

LEGALINK QUESTIONNAIRE:
Cross-Border Layoffs: A Country By Country Summary
Of Applicable Employment Laws.

UKRAINE
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1. Are there any laws that govern a layoff of employees? If so, what do the laws require?

The Labor Code of Ukraine is the main document that regulates the layoff of employees. Under Article 40 of the Labor Code of Ukraine, a term labor agreement or labor agreement of unlimited duration between the owner of the company, agency or organization or its authorized representative body or person and each employee can be cancelled by the owner of the company, agency or organization or authorized representative body or person (hereinafter “employer”). This cancellation power applies to cases including production and work reorganization, including dissolution/closing/winding-up, reorganization, bankruptcy or reorientation of the company or organization, as well as during a workforce reduction. The actual procedure of workforce reduction is not defined in the Ukrainian legislation. Other grounds unrelated to mass layoff, but related to the termination of individual employees exist and are better defined in the Labor Code.

Article 21 of the Labor Code of Ukraine defines a labor agreement as an agreement between an employee and either the owner of the company, agency or organization or its authorized representative body or person, under which the employee is obligated to perform work stipulated in the labor agreement and to comply with internal company rules and regulations. Additionally, the owner of the company, agency or organization or authorized representative body or person is obligated to pay compensation and provide appropriate working conditions stipulated by the labor legislation, collective agreement (if any) and labor agreement.

2. Are there any formal requirements for terminating an employee or groups of employees?

Under Article 40 of the Labor Code of Ukraine, each employee has to be given two months’ notice prior to his termination. If a similar vacancy exists in the same company/ organization, such employee must be offered that position. If the employee does not accept that position or if such a similar position does not exist, the employer must inform the State Employment Agency of Ukraine of the forthcoming dismissal and indicate the employee's profession, specialty, skills, qualifications and salary. In practice, in case of a hiring or a termination of an employee, an internal company/organization order must be issued. A laid-off employee must be paid all compensation owed to him. Under Article 44 of the Labor Code, a laid-off employee must be paid additional compensation equal to not less than one average monthly salary, calculated according to Ukrainian legislation (varies on case-by-case basis). Also, valid reasons defined in the Labor Code of Ukraine must exist for the employee's termination or layoff. Ukrainian legislation does not specify a procedure for terminating a group of employees.

3. Are there special legal requirements for a layoff caused by redundancy in the workforce?

Ukrainian legislation does not contain legal requirements for a layoff caused by redundancy in the workforce. However, layoffs are allowed in response to changes in workflow at an organization. At the same time, not every employee can be easily terminated. The employer is obliged to take into account employee qualifications, their family situations, disability status and other issues and rules stipulated by the Labor Code of Ukraine. A laid-off employee has first priority to be rehired for the same position should it open again in the future.

4. Are there employment laws that laid-off employees can use to challenge their inclusion in the layoff?

Laid-off employees can use the Labor Code of Ukraine and any other applicable laws, including the Constitution of Ukraine, to challenge their inclusion in the layoff.

5. What sanctions or penalties may be imposed against employers for violating any of the requirements mentioned in Nos. 1-4 above?

If termination in the course of a layoff is deemed invalid by the court or other body authorized to consider labor disputes, the employer can be ordered to reinstate the employee to her previous position, to pay compensation for the period the employee was involuntarily absent from her position, and even to pay moral damages. Also, the employer who violated the labor legislation may be fined in accordance with Ukrainian legislation. In practice, even if termination was justified but the employer made errors in the termination procedure, the court may order the employer to pay the terminated/laid-off employee compensation for the term of such employee's involuntary absence (Article 240-1 of the Labor Code).

6. What are the one or two most common mistakes that employers make that lead to liability for a layoff?

The most common mistakes are likely errors in employee termination procedure and paperwork, such as the absence of an internal order authorizing employee termination, the absence of valid grounds for termination, and not following the Labor Code's stipulated conditions for termination. Additionally, employers may neglect to consider the status of certain employees who have retention priority under Ukrainian legislation such as employees with families who financially support two or more other individuals, employees with families in which there are no other workers with income, and other categories stipulated in article 42 of the Labor Code.

7. What other employment issues are likely to arise from a layoff in your jurisdiction that you have not addressed in your answers to the previous questions?

Generally, Ukrainian labor legislation is archaic and heavily biased in favor of employees. Overall, courts favor the interests of employees over employers and layoff procedures can be lengthy and complicated.