

Employee reservation in Ukraine: critical enterprises

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Due to the Russia's war against Ukraine, the task of ensuring effective mobilisation of resources needed for the country's military and economic needs remains of utmost importance. At the same time, it is equally important to ensure the functioning of Ukraine's economy in the conditions of war. The main goal of orderly and regulated mobilisation is to balance the distribution of resources between the urgent military and economic needs.

Related article: [Update on reservation of employees liable for military service in Ukraine](#)

In this regard, persons liable for military service who work in companies that are critical to the functioning of the economy and the population's livelihood are subject to reservation. The criteria and procedure for determining such companies are established by the Ukrainian government.

1. Critical enterprise criteria

The Ukrainian government has established the following criteria for recognising a company as a critical enterprise for the functioning of the economy and ensuring the population's livelihood during a special period (hereinafter referred to as a critical enterprise):

- the total amount of payments by such a company to the budget during the reporting tax year must exceed the equivalent of EUR 1.5 million. Customs payments are not included in the calculation here. This figure must be confirmed by a certificate from the relevant

- supervisory authority (usually the tax authorities where the company is registered);
- the amount of foreign currency received by such a company for the reporting tax year must exceed the equivalent of EUR 32 million. The amount of loans and borrowings received by a company is not included in the calculation. This figure must be confirmed by a certificate from the relevant servicing bank;
- a company must have the status of an enterprise of strategic importance for the economy and security of the state. The list of such enterprises is established by the Ukrainian government;
- a company must have the status of an enterprise that is of great importance for a sector of the national economy or for fulfilling the needs of a territorial community;
- a company must not have arrears in the payment of the single contribution to the obligatory state social insurance. This is confirmed by a certificate from the relevant supervisory authority (usually the tax authorities where the company is registered);
- the average salary of the insured employees of such a company for the last quarter must amount to no less than the average salary in the region for the fourth quarter of 2021. This can be confirmed by a certificate provided by the company itself;
- a company must be a resident of Diia City.

2. Important peculiarities

The definition of one of the criteria set by the Ukrainian government, namely "the status of an enterprise that is important for a sector of the national economy or for fulfilling the needs of a territorial community", has certain peculiarities.

In order to meet this criterion, a company must acquire the status of an important enterprise:

- for a sector of the national economy, or
- for fulfilling the needs of the local community.

In case of the former, the conditions for acquiring the status are determined by a decision of state authorities (e.g., ministries). In case of the latter, the regional state or military (or civil-military) administrations determine the conditions for obtaining the status.

It should be borne in mind that the criteria established by ministries and regional administrations contain complex compliance conditions. They are much more detailed than those set out by the Ukrainian government. They require a very careful study with respect to the characteristics of the company that intends to apply for such a status.

At the same time, the broad list of conditions allows more companies to obtain the status of an enterprise that is of great importance for a sector of the national economy or for fulfilling the needs of a local community. In turn, this allows a company to automatically meet one of

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the general criteria for obtaining the status of a critical enterprise and increase the possibility of its employee's reservation.

For example, the Ministry of Communities, Territories, and Infrastructure of Ukraine (hereinafter referred to as the Ministry of Infrastructure) sets the conditions for obtaining the status of an important enterprise for the national economy in the fields of transport, postal services, construction, and energy efficiency.

According to these conditions, a company can obtain the status of an important enterprise for the specified industry if it meets at least one of the established criteria, namely:

- it is included in the list of critical infrastructure facilities (the list is determined by the Ukrainian government);
- it has a licence to carry passengers, dangerous goods and hazardous waste by road, and to perform international carriage of passengers and goods by road;
- it performs freight transportation, and has contracts to meet the needs of the Armed Forces of Ukraine and other military formations, transportation of medical goods, goods of importance to the national economy;
- it carries out engineering activities for the construction, efficient use and maintenance of port infrastructure facilities;
- it ensures the implementation of works aimed at restoring facilities damaged as a result of russian armed aggression;
- it employs at least 5 certified performers of certain types of work related to the creation of architectural objects;
- it provides maintenance services for buildings and adjacent territories for at least 250 residents or more, etc.

The Ministry of Economy of Ukraine (hereinafter – the "Mineconomy") has established specific criteria for the sectors of the state economy.

These criteria are met by companies that:

- received financial state support;
- perform works and provide services to the Mineconomy under contracts concluded for a period of at least 6 months;
- pay their employees an average salary not lower than the average salary in Ukraine multiplied by a coefficient of 1.5 (for companies with over 50 employees) or 3 (for companies with fewer than 50 employees);
- carry out demining work, etc.

A company may also be granted the status of an enterprise that is of great importance for fulfilling the needs of a territorial community. For instance, the Kyiv Regional Military Administration has established relevant criteria for this purpose, which include conditions regarding the type of business activity, such as:

- food production (e.g., cultivation of grain crops, production of meat, fruit and vegetable juices, bread, oil and animal fats, processing and canning of fruits and vegetables, milk processing, butter and cheese production);
- production of certain goods, performance of certain work and provision of certain services (e.g., weaving, manufacturing of pesticides and other agrochemical products, certain types of construction activities, etc);
- production of goods, performance of works and provision of services necessary to meet the needs of a territorial community;
- implementation of social infrastructure projects (including the reconstruction/construction of hospitals, general secondary education facilities, preschool education facilities, construction of shelters);
- cultivation of agricultural land in Kyiv region (for this type, the following indicators are set: at least 15 hectares for the cultivation of fruit and/or berry crops, 25 hectares for vegetable crops cultivation, and 50 hectares for the cultivation of other crops);
- conducting medical practice;
- manufacture of products or provision of services that have no analogues or are limited in the domestic market, as evidenced by relevant documents.

The criteria established by the Kyiv Regional Military Administration may also be met by:

- companies that have at least 10 insured employees. Such employees must receive salaries, whereby taxes and single social contribution to the local budgets of Kyiv region are withheld from their salaries;
- companies included in the sectoral list of critical infrastructure facilities (the list is established by the Ukrainian government).

3. Determination procedure

To qualify as a critical enterprise, a company must meet three or more criteria set forth by the Ukrainian government. However, for certain companies, it may be enough to meet only two criteria.

These companies include:

- enterprises of the fuel and energy complex;
- state-owned enterprises of assay control;
- enterprises that provide services and perform works related to the use and comprehensive maintenance of the property of public authorities;
- enterprises of state or municipal ownership that operate in the field of healthcare, veterinary medicine, education and science, physical culture and sports, social protection, housing and communal services. Such enterprises must be included in the Register of Non-Profit Institutions and Organisations or be funded by the state or local budget, or provide free services to the population that are necessary to ensure its vital activity;

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- linear audiovisual media and their affiliates that carry out terrestrial multichannel (digital) television broadcasting using a radio frequency resource, the content of which consists mainly of information or information and analytical programmes, or that are involved in the warning system;
- state and municipal cultural institutions.

Regardless of the above criteria, the Ukrainian legislation lists the following as critical enterprises:

- UN specialised agencies;
- foreign diplomatic missions in Ukraine;
- representative offices of donor agencies;
- implementers of international technical assistance projects;
- representative offices of international organisations;
- international and Ukrainian non-governmental organisations that implement humanitarian projects at the expense of international partners according to the list approved by the Ministry of Foreign Affairs of Ukraine or the Secretariat of the Cabinet of Ministers of Ukraine.

The status of a critical enterprise is established by:

- a central executive body, other state body, public administration body with jurisdiction over the entire territory of Ukraine, by the relevant sphere of governance and sector of the state economy (e.g., the Ministry of Economy);
- regional, Kyiv, and Sevastopol city state administrations, or regional, Kyiv, and Sevastopol city military/military-civilian administrations in the territory of the relevant administrative-territorial unit.

Therefore, if a company meets these criteria, it may apply for the designation as a critical company:

- to a government agency according to the sector of the national economy and the relevant governance area, or
- to regional, Kyiv, and Sevastopol city state administrations, or regional, Kyiv, and Sevastopol city military/military-civilian administrations based on the territory of its location.

The application must be accompanied by copies of supporting documents, as well as information on the company's submission of tax returns for the most recent calendar quarter. The submission of tax returns must be confirmed by:

- a copy of the tax declaration with the marks (stamps) of the supervisory authority having received the tax declaration, indicating the date

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- of its receipt, or
- a receipt of acceptance of the tax declaration in case of its submission by means of electronic communication, or
- a receipt of the supervisory authority entrusted with the functions of verification and acceptance of taxpayer reporting documents, or
- a postal notice with a mark of delivery to the supervisory authority if the tax declaration is sent by post.

The authority receiving the application is obliged to consider it within 10 working days.

Based on the results of the application review, one of the following decisions may be made:

- a company meets the criteria and its status as a critical enterprise is established;
- a company does not meet the criteria. Hence, it does not receive such a status.

A copy of the decision on a company's compliance with the criteria and its designation as a critical enterprise is sent to the Ministry of Economy and the General Staff of the Armed Forces of Ukraine (the Security Service of Ukraine, the Foreign Intelligence Service).

The decision to designate a company as an enterprise that is of great importance for a sector of the national economy or for meeting the needs of a territorial community is made pursuant to the procedure established by the relevant authority. For example, when it comes to determining the importance for meeting the needs of the territorial communities of Kyiv region, a special commission is tasked with determining this. Such a commission is formed in accordance with a resolution of the Kyiv Regional Military Administration.

4. Confirming the status

Companies shall confirm their status as critical enterprises at least once a year.

For this purpose, a company shall submit an application to the authority that made the decision on the company's compliance with the criteria and granting it the status of a critical enterprise. The application must be accompanied by the same copies of supporting documents as for the initial application.

The decision to confirm or revoke the status is made in the same manner as the decision to establish a company's compliance with the criteria and its designation as a critical enterprise.

A copy of the decision to confirm the status of a critical enterprise or to revoke such a status is sent to the Ministry of Economy and the General Staff of the Armed Forces of Ukraine (the Security Service of Ukraine, the Foreign Intelligence Service) within one day from the date

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of its adoption.