

SALANS KYIV OVERVIEW OF THE LABOUR LAW OF UKRAINE

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INTRODUCTION

Labour issues in Ukraine are governed primarily by the Labour Code of Ukraine ("**Labour Code**"), which regulates matters such as wages and salaries, sabbaticals and vacation, employment agreements, collective bargaining agreements, termination of employment and employee guarantees. Related issues, including social security, mandatory withholdings, taxation, pensions, and work permits are regulated by a number of other legislative acts and regulations.

The Labour Code, being based on the old Soviet labour code, is slanted heavily in favour of workers' rights and protections. For example, the concept of "employment at will" is undeveloped in Ukrainian labour legislation. In addition, an employee cannot contractually waive many of the rights he or she may have under Ukrainian law. Therefore, provisions of the Labour Code will prevail over any less-favourable terms in the employment agreement. This becomes particularly relevant in the context of

termination of employment, given that the Labour Code permits termination only in specific and limited circumstances, described further under "Termination," below.

1. *Employment Agreements*

There are three types of employment agreements in Ukraine: (i) fixed term, (ii) indefinite term, and (iii) project-based agreements. The latter are entered into to fulfil a specific job or responsibility and terminate when the task has been completed.

Employment agreements are usually evidenced by an internal order ("*nakaz*" in Ukrainian), which contains *inter alia* the employee's name, position and employment starting date. The order should be signed by the local director and the written agreement signed by the employer and employee should be attached. As a general rule, the employer may not demand that the employee perform duties not detailed in the employment agreement.



A specific type of fixed term employment agreement is the “labour contract,” which may be utilized only in specific circumstances permitted by Ukrainian law. For instance, the Business Code of Ukraine permits a labour contract to be entered into with the “director of an enterprise” which, under current professional classification codes, would potentially include a director of any business entity.

A labour contract may contain additional bases for termination beyond those permitted by the Labour Code (for example, breach of confidentiality obligations, failure to attain productivity levels), as well as impose additional rights and obligations on the parties. An employer may wish to consider using the labour contract form of agreement to provide more flexibility in structuring its employment relationship with a director.

2. Terms of Employment

An employee may be hired for an initial trial or probationary period that generally should not exceed three (3) months. The standard probationary period is one (1) month for “labourers,” three (3) months for other employees. During this trial period, employment can be terminated without prior notice if the employee proves unfit for the job. However, if the employee continues to work after the trial period has elapsed, the employee is considered to have “passed the test,” and is entitled to all rights and protections under Ukrainian labour law.

Under Ukrainian currency regulations, salary payments made by employers to Ukrainian residents are permitted only in local

currency, the Ukrainian Hryvnia. In practice, salaries are often indexed against a foreign currency to protect against the risk of currency devaluation.

By law, a salary should be paid twice per month with the period between payments not exceeding 16 calendar days.

According to the Labour Code, regular working hours may not exceed 40 hours per week, based on either five or six working days. However, the Labour Code also recognizes a “non-normative” work schedule for certain classes of employees, such as managers and professionals, which allows extended work hours without additional remuneration. In all other cases, employees are entitled to overtime pay for working extended hours. Negotiated overtime may not exceed four hours in any 48-hour period or 120 hours annually.

Most businesses in Ukraine are open from 9:00 am until 6:00 pm. Under the Labour Code, lunch breaks may not exceed two hours; however, usual practice is for the lunch break to last one hour. The timing of the lunch break should be established by the internal regulations of the employer.

The Labour Code currently recognizes 10 national (paid) holidays, and also provides employees with the opportunity of taking an additional three religious holidays on the condition that the employee makes up those days later.

In addition to national holidays, employees are entitled to at least 24 calendar days of paid vacation each year.



Depending on the employee's position and qualifications, he or she may be entitled to additional vacation time. For example, employees working a "non-normative" schedule (*i.e.*, over 40 hours per week) are entitled to up to seven (7) calendar days of paid vacation above and beyond the 24 calendar days. Employees may not waive vacation time in exchange for monetary compensation, except in certain limited circumstances. Employees earn their annual vacation entitlement after the elapse of six-months following commencement of employment.

Employees are also entitled to paid sick leave; however an employer may terminate an employee's contract if he or she takes more than four consecutive months' sick leave, subject to certain exceptions. Sick leave is paid as a percentage of the employee's full salary, determined on the basis of duration of employment.

Termination of employment is strictly regulated by Ukrainian labour rules. During the initial probationary period, either the employer or the employee may terminate the employment relationship without cause and without prior notice. After this probationary period, however, the employer's right unilaterally to terminate employment is limited to those cases expressly stipulated by the Labour Code. Such limited cases include, for example,

- ❖ persistent non-performance without cause of the employee's duties, in spite of prior written reprimands;
- ❖ a single gross violation of employment duties (in limited cases only);

- ❖ absence from work for more than three consecutive working hours without sufficient cause;

- ❖ drunkenness, theft or embezzlement;

- ❖ sick leave of more than four consecutive months, subject to certain exceptions;

- ❖ unsuitability for a position or inadequate qualifications. In this case, however, the employer must first offer the employee another job that matches the employee's qualifications, if such a job exists;

- ❖ liquidation, reorganization or necessary staff reductions. In such case, the employer must first offer the employee an alternative position (if one is available) and must provide two months' prior written notice and one month's severance pay.

In contrast, employees working under an indefinite term employment agreement have the right to terminate the employment relationship at any time, subject to two weeks' (and less in certain cases) prior written notice. The Labour Code also permits termination of the employment relationship by mutual agreement of the employer and employee.

3. *Labour Books*

Labour books typically contain information about the type of work performed, any awards, the duration of employment, etc., and serve as a basis for ascertaining the employee's length of service with reference



to social security and pension rights upon retirement.

Although representative offices of foreign companies may engage Ukrainian employees, they are not permitted to make any entries in the labour books of such employees. Any entries made directly by a representative office would be declared invalid. Rather, those books are submitted to and maintained by appropriate government agencies. In Kyiv, the relevant agency is the General Directorate for Servicing Foreign Representations (commonly referred to by its acronym "GDIP"). A representative office must enter into an appropriate service agreement with GDIP and compensate GDIP for its services.

4. Payroll Taxation

Ukrainian law imposes a number of tax obligations on an employer in relation to the payroll of its employees as described below.

Under Ukrainian tax law, an employer is deemed to be a "tax agent" for its employees. This means that the employer is obliged to withhold and remit to the state budget personal income tax ("PIT") on salary and on certain fringe benefits provided to its employees. Moreover, the employer must regularly file PIT reports with the tax authorities.

The standard PIT rate is 15%. The PIT base for payroll income is determined as

being gross salary less social security contributions payable at the expense of the employee.

In addition to PIT, a Ukrainian employer is liable for paying relevant mandatory social security contributions for its employees and reporting to the relevant social security funds. Mandatory social security contributions apply to payroll salary payable by an employer to its employee.

Social security contributions are split into two types: (1) those payable at the expense of the employer; and (2) those payable at the expense of the employee. Social security contributions payable at the expense of the employer are accrued on top of payroll. Conversely, social security contributions due from an employee are withheld by the employer from the employee's payroll.

The tax base for social security contributions is currently capped at UAH 10,035 (approximately - USD 1,600) per month per person. To explain, if a salary exceeds the payroll cap, social security contributions will not apply to the amount of salary that exceeds the payroll cap.

For your reference, we summarize the rates for social security contributions in the table below.



No.	Type of mandatory social security	Rate of contribution, % of payroll	
		Employer	Employee
1.	Pension	33.2	2
2.	Unemployment*	1.3	0.5
3.	Temporary disability	1.5	1
4.	Accident at work	0.66-13.6 (depending on the class of professional hazard)	N/A

* Foreign individuals who temporarily reside in Ukraine are exempt from the liability to make mandatory contributions to the Unemployment Fund of Ukraine.

5. Disabled Persons- Employment Requirements

Ukrainian law sets requirements for the employment of a certain number of disabled persons by Ukrainian employers. Specifically, a Ukrainian employer must employ disabled persons as 4% of its average number of employees per year. If a Ukrainian employer engages between 8 and 25 staff, at least one disabled person must be employed.

6. Work Permits

Any foreign citizen seeking employment in Ukraine must obtain a work permit from the relevant state or local employment centre of the Ministry of Labour. However, the Ministry of Labour has stated that expatriate directors of local representative offices are exempt from the requirement to obtain a work permit.

It is the employer's obligation to ensure that every foreigner working in their office obtains a work permit. A foreign citizen employed without a work permit is subject to immediate deportation from Ukraine at the employer's expense, and the passport of such foreign citizen will be stamped with "persona non grata". In addition, the director

of the employer company may be liable to an administrative financial penalty.

Applications for work permits are submitted by the employer, and should include supporting evidence that there are no local employees who would be able to perform the work the foreigner would be performing in Ukraine. Work permits are issued for a period of not more than one year but can generally be extended, with a few exceptions. There is no provision as to the maximum permissible period of uninterrupted stay for a foreign citizen in Ukraine for employment purposes.

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