
COVID-19 and Labour Law: Ukraine

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Abstract

The most important reaction of Ukrainian legislation associated with COVID-19 is the amendments made to the Labour Code regarding remote work and flexible working hours. Due to the fact that many enterprises during national quarantine have reduced their activities or are not working at all, in such cases downtime should be paid at the rate of not less than two-thirds of the salary set for the employee. Only upon their consent employees can be provided with unpaid leave, which is limited by the quarantine time frames. Employers are eligible to receive the partial unemployment benefit from the state for the quarantine period in the amount of 2/3 of wages in order to pay their employees for preserving the employment relationship.

Keywords: Covid-19; Labour Law; Remote work; Flexible working hours; Downtime; Unpaid leave; Partial unemployment benefit.

1. General framework.

Starting March 17, 2020, in order to prevent the spread of COVID-19 national quarantine was introduced in Ukraine. Also, on March 25, 2020, the Cabinet of Ministers of Ukraine introduced an emergency situation regime (ESR) throughout Ukraine. These two circumstances have caused: operational limitations of public transport (transportation is carried out only for employees of trade establishments, pharmacies, enterprises of critical infrastructure, important state institutions and healthcare workers); closing of entertainment and shopping centers; changes in educational process by introducing distance learning; restrictions on the activities of public catering establishments, which can operate only without receiving visitors.

Thus, due to quarantine and ESR, a significant number of enterprises were forced to close or limit their business activities. According to a survey conducted by the Union of Ukrainian Entrepreneurs, almost 60 % of business owners surveyed continue to operate under restrictions (mainly large and medium-sized businesses), 29 % – stopped working (typical for

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micro-business), 51 % of enterprises can last only 1 month¹. This situation undoubtedly has a negative impact on the employment relations. For instance, notwithstanding that the quarantine and ESR are not the reason for dismissal, they can be considered as a prerequisite for the employer to carry out the process of reducing the number of employees. As of April 16, 2020, the number of unemployed registered with the State Employment Service (SES) is 400.9 thousand persons. This is 27 % more than on the same date last year².

In addition, the Ukrainian labour market will be affected by workers who have returned from abroad. In March alone, more than 270,000 seasonal workers returned to the country. In order to prevent the Ukrainian economy from experiencing vast unemployment, the Cabinet of Ministers plans to create 500,000 jobs in May, according to Ukrainian Prime Minister Denys Shmygal. The prime minister didn't specify how exactly the state would provide 500,000 new jobs, but said a detailed strategy would come out soon³.

2. The main state measures in the field of labour and employment relations.

2.1. Changes in legislative regulation of employment relationships.

In order to reduce the negative effects on the labour market, the Parliament of Ukraine adopted the Law No. 530-IX, of 17.03.2020⁴ and the Law No. 540-IX, of 30.03.2020⁵, which amended the labour legislation, primarily, Labour Code (LC). These amendments include:

a) extension of the unpaid leave depending on the duration of the quarantine.

According to the changes made to the Article 84 of the LC, the duration of unpaid leave is limited by the quarantine periods. Previously, this leave was granted to employee for a period not exceeding 15 calendar days per year. However, it should be noted that in any case, the granting of unpaid leave could occur only with the consent of the employee;

b) itemization of application of flexible working hours.

Article 60 of LC was supplemented by provisions in accordance with which the definition of flexible working hours and the procedure for its application were given. Until that time, flexible working hours had not been regulated in the Code;

c) regulation of application of remote (home-based) work.

¹ 51% of enterprises under quarantine conditions can last a month – interview, ZN,UA, 3 April 2020: <https://dt.ua/ECONOMICS/51-pidpriyemstv-v-umovah-karantinu-zmozhut-protrimatisya-misyac-opituvannya-343491.html> (accessed 20 April 2020).

² <https://minfin.com.ua/ua/2020/04/17/43726822/> (accessed 20 April 2020).

³ Datskevych, N. *Amid pandemic, Ukraine's unemployed grow by 36,000 people in one week*, 13 April 2020: <https://www.kyivpost.com/business/amid-pandemic-ukraines-unemployed-grow-by-36000-people-in-one-week.html>. (accessed 20 April 2020).

⁴ Law of Ukraine No. 530-IX, of 17.03.2020: <https://zakon.rada.gov.ua/laws/show/530-20> (accessed 20 April 2020).

⁵ Law of Ukraine No. 540-IX, of 30.03.2020: <https://zakon.rada.gov.ua/laws/show/540-20> (accessed 20 April 2020).

Article 60 of LC was also amended by provisions which legitimize the remote work regime. The current edition of Article 60 of LC defines the remote work regime, regulates the time management and prohibits the discrimination of employees involved in this regime;

d) clarification of the procedure of remuneration during the downtime of enterprises in connection with the introduction of quarantine.

Prior to amending the LC, its Article 113 provided that downtime is paid at the level of 2/3 of the wages of employee. In addition, this version of the Article provided that during downtime, when a life-threatening situation arises in the workplace, the employee retains his average earnings. The presence of these two provisions in Article 113 of LC raised many questions of their application during the quarantine. Changes, made to Article 113, clarified the procedure of remuneration during the downtime in connection with the introduction of quarantine – downtime through no fault of the employee during the quarantine period is paid at least two-thirds of his salary.

2.2 Facilitation of obtaining unemployment status and receiving social benefit.

On March 29, 2020, the Cabinet of Ministers of Ukraine adopted the Resolution № 244. Under provisions of this Resolution, in the case of dismissal during the quarantine period, unemployment status is given to an individual from the first day of registration in SES without any additional requirements. The unemployment benefit shall be established starting the next day after the registration with SES⁶. Prior to the amendment, the unemployment benefit was paid from the 8th day after the registration of the insured person.

3. The state support of employers.

A temporary (for March and April of 2020) exception from Payment of Unified Social Security Contribution (USSC) is provided only for certain categories of USSC payers, such as private entrepreneurs, people engaged in independent professional activity and members of farming households. This option is not available to employers paying USSC on behalf of their employees⁷.

One of the measures to support employers who have economic challenges due to COVID-19 is the partial unemployment benefit to employees of small and medium-sized enterprises.

This type of financial support is provided to employers from the Compulsory State Social Insurance Fund during the quarantine for maintaining the employment relationship. The partial unemployment benefit is payable in the amount of 2/3 of the employee's base salary

⁶ Resolution of the Cabinet of Ministers of Ukraine № 244, of 29.03.2020: <https://zakon.rada.gov.ua/laws/show/244-2020-%D0%BF> (accessed 20 April 2020).

⁷ Ukraine takes measures towards COVID-19: <https://www.lexology.com/library/detail.aspx?g=ebc6d5bc-211a-446d-aed5-643788124eb0> (accessed 20 April 2020).

for each reduced working hour. The amount of the benefit is to be determined by the financial possibilities of the Fund and may not exceed the minimum wage established by law (UAH 4723, ca EUR 160).

The employer pays the partial unemployment benefit for employees (except for working pensioners) during the period of quarantine from the first day the reduction of their working time within the period of suspension (reduction) of the activity, but not more than 30 calendar days after the end of the quarantine.

In case that the employer receives this state allowance, it cannot dismiss employees on such grounds as: reduction (except the total liquidation), the agreement of the parties and the employer's failure to comply with labour legislation, within 6 months (if the benefit was paid less than 180 calendar days - during the period equal to the period of payment) from the day the benefit ends. If the employer violates this obligation, it must return all received funds to the State Fund in full⁸.

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⁸ Article 47-1 of the Law of Ukraine On Employment of Population № 5067-VI, current version — Revision on April 18, 2020, on the basis - 553-IX: <https://zakon.rada.gov.ua/laws/show/5067-17?lang=en>. (accessed 23 April 2020).