

2011 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*



# Ukraine

**Population:** 45.4 million

**Capital city:** Kiev

**GDP growth:** 4.2% (2010)

**Inflation rate:** 9.4% (2010)

**Unemployment rate:** 8.1% (2010)

**Exchange rate**

Effective date: May 2011

GBP 1 = UAH 13.03

USD 1 = UAH 7.97

EUR 1 = UAH 11.51

## 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 to be a work in progress, and in need of significant improvement.

#### 1.2 Contributions to social security

**Effective date of figures**

1 April 2011

In 2011, Ukraine changed over to a new procedure for administering social insurance contributions. Effective 1 January 2011, instead of paying social insurance, pension, unemployment and accident contributions to various funds, Ukrainian employers shall now pay a single contribution for mandatory State Social Insurance to the State Pension Fund of Ukraine. The said contribution is transferred to the Pension Fund's accounts and is then automatically divided among other funds. The total amount of the single contribution does not exceed the sum of the contributions that used to be paid to various funds.

The social security contribution is mainly based on the monthly minimum living wage. As of 1 April 2011, this wage for able-bodied citizens is set at UAH 960.

### Date when figures are expected to next change

The monthly minimum wage will be gradually increased in 2011. Effective 1 April, the monthly minimum wage was set at UAH 960, effective 1 October at UAH 985, and effective 1 December at UAH 1,004. As the result, the existing social security salary ceiling will increase on the same dates.

	By employer (% of payroll)	By employee (% of base salary)	Salary ceiling (local currency)
<b>Single contribution for the mandatory State Social Insurance</b>	Ranges from 36.76% to 49.7% depending on the nature of the company's business and risk profile (for example, the employer contribution for law firms is 36.76%; for banks 36.8%, etc.), with variations for special types of employees	3.6%, with variations for special types of employees	The maximum monthly salary ceiling for a single contribution is: <ul style="list-style-type: none"> <li>Effective 1 April 2011: UAH 14,400</li> <li>Effective 1 October 2011: UAH 14,775</li> <li>Effective 1 December 2011: UAH 15,060</li> </ul>
<b>Single contribution is paid to the Pension Fund and then automatically divided among other funds as follows:</b>			
<b>Social insurance</b>	Ranges from 2.82% to 3.81% of the single contribution depending on the nature of the company's business and its risk profile	27.7778% of the single contribution, with variations for special types of employees	Salary ceiling is applied when the single contribution is calculated
<b>State Pension Fund</b>	Ranges from 66.81% to 90.32% of the single contribution depending on the nature the company's business and its risk profile	55.5555% of the single contribution, with variations for special types of employees	Salary ceiling is applied when the single contribution is calculated
<b>Unemployment</b>	Ranges from 3.02% to 4.08% of the single contribution depending on the nature of the company's business and risk profile	16.6667% of the single contribution, with variations for special types of employees	Salary ceiling is applied when the single contribution is calculated
<b>Health</b>	None (paid from taxes)	None	None
<b>Accident</b>	Ranges from 27.36% to 1.79% of the single contribution depending on the nature of the company's business and risk profile	None	Salary ceiling is applied when the single contribution is calculated

### Other comments

The single social security contribution is paid monthly from the company payroll and employee salaries. The said contribution is divided among the State Pension Fund, Fund for Social Security against the Temporary Loss of Ability to Work, Fund for Social Security against Industrial Accidents, and State Insurance Fund against Unemployment. Employees can also make voluntary contributions to private social security funds (private agencies such as non-state pension funds, other non-state funds, charitable organisations, etc.).

## 1.3 General description of company practices for employee benefits

This table summarises the benefits that companies typically provide to their 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 complicated implementation of such programmes – legal framework regulation implementation of such programmes is quite poor.	It is not common for companies to provide supplementary benefits.
<b>Death</b>	No. Employers do not supplement due to cost and complicated implementation of such programmes – legal framework regulating implementation of such programmes is quite poor.	It is not common for companies to provide supplementary benefits.

Benefit	Do employers supplement? Why or why not?	Typical supplementary benefits
<b>Disability</b>	No. Employers do not supplement due to cost and complicated implementation of such programmes – legal framework regulating implementation of such programmes is quite poor.	It is not common for companies to provide supplementary benefits.
<b>Medical</b>	Yes. Benefits exist, but they usually cover a limited number of illnesses and are often not enough for proper treatment.	Most multinationals provide employees a private medical plan.
<b>Other</b>	No. Employers do not supplement due to cost and complicated implementation of such programmes – legal framework regulating implementation of such programmes is quite poor.	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. The legal framework for implementation of such programmes is rather poor. Law contains only general provisions concerning fringe benefits.

## 1.4 Contributions to typical employer-sponsored plans

### Effective date of figures

November 2010

### Date when figures are expected to next change

November 2011

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

	Prevalence: All industries	Eligibility	By employer (% of payroll)	By employee (% of base salary)
<b>Retirement – DB</b>	About 8% of participating companies			
<b>Retirement – DC</b>	9% of participating companies	All employees		None
<b>Severance</b>	25% of participating companies provide severance pay in addition to statutory benefits			
<b>Death</b>	41% of participating companies provide life assurance benefits in addition to statutory benefits. In 90% of cases, the plan covers death due to any cause	All employees		None
<b>AD&amp;D</b>	40% of participating companies provide personal accident insurance benefits in addition to statutory benefits	All employees		None
<b>Business travel</b>	85% of participating companies provide travel insurance, of which 72% cover business travel only	All employees travelling for business		None
<b>Short-term disability</b>	31% of participating companies provide sickness benefits on top of statutory requirements; of this, 70% provide sickness benefits in case of pregnancy	All employees		None
<b>Long-term disability</b>	38% of participating companies provide long-term disability benefits on top of statutory requirements	All employees		None
<b>Medical</b>	92% of participating companies provide their employees with a private medical plan	All employees		

	<b>Prevalence: All industries</b>	<b>Eligibility</b>	<b>By employer (% of payroll)</b>	<b>By employee (% of base salary)</b>
<b>Dental</b>	Part of medical			
<b>Vision</b>	Not applicable			

Source: Mercer's Total Remuneration Survey, 2010

Note: Figures are for multinational and leading local companies.

### Other comments

Companies can provide employer-sponsored plans if they choose. As a rule, only multinational companies with offices in Ukraine and leading local companies offer such plans. It is not a typical practice for Ukrainian companies. The above still remains non-typical practice for Ukrainian businesses.

## 2 Legislative updates

### 2.1 Legislation approved within last 12 months

More than 5,050 legislative acts (including 280 laws) have been passed since 1 April 2010. The most important regulations, relevant to social security and labour law, approved within the last 12 months, are described below.

HR area	Effective date	New law	Action required	Impact
<b>Labour law</b>	2 June 2010	Law of Ukraine "On Amending Article 25 of the Law of Ukraine 'On Vacations'" stipulates that a mother or other person taking care of a child under the age of 14 years shall be granted a non-paid vacation for the period of quarantine being established in the respective territory (area in which the family lives).	Not required	Obliges an employer to grant non-paid vacation to employees of respective categories for the period of quarantine
<b>Labour law</b>	20 November 2010	Law of Ukraine "On Amendments to Specific Legislative Acts of Ukraine Concerning Deadlines for Paying Salaries" stipulates that salary shall be paid no later than seven days after the end of the period for which such salary is paid and that the salary for the first half of a month shall not be less than the remuneration for the hours actually worked.	Not required	Obliges an employer to pay salaries no later than seven days after the end of the period of work and to pay actual remuneration for the first half of a month
<b>Social security</b>	1 January 2011	Law of Ukraine "On Collecting and Accounting a Single Contribution for Mandatory State Social Insurance" stipulates that a single contribution shall be paid to the Pension Fund of Ukraine instead of various contributions to various funds.	Not required	Obliges an employer to make a single social insurance contribution to the Pension Fund from its payroll and individuals salaries
<b>Social security</b>	1 January 2011	Law of Ukraine "On Amending Article 30 of the Law of Ukraine 'On Fundamentals of Disabled Persons' Social Security in Ukraine'" stipulates that owners of parking lots must provide 10% of their parking lot space to disabled persons' vehicles free of charge.	Not required	Sets no limitations/requirements for the employer

HR area	Effective date	New law	Action required	Impact
<b>Personal data protection</b>	1 January 2011	Law of Ukraine "On Personal Data Protection" provides for conditions of protection, use and processing of personal databases.	Registration of personal databases with a competent agency	Obliges an employer to register databases of employees' personal data with a competent agency and follow the rules of the law while using such bases (Note: Respective regulations governing the registration procedure have not been adopted yet)
<b>Labour law</b>	11 January 2011	Law of Ukraine "On Amendments to Specific Legislative Acts of Ukraine Concerning Payment of One-Time Vacation in Connection with Adoption of a Child" stipulates that a woman or a man having adopted two or more children over the age of three years shall be granted a one-time paid vacation of 70 calendar days.	Not required	Obliges an employer to grant an employee that has adopted two and more children over the age of three years a paid vacation of 70 calendar days
<b>General social matters</b>	18 January 2011	Law of Ukraine "On the Social Dialogue in Ukraine" sets forth conditions for creation of bodies of social dialogue which would include representatives of state authorities, employers and employees	Not required	Sets no limitations/requirements for the employer
<b>Labour law</b>	22 March 2011	Law of Ukraine "On Ratifying the International Labour Organization Convention No. 176 Concerning Safety and Health in Mines, 1995" sets forth conditions for ensuring safety of labour in mines.	Not required	Sets no limitations/requirements for the employer

## Legislation proposed within last 12 months

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

Date of proposal	New law	Action required	Impact
<b>28 April 2010</b>	The Draft Law of Ukraine "On Amendments to Specific Laws of Ukraine Concerning Disabled Persons' Rights" defines the notion of disability discrimination, establishes that any person (not only officials) shall incur liability for violation of disabled persons' legitimate rights and provides for additional measures for simplification of disabled persons' socialisation.	Not required	Sets no limitations/requirements for the employer
<b>15 June 2010</b>	The Draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Imposing Tax on Enterprises' Profit' (Concerning Tax Incentives for Increase in the Number of Job Positions)" stipulates that a part of enterprises' profit allocated for creation of new job positions shall be exempt from tax, provided the increase in number of job positions is more than 0.5% of the average number of the enterprises' employees in the previous reporting year and is not less than 100 new job positions per month.	Not required	Sets no limitations/requirements for the employer

Date of proposal	New law	Action required	Impact
5 July 2010	The Draft Law of Ukraine "On Amendments to Article 121 of the Labour Code of Ukraine" stipulates that employees going on business trips shall receive salary according to the terms and conditions of an employment or collective agreement and that amount of such salary shall not be lower than such employees' average salary.	Not required	An employer must ensure that employees going on business trips receive salary that is not lower than their average salary.
11 November 2010	The Draft Law of Ukraine "On Amendments to Specific Legislative Acts of Ukraine Concerning Violation of Personal Data Protection Law" provides, <i>inter alia</i> , for amendments to the Administrative Offences Code of Ukraine regarding liability for violation of personal data protection law.	Not required	Sets no limitations/requirements for the employer
9 December 2010	The Draft Law of Ukraine "On Amendments to Article 8 of the Law of Ukraine 'On Remuneration of Labour' (Concerning Regulation of Monopolist Companies' Salary Fund)" stipulates that the state shall no longer regulate salary funds of monopolist companies.	Not required	Sets no limitations/requirements for the employer
28 December 2010	The Draft Law of Ukraine "On Amendment to the Law of Ukraine 'On the State Assistance to Families with Children' Concerning Payment of Childbirth Allowance" increases the amount of childbirth allowances and extends the periods of paying same.	Not required	Sets no limitations/requirements for the employer
18 February 2011	The Draft Law of Ukraine "On Amendments to Specific Legislative Acts of Ukraine (Concerning Provision of Citizens of Specific Preferential Categories with Work Places at Enterprises, Institutions and Organizations Using Hired Labour)" stipulates that companies which use hired labour shall provide 15% of an average number of their job positions to young employees aged 14–25 years or, if such companies employ 7–14 persons, they shall provide one work place to a young employee of said age category.	Not required	The employer must provide a specific number of workplaces to young employees aged 14–25 years.
2 March 2011	The Draft Law of Ukraine "On Employers' Organizations and Associations Thereof, their Rights and Guarantees of their Activity" sets forth the bases of creation and functioning of employers' organisations and associations thereof, principles of their cooperation with state and local authorities, trade unions and other similar associations.	Not required	Sets no limitations/requirements for the employer
12 March 2011	The Draft Law of Ukraine "On Amendments to Specific Legislative Acts of Ukraine (Concerning Employers' Material Liability to Employees for Untimely Payment of Salaries and Other Sums Due to Employees)" establishes that an employer shall pay a penalty of 1% of the non-paid salary or other sum due to an employee for each day of the delay in paying such salary or sum.	Not required	Obliges an employer to pay a penalty to an employee for each of delay in paying the salary or other sum

The pension reform has been a much politicised issue in Ukraine. A draft Law "On Measures Aimed at Securing Legislative Basis for Reformation of the Pension System" was elaborated by the Cabinet of Ministers of Ukraine and registered with the Parliament at the end of 2010. However, the situation around the pension reform remained unclear due to varied attitude towards the pension reform among Ukrainian officials. In spring 2011, it was recalled by the Cabinet of Ministers, and an amended version of the draft Law was again submitted to the Parliament. On 8 July 2011, the Parliament approved the Law, which still has to be signed by the President.

### 3 Trends

Benefit	Summary Recent changes made or considered by companies	Reasons for trend
<b>Retirement</b>	Retirement benefits are provided by state social security, but some companies may establish higher amounts of retirement benefits for employees.  We do not see any trend of increase in the number of employers wishing to provide their employees with supplementary retirement benefits.	Retirement benefits are insufficient for a decent quality of life.
<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>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. The law does not define clearly what is considered necessary to live or first priority. It only says that it is a set of food products required for normal functioning of person’s body and preservation of health as well as a minimum set of non-food products and a minimum set of services necessary for satisfaction of the main social and cultural needs of the person.

#### Minimum salary

It is the minimum level of monthly salary guaranteed by law for a full-time working day. Ukrainian law establishes minimum monthly salary and minimum hourly wage. Minimum monthly salary is usually used as a basis for calculation of other sums.

#### Social security benefits for temporary inability to work

State social security provides benefits to those who have been affected by temporary loss of ability to work. The loss of ability to work may be due to a need to care for a sick or disabled child or a sick family member, pregnancy and births, need to care for 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

### Local Mercer offices

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 employment agreement 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 end of the term for a fixed-period contract
- Upon the employee's drafting into the military or alternative service
- At the initiative of the employee (at his/her discretion) or employer or at the request of the trade union of the employer, as described in detail below
- Upon transfer of the employee from one company to another, solely upon the employee's consent
- Upon refusal by the employee to be relocated to another geographic location with the employer
- 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
- According to conditions stipulated in a contract

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:

- Upon liquidation of the employer or a reduction in the number of the employees. Due to an employee's insufficient qualifications or deteriorating health condition
- Upon an employee's systematic failure to fulfil work obligations or the employee's unsatisfactory work performance
- 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, such absenteeism does not include maternity leave
- 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

Additionally, pursuant to Article 41 of the Labour Code, an employer may terminate a labour agreement before its expiration in the following cases:

- One-time gross violation by the CEO, his deputies, chief accountant, etc.
- Guilty actions of the CEO that led to the untimely payment of wages
- Guilty actions of an employee who directly deals with money, commodities or cultural valuables if such actions resulted in the loss of his employer's confidence
- Immoral actions by a tutor

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

- Dismissal of an employee currently incapable of working (this provision does not include cases of absenteeism of more than four months due to illness)
- 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.

## Description of financing

Not applicable

## 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 employees' work longevity, which will determine their social security and pension rights after retirement.

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

According to the Labour Code of Ukraine, on an employee's request, the employer should issue a reference certifying the employee's work in the company, speciality qualifications, position, period of work and amount of wages.

## 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 average monthly salary.

## Description of financing

Not applicable

## Other comments

Collective dismissals are restricted in companies undergoing privatisation.

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

## 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 20% higher than an employee's ordinary salary per hour of day work.

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 must 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 types 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, all unused vacation days have to be paid out in cash.

### 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	2011	2012
<b>New Year's Day</b>	01 January	01 January
<b>Christmas Day</b>	07 January	07 January
<b>Women's Day</b>	08 March	08 March
<b>Easter</b>	24 April	15 April
<b>Spring and Labour Days</b>	01–02 May	01–02 May
<b>Victory Day</b>	09 May	09 May
<b>Trinity Day</b>	12 June	03 June
<b>Constitution Day</b>	28 June	28 June
<b>Independence Day</b>	24 August	24 August

If a public holiday day coincides with a day off, the day off is moved to the next work day following the public holiday.

Public holidays are not taken into account in determining the duration of annual vacations.

### 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

These holidays are specified in the Labour Code as religious holidays. The above three holidays are celebrated on Sunday. In addition, Mondays following those holidays are also days-off.

## 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 60%, 80% or 100% of regular pay (depends on work experience). 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 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 payment 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 (70 calendar days after multiple adoptions) 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, step-daughter), 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 ten 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 examinations 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, Israel, Korea 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.

According to Clause 19 of the Rules for Foreigners’ and Stateless Persons’ Entry to Ukraine, Their Exit from Ukraine and Transit through Its Territory, approved by the CMU Resolution No. 1074 dated 29 December 1995 (the “Entry and Exit Rules”), passports of citizens of visa-free regime states are registered at the Ukrainian state border by an official of the State Frontier Service for a term that cannot exceed 90 calendar days during the 180-calendar day period after the day of their first entry. The above term is calculated by the “GART-1” system maintained by the State Frontier Service of Ukraine.

Citizens of visa-free regime states must leave Ukraine upon expiration, in the aggregate, of 90 days of their stay in the territory of Ukraine and may enter Ukraine again in 180 days after the date of their first entry. Otherwise, they may be subject to sanctions stipulated by the Administrative Offences Code of Ukraine and Article 32 of the Law “On the Legal Status of Foreigners and Stateless Persons” and the persons hosting such foreigners may be subject to sanctions envisaged by the Administrative Offences Code of Ukraine.

A foreign citizen may stay in the territory of Ukraine during a long period if such a citizen:

- Timely extends the stay in Ukraine by way of extending registration of the passport at a local office of the Department for Citizenship, Immigration and Registration of Physical Persons of the Ministry of Internal Affairs of Ukraine (hereinafter – “GIRFL office”), or
- Holds a temporary residence certificate (which is usually issued for a period of validity of an employment permit), or
- Holds a permanent residence certificate (a document that is issued to immigrants and is not addressed in this article), or
- Holds documents certifying obtaining of a refugee status or asylum in Ukraine (this article does not address such cases either).

The shortcoming of stay in Ukraine is that in practice a citizen of a visa-free regime state may be denied entry to Ukraine if he or she has already been staying in the country for more than 90 days during the 180-day period after the date of first entry, extended registration of the passport, exited the country during the term of such registration and is entering Ukraine before expiration of the 180-day period after the date of the first entry.

### Temporary Residence Certificate

The Law “On the Status of Foreigners and Stateless Persons” stipulates that foreigners who arrive for temporary employment purposes shall obtain a certificate (*posvidka*) of temporary residence.

The said certificate allows a foreigner to stay in the territory of Ukraine and to freely enter and exit the country during the certificate term.

Under the Entry and Exit Rules foreigners and stateless persons arriving in Ukraine for employment purposes based on an employment permit issued by the respective employment centre and IM-1 type visa shall be granted a certificate (*posvidka*) of temporary residence by local agencies or offices of GIRFL in accordance with the procedure established by the Ministry of Internal Affairs in coordination with the Administration of the State Frontier Service, unless otherwise envisaged by laws and international treaties of Ukraine.

There has been no regulation governing the procedure for issuing temporary residence certificates in publicly available sources since the adoption of amendments to the Entry and Exit Rules that provide for such procedures (19 April 2006).

GIRFL local offices provide a list of documents required for obtaining a temporary residence certificate. Without presenting all the documents (except as described below) one cannot file an application for obtaining a temporary residence certificate.

Based on the aforementioned practice, citizens of visa-free regime states employed in Ukraine on the grounds other than employment permits cannot obtain temporary residence certificates.

### 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 Law of Ukraine No. 803-XII “On Employment of People” dated 1 March 1991 and Resolution of the Cabinet of Ministers of Ukraine No. 322 dated 8 April 2009 entitled “On Approving the Procedure for Issuance, Extension of the

Expiration Date and Nullification of the Approvals for the Use of Work of 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)
- Two colour photographs of size 3.5 x 4.5
- 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 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)
- A certificate of a state tax service office evidencing payment of taxes and duties (mandatory fees) by the employer
- A certificate of the employment centre evidencing that the employer has no debts to the Unemployment Fund
- Receipt of payment of the fee for the application consideration (as of 1 April 2011 the amount is UAH 3,840)
- A copy of the draft employment contract certified by the employer
- A reference from the employer, confirming that the foreign employee’s position does not require Ukrainian citizenship and does not involve access to information that constitutes a state secret
- A certificate of an internal affairs office evidencing that the foreigner who is staying in the territory of Ukraine as

of the day the permit is being formalised has (no) criminal record; or

- A certificate of an authorised agency of the country of origin (stay) evidencing that the foreigner who is staying outside Ukraine as of the day the permit is being formalised is not servicing a sentence and is not under investigation
- A copy of the employer's statutes and State Registration Certificate
- Copies of documents showing the employee's professional qualifications and education as required for the position
- Copies of the foreigner's passport pages containing the main identification data

All documents should be duly notarised and apostilled or legalised.

The above list may vary in case the employer obtains a permit to use labour of a foreigner who is sent by a foreign business entity to Ukraine for accomplishing a specific volume of works or rendering services based on an agreement (contract) concluded between the Ukrainian and the foreign business entities, and in case of employment of employees providing services without commercial presence in Ukraine. 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 foreign employee is servicing a sentence for commitment of a crime or is under investigation as of the day the permit is being formalised.

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 maximum term of three years with possibility of extension thereof for two years, 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 Economic Development and Trade of Ukraine.

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.

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. But 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 set by the parties, or for a fixed period necessary to fulfil a certain task or job (for example, seasonal works). A trial period (up to three months) 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 he or she 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 or 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, the probation term may be prolonged to "make up" the corresponding number of days of 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 or 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 set at UAH 941 effective 1 January 2011. With effect from 1 April 2011, the minimum monthly wage is UAH 960. With effect from 1 October 2011, the minimum monthly wage will be UAH 985. With effect from 1 December 2011, the minimum monthly wage will be UAH 1,004. 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.

According to Law No. 2694-XII dated 14 October 1992, an employer should obtain a permit to begin hazardous works and operating hazardous facilities.

An employee has the right to stop on-going work if a situation, dangerous for his or 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 qualification

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 their 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 Kiev 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, Kiev 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 not satisfied with the decision of the labour commission, or no decision has been reached after ten days
- If the employer has no labour commission
- If termination of the employee's contract is considered unlawful and there is an argument that the employee deserves to be rehired
- If the employer is already filing a claim for damages against the employee
- If the applicant has evidence that he or 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.

## Correspondents

Mercer has correspondents in a number of countries. The following have contributed information for this publication.

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