

Legal regulation of freelance work in Ukraine

The new law

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On 10 July 2022, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Regulation of Labour Relations with Non-Fixed Working Hours" (hereinafter – the "Law") came into force. The Law introduces a new form of contract – an employment contract with non-fixed working hours.

The Law is intended to regulate the issue of non-standard forms of employment for individuals who perform work on a part-time basis; to ensure flexibility in choosing the organization of employment relations; to enhance mobility of employees in exercising their right to work. Consequently, freelancers, who prefer short-term projects and are not constrained to performing work for a single client, are now legally allowed to work this way in Ukraine.

1. Employment contract with non-fixed working hours

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An employment contract with unfixed working hours (hereinafter referred to as the "employment contract") is a special type of employment agreement in Ukraine, the terms of which do not stipulate any particular hours of work performance. An employee's obligation to perform work arises solely when an employer provides the employee with work envisaged by such an employment contract with no guarantee that the work will be provided permanently, but subject to the terms of payment set forth by the Law.

The employer shall independently determine the following:

- the necessity and time of engagement of an employee for work;
- the scope of work.

The employer shall coordinate the following with the employee in the term stipulated by the employment contract:

- work schedule;
- duration of working time required to complete the respective work.

However, the requirements of Ukrainian legislation on duration of work and rest periods must be observed.

2. Maximum number of contracts

The number of employment contracts with non-fixed working hours for one employer may not exceed 10 per cent of the total number of employment contracts to which that employer is a party.

An employer who employs less than 10 employees may not conclude more than one contract not entailing fixed working time.

3. Essential terms of contract

A non-fixed working hours employment contract must contain information on, inter alia:

- the method and the minimum period of notice to an employee on the commencement of work, which must be sufficient to enable the employee to start work in a timely manner;
- the method and the maximum period of notice given by an employee of their readiness to commence work or of their refusal to do so in cases prescribed by the Law;
- the intervals during which an employee may be required to work (base hours and days).

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A standard form of an employment contract with non-fixed working hours shall be approved by the Ministry of Economy of Ukraine.

4. Duration of working time

The maximum amount of working time an employer may require an employee to work is:

- 40 hours per week (number of base hours);
- 6 days per week (number of base days).

The minimum number of working hours in a calendar month is 32 hours.

5. Refusal to perform work

An employee is entitled to refuse to perform work if:

- the employer demands performance of work outside the base days and hours;
- the employer fails to notify the employee in accordance with the minimum terms envisaged by the employment contract.

6. Wages

Wages and salaries are paid to employees:

- for the time actually worked;
- for the work actually performed, at piece rates (for piecework remuneration system) as agreed in the employment contract.

The Law stipulates guarantees of minimum wage payment in case of failure to reach the minimum working hours or failure to provide work:

- under hourly remuneration system, not less than 32 hours of work time in accordance with the remuneration conditions specified in the employment contract;
- under piecework remuneration system, not less than the wage of an employee with relevant qualifications paid on an hourly basis for 32 hours of work.

Remuneration for work outside of the base days is paid in accordance with the procedure stipulated by Ukrainian legislation for remuneration

for overtime work:

- in case of hourly remuneration system – at double the hourly rate;
- in case of piecework remuneration system – additional payment in the amount of 100% of the rate of the employee of relevant qualification whose remuneration is paid under hourly system – for all overtime hours worked.

7. Legal status of freelance workers

An employer cannot forbid or prevent an employee from performing work under employment contracts with other employers.

The performance of work on the basis of non-fixed working hours does not entail any restrictions on the scope of the labour rights of an employee.

An employee who has worked under an employment contract with non-fixed working hours for a period of over 12 months has the right to submit a request to the employer to conclude a fixed-term or indefinite term employment contract according to the working hours and remuneration set by the employer.

Within 15 calendar days of an employee's application, the employer is obliged to:

- conclude a fixed-term or indefinite term employment contract, or
- give the employee a reasoned written refusal to conclude such an employment contract.

The employee is entitled to make a repeated request within the entire term of the employment contract, but not earlier than 90 days from the day of receipt of the employer's reply to their earlier request.

8. Employment contract termination

An employment contract with non-fixed working hours may contain additional grounds for its termination. Such grounds must be related to the employee's abilities (skills) or conduct or other reasons of an economic, technological, structural, or similar nature.