The purpose of this booklet is to provide a summary of the major provisions applicable to employment in Ukraine. It does not purport to be exhaustive.

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The Code of Laws on Labor of Ukraine (the Labor Code), dated 10 December 1971, as amended, is the principal, but not the sole, legislative act governing employment relationships in Ukraine. The Labor Code applies to all Ukrainian and foreign enterprises, institutions, and organizations, irrespective of their ownership form, type, or area of activity, and to all individuals employing labor in Ukraine. Article 3 of the Labor Code provides that employment relationships between enterprises with foreign investment and their employees on the territory of Ukraine are governed by the applicable Ukrainian legislation and the bylaws of such enterprises. Thus, all employers (both foreign and Ukrainian) must comply with the provisions of the Labor Code, which apply regardless of whether an employee is a foreigner or a Ukrainian national. The employment guarantees and the social security benefits granted to employees of both foreign companies and Ukrainian companies with foreign investment are the same as those granted to employees of other Ukrainian companies.

Conceptually, both local and foreign legal entities may engage individuals in Ukraine pursuant to employment agreements (or employment contracts, where appropriate) concluded in accordance with the Labor Code. As a rule, employment agreements must be concluded for an unlimited period. However, in a few specified circumstances, the Labor Code allows for an employment agreement to be concluded for a limited period agreed upon by the parties, or the period required to complete a given amount of work.

In particular, Article 23 of the Labor Code provides that an employment agreement may be concluded for a limited (i.e., definite) term only if the nature of employee’s work or “employee’s interests” make it impossible to establish an employment relationship for an unlimited term. However, this provision affects only employment agreements, and it is not applicable to employment contracts.

Ukrainian law distinguishes between an “employment agreement” and an “employment contract.” Although it is usual for an employment agreement to be concluded in writing, the absence of a written employment agreement does not prevent employment relationships from being established. In such situation, i.e., where a written employment agreement does not exist, the parties will be bound by an implied employment agreement as well as by the provisions of Ukrainian labor legislation.

An “employment contract” is a specific form of a written employment agreement. It may be concluded only when such possibility is expressly provided in a statute, e.g., with the CEO (as opposed to all other employees) of a company, and it must always be executed in writing. The resolution of certain issues in an employment contract (including the term of the contract, any additional grounds for termination of the employment relationship, the scope of material liability of the employee, etc.) may be determined by the parties and may deviate from the requirements of the Labor Code. However, Article 9 of the Labor Code provides that the provisions of an employment agreement (including contract) may not deprive an employee of the rights and benefits, which are guaranteed by the labor laws of Ukraine.

Pursuant to Article 21 of the Labor Code, the parties to an employment contract have discretionary powers to determine the terms of such contract, in particular:

• The rights, obligations, and liabilities of the parties, including the terms of their material liability;
• The duration of the contract;
• The remuneration and organization of an employee’s labor; and
• The grounds for termination, including early termination.
Thus, the principal advantage of an employment contract (as opposed to an employment agreement) is the discretion which the parties to an employment contract may exercise in respect of the terms and conditions of the employment and the grounds for termination, in contrast with the rigid requirements of the Labor Code. On the other hand, the principal disadvantage of an employment contract is that, unlike an employment agreement, it may be concluded only if it is expressly authorized by a relevant statute.
Employment-related Orders

Employers in Ukraine are required to issue an internal order (decree) each time an employee is hired, transferred to a new job, disciplined, or terminated, and in several other cases. For instance, Article 24 of the Labor Code stipulates that the conclusion of an employment agreement must be effected by the relevant order or instruction of an employer. Nevertheless, even if no such order or instruction is issued, but an employee has been granted actual access to work, an employment agreement will be considered as executed.

Labor Books

Every employee working for more than five days in an enterprise must have his/her employment recorded in his/her labor book. The labor book contains information about an employee and his or her past and current employment, as well as certain other information relating to an employee’s work history. The labor book is vital for establishing the right of an employee to state-provided pension and other benefits. The Labor Code prohibits the entering of information on disciplinary punishments into an employee’s labor book.

Probationary Period

An employer has the right to establish a probationary period of up to three months for a newly-hired employee. For workers, the duration of the probationary period may not exceed one month. The imposition of a probationary period must be specifically provided for in the employment agreement or the employment contract, as well as in the order on the hiring of an employee issued by the employer. During the probationary period, an employer may dismiss an employee at any time if an employer determines that an employee does not meet the criteria established for the position for which such employee was hired. However, there are restrictions on the dismissal of certain categories of women, which effectively makes probation for these employees meaningless. Also, there are certain categories of employees for whom probationary period cannot be established at all, in particular, persons under 18; young workers who have just finished their education; young professionals who have just finished their higher education; persons discharged from military or alternative (non-military) service; disabled persons who were directed to work at the enterprise by the Medical and Social Commission.

Minimum Wage

Wages in Ukraine may not be lower than the officially established minimum monthly salary defined in the legislation. As of December 2014, its amount is equal to UAH 1,218 (approximately USD 80). The amount of the officially established minimum monthly salary is periodically adjusted by the Verkhovna Rada (Parliament) of Ukraine to reflect increases in the cost of living.
Work Week

The regular work week in Ukraine is a maximum of 40 hours. A shorter work week is established for employees under 18, or for employees working in dangerous or harmful conditions and for certain other categories, or may be envisaged in the collective agreement. Any time worked in excess of the set limit is classified as overtime, and may only be required in extraordinary circumstances. The Labor Code limits the total amount of overtime in one year to 120 hours, and an employee may not be required to work more than 4 hours of overtime during two consecutive days. Pregnant women, women with children under 3, persons under 18 and employees enrolled in secondary schools and vocational technical schools may not be required to work any overtime. Overtime must be paid at the rate of 200% of the regular hourly rate of the relevant employee. Depending on the nature of the employee’s work, it may be possible to provide for work time on the basis of undefined duration of workday, which allow the employees to work extra hours without extra pay (but with extra paid annual vacation) within the maximum time limits described above.

Holidays and Days Off

According to Article 73 of the Labor Code, there are nine official holidays in Ukraine, namely:

- 1st of January - The New Year Day;
- 7th of January - Christmas;
- 8th of March - International Women’s Day;
- 1st and 2nd of May - International Worker’s Day;
- 9th of May - Victory Day;
- 28th of June - Ukraine Constitution Day;
- 24th of August - Ukraine Independence Day;
- one day (Sunday) - Easter;
- one day (Sunday) - Trinity Day.

Employees may be required to work on an official holiday only in extraordinary circumstances, except for the certain types of businesses that may not be interrupted due to technology or due to need to cater to the public (theatres, restaurants, museums, etc.).

Vacations

Employees in Ukraine are entitled to annual paid vacation of a minimum of 24 calendar days (to include weekends during the vacation period but excluding official holidays). Persons under 18 shall be granted such annual basic leave for a term of 31 calendar days. Certain categories of employees are entitled to additional annual paid vacation, inter alia, employees:

- under hazardous and difficult working conditions;
- engaged in special types of production;
- mothers of 2 or more children under 14;
- in other cases envisaged by the law.

The duration, terms, and procedures of additional annual vacations shall be established by the laws of Ukraine.
Sick Leave

The system of sick leave in Ukraine requires an employee to submit a medical certificate only after his/her recovery, i.e., on the first working day after an employee’s recovery. Sick leave compensation is covered by the Ukrainian State Social Security Fund, which is funded by an employer’s contributions made as a percentage of its employees’ aggregate salaries, except for the first 5 days of each period of an employee’s sickness, which is paid for by the employer.

Maternity Leave

Paid maternity leave is required for a minimum of 70 calendar days prior to the birth and for an additional 56 calendar days (or 70 calendar days in the event of multiple births or delivery complications) after the birth. An employee may take additional unpaid leave until the child reaches three years of age. During the entire period of paid and unpaid leave, an employee retains the right to return to her job, with the full leave period included in calculating an employee’s length of service.

Termination of Employment and Job Protection

The procedure for termination of an employment agreement or an employment contract is governed by Articles 36 through 49 of the Labor Code.

Pursuant to Article 40 of the Labor Code, an employer may terminate an employment agreement before its expiration only in a limited number of cases, including, but not limited to: staff redundancy; an employee’s systematic failure to fulfill his/her employment duties; an employee’s insufficient qualifications or deteriorating health condition; an employee’s unjustified absence from work for more than three consecutive hours during one working day; and a number of other cases. In contrast, Article 36 of the Labor Code provides that an employment contract (as opposed to an employment agreement) may also be terminated for any grounds specified in the contract.

In addition, Ukrainian law prohibits dismissal of pregnant women, women who have children under 3 (or, in special circumstances supported by medical evidence, under 6), and single mothers who have disabled children or children under 14. Pursuant to Article 184 of the Labor Code, this rule does not apply in the event of the dissolution of an enterprise, or if the woman was on a fixed-term contract which expired. However, in these two cases, an employer is obliged to find alternative employment for such women.

Under the Labor Code, generally, the dismissal of an employee who is a trade union member requires the prior consent of his/her trade union.

Remuneration

As a general rule, all employers in Ukraine, including representative offices of foreign companies, are required to pay salaries to their employees exclusively in Ukrainian currency. At the same time, foreigners working in Ukraine are entitled to be remunerated in foreign currency under certain conditions.
Foreigners Working in Ukraine

Article 3 of the Law of Ukraine “On Legal Status of Foreigners and Stateless Persons”, dated 22 September 2011, provides that foreigners who lawfully reside in the territory of Ukraine enjoy the same rights and opportunities (including employment) as Ukrainian citizens. The Law of Ukraine “On International Private Law”, dated 23 June 2005, states that the employment relationships of foreigners and stateless persons working in Ukraine are not governed by Ukrainian laws only if: a) such foreigners or stateless persons work with diplomatic missions or representative offices of international organizations, unless otherwise provided for in international agreement to which Ukraine is a party; or b) employment agreement which provides for the performance of work in Ukraine was concluded outside of Ukraine, unless otherwise provided for by such employment agreement or international agreement to which Ukraine is a party.

Article 42 of the Law of Ukraine “On Employment”, as restated on 5 July 2012, (the Employment Law), provides that Ukrainian companies, entities and organizations are entitled to employ foreign nationals and stateless persons only subject to obtaining a work permit issued by the relevant employment center, unless otherwise provided for by the applicable international agreement to which Ukraine is a party. Although it is not clearly envisaged by the law, as a matter of practice, foreigners employed by Ukrainian representative offices (branches) of foreign companies are not able to obtain work permits. Instead, they receive a quasi substitute, the so-called “service cards” from the Ministry of Economy of Ukraine with a term of validity of up to three years.

To date, Ukraine has not entered into any international agreement with any foreign state providing for the employment of nationals of such foreign state in Ukraine without a work permit. Although Ukraine is a party to certain international agreements on labor law issues with a number of the CIS countries, none of these agreements allows a foreign national to work without a work permit in Ukraine.

Under the Resolution of the Cabinet of Ministers of Ukraine “On the Procedure for the Issuance, Prolongation, and Annulment of Work Permits for Foreigners and Stateless Persons” dated 27 May 2013 (the Work Permit Resolution), work permits are issued to foreigners and stateless persons by the relevant Ukrainian employment center only if: a) there are no qualified Ukrainian nationals in the relevant sphere, who are suitable for the position in question; or b) there are solid grounds for the employment of such foreign nationals due to their high skills. It is presumed that solid grounds exist if such employee will occupy a top manager position and is a founder (co-founder) of the employing entity, or has the copyright or related rights and is employed by a Ukrainian entity to exercise them. Nevertheless, Ukrainian law does not provide a definition of the term “significant grounds.”, and, thus, in practice, foreigners are employed in Ukraine based on the ground a) above.

The Work Permit Resolution provides that a work permit should also be obtained for foreigners who perform services or works pursuant to contracts between their foreign employers and Ukrainian customers. Also, intra-corporate transferees must have work permits. Allowing a foreigner to commence his/her activities in Ukraine, prior to obtaining a work permit for the specific role that the foreigner is intended to perform, will trigger the imposition of a fine in the amount of 20 minimum monthly salaries.

Work permits are issued for up to 1 year (up to 3 years for intra-corporate transferees). Work permits may be extended by filing an application at least one month prior to the expiration of the current work permit.
Under the Work Permit Resolution, applications for work permits will be considered by a commission consisting of representatives of the Ministry of Internal Affairs, the State Migration Service, the State Security Service, the Ministry of Education and Science of Ukraine, the State Border Guards Service and the representatives of labor unions and employers federations. After the consideration of the application by the commission, the relevant regional employment center must issue the work permit (or give its written refusal to issue it) within 15 calendar days from the date of the filing of the application. The state fee for the consideration of a work permit application amounts to 4 minimum monthly salaries and is paid by an employer only after a decision to issue the relevant work permit was issued.

According to the Work Permit Resolution, after obtaining the work permit, the employer is obliged to submit to the relevant employment center the copy of an employment agreement (contract) concluded with the relevant employee within 3 business days after its execution. Otherwise, the employment center might cancel the work permit that has been issued to such employee.

The Work Permit Resolution has set an exhaustive list of grounds for the refusal to issue a work permit or to prolong its term as well as for the annulment of a work permit. Among other reasons, a work permit will not be issued or prolonged if an employer has an unpaid Unified State Contribution liability, the foreigner has criminal proceedings initiated against him/her or is serving criminal sentence, or the foreigner is to be expelled from Ukraine. The annulment of a work permit may, among other reasons, result from an early termination of the employment agreement/contract with the foreigner, the migration authority’s decision to expel the relevant foreigner or if the work performed by the foreigner does not correspond to the one provided for in the work permit.
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