



The Business & Law Readers Digest

Regulation of Labour and Employment in Ukraine

Banking and Finance // Beverages Industry // Corporate // Corporate Dispute Resolution // Due Diligence // **Employment** // Financial Services // Insurance // Investments // Kyoto Protocol Implementation // Logistics // Mergers and Acquisitions // Natural Resources // Oil and Gas // Representative Office // Land // Ukraine and the WTO // Ukraine and Russia // Tourism



Contents

General labour regulations in Ukraine	3
Employment Agreements	5
Employees' Rights	6
<i>Working Hours</i>	
<i>Overtime and breaks</i>	
<i>Vacation</i>	
<i>Maternity</i>	
Wages	8
Employment of Foreign Nationals	9



General labour regulations in Ukraine

The main sources of labour and employment law in Ukraine are the Constitution, the Labour Code of Ukraine, and labour regulations issued by the Cabinet of Ministers of Ukraine, the Ministry of Labour, and local state administrations.

While the Constitution's guarantees are stated in general terms, the Labour Code of Ukraine is the more specific source of labour law. It is a comprehensive set of rules which relates to practically all aspects of relations between employers and employees governing employment agreements and contracts, working hours, vacations, days off, compensation, social benefits, discipline, employment of women and minors, resolution of employment disputes, and the respective liabilities of employees and employers.

It should be admitted however, that the current Labour Code of Ukraine has not undergone any major revisions since its adoption in 1971. Nowadays it fails to reflect the nature of the employment situation in modern Ukraine and burdens the employers with numerous formalities which do not serve the interests of employees and yet require significant recourses on the part of employers. Therefore, there is a necessity to adopt a new and appropriate Labour Code.

While the Labour Code of Ukraine applies to employment relationships, labour relations in a broader sense (for example, under agency or contractor's agreements) are regulated by civil law. Therefore, the Civil Code of Ukraine provides rules regulating the relations between client and contractor, including their respective rights, duties, and liabilities, the terms for payment, and the grounds for invalidating a contractor's agreement.

As a member of the International Labour Organisation (ILO), Ukraine has signed and ratified a number of ILO conventions that supersede conflicting provisions of Ukraine's domestic labour laws. The country has also entered into a number of bilateral and multilateral international agreements that contain provisions on labour, employment, and social protection.

Ukraine guarantees to each citizen of working age the following rights:

- freedom to work and choose a profession;
- protection from unreasonable rejection of an employment application or from illegal termination of employment;
- free assistance in locating a position according to the individual's education and professional training;



- severance pay when a job is lost due to reorganisation, or the elimination of the position held by an employee;
- free training while unemployed;
- unemployment compensation.

The state provides additional employment guarantees to certain categories of citizens, including women with children under the age of six, single mothers with children who are disabled or under the age of 14, senior citizens of pre-retirement age, and persons released from prison.

Primary responsibility for the implementation of state labour and employment policy rests with the Ministry of Labour and Social Policy of Ukraine (Ministry of Labour), the State Centre for Employment, the Research Centre for Employment of Population and Employment Market of the National Academy of Sciences and their respective local branches.

The Labour Code is extremely pro-employee, which reflects the socialist principles of employment. Grounds for dismissal are limited and social guarantees to employees are generous. Individual employment in Ukraine is established by an employment agreement or an employment contract be-

tween an employer and an employee. The main employment terms and conditions may be summarised as follows:

1. The trial period is normally limited to three months, with a few exceptions of six months.
2. The monthly wage may not be less than the statutory minimum wage (as of March 2008 - UAH 515 or approximately USD 102) and must be paid at least twice a month.
3. An employer may not order an employee to undertake a job that is not included in the employee's employment agreement.
4. Employers must notify employees at least two months in advance concerning employees' working location or conditions.
5. The working week may not exceed 40 hours.
6. Overtime is capped at 120 hours per year and permitted only when expressly provided by law.
7. Vacations may not total less than 24 calendar days.



Employment agreement

Employment agreements with Ukrainian nationals, as a rule, are not made in the form of a single written instrument, but rather in the form of an employee's application and an administrative order signed by the general manager of a company, both documents specifying the employee's position and salary. All other substantive terms and conditions of employment evolve from the provisions of the Labour Code, collective bargaining agreement and employer's internal regulations.

When entering into an employment agreement, an employee must submit their passport (or other identification document) and labour book. In certain circumstances, the employee may also be required to submit an educational or training diploma, a health certificate, or other documents. In certain cases - when specifically stipulated by law - an employee may be required to comply with minimum requirements concerning age, education, or health. In addition, the Labour Code permits an employer to establish limitations as to employment of close relatives (such as parents, spouses, siblings, children of an employee) if such relatives and an employee are subordinated to each other. Generally, an employee must perform the duties under the employment agreement personally, and may not delegate it to any other person unless otherwise provided by law.

Employment agreements may be either permanent or temporary. If the agreement is temporary, the employer may terminate it at the end of the specified term without cause. If the agreement is permanent, the employer may terminate it only upon a ground set forth in the Labour Code.

The Labour Code distinguishes between an employment agreement and an employment contract. An employment contract is a special form of an employment agreement and may be used only where expressly permitted by law. It must be executed in writing and may be entered into only for a definite term or until a specific job is completed. An employment agreement, by contrast, may be concluded orally and may be entered into for an indefinite term.

The law expressly permits the use of employment contracts with certain employees, including, without limitation, the managing director of an enterprise. Generally, an employment contract allows the parties more discretion in determining their respective rights and duties, including working conditions, termination, compensation and benefits.

In other words, the parties to an employment contract may include provisions that differ from those prescribed by the Labour Code, e.g., a



longer annual vacation and more flexible working hours.

However, neither a contract nor an agreement may diminish the employ-

ment guarantees provided by the Labour Code, other labour laws and regulations, or applicable collective agreements.

Employment Rights

1. Working Hours

Under the Labour Code, the working hours of an employee may not exceed 40 hours per week, based on a working week of five or six days. The working week is 36 hours for employees between the ages of 16 and 18, and for employees in other categories, for example, those working in hazardous occupations.

The Labour Code requires employers to allow a reduced working day or a reduced working week upon the request of a pregnant woman, a woman with a child who is under the age of 14 or disabled, or a woman who takes care of an ill family member. The law also permits an employee and employer to agree to a reduced working day or a reduced working week. Wages in these cases shall be paid for hours worked.

The Labour Code requires that the duration of a continuous rest from work should be not less than 42 hours every week and the law generally prohibits work on days off. An employer may

assign employees to work on days off only with the consent of the trade union committee, if any, and then only to perform urgent, unforeseen work that affects regular operations, to avert a natural disaster, or to respond to an operational accident or other emergency. An employer assigns employees to work on days off through a written order. Having worked on a day off, an employee is granted either another day off or double pay, as agreed to by the parties.

With certain exceptions, work is not permitted on holidays and non-working days:

- New Year's Day (January 1);
- Orthodox Christmas (January 7);
- International Women's Day (March 8);
- Days of International Workers' Solidarity (May 1 and 2);
- Victory Day (May 9);
- Constitution Day (June 28);
- Ukrainian Independence Day (August 24);



- Easter and Trinity - one Sunday each.

Night work is defined as work performed between 10 p.m. and 6 a.m. Generally, normal working hours for night shifts are one hour less than normal daytime working hours. Night work is paid at an increased rate established by the industry (regional) bargaining and collective agreement, with a provision that such a rate is not less than 120 % of an employee's hourly rate.

2. Overtime and breaks

Employment agreements must also comply fully with the requirements of the Labour Code regarding overtime. As a general rule, Ukrainian labour law prohibits employers from requiring employees to work overtime. Permissible exceptions include work performed in response to an emergency, a natural disaster, or an operational accident, or to replace an absent employee. Even under these circumstances, overtime work is allowed only with the consent of the company's trade union. When permitted, overtime work may not exceed four hours per two consecutive days or 120 hours per year. Overtime work must be compensated at double the normal rate. Employees are entitled to a lunch break, which does not exceed two hours and which does not count towards working hours. The rest and lunch break must be provided four hours after the beginning of work and employees may use the break time at their discretion.

3. Vacation

Ukrainian labour law provides for a basic annual vacation of at least 24 calendar days. Of these, a minimum of 14 are consecutive calendar days to be used for the employee's main annual vacation. Certain categories of employees are entitled to longer basic vacations and/or additional annual vacations.

In general, aggregate annual paid vacation time may not exceed 59 days (69 days for those working in mines). After six months at a certain job, an employee is entitled to take annual vacation for the first year of employment. Annual vacations for the second and following years may be taken at any time during the respective year.

Certain vacations are available over and above the general limits, for special purposes. These include vacation periods of 10 days to four months for educational commitments. Under special regulations, longer vacations also may be allowed for certain creative activities such as completing a thesis or writing a book. In addition, an employee may be eligible to take unpaid vacation, ranging from 3 to 60 days.

4. Maternity

Ukrainian labour laws grant female employees a right to leave, known as "social vacation," for the purposes of pregnancy, childbirth, and child care, including a 70 day vacation prior to giv-



ing birth if there is more than one child or if complications arise, and a 56 day vacation after giving birth. Social vacations are also given for child care until the child reaches three years of age.

Payments for maternity and child care leave are made from the state social security fund for temporary disability. After exhausting her paid child care leave, a woman may be entitled to additional unpaid leave until a child reaches the age of six. This additional unpaid leave may be provided if the child, according to a medical certificate, requires special care at home.

Over recent years the state has encouraged an increase in the birth rate

through, among other incentives, increasing the sum of social payments connected with births.

In accordance with the recent amendments to the Regulations of the allocation and payment of the state assistance to families with children, approved by the Cabinet of Ministers of Ukraine dated 29 December 2001 No. 1751, the allowance for childbirth (for children born after 31 December 2007) amounts to UAH 12,240.00 (approximately USD 2,423.00) for the first child; UAH 25,000.00 (approximately USD 4,950.00) for the second child; and UAH 50,000.00 (approximately USD 9,900.00) for the third child and subsequent children.

Wages

Under Ukrainian law, the wage is defined as a compensation which an employer pays to an employee for completed work. The wage may consist of basic compensation, expressed as a fixed amount per working hour or scope of work, as well as additional reward for work over established standards, additional effort, creativity, or special conditions of work. Such additional compensation may include bonuses, interest, or other payments established by law or provided voluntarily by the employer. Wage amounts are established under employment agreements (or employ-

ment contracts) and collective agreements. By law, wages must be paid only in Ukrainian currency.

The minimum wage is the lowest compensation allowed by law for simple, unskilled work. Effective as of 1 January 2008, the minimum wage in Ukraine is UAH 515 (approximately USD 102). From 1 April 2008, the minimum wage will be UAH 525 (approximately USD 104).

Wages must be paid on a regular basis on the dates specified by a corporate



collective agreement, but not less than twice a month, with an interval(s) not exceeding 16 calendar days. The employer must compensate the emp-

loyee for losses resulted from a delay in payment of wages for one or more calendar months, irrespective of whether or not the delay is the employer's fault.

Employment of Foreign Nationals

An employment permit may be issued to a foreign national only if the following requirements are complied with:

- there are no Ukrainian nationals in the region (or, in certain cases, in the entire country) capable of performing the work for which the employment permit is requested; or
- there are sufficient other grounds for using foreign labour.

An employment permit is issued by the State Employment Centre of the Ministry of Labour (the "Employment Centre") for a period of up to one year and may be extended with one month's prior written request.

To apply for an employment permit for a foreign employee, an employer must submit the following documents to the Employment Centre:

- an application, stating the reasons for employing foreign citizens and demonstrating the employer's readiness to provide

all necessary working and living conditions;

- notarised copies of the company's charter and certificate of registration;
- a list of foreign citizens, stating the full name, year of birth, sex, passport number, and profession of each;
- a copy of the agreement, if any, between a foreign company and the Ukrainian legal entity providing for employment of foreign citizens;
- a copy of the draft employment agreement between the employer and the foreign employee;
- copies of the documents that evidence the foreign citizens' education or profession;
- the employer's good standing certificate from the state tax administration;
- a power of attorney for the employer's representative; and
- evidence of payment of the required application fee, equal to 10 non-taxable income units (UAH 170).



The Employment Centre is required to issue its decision regarding an employment permit within 30 days of the submission of a completed application. The employer must inform the Employment Centre of the commencement or termi-

nation of work by a foreign national within three days. The employer is also required to report the foreign employee's income and withheld taxes to the state tax administration on a quarterly basis.

**Volkov Koziakov & Partners
Law Firm**

72a, Chervonoarmiyska Street
Olimpiysky Business Center, Suite 124
Kyiv 03150 Ukraine

tel. +380 (44) 207 0270 fax +380 (44) 207 0272
e-mail office@vk-partners.com <http://www.vk-partners.com>