

Changes to the granting and use of leave in Ukraine

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On 24 December 2023, amendments to certain legislative acts of Ukraine regarding the regulation of the granting and use of leave (hereinafter referred to as the "Law") came into force. This legislative act made a number of important adjustments to the regulation of certain issues in the area of labour relations, in particular, in respect of leave and organisation of employee recreation.

1. Transfer of holidays and non-working days

As a general rule, if a public holiday or a non-working day coincides with a day off, the day off is carried over to the day following the public holiday or non-working day. However, this rule does not apply during the martial law in Ukraine.

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To mitigate the cancellation of the mandatory transfer of holidays and non-working days for the period of martial law (i.e., effectively for an indefinite period), the Law introduces additional opportunities for transfer by delegating this matter to the parties to labour relations, i.e.:

- by determining it in the labour and/or collective agreement or
- by an order (instruction) of the employer agreed with the primary trade union organisation, and in case of its absence – with the authorised representatives of employees.

2. Parental leave at the birth of a child

A one-time paid paternity leave of up to 14 calendar days (excluding holidays and non-working days) is now granted to a father (other relative) no later than 3 months after the child's birth.

The Law thus eliminated the conflict that existed in Ukrainian legislation between the provisions of the Labour Code and the Law "On Leaves", on the one hand, which did not limit the use of this type of leave to any period, and the Procedure for Granting Parental Leave, approved by a Resolution of the Ukrainian government (the "Procedure"), on the other hand, which set a 3-month period. For a long time, there was a situation where a bylaw actually worsened the position of an employee compared to laws with higher legal force.

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In addition, the lawmakers have simplified the conditions for obtaining this type of leave for a child's father who is not married to the child's mother, provided that they live together, share a common household, and have mutual rights and obligations. These facts now need to be confirmed only by:

- a statement of the child's mother and
- the child's birth certificate, which contains relevant information about the child's father.

In other words, the documents to be attached to the leave application do not include a certificate of residence registration, as required by the Procedure. The need to submit the certificate had previously caused numerous discussions, in particular, due to the widespread discrepancies between the many Ukrainians' registered place of residence and the actual one. It is now up to the Ukrainian government to bring its regulations (including this provision) in line with the Law.

3. Monetary compensation for unused leave

Under certain circumstances, at the request of an employee, it is possible to replace part of the leave with monetary compensation. However, monetary compensation for all unused vacation days was previously provided only in the event of dismissal.

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The novelty of the Law is that employees who have entered or are called up for military service – based on their application – are paid monetary compensation for all unused days of annual leave, as well as additional leave for employees who have children or an adult child with a childhood disability of Group I, subgroup A.

The relevant application must be submitted no later than the last day of the month in which the employee was released from work due to military service.

4. Unpaid leave

The Law introduced certain changes to the regulation of unpaid leave. In particular, the Law stipulates that unpaid leave for up to 60 calendar days must be granted – upon request – to employees who have resumed work after being discharged from military service due to the end of a special period or demobilisation.

Apart from leave at the employee's request, which is granted on a mandatory basis, unpaid leave for family reasons and other reasons may also be provided to an employee by agreement of the parties. The maximum duration of such a leave, which may be stipulated by an agreement between the employee and the employer, has been increased from 15 to 30 calendar days per year.

In the event of a threat of an epidemic, pandemic, the need for self-isolation of an employee in cases established by law, and/or in the event of a threat of armed aggression against Ukraine, an emergency of a man-made, natural or other nature, the employer may, at the request of the employee, grant him/her an unpaid leave beyond the 30-day limit. The duration of such leave is determined by the parties' consent.

The time spent on unpaid leave by the parties' consent shall not be counted towards the length of service entitling the employee to annual basic leave, which distinguishes this type of leave from the previously mentioned unpaid leave, which is mandatory at the employee's request.

5. Granting certain types of leave

Leave for preparation and participation in competitions is granted to employees who participate in national and international sports competitions. The duration, procedure, terms and conditions for granting and paying leave for training and participation in sports competitions shall now be determined by the labour and/or collective agreement, and not by the Ukrainian government, as it was before.

For the period of trade union training, employees selected to the elected trade union bodies of the company are granted additional leave of up to 6 calendar days with compensation of the average salary at the expense of the trade union organisation that decided to send them for

trade union training. Previously, such a leave was paid for by the employer.

6. Leave during martial law

For the period of martial law in Ukraine, an employer may limit the duration of an employee's annual basic leave to 24 calendar days for the current working year. If the duration of an employee's annual basic leave exceeds 24 calendar days, the days of such leave not used during the martial law period shall be transferred to the period after its termination or cancellation.

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The Law clarifies the aforementioned provisions of the Law of Ukraine "On the Organisation of Labour Relations under Martial Law" and establishes that the transfer also applies to any other type of leave exceeding the annual basic leave. At the same time, it is stipulated that this provision does not apply to maternity leave, childcare leave for parents of children under the age of 3, and adoption leave.

It is established that, at the employer's decision, unused days of an employee's annual basic leave or any type of leave in excess of 24 calendar days may be granted on an unpaid basis.

Note: the Law as a whole ceases to be in force from the date of termination or cancellation of martial law in Ukraine. However, the Law's provisions on the possibility of granting both annual basic leave and any type of leave in excess of 24 calendar days without pay shall cease to be effective from the moment the leave days that were carried over to the period after the martial law in Ukraine is terminated or lifted.

The Law also expanded the range of employees who may be denied any type of leave during the martial law period (except for maternity leave and parental leave for children under 3 years of age). In addition to employees engaged in work at critical infrastructure facilities, this provision now also applies to employees engaged in the production of defence related goods or in the performance of mobilisation tasks (orders).