regulatory legal acts, but incorpo-

rating legal norms of similar content. The individual training of workers, carried out by handicraftsmen and artisans, played a supporting role and was gradually forced out by organized forms of training. The legal norms regulating the individual training of employees were included in regulatory legal acts on apprenticeship in non-agricultural producers' cooperatives. At the same time, the totality of the existing norms on the training of employees began to be applied to the labor law. Simultaneously with legally establishing the system of primary training of workers represented by schools of factory apprenticeship and a brigade training order, norms aimed at regulating the additional education and further training of workers were adopted.

Streamlining the legal regulation of training and retraining of workers and requirements for students allowed the legislator to pay attention to the legal regulation of requirements raised to employees. The emerging practice of regulating qualification requirements for employees through tariff-qualifying manuals proved to be efficient. These manuals enabled to unify the qualification requirements for employees performing similar work at different enterprises, to differentiate the remuneration of employees according to their qualifications, complexity and responsibility of the work performed.

In the 1950s, in the conditions of accelerating scientific and technological progress, strengthening mechanization and automation of labor, a need arose to reform the existing system of employees' training. The USSR Law "On Strengthening the Connection of School with Life and the Further Development of the Public Education System in the USSR" was adopted, which changed the system of professional training of employees. In the 1960-ies amendments were made to the legal regulation of the further training of employees. The following were recognized as the main forms of further training of employees: on-the-job training at evening and correspondence departments of higher and secondary special educational institutions; evening and correspondence higher and secondary special educational institutions; short-term refresher courses. In the 1970s

and 1980s, separate organizational measures were taken to increase the efficiency of the activities of vocational schools and to improve the quality of vocational training and further training of employees.

After the collapse of the Soviet Union, the reform of the education system, initiated by the Law of the Russian Federation dated July 10, 1992 No. 3266-1 "On Education" also touched upon the professional training of employees. State educational standards were introduced, which determined the mandatory minimum content of basic educational programs, the maximum amount of academic workload of students, the requirements for the level of vocational training of students, the requirements to training level of graduates. In the mid-90s in Russia, the education system as a whole and the vocational education system in particular were substantially reorganized.

In 2012, a new Federal Law "On Education in the Russian Federation" was adopted, which, unlike the previous laws, devoted a separate chapter to the regulation, origin, change and termination of educational relations (Chapter 6). The law also changed the system of vocational education. In the same year, the Labor Code of the Russian Federation introduced provisions on the qualification of the employee and the professional standard, according to which the characteristics of qualification required for an employee to pursue a certain type of professional activity, was established by the professional standard.

With the adoption of these laws, a contemporary stage in the development of laws on qualifications, training and further vocational education of employees began.

In the second paragraph of the first chapter, the content of concepts, training and additional vocational education of employees is examined.

The legislator does not define the training of the employee, but an analysis of the norms governing it allows making a conclusion that this concept is used as a synonym for the concepts of education and training, i.e. is understood as the process of acquiring the professional knowledge, competencies and skills

necessary for the employee. The training of an employee is the process during which an employee obtains professional knowledge that is necessary for the performance of a certain more or less qualified work and acquires professional competencies and skills.

Additional vocational education is the process of an employee having professional knowledge, competencies and skills in any profession, obtaining professional knowledge, competencies and skills in another profession (professional retraining) or professional knowledge, competencies and skills in the previous profession, but of higher level (advanced training).

The criterion of the difference between the two varieties of further vocational education - the further training and professional retraining - is a sign of the connection of the vocational training received by the employee with the one he / she has obtained previously. This feature is inherent in further training, but is lacking in professional retraining.

In the third paragraph of the first chapter, the peculiarities of applicable laws on the training and additional vocational education of employees are examined.

Having examined the specific features of contemporary Russian laws on training and further vocational education of employees, the author has revealed that labor laws have made a greater contribution to regulatory framework of the relations in the field of qualification, training and vocational education of employees. In addition, the analysis of legislative provisions on training and vocational education of employees allowed the author to conclude that the legal nature of the apprenticeship contract is of a mixed, labor-legal and civil-law nature. At the same time, if the civil law component prevails in the legal nature of the apprenticeship contract with a job-seeker then the labor legal component prevails in the legal nature of the apprenticeship contract with the employee.

A peculiarity of the Russian laws on the training and additional vocational education of workers lies in strengthening the reception of international stand-

ards in the field of vocational education. Currently, there is a tendency for the rapprochement of the Russian laws on the training and further vocational education of workers with internationally recognized norms and principles in force in this field.

In the second chapter "Problems of Legal regulation of vocational training", the specifics of the content and provision of the right of employees to vocational training are examined.

In the first paragraph of the second chapter, the issues of legal regulation of professional requirements for employees and professional standards are examined.

The vocational training forms the initial level of qualification required for the performance of the labor function in accordance with the employment contract with the employee who is just starting his/ her labor activity. If the vocational training was carried out in accordance with an educational program with state accreditation, the qualification received by the employee is recognized by the state, and the legislator obliges a private employer also to recognize the qualification obtained by employee as a result of such training. According to the Decree of the Government of the Russian Federation of November 18, 2013 № 1039 state accreditation of educational programs is considered as an integral part of state accreditation of educational activities of the educational establishment. Hence it follows, that it is only educational establishment that has state accreditation is allowed to provide educational services in line with certain curricula and, accordingly, to assign qualifications, which should be recognized by the employers, to the graduates.

Vocational training in line with educational programs with state accreditation guarantees that the qualification received by a graduate of an educational institution corresponds to professional standards. The professional standard as a qualification characteristic can be defined as a model (formal), formalized qualification of an abstract employee expressed in the aggregate of mandatory re-

quirements for the level of knowledge, competencies, skills and experience of the employee and determining the employee's ability to perform a particular type of work or a specific labor function. At the same time, the professional standard has characteristics of a regulatory legal act: it is an official document; adopted by the authorized state authority; is aimed at the regulation of public relations; contains rules of conduct that are mandatory for an indefinite circle of persons; is designed for repeated use.

When transforming to the system of professional standards, the European experience of the European Qualifications Framework, created by the European Union as a tool for human resource management, was taken into account. Comparison of the contents of the Russian professional standards with that of the European Qualifications Framework shows that, having adopted the idea of the European qualification framework to develop the structure of comparable and compatible qualifications, domestic professional standards included not only competency indicators (characteristics of authority and responsibility), but also an indication of the way to achieve the level of qualification. Such a decision by the Russian legislator should be recognized as justified. It takes into account the experience of developing a professional standard of foreign countries, promotes the ideas that the developers of the European qualifications framework were guided by, and allows to adequately reflect the market demands.

In the second paragraph of the second chapter, the right of employees to vocational training and independent assessment of qualification is analyzed.

The Labor Code of the Russian Federation establishes that the employer determines the need for training of employees (vocational education and vocational training) and further vocational education, as well as the referring the employees to pass an independent qualification assessment for their own needs (Part 1, Article 196 of the Labor Code of the Russian Federation as amended by Federal Law No. 239-FZ dated July 03, 2016). This formulation puts the employee's opportunity to enforce the right for vocational training and passing an

independent evaluation of his/ her qualification given to him/ her by the labor laws dependent on the employer's will. The employees' right to pass training and further vocational training as well as to pass an independent qualification assessment is established in part 1 of art. 197 of RF LC. However, this provision neither release the employee from the expression of will of the employer. As soon as in Part 2 this article stipulates the enforcement of this right by concluding an agreement between the employee and the employer, i.e. again puts the enforcement of these rights of the employee in dependence on the will of the employer.

Linking the implementation of the employee's labor rights with the will of the employer creates conditions for the violation of employee rights.

At the same time, the consequences of employer's refusal to conclude a contract with the employee for his/ her vocational training and those of refusal to pass an independent evaluation of qualification are not entirely equivalent for the employee. If the employer decides that there is no need to train an employee or to support him/ her in passing further vocational education, the actual qualification of the employee, his/ her knowledge and skills will remain the same and the reasons for changing the terms of the contract (for example, for transferring an employee to another job, raising his/ her salary) will not arise. At the same time, no obligations of the employer established by labor laws are violated. However, in case if an employee has upgraded his/ her qualification and, accordingly, performs work of higher quality, and the employer refuses to assess the qualification of such an employee, in fact he/ she deprives the employee of the right to timely and full payment of his / her salary in accordance with his/ her qualification, the quantity and quality of the work performed (paragraph 4 of part 1 of Article 21 of the Labor Code of the RF). In this way, the employer violates its obligations to provide employees with equal payment for the work of equal value and to timely pay in full the amount due to the employees in accordance with the Labor Code of the Russian Federation, the collective agreement,

internal labor regulations, labor contracts (paragraphs 5 and 6 of Part 2 of Article 22 of the LC RF). In such cases, the employee cannot protect his/ her labor rights in court, since speaking formally, the employer has not allowed any violation of labor law norms.

Therefore, it seems expedient to consolidate in the legal laws that the employer is liable to ensure that the employee passes an independent evaluation of his/ her qualification at his/ her request in cases when this employee has a document confirming a higher level of qualification and (or) he actually performs work corresponding to a higher skill level.

In the third paragraph of the second chapter, questions of guaranteeing the enforcement of employee's right to vocational training are considered

Consideration of the problems of ensuring the enforcement of employees' right to training and further vocational education showed that the norms of labor laws establishing guarantees and benefits for students receiving vocational education have certain gaps and deficiencies.

The Russian legislator, extending all the provisions of the Labor Code of the Russian Federation to the apprentices who have entered into an apprenticeship contract with the employer, does not differentiate this requirement depending on the apprentice's status: whether the apprentice is an employee who has concluded an employment contract with the employer or is undergoing vocational training on the basis of a separate apprenticeship contract without entering into an employment relationship with the employer. Hence it follows that an apprentice who has not entered into a labor contract with an employer and who does not maintain employment relationship with him/ her, nevertheless has the right to participate in the management of the enterprise, which is unreasonable, since such an apprentice cannot be considered a full member of the work collective, and has interests, substantially different from the interests of the employee.

Based on the literal interpretation of art. 206 of the Labor Code of the Russian Federation, such conditions of the apprenticeship agreement which, alt-

though they do not contradict the provisions of the Labor Code of the Russian Federation, collective and other agreements, but do not comply with the norms enshrined in other laws and subordinate regulatory legal acts, nevertheless, may be deemed as valid and applicable. This can lead to unreasonable infringement of the apprentice's rights and legitimate interests, a decrease in the level of rights and guarantees established by law and deterioration of the legal status of the apprentice as compared with the rules established in laws and by-laws.

By fixing the right of a person who successfully completed the apprenticeship to be released from the probationary period, the Russian legislator did not determine the criteria for the success of the training, which leaves the decision-making regarding this issue to the discretion of the employer. This creates an opportunity for an unjustified restriction by the employer of the rights of apprentice who have received vocational training and obtained a relevant document, such rights being consolidated in the Labor Code of the Russian Federation.

The candidate for the degree has made suggestions on introducing changes and additions to the current labor laws aimed at overcoming the above mentioned deficiencies.

The third chapter, “ Additional vocational education in Russia and abroad” analyzes the special aspects of exercise of the employee's right to additional vocational education.

In the first paragraph of the third chapter, the specifics of the right of employees to further vocational education in Russia and abroad are analyzed.

Additional vocational education allows the employee to obtain the qualifications necessary to perform a new type of professional activity, and, thereby, ensures the enforcement of his right to work under the conditions of production modernization. However, the Russian labor laws does not stimulate the employer to creating the necessary conditions so that employee who receives additional vocational education will study and work concurrently. Such a duty of the Labor

Code of the Russian Federation is fixed only in respect of the employee being trained (Part 5 Article 196 of the LC RF).

The fact that the legislator did not envisage the employer's obligation to create conditions to study and work concurrently for an employee who is obtaining additional vocational education, makes it difficult for employees to exercise this right, strengthens their dependence on the employer's will in the field of further training. Thus, one should realize, that current labor laws restricts the employee's ability to improve his/ her level of qualification, which unreasonably limits his/ her rights to obtain proper vocational education;

Improving the legal regulation of additional vocational education, it seems useful to get advantage of the international legal regulation experience in the field of vocational education, and foreign experience, in particular, of Western European countries. The paper analyzes the laws of the countries of Western Europe and legal acts adopted within the framework of the CIS. Proposals are being made to improve the legal regulation of further vocational education.

In the second paragraph of the third chapter, problems of guarantees for the enforcement of employees' right to additional vocational education are analyzed.

The employees who receive additional vocational education in accordance with the concluded apprenticeship agreement, or are referred for training on the basis of the order of the head of the organization should be covered by the same guarantees as are provided for employees undergoing vocational training, considered in paragraph 2.3 of this study. However, it must be borne in mind that these guarantees apply only to those employees who have been already receiving additional vocational education. In addition, it should be noted that according to Part 3 of Art. 196 of RF LC, the forms of additional vocational education of employees are determined by the employer (although taking into account the opinion of the representative body of employees). This objectively makes it difficult for an employee to realize his right to additional vocational education.

At the same time, the current labor laws somewhat strengthen the guarantees of enforcing the employee's right to additional vocational education in the event of the liquidation of his workplace caused by violations of occupational safety requirements. The provisions of para. 8 p. 1 of art 219 of RF LC, granting the employee the right to additional vocational education at the employer's cost in the event of the liquidation of the workplace caused by violations of occupational safety requirements, contribute to higher competitiveness of the employee in the labor market.

Russian labor laws also provide pedagogical workers and state civil servants with enhanced guarantees to exercise a right to additional vocational education. Such practice should be expanded. In particular, we believe that it is necessary to establish appropriate safeguards for medical workers, legal servants of enterprises and organizations, as well as for women who have dependent children of minority age, in line with the separate regulatory legal acts.

To strengthen the guarantees of the enforcement of employees' right to additional vocational education, it is necessary to take advantage of the possibilities of creating departmental regulatory legal framework of labor relations. Departmental regulatory legal acts may specify the obligation of the employer to create conditions and pay for the additional vocational education passed by his employee, more active participation of the employee in the planning of further vocational education, establishing the periodicity of the employee's taking further vocational education, etc.

In conclusion, the main findings of the research have been formulated. Three academic works were published on the subject of the thesis.

1. Demchenko M.V. The right of workers to training and independent assessment of qualifications // Vestnik VSU. Series : Law . 2018. №4. p. 259-269.
2. Demchenko M.V. Analysis of the concepts of qualification, professional standart, training and additional professional education of employees // Legislation. 2019. №3. p. 27-33.
3. Demchenko M.V. Additional professional education in Russia and abroad // Legislation. 2019. №9. p. 62-68.