

## ЕҢБЕК ҚҰҚЫҒЫ, ӘЛЕУМЕТТІК ҚАМСЫЗДАНДЫРУ ҚҰҚЫҒЫ LABOR LAW, SOCIAL SECURITY LAW ТРУДОВОЕ ПРАВО, ПРАВО СОЦИАЛЬНОГО ОБЕСПЕЧЕНИЯ

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# Comparative legal analysis of the legislation of Kazakhstan and some OECD countries on the labor peculiarities of medical and pharmaceutical workers<sup>1</sup>

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

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

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

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

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#### Introduction

Health is undoubtedly an indispensable asset for everyone. Without it many other values are lost. At the same time, it must be understood that for a state, the protection of the health of its citizens is important, and it should not be attributed only to the personal benefits of a person, since it has an important social character. Fundamental laws of many countries define

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the value of human life and health, the right of everyone to health care and medical care. There is no exception in the Constitution of the Republic of Kazakhstan. According to the Constitution of the Republic of Kazakhstan, citizens of the Republic of Kazakhstan have a right to health protection and to receive a guaranteed volume of medical carefree of charge established by law (Article 29) [1].

In this regard, it is obvious that the level of public health is influenced by various factors, including medical and pharmaceutical activities, their development and reform, equipping with the latest technological equipment, organization of work, training of specialists, etc. especially in the new realities in which the whole world has been for a year. But even the most modern technological equipment will not be able to meet the challenges of public health and the provision of medical and pharmaceutical care to the population at a quality level without highly qualified specialists in the field of public health.

Thus, the most important role in the provision of medical and pharmaceutical assistance to citizens in the world and in Kazakhstan belongs to medical and pharmaceutical workers. Undoubtedly, this circumstance imposes a high professional responsibility on this category of workers, and thus increased requirements imposed on their qualifications and skills to perform a work of a doctor and other specialists like a chemist, a pharmacist, etc. The degree of risk to their life and health and the complexity of their work are defined in many regulations, aimed at ensuring, among other things, a favorable working environment for them. Thus, due to the adoption of the new Code of the Republic of Kazakhstan «On Public Health and the Healthcare System» (hereinafter the Code of the Republic of Kazakhstan on Healthcare) [2] and further reform of national legislation in July last year, the study of the specifics of regulating the work of medical and pharmaceutical workers at the present stage not only becomes particularly relevant, but also requires studying best international practices, including countries of the Organization for Economic Cooperation and Development (hereinafter – OECD).

#### Methodology

The study is based on traditional general scientific and special legal methods, such as analytical method (which is used for collecting, generalizing, and processing scientific information about labor peculiarities of medical and pharmaceutical workers) abstract-logical method; analogy method, comparative method, method analysis of foreign experience.

#### Discussion

In general, there have been studies in labor law science on the regulation of labour, mainly of health workers. At the same time, there isn't a comprehensive study devoted to the peculiarities of legal regulation of both medical and pharmaceutical workers. The study is relevant both scientifically and practically. We studied such works as the work of E.V. Astrakhantseva (2008), which deals with the regulation of rights of health workers and their social security; T.A. Belokolodova (2017), which investigates the labor law status of a medical worker and its features. Also, there have been analyzed individual scientific articles of such authors as Zh.B. Auelbekova, T. Kantsidailo, B.K. Sorokin, M. Tanner and others.

Medicine and pharmacy have been closely interlinked fields at the core of health care for a long time during their development, as medicines have been remaining the main means of medical treatment. Initially, the activities of doctor and pharmacist were not clearly separated, as the «doctor» was also a manufacturer of medicines. Over time, pharmacy, as an independent field, and its representatives do not lose their connection with medical activities, interacting with health care workers [3, p. 3]. This is evidenced by the fact that the above mentioned Code of the Republic of Kazakhstan applies equally to both medical and pharmaceutical workers.

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

It should be noted that in international practice there is often a generalised concept of «health workers». For example, according to the WHO definition, health workers are people whose main activity focuses on improving health. These include health care professionals (doctors, nurses, pharmacists, and laboratory technicians) as well as administrative and support workers [4].

The use of Kazakhstani and international terminology will be considered equal in meaning in this study.

So, there are about 60 million healthcare workers in the world. Approximately, two thirds of them provide health services (providers), and one third perform administrative and support functions. According to a recent WHO annual report, at the end of March 2020 [5], globally there are approximately 16 doctors and 38 nurses (including midwives in most countries) for every 10 000 people.

The health workforce in Kazakhstan is characterized by higher levels of medical staffing, along with lower levels of paramedical staffing compared with global data. So, over 248 thousand medical workers work in Kazakhstan, including 72 877 doctors and 175 705 paramedical workers. The availability of doctors in Kazakhstan makes 39.6, in OECD - 33, the availability of nursing staff in Kazakhstan makes 95.5, in OECD - 91 per 10 thousand people [6].

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

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

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

The WHO estimates that at least 2 360 000 health workers and 1 890 000 administrative and support workers are needed to fill this gap, for a total of 4 250 000 health workers [7].

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

Turning to the direct description of normative sources, it should be noted that international legal norms in the field of labor relations, where medical and pharmaceutical workers are participants, are of a declarative nature for Kazakhstan.

This is because they are created by intergovernmental bodies, international the World Health organizations such as Organization (WHO), the European Medicines Agency and the World Medical Association. These acts are of a recommendatory nature and proclaim general principles of regulation of these legal relations and establish universal rules and standards.

The Geneva (1948) [8] and Helsinki (1964) [9] Declarations of the World Medical Association and the International Code of Medical Ethics (1949) [10] are prime examples of such instruments.

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

An international experience, in particular the experience of WHO, shows that among

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

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

Different countries are characterized by different levels of qualification, the ratio of nurses to doctors. Differences in the range of main occupations and qualifications, as well as in job satisfaction, also remain significant. The latter has negative statistics even in some OECD countries. For example, according to the Health Workers' Union of the Republic of Korea, in 2019, eight out of ten nurses wanted to quit their jobs due to poor working conditions and high workloads. The reasons cited by employees who wanted to quit included: poor working conditions and high workload (80.2%), team relations and employer policies (25.9%). Also, 56.8% of respondents reported that the workload per nurse was very high and 31.3% complained that they did not even have time to eat because of the high workload. Seven out of ten health care workers reported that the lack of staff and heavy workload made them feel worse and more than 65% of the respondents reported that they were prone to accidents [11].

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

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

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

state, the Landstings (political bodies) and municipalities.

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

In Germany, the regulation of the health care system is carried out by the central government and regional authorities. At the same time, the current price restrictions and fixed fees in our country mean that doctors are reluctant to provide more care to patients than minimum necessary because they are forced to work under conditions of rigid tariffs and a lack of financial incentives. This calls into question the quality of their services [13].

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

The territory of Kazakhstan is characterized by a very unequal distribution of the health workforce ranging from 20 to 45.7 per 10 thousand population. The provision of rural health care doctors remains low. The lack of qualified

health workers in remote and rural areas makes it difficult to access health services for a large proportion of the population. The steady upward trend in the proportion of doctors over 50 years of age observed in recent years indicates the risk of a possible increase in staff shortages in the next decade [14].

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

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

Problematics are inadequate technical equipment of workplaces, weak support from management personnel, outdated principles of human resources services, lack of social infrastructure of rural settlements, low salaries of medical and pharmaceutical workers in comparison with OECD countries. Thus, the ratio of the average salary of a doctor to the average salary in the economy in 2018 was 0.93:1 in Kazakhstan, while in OECD countries this ratio was 2.6:1. The difference in the value of the

salaries of a doctor in Kazakhstan and an OECD doctor was 6.9 times: a Kazakhstani doctor with his monthly salary can buy 2.4 consumer baskets, while a doctor in OECD countries can buy 16.4 consumer baskets [6].

#### Conclusion

Based on the study, we must state that the lack of a clear state personnel policy in the field of Kazakhstani health care has led to a quantitative and qualitative crisis of labor resources. Lack of motivational incentives to work, low wages, and insufficient social protection of health workers have led to a decrease in the inflow of personnel into the health sector. At the same time, there are problems of legal regulation of labor relations with medical and pharmaceutical workers, caused not only by the personnel management system, the lack of qualified managerial capacity, but also by the complex system of labor law in the health sector, associated with a ramified system of regulations, imperfect standards, and gaps in the legislation.

In this connection, we consider it appropriate to draw on the experience of some OECD countries, including in improving the legal framework for labor relations and using new and effective management methods in the health sector.

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### Медицина және фармацевтика қызметкерлері еңбегінің ерекшеліктері туралы Қазақстан мен ЭЫДҰ-ның кейбір елдерінің заңнамаларына салыстырмалы-құқықтық талдау

**Аннотация.** Мақалада медицина және фармацевтика қызметкерлерінің еңбегін реттеудің кейбір мәселелері, сонымен қатар, Экономикалық ынтымақтастық және даму ұйымының кейбір елдеріндегі денсаулық сақтау жүйесінің ерекшеліктері қарастырылады, олардың тәжірибесі мен Қазақстан Республикасының заңнамасы негізінде салыстырмалы талдау жүргізіледі.

Сондай-ақ, медицина және фармацевтика қызметкерлерінің құқықтық жағдайының ерекшелігі қарастырылады. Бұл оны реттеу еңбек құқығының жалпы нормаларына ғана емес, сонымен қатар осы санаттағы жұмыскерлердің қызметінің әртүрлі ерекшеліктеріне әсер ететін арнайы ережелерге де негізделетіндігімен түсіндіріледі. Медицина және фармацевтика қызметкерлерінің еңбегін заңнамалық регламенттеудің негізін халықаралық құқықтың жалпыға танылған қағидаттары мен нормалары, сондай-ақ ұлттық заңнаманың нормалары құрайды.

Мақалада әр түрлі санаттағы жұмыскерлердің құқықтық жағдайына қатысты түрлі дереккөздердің ішінде медициналық және фармацевтикалық қызметкерлерді құқықтық реттеудің ерекшеліктеріне арналған жеке кешенді зерттеу жоқ, осыған байланысты ғылыми зерттеудің тақырыбы өзекті болып табылады.

**Түйін сөздер:** медицина қызметкері, фармацевтика қызметкері, денсаулық сақтау жүйесі, еңбек ресурстары, ЭЫДҰ елдері, халықаралық-құқықтық нормалар, ұлттық заңнама.

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#### Сравнительно-правовой анализ законодательств Казахстана и некоторых стран ОЭСР об особенностях труда медицинских и фармацевтических работников

Аннотация. В настоящей статье рассматриваются некоторые вопросы регулирования труда медицинских и фармацевтических работников, особенности систем здравоохранения в некоторых странах Организации экономического сотрудничества и развития, проводится сравнительный анализ на основе их опыта и Республики Казахстан.

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

В статье делается акцент на том, что среди многообразия источников, касающихся правового положения различных категорий работников, отдельного комплексного исследования, посвященного особенностям правового регулирования как медицинских, так и фармацевтических работников не имеется, в связи чем актуализируется выбранная тема научного изыскания.

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

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