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## DEFINITION AND SIGNIFICANCE OF EMPLOYEE'S STATUS AS GENERAL LABOR SUBJECT

**Key words:** “economic realities” test, distinction between employee and independent contractor, control and relationship

**Açar sözlər:** “iqtisadi reallıqlar” testi, işçi və podratçı arasındakı fərq, idarəetmə və münasibət

**Ключевые слова:** тест “экономические реалии”, различие между работником и независимым подрядчиком, контроль и отношения

### Introduction

Employee's status as subject of Labor law is described variously in various domestic and international acts. Significance of status is seen in employee's position in relationship with employer, his benefits from employment contract. Some challenges are emerged from his subject status in labor law, so world states put forward their own approaches to this situation. Determination of status of employee targets to clarify his/her rights and duties certainly and halts risk of loss.

According to the article 8.1 of the Resolution concerning the International Classification of Status in Employment (ICSE) adopted by the Fifteenth International Conference of Labor Statisticians in January 1993, employees are all those workers who hold the type of job defined as "paid employment jobs". Employees with stable contracts are those “employees” who have had, and continue to have an explicit (written or oral) or implicit contract of employment, or a succession of such contracts, with the same employer on a continuous basis. "On a continuous basis" implies a period of employment which is longer than a specified minimum determined according to national circumstances. Regular employees are those 'employees with stable contracts' for whom the employing organization is responsible for payment of relevant taxes and social security contributions and/or where the contractual relationship is subject to national labor legislation. (5, p.8)

According to the article 20 of the Labor Code of Russia, the employee shall be an individual entering labor relations with the employer. It refers to the article 15 of this act, labor relations shall be the relations based on an agreement between an employee and an employer on the personal performance by the employee of a work function for payment (work of a certain specialty, with a qualification, in a position), on the employee's compliance with the internal working regulations with the employer providing the working conditions stipulated by the labor law, collective contract, agreements, labor contract. (3, p.15)

Article 3.2 of the Labor Code of Republic of Azerbaijan implies simple definition of “employees”. Employee is an individual who has entered into an employment agreement (contract) with an employer and who works in an appropriate workplace for pay. It does not consider any exceptions. (2, p.5)

Unlike from Russia and Azerbaijan, United States does not refer to unique legislative act. Although there are many specific legislative exceptions, the general practice in the United States is to define who is a covered “employee” for a labor or employment law statute or doctrine, according to the purposes for which the statute or doctrine were adopted. For example, under the common law doctrine of *Respondeat superior*, an “employee” is one who a person has the right to “direct and control” in the performance of some compensated duties, and accordingly, it is appropriate to hold the “employer” liable for the torts of the employee he “controls.” The default definition of employee in most federal protection legislation, for example the Fair Labor Standards Act, is the “economic realities test” in which the court wants to see if a person is in such a relation to another under the economic realities of the situation that it fulfills the goals of the act to find that person is an “employee” under the act. According to Fair Labor Standards Act, an employee is defined as “any individual who is employed by an employer.” Furthermore, the act states that “employ includes to suffer or permit to work.” While interpreting this uncertain definition, the Supreme Court has applied the “economic realities test.” The economic realities test focuses on the “whole activity” surrounding the employment relationship in determining whether the workers are employees for the purposes of the Act. Neither the common law definitions of employee and independent contractor nor any agreement between the parties are controlling in determining the nature of the relationship. Instead, the economic realities test considers whether the individuals at issue are economically dependent on the business for which they labor. This issue is highly fact-dependent and requires an analysis of the entire employment relationship. In *Rutherford Food Corp. v. McComb*, the Supreme Court interpreted the definition of employee to be quite broad under the Act, stating that “this Act contains its own definitions, comprehensive enough to require its application to many persons and working relationships which, prior to this Act, were not deemed to fall within an employer-

employee category.” The definition of employee under the Act deserves such broad construction because “the Act concerns itself with the correction of economic evils through remedies that were unknown at common law.” The Court determined in *Rutherford* that, according to the economic realities of the situation, the workers at issue were employees under the FLSA. The Court based this decision on the facts that: 1) the company’s equipment and facilities were used by the workers; 2) the workers had no business organization that could or did shift from one facility to another; 3) the workers were under close supervision by the managing official of the plant; 4) the profits to workers depended upon their work. Therefore, the workers in inquiry were economically dependent on the business for which they worked, and thus employees under the act. (7, p.117-119; 6)

The definition of “employee” under the National Labor Relations Act has been a significant source of conflict and dilemmas in recent years. The intention of the courts to exclude an increasing number of workers as “independent contractors,” “supervisors” or “managerial” employees has denied many workers who could have benefited from the provisions of the NLRA the protections of the Act. For example, American employers have been known to restructure their technical legal relationship with employees in order to escape coverage under the NLRA. For example, a trucking firm that employs drivers might “sell” the trucks to their drivers, with a lien on the truck and payments and service agreement subtracted from future carrying fees, in an effort to make the drivers “independent contractors” under the NLRA, and so escape from the act. With respect to the managerial exception, in *NLRB v. Yeshiva University*, the Supreme Court held that full-time faculty members at a large private university were “managerial” employees due to the faculty’s role in various areas such as faculty appointments, the setting of curriculum, and graduation requirements. The Court dismissed the National Labor Relations Board’s argument that faculty members were not aligned with management because they were exercising independent judgment rather than “conforming to management policies.” The Court stated that “the faculty’s professional interests, as applied to governance at a university like Yeshiva cannot be separated from those of the institution... The “business” of a university is education.” (7, p.123; 4)

The Yeshiva case has been a significant source of criticism by academic commentators. The potential impact of the Yeshiva case may be to effectively deny NLRA coverage for many professionals. The exclusion of workers from NLRA denies them protection for their basic rights of organization and, in doing so, precludes them from forming an effective union to bargain with their respective employers. (7; 124)

The lack of uniformity in the definition of “employee” has both perks and drawbacks. While defining “employee” according to the purposes of the statute can most fully impact the intent of state legislatures and Congress, it can also cause problems for the average American worker and employer by creating challenges to determine when, and by which, labor and employment law doctrines and statutes a person is covered. When the legislature fails to clearly explain the purposes of the statute that will guide the determination of who is an employee, the problems are of course magnified. Lack of uniformity and clarity raise legitimate notice objections in that potential employers and employees do not always know which doctrines or statutes apply to which potential employees, and also raise litigation costs as the parties endeavor to pick out these controversies. (7, 125)

The Internal Revenue Services in United States stimulates all businesses and business owners to be aware of the rules when it comes to classifying a worker as an employee or an independent contractor.

Here is key point for small business owners to keep in mind when it comes to classifying workers:

1. **Control.** The relationship between a worker and a business is important. If the business controls what work is accomplished and directs how it is done, it exerts behavioral control. If the business directs or controls financial and certain relevant aspects of a worker’s job, it exercises financial control.

2. **Relationship.** How the employer and worker perceive their relationship is also important for determining worker status. Key points to think about include:

1. Written contracts describing the relationship the parties intended to create whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation or sick pay

2. The permanency of the relationship

3. The extent to which services performed by the worker are a key aspect of the regular business of the company

4. The extent to which the worker has unreimbursed business expenses (1, p.1-2)

In UK there is significant distinction between employee and worker and also self-employed contractor.

An employee is an individual who has entered into or works under the terms of a contract of employment. The contract can be expressly agreed (in writing or orally) or implied by the nature of the relationship. Here are some characteristic features of employee status:

1. An individual must be obliged to do the work personally (rather than being able to send a substitute).

2. The employer needs to be obliged to provide the work and the employee is obliged to accept the work.

3. The employer needs to have some control over the way the employee carries out the work.

Worker status is sometimes seen as a “half-way house” between employee and self-employed status. Workers are entitled to fewer statutory rights than employees, but have some key legal rights:

1. Protection from discrimination.
2. Protection against unlawful deduction from wages.
3. Entitlement to the national minimum wage.
4. Self-employed status
5. The self-employed enjoy no statutory employment rights (although they may be protected by discrimination law).
6. Not being unfairly dismissed, receiving a statutory redundancy payment only apply to employees. (8)

### Conclusion

Overall, it is necessary to know coverage of employees under specific legislation act. Therefore, it facilitates to sort out legal issues in labor law. Significance of status of employee is seen in landmark cases, such as *Rutherford Food Corp. v. McComb*, and *NLRB v. Yeshiva University*. Exceptions from legislature may create challenges. Certain distinctions between employee, worker and self-independent contractor make it crucial to highlight rights and duties of employer toward them.

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### İşçinin ümumi əmək subyekti kimi statusunun anlayışı və əhəmiyyəti

#### Xülasə

İşçilərin ümumi əmək subyektivliyinin anlayışı və əhəmiyyəti adlı məqalədə əsas üstünlük Amerikanın Əmək və Məşğulluq haqqında qanunlarına verilmişdir. Qeyd edilir ki, işçinin hüquqi statusu qanunun məqsədinə uyğun müəyyənləşir. Qanunvericilikdən yaranan problemlər özünü məhkəmə işlərində göstərir. Eyni zamanda Rusiya və Azərbaycan Respublikasının işçiyə verdiyi anlayış öz sadəliyi ilə Amerika dövlətinin yanaşmasından fərqlənir. İşçinin statusuna görə əmək münasibətində tutduğu mövqe, digər subyektlərdən fərqi vurğulanır.

### Определение и значение статуса работников как общего субъекта труда

#### Резюме

Основное внимание в статье уделяется американским законам о труде и занятости. Отмечается, что правовой статус работника определяется в соответствии с целями закона. Проблемы, возникающие из законодательного органа, проявляются в судебном процессе. В то же время понимание России и работников Азербайджанской Республики отличается от подхода американского правительства к его простоте. Положение в отношении статуса занятости, отличие от других предметов подчеркивается.

**Rəyçi: dos. D.Qəmbərov**

Göndərilib: 18.03.2020

Qəbul edilib: 22.03.2020