

Labour Relations in Ukraine at the Time of Quarantine

Since 12 March 2020, quarantine has been introduced throughout Ukraine to combat COVID-19. It will last till 28 February 2021 (it is quite possible that the quarantine will be extended) and will significantly affect the activities of most business entities.

Currently, many companies have to quit or downsize their activity due to quarantine restrictions. But what to do with their employees? In this Article, we focus on the main issues that should be addressed to an employer.

Quarantine vacations

Pursuant to the Law of Ukraine On Leaves, an employee may receive a paid or unpaid leave.

It should be noted that employees have the right to a leave and an employer has no opportunity to force them to go on an annual paid or unpaid leave. Granting of any leave is possible only with the employee's consent. In particular, an annual paid leave may be granted only upon prior agreement of its terms at the employee's request or in accordance with the leave schedule.

An unpaid leave for family and other reasons shall be granted no more than for 15 calendar days a year (Article 84 of the Labour Code, Article 26 of the Law On Leaves). However, on 17 March 2020, the Verkhovna Rada of Ukraine adopted temporary amendments for the quarantine period, according to which the period of an unpaid leave will not be included in the total 15-day period. Please also note that if an employee becomes ill while being on an unpaid leave, such a leave does not extend for the number of the days of a sick leave certificate. And an employer is not obliged to pay for such a sick leave certificate.

Remote (distance) work

In accordance with Law No. 530-IX On Prevention of Occurrence and Spread of Coronavirus Disease (COVID-19), dated 17 March 2020, an employer may instruct an employee to perform at home during a certain period of time the work, as defined by the labour contract.

Since this is a new mode of work, it is advisable for a company (enterprise) to adopt the remote work regulations. It is important that other working conditions should not be changed during remote work in order to maximally adhere to employees' rights and avoid a need to comply with the legislation of Ukraine on changing essential working conditions. Therefore, remote work should be implemented as a temporary quarantine measure.

Also, in order to avoid unnecessary risks for a company, an employer needs to receive the applications in writing from the company employees for their transfer to remote work. This will protect a company employer from unnecessary risks. After approving the above regulations and receiving the above applications from the employees, an employer shall issue an order for introducing the remote work regime and make employees aware thereof. At the same time, it is important to ensure the production management, setting of tasks and monitoring their execution, accounting of working time and other procedural issues. An ideal option is to approve the amendments to the employment policies and procedures or a collective agreement that will regulate these issues.

Part-time work

In accordance with Article 56 of the Labour Code of Ukraine, an employee and an employer may enter into an agreement and establish thereby both on the recruitment date and subsequently a part-time business day or a part-time week. In these cases, remuneration shall be paid proportionally to the time worked or depending on productivity. Part-time work does not entail any restrictions on the scope of employees' labour rights.

Introduction of part-time work, respectively, is a change in essential working conditions, and therefore it requires at least a two-month notice to be served to employees. If part-time work is introduced at the employee's request, then the above two-month notice to an employee is not required, and part-time work may be introduced at any time.

If an employee files an application for part-time work, such an employee should refer to therein as follows: a part-time type (a part-time day or a part-time week); a part-time mode (the start time and the end time of work); a part-time period.

Partial or complete stoppage of company operations (idle time or shutdown)

Idle time is the work stoppage caused by the absence of organizational or technical conditions necessary to perform the work, or by extreme and unpreventable or other circumstances.

The idle time resulting not from the employee's fault shall be paid at the rate of not less than 2/3 of the tariff rate as set for the employee's labour grade (salary). The idle time introduction does not require the employee's consent. This issue shall be resolved by the employer in agreement with a primary trade union (if any) or a labour collective's representative and shall be formalized on the basis of the decision/order to be made or issued by the employer's authorized body. The order shall state the reasons for its publication, set the time and date of the idle time start and end (if possible). Such an order may allow the employees, in respect of whom the idle time is formalized, not to go to work until its termination. The order shall be made known to all employees concerned, as well as to a representative of the labour collective (trade union) operating in the company.

If the idle time order does not include its end date, then such an end date should be also formalized in the respective order, indicating the date since which such idle time will end and expire.

Employees' dismissal due to quarantine?

The applicable Labour Code does not provide for the procedure how to dismiss employees due to quarantine. But if such a need arises, then one of the best reasons will be to reduce the employees' number or personnel due to changes in the production and labour management.

For such a reduction the employer shall be obliged:

- to substantiate a need in the personnel reduction and employees' dismissal;
- to draw up and approve a new personnel list not including the reduced positions;
- to notify personally the employees, whose positions are being reduced, of the next dismissal no later than two months before such a dismissal;
- to offer an employee simultaneously with the notice of dismissal due to the personnel reduction (redundancy) another job at the same company (enterprise);
- to notify the State Employment Service of the subsequent employees' dismissal;
- to issue an order for dismissal after the expiry of a two-month notification period;
- to issue to the employee on the dismissal day a properly executed employment record book, and a copy of the order for his/her dismissal;
- to issue to the employee at his/her request a certificate of his/her work at the company (enterprise);
- to pay the employee on the day of his/her dismissal all amounts due and payable to him/her by the company (enterprise) (wages, severance pay in the amount not less than the average monthly salary, compensation for unused vacation). If the employee did not work on the dismissal day, the abovementioned amounts should be paid not later than the next day following the one when such a dismissed employee submits a settlement request.

If all of the abovementioned options for solving the problem of the work management during quarantine are not suitable, the only option is to continue the work, providing the employees with personal and collective protective equipment. In this case, the employer should arrange for the maximum safe delivery of employees to the place of work and backwards, to freely provide them with personal protective equipment, detergents, antiseptic and disinfectants, to inform employees about the preventive measures posted on the official website of the Ministry of Health of Ukraine and State Labour.