

Staff reductions in international technical assistance projects in Ukraine

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In January 2025, the United States government suspended all new foreign assistance funding commitments pending a review of U.S. foreign assistance programmes. Contracting and grant officers were instructed to issue stop work orders for all existing foreign assistance grants.

This meant that USAID programmes were suspended, including those that had already been committed and disbursed.

Related article: Closing an International Technical Assistance project in Ukraine: procedure and requirements

Implementers of international technical assistance projects in Ukraine faced the challenge of how to proceed with the staff involved in the projects.

This was further complicated by the peculiarities of Ukrainian labour law. In many cases, employment contracts with project staff were concluded as understood by the implementers of international technical assistance projects, mostly non-residents. However, the crisis caused by the suspension of project funding has shown that this understanding does not always align with the current regulation of labour relations in Ukraine.

In a situation where an employer is unable to provide its employees with work or remuneration for one reason or another, it becomes necessary to dismiss employees at the employer's initiative.

Under Ukrainian law, employers should take into account certain peculiarities.

Otherwise, they run the risk of employees challenging their dismissal and demanding reinstatement and compensation. The judicial system in Ukraine generally favours employees' interests over those of employers.

Understanding and strict adherence to the procedures for dismissing employees in Ukraine at the initiative of the employer is the key to preventing such a risk.

1. Grounds for employee dismissal

Ukrainian legislation provides for a number of grounds for dismissal of employees at an employer's initiative. Most of them are related to violations committed by an employee (absenteeism, being drunk at work, systematic failure to perform work duties, theft, etc.).

However, an employee may also be dismissed for objective reasons that do not depend on his or her will and actions, in particular as a result of changes in the organisation of production and labour, including, inter alia, the employer's liquidation, reorganisation, bankruptcy or re-profiling, as well as a reduction in the number or staff.

Among the grounds for employee dismissal in the current situation for international assistance implementers, the main ground for dismissal of employees involved in such projects is a reduction in the number or staff.

2. Employee dismissal under the redundancy procedure

The redundancy procedure in Ukraine is a complex and multi-stage process that requires careful preparation and careful documentation.

As a general rule, the procedure involves several stages:

- making a decision to make employees redundant;
- determining the list of employees to be made redundant;
- approval by the trade union (in cases provided for by law);
- notifying the State Employment Service of Ukraine of the dismissal;
- notifying employees of their dismissal;
- dismissal and payments from the employer.

3. Making a decision on redundancy

Under Ukrainian law, an employer has the right to terminate an employment contract at its own initiative in the event of changes in the organisation of production or labour. Such changes, according to this provision, include, in particular, a reduction in the number of employees.

This means that the employer may decide to change the number of employees or the structure of the staff, inter alia, by reducing their number or positions.

Such a decision must be made following the procedure foreseen for the employer's organisational and legal structure. In the case of international technical assistance implementers, it is also necessary to take into account the specifics of each project (if such specifics are stipulated by the relevant documents governing the project).

After making such a decision, the employer's authorised person issues an order on staff redundancy, which contains:

- a list of positions to be made redundant;
- the number and categories of employees to be dismissed;
- establishment of a commission to determine the employees who cannot be dismissed, etc.

4. Identifying employees to be made redundant

The next step is to identify the employees to be made redundant. It should be borne in mind that Ukrainian legislation establishes categories of employees who may not be dismissed, in particular,

- employees during the period of their temporary disability, as well as during the period of their leave or military training;
- pregnant women and women with children under the age of 3 (under 6);

- single mothers with a child under the age of 14 or a child with a disability, etc.

In addition, when determining the pool of employees to be made redundant, employees with higher qualifications and productivity are given the priority right to remain in employment.

A special commission is set up to formalise this selection process. The work of the commission is to analyse and record the selection (create lists), which shows the soundness and validity of the employer's decision to dismiss or retain each particular employee.

5. Notifying the State Employment Service of Ukraine

It is mandatory to notify the State Employment Service of Ukraine of a planned dismissal when a large number of employees are dismissed (mass dismissal).

Ukrainian legislation establishes criteria for determining mass redundancies in quantitative terms. It is important to consider these criteria and their relevance at the time of preparation for the redundancy procedure.

In the case of a mass dismissal, the employer shall notify the State Employment Service of the employees' planned dismissal. The notification shall be made in a specially established form and in accordance with the procedure prescribed by Ukrainian law. In this case, mass dismissal of employees may be carried out after submission of a written notice on this dismissal to the elected body of the primary trade union organisation (trade union representative) (if any).

After that, the employer must hold consultations with the trade union no later than 3 months before the planned dismissal.

6. Notifying employees of dismissal

Notifying employees about their dismissal and offering them alternative vacant positions to continue working is a very important stage of the redundancy procedure. Failure to comply with the procedures at this stage is the most common cause of litigation between employees and employers.

Under Ukrainian law, an employer is obliged to notify an employee of a planned redundancy in writing no later than 2 months before the dismissal.

In this case, the 2-month period starts from the date of the written notice to the particular employee.

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The written notice must include the grounds for dismissal (e.g., reduction in headcount) and the date on which the dismissal will take place.

Simultaneously with the notice on dismissal, the employer is obliged to offer the employee another job at the same enterprise, if available.

If new vacancies arise during the notice period, the employer must also offer them to the employee, even if they were not available before.

7. Employee dismissal and payment of all amounts due

The redundancy procedure is completed by the issuance of an order by an employer to dismiss an employee and pay all due amounts.

Under Ukrainian law, on the day of dismissal, the employer is obliged to provide the employee with a copy of the dismissal order and make all settlements with the employee (pay salary, compensation for unused vacation days, severance pay and other payments if they are provided for by the employment contract or law).

8. Peculiarities of martial law

For the period of martial law in Ukraine, the law establishes a number of peculiarities in the regulation of labour relations.

For example, during the period of martial law, the employer does not need to obtain prior consent from the trade union bodies of which the employee is a member (if any) when reducing the staff.

During the martial law period, the prohibition on dismissal of employees during the period of their temporary disability or during the period of leave (except for maternity leave and leave to care for a child under the age of 3) does not apply. Dismissal is permitted with the date of dismissal being the first working day following the day of the end of the temporary disability specified in the document on temporary disability or the first working day after the end of the leave.

However, such provisions should be applied with caution and on a case-by-case basis, as the martial law exceptions do not cover all specific situations.

For instance, if an employee is an elected member of a trade union organisation (if the employer has one), the prior consent of the elected body of the primary trade union organisation is still required for his or her legal dismissal. The validity of this consent or its absence will be investigated by the court if the employee decides to challenge his dismissal and be reinstated in court.

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It should also be remembered that employees of international technical assistance projects had the right to be reserved from mobilisation. Upon termination of their employment, such reservation is also terminated. The employer must, in accordance with the established procedure, notify the relevant state institutions responsible for keeping records of reserved persons of the employment termination.

The redundancy procedure in Ukraine has its peculiarities and requires careful preparation, meticulous formalisation, compliance with deadlines and an understanding of possible risks.

In order to avoid the risks of litigation and compensation payments, it is necessary to carefully check the grounds for the employment relationship between the employer and the employee and, in any case, to follow the established sequence of actions, acting strictly in accordance with the requirements of Ukrainian law.