

## Managing labour relations under martial law in Ukraine

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On 23 March 2022, the Law of Ukraine "On organization of labour relations under martial law" regulating particularities of the labour relations of employees of all enterprises, institutions, and organizations, irrespective of their forms of ownership, types of activity and industry sectors, as well as persons working under a labour agreement with individuals during martial law in Ukraine, came into force.

### 1. Concluding a labour agreement under martial law

For the duration of martial law in Ukraine, parties shall agree on the form of labour agreements. It is now allowed to waive the requirement for a written form of a labour agreement in cases for which it would be obligatory under normal circumstances, in particular:

- in the case of an organised recruitment of workers;
- when a labour contract is concluded for work in areas with special natural geographical and geological conditions, or conditions of increased risk to health;
- when entering into a contract;
- when concluding a labour contract with an individual;
- in the case of the conclusion of a labour agreement for remote work or work performed at home.

A probation period may be imposed for any category of employees.

An employer has the right to hire new employees under fixed-term labour

contracts for the duration of martial law or for the period of substitution of temporarily absent employees, regardless of the reasons for their absence.

## **2. Transfer and change of essential working conditions under martial law**

A Ukrainian employer has the right to transfer their employees to another job not stipulated by the labour agreement (if it is not contraindicated by an employee's health condition) without their consent and without 2-months' prior notice, provided that the following conditions are met:

- the transfer shall be made only to prevent or eliminate the consequences of hostilities or other circumstances which endanger or may endanger human life or the normal conditions of life;
- the remuneration for work performed must not be less than the average earnings on the previous job.

Exception: transfer to work in another area where active hostilities are ongoing requires the employee's consent.

## **3. Termination of labour agreement under martial law**

### **3.1 Termination of the labour agreement by the employee**

An employee is entitled to terminate the labour agreement on his/her own initiative within the term specified in his/her application (without observing the two-week notice period) due to military action in the regions where the enterprise, institution, organization is located and due to the threat to the life and/or health of the employee.

Exceptions: an employee engaged in: public utility work under wartime conditions; performance of work at objects of critical infrastructure.

### **3.2 Termination of a labour agreement on the employer's initiative**

Dismissal by the employer is allowed during the period of temporary disability or the employee's vacation, provided there are legal grounds for it. The date of dismissal is the first working day after the day on which the temporary disability ends or after the end of the vacation.

Exceptions: maternity leave; parental leave.

Requirements for prior consent of a primary trade union for the dismissal of an employee on the employer's initiative apply only to the cases of dismissal of employees who have been elected into trade union bodies.

## **4. Hours of work and rest under martial law**

Maximum working time of employees under martial law in Ukraine is as follows:

- normal – 60 hours/week (instead of 40 hours);
- reduced – 50 hours/week.

5- or 6-day working week is set by the employer upon the decision of the military

command together with the military administration.

The time of beginning and ending of daily work (shift) is determined by the employer.

The duration of weekly uninterrupted rest may be reduced to 24 hours (from 42 hours).

The following provisions of the Ukrainian labour law do not apply:

- the reduced duration of work at night, on the eve of holidays, non-working days and weekends, as well as the exceptional procedure for engaging employees to work on these days and the respective compensation;
- the prohibition of overtime work exceeding four hours within two consecutive days and 120 hours per year.

Employees' consent is temporarily not required for them to be engaged in night work, unless the employees are:

- pregnant women;
- women with children under one year of age; or
- persons with disabilities who have been medically advised against such work.

## 5. Peculiarities of employing certain categories of workers

It is now allowed to employ women for heavy work and work in harmful or hazardous conditions, as well as for underground work.

Exceptions: pregnant women and women breastfeeding a child under the age of 1 year.

For the duration of martial law, it is allowed to engage employees who have children to work at night and overtime, to work on weekends, public holidays, and days off, and to be sent on business trips upon their consent.

## 6. Remuneration of labour

Salary shall be paid to the employee on the terms and conditions specified in the labour agreement. However, the employer is released from the liability for the violation of the obligation to pay the salary within the specified time period if it is proved that the violation has been caused by military action or other force majeure circumstances.

The Chamber of Commerce and Industry of Ukraine (hereinafter – CCI) has decided to simplify the procedure for certifying force majeure circumstances (events of "superior force"). In order to remove the compulsory application to the CCI of Ukraine and its authorised regional chambers of commerce and industry and to prepare a package of documents under martial law, a general official letter of the CCI of Ukraine on the certification of force majeure circumstances was published on its website on 28 February 2022. That is, it is now possible to print out the relevant confirmation to whom it may concern, if necessary.

If timely payment of wages is not possible due to the hostilities, the deadline for

payment of wages may be delayed until the company resumes operations.

## 7. Vacations under martial law

During martial law, employees are entitled to 24 calendar days of basic annual paid leave. The rest of the due days of leave must be granted after the end of martial law in Ukraine.

An employer may refuse to grant any type of leave to an employee if such an employee is involved in the performance of work at facilities of critical infrastructure.

Exceptions:maternity leave;parental leave for taking care of a child under the age of three years.

A Ukrainian employer may grant unpaid leave at the employee's request without observing the limit of 15 calendar days per year.

## 8. Suspension of the employment contract

The term "suspension of the employment contract" has been introduced by the law, which means

- temporary exemption from the employer's obligation to provide the employee with work, and
- suspension of the employee from his or her obligation to perform work according to the concluded labour agreement.

Suspension of the labour agreement does not result in the termination of the employment relationship.

The reason for suspension may be military aggression against Ukraine, which precludes the provision of work.

If possible, the parties must notify each other of the labour agreement suspension by any available means.

Reimbursement of salary, guarantees, and compensation payments to employees for the period of suspension is fully borne by the state perpetrating the military aggression.

Additionally, under martial law in Ukraine, certain provisions of collective agreements may be suspended at the employer's initiative.

## 9. Staff record keeping

The staff record keeping and archival storage of staff documents during martial law is performed at the employer's discretion.

At the same time, the Ministry of Economic Development of Ukraine, in its commentary to the Law, notes that in order to secure the rights of employees, the requirement for the employer to keep reliable records on the work performed by the employees and labour remuneration expenses remains mandatory.