

Optimisation of labour relations in Ukraine

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On 19 July 2022, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Optimisation of Labour Relations" (hereinafter – the Law) came into force. This article deals with the key general changes made to the labour legislation of Ukraine. These changes are not limited to the period of martial law.

1. Reduced social guarantees for mobilised employees

The employees called up or recruited for military service during mobilisation, for a special period (until its end or until the day of their actual dismissal), will now only retain their place of work and position in the enterprise they were working in at the time of their call-up. Preservation of average monthly earnings for such workers has been abolished.

According to the Commentary of the Ministry of Economy of Ukraine, retention of average monthly salary for employees, who have been enlisted (conscripted) into the military service before the day of enactment of the Law, should be ceased.

At the same time, employers, within the limits of their authority and at their own expense, may establish additional labour and social benefits for their employees along with those provided by the legislation.

2. Employer's expanded informing obligations

2.1. Informing prior to the beginning of work

The Law has expanded and detailed the list of information which the employer is obliged to provide to the employee prior to commencing work. Thus, the rules of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union have been implemented to ensure that the employee receives full information about the terms of employment.

Informing shall take place in a way agreed upon with the employee. Informing against an employee's signature is only mandatory when it comes to the presence of hazardous and harmful factors at the workplace and their possible health effects, as well as the right to benefits and compensation for working in such conditions.

Due to the specific nature of remote work, conclusion of an employment agreement for remote work does not require informing employees about the workplace, presence of hazardous and harmful production factors at the workplace, general briefing on labour protection, occupational sanitation, occupational hygiene, and fire protection.

When a remote work employment agreement is concluded, the employer is obliged to systematically instruct (train) the employee on occupational safety and health and fire protection within the limits of such employee's use of equipment and facilities recommended or provided by the employer.

In addition, employers are obliged to inform employees working under fixed-term employment contracts of any vacancies corresponding to their qualifications and offering an unlimited-term employment agreement, and ensure equal opportunities for such employees to conclude such agreements.

2.2. Informing on dismissal

The Law stipulates that Ukrainian employers now must deliver to its employees not only a copy of the dismissal order (directions) but also a written notice on the amounts accrued and paid to the employee upon dismissal, on the day of dismissal (the day of payment of all outstanding termination amounts).

Each type of payment must be indicated separately: basic and additional salary, bonuses and compensation payments, other payments the employee is entitled to on dismissal in accordance with the terms of the employment agreement and Ukrainian legislation.

3. Expanded list of grounds for terminating an employment agreement

The list of grounds for terminating an employment agreement, as defined in the legislation of Ukraine, was extended by the following:

(1) death of an employer, an individual, or entry into force of a court decision declaring such an individual missing or pronouncing him/her dead;(2) death of an employee or a court ruling declaring him/her missing or pronouncing him/her dead;(3) absence of an employee from work and lack of information about the reasons for such absence for more than four consecutive months. The Ministry of

Economy of Ukraine in its Commentary to the Law emphasizes that this ground for terminating an employment agreement should not be equated with dismissal for truancy (Article 40(4) of the Labour Code).

For the termination of the employment contract on the relevant ground, two indispensable conditions must simultaneously be met:

- 1) an employee is absent from the workplace for more than 4 consecutive months;
- 2) the employer is not aware of the reasons for such absence for a period longer than 4 consecutive months (regardless whether the reasons are justifiable or not).

If either of these two conditions is not met, the dismissal can be declared unlawful by the court, e. g. if an employee proves that he/she informed the employer of the reasons for the absence within 4 months. Furthermore, the existence of several such periods, amounting to or exceeding 4 months in total, cannot be regarded as fulfilment of such a condition.

(4) additional grounds for terminating an employment agreement with certain categories of employees on the employer's initiative under certain conditions. In particular, an employment agreement may be terminated if the employee cannot be provided with the work defined in the employment agreement due to destruction (absence) of production, organizational, and technical means of production or of the employer's property as a result of hostilities.

4. Procedure for dismissal due to employer's property destruction

The Law envisages a special procedure for laying off employees, due to impossibility to provide the work defined by their employment agreement as a result of destruction (lack) of production, organizational and technical conditions, means of production or property of the employer caused by the hostilities in Ukraine.

In particular, employees shall be given personal notice of impending dismissal no later than 10 calendar days in advance.

Not later than 10 calendar days before the scheduled dismissal, trade unions shall be provided with the following information:

- the reasons for the dismissal;
- the number and categories of employees affected;
- the dismissal timeframe.

If the employee's dismissal is deemed large-scale in accordance with the Ukrainian legislation, the employer shall:

- notify the State Employment Service of Ukraine of the planned lay-off of employees 10 calendar days prior to the lay-off, and
- hold consultation with the trade unions about measures to prevent or minimize dismissals or to mitigate adverse consequences of any dismissals for 5 calendar days.

In the event of dismissal on the above grounds, employees are paid severance pay in an amount not less than their average monthly earnings. The collective agreement or employment contract may establish higher amounts of severance pay.

5. Amended leave provisions

5.1. Non-transferability of leave to a new place of work

The mechanism allowing employees who had not used (partly or in full) their annual basic leave from their previous job to be granted leave from the new place of work in the event of transfer was abolished.

When employees are dismissed, they must be paid full and final settlement and, if entitled to, the monetary compensation for all the unused days of leave in accordance with Ukrainian law. The new employer is not liable for the employee's relationship with the previous employer.

5.2. Military service not counted towards length of service

The Law stipulates that the period during which, in accordance with Ukrainian legislation, employees called up (admitted) for military service during mobilisation, for a special period, during a special period until its termination or until the day of actual dismissal, retained their job and position in an enterprise is not counted towards the length of service entitling them to annual basic leave.

5.3. Deadline for salary payment before leave

Previously, employees had to be paid no later than 3 days before their annual leave. In accordance with the Law, this rule has been brought in line with the International Labour Organisation's Holidays with Pay Convention No.132 of 24.06.1970. Now, employees are paid for the whole period of their leave according to the general rule before their leave starts. However, an employment contract or a collective agreement may stipulate otherwise.

6. Legal definition of side (part-time) employment

Side (part-time) job is any paid job performed by an employee at the same or another enterprise, institution, organisation or for an individual employer in his/her free time in addition to his/her primary job.

Employees who have more than one job shall be remunerated for the work they actually perform.

7. Payments in case of delayed payment on dismissal

In case of failure to pay the amount payable to a dismissed employee within the period set by the law due to the fault of the employer, the employer must pay the employee his/her average earnings for the whole period of delay up to the date of actual payment, but not more than for six months.