

Labour Relations Ukraine

1. INTRODUCTION

Ukrainian labour law has inherited a significant number of concepts and approaches from the Soviet era. Despite numerous changes, the Labour Code (of 10 December 1971), which is the key piece of legislation regulating employment matters, remains highly employee-focused and full of pitfalls. Specific statutes have been adopted since Ukraine became independent to deal with labour safety, remuneration, vacation, collective bargaining agreements, employment of population and employment of foreign nationals.

2. THE DIFFERENT TYPES OF EMPLOYMENT CONTRACTS AND THEIR TERMINATION

2.1 EMPLOYMENT FOR AN INDEFINITE PERIOD OF TIME

In general, most agreements are concluded for an indefinite term. Pursuant to the Labor Code of Ukraine an employee shall give two-week notice before termination of his/her contract which is concluded for an indefinite period of time. However, in certain cases an employee does not need to follow this requirement (i.e. an employee's move, sickness, pregnancy, admission to an educational institution or other valid reasons).

2.2 FIXED-TERM EMPLOYMENT RELATIONSHIPS

Ukrainian labour law enables an employer to conclude fixed-term employment agreements with its employees, these agreements should be concluded only with those employees whose work is by nature of a limited duration (i.e., when it is possible to estimate the last day of their employment). It is also possible to enter into an employment agreement 'until the completion of agreed-upon work' when it is impossible to determine the period necessary to complete the limited scope of agreed-upon work. An employee can also state in his or her employment application that he or she is asking to be employed for a fixed term for family or personal reasons.

Ukrainian labour law also provides for a special form of employment agreement, called an 'employment contract', that may be concluded either for a fixed term or for an indefinite period of time. The employment contract, unlike an ordinary employment agreement, contains the following features:

- a. it allows the employer to establish an employment relationship for a fixed period of time even where the nature and conditions of employment would not ordinarily warrant the conclusion of an employment agreement for a fixed term;

- b. it may contain reasons for the discharge of an employee in addition to the list of grounds provided in the Labour Code; and
- c. an employer and an employee may also agree in the employment contract on their additional rights, obligations and liabilities, conditions of remuneration apart from those provided by law, provided that such additional terms do not diminish the employee's rights guaranteed by law.

A written employment agreement or contract can be concluded before or on the date of issuing a hiring order by the employer and becomes effective on the date of the hiring order. It must be signed by the employee as the party to the employment agreement or contract.

The parties can amend the employment agreement or contract at any time. To change the essential terms of employment (compensation, working hours, etc.) the employer must issue an order notifying the employee of such changes at least two months in advance.

Irrespective of the form of an employment agreement, the employer must issue an internal hiring order to document commencement of the employment relationship stating the employee's position and salary. An employment agreement is deemed to be concluded even if a hiring order was not issued, but an employee was de facto admitted to work.

In addition, the employer must enter the relevant record in the employee's labour book. The labour book records the employment activity and must be kept by the employer for each employee working for more than five days.

The parties to a labor agreement or contract may agree to terminate their contractual relations due to:

1. mutual consent of the parties;
2. expiration of the labor contract, except in cases when labor relations actually continue and neither party has any objections as to termination;
3. military draft or recruitment of an employee;
4. termination of the labor contract at the initiative of the employee, the owner, a body authorized thereby, a trade union, several trade unions or other bodies which are authorized to represent the workers' collective;
5. in case the employee agrees to be transferred to another enterprise, institution or organization or the transfer of the employee to another chosen position;
6. refusal of the employee to be reassigned to another location of the enterprise, institution or organization, or the employee's refusal to work due to significant changes in labor conditions;
7. court order for imprisonment of the employee or other type of punishment, which excludes the possibility of performing work; or

8. any other grounds provided by an agreement between the employer and the employee.

2.3 FREELANCERS

The relations between freelancer and his employer are not of labour, but of civil nature. Thus, they are regulated not by the Labour Code, but by the Civil Code and other civil law acts. The employer and freelance worker usually sign an agreement. Typically, this is a contractor's agreement or agreement for the provision of services, or another type of agreement depending on the subject.

2.4 MINOR EMPLOYMENT

Labour law provides for the possibility to establish a part-time. Despite the reduced working hours, a part-time is set by agreement between the parties of an employment contract. In some cases, the law requires an employer to establish part-time at the request of employees.

Part-time can be set in the form of part-time working week (reducing number of working hours per week) or a part-time day (e.g. 2 business hours of 8), or a combination of types mentioned above.

3. SOCIAL CONTRIBUTIONS AND THE DIFFERENT KINDS OF BENEFITS IN UKRAINE

3.1 PRESENTATION OF THE Ukrainian Social SECURITY SYSTEM

By law, the Ukrainian government provides all employees (except subcontractors or consultants) with certain social protection by requiring all enterprises and organizations, except those specifically covered by relevant international agreements, to make deductions to the social security fund on behalf of its employees. Thus, under the current legislation, Unified Social Security Contribution (USSC) is withheld from remuneration. Ukrainian employers are considered to be tax agents. As such, Ukrainian companies withhold USSC and remit the payment to the State Fiscal Service, which, in turn, distributes the amounts between state social security funds. The effective employer USSC rate is 22%. The base of USSC is capped at 25 times the minimal cost of living during the year. For December 2016 the cap is UAH 38,750.

3.2 OLD-AGE PENSION

In Ukraine the retirement age is 60 with at least 35 years of coverage (men) or age 57 and six months (women, gradually rising by six months a year until reaching age 60 in 2021) with at least 30 years of coverage.

Covered employment includes years spent in higher education, the armed services, caring for persons with disabilities or children younger than age 3, or being unemployed and seeking a job, if contributions are paid for these periods.

Amount of pension payment depends on the wages of a participant (personal and average in Ukraine) and covered service period (number of months the participant paid a pension insurance contribution).

The minimum pension is the minimum subsistence level for people with a disability (as of December 2016 - UAH 1247).

The maximum pension is 10 times the minimum subsistence level for people with a disability.

3.3 THE UNEMPLOYMENT BENEFITS SYSTEM

The unemployed person must be registered at an employment office, be able and willing to work, and have income less than the minimum wage. The benefit may be reduced, suspended, or terminated if the worker is discharged for violating work rules, leaving employment without good cause, violating conditions for job placement or vocational training, or filing a fraudulent claim.

The unemployment benefits are the following: with less than two years of covered employment, 50% of the insured's average earnings is paid with less than two years of covered employment; 55% with two to six years; 60% with seven to 10 years; and 70% with more than 10 years. 100% of the benefit is paid for the first 90 calendar days; 80% for the next 90 calendar days; 70% thereafter. Benefits are paid for up to 360 days in a two-year period; up to 720 calendar days for insured persons within two years of retirement.

4. FOREIGNERS WORKING IN UKRAINE – TRANSFERS OF UNDERTAKINGS

4.1 FOREIGNERS WORKING IN UKRAINE

The majority of labour law provisions apply equally to Ukrainian and foreign nationals. Thus, foreign employees enjoy the same benefits, guarantees, and protections available for Ukrainian employees under Ukrainian labour laws and the employer's internal labour rules, policies and procedures. However, there exist special procedures for hiring foreign nationals that must be followed to avoid administrative liability or even deportation of a foreign national.

In accordance with Ukrainian law, each foreign national intending to work in Ukraine for a Ukrainian company must obtain a work permit.

The State Center of Employment of the Ministry of Labor of Ukraine or its authorized regional or city bodies (the "Employment Center") issues work permits. General work permits are not issued, and instead a foreigner obtains permission to work at a specific position at a specific enterprise, institution or organization. Work permits also must be registered at the appropriate regional Employment Center.

Work permits are valid for up to one year, but may be extended if an application is filed with the Employment Center up to one month before expiration of the current term.

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Cross-border posting of Employees

Employees can be posted abroad by a Ukrainian company, in the same way as they can be posted to Ukraine from a foreign company. Ukrainian company must have a permit for the employment of a foreigner as per procedure described above. The employer is obliged to maintain the employment contract and all the documents in related with the labour contract, decisions of posting, posting contracts, the evidence of working hours and the salaries paid to the employees.

Taxation of Employment Income

The general personal income tax rate on employment income is 18%. A temporary military contribution of 1.5% of taxable personal income was introduced from August 2014 and remains applicable. The tax base is equal to the personal income tax base.

4.2 Transfer of Undertakings

Ukrainian legislation provides for legal guarantees of employees in case of change of employer's ownership. Part 3, art. 36 of the Labor Code stipulates that changes in subordination of enterprise, institution or organization shall not terminate the validity of labour contract.

However, according to part 4, art. 36 of the Labor Code, termination of labour contract is possible at the initiative of the owner only in case of reduction in the number of employees or staff size.

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