

UDC 349.2

DOI <https://doi.org/10.32849/2663-5313/2021.12.12>**Leonid Mohilevskyi,***Doctor of Law, Professor, Honoured Lawyer of Ukraine, Vice-Rector, Kharkiv National University of Internal Affairs, 27, Lev Landau avenue, Kharkiv, Ukraine, postal code 61080, Leonid\_Mohilevskyi@ukr.net***ORCID:** [orcid.org/0000-0002-6994-6086](https://orcid.org/0000-0002-6994-6086)

Mohilevskyi, Leonid (2021). Disciplinary and material liability as a means of ensuring labour discipline. *Entrepreneurship, Economy and Law*, 12, 72–75, doi <https://doi.org/10.32849/2663-5313/2021.12.12>

## DISCIPLINARY AND MATERIAL LIABILITY AS A MEANS OF ENSURING LABOUR DISCIPLINE

**Abstract.** The *purpose of the article* is to describe disciplinary and material liability as a means of ensuring labour discipline.

**Results.** The article, on the basis of an analysis of the scientific views and the provisions of current legislation, clarifies the nature and content of disciplinary and material liability as a means of ensuring labour discipline. It is argued that, as well as punitive and remedial, liability is educational and stimulating, that is, it is aimed at raising the level of legal consciousness and legal culture of the parties to the legal relationship. The study reveals that the law considers “labour discipline” in four aspects: as a concept of labour law; as a principle of labour law; as an element of labour law; and as actual conduct. As a concept of labour law, labour discipline is a set of legal provisions governing the internal code of conduct and defining the labour duties of the parties to an employment contract, as well as the methods of ensuring performance of these duties. It is underlined that there are two aspects in the content of labour discipline: objective and subjective. Objective aspect means the order without which an enterprise cannot exist. To some extent, this order is governed by labour law and is formed as a specific part of legal order, adapted to the conditions of production and operating within the enterprise in the form of internal labour regulations. The subjective aspect is the performance of duties and the exercise of rights by the parties to employment relationship. The commission by an employee of a disciplinary misdemeanour, the exercise by the employer of disciplinary powers and the obligation of the violator of labour discipline to be punished also fall under the subjective aspect of labour discipline.

**Conclusions.** The concept of liability regulates the grounds for and the manner in which a party to labour relationship incurs additional onerous obligations (the type and measure of which are determined by law) in connection with the commission of a labour offence. As well as punitive and remedial, liability is educational and stimulating. In other words, it is aimed at raising the level of legal consciousness and legal culture of the parties to the legal relationship. It is aimed at their education for necessary conscious lawful behaviour as the most appropriate and beneficial for these persons and society as a whole.

**Key words:** labour discipline, disciplinary liability, material liability, employee.

### 1. Introduction

When signing an employment contract, the person (employee) undertakes to observe discipline established in the enterprise (organization or institution), determined by the legislation in force, as well as internal (local) regulations of the organization. The main purpose of the concept of labour discipline is to determine the conduct of an individual in the performance of one’s work duties. In addition, the concept aims to establish the efficient operation of the enterprise (institutions, organizations) and to ensure the efficient realization of labour and productive resources. Therefore, discipline is a prerequisite for the efficiency of an enterprise, institution or organization.

Some issues related to ensuring of labour discipline were studied in scien-

tific papers by V.I. Prokopenko, M.Y. Baru, Y.Y. Ivchuk, A.Y. Ryzhenkova, T.R. Kolo-moiets, T.M. Yamnenko, N.M. Onishchenko, O.F. Skakun, R.B. Topolovskiy, O.V. Smirnov, and many others. However, despite a large number of scientific contributions, the legal literature lacks comprehensive research on disciplinary and material liability as a means of ensuring labour discipline.

Thus, the *purpose of the article* is to describe disciplinary and material liability as a means of ensuring labour discipline.

### 2. Scientific approaches to defining labour discipline

First of all, it is necessary to focus on the essence of the concept “labour discipline” under the framework of the relevant problem”.

For example, A.O. Bakanin considers the concept of labour discipline in the narrow and broad meanings. According to him, in the first case, discipline “means the duty of everyone to work, strictly observing the rules of labour regulations established in enterprises, businesses, institutions”; broadly, labour discipline is a form of social communication between people in the process of teamwork (Bakanin, 1955, p. 14). Labour discipline is reflected in workers' direct perception of the regulations and in their actual behaviour in the exercise of their labour powers. Subjectively, labour discipline is the compliance or in compliance of the behaviour of an individual worker with the statutory requirements, that is, the observance or non-observance of discipline (Malikov, 2004, p. 123).

According to V.V. Zhernakov, as a concept of labour law, labour discipline is a set of legal provisions governing the internal code of conduct and defining the labour duties of the parties to an employment contract, as well as the methods of ensuring performance of these duties (Zhernakov et al., 2012). It is a set of legal provisions that regulate the subject matter such as: 1) organization's internal labour regulations; 2) mutual rights and duties of workers and employers; 3) measures for rewarding success in work; 4) disciplinary penalties on employees for misconduct in the workplace (Hruzinova, Korotkin, 2003).

The law considers “labour discipline” in four aspects: a) as a concept of labour law; b) as a principle of labour law; c) as an element of labour law; d) as actual conduct. As a concept of labour law, labour discipline is a set of legal provisions governing the internal code of conduct and defining labour duties of the parties to an employment contract, as well as the methods of ensuring performance of these duties. As a principle of labour law, labour discipline provides for employees' duty to observe discipline at work and employers' right to require employees to perform only those duties which are prescribed by law in force, local regulations and employment contracts. Moreover, labour discipline is an element of labour law relations, implying the worker's duty to comply with labour discipline of the entity and with its internal labour regulations. Labour discipline as actual behaviour is the status and level of compliance with work duties by employees in a particular enterprise, institution or organization (Zhernakov et al., 2012).

There are two aspects in the content of labour discipline: objective and subjective. The objective aspect means the order without which an enterprise cannot exist. To some extent, this order is governed by labour law and is formed as a specific part of legal

order, adapted to the conditions of production and operating within the enterprise in the form of internal labour regulations. The subjective aspect is the performance of duties and the exercise of rights by the parties to employment relationship. The commission by an employee of a disciplinary misdemeanour, the exercise by the employer of disciplinary powers and the obligation of the violator of labour discipline to be punished also fall under the subjective aspect of labour discipline.

An important guarantee of the proper performance of their work duties by the parties is the concept of liability in labour law. H.I. Uhriumova emphasises that disciplinary liability is a form of labour and legal liability and is one of the legal forms of influence expressed in the application of disciplinary sanctions against an employee, who has committed a disciplinary offence, by an employer vested with disciplinary authority (Uhriumova, 2005, p. 79). Disciplinary liability under labour law is the duty of the employee to answer for his/her breach of labour discipline to the employer and to be disciplined under labour law. A labour offence as grounds for disciplinary liability (traditionally referred to as a disciplinary misdemeanour) is a guilty, unlawful or improper performance of the duties by an employee under the labour legislation, collective agreements and labour contracts, which result in violations of the internal labour regulations of enterprises (Pylypenko, 2006).

According to V.V. Sereda, disciplinary liability is generally considered in two aspects: 1) as a certain response to a disciplinary misdemeanour in employment relations, the possibility of disciplinary sanctions against the offender, as defined in the labour law; 2) as an effect of the non-fulfilment or improper performance of work duties by a particular worker, with the application of sanctions for violation of labour discipline. In this aspect, disciplinary liability implies the duty of the offender to answer for disciplinary misdemeanour committed and to suffer the negative effects of personal, organizational or property constraints. The employer's response to a disciplinary misdemeanour is to demand an explanation from the offender of labour discipline; to impose sanctions on the employee in the manner prescribed by labour law (Sereda, 2014, p. 19).

A.M. Perunova argues that disciplinary liability is the duty of the employee to respond to the owner or a body authorized by him for the disciplinary misdemeanour committed and to suffer disciplinary action, provided for in labour law. That is, in labour relations, a worker is subject to disciplinary liability only to the owner and not to the State, as is the case of administrative and criminal liability, and the owner

has disciplinary liability towards the employee (Perunova, Selezhen, 2009). A disciplinary action may be imposed on the grounds of a labour disciplinary misdemeanour and without direct and actual damage to property of an employer. Its purpose is to influence labour discipline violator by imposing on him/her the obligation to bear unfavourable legal effects of a personal, material or organizational nature for violation of his/her work duties, with a view to influencing his/her consciousness and will and to changing them in the way provided by the employment contract, as well as developing an employee's sense of responsibility for the proper performance of his or her duties and for the prevention of further violations – compensation for property damage caused (Zhernakov et al., 2012).

### 3. Particularities of material liability

With regard to material liability, contrasting disciplinary liability, which is primarily punitive, it is remedial. Material liability, as a fundamental concept of labour law, is to ensure that the conduct of individuals is in accordance with the standards adopted by the State. This liability, contrasting disciplinary liability, is bilateral, since not only the employee is liable to the owner or authorized body, but also the owner is liable to the employee for causing damage to his/her property or health. Therefore, liability under labour law is a statutory duty of a party to an employment contract to compensate for damages caused to another party by unlawful and guilty acts (Prokopenko, 2000). In the absence of such damage, material liability shall not arise. Therefore, the ground for material liability is a labour offence.

According to S.M. Prylypko, the employee's liability under labour law has three purposes: protection of the employer's property from damage, loss, theft and compensation for injury caused by the employee. Bringing a worker to material liability does not preclude disciplinary actions on the guilty party, since the guilty employee both commits a labour disciplinary offence (disciplinary misdemeanour) and inflicts damage to property (a property labour offence); guarantees to protect the worker's wages from excessive, illegal and unjustified penalties in

case of material liability. This objective of material liability guarantees teaching the employee an attentive, careful, diligent, caring attitude to the employer's property, transferred to him/her for the performance of his/her work, to prevent further damage to the employer's property (Zhernakov et al., 2012).

O.M. Korotka identifies the following elements of liability as the concept of labour law.

First, material liability is an autonomous form of legal liability and can be applied alongside other types of liability, such as disciplinary, administrative and criminal.

Second, it is a bilateral mutual duty to compensate for the damage caused by wrongful acts to the other party to the employment relations.

Third, it arises only when a property offence has been committed, resulting in direct property damage to the other party to labour relations.

Fourth, liability of the parties to an employment contract arises only for damage caused in connection with the performance of labour or official duties.

Fifth, the purpose of liability of the parties to employment relations is to prevent the occurrence of damage and, at the same time, to protect the earnings of an employee from unreasonable deductions.

Sixth, material liability is, by its legal nature, a sanction for a labour-related property offence committed by an employee or owner or an authorized body due to failure to perform one's labour duties (Korotka, 2003, pp. 22–23).

### 4. Conclusions

The concept of liability regulates the grounds for and the manner in which a party to labour relationship incurs additional onerous obligations (the type and measure of which are determined by law) in connection with the commission of a labour offence. As well as punitive and remedial, liability is educational and stimulating. In other words, it is aimed at raising the level of legal consciousness and legal culture of the parties to the legal relationship. It is aimed at their education for necessary conscious lawful behaviour as the most appropriate and beneficial for these persons and society as a whole.

### References:

- Bakanin, A.O.** (1955). *O trudovoi distsipline v sotsialisticheskoy obshchestve* [Labor discipline in socialist society]. Ivanovo (in Russian).
- Hruzynova, L.P., Korotkin, V.H.** (2003). *Trudove pravo Ukrainy* [Labor law of Ukraine]. Kyiv: MAUP (in Ukrainian).
- Korotka, O.M.** (2003). Udoskonalennia pravovoho rehuliuвання materialnoi vidpovidalnosti v umovakh rynkovoi ekonomiky [Improving the legal regulation of liability in a market economy]. *Candidate's thesis*. Kharkiv (in Ukrainian).
- Malikov, V.V.** (2004). Spivvidnoshennia poniattia hromadskoho poriadku z inshymy sferamy suspilnykh vidnosyn [Correlation of the concept of public order with other spheres of public relations]. *Pravo i Bezpeka – Law and Security*, no. 1, pp. 120–125 (in Ukrainian).

**Perunova, O.M., Selezen, S.V.** (2009). *Tsyvylne pravo. Trudove pravo. Pidprijemnytske (hospodarske) zakonodavstvo: konspekt lektsii* [Civil law. Labor Law. Business legislation: lecture notes]. Kharkiv: KhNADU (in Ukrainian).

**Prokopenko, V.I.** (2000). *Trudove pravo Ukrainy* [Labor law of Ukraine]. Kharkiv: Konsum (in Ukrainian).

**Pylypenko, P.D.** (2006). *Osnovy trudovoho prava Ukrainy* [Fundamentals of labor law of Ukraine]. Lviv: Mahnoliia plus (in Ukrainian).

**Sereda, V.V.** (2014). Dystsyplinarna vidpovidalnist: poniattia, pryntsyipy ta vydy [Disciplinary responsibility: concepts, principles and types]. *Universytetski naukovi zapysky – University scientific notes*, no. 1, pp. 18–25 (in Ukrainian).

**Uhriumova, H.I.** (2005). Zahalna kharakterystyka dystsyplinarnoi vidpovidalnosti i dystsyplinarnoho prostupku za ukrainskym trudovym pravom [General characteristics of disciplinary liability and disciplinary misconduct under Ukrainian labor law]. *Pravo Ukrainy – Law of Ukraine*, no. 5, pp. 78–81 (in Ukrainian).

**Zhernakov, V.V., Prylypko, S.M., Yaroshenko, O.M. et al.** (2012). *Trudove pravo* [Labor law]. Kharkiv: Pravo (in Ukrainian).

**Леонід Могілевський,**

доктор юридичних наук, професор, заслужений юрист України, проректор, Харківський національний університет внутрішніх справ, проспект Льва Ландау, 27, Харків, Україна, індекс 61000, Leonid\_Mohilevskyi@ukr.net

ORCID: [orcid.org/0000-0002-6994-6086](https://orcid.org/0000-0002-6994-6086)

## ДИСЦИПЛІНАРНА ТА МАТЕРІАЛЬНА ВІДПОВІДАЛЬНІСТЬ ЯК ЗАСОБИ ЗАБЕЗПЕЧЕННЯ ДИСЦИПЛІНИ ПРАЦІ

**Анотація.** *Мета статті* полягає в тому, щоб надати характеристику дисциплінарній і матеріальній відповідальності як засобам забезпечення дисципліни праці.

**Результати.** У статті з огляду на аналіз наукових поглядів учених та норм чинного законодавства з'ясовано сутність і зміст дисциплінарної та матеріальної відповідальності як засобів забезпечення дисципліни праці. Аргументовано, що відповідальність має, окрім карального й правовідновлювального, також виховний і стимулюючий характер, тобто її дія спрямовується на підвищення рівня правової свідомості та правової культури сторін правовідносин. З'ясовано, що у праві категорія «дисципліна праці» розглядається в чотирьох аспектах: як інститут трудового права, як принцип трудового права, як елемент трудових правовідносин, як фактична поведінка. Як інститут трудового права дисципліна праці є сукупністю правових норм, що регулюють внутрішній трудовий розпорядок і визначають трудові обов'язки сторін трудового договору, а також методи забезпечення виконання цих обов'язків. Наголошено на тому, що у змісті трудової дисципліни виокремлюють дві сторони – об'єктивну та суб'єктивну. Під об'єктивною стороною розуміється певний порядок, без якого не може існувати підприємство. Цей порядок у певній частині регулюється нормами трудового права та формується як особлива, специфічна частина правопорядку, що пристосована до умов виробництва й діє в межах конкретного підприємства у вигляді внутрішнього трудового розпорядку. Суб'єктивну сторону становлять виконання обов'язків та здійснення прав сторонами трудових правовідносин. Учинення працівником дисциплінарного проступку, реалізація роботодавцем дисциплінарного повноваження та обов'язок порушника трудової дисципліни понести покарання також належать до суб'єктивної сторони дисципліни праці.

**Висновки.** Інститут відповідальності регламентує підстави виникнення та порядок реалізації стороною трудових правовідносин додаткових обтяжливих обов'язків (вид і міра яких визначаються законодавством), що покладаються на неї у зв'язку з вчиненням трудового правопорушення. Відповідальність, окрім карального та правовідновлювального, має також виховний і стимулюючий характер. Тобто її дія спрямовується на підвищення рівня правової свідомості та правової культури сторін правовідносин. Виховання їх відбувається в душі необхідності свідомої правомірної поведінки як найбільш доцільної та корисної для цих осіб і суспільства загалом.

**Ключові слова:** дисципліна праці, дисциплінарна відповідальність, матеріальна відповідальність, працівник.

*The article was submitted 15.12.2021*

*The article was revised 06.01.2022*

*The article was accepted 27.01.2022*