

## Case Note

# WORKING IN WAR: THE MAIN CHANGES IN LABOUR RELATIONS AND WORKING CONDITIONS UNDER MARTIAL LAW IN UKRAINE

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**Summary:** 1. Introduction. – 2. Labour Code of Ukraine or the Law “On the organisation of labour relations in martial law”: the scope of acts during martial law. – 3. Features of labour relations and working conditions in the period of martial law in Ukraine. – 4. Statistical data. – 4.1. *Statistics on Ukrainians who left Ukraine during the war in search of work and security.* – 4.2. *Statistics on Ukrainians who have remained in Ukraine and are looking for job.* – 5. Conclusions.

**Keywords:** *martial law, labour relations, working conditions, remote work, Ukraine*

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## ABSTRACT

**Background:** Maintaining labour regulations and the quality of working conditions is a considerable challenge during wartime and martial law. This paper outlines the changes that have affected the working life of employees who continued in employment, both inside and outside Ukraine, under martial law in 2022. Using a qualitative analysis of Ukrainian labour regulations, ILO and Ukrainian government statistics, and direct observation, we show how the legal regulation of labour relations and working conditions has changed under the influence of active hostilities. During the war in Ukraine, many employees started to work remotely, and some companies have relocated their production facilities to areas where there are no active hostilities and continue to operate. At the same time, the legal regulation and nature of labour relations and the quality of working conditions have changed significantly - yet regulations have failed to keep up with the levels of flexibility and timeliness required to respond effectively in the ongoing crisis.

**Methods:** In order to achieve objective scientific results, the authors used such methods as analysis and synthesis to understand and build a logical chain of ideas. The authors used the statistical method to emphasise their positions with real data regarding the situation that developed in practice.

**Results and Conclusions:** We draw conclusions regarding the problems of employees implementing their labour rights during wartime, identify applied aspects of labour law in wartime conditions, and propose ways to improve the situation regarding the implementation of labour rights.

## 1 INTRODUCTION

Today, the basis of Ukrainian labour legislation is the Code of Labour Laws of Ukraine<sup>1</sup>, adopted on December 10, 1971 (hereinafter called the Labour Code of Ukraine) and enacted on July 1, 1972. The Labour Code of Ukraine has been amended 154 times since its existence, which allowed for relatively effective solutions to urgent problems in the social and labour spheres. In particular, in 2015 there were 15 such changes. At the same time, the Labour Code of Ukraine, which was developed for a planned economy, does not allow a successful response to the challenges of time, which is inconvenient for the modern economy, nor supports small and medium businesses with the appropriate level of employment flexibility required by employers and employees, especially in martial law. Even the terminology of the Code remains archaic. For instance, Art. 118 of the Labour Code of Ukraine deals with guarantees for employees elected to positions in Komsomol organisations. And this, unfortunately, is not an isolated example.

The Verkhovna Rada of Ukraine dealt with important issues (civil service and local government reform, election legislation, recoding of civil law, criminal law reform, etc.), ignoring the need to address the problems that always arise in the field of economics. And this is surprising, because without the economy, the existence of human society would be impossible. Everyone, since childhood, is exposed to various economic phenomena every day, such as buying and selling goods, receiving a salary or scholarship, using money, getting a loan, and so on.

Along with the commodity and capital markets, the labour market is an important component of a market economy. Such economic phenomena as the labour market, unemployment,

<sup>1</sup> The Labour Code of Ukraine: Law No 322-VIII of 10.12.71. The Official Bulletin of the Verkhovna Rada of Ukraine, 1971, Appendix to No. 50, Article 375. <https://zakon.rada.gov.ua/laws/show/322-08#Text> accessed 30 September 2022.

inflation, and taxes affect the living conditions of each person. And while the legislature dealt firmly with the budget, taxes and fees, little attention was given to the labour market and labour relations during all the years of Ukraine's independence. In fact, the only significant achievement of the last decade is the adoption on July 5, 2012 of the Law of Ukraine "On Employment of Population"<sup>2</sup>.

The central executive bodies also did not particularly care about these issues. Thus, in accordance with the Regulation on August 20, 2014<sup>3</sup>, although the formation and implementation of state policy in the areas of labour, employment, labour migration, labour relations and social dialogue are two of the key activities of the Ministry of Economy, the latter did not deal with them. They provided a solution only in cases where further disregard in the relevant field was impossible. This is particularly illustrated by the structure of the Ministry of Economy, where only two of its more than 40 divisions take care of the above issues: (1) the Directorate of Labour Market Development and Wage Conditions and (2) the Directorate of Employment and Labour Migration. This looks strange, to put it mildly, because the economically active population of Ukraine is about 16.7 million people, of whom just over 15 million are employed.

During the war, significant changes have taken place in the working life of employees who remained in Ukraine or left the country and continued to work under martial law in 2022.

In this article we are going to show how the legal regulation of labour relations and working conditions has changed under the influence of active hostilities, based on a qualitative analysis of labour legislation, observations, and statistics of the ILO and Ukrainian government services.

We used analysis and synthesis to understand and argue a logical chain of ideas to their conclusions. The statistical method helps to emphasise conclusions with real data regarding the actual situation.

## 2 LABOUR CODE OF UKRAINE OR THE LAW "ON THE ORGANISATION OF LABOUR RELATIONS IN MARTIAL LAW": THE SCOPE OF ACTS DURING MARTIAL LAW

At the beginning of the war, Ukraine had labour legislation that did not meet the requirements of peacetime, much less wartime. Separate attempts to resolve labour law issues related to the mobilisation were made on March 27, 2014<sup>4</sup> and on May 20, 2014<sup>5</sup>: (1) the list of grounds for termination of the employment contract was supplemented; (2) the procedure for dismissal of employees was clarified; and (3) for a special period, and in connection with changes in

2 On Employment of Population: Law of Ukraine on July 5, 2012 No 5067-VI. *The Official Bulletin of the Verkhovna Rada of Ukraine*. 2013. No 24. Art. 243. <https://zakon.rada.gov.ua/laws/show/5067-17#Text> accessed 30 September2022.

3 Issues of the Ministry of Economy: Resolution of the Cabinet of Ministers of Ukraine on August 20, 2014 No 459. *Official Gazette of Ukraine*. 2014. No 77. Art. 2183. <https://zakon.rada.gov.ua/laws/show/459-2014-%D0%BF#Text> accessed 30 September2022.

4 On Amendments to Certain Legislative Acts of Ukraine Concerning Ensuring Mobilization: Law of Ukraine on March 27, 2014 No1169-VII. *The Official Bulletin of the Verkhovna Rada of Ukraine*. 2014. No 20–21. Art. 746. <https://zakon.rada.gov.ua/laws/show/1169-18#Text> accessed 30 September2022.

5 On Amendments to Certain Legislative Acts of Ukraine Concerning the Improvement of Defence and Mobilization Issues During Mobilization: Law of Ukraine on May 20, 2014 No1275-VII. *The Official Bulletin of the Verkhovna Rada of Ukraine*. 2014. No 29. Art. 942. <https://zakon.rada.gov.ua/laws/show/1275-18#Text> accessed 30 September2022.

the organisation of production and labour related to the implementation of measures during the mobilisation, specified guarantees for employees during the performance of state duties. In the latter case, given the failure of the first edition of Art. 119 “Guarantees for employees during the performance of state or public duties” and given the constant problems of law enforcement, the parliament made nine more attempts to make changes and additions to it.

The adoption on March 15, 2022 by the Verkhovna Rada of Ukraine of the Law of Ukraine “On the Organisation of Labour Relations in Martial Law” (hereinafter referred to as the OLR Martial Law)<sup>6</sup> allowed a partial solution to the most pressing issues of overcoming acute military challenges facing employers in the organisation of labour relations and assurance of labour rights of employees. Since its entry into force on March 24, 2022, the rules of application of labour legislation, and even personnel records in general, have changed<sup>7</sup>.

The fundamental rights of citizens related to the exercise of the right to work are provided by Articles 43–46 of the Constitution of Ukraine<sup>8</sup>. According to Art. 64 of the Constitution of Ukraine, in conditions of martial law or state of emergency, certain restrictions on rights and freedoms may be established, indicating the time period of these restrictions. At the same time, the rights provided for in Articles 43–46 of the Constitution of Ukraine are not included in the list of those that cannot be restricted under any circumstances.

According to the OLR Martial Law, restrictions on the constitutional rights and freedoms of men and citizens are introduced for the period of martial law in accordance with Articles 43 (labour), 44 (strike) of the Constitution of Ukraine.

However, during martial law, the norms of labour legislation do not apply to the relations regulated by the OLR Martial Law. In view of the above, the provisions of the OLR Martial Law, which regulate some aspects of labour relations differently than the Labour Code of Ukraine, have priority application for the period of martial law. At the same time, other norms of labour legislation that do not contradict the provisions of the OLR Martial Law must be applied in the relationship between an employee and an employer.

For the period of martial law, the norms of the Labour Code of Ukraine<sup>9</sup> do not apply to:

- reduction of work by one hour on the eve of holidays and non-working days
- duration of the working day on the eve of the weekend with a six-day working week not more than 5 hours
- limitation of overtime limits (four hours for two consecutive days and 120 hours per year)
- transfer of the day off to the next day after a holiday or non-working day
- transfer of days off and working days in accordance with the recommendation of the Cabinet of Ministers of Ukraine

6 On the organization of labour relations in martial law: Law of Ukraine on March 15, 2022 No 2136-IX. Official Gazette of Ukraine. 2022. No 31. Art. 1634. <https://zakon.rada.gov.ua/laws/show/2136-20#Text> accessed 30 September2022.

7 Yu Prytyka, I Izarova, L Maliarchuk, O Terekh ‘Legal Challenges for Ukraine under Martial Law: Protection of Civil, Property and Labour Rights, Right to a Fair Trial, and Enforcement of Decisions’ 2022 3 (15) Access to Justice in Eastern Europe 233-236. <https://doi.org/10.33327/AJEE-18-5.4-n000329>

8 Constitution of Ukraine: Law on June 28, 1996 No 254к/96-BP. The Official Bulletin of the Verkhovna Rada of Ukraine, 1996, No. 30, Art. 141. <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> accessed 30 September2022.

9 The Labour Code of Ukraine: Law No 322-VIII of 10.12.71. The Official Bulletin of the Verkhovna Rada of Ukraine, 1971, Appendix to No. 50, Art. 375. <https://zakon.rada.gov.ua/laws/show/322-08#Text> accessed 30 September2022.

- prohibitions on engaging in work on weekends, holidays and non-working days
- compensation for involvement in work on weekends, holidays and non-working days.

### 3 FEATURES OF LABOUR RELATIONS AND WORKING CONDITIONS IN THE PERIOD OF MARTIAL LAW IN UKRAINE

For the period of martial law in Ukraine, the Verkhovna Rada of Ukraine provided for the following innovations:

1) The procedure for organising personnel records and the management and archival storage of personnel documents in areas of active hostilities shall be determined independently by an employer. The only condition is to ensure reliable accounting of work performed by an employee and accounting for labour costs.

2) As a general rule, an employment contract is concluded in writing. Art. 24 of the Labour Code of Ukraine defines mandatory cases of concluding an employment contract in writing. For the period of martial law, the parties of labour relations may deviate from this rule and independently determine the form of employment contract convenient for them.

At the same time, other stages of concluding an employment contract are maintained and should be followed:

- (1) initiating the conclusion of an employment contract;
- (2) approval of the content of an employment contract;
- (3) registration of the conclusion of an employment contract;
- (4) informing an employee about working conditions;
- (5) registration of an employment record book and social insurance of an employee.

An employer received the right to conclude fixed-term employment contracts with new employees; and if an employee's presence is doubtful for a period of time, and it seems appropriate during martial law, the right of replacement of a temporarily absent employee. The last formulation of the OLR Martial Law (2022) is possible outside the period of martial law. The purpose of concluding such agreements is to promptly recruit new employees, as well as to eliminate staff and labour shortages. The question of expediency of the conclusion of the corresponding contracts is solved by an employer at his/her own discretion.

3) During the period of martial law, the condition of the probation period for employment may be established for any category of employee. However, this is the employer's right, not a duty. The issue is decided at his/her own discretion.

4) The procedure for transferring to another job and changes in significant working conditions also underwent substantial innovation, while the procedure for moving to another job remained the same.

The consent of an employee is not required for transfer at the initiative of an employer, if the following conditions are met:

- 1) purpose – to perform work aimed at preventing or eliminating the consequences of hostilities, as well as other circumstances that pose or may pose a threat to life or normal living conditions;
- 2) is not carried out in another area on the territory in which active hostilities continue. Otherwise, the consent of the employee is required;

- 3) remuneration for work performed is not lower than the average salary for previous work.

According to the general rule (Part 3 of Art. 32 of the Labour Code of Ukraine) on changing significant working conditions (systems and amounts of remuneration, benefits, working hours, establishing or abolishing part-time work, combining professions, changing ranks and names of positions, etc.) notification must occur no later than two months. Under martial law, this requirement does not apply. Therefore, employees can be warned about a change in significant working conditions immediately after an employer decides to make such a change, but not later than admission to work with changed working conditions. In this case, employees who have not refused to change significant working conditions - but are unable to move to a new location of the enterprise due to hostilities - cannot be fired in accordance with paragraph 6 of Part 1 of Art. 36 of the Labour Code of Ukraine. Alternatively, they can be sent by an employer on a simple basis, have their employment contract suspended, or can go on leave without pay.

5) According to Art. 38 of the Labour Code of Ukraine, an employee has the right to terminate an employment contract concluded for an indefinite period, notifying an employer in writing within two weeks. In addition, the above article provides cases where an employee may ask to terminate an employment contract within a requested period of time.

Under martial law, an employee has the right to terminate an employment contract on his/her own initiative within the period specified in his/her application in the presence of the following conditions:

- 1) conduct of hostilities in the areas in which the enterprise is located, and the existence of a threat to the life and health of an employee;
- 2) work under an employment contract is not conditioned by forced involvement in socially useful work under martial law or involvement in the performance of work on critical infrastructure facilities. In the same case, when an employee is involved in socially useful work under martial law, or is involved in the performance of work on critical infrastructure, he/she does not have the appropriate right.

6) If there are grounds provided by law, the employer's right to dismissal is not limited. An employer is entitled to dismiss an employee during his/her temporary incapacity for work, as well as to keep an employee on leave (excluding maternity and childcare leave until the child reaches the age of three). However, a very temporary incapacity for work (without taking into account the specifics of paragraph 5 of Art. 40 of the Labour Code of Ukraine) or the employee's leave is not an independent reason for dismissal. An exhaustive list of grounds is listed in Articles 40 (10 grounds) and 41 (8 grounds) of the Labour Code of Ukraine.

At the same time, special attention should be paid to the fact that such dismissal occurs when there are legal grounds for dismissal of an employee at the initiative of an employer (Articles 40, 41 of the Labour Code of Ukraine), and not on the grounds of temporary incapacity or leave.

Under martial law, the prior consent of the elected body of the primary trade union organisation is not required for dismissal by the employer on any grounds. This rule does not apply to dismissals of employees elected to trade union bodies. With regard to the latter, the requirements of the Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Activity"<sup>10</sup> should be observed.

10 On Trade Unions, Their Rights and Guarantees of Activity: Law of Ukraine on September 15, 1999 No 1045-XIV. *The Official Bulletin of the Verkhovna Rada of Ukraine*. 1999. No 45. Art. 397. <https://zakon.rada.gov.ua/laws/show/1045-14#Text> accessed 30 September 2022.



All other stages of the procedure for termination of an employment contract at the initiative of an employer have not changed.<sup>11</sup>

7) During the period of martial law, a mechanism of postponement of an employment contract was introduced. The postponement of an employment contract being a temporary termination of employment by an employer or by an employee under the concluded employment contract.

Postponement does not entail termination of employment.

Postponement can be initiated by both an employer and an employee. In order to avoid disputes about the postponement of a contract, the opposite party should be notified in writing or electronically.

8) The normal working hours of employees during martial law have been increased from 40 to 60 hours per week. Working hours were reduced to 50 hours per week for minors, workers engaged in work with harmful working conditions, teachers, doctors, etc. However, increasing the length of working hours during martial law is a right, not an obligation, of an employer. In this case, the tariff rate (salary) of an employee does not change in the direction of increase. Remuneration is paid in the same amount as for normal working hours.

Significant changes were made in the mode of operation. If a five-day or six-day working week had been established by an employer together with the elected body of the primary trade union organisation taking into account the specifics of work, the opinion of the labour collective, and in agreement with the local council, then in martial law an employer makes a decision in conjunction with the military command along with military administrations.

The legal norms on working at night have changed (from 10 pm to 6 am). Thus, (1) pregnant women, women with a child under the age of one and persons with disabilities are involved in work only with their consent, and (2) the duration of work is not reduced by one hour.

9) In accordance with Art. 70 of the Labour Code of Ukraine, the duration of weekly uninterrupted rest must be at least 42 hours. Under martial law, the duration of weekly rest can be reduced to 24 hours. However, an employer decides on the issue of reducing the duration at his/her own discretion. It is the employer's right, rather than a duty

During martial law, an employer has the right to deny an employee any type of leave if the latter is involved in work on critical infrastructure. This entitlement does not apply to social leave such as maternity leave and childcare leave until the child reaches the age of three. Accordingly, if a person's work is not used at the specified facilities, the granting of leave takes place according to the usual procedure which operated in peacetime. The order of granting annual leave is determined by schedules approved by an employer in agreement with the union, and communicated to employees. The specific period of leave is agreed between an employee and an employer, who must notify the former in writing of the date of commencement of leave no later than two weeks.

10) Part 1 of Art. 53 of the Law of Ukraine "On Education"<sup>12</sup>, pedagogical, academic and research employees are entitled to extended paid leave. According to Part 6 of Art. 6 of the

11 Lutsenko O. 2019. Anticorruption compliance: International experience in legal regulation and innovation for Ukraine. *Humanities and Social Sciences Reviews*. 7 (5). P. 768

12 On education: Law of Ukraine on September 5, 2017 No 2145-VIII. *Bulletin of the Verkhovna Rada*. 2017. No. 38–39. Art. 380. <https://zakon.rada.gov.ua/laws/show/2145-19#Text> accessed 30 September 2022.

Law of Ukraine “On Vacations”<sup>13</sup>, executives of educational institutions and pedagogical, academic and research employees are granted an annual basic leave of up to 56 calendar days. However, the duration of leave may be shorter depending on the specific position of an employee and the educational institution where he/she works. According to the “Procedure for granting annual basic leave”<sup>14</sup> it is 56 calendar days for schoolteachers.

In view of the above, the provisions of the Law “On the organisation of labour relations in martial law”<sup>15</sup>, which regulate certain aspects of hired labour differently than any act of labour legislation or legislation containing certain rules governing employment, have priority application for the period of martial law.

Therefore, during martial law, an employer is released from the obligation to provide an employee with annual leave of more than 24 days. However, Art. 4 of the Law of Ukraine “On Vacations”<sup>16</sup>, in addition to the annual leave mentioned above, also distinguishes additional leave in connection with studies, creative leave, leave to prepare for and participate in competitions, social leave, and leave without pay. Basic leave is also not the only annual leave. If the duration of the employee’s annual basic leave (as in the case of teachers) is more than 24 calendar days, the difference in leave days is not lost, but must be granted after the end of martial law.

At the same time, the Law “On the organisation of labour relations in martial law”<sup>17</sup> does not suspend or repeal Art. 9<sup>1</sup> of the Labour Code of Ukraine. According to which, enterprises - within their power and at their own expense - may establish leave in addition to that which is prescribed by the law on labour and social benefits for employees. Accordingly, during martial law, an employer has the right to provide employees the main paid annual leave lasting more than 24 days, taking into account the peculiarities of labour organisation and economic conditions, within its power and at its own expense. However, granting longer leave during martial law is an employer’s right, not an obligation.

11) The Law of Ukraine “On Vacations”<sup>18</sup> provides for two types of leave without earnings:

- 1) unpaid leave at the request of an employee, which is provided on a mandatory basis.

The legislation distinguishes 19 categories of citizens who are entitled to such leave, and its maximum duration. Thus, for old-age pensioners and persons with disabilities of group III it is up to 30 calendar days per year. To receive leave, an

13 On Vacations: Law of Ukraine on November 15, 1996 No 504/96-BP. *The Official Bulletin of the Verkhovna Rada of Ukraine*. 1997. No 2. Art. 4. <https://zakon.rada.gov.ua/laws/show/504/96-%D0%B2%D1%80#Text> accessed 30 September 2022.

14 On approval of the Procedure for granting annual basic leave lasting up to 56 calendar days to executives of educational institutions, educational (pedagogical) units (subdivisions) of other institutions and establishments, pedagogical, academic employees and researchers: Resolution of the Cabinet of Ministers of Ukraine; Procedure on April 14, 1997 No 346. *Official Gazette of Ukraine*. 1997. No 16. Art. 73. <https://zakon.rada.gov.ua/laws/show/346-97-%D0%BF#Text> accessed 30 September 2022.

15 On the organization of labour relations in martial law: Law of Ukraine on March 15, 2022 No 2136-IX. *Official Gazette of Ukraine*. 2022. No 31. Art. 1634. <https://zakon.rada.gov.ua/laws/show/2136-20#Text> accessed 30 September 2022.

16 On Vacations: Law of Ukraine on November 15, 1996 No 504/96-BP. *The Official Bulletin of the Verkhovna Rada of Ukraine*. 1997. No 2. Art. 4. <https://zakon.rada.gov.ua/laws/show/504/96-%D0%B2%D1%80#Text> accessed 30 September 2022.

17 On the organization of labour relations in martial law: Law of Ukraine on March 15, 2022 No 2136-IX. *Official Gazette of Ukraine*. 2022. No 31. Art. 1634. <https://zakon.rada.gov.ua/laws/show/2136-20#Text> accessed 30 September 2022.

18 On Vacations: Law of Ukraine on November 15, 1996 No 504/96-BP. *The Official Bulletin of the Verkhovna Rada of Ukraine*. 1997. No 2. Art. 4. <https://zakon.rada.gov.ua/laws/show/504/96-%D0%B2%D1%80#Text> accessed 30 September 2022.



employee must submit a written application to the employer, which must specify:  
a) the reason for leave; b) the start time; and c) the duration.

2) leave without earnings with the consent of the labour relation parties.

For family reasons and other circumstances, an employee may be granted unpaid leave for a period determined by his/her agreement with an employer, but not more than 15 calendar days per year. Under martial law, restrictions on the 15-day period for granting this leave are lifted. During this period, employees were given the right to ask an employer to grant unpaid leave of any duration, which may significantly exceed 15 days.

However, it is not possible for an employer to force employees to go on leave without saving their earnings. An employee must make a request. On the other hand, an employee cannot go on vacation arbitrarily without the consent of an employer as this can be considered absenteeism without good reason.

Important guarantees for granting unpaid leave are that an employee retains his/her place of work for the time of their provision, and the time spent is included in the length of service - both of which entitle them to annual basic leave<sup>19</sup>.

If an employee does not want to go on unpaid leave and the company is unable to operate due to hostilities, an employer can issue a simple leave.

In the case of declaring downtime, payment is made on the terms specified in the collective agreement but should not be less than two-thirds of the tariff rate set for an employee category (salary)<sup>20</sup>.

12) The Constitutional Court of Ukraine stated that the right to earn a living is inalienable from the right to life itself, as the latter is real only when materially secure<sup>21</sup>.

The right to timely remuneration for work is protected by law.

The main legislative acts regulating the issue of remuneration of labour are the Laws of Ukraine "On Remuneration of Labour"<sup>22</sup> and the Labour Code of Ukraine.

The state regulates wages by (1) establishing the minimum wage and other state norms and guarantees; (2) establishing the conditions and amounts of remuneration of managers of enterprises based on state or municipal property, employees of enterprises financed or subsidised from the budget; and (3) employee income taxation.

19 Oleg M Yaroshenko, Dmytro Ye Kutomanov, Nataliya A Maryniv, Tetiana V Dudenko 'Features of Corporate Liability for Violation of Competition Law' 2020 9 *International Journal of Criminology and Sociology* 1523.

20 Some issues of remuneration of employees of state bodies, local governments, enterprises, institutions and organizations financed or subsidized from the budget, in martial law: Resolution of the Cabinet of Ministers of Ukraine on March 7, 2022 No 221. *Official Gazette of Ukraine*. 2022. No 25. Art. 1308. <https://zakon.rada.gov.ua/laws/show/221-2022-%D0%BF#Text> accessed 30 September2022.

21 Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of 52 people's deputies of Ukraine on compliance of the Constitution of Ukraine (constitutionality) with the Law of Ukraine "On Peculiarities of Dismissal of Persons Combining the Mandate with Other Activities" and the constitutional petition of 89 people's deputies of Ukraine interpretation of the provisions of paragraph 2 of part two of Article 90 of the Constitution of Ukraine, Art. 5 of the Law of Ukraine "On Peculiarities of Dismissal of Persons Combining the Mandate with Other Activities" (case on dismissal of People's Deputies of Ukraine from other positions in case of combination): Decision of the Constitutional Court of Ukraine on January 29, 2008 № 2-пн/2008. *Official Gazette of Ukraine*. 2008. No 80. Art. 2697. <https://zakon.rada.gov.ua/laws/show/v002p710-08#Text> accessed 30 September2022.

22 On remuneration of labour: Law of Ukraine on March 24, 1995 No 108/95-BP. The Official Bulletin of the Verkhovna Rada of Ukraine. 1995. No 17. Art. 121. <https://zakon.rada.gov.ua/laws/show/108/95-%D0%B2%D1%80#Text> accessed 30 September2022.

“In Ukraine, the tariff rate is the main initial normative value that determines the amount of wages. Tariff rates set the amount of wages for workers who perform various jobs per unit time.”<sup>23</sup>

An employer is released from liability for breach of the obligation to pay wages if he/she proves that this violation occurred due to force majeure (combat or other force majeure). The Chamber of Commerce and Industry of Ukraine reported on the fact of force majeure on February 24, 2022<sup>24</sup>. These circumstances from February 24, 2022 to their official end are extraordinary, inevitable and objective. After eliminating the above circumstances, an employer is obliged to fulfil all its obligations to pay an employee.

13) The procedure for involving certain categories of workers (women, workers with children) has been innovated during the period of martial law.

14) An employer has the right to refuse an employee any kind of leave (except maternity leave and childcare leave until the child reaches the age of three) if the latter is involved in work on critical infrastructure. Annual basic paid leave is limited to 24 calendar days. Restrictions on the 15-day period of unpaid leave are lifted for the period of martial law. However, as before, unpaid leave will be granted solely on the initiative of an employee.

15) At the initiative of an employer, certain provisions of a collective agreement may be suspended for the period of martial law.

16) Under martial law, many citizens have been forced to flee their homes and work from abroad to support Ukraine's economy and provide for their families. As a result, the use of telework has become more acute.

In Ukraine, telework was legalised on March 17, 2020 as one of the measures to prevent COVID-19<sup>25</sup>. However, on February 27, 2021, the Parliament divided remote and home-based work<sup>26</sup>.

The key features of remote work are:

A. There is a written employment contract.

B. An employee independently determines a workplace and is responsible for safe and harmless working conditions there (Part 3 of Art. 14 of the Law of Ukraine “On labour protection”<sup>27</sup>). A common mistake in practice is for the employer to indicate the address at which an employee will work remotely. An employee independently determines the place of work and performs work outside the work premises or territory of an employer (paragraph 4 of section I of the Standard form of employment contract for telework).

23 Yaroshenko OM, Lutsenko OYe, Vapnyarchuk NM ‘Salary optimisation in Ukraine in the context of the economy Europeanisation’ 2021 28(3) Journal of the National Academy of Legal Sciences of Ukraine 234.

24 Letter of the Chamber of Commerce and Industry of Ukraine dated 28.02.2022 No 2024 / 02.0-7.1 [Regarding force majeure] < <https://uccu.org.ua/uploads/files/621cba543cda9382669631.pdf> > accessed 29 June 2022

25 On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19): Law of Ukraine on March 17, 2020 No 530-IX. Official Gazette of Ukraine. 2020. No 26. Art. 955. <https://zakon.rada.gov.ua/laws/show/1213-20#Text> accessed 30 September 2022.

26 On Amendments to Certain Legislative Acts of Ukraine Concerning the Improvement of Legal Regulation of Telework, Homework and Work with the Use of Flexible Working Hours: Law of Ukraine on February 4, 2021 No 1213-IX. Official Gazette of Ukraine. 2021. No 20. Art. 850. <https://zakon.rada.gov.ua/laws/show/1213-20#Text> accessed 30 September 2022.

27 On labour protection: Law of Ukraine on October 14, 1992 No 2694-XII. The Official Bulletin of the Verkhovna Rada of Ukraine. 1992. No 49. Art. 668. <https://zakon.rada.gov.ua/laws/show/2694-12#Text> accessed 30 September 2022.

C. An employee distributes working time at its discretion (Part 5 of Art. 60<sup>2</sup> of the Labour Code of Ukraine).

D. An employee may combine the remote format with work at the workplace in the premises or on the territory of an employer (Part 6 of Art. 60<sup>2</sup> of the Labour Code of Ukraine).

E. An employee is guaranteed free time for rest - a period of disconnection (Part 9 of Art. 60<sup>2</sup> of the Labour Code of Ukraine).

Remote work can be introduced at the time of an epidemic or pandemic threat; the need for self-isolation of the employee in cases established by law; in the case of an armed aggression threat; or during a man-made, natural or other emergency (Part 11 of Art. 60<sup>2</sup> of the Labour Code of Ukraine). The Labour Code of Ukraine does not determine which state body is authorised to decide on the existence of such threats and for how long they will exist. It is necessary to rely on other regulations that correspond to the specific situation.

Thus, during the armed aggression, the introduction of telework became even more important to support the country's economy and help employers and employees organise the labour process. We are currently facing extremely difficult living and working conditions. Many Ukrainians were forced to leave their homes in search of security for themselves and their families, so they went abroad. Although the Labour Code of Ukraine does not contain restrictions on the use of telework from abroad by persons working for domestic employers, in wartime there are some bylaws that introduce such restrictions. Thus, for the period of martial law, civil servants and employees of a state body may work remotely by decision of the head - but only on the territory of Ukraine.<sup>28</sup> The resolution of the Cabinet of Ministers of Ukraine "Some issues of organisation of work of employees of public sector economic entities for the period of martial law"<sup>29</sup> caused considerable concern, as it provided that employees of public sector entities by decision of the executive body or head business entities can work remotely, but only on the territory of Ukraine. Members of the executive body or the head of the business entity - by the decision of the business entity, the general meeting of shareholders/participants of companies with an authorised capital of which 50% of shares/stakes belongs to the state, as well as supervisory boards of business entities - may work remotely on the territory of Ukraine.

It should be emphasised that economic entities of the public sector of the economy are entities operating on the basis of state ownership only, as well as entities whose state share in the authorised capital exceeds 50%, or is of a value that provides the state the right to decisive influence on economic activity of these entities (Part 2 of Art. 22 of the Economic Code of Ukraine<sup>30</sup>). Such widespread application of this regulation will force employers to take measures against employees who are abroad but still have the opportunity to perform their duties remotely. This resolution allows such employees to be subject to disciplinary action. Does it protect the rights of citizens and help businesses and employees earn a living in martial law? Is it possible to resort to such measures if workers have gone abroad under threat of destruction? We hope that the resolution will undergo significant changes,

28 Some issues of the organization of work of civil servants and employees of state bodies during martial law: Resolution of the Cabinet of Ministers of Ukraine on April 12, 2022 No 440. *Uriadovyi kurier* on April 14, 2022. No 86. <https://zakon.rada.gov.ua/laws/show/440-2022-%D0%BF#Text> accessed 30 September 2022.

29 Some issues of organization of work of employees of economic entities of the public sector of the economy for the period of martial law: Resolution of the Cabinet of Ministers of Ukraine on April 26, 2022 No 481. *Uriadovyi kurier* on April 28, 2022. No 97. <https://www.kmu.gov.ua/npas/deyakipitannya-organizaciyi-roboti-pracivnikiv-subyektiv-gospodaryuvannya-derzhavnogo-sektoru-ekonomiki-na-period-voyennogo-stanu-481> accessed 30 September 2022.

30 Economic Code of Ukraine: Law of Ukraine of 16.01.2003 No 436-IV. The Official Bulletin of the Verkhovna Rada of Ukraine. 2003. No 18. Nos. 19–20, Nos. 21–22, Art. 144. <https://zakon.rada.gov.ua/laws/show/436-15#Text> accessed 30 September 2022.

and the legislator will clarify the question on who exactly are the subjects to which it applies.

Presently, according to current legislation, an employee can combine the remote format with work at the workplace in the premises or on the territory of an employer, provided that an employee and an employer have agreed on this issue (Part 6 of Art. 60<sup>2</sup> of the Labour Code of Ukraine). If remote work is introduced by an employer in case of emergency by order, it is necessary to agree with an employee on which days he/she will work remotely and on which days he/she will be in the office, and record this agreement in the order on remote work.

In the cases provided for in Part 11 of Art. 60<sup>2</sup> of the Labour Code of Ukraine, introduction of remote work is the employer's right. The Labour Code of Ukraine does not require the consent of an employee. An employer is only obliged to acquaint an employee with the order before the date from which he/she introduces remote work, within two days from the date of its acceptance. If an employee is unable to work remotely during the existence of these circumstances, an employer may exercise his/her right to suspend or declare a simple employment contract.

Of course, in terms of the resolution of the Cabinet of Ministers "Some issues of organisation of work of employees of economic entities of the public sector for the period of martial law"<sup>31</sup>, employers have the right to impose disciplinary sanctions for violations of labour discipline because the timely and accurate responsibilities and orders of an employer, and the obligations of an employee, are enshrined in Art. 139 of the Labour Code of Ukraine. However, it is necessary to analyse the specific extreme difficulties of living conditions and the reasons for being forced to find temporary shelter and work remotely from abroad due to the impossibility of working in Ukraine.

Thus, the conditions for the use of remote work in martial law have changed - but not for the better for workers. We hope this Resolution<sup>32</sup> will undergo significant changes and gain a limited and clear range of subjects to which it will apply.

## 4 STATISTICAL DATA

### 4.1. Statistics on Ukrainians who left Ukraine during the war in search of work and security

The most important consequence of the war in Ukraine is the lives lost and the humanitarian crisis associated with the huge numbers of besieged, traumatised and displaced persons. There are also, however, numerous significant economic implications<sup>33</sup>.

Modern researchers of domestic labour markets consider the current situation quite paradoxical: on the one hand, in the context of globalisation there are increasing

31 Some issues of organization of work of employees of economic entities of the public sector of the economy for the period of martial law: Resolution of the Cabinet of Ministers of Ukraine on April 26, 2022 No 481, Uriadovyi kurier on April 28, 2022, No 97. <https://www.kmu.gov.ua/npas/deyaki-pitannya-organizaciyi-roboti-pracivnikiv-subyektiv-gospodaryuvannya-derzhavnogo-sektoru-ekonomiki-na-period-voyennogo-stanu-481> accessed 30 September 2022.

32 Some issues of organization of work of employees of economic entities of the public sector of the economy for the period of martial law: Resolution of the Cabinet of Ministers of Ukraine on April 26, 2022 No 481. Uriadovyi kurier on April 28, 2022, No 97. <https://www.kmu.gov.ua/npas/deyaki-pitannya-organizaciyi-roboti-pracivnikiv-subyektiv-gospodaryuvannya-derzhavnogo-sektoru-ekonomiki-na-period-voyennogo-stanu-481> accessed 30 September 2022.

33 OECD Economic Outlook, Interim Report March 2022: Economic and Social Impacts and Policy Implications of the War in Ukraine 2022 <<https://www.oecd-ilibrary.org/sites/4181d61b-en/index.html?itemId=/content/publication/4181d61b-en> accessed 30 June 2022

opportunities for labour mobility, expanding the sphere of employment; on the other hand, the labour market is not protected from external and internal threats. The external threat caused, in particular, by the annexation of Crimea and the war in Ukraine, resulted in heavy losses in the domestic labour market. Internal migration from the occupied territories caused additional strain in the central and western regions and negatively affected the overall unemployment rate in the country<sup>34,35</sup>.

There are an estimated 5.23 million refugees and those forcibly displaced from Ukraine who have moved to neighbouring countries. The ILO estimated that approximately 1.2 million of the total refugee population were working prior to the aggression<sup>36</sup>.

The refugee population comprises primarily women, children, and persons over the age of 60. The ILO estimated that among the total refugee population, approximately 2.75 million are of working age. Of these, 43.5 per cent, or 1.2 million, were working prior to the onset of the conflict and subsequently left or lost their jobs.

*Estimated labour market characteristics of the Ukrainian refugee population<sup>37</sup>*

<b>Labour force status</b>	<b>Distribution (%)</b>	<b>Full time or part time work</b>	<b>Distribution (%)</b>
Employed	43.5	Full-time (>35 hours/week)	87.4
Unemployed	3.7	Part-time <35 hours/week)	7.7
Outside labour force	52.8	Not classified	4.8
<i>Total</i>	<i>100.0</i>	<i>Total</i>	<i>100.0</i>

<b>Occupation (skill level) – Main job</b>	<b>Distribution (%)</b>	<b>Education (aggregate level)</b>	<b>Distribution (%)</b>
Skill level 1 (low)	15.5	Basic	15.3
Skill level 2 (medium)	35.5	Intermediate	18.5
Skill levels 3 and 4 (high)	49.0	Advanced	66.2
<i>Total</i>	<i>100.0</i>	<i>Total</i>	<i>100.0</i>

34 Hirman A, Volkova N 'Migration in the context of economy state regulation in Ukraine' 2016 14 (1) Socio-Economic Problems and the State' 84–85.

35 Yaroshenko Oleg M, Karina V Gnatenko, Hanna V Anisimova, Sofia O Shabanova, Andrey M Sliusar 'Prohibition of discrimination as a principle of social security in the context of ensuring sustainable well-being' 2020 Rivista di Studi sulla Sostenibilita 185.

36 The impact of the Ukraine crisis on the world of work: Initial assessments <[https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/documents/briefingnote/wcms\\_844295.pdf](https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/documents/briefingnote/wcms_844295.pdf)> accessed 1 July 2022.

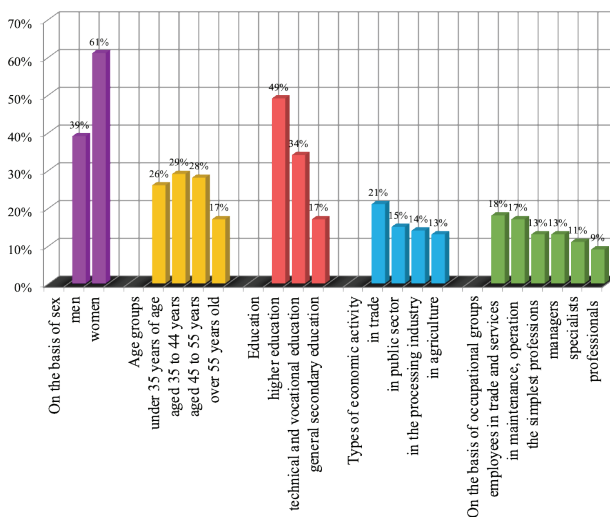
37 According to the ILO.

<i>Occupation (ISCO-08) – Main job</i>	<i>Distribution (%)</i>	<i>Status in employment – Main job</i>	<i>Distribution (%)</i>
Managers	8.3	Employees	88.3
Professionals	25.2	Self-employed	11.7
Technicians and associate professionals	15.5	<b>Total</b>	<b>100.0</b>
Clerical support workers	5.7		
Service and sales workers	21.7		
Skilled agricultural, forestry and fishery workers	0.6		
Craft and related trades workers	4.3		
Plant and machine operators, and assemblers	3.2		
Elementary occupations	15.5		
Total	100.0		

## 4.2. Statistics on Ukrainians who have remained in Ukraine and are looking for job

According to the latest published data of the State Statistics Service of Ukraine, as of June 1, 2022, 311,000 people had the status of unemployed in Ukraine<sup>38</sup>.

### The situation on the labour market in Ukraine during martial law



38 The situation on the labour market and the activities of the State Employment Service of Ukraine in January–May 2022 < <https://www.dcz.gov.ua/analytics/67> > accessed 1 July 2022.



On the basis of sex: in the total number of registered unemployed, 122,500 were men (39 per cent), and 188,500 were women (61 per cent).

On the basis of age groups: 26 per cent of the registered unemployed were under 35 years old; 29 per cent were aged 35 to 44 years; 28 per cent were aged 45 to 55 years; and 17 per cent were over 55 years old.

On the basis of education: 49 per cent of the registered unemployed had higher education; 34 per cent had technical and vocational education; and 17 per cent had general secondary education.

On the basis of types of economic activity: among the registered unemployed, 21 per cent were previously employed in trade; 15 per cent in public administration, defence or compulsory social insurance; 14 per cent in the processing industry, and 13 per cent in agriculture, forestry and fisheries.

On the basis of occupational groups, the registered unemployed are dominated by employees:

- in trade and services – 18 per cent (sales person, cook, sales consultant, security guard, junior nurse, assistant educator, social worker, waiter, bartender, hairdresser, maid);
- in the maintenance/operation of equipment and machines – 17 per cent (driver, boiler operator/driver, tractor driver in agricultural production, road worker, gas station operator, tractor driver, loader driver, boiler driver, fireman, dry-cleaning operator, machinist turner, pump driver installation worker, grain processing equipment worker);
- in the simplest professions – 13 per cent (auxiliary worker, cleaner of office/production premises, caretaker, storekeeper, packer, loader, kitchen worker, landscaping worker, janitor, goods receiver, dishwasher);
- managers – 13 per cent (sales manager, general manager, head of department, warehouse manager, store manager, supply manager, farm manager, head of postal department, personnel manager);
- specialists – 11 per cent (nurse, educator, sales representative, personnel inspector, merchandiser, dispatcher, commodity expert, freight forwarder, sales agent, mechanic, technician, paramedic);
- professionals – 9 per cent (civil service specialist, teacher, economist, engineer, lawyer, educator, teacher, librarian, pharmacist, security engineer labour, inspector, marketer, land surveyor, social worker, engineer).

As can be seen from the diagram, the main share of people who lost their jobs during martial law are people of active working age with a high level of education and experience. Key areas of the Ukrainian economy (agricultural sector, public sector, etc.) have lost a significant part of the workforce. The Ukrainian government has developed programs for the transfer of production capacities located in the territory of active hostilities to other areas. Of course, this will potentially help restore business and preserve human resources. But we should not forget about the destroyed enterprises and completely destroyed production facilities. Therefore, Ukraine cannot do without joint and effective programs with international communities and foreign governments.

## 5 CONCLUSIONS

The authors' analysis of the labour legislation and the study of the real situation in the labour market of Ukraine gives grounds to assert that during martial law in Ukraine the Parliament began to actively restore changes in the regulation of labour relations. Therefore, for the period of martial law, an employer received the right to conclude fixed-term employment contracts with new employees. The condition of probation of an employee at employment can be established for any category of employees. Substantial innovations have been introduced in the procedure for transfer to another job and changes made in significant working conditions.

If there are grounds provided by law, the employer's right to dismissal is not limited. Under martial law, the prior consent of the elected body of the primary trade union organisation is not required for dismissal by an employer on any grounds. Additionally, a mechanism for suspending employment contracts was introduced.

During martial law, working hours were increased and an employer was entitled to deny an employee any type of leave (except maternity leave and childcare leave until the child reaches the age of three).

Under martial law, many citizens have been forced to flee their homes and work from abroad to support Ukraine's economy and provide for their families. As a result, the issue of the use of remote work has become more acute and many novelties of the legal regulation of such work have been introduced.

But will these measures help to improve the situation in the field of labour and employment in Ukraine? Will these and the changes in legislation be able to bring back employees who have gone abroad? We have our doubts about this. After all, with the adopted changes, the Parliament allowed the delay of the payment of wages, but at the same time set significantly longer working hours. Moreover, the Parliament provided for the employer's ability to postpone employment contracts, send employees on unpaid leave, etc. Will such changes stabilise the situation in the field of labour relations?

We believe that to stabilise the situation in labour law issues, laws should be developed that would benefit both employees and employers. Perhaps, those employers who were able to keep all (or at least most) of their company's personnel potential should provide certain benefits, subventions for business recovery, or reduce the number (or amount) of taxes.

In addition, employees, who have left Ukraine, should not be discriminated against by such norms of laws that establish the obligation of certain categories of employees (for example, the public sector of the economy) to work only on the territory of Ukraine. We believe that this is unacceptable and discriminatory, since they left Ukraine forcibly and most of these people had their homes destroyed, and relatives or close friends who died.

Thus, in our opinion, Ukraine currently has unfavourable conditions for labour resources and the regulation of labour relations and working conditions, and therefore it is necessary to make joint efforts to change the situation by involving practitioners, scientists and authoritative international organisations (such as, the ILO) in order to develop favourable labour legislation for the war and post-war period.

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