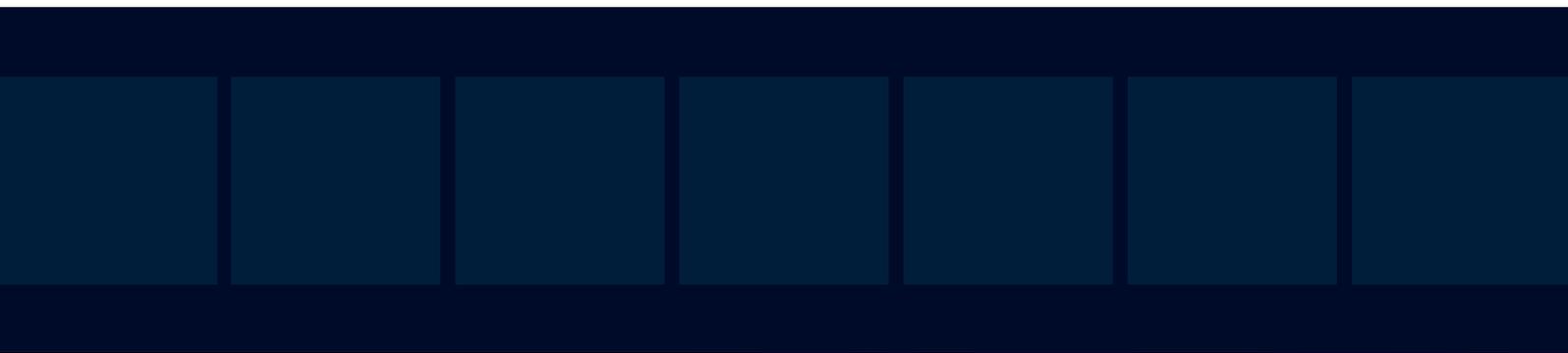


2009 Edition

MERCER

# Employment Conditions

Central & Eastern Europe - Ukraine



Consulting. Outsourcing. Investments.

*Mercer's Authoritative Reference Source for Employment Conditions, Statutory Benefits and Typical Benefit Packages*



**Population:** 45.7 million

**Capital city:** Kiev

**GDP growth:** 2.1% (2008)

**Inflation rate:** 25.5% (2008)

**Unemployment rate:** 6.4% (2008)

#### **Exchange rate**

Effective date: April 2009

GBP 1 = UAH 11.40

USD 1 = UAH 8.03

EUR 1 = UAH 10.46

## Country overview

### 1 Summary of contributions

#### 1.1 General description of social security scheme

##### **How scheme has evolved over time**

Ukraine's social security scheme began its evolution when Ukraine gained independence in 1991. After adoption of the Constitution of Ukraine in 1996, the main principles of social security in Ukraine were based on the provisions of the constitution. At present, the social security scheme consists of numerous laws and regulations guaranteeing and regulating the social security of various categories of people.

##### **Other comments**

Ukraine's social security scheme remains a work in progress, and in need of significant improvement.

#### 1.2 Contributions to social security

##### **Effective date of figures**

1 April 2009

Contributions to social security are mainly based on the monthly minimum living wage. As of 1 April 2009, this wage for able-bodied citizens is set at UAH 625.

##### **Date when figures are expected to next change**

According to the state budget for 2009, the monthly minimum living wage will be increased four times. Effective 1 April, the monthly minimum living wage was set at UAH 625, effective 1 July at UAH 630, effective 1 October at UAH 650, and effective 1 December at UAH 669.

	By employer (% of payroll)	By employee (% of base salary)	Salary ceiling (local currency)
<b>Social Insurance</b>	1.5%	0.5–1%	The maximum monthly salary ceiling for contributions is currently UAH 10,035
<b>State Pension Fund</b>	35.2%	Employee contribution up to the level of the monthly minimum living wage of UAH 625 is 0.5%; contribution for salary in excess of UAH 625 is 2%	The maximum monthly salary ceiling for contributions is currently UAH 10,035
<b>Unemployment</b>	1.6%	0.6%	The maximum monthly salary ceiling for contributions is currently UAH 10,035
<b>Health</b>	None	None	None
<b>Accident</b>	Depends on the nature of the company's business and risk profile (for example, employer contributions for law firms are 0.66% of salary; for construction firms, 2.42%)	None	The maximum monthly salary ceiling for contributions is currently UAH 10,035

### Other comments

Social security contributions to various state funds are paid monthly from employee salaries. Such state funds are: Social Insurance Fund, State Pension Fund, Fund for Social Security against the Temporary Loss of Ability to Work, Fund for Social Security against Industrial Accidents, State Insurance Fund against Unemployment, and certain other state social funds, contributions to which are not mandatory. Employees can also make voluntary contributions to private social security funds.

## 1.3 General description of company practices for employee benefits

This table summarises the benefits that companies typically provide employees over and above social security or government programmes, the reasons companies provide supplementary benefits and the typical types of supplementary benefits provided.

Benefit	Do employers supplement? Why or why not?	Typical supplementary benefits
<b>Retirement</b>	No. Employers do not supplement due to cost and inconvenience	It is not common for companies to provide supplementary benefits
<b>Death</b>	No. Employers do not supplement due to cost and inconvenience	It is not common for companies to provide supplementary benefits
<b>Disability</b>	No. Employers do not supplement due to cost and inconvenience	It is not common for companies to provide supplementary benefits
<b>Medical</b>	Yes. Benefits exist, but the quality of care is poor	Most multinationals provide employees a private medical plan
<b>Other</b>	No. Employers do not supplement due to cost and inconvenience	It is not common for companies to provide supplementary benefits

### Other comments

Generally speaking, companies do not provide “fringe benefits” analogous to social security to employees due to the cost and inconvenience of setting up such programmes.

## 1.4 Contributions to typical employer-sponsored plans

### Effective date of figures

November 2008

**Date when figures are expected to next change**

November 2009

Employer-sponsored plans are not typically provided. The table below indicates prevalence of supplementary plans of multinational companies.

	<b>Prevalence: All industries</b>	<b>Eligibility</b>	<b>By employer (% of payroll)</b>	<b>By employee (% of base salary)</b>
<b>Retirement – DB</b>	About 5% of multinational companies			
<b>Retirement – DC</b>	8% of multinational companies	All employees		
<b>Severance</b>				
<b>Death</b>	45% of multinational companies provide life assurance benefits in addition to statutory benefits. In two-thirds of cases, the plan covers death due to any cause	All employees		None
<b>AD&amp;D</b>	19% of multinational companies provide personal accident insurance benefits in addition to statutory benefits	All employees		None
<b>Business travel</b>	73% of multinationals provide travel insurance, of which 75% cover business travel only	All employees travelling for business		None
<b>Short-term disability</b>	41% of multinationals provide sickness benefits on top of statutory requirements	All employees		None
<b>Long-term disability</b>	34% of companies provide long-term disability benefits on top of statutory requirements	All employees		None
<b>Medical</b>	87% of multinationals provide their employees with a private medical plan	All employees		
<b>Dental</b>	Part of medical			
<b>Vision</b>	Not applicable			

Source:: Mercer's Total Remuneration Survey, 2008

## 2 Legislative updates

### 2.1 Legislation approved within last 12 months

More than 3,997 legislative acts have been passed since 21 June 2006. The most important regulations, relevant to social security and labour law, approved within the last 12 months are described below.

<b>Effective date</b>	<b>Summary</b>	<b>Action required</b>	<b>Impact</b>
9 June 2008	Memorandum "on the mutual understanding between the Ministry of Labour and Social Policy of Ukraine and the International Labour Organisation in relation to the programme of cooperation for 2008–2011" calls for the creation of a cooperative programme for strengthening and developing the labour market in Ukraine.	Not required	Sets no limitations/requirements for the employer
17 September 2008	Law of Ukraine "on joint stock companies" regulates the creation, activity and liquidation of joint stock companies in Ukraine. This new law came into force on 30 April 2009.	Not required	Sets no limitations/requirements for the employer

Effective date	Summary	Action required	Impact
23 September 2008	Law of Ukraine on amendment of some laws of Ukraine in relation to state support of families that have adopted an orphan or children with deficient parental care provides benefits and additional payments to families that have adopted an orphan or children.	Not required	Sets no limitations/ requirements for the employer
26 December 2008	Law of Ukraine "on the State Budget of Ukraine for 2009" establishes the sources of the country's income and its expenses.	Not required	Establishes the minimum monthly living wage and minimum salary that an employer should pay employees
1 January 2009	Law of Ukraine on amendment of some laws of Ukraine in relation to the size of state payments for children whose guardianship is mentioned above increases the payments paid by the state to families that have children in guardianship.	Not required	Sets no limitations/ requirements for the employer
13 January 2009	Law of Ukraine "on amendment of some laws of Ukraine in relation to diminishing the influence of the world financial crisis on the sphere of employment of the population" establishes the main principles of employment in case of job loss and establishes special regulations for the State Employment Centre.	Law creates paid public works for unemployed persons during the period of the financial crisis. If a person refuses to participate in this public works programme, his/her unemployment benefit as established by this law will be reduced by 50%. If said person refuses to participate in public works after being asked a second time, he/ she will be stricken from the rolls of the unemployed and lose all unemployment benefits.	Sets no limitations/ requirements for the employer
7 March 2009	Law of Ukraine "on amendment of some laws of Ukraine in relation to improving the State balance of payments of Ukraine in connection with the world financial crisis" establishes additional mechanisms for regulating financial operations (for example, state import duties for some types of goods).	Not required	Sets no limitations/ requirements for the employer
11 March 2009	Law of Ukraine on amendment of certain articles of the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine concerning strengthening responsibility for late payment or groundless non-payment of salaries, grants, pensions or other payments.	Not required	Establishes responsibility for late payment or groundless non-payment of salaries, grants, pension or other payments

## 2.2 Legislation proposed within last 12 months

This section summarises legislation that has been proposed but not yet approved.

Date of proposal	Summary	Action required	Impact
5 March 2008	Draft law of Ukraine "on employment" would establish legal organisational principles of state policy on employment, unemployment insurance and labour by non-residents.	Not required	Sets no limitations/ requirements for the employer
24 April 2008	Draft law of Ukraine amending certain laws of Ukraine would establish the procedure for cooperation between Ukrainian courts and relevant foreign courts on labour questions.	Not required	Sets no limitations/ requirements for the employer
5 May 2008	Draft law of Ukraine amending certain laws of Ukraine would establish additional guaranties and family allowances.	Not required	Sets no limitations/ requirements for the employer
6 June 2008	Draft law of Ukraine "on amendment of the law of Ukraine on employers' enterprises" would regulate the organisation and activity of employers' enterprises.	Not required	Sets no limitations/ requirements for the employer
3 October 2008	Draft law of Ukraine amending certain laws of Ukraine would define the term "hourly wage."	Not required	Sets no limitations/ requirements for the employer
14 January 2009	Draft law of Ukraine amending the law on pension insurance would establish new pension guaranties.	Not required	Sets no limitations/ requirements for the employer
10 February 2009	Draft law of Ukraine amending certain laws of Ukraine concerning employment of personal husbandry workers would set social insurance and pension guaranties for personal husbandry workers.	Not required	Sets no limitations/ requirements for the employer
18 February 2009	Draft law of Ukraine amending certain laws of Ukraine would prohibit paying wages and bonuses to directors or executive managers if a company has any debts to ordinary employees.	Not required	Encourages companies to ensure that salaries are paid on time and in full by forbidding management being paid ahead of ordinary employees.
18 March 2009	Draft law of Ukraine "on amending articles 42 and 184 of the Labour Code of Ukraine" would create an obligation to employ pregnant women, women with children under age three or with two or more children and single mothers with a child under age fourteen or an invalid child.	Not required	Creates employment guaranties for the named classes of employees.
20 March 2009	Draft law of Ukraine amending certain laws of Ukraine would impose liability for demanding that an employee sign in acceptance of a change to his labour contract or work conditions provided by contract.	Not required	Establishes liability for demanding that an employee accede to such changes

## 3 Trends

Benefit	Summary	Reasons for trend
	Recent changes made or considered by companies	
<b>Retirement</b>	Retirement benefits are established by law, but some companies may establish higher amounts of retirement benefits for employees	Retirement benefits are insufficient for normal living
<b>Severance &amp; termination</b>	Generous severance and termination benefits are required by law. The ongoing trend is for companies to seek out ways of minimising or avoiding payments required by law	The high cost of terminating employees
<b>Death</b>	Benefits are established by law, but more companies are offering supplementary benefits	Benefits provided by the state are minimal

<b>Benefit</b>	<b>Summary</b> Recent changes made or considered by companies	<b>Reasons for trend</b>
<b>Disability</b>	Benefits are established by law, but more companies are offering supplementary benefits	Benefits provided by the state are insufficient to maintain normal living standards in case of disability
<b>Medical &amp; dental</b>	No company-provided benefits are required by law. Some companies, often foreign companies, offer benefits	No information
<b>Flexible benefit programme</b>	No company-provided benefits are required by law. Some companies, often foreign companies, offer benefits	No information
<b>Perquisites &amp; allowances</b>	No company-provided benefits are required by law. Some companies, often foreign companies, offer benefits	No information

## 4 Definitions

### Minimum living wage

It is the minimum level of income for a single person, which is sufficient to cover “first-priority” requirements. The minimum living wage is established and guaranteed by law.

### Minimum salary

It is the minimum level of salary guaranteed by law for a full-time working day.

### Social security benefits for temporary work inability

State social security envisions providing benefits to those who have been affected by temporary loss of ability to work. The loss of ability to work may be because of a need to care for a sick or invalid child or a sick family member, for pregnancy and births, for care of a young child, partial indemnification of charges related to the birth of a child or the death of the insured person or a family member.

## 5 Contact details

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There is no Mercer office in Ukraine.

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# Employment conditions

## 1 Severance conditions & termination indemnities

### 1.1 Individual termination

#### Definition and conditions of fair and unfair termination

In Ukraine, the procedure for termination of employees is governed by Article 36 of the Ukrainian Labour Code (hereafter the “Labour Code”).

Lawful reasons for the termination of an employment agreement are as follows:

- By mutual agreement
- At the initiative of the employee or employer or at the request of the trade union of the employer
- At the end of the term for a fixed-period contract
- Upon the employee’s drafting into the military or alternative service
- According to conditions stipulated in a contract
- Upon entry in force of a court ruling by which the employee is sentenced to imprisonment or other punishment, which eliminates the possibility to continue work
- Upon transfer of the employee from one company to another, solely upon his/her consent
- Upon liquidation of the employer or a reduction in the number of the employers
- Upon refusal by the employee to be relocated to another geographic location with the employer

Pursuant to Article 40 of the Labour Code, an employer may terminate a labour agreement before its expiration only in a limited number of cases, including:

- Staff redundancy
- Upon an employee’s systematic failure to fulfil work obligations or the employee’s unsatisfactory work performance
- Due to an employee’s insufficient qualifications or deteriorating health condition
- In the case of a qualitative change in the requirements

- In case of an employee’s unjustified absence from the workplace for more than three consecutive hours during one working day
- In cases of absenteeism of more than four months because of illness
- In case of the return of a previous employee to retake the employment position
- In cases of an employee’s alcohol or drug abuse at work or presence at work under the influence of these substances
- In cases when an employee is caught stealing an employer’s property

The following cases of termination shall be deemed unfair according to Ukrainian legislation:

- Dismissal of an employee currently incapable of working
- Dismissal of an employee currently on vacation
- Dismissal of pregnant women
- Dismissal of women who have children under the age of three (or, in certain circumstances confirmed by medical certificate, under the age of six)
- Dismissal of single mothers who have disabled children or children under the age of 14

Termination of employment by an employee is considered unlawful in the following cases:

- If an employee does not give sufficient notice, except in cases in which the employee is unable to continue performing the job in question (for example, moving to another location, pregnancy, etc.)
- If the employee resigns with immediate effect, even though the law does not permit this, or if the employee gives a false or invalid reason for resigning

An employee terminating an employment contract unlawfully may not be forced to return to work and continue employment, or to pay the employer any compensation. But the law treats such employees as though they had been dismissed as a consequence of disciplinary action.

#### Company notice period

The notice period that an employer must provide is not directly stipulated by Ukrainian legislation and varies according to the reason for the dismissal, but is normally two months.

## **Pay in lieu of notice permitted**

The Labour Code of Ukraine does not permit payment to be made to an employee in lieu of notice.

## **Other requirements (for example, consultation requirements, government approval)**

Under the Labour Code, dismissal of an employee who is a trade union member requires, in certain circumstances (such as an employee's systematic failure to fulfil work obligations; an employee's alcohol or drug abuse at work, etc.), the prior consent of the trade union. In such cases, the consent of the relevant trade union should be requested before the termination.

## **Employee notice period**

An employee who wishes to resign must give a written notice to an employer. The required notice period is two weeks.

An exception may apply in the following cases:

- Moving an employee to a new dwelling place
- Transfer of an employee's spouse to work in another locality
- Entering an educational establishment
- Impossibility of staying in a particular locality, confirmed by a medical certificate
- Pregnancy
- Other substantial reasons

In such cases, an employer must terminate the employment agreement or contract within the period required by the employee.

## **Benefits paid on involuntary termination of service**

Normal severance payments amount to no less than one month's average salary irrespective of the length of employment. The average salary is calculated based on salary paid in the most recent 12-month period.

## **Benefits paid upon voluntary resignation (only include benefits not described elsewhere)**

No benefits are obligatory upon voluntary resignation from an employment position.

## **Other comments**

Under Ukrainian labour legislation, to hire any Ukrainian citizen, an employer should receive from such prospective employees their labour book and passport. If the position requires special skills (for example, a driver), the employee must submit the appropriate professional documents (for example, a driver's licence). No other documents are required from a Ukrainian employee.

All employers maintain labour books for all their full-time employees (that is, everyone other than subcontractors or part-timers) including seasonal and temporary employees. Such labour books contain data regarding the type of work performed, any awards and the duration of employment. In essence, labour books serve as a basis for ascertaining the employee's work longevity, which will determine his/her social security and pension rights after retirement.

Every employee working for more than five days at an enterprise is to have his/her employment noted in a labour book. The Labour Code prohibits the entry of information regarding disciplinary punishments into an employee's labour book.

## **Description of financing**

Not applicable

## **1.2 Collective dismissal**

### **Definition and conditions of collective dismissal**

Under Ukrainian law, collective dismissals are permitted under the following conditions:

When an employer undergoes liquidation

When there is a reduction in staff (including the restructuring of an employer)

### **Company notice period**

In case of collective dismissal, the notice period is two months.

### **Pay in lieu of notice permitted**

In case of collective dismissal, the Ukrainian Labour Code does not permit payment in lieu of notice.

### **Other requirements (for example, consultation requirements, government approval)**

Ukrainian law imposes no other special requirements.

### **Employee notice period**

The notice period for collective dismissals is not separately stipulated by Ukrainian legislation. But all employees wishing to terminate their employment must provide an employer with written notice two weeks in advance.

### **Benefits paid on collective dismissal**

Group or individual dismissals resulting from an employer's liquidation or staff reduction entitle dismissed employees to an additional month's salary.

## Other comments

Collective dismissals are restricted to companies undergoing privatisation.

People with certified physical disabilities may only be dismissed in case of an employer's liquidation.

## Description of financing

Not applicable

## 2 Working time

### 2.1 Working hours

According to Ukrainian labour legislation, the normal working hours are 40 hours per week. But working hours may vary from day to day in accordance with an employer's requirements. Shorter working weeks are required in the following cases:

- For employees aged 16–18 years, the duration of the working week is 36 hours.
- For employees aged 15–16 years, the duration of the working week is 24 hours.
- For employees aged 14–15 years (who are only permitted to work during school vacation), the duration of the working week shall not be more than 24 hours.
- For employees engaged in arduous or unhealthy working conditions, the duration of the working week may not be more than 36 hours.

### 2.2 Overtime

Any time worked in excess of 40 hours per week is classified as overtime, and may only be required in extraordinary circumstances.

The law permits overtime work in the following cases:

- Protection of the security of Ukraine and prevention and elimination of civil, natural or industrial disasters
- Fulfilment of certain types of urgent civil work (repairs of damages to the water supply, gas tubes, electricity supply, heating, sewage, transport and communications systems)
- Completion of work that has not been completed due to unpredicted circumstances or an accidental halt of production, if failure to complete such work within the ordinary working hours might cause damage to the state or municipal property

- Urgent repair of equipment if its disrepair could halt the work of several employees
- Loading/unloading work aimed at preventing delays in moving goods or accumulating cargo backups at loading/unloading stations
- Resumption of work, which may not be terminated, in case an employee could not come to work for the shift, in accordance with an employer's internal rules (in such cases, an employer may also try to replace the absent employee with another employee)

Ukrainian labour legislation establishes restrictions on overtime work. A collective agreement may establish further restrictions and conditions with respect to overtime.

Restrictions regarding overtime specified in the Labour Code are as follows:

- Overtime shall not endanger an employee's health or safety or impose any unnecessary pressure on personal life or family circumstances
- Children under the age of 18, pregnant women, women who have children under the age of three and working students on school days may not work overtime
- Women who have children aged 3–14, or a disabled child under the age of 16, and disabled people, may work overtime provided they willingly agree to do so
- The duration of overtime work shall not exceed four hours in any two consecutive days or 120 hours in total per year

### 2.3 Night work

Work carried out between 22.00 and 06.00 hours is considered as night work. A night shift shall be one hour shorter than the same shift during the day. Compensation for night work shall be at least 120% of an employee's ordinary salary. Pregnant women, women with children under the age of three and young persons under the age of 18 cannot perform night work. Disabled people may work at night provided they willingly agree to do so and if this work does not contradict any medical recommendations.

### 2.4 Rest periods

The rest period is the time during which the employee is absolved from the duty of work.

Workers are normally entitled to two days' rest each week, which usually fall on Saturday and Sunday. The duration of weekly continuous rest shall not be less than 42 hours. For employees working a six-day work week (seven hours per day), the sole day of rest is Sunday. Ukrainian labour

legislation ensures the following types of rest periods:

- Breaks during regular daily working hours. These are usually prescribed by collective agreement, with special regulations for drivers, but may not be more than two hours
- Weekly rest periods. The normal weekly days of rest are Saturday and Sunday
- Public holidays
- Annual vacation

If an employee is required to work on a weekly day off, this work is treated as overtime, with time off in lieu of additional wages, and the employee may request an alternative day of rest at any time. Alternatively, this time may be added to the employee's annual leave. In this case, with the agreement of the employer and the employee, compensation equal to twice the employee's normal wage may be paid. These provisions do not apply as strictly to employees in executive positions.

## 2.5 Annual vacation & leave

### Mandatory vacation entitlement

All employees over the age of 18 are entitled to a basic paid vacation of not less than 24 calendar days in any full calendar year worked (including weekends during the vacation period but excluding official holidays and days of temporary loss of ability to work, certified in accordance with the statutory requirements).

Employees under the age of 18 are entitled to a basic paid vacation of 31 days.

### Supplementary vacation provided

Annual supplementary vacations are provided:

- For work in harmful surroundings
- For the special character of labour (up to 35 days for employees whose work is related to strong emotional and intellectual stress or risk to health and up to seven days for employees who have non-fixed working hours)
- In other cases, as provided by legislation

Legislative acts of Ukraine and collective agreements provide the duration of annual additional vacations, relevant conditions and procedure for their grant.

### Options for carry-forward of unused vacation days

Any unused part of an annual vacation is to be given to an employee, as a rule, before the end of the working year, but not later than 12 months after termination of the working year for which the vacation was accrued.

### Options for pay-out in cash of unused vacation days

At the employee's request, part of an annual vacation may be replaced by cash. The total amount of days of vacation accorded to the employee and used must be not less than 24 calendar days.

Persons under the age of 18 may not have their vacations replaced by cash payment.

In case of the employee's dismissal, he is paid for all unused vacation days.

### Vacation bonus

Wages related to vacation are to be paid not later than three days before the beginning of the vacation.

### Mandatory public holidays' entitlement

Public holidays observed in Ukraine are as follows:

Public holiday	2009	2010
New Year's Day	01 January	01 January
Christmas Day	07 January	07 January
Women's Day	08 March	08 March
Easter Monday	19 April	04 April
Spring and Labour Days	01–02 May	01–02 May
Victory Day	09 May	09 May
Trinity Day	07 June	23 May
Constitution Day	28 June	28 June
Independence Day	24 August	24 August

### Supplementary public holidays provided

According to the Labour Code, employees need not work on the following religious holidays:

- 7 January – Christmas
- Easter – one day
- Trinity – one day

### Sick leave

Sick leave is paid from the first day of loss of ability to work through the date the employee returns to work, at the rate of 100% of regular pay. To claim sick leave payment, an employee should obtain a medical certificate from a hospital. The system of sick leave in Ukraine requires an employee to submit a medical certificate only after recovery – that is, on the first working day after the employee's absence. The Ukrainian State Social Security Fund, which is funded by the

employer's contributions made as a percentage of employees' aggregate salaries, covers the sick leave compensation from the sixth day of such leave. The employer covers the compensation for the first five days of sick leave.

## Maternity leave

With a medical certificate, women may receive paid vacation leave in connection with pregnancy and birth of children. The duration of such leave is 70 calendar days before birth of a child and 56 calendar days after birth (70 calendar days after multiple births or in case of complications arising from giving birth). The employer pays maternity leave at the expense of the State Social Insurance Fund. Maternity leave pay is 100% of regular salary.

A woman may request and receive a vacation to care for a baby up to three years of age, receiving social payments.

If a child needs home treatment, a woman receives obligatory vacation without payments based upon a period, required by a medical certificate, not longer than until a child reaches six years of age.

Firms, companies and organisations may offer women a partially paid or non-paid leave of absence (financed from their respective budgets) after her child reaches the age of three. If a child is a recipient of state aid, a leave of absence for his/her care is not offered.

If a woman desires, during her leave of absence, she is entitled to work part-time or from home. She is still eligible for receiving a state pension until the child reaches the age of three.

During the entire period of paid and unpaid leave, a female employee retains the right to return to her job, with the full leave period included in calculating her length of service as an employee.

A woman who has adopted a child older than three years of age is granted 56 calendar days' one-time paid vacation in connection with the child's adoption once the adoption decision has become effective.

## Paternity leave

The same guarantees regarding vacation for child care extend to fathers who de-facto take care of a child or who actually adopted the child.

## Parental leave

Ukrainian law does not clearly envision "parental leave." But fathers, grandfathers or grandmothers may request and receive leave for child care (including in such cases when a mother is receiving on-going medical treatment).

## Bereavement leave

Bereavement leave is granted to employees in case of death of a blood relative or a relative by marriage. For a spouse, parent (stepfather, stepmother), child (stepchild, stepdaughter), brothers and sisters of a deceased person, bereavement leave may last up to seven calendar days, not

counting the time necessary to travel to and from the burial place. For other blood relatives, the duration of a bereavement leave is three calendar days.

Unpaid time off

## Miscellaneous paid leave

Additional leave may be granted under the following circumstances:

- Employees working in difficult conditions (for example, miners) or exposed to health hazards may be granted between 26 and 36 calendar days' leave per year, depending on their length and type of employment
- Employees in harmful or difficult working conditions receive up to 35 calendar days' leave
- Mothers with two or more children under the age of 15 or disabled children may be granted five extra paid days' leave per year. This is also applicable to mothers who have adopted a child and to single fathers
- Employees who do not have any fixed working days may also be granted additional days' paid leave each year
- Employees in the educational or scientific sectors are allowed 56 calendar days' vacation
- Employees with category I and II disability receive 30 calendar days and those with category III disability receive 26 calendar days
- Employees at postgraduate courses during their work are entitled to paid study leave, the length of which is determined by the course of training pursued (from four days to four months)

## Miscellaneous unpaid leave

Upon an employee's request, unpaid leave of the following durations shall be granted (during one year) for:

- A single mother or father who has a child under the age of 15 or a disabled child – up to 14 days
- A spouse claiming unpaid maternity or paternity leave – up to 14 days
- A woman, if her child under the age of six needs home treatment – recommended by a medical institution
- War veterans – up to 14 days
- Persons who have received labour awards – up to 21 days
- Disabled people with a category III disability – up to 30 days
- Disabled people with a category I or II disability – up to 60 days
- Employees whose relative has died recently – three to seven days, depending on the closeness of kinship

- Employees taking care of a sick (immediate) relative – as determined by a medical institution, but not more than 30 days
- Employees undergoing treatment in a sanatorium – as determined by a medical institution
- Employees taking exams for higher education – up to 15 days
- Employees entering or studying in a postgraduate course – time of study increased by the time required to travel to and from the place of study
- Persons working at more than one job – for the duration of any period of paid vacation at the other job
- Veterans of labour – up to 14 days
- Employees who have not used up their annual base and additional leaves at the previous place of work – up to 24 days for the first year of employment at the entity, which leave may be taken after six months of uninterrupted employment have elapsed
- Employees whose children under age 18 are entering educational establishments at another location – up to 12 days Employees who are studying in their fourth year of postgraduate courses – one additional day off per week (optional)
- Due to family or any other circumstances – up to 15 days

## 3 Conditions of entry & residence

### 3.1 Conditions of entry

All non-Ukrainians require visas, except for those from the Commonwealth of Independent States (the “CIS”), Canada, the United States of America, Japan, member states of the European Union, Mongolia and others holding diplomatic or special passports from countries that have relevant bilateral agreements with Ukraine.

Citizens of the foregoing states do not need visas to enter Ukraine, provided they are visiting the country or transit through its territory for less than 90 days, with a valid travel passport.

In connection with Ukraine's entry into the WTO in 2008, residents of WTO member countries may now enter Ukraine without a visa for a term of not more than 180 days during any calendar year.

Effective from 26 July 2007, the overall duration of a stay in Ukraine without a visa (for residents of countries that are not members of the WTO) shall not exceed 90 calendar days per 180 calendar days from the arrival date. The number of

entries continues to stay unrestricted. But the duration of the stay will be added. This means that foreign nationals, during a period that amounts to 180 days starting from the date of the first entry (the date in the stamp of the border authority is important), may not stay for longer than 90 calendar days in total. The following entry is possible only during the next period of 180 calendar days and, again, may not exceed 90 calendar days.

Citizens of the above-mentioned countries who enter Ukraine with the purpose of employment, permanent residency, family reunion, study, or work at the diplomatic missions of these countries or with any other purpose must obtain a visa if they are going to stay in Ukraine for more than 90 days.

To obtain a visa, the person should apply through the Ukrainian Consulate or Embassy in the country of residence before departure. For all questions of renewal of visas, it is advisable to contact the Ukrainian Consulate or the Ministry of Foreign Affairs.

### 3.2 Employment of expatriates

Current law requires that all persons arriving in Ukraine for any purpose, those leaving or those in transit have a document confirming their citizenship or status (for example, a passport for citizens or a document recognised by Ukraine as one that identifies a stateless person), and insurance coverage guaranteeing the payment of medical fees, if needed.

Article 8 of the Labour Code provides for equal employment opportunities for foreign nationals working in Ukraine. This article provides that the employment relationship of foreign nationals working for Ukrainian companies or organisations is governed by the law of the employing party (that is, Ukraine) and international agreements. If an international agreement to which Ukraine is a party establishes rules different from those established by the applicable Ukrainian labour legislation, then the provisions of such an international agreement take precedence.

The Resolution of the Cabinet of Ministers of Ukraine No. 2028 of 1 November 1999 entitled “On the Procedure for the Issuance of Work Permits to Foreign Citizens and Stateless Persons” (hereafter the “Work Permit Resolution”) provides that, as a general rule, any foreign national intending to be employed in Ukraine shall, before commencing such employment, apply for and obtain a work permit unless otherwise provided by an applicable international agreement of Ukraine.

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

Persons wishing to work in Ukraine should obtain an IM-1 immigration visa. A permit has to be obtained from the State Employment Service before an IM-1 immigration visa is

granted. An employer may obtain the necessary permit by submitting to the State Employment Service (respective local employment centre – the regional employment centre, in Kiev and Sevastopol, or in the Autonomous Republic of Crimea) the following documents:

- Application (no prescribed standard form)
- Reference to the application containing information on the employer and approval of the local employment centre
- Explanation of the reason(s) why it is necessary to employ foreigners and confirmation that all conditions required for their stay and activity may be provided (it is important to prepare and provide the employment centre with sufficient grounds for employing a foreigner, as well as to confirm that the employer had earlier made reasonable efforts to find a Ukrainian worker. Also, the application must indicate any difficulties an employer faced while searching for an employee)
- A copy of the employment contract (if there is such a contract) or a draft contract
- A copy of the employer's statutes and State Registration Certificate
- A list of foreign employees, which should contain, for each employee, the employee's full name, year of birth, passport number, qualifications and gender
- A power of attorney authorising the person submitting the documents to the State Employment Service, to represent the employer before the state employment authorities (required if the person does not have such authority according to the statutory documents)
- Copies of documents showing the employee's professional qualifications and education as required for the position
- A copy of a payment document showing that the employer has paid all taxes required by law
- A reference from the employer, confirming that the foreign employee's position does not require Ukrainian citizenship and does not involve access to information which constitutes a State secret

The work permit fee shall be paid regardless of whether the permit is granted or not. Most foreign employees need work permits, subject to a decision of the local representative of the state employment authorities. At the same time, foreigners who permanently reside in Ukraine (holding an immigration permit for permanent stay in Ukraine) have the right to work on the same basis, and in compliance with the procedures applicable to Ukrainian citizens. For example, foreigners hired by an investor within the framework of, and according to, a production sharing agreement, need not obtain a work permit. Persons who have been granted refugee status under Ukrainian legislation, employees of foreign airlines or maritime (river) fleets operating in Ukraine, employees of foreign mass media organisations accredited in Ukraine and senior managers of representative offices of

foreign companies operating in Ukraine may also work without permits.

Work permits will not be granted: if the documents submitted in the application contain false information; when a contract provides for conditions of work that are less favourable to foreigners than to Ukrainian employees; or when the documents contain provisions that contradict the provisions of Ukrainian legislation. In addition, a work permit will not be issued if the potential employee has violated the law.

A work permit is issued for a period of up to one year and may be extended for the same period. To extend a work permit, the employer must file an application with the State Employment Service, and do so no later than one month before the current work permit expires.

With effect from 12 September 2005, work permits for the senior management, experts and employees providing services without commercial presence in Ukraine must be issued for the length of the term of employment, but in practice this regulation is not enforced.

When the Ukrainian representative offices of foreign companies hire a foreign employee, a service card is issued as evidence of the employment permit. Such a card is issued by the Ministry of Economics and European Integration.

Conceptually, both local and foreign legal entities may contract the services of individuals in Ukraine pursuant to either labour agreements or labour contracts concluded in accordance with the Labour Code, or so-called "civil law contracts" concluded in accordance with the Civil Code of Ukraine (for example, an independent consultant agreement).

## 4 Contract of employment

### 4.1 General characteristics

According to Ukrainian legislation, employment relations may be based on an employment agreement or employment contract (the latter is a form of employment agreement on a term basis).

The basic acts regulating issues concerning labour agreements and labour contracts are the "Ukraine Labour Code" of 12 October 1971, as amended, and a Resolution of a Cabinet of Ministers of Ukraine No. 170 of 19 March 1994 entitled "On Regulating of the Use of Employment Contracts" (hereafter "Resolution" No. 170).

Anti-discrimination regulations forbid denying an applicant employment on the grounds of gender, race, nationality, language, origin, place of residence, religion, membership in a trade union or other public organisation, place of residence and other circumstances that are not directly associated with the employee's professional qualities.

Any person older than 16 and who is exempt from regular school attendance, may accept employment, but for not more than 36 hours per week until the age of 18. In exceptional circumstances, children aged 15–16 may accept employment with the consent of their parents or a guardian, for work lasting no more than 24 hours per week. Children aged 14–15 can work during summer vacation only, for no more than 24 hours per week.

No women, or persons under the age of 18, can be employed in jobs that may be prejudicial to their health and development.

When a person is employed, the managing director issues an order for hiring. It has to include the following details:

- Date of commencement of the employment relationship
- Duration of employment
- Position title and/or description
- Name of the department in which work is to be carried out
- Level of remuneration
- Duration of work

## 4.2 Contents

An employment agreement shall contain the following essential elements:

- Information on the parties to the contract (names, addresses, passport details, etc.)
- Employee's position title
- Agreement by the parties to establish an employment relationship
- Period of employment
- Conditions and procedure for terminating the contract
- Responsibilities of the parties to the contract
- Description of the scope of work
- Description of the employee's compensation, benefits and social guarantees
- Working hours

An employment agreement may contain any additional provisions that do not contravene Ukrainian legislation.

## 4.3 Types of contracts

There are two types of employment contracts:

- Ordinary employment agreements
- Employment contracts

Employment contracts may normally be used when specifically provided by Ukrainian legislation. But the parties to an employment relationship may also conclude an employment contract if their relationship requires such a contract due to the special nature of an employee's duties.

Contracts may contain additional and broader provisions than those permitted in ordinary employment agreements.

Thus, the principal advantage of a labour contract (as opposed to a labour agreement) is the discretion that the parties to a labour contract may exercise in respect of the terms of the employment and the grounds for termination, in comparison with the strict requirements of the Labour Code. However, the labour contract should not worsen the employee's position in comparison with the guarantees set by the labour regulations and collective agreement. On the other hand, the principal disadvantage of a labour contract is that, unlike a labour agreement, it may be concluded only if it is expressly provided by law.

## 4.4 Duration

The duration of an employment agreement may be established for either an indefinite or a fixed period up to a maximum of five years, or for a fixed period necessary to fulfil a certain task or job. A trial period may be provided by the employment agreement, although this is not mandatory. The most usual form of employment agreement is an agreement for an indefinite period.

Article 23 of the Labour Code provides that a labour agreement may be concluded for a specified term only if the nature of the employee's work or interests makes it impossible to establish an employment relationship for an indefinite term.

Employers have the right to restrict the employment of relatives of an existing employee (parents, spouses, siblings and children), if their hiring would place them in a subordinate or supervisory role in relation to an existing employee.

The duration of an employment contract with a foreigner is counted from the moment of obtaining a work permit and may not exceed one year (the period of the work permit's validity). But these contracts may be prolonged for successive one-year terms every time the work permit is prolonged. An exception to this rule applies to experts and employees providing services without a commercial presence in Ukraine.

### Fixed-term contracts

A fixed-term contract of employment is mainly used in the following types of employment:

- In building and construction industries
- For some categories of drivers
- For various types of temporary work – for example, in the agricultural industry

- For temporary replacement of the usual position holder in cases of maternity leave
- For foreigners

An employer has the right to terminate a fixed-term contract on its expiration date with immediate effect. But if, by mutual agreement and if allowed by law, the parties decide to extend the duration of a contract beyond the contracted termination date, the contract automatically becomes a contract for an indefinite duration.

## 4.5 Trial period

To verify whether the employee corresponds to the work with which she/he is entrusted, the parties to a contract may provide for a trial period.

The duration of the trial period may not exceed three months (or in some cases, with the approval of the relevant labour union, six months). For manual labourers, the duration of the probationary period may not exceed one month.

The imposition of a trial period must be specifically provided for in the labour agreement or the labour contract, as well as in the order on the hiring of the employee issued by the employee's managing director. During the trial period, the employer may dismiss the employee at any time if the employer determines that the employee does not meet the criteria established for the job position for which he/she was hired. But there are restrictions on the dismissal of certain categories of women on probation, which effectively prohibits probation for these employees.

If the employee was absent from work during the probation period because of a temporary loss of ability to work, his probation term may be prolonged to "make up" the corresponding number of days of his absence.

Trial periods may not be established for employees under 18, graduates starting their first job, employees transferred from one company to another, disabled people assigned to a job with the recommendation of a medical expert or people who are employed for the first time after completing military or alternative service.

If the employment relationship is not terminated during the trial period, it continues without interruption in accordance with the conditions agreed to in the employment agreement.

## 4.6 Invalid contracts

An employment agreement is null and void in the following circumstances:

- If its conclusion, ipso facto, violates labour legislation or "ethical norms" of society
- If its terms derogate from the rights granted to an employee by Ukrainian legislation

- If the employee has no legal capacity, does not perform the duty or does not have the necessary qualifications
- If the procedure by which the agreement was formed was irregular. For example, if no written records of the employment relationship are kept
- If there is a lack of intent to enter into a contract on the part of either party

According to Ukrainian legislation, any time an employee has been working before the termination of a void employment agreement should be treated as if he/she has been working pursuant to a valid employment contract, irrespective of the reason for the agreement's invalidity. As a result, the employee is entitled to pay wages and any other benefits due for the period of work.

## 4.7 Obligations of the parties

Ukrainian labour legislation provides that each party is bound by a mutual obligation to cooperate. Each party shall help the other in asserting its rights and fulfilling its duties.

### Employer obligations

An employer is obliged to fulfil the following duties:

- Provide continuous employment according to the position and qualification of the employee
- Provide adequate compensation and benefits
- Provide an appropriate workplace
- Provide appropriate health, safety and security conditions in the workplace
- Instruct the employee as to the employer's security and safety regulations and its internal regulations (rules and procedures)
- Explain to employees their rights and obligations
- Encourage productivity by employees and assist them in fulfilling their jobs in terms of quality and quantity
- Fulfil all duties and obligations stipulated in the employment contract
- Fulfil other duties prescribed by Ukrainian legislation

An employer should not pay wages lower than the minimum monthly wage established under applicable Ukrainian legislation. The amount of the minimum monthly wage is subject to frequent indexation. The minimum monthly wage was established as of 1 January 2009 at UAH 605. With effect from 1 April 2009, the minimum monthly wage will be UAH 625. With effect from 1 July 2009, the minimum monthly wage will be UAH 630. With effect from 1 October 2009, the minimum monthly wage will be UAH 650. With effect from 1 December 2009, the minimum monthly wage will be UAH 669. The amount of the minimum monthly

wage is periodically adjusted by parliament to reflect increases in cost of living.

## Employee obligations

An employee is obliged to fulfil the following duties:

- Carry out work according to an employment contract
- Carry out work personally, unless otherwise stipulated by legislation
- Abide by an employer's rules and procedures concerning working hours, health, safety and security
- Fulfil other duties and obligations stipulated in an employment agreement
- Fulfil other duties prescribed by Ukrainian legislation

An employee also has the right to participate in decision-making processes, directly or indirectly, and to join a trade union.

## 5 Occupational health & safety

### 5.1 Measures of occupational health and safety

Employers must meet the legislative and technical requirements and adopt internal regulations to avoid damaging employees' health. In some cases, employees must also undergo medical examinations during employment to see whether they may continue working.

According to Law No. 2694-XII of 14 October 1992 entitled "On Work Protection," and the Labour Code, an employer should create conditions to eliminate dangers at the workplace and to prevent or at least reduce accidents.

Terms of work, safety of technological processes, machines, mechanisms, equipment and other capital assets, and the state of facilities for collective and individual protection that an employee uses, must meet the requirements of Ukrainian legislation.

An employee has the right to stop on-going work if a situation, dangerous for his/her life or health or for other people, is present. Employees are under an obligation to reveal a dangerous situation to their direct manager or the employer's director.

The presence of such an urgent situation may be confirmed by specialists on labour protection of the enterprise, with the participation of a representative of a trade union and an insurance expert on labour protection.

An employer introduces changes and reviews labour norms upon agreement with the representatives of a trade union. Labour norms are set for an indefinite period and operate until the moment of their review. The employer shall notify the employees of the introduction of new, or a change of current, labour norms, at least one month before they become effective.

Ukrainian legislation demands an investigation into employees' psychological fitness in addition to their physical fitness.

Employee should also possess suitable qualifications. This particularly applies to jobs in which a lack of qualifications may cause accidents not only for the employee but also for third persons outside the factory or working place.

Each employee is expected to have an understanding of the regulations through both theoretical and practical labour safety education before the commencement of work.

Supervisors of sections or smaller units, and others responsible for creating safe and healthy working conditions such as designers and builders, are obliged to pass a labour safety examination.

As regards organising labour safety, both the state and the trade unions have a shared responsibility. The state determines the rules and regulations concerning health and safety at work, and the trade unions determine the procedures for ensuring health and safety at work.

The National Labour Safety Inspectorate directs, coordinates and supervises labour safety.

An employee has a right to terminate a labour agreement, if an employer does not meet the requirements of legislation regarding labour protection, or does not enforce conditions of the collective agreement regarding this matter. In this case, a severance payment is paid to such employee in an amount, determined by a collective agreement, but not less than the three months' salary.

### Women

It is prohibited for women to work at hard labour or in an unsafe or a potentially damaging work environment.

Imposing night work on women is not permitted, except for those sectors of the economy where night employment of women is justified by extreme necessity. Even in such cases, women may be engaged in night work only temporarily.

It is forbidden to engage pregnant women and women who have children under the age of three for night work, overtime work, work on weekends and to send this category of women on out-of-town business trips.

Women who have children aged 3–14 and women who have disabled children may not be assigned overtime work and may not be sent on out-of-town business trips.

Based on the conclusion of a medical report, pregnant women are subject to lower productivity and service requirements, as well as to a transfer to a different position

with less heavy work and less harmful conditions while maintaining their average salary from the previous employment position.

## Minors

It is prohibited for children under the age of 18 to perform hard labour, to work in an unsafe or a potentially damaging working environment, or in underground mining. Minors must undergo a physical examination before employment.

## 5.2 Rules and implementation

Requirements for material health and safe working conditions are defined as follows:

- Buildings, machines and other equipment and production procedures are to be planned and organised in such a way that during work, damage to health and physical safety is excluded
- Basic requirements for creating safe and healthy conditions must be considered in planning and constructing buildings
- If the above may not be fully achieved, precautions must be taken to ensure the elimination or reduction of accidents. Such precautions might include the introduction of safety devices, especially protective clothing, and personal protective equipment such as gas masks, eye shields and in some cases special food
- Premises shall be kept clean
- Overcrowding must be prevented by the provision of certain norms, such as 50 m<sup>3</sup> of space per person in a factory where unhealthy conditions exist
- Suitable lighting and heating
- Elimination of harmful noise and vibrations
- Adequate storage for materials, tools, instruments, etc.

## Employee negligence

Ukrainian labour and social legislation concerning violations of rules relating to labour safety by employees envisions numerous sanctions:

- Sanctions of a material nature such as damages may be obtained from an employer or employee responsible for an accident
- Disciplinary procedures against those responsible for infringement of rules
- Civil, administrative or criminal prosecution of those liable
- Sanctions of a moral character – for example, by preventing an employee from receiving certain distinctions or titles

## Employer negligence

If an employer has not taken appropriate protective measures resulting in an accident or personal injury, Ukrainian legislation provides the following guarantees:

- Norms regulating medical treatment
- Rules assuring the possibility of return to work if the injured person can still work after re-gaining health
- Rules governing damages for an employee in case of an accident or a personal injury. These include reimbursement for lost earnings as a result of an accident or a personal injury, compensation for a reduction of earnings due to a decrease in working capacity as a result of an accident or a personal injury, and provisions for compensation of damages suffered by relatives of a deceased employee

## Special categories of employees

The aim of ensuring special conditions is to render it impossible for anyone to be employed for a job where his/her health could be impaired, or where the employee might suffer an accident.

Special protection is provided to pregnant women, young persons and disabled persons. In certain types of work, involving unhealthy or dangerous conditions, it is prohibited to employ these categories of employees.

# 6 Industrial relations

## 6.1 Social partners

### Trade unions

All citizens have the right to establish trade unions without any pre-conditions and are guaranteed freedom of association and organisation. The rights of trade unions are determined by Law No. 1045-XIV of 15 September 1999 entitled “On Trade Unions, Their Rights and Guarantees of Activity” (hereafter the “Law on Trade Unions”).

The state provides for the complete autonomy of trade unions. Consequently, the state may not intervene in the internal affairs of unions and in relations between unions and their members.

Trade unions establish in their statutes the rules and regulations governing their functions and activities. Trade unions are entitled to regulate their activities, organisation, management, and the rights and obligations of their members. The only limitation in this respect is that the statutes of a trade union may not contravene provisions of the constitution or Ukrainian legislation.

Membership of a trade union is completely voluntary in regard to both admission and withdrawal. No social or economic pressure may be exerted to compel citizens to become members of trade unions, or to resign from them.

The legislative rights and obligations of trade union members are summarised below:

- A member may elect trade union officials, and after membership of one to five years, may be elected as an official
- A member may criticise the work of the trade union bodies and of any of their leaders; a member may appeal to any executive trade union body with a petition, proposal or complaint
- A member may request legal assistance from any trade union body, if the rights resulting from an employment relationship are violated
- A member may make use of the social and cultural benefits granted by a trade union to its members

In return, members' obligations to a trade union are as follows:

- To promote the realisation of trade union objectives
- To observe the statutes and the decisions of the higher trade union organs
- To pay membership dues regularly

In Ukraine, trade unions are normally organised on the basis of particular branches of industry.

## Trade union funds

Trade union funds are derived from membership dues, entrance fees and funds raised from cultural and sporting events.

## Trade union rights of participation

The Labour Code and the Law on Trade Unions require that an employer and a trade union conclude a collective bargaining agreement governing their labour relations and working conditions for employees. The following forms of trade union participation may be identified:

- The right of cooperation in the management of an employer
- The right of supervision
- The right of participation in the settlement of labour disputes at all levels of proceedings
- Other rights stipulated by Ukrainian legislation

The union's right of approval of an employer's internal rules and decision-making processes guarantee the protection of

employees' rights. In addition to this, a union representative's consent is required in the following matters:

- Setting an employee's personal basic wage
- Nomination for a governmental or other honour and reward
- Granting extra paid holidays
- Granting of social welfare benefits

A decision may not be implemented until a trade union and an employer reach an agreement. In the absence of such an agreement, the parties may conduct a conciliatory proceeding.

The rights of trade unions with regard to production and economic management are apparent at the national economy level, at the level of individual sectors and at the level of an employer. These rights appear in three forms:

- The right to express views
- The right to participate in committees
- The right to control the activities of an employer

A trade union must be asked to express its official opinion during the hiring or dismissal of an employer's manager or of another employee in a senior position, or when evaluating the quality of such persons' work.

## Protection of union officers

A union official is protected against transfer to another workplace, or termination of the employment contract, during the period of office, and in a subsequent two-year period.

## Employer organisations

Ukrainian employers organisations operate under Law No. 2436-III of 24 May 2001 entitled "On Employers' Organizations." According to this law, employers have a right of freedom of association for realisation and defence of their rights and satisfaction of social, economic and other legal interests based on their own free will without any previous pre-conditions or approvals.

For implementation of their statutory tasks, organisations of employers have a right on a voluntary basis to create or enter into associations of organisations of employers. Employers may also withdraw from such organisations at any time.

The "All-Ukrainian Association of Employers" was created on 26 March 2004. Fifteen organisations of employers from 13 regions of Ukraine and Kyiv were the founders of the association. The aim of activity of the association is the representation and protection of rights and legal interests of organisations of employers – member organisations of the association with respect to economic, social, labour and other relationships. The association also aims to coordinate and consolidate of actions of member organisations,

intensification of their influence on the process of forming socio-economic policies, perfection of social and labour relations and development of social partnerships in Ukraine.

The “Federation of Employers of Ukraine” (hereafter the FEU), created on 27 September 2002, is one of the most powerful employers’ organisations representing their interests in the economic, social and labour relations and protecting their rights and interests at the national level. Fifteen all-Ukrainian sectoral and 27 regional, Kyiv and Sevastopol local employers’ organisations (associations) are members of the FEU. They affiliate 565 regional, local and district territorial and branch employers’ organisations (associations).

## Workers’ participation in company management

The participation of employees in the management of employers is based on two principles: protection of employees’ interests and employees’ participation in issues such as production, economy, distribution of income, etc.

An employer and its management must promote and cooperate with employees to ensure such participation. The management shall provide information in due time on the most important tasks of production and activities of an employer so that employees may participate fully in the development and enforcement of an employer’s internal acts.

Regular discussion meetings should be held to enable employees to express their opinions and put forward suggestions and comments. Minutes should be taken during the discussions, and suggestions and comments calling for further investigation should be replied to in writing within 15 days.

## 6.2 Collective agreements

Articles 11 and 12 of the Labour Code require legal entities operating in Ukraine to conclude collective agreements with the relevant bodies of the trade unions representing the interests of the employees, or if there are no such trade union bodies, with elected representatives of the employees who have been authorised by their fellow employees to sign and negotiate such collective agreements with an employer.

The sphere of use of collective agreements and all respective procedures are provided for by Law No. 3356-XII of 1 July 1993 entitled “On Collective Agreements and Contracts” (hereafter Law on Agreements).

Collective agreements set forth mutual obligations of employers and employees regarding labour, social and economic relations, in particular:

- Changes in organisation of work
- Effective work
- Wages, salaries and benefits

- Participation of employees in the sharing of profits received by their employer (if this right is stipulated by the employer’s statutes)
- Working regime, duration of work and rest
- Conditions and security of work
- Housing, cultural and medical services for employees, as well as organisation of their rest and health improvement
- Guarantees and privileges additional to those generally required by Ukrainian legislation
- Guarantee equal rights for women and men

The collective agreement may grant additional guarantees and social benefits for employees in comparison with the effective legislation.

A collective agreement includes an employer’s managerial staff unless otherwise specified in the statutes – for example, with regard to required periods of notice.

Ukrainian legislation does not limit the duration of a collective agreement. Its duration depends on mutual agreement. A copy of a collective agreement must be issued to an employer’s management, to the supervisory board of a trade union and, to the extent possible, to each trade union representative and employee.

A collective agreement may not be concluded in the following cases:

- If the draft of the collective agreement had not been submitted to the employees for discussion
- If unauthorised signatories signed the collective agreement
- If the collective agreement infringes on provisions of an employer’s statutes

Conditions of a collective agreement, which worsen the conditions of employment in comparison to current legislation and agreements, are null and void.

## Settlement of collective labour disputes

Collective labour disputes are decided based on the Labour Code and Law No. 137/98-VR of 3 March 1998 entitled “On Procedure for Settlement of Collective Labour Disputes (Conflicts)” (hereafter the “Law on Settlement of Disputes”).

The major points of procedure for the settlement of collective labour disputes are the following:

- The demands of the trade union must be agreed upon by the majority of its members, and presented to an employer
- If an agreement between the parties is not reached, the issue is to be referred to a labour arbitration committee for a further seven days of discussion
- If an agreement is not reached, a trade union may invoke its right to strike. Any decision to strike before following the above-described procedure is considered unlawful

Employees have the right to strike to protect or advance their economic and social interests.

## **Settlement of individual labour disputes**

A labour dispute may be settled in a commission on labour disputes. Such a commission is elected by the labour collective of enterprise, institution or organisation by the employees and consists of not less than 15 people. A dispute may also be submitted in resolution by a Ukrainian court.

An employee may sue the employer in court under the following conditions:

- If he/she is not satisfied with the decision of the labour commission, or no decision has been reached after 10 days
- If the employer has no labour commission
- If termination of the employee's contract is considered unlawful and there is an argument that he/she deserves to be rehired
- If the employer is already filing a claim for damages against the employee
- If the applicant has evidence that he/she was denied employment for reasons of race, gender, nationality, language, origin, place of residence, religion or any other circumstances, which are not directly associated with the employee's professional skills

In all labour cases, not depending on the ruling of the court, an employee does not pay court costs.

## **6.3 Industrial action**

### **Strikes**

According to Article 44 of the Constitution of Ukraine of 28 June 1996, employees have the right to strike to protect their economic and social interests.

The procedure for strikes is established by the Law on Settlement of Disputes, taking into account the need to ensure national security, health protection, and the rights and freedom of other persons.

No one may be forced to participate in a strike. Prohibiting strikes is only possible on the basis of Ukrainian law.

A strike may only be organised if two-thirds of the employees of the enterprise vote for it. Public servants may not strike, nor may members of the judiciary, armed forces, security services or law enforcement agencies. Employees who strike in prohibited sectors may receive prison terms of up to three years. Federations and confederations may not call a strike.

### **Lockouts**

There are no provisions for lockouts in Ukrainian legislation.

# MERCER

Argentina

Australia

Austria

Belgium

Brazil

Canada

Chile

China

Colombia

Czech Republic

Denmark

Finland

France

Germany

Hong Kong

Hungary

India

Indonesia

Ireland

Italy

Japan

Malaysia

Mexico

Netherlands

New Zealand

Norway

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