

Remote and home-based work, flexible working mode in Ukraine

- 1. Law on remote work**
- 2. Remote work**
- 3. Home-based work**
- 4. Flexible working mode**

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On 4 February 2021, the Verkhovna Rada of Ukraine adopted the Law On Amending Certain Legislative Acts to Improve Legal Regulation of Remote Work, providing the improvement of legal regulation of remote and home-based work.

This Law introduces two independent types (forms) of work – remote and home-based, as well as the concept of "flexible working mode".

Remote work

Remote work is a form of labor relations between an employee and an employer when the work is performed by the employee outside the employer's premises in any place of his/her choice using information and communication technologies.

When performing remote work, the employee independently chooses his/her own workplace and is personally responsible for ensuring safe and harmless working conditions in it.

Also, in case of remote work, employees distribute working time at their discretion and are not subject to an internal code of conduct, unless otherwise provided in an employment contract. Thus, the overall working hours shall not exceed the norms provided by the Labor Code.

By agreement between an employer and an employee, the latter may combine remote work with office work in the employer's premises/territory. Peculiarities of combining remote work with office work in the employer's premises/territory are defined in an employment contract for remote work.

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An employment contract for remote work determines procedure and terms of providing employees who work remotely with the necessary equipment, software and hardware, information security and other means to perform their duties. Also, an employment contract for remote work specifies procedure and deadlines for such employees to submit work reports, an amount, procedure and terms of a compensation payment for the use of equipment, software and hardware, information security and other means owned or rented by an employee, a compensation procedure of other costs associated with remote work.

In the absence of a relevant provision in an employment contract, an employer provides an employee with information and communication technology means of work, insures their appropriate installation and maintenance, as well as pays all associated costs.

The employee who works remotely must be provided with a guaranteed period of free time for rest (period of disconnection), when the employee may interrupt any telecommunication with the employer, which is not considered a violation of an employment contract or labor discipline.

The employee may demand from the employer a temporary (up to 2 months) transfer to remote work, if actions with signs of discrimination have been taken against him/her at his/her workplace. Thus, the employer may refuse such a transfer if remote work is not compatible with activities and job function of the employee, as well as if the employee didn't provide sufficient evidence of discrimination, sexual harassment or other violence committed against him/her.

Home-based work

Home-based work is a form of labor relations when paid work is performed by an employee at his place of residence or in other pre-selected premises, which are characterized by the presence of a fixed area, technical means (fixed production and non-production assets, tools, devices, inventory) or their combination, required for the production of outputs, provision of services, performance of works or functions provided in the constituent documents of an employer, but outside an employer's production or working premises.

When performing home-based work, an employee's workplace is fixed and can't be changed at the employee's initiative without the employer's consent in the manner specified in an employment contract for home-based work. The employer must justify a refusal to give consent for a workplace change at the employee's initiative.

In case of impossibility to work at a fixed workplace for reasons beyond his/her control, the employee has a right to change a workplace notifying the employer at least three working days before such a change in the manner specified in an employment contract for home-based work.

During home-based working, employees are subject to an employer's general work regulation, unless otherwise provided in an employment contract.

An employer is to keep records of all home-based work employees, separately women and men, as well as registration sheets of work assignments entrusted to an employee, indicating:

- Time given for performance of the assignments;
- Wage rates;
- Costs incurred by an employee, if any, and an amount of compensation paid in this regard;
- Any deductions from wages made under Ukrainian law;
- Due salary and paid salary less deductions together with date of payment.

Also, upon entering into an employment contract for remote or home-based work, the law gives an employer the right to obtain information about a place of residence or other place of an employee's choice, where job will be performed (to register the employee for remote work properly).

Under the law, an employee is to be acquainted in writing with an internal code of conduct, collective agreement, local regulations of an employer, notifications and other documents using electronic means of communication.

Flexible working mode

Flexible working mode is a form of labor management allowing an establishment of a work mode different from an internal code of conduct, subject to compliance with the established daily, weekly or for a certain record period (two weeks, month, etc.) norms of working hours. This means that an individual employee may work according to an individual timetable, which differs from an employer's general work mode.

Such a work mode can be agreed for a specified period or indefinitely, verbally or in writing both upon applying for a job and afterwards. The procedure and terms of flexible working mode are defined in an internal code of conduct.

Working hours in flextime consist of three parts:

a fixed time when an employee must be present at the workplace and perform his/her duties; thus a working day may be divided into parts;

a variable time when an employee determines the working periods at his/her discretion within the established norm of working hours;

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a break time for rest and meals.

In case of multi-shift work management, as well as in case of continuous production and in other cases requiring the presence of an employee in strictly defined by an internal code of conduct hours (industry, trade, consumer services, service delivery, transport, etc.), a feasibility of flextime is determined by an employer.

Also, the law stipulates that in case of industrial and technical necessity or to perform urgent or unexpected tasks, an employer may temporarily (for up to one month during a calendar year) apply general working mode established at an enterprise to employees who work under flextime. In other words, in some cases an employer may transfer employees who work under flextime to general working mode, without the need to notify them two months in advance.

In case of a business trip, an employee is subject to working hours of an assigned enterprise.