

Salary payments during martial law in Ukraine

1. Martial law. Mobilisation. Special period

2. Salary payment during the special period

2.1. Legal consequences of conscription/enlistment

- General (peacetime) regulations
- Retention of job, position, and average earnings

2.2. Guarantees for members of territorial volunteer units

2.3. Salary payments to other employees

- Inability to show up for work
- Downtime caused by unavoidable force
- Suspension of a labour agreement

3. Force majeure due to war in Ukraine

B

1. Martial law. Mobilisation. Special period

On 24 February 2022, due to the military aggression of the Russian Federation against Ukraine:

- martial law was imposed in Ukraine for a period of 30 days; from 26 March 2022, martial law was extended until 25 May 2022;
- general mobilisation was announced to be carried out in Ukraine within 90 days.

Thus, since 24 February 2022, a special period is in force in Ukraine – the period of functioning of the national economy, state authorities, other state bodies, local self-government bodies, the Armed Forces of Ukraine, other military formations, civil defence forces, enterprises, institutions, and organizations, as well as the performance by citizens of Ukraine of their constitutional duty to protect the Motherland, independence and territorial integrity of Ukraine, which comes into force from the announcement of the decision on mobilisation (except the targeted mobilisation) or execution of a decision on covert mobilisation, or since the introduction of martial law in Ukraine or in certain parts of Ukraine and comprises as follows:

- mobilisation time,
- wartime, and
- (partially) the period of reconstruction after the end of hostilities.

2. Salary payment during the special period

2.1 Legal consequences of conscription/enlistment

General (peacetime) regulations

The conscription or enlistment of an employee for military or alternative (non-military) service is, as a general rule, the ground for termination of the employment contract. An exception is provided by the law when the job, position and earnings of the employee are preserved.

At the termination of the employment contract in the case of conscription, enlistment in the military service, or assignment for alternative (non-military) service, Ukrainian legislation provides for a severance pay of two minimum wages to the employee.

Retention of job, position, and average earnings

Employees called up for fixed-term military service, military service as per call-up of officers, military service as per call-up during mobilisation during a special period, military service as per call-up of reservists during a special period or those recruited for military service under contract, including by signing a new contract for military service, during a special period, until its end or till the day of actual dismissal, shall keep their job, position, and average earnings in an enterprise, institution, organization or farm, agricultural production cooperatives, regardless of subordination or form of ownership, or with the individual entrepreneur for whom they were working at the time of the draft.

Such employees are paid from the State budget of Ukraine in accordance with the Law of Ukraine "On social and legal protection of servicemen and members of their families."

No compensation is currently provided to the employers for the salaries paid.

The compensation to enterprises within the average earnings of employees called up for military service during mobilisation for a special period in 2014-2015, was carried out in accordance with the Procedure for payment of compensation to enterprises, institutions, organizations within the average earnings of employees called up for military service during mobilisation for a special period, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 105 of March 4, 2015.

2.2 Guarantees for members of territorial volunteer units

In accordance with the Law of Ukraine "On the Fundamentals of National Resistance," the recruitment of territorial volunteer units shall be voluntary in accordance with the procedure approved by the Cabinet of Ministers of Ukraine.

Territorial volunteer units include citizens of Ukraine who meet the requirements set out in the Regulation on Voluntary Formations of Territorial Communities, have undergone medical, professional, and psychological screening, and have signed a territorial defence volunteer contract.

Citizens of Ukraine assigned to territorial volunteer units are covered by the statutes of the Armed Forces of Ukraine when participating in training and carrying out territorial defence tasks.

When participating in the training activities of territorial volunteer units, as well as when carrying out territorial defence tasks, members of such units are entitled to the social and legal protection guarantees provided by the Law of Ukraine "On

Social and Legal Protection of Servicemen and Members of Their Families."

Thus, members of volunteer units who have signed a territorial defence volunteer contract are covered by a guarantee of retention of their job, position, and average earnings.

2.3 Salary payments to other employees

Salaries are paid to the employees under the terms and conditions laid down in the relevant labour agreements. The employer must take all possible steps to ensure the employees' right to receive their salary on time.

Inability of an employee to show up for work

The Labour Market and Remuneration Conditions Development Directorate of the Ministry of Economy of Ukraine has issued recommendations on the formalisation of work and remuneration of employees who are unable to show up for work:

- if the nature of the work allows for it to be carried out remotely, by means of information and communication technology, it is reasonable for the employer to decide to transfer the employee to a remote position;
- if an employee cannot get to work and cannot perform their work remotely, it is expedient to provide employees with a paid leave (annual, social) as well as unpaid leave granted mandatorily and by mutual agreement of the parties according to the procedure established by law;
- if it is not possible to draw up a remote work contract or to send an employee on leave, it is necessary to record the absence of the employee with the corresponding notation ('NZ' or 'I' for absence for unexplained reasons, or other reasons for non-appearance, respectively). Once the circumstances have been clarified and it has been found that the reasons were valid, the time sheet can be adjusted.

Downtime caused by unavoidable force or other circumstances

Downtime is a work stoppage caused by a lack of organisational or technical conditions necessary for the performance of work, due to an unavoidable force or other circumstances.

Downtime not attributable to an employee shall be paid at the rate not lower than 2/3 of the remuneration rate of the grade (wage) established for the employee. The employee shall be paid their average wage for the downtime which is not due to their fault and is dangerous to their life or health or to other persons or the environment.

Suspension of a labour agreement

The Ministry of Economy clarifies that the total impossibility of the employer to provide assignments and of the employee to do the respective work is the main condition for suspension of a labour agreement.

More on suspension of a labour agreement

3. Force majeure due to the war in Ukraine

The employer is released from the liability for the breach of the obligation for timely payment of salaries, if it is proven that the breach was caused by the war or other force majeure circumstances.

The Ukrainian Chamber of Commerce and Industry (hereinafter, the CCI) has decided to simplify the procedure for certifying force majeure circumstances (circumstances of unsurmountable forces).

The CCI certifies that the specified circumstances from 24 February 2022 to their official termination, are extraordinary, unavoidable and objective circumstances for business entities and/or individuals under the contract, individual tax and other obligations the performance of which occurred under the terms of the agreement, contract, agreement, legislation or other regulations and the implementation of which became impossible in due time as a result of the occurrence of such force majeure circumstances.