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TÍTULO: Regulación legal del emprendimiento de personas con discapacidad.

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RESUMEN: El problema del empleo de personas con discapacidad en la sociedad moderna es relevante y no menos importante. Las personas con discapacidad experimentan una serie de dificultades para encontrar un trabajo debido al hecho de que muy a menudo los empleadores no los emplean bajo varios pretextos, restringen sus derechos, y hacen que ciertos tipos de trabajo sean inaccesibles debido a la incapacidad física de las personas con discapacidad para sus diversos tipos. El trabajo para una persona es una condición importante para una vida plena. No es solo una forma de asegurar económicamente su existencia, sino también una oportunidad para realizar sus habilidades, incluidas las creativas. La actividad laboral es un factor en la introducción de una persona a los valores sociales.

PALABRAS CLAVES: empleo, discapacidad, derecho laboral, derechos humanos.

TITLE: Legal regulation of entrepreneurship of persons with disabilities.

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ABSTRACT: The problem of employment of people with disabilities in modern society is relevant and no less important. People with disabilities experience a number of difficulties in finding a job due to the fact that very often employers do not employ them under various pretexts, restrict their rights, make certain types of work inaccessible due to the physical inability of people with disabilities to their various types. Work for a person is an important condition for a full life. It is not only a way to economically ensure its existence, but also an opportunity to realize its abilities, including creative ones. Labor activity is a factor in introducing a person to social values.

KEY WORDS: Employment, disabled person, labor law, human rights.

INTRODUCTION.

Today, there is a certain stereotype in society that a person with disabilities cannot and does not want to work, that he lives in the care of close relatives and the state. However, we must not forget that among the disabled there are those who wish to work and be independent (Voskresenskaya, 2015; Stepanov, 2013; Stafford et al., 2019; Sitnikova et al, 2017).

A person with a disability is recognized as a person who has a health disorder with persistent dysfunction of the body due to diseases, the consequences of injuries or defects, leading to a limitation of life and causing the need for social protection (Zakalyuzhnaya, 2015). Depending on the degree of dysfunction of the body's functions, persons recognized as disabled are assigned a disability group (1, 2, 3), and the category “disabled child” is established for people under the age of 18. (Article 1 of

the Federal Law of November 24, 1995 No. 181-FL (as amended on July 29, 2018) “On the Social Protection of Persons with Disabilities in the Russian Federation”) (Lushnikova et al., 2018).

Unfortunately, the provisions of the current legislation have not yet led to the formation of an accessible environment for people with disabilities, and the provision of employment for people with disabilities (Stafford et al., 2019; Pionke, 2019; Park et al., 2019; Luz Mairena et al, 2019); for example, the share of passenger buses equipped for disabled people in 2011 was only 2.6% of the total number of buses, in 2017 - 12.1% (Voskresenskaya, 2015).

The percentage of unemployed among able-bodied persons with disabilities decreased slightly - from 22% in 2014 to 21.3% in 2018 (Kovalenko et al, 2019; Stepanov, 2013). The state recognizes the existing problems, Decree of the Government of the Russian Federation dated March 29, 2019 No. 363 approved the state program of the Russian Federation "Accessible environment", one of the expected results of the program is an increase in the proportion of priority social, transport, and engineering infrastructure accessible to people with disabilities and other low-mobility groups of the population in the total number of priority objects (up to 61.8 percent by 2025).

DEVELOPMENT.

Methodology.

The methodological basis of the research consists of general scientific, private scientific and special methods of cognition. The analysis method was used in the interpretation of regulatory legal acts, the study of special legal literature and the study of materials of judicial practice.

Literature review.

The scientific literature includes a sufficient number of studies relating to persons with disabilities. Attention is paid to various aspects - the receipt of education, treatment by the disabled, their inclusion in social relations, and employment (Kelli et al., 2019; Davydova, 2013). Studies are of

various sectoral nature - there are works on jurisprudence, economics, sociology, pedagogy (Stafford et al., 2019).

Scientific works are presented in the form of the above dissertations, monographs, articles in scientific journals and collections, published following the results of conferences. For example, on May 21-22, 2015, the International Scientific and Practical Conference "Disabled in the XXI Century: Education, Employment, Social Integration" was held, a collection was published, which included an article by Andrianova V.V. "Problems of providing employment for people with disabilities and persons with disabilities" (Andrianova, 2014). This article lists the reasons employers are reluctant to hire people with disabilities.

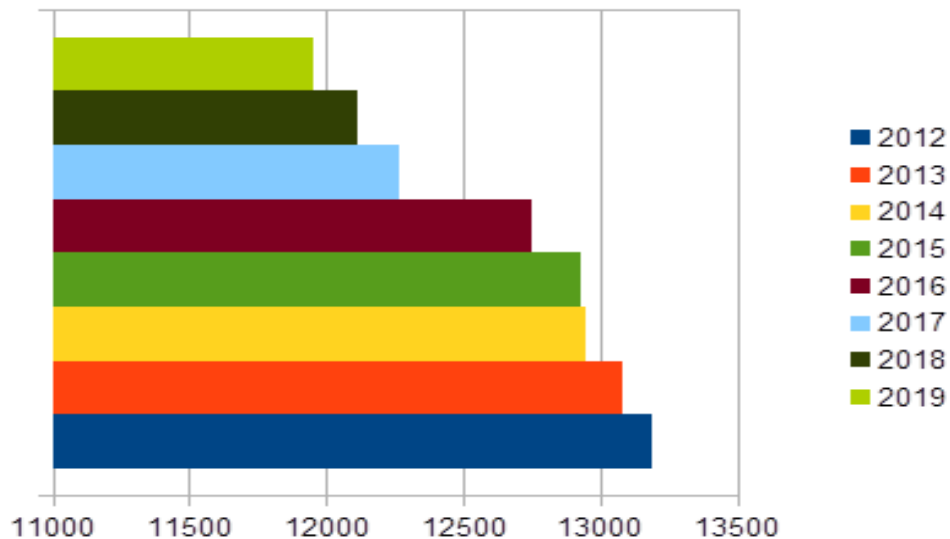
Monograph by Paryagina O.A. "Social Labor Law: Guarantees of Employment and Labor of Persons with Disabilities" (Paryagina O.A, 2014) highlights the pressing problems of ensuring the right to work of Russian disabled people, it justifies measures to improve domestic legislation. The collective monograph "Problems of Employment of Under-Protected Populations in Moscow", edited by A.V. Yarasheva (Yarasheva, 2017), presents the results of an analysis of the problems of employment, including persons with disabilities, reveals their labor attitudes, the specifics of the Moscow labor market (Yarasheva, 2017).

In legal studies, attention is paid to the participation of persons with disabilities in labor relations, and, probably, influenced by the prevailing paradigm about the protective function of labor law, the emphasis is on the analysis of the rights and guarantees that people with disabilities have in accordance with applicable law and the problems of the implementation of these rights and guarantees, while the Labor Code of the Russian Federation declares the protection of the rights and interests of not only the employee, but also the employer, which is recognized as an entrepreneur who enters into an employment relationship.

Discussion and results.

A direct impact on the implementation of entrepreneurial activity is manifested when a disabled person joins an entrepreneur and when a disabled person performs labor duties, as well as when a disabled person applies to an entrepreneur for work, the provision of services or the acquisition of goods. In the second case, the entrepreneur, by virtue of the Federal Law of the Russian Federation of November 24, 1995 N 181-FL “On the Social Protection of Persons with Disabilities in the Russian Federation”, is obligated to provide access to the objects of social, engineering and transport infrastructure of the guide dog with a document confirming her special training; provide support for people with persistent visual impairment.

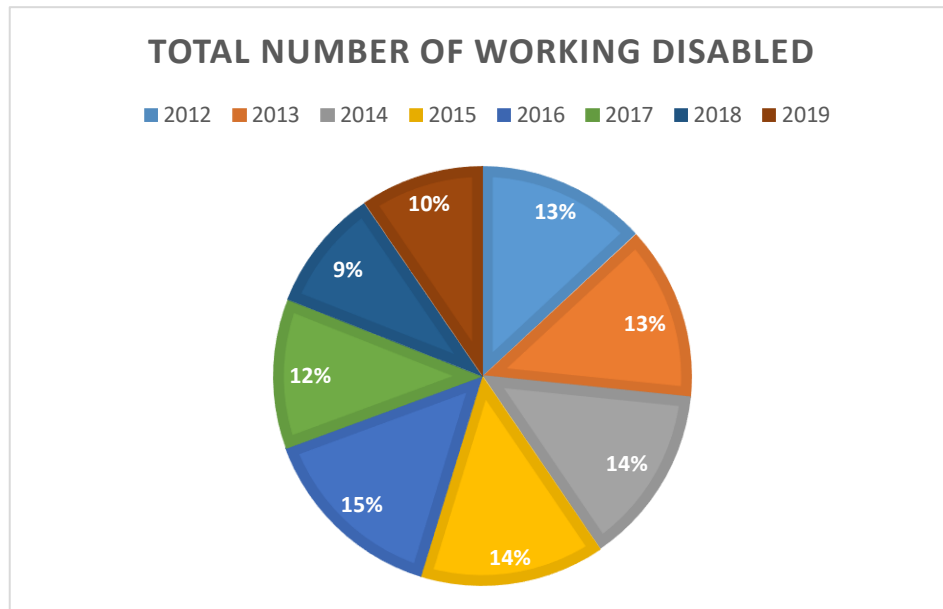
Figure 1. The dynamics of the number of persons with disabilities in the Russian Federation for the period from 2012 to 2019.



The above data demonstrate that despite a clear decrease in the number of people with disabilities since 2012, the number of this category of people remains impressive (Figure 1, Figure 2).

The named category of individuals affects the implementation of entrepreneurial activity, which is an independent activity carried out at one's own risk, aimed at the systematic receipt of profit from the use of property, sale of goods, performance of work or the provision of services (Article 2 of the Civil Code of the Russian Federation).

Figure 2. Total number of working disabled 2012 to 2019.



Such influence can be recognized as indirect and direct. Indirect influence is manifested in the establishment of obligations by the state in laws (Davydova, 2013; Pionke, 2019; Serov, 2014). The performance of these duties does not depend on whether or not people with disabilities live in the village, whether they applied to this organization or there is no such appeal.

We have analyzed legislation on the entrepreneurial activity of persons with disabilities: Articles 15, 21 of the Federal Law of the Russian Federation dated 24.11.1995 N 181-FL "On the Social Protection of Persons with Disabilities in the Russian Federation", paragraph 3 of Art. 25 of the Law of the Russian Federation of 04.19.1991 N 1032-1 "On employment in the Russian Federation" (Table 1).

Table 1. Legislation on the entrepreneurial activity of persons with disabilities.

Responsibilities regarding existing facilities managed by the entrepreneur, services rendered	Responsibilities regarding planned works and services	Responsibilities related to employment of disabled people
Provide access to residential and non-residential premises.	Ensure the adjustment of the planning and development of settlements, the formation of residential and recreational areas, the development of design solutions for new construction and reconstruction of buildings, structures and their complexes for unimpeded access for disabled people and their use by disabled people.	Set a quota for hiring disabled people, the size of the quota depends on the number of employees. The maximum value is 4% of the average number of employees.
To ensure unhindered use of rail, air and other means of transport	To ensure the adaptation of the development and production of public vehicles for unhindered access for disabled people and their use by disabled people	On a monthly basis, provide the employment service authorities with the information necessary for the implementation of vocational rehabilitation activities and the promotion of employment for disabled people
Ensure the possibility of independent movement through the territory on which objects of social, engineering and transport infrastructure are located, entering and leaving such objects, getting into and leaving the vehicle.	To ensure the adaptation of communication tools and information for unhindered access to and use by persons with disabilities	Submit monthly information to the employment service authorities on the availability of jobs and vacant posts created or allocated jobs for the employment of persons with disabilities in accordance with the established quota for hiring persons with disabilities.
Ensure the proper placement of equipment and information carriers necessary for access for disabled people to infrastructure facilities and services, taking into account their limitations.		
Ensure the duplication of sound and visual information necessary for people with disabilities, as well as inscriptions, signs and other text and graphic information with signs made in embossed braille, approval of sign language interpreter.		

To provide at each parking lot (stop) of vehicles, including near objects of social, engineering and transport infrastructure, recreational facilities, at least 10 percent of the places (but not less than one place) for free parking of vehicles operated by persons with disabilities and vehicles, carrying disabled.		
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As for the labor activity of people with disabilities, it should be noted that the number of working people with disabilities, as can be seen from chart 2, varies. The decrease in the number of working disabled people compared to January 1, 2016, according to the explanations of the Federal State Statistics Service, is due to the entry into force of Federal Law dated December 29, 2015 No. 385-FL, which provides for non-indexation of pensions for working pensioners, and a decrease in the number of working disabled people compared to 1 January 2017 is due to a change in the calculation methodology (in the past period, not only disabled people over 18 years old, but also disabled children aged 16 to 18 years who worked for at least a month were taken into account).

In general, the decrease in the number of disabled people working from 2012 to 2019 can be explained, first of all, by the decrease in the total number of disabled people in the Russian Federation. In turn, the change in the number of people with disabilities in Russia is also connected with the fact that disability of group I is established for 2 years, groups II and III - for 1 year, after the expiration of this period re-examination is carried out.

In exceptional cases, the disability group is established without specifying the period of re-examination, these provisions are provided for in clause 9 of the Rules for Recognizing a Person as Disabled, approved by Decree of the Government of the Russian Federation of February 20, 2006 No. 95 (as amended of June 27, 2019). In addition, it is impossible not to take into account changes in the economy, which also affect the employment of the population.

Obligations of an entrepreneur - employer of a disabled person according to the Labor Code of the Russian Federation and the Law of the Russian Federation of 04.19.1991 N 1032-1 "On Employment in the Russian Federation", the Federal Law of the Russian Federation of 24.11.1995 N 181-FL "On Social Protection of Persons with Disabilities in Russian Federation" (Table 2.).

Table 2. Obligations of an entrepreneur - employer of a disabled person.

Obligations at employment	Obligations at execution of an employment contract	Obligations at termination of an employment contract
Comply with a quota for disabled people.	for employees who are disabled I or II group, a reduced working time is set - no more than 35 hours a week; reduced working time does not entail a reduction in wages.	If, in accordance with a medical opinion, an employee needs to be temporarily transferred to another job for a period of more than four months or to be permanently transferred, then upon his refusal to transfer or if the employer does not have the corresponding job, the employment contract is terminated.
	The obligation to establish the working hours of the disabled person, taking into account the medical report.	
	The obligation to inform the disabled person of the right to refuse to work at night, on weekends, non-working holidays, from overtime.	
	Obligation to provide a vacation of at least 30 calendar days.	
	The obligation to provide leave without pay up to 60 calendar days a year.	

The fulfillment of the above obligations is ensured, including by the norms of the Administrative Code of the Russian Federation, which is punished by a fine of various sizes for the commission of the following offenses:

- ✚ Non-fulfillment by the employer of the obligation to create or allocate jobs for the employment of persons with disabilities in accordance with the established quota for hiring persons with disabilities (Article 5.42).

- ✚ Employer's refusal to hire a disabled person within the established quota (Article 5.42).
- ✚ Violation of the requirements of legislation providing for the allocation of parking lots (stops) for special vehicles for disabled people (Article 5.43).
- ✚ Evasion of the requirements to ensure conditions for persons with disabilities access to engineering, transport and social infrastructure facilities (Article 9.13 of the Administrative Code of the Russian Federation).
- ✚ Refusal to start production of public vehicles adapted for use by persons with disabilities (Article 9.14).
- ✚ Violation by the head of the organization or other official responsible for the organization of the public transport service system and the operation of vehicles of the requirements of the law, providing for the inclusion of vehicles accessible to the disabled in the public transport system (Article 11.24).
- ✚ Violation of labor laws and other normative legal acts containing labor law norms, in addition to a fine, a punishment in the form of a warning is provided (art. 5.27).

CONCLUSIONS.

Thus, the presence of disability among citizens affects the implementation of entrepreneurial activity both indirectly and directly. Such an influence is predetermined by the special state of health of persons with disabilities, due to which, in general, it should be recognized as permissible and justified.

At the same time, the introduction of certain guarantees for people with disabilities, which the entrepreneur is obliged to observe, raises questions, namely: the establishment of the duration of annual paid leave, as well as leave without pay, more than other employees, in conjunction with reduced working time, which should be paid in the same size as normal. It seems that these benefits for the disabled create an additional financial burden on the entrepreneur and are an advantage that

is not justified by the state of health. Opponents may refer to the need for longer vacation periods to restore health, however, if treatment is necessary, legislation provides for exemption from work with the payment of temporary disability benefits.

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