

## Reservation of employees during mobilisation in Ukraine

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Mobilisation is an extremely sensitive and complex issue in Ukraine. Defending the country from Russian invasion is the duty of every Ukrainian citizen. However, winning the war requires not only an effective army, but also a functioning economy that can ensure the country's defence capability. That is why the mechanism for reserving company employees exists and is continuously improved.

### 1. What regulates the reservation rules?

Currently, the mechanism of reserving persons liable for military service during martial law is determined by Resolution of the Cabinet of Ministers of Ukraine No. 76 "Some Issues of Implementation of the Provisions of the Law of Ukraine "On Mobilisation Preparation and Mobilisation" on Reservation of Persons Liable for Military Service for the Period of Mobilisation and for Wartime" dated 27 January 2023. However, it is important to take into account a number of other regulatory acts that establish the procedure for registering persons liable for military service, the mobilisation rules, etc.

Moreover, it should be borne in mind that the reservation rules and procedures are subject to constant changes. These changes may significantly affect the ability of companies to reserve employees essential to their business. To avoid misunderstandings, it is necessary to keep track of such changes.

### 2. Which companies can reserve employees?

The current regulation of the reservation procedure sets out the requirements for employers who can reserve their staff. With regard to businesses, the current reservation procedure defines the mechanism and procedure for reserving employees liable for military service during martial law in relation to:

- companies critical to fulfilling the needs of the Armed Forces of Ukraine and

- other military formations during a special period;
- companies critical to the functioning of the economy and the livelihood of the population during a special period.

In order to be recognised as a critically important company, it must meet the following criteria:

- the total amount of taxes paid (excluding customs duties) and the amount of the unified social contribution paid during the year must exceed EUR 1.5 million (at the exchange rate of the National Bank of Ukraine);
- the amount of foreign currency revenues, except for loans and borrowings, for the year must exceed the equivalent of EUR 32 million (at the exchange rate of the National Bank of Ukraine);
- the company must be of strategic importance for the economy and security of the state in accordance with the list approved by the Cabinet of Ministers of Ukraine;
- the company must be of great importance for a sector of the national economy or for meeting the needs of a local community;
- the company has no arrears in the payment of a single social security contribution;
- the average salary at the company is not lower than the average salary in the region;
- the company is a Diia City resident.

To be recognised as critically important, a company must meet at least 3 of the above criteria.

However, companies belonging to a specific category (companies in the fuel and energy sector, healthcare, veterinary medicine, international transport, etc.) only need to meet 2 of the criteria.

Related article: Employee reservation in Ukraine: critical enterprises

### **3. How are such companies determined?**

A company is recognised as critically important based on compliance with the criteria established by:

- a public administration body (the Cabinet of Ministers of Ukraine, a relevant ministry, etc.) in the relevant governance area and sector of the national economy, or
- a regional state administration (or military administration, if established) of the relevant administrative-territorial unit.

Notwithstanding the above criteria, the following are considered critically important, inter alia:

- representative offices of donor agencies;
- implementers of international technical assistance projects according to the list approved by the Secretariat of the Cabinet of Ministers of Ukraine;
- companies in the prosthetic and orthopaedic industry, as defined by the Ministry of Social Policy, which directly provide prosthetics/orthotics;
- companies that produce goods, perform work and provide services for the

development, manufacture, repair, modernisation and disposal of weapons, military and special equipment, ammunition, and their components to meet the needs of the Armed Forces and other military formations. Such companies must be designated by the Ministry of Strategic Industries of Ukraine and meet the established criteria.

#### **4. How long are employees reserved for?**

For businesses, the reservation period depends on the specifics of their activities and the status of the company recognised as critically important. In particular, the reservation period may not exceed:

- the term of the contract (agreement) for the supply of goods, performance of works or provision of services necessary to meet the needs of the Armed Forces and other military formations. This applies to employees of companies that are critically important for meeting the needs of the Armed Forces and other military formations during a special period;
- 12 months – for employees of companies that are critically important for the functioning of the economy and the livelihood of the population during a special period.

The reservation period is determined by a decision of the Ministry of Economy of Ukraine.

#### **5. How many employees can be reserved?**

Up to 50% of persons liable for military service who work for a critically important company and are subject to reservation in accordance with the law can be reserved. To calculate the number, the base number of such employees in the company as of 18 May 2024 is taken. If their number increased, the base number of such employees in the company is determined as of the date of submission of the lists.

It should be borne in mind that this restriction does not apply to certain categories of companies, such as implementers of international technical assistance projects that are critical to the economy. Such companies (or organisations) are defined by regulatory acts of the Cabinet of Ministers of Ukraine.

#### **6. Who else can be reserved?**

In addition to employees of companies that meet the criteria of critical importance, the following individuals can be reserved:

- ultimate beneficial owners of such companies who are not their employees;
- members of the supervisory boards of companies of strategic importance for the economy and security of the state and whose asset value or annual net income exceeds UAH 200 million;
- members of the supervisory boards of companies that are particularly important for the economy, whose assets value exceeds UAH 2 billion or whose annual net income exceeds UAH 1.5 billion;
- persons holding the positions of prosthetists, prosthetic technicians, prosthetic technologists, prosthetic engineers, prosthetic engineers, mechanics of prosthetic and orthopaedic products (the level of their involvement in the

company's work must meet the established conditions).

## 7. What is the reservation algorithm?

The algorithm for reserving employees is generally the same for all companies and organisations, but there are some peculiarities. These peculiarities arise depending on which body approves the lists of employees submitted for reservation. In turn, the determination of the body that approves such lists depends on the specifics of the company that is entitled to reserve its employees.

For instance, for implementers of international technical assistance projects, the reservation procedure outlines the following algorithm:

- implementers of international technical assistance projects submit a list of employees liable for military service who are to be reserved to the Secretariat of the Cabinet of Ministers of Ukraine;
- the number of persons liable for military service who can be booked by such contractors is not limited (unlike, e.g., for a regular commercial enterprise);
- pursuant to the procedure, the Secretariat of the Cabinet of Ministers of Ukraine submits this list to the Ministry of Defence of Ukraine for approval;
- the reservation of such persons liable for military service is carried out in accordance with the decision of the Ministry of Economy of Ukraine according to the lists approved by the Ministry of Defence of Ukraine;
- such decision shall be made within 5 working days from the date of receipt of the said lists;
- for the purpose of granting a deferral to persons liable for military service, the Ministry of Economy of Ukraine sends a decision on the reservation of employees liable for military service to public authorities, other state bodies that submitted the lists, and the Ministry of Defence of Ukraine;
- the Ministry of Defence of Ukraine informs the relevant territorial centre for recruitment and social support of the decision within 3 days;
- the company issues an extract from the decision of the Ministry of Economy of Ukraine to the employee liable for military service. The extract must be issued in a form prescribed by law;
- an extract signed by the head of the company and sealed with the company's seal (if any) is a document confirming that the employee has been granted a deferral;
- within 5 days from the date of issuing an extract to a person liable for military service, the company sends a notice of reservation to the territorial centre for recruitment and social support where the person liable for military service is registered. The notification must also be made in a form specifically prescribed by law;
- the territorial centre for recruitment and social support shall enrol (within 5 working days from the date of receipt of the notice) such a person liable for military service in a special military registry and enter information about the deferral granted to him/her in the Unified State Register of Conscripts, Persons Liable for Military Service and Reservists.

## 8. Practical tips

When implementing the above algorithm, it is advisable to adhere to the following:

- make sure that in the decision to reserve a person liable for military service

received from the Ministry of Economy of Ukraine, the following information is indicated correctly: the employee's surname, name, and patronymic;

- the employee's year of birth;
- the employee's military speciality (profile);
- the company name (full and abbreviated) and location;
- the company's EDRPOU code.

If this information is incorrect in the decision (and the territorial centre for recruitment and social support must check this), the enrolment of such a person liable for military service in special military registry may be refused. Accordingly, the reservation will not take place;

- it should be borne in mind that the receipt of a decision of the Ministry of Economy of Ukraine on the reservation of a person liable for military service does not mean that the reservation is carried out. The reservation will only take effect from the moment such a person liable for military service is enrolled in the special military registry and the information about the deferral is entered into the Unified State Register of Conscripts, Persons Liable for Military Service and Reservists. Sometimes, employees of territorial centres for recruitment and social support take advantage of this and issue referrals to employees liable for military service to undergo a military medical examination. This is contrary to the requirements of the conscription procedure established by the Cabinet of Ministers of Ukraine, as the procedure for granting a deferral from military service during mobilisation due to reservation does not provide for a referral to a military medical commission for a medical examination;
- the military registration data of the employee who is reserved must be updated as required by law. It should be noted that such data can be updated not only at the territorial centres of recruitment and social support, but also at the Centres for the provision of administrative services and via a specialised mobile application;
- an extract from the decision of the Ministry of Economy of Ukraine on reservation is issued by the company to the employee liable for military service against his/her signature in the log of issuance of forms for special military registry. This log must also comply with the form prescribed by law;
- non-resident companies doing business in Ukraine through representative offices should take into account that employees of the representative office cannot be reserved. As of today, a foreign company's representative office cannot be recognised as critically important, even if its activities through the representative office meet the established criteria. In order to reserve employees of such a representative office, a foreign company will have to establish a legal entity (subsidiary) in Ukraine that meets the criteria and will be entitled to reserve employees;
- if the reservation period for a person liable for military service expires, it is recommended to start the reservation procedure for a new period in advance (1-2 months) to avoid regrettable incidents during the period when the previous reservation expires and the new one is not yet issued.