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EU-ILO Project

“Towards safe, healthy and declared work in Ukraine”



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TOGETHER

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► Employer's obligation to inform workers and to ensure transparent & predictable working conditions

Online training series
International and EU Labour Standards

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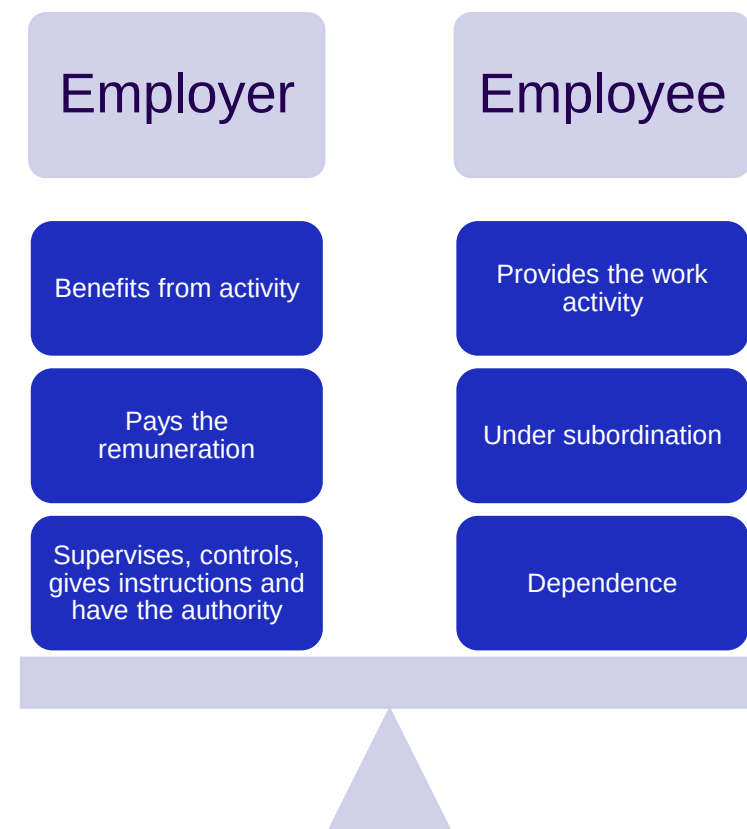
Introductory concepts

- **Employment relationship (ER):** the one by which a natural person (employee) undertakes, by way of remuneration, to provide an intellectual or manual activity to other natural or legal person (employer), under his/her direction, supervision, control and authority.



Determination of its existence:

- **Principle:** guided primarily by the facts relating to the performance of work and the remuneration of the worker (principle of substance over form)
- **Main criteria:** subordination and dependence
- **Main legal mechanisms:** legal presumption of its existence when one or more indicators are present; transfer of the burden of the proof to employer



► Introductory concepts

- **Labour contract** - formal written employment contract / agreement between two parties (employer and employee), which defines the main aspects of the ER, proves its existence and regulates the relation between them.



- Although a labour contract proves the existence of an ER, its absence (even when mandatory) does not necessarily mean that there is no ER (as the latter can exist without the former).
- Legislation should provide that the rights and obligations foreseen in labour and OSH legislation shall apply whenever an ER exists, regardless of:
 - ✓ The absence of a formal written labour contract:
 - ✓ How the relationship is characterized in any contrary arrangement (contractual or otherwise) that may have been agreed between the parties.

▶ Introductory concepts

- ▶ **Worker** - broader concept that refers to any person who works (i.e., provides work activities), either within an employment relationship or within other type of relation (e.g., services provision).
- ▶ **Employee** - may be defined as a natural person who undertakes, by way of remuneration, to provide its intellectual or manual activity to another, under his/her direction, supervision, control and authority.
- ▶ **Employer** - can be defined as the natural or legal person for whom an employee performs work or provides services within an employment relationship; or, more simply, as the natural or legal person who has an employment relationship with a worker.

▶ Introductory concepts

- ▶ **Work schedule** - the schedule determining the hours and days on which performance of work starts
- ▶ **Reference hours and days** - time slots in specified days during which work can take place at the request of the employer
- ▶ **Work pattern** - the form of organisation of the working time and its distribution according to a certain pattern determined by the employer

► Main applicable EU Directives

- **Directive 91/533/EEC**, of 14 October 1991, on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship

- 💡 Ukraine should **approximate its legislation** to Directive 91/533/EEC **by 31st August 2021** (Article 424 and Annex XL to Chapter 21 of the EU-UKR AA)

- **Directive (EU) 2019/1152**, of the European Parliament and of the Council, of 20 June 2019, on transparent and predictable working conditions in the European Union

- 💡 **Member States** shall take the necessary measures to **comply** with this Directive **by 1 August 2022**

► Why these Directives?

- To improve working conditions, through the promotion of more transparent and predictable employment relationships while ensuring labour market adaptability

► IMPORTANT NOTES ABOUT THESE DIRECTIVES:

- Shall not constitute grounds for reducing the general level of protection already afforded to workers;
- Shall not affect Member States' prerogative to apply/introduce laws, regulations or administrative provisions more favourable to workers or encourage/permit the application of collective agreements which are more favourable to workers;
- Apply without prejudice to other rights conferred on workers by other legal acts of EU;
- Directive 91/533/EEC shall be repealed with effect from 1 August 2022. References to the repealed Directive shall be construed as references to (EU) 2019/1152.

► To whom do these Directives apply?

- To all workers and employers who have an employment relationship

Exceptions:

- Some provisions do not apply to seafarers or sea fishermen;
- MS can exclude:
 - ✓ Workers with a working time up to 3 hours/week in average in a reference period of 4 weeks;
 - ✓ Civil servants, public emergency services, the armed forces, police authorities, judges, prosecutors, investigators or other law enforcement services from the application of some provisions;
 - ✓ Natural persons in households acting as employers where work is performed for those households may also be excluded from the application of some provisions.

► How to inform?

► **Individually** to each worker

► In **writing** and transmitted on **paper**

💡► By **electronic form**, **only if** the information:

- is accessible to the employee;
- can be stored and printed; and
- the employer retains proof of transmission or receipt.

What to inform?

For the generality of workers

- ▶ 1. Identities of the parties to the ER;
- ▶ 2. Place of work; when non-fixed or main, the principle that worker is employed at various or is free to determine it, and the registered place of business or, where appropriate, the domicile of the employer;
- ▶ 3. Title, grade, nature or category of work or brief specification or description of the work;
- ▶ 4. Date of commencement or, in case of a fixed-term, the end date or expected duration thereof;
- ▶ 5. In case of temporary worker, the identity of the user (when and as soon as known);
- ▶ 6. Duration & conditions of probationary period (if any);
- ▶ 7. Training entitlement (if any);
- ▶ 8. Amount of paid leave (or, if cannot be indicated, the procedures for determining it);
- ▶ 9. Procedures (formal requirements, notice periods, etc) for termination of ER (or, if notice periods cannot be indicated, the method to determine them);
- ▶ 10. Remuneration (including initial amount, any other component, indicated separately) and frequency and method of payment;

What to inform?

For the generality of workers

- ▶ 11. If the work pattern is entirely or mostly predictable, the length of worker's standard working day or week and any arrangements for overtime and its remuneration and, where applicable, any arrangements for shift changes;
- ▶ 12. If the work pattern is entirely or mostly unpredictable:
 - The principle that the work schedule is variable, the No. of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours;
 - The reference hours and days within which the worker may be required to work;
- The minimum notice period to which the worker is entitled before the start of a work assignment and, where applicable, the deadline for cancellation
- ▶ 13. Any collective agreements governing the worker's conditions or in case of collective agreements concluded outside business by special joint bodies/institutions, their names;
- ▶ 14. Where it is the responsibility of the employer, the identity of the social security institutions receiving the social contributions;
- ▶  **OSH risks, preventive measures, etc.** (Article 10 Directive 89/391/EEC).

What to inform?

Additional information for workers sent to another country

- ▶ For workers required to work in other country than the habitual one (when more than 4 consecutive weeks):
 - 1. Country/countries where work abroad is to be performed and anticipated duration;
 - 2. Currency for payment of remuneration;
 - 3. Where applicable, benefits in cash or kind;
 - 4. Information as to whether repatriation is provided for (and if so, its conditions).

Additional information for posted workers

- ▶ For workers posted for periods of more than 4 consecutive weeks:
 - 1. Remuneration to which the worker is entitled according to the host country law;
 - 2. Where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging;
 - 3. The link to the single official national website developed by the host country.

► When to inform?

- The information for the generality of workers mentioned in points 1 - 4, 6 and 10 - 12 - during a period between the 1st working day and the 7th calendar day;
- The information for the generality of workers mentioned in points 5, 7 - 9, 13 and 14 - within 1 month of the 1st working day.
- For any change in the aspects of the employment relationship – at the earliest opportunity and at the latest on the day on which it takes effect.
- 💡► For workers sent to another country and posted workers - before the worker's departure.

▶ Working conditions' minimum requirements

Maximum duration of any probationary period

- ▶ General rule - up to 6 months

▶ Exceptions:

- Nature of the employment or in the interest of the worker;
- Absence during the probationary period
- Fixed-term ER: proportionate to the expected duration of the contract and the nature of the work (renewal for the same function and tasks not subjected to it).

▶ Working conditions' minimum requirements

Parallel employment

▶ Employer **cannot**:

- Prohibit a worker from taking up employment with other employers, outside of the established work schedule; and
- Subject a worker to adverse treatment for doing so.

💡▶ Member states **may**, however, **allow employers** use **incompatibility restrictions**, on objective grounds, e.g.:

- Health and safety;
- Protection of business confidentiality
- Integrity of the public service; or
- Avoidance of conflicts of interests.

▶ Working conditions' minimum requirements

Minimum predictability of work:

- ▶ Were a worker's **work pattern** is entirely or mostly **unpredictable**:
 - The worker shall **not be required to work** by the employer **unless**:
 - ✓ The work takes place within the **predetermined reference hours and days** agreed; and
 - ✓ The worker is **informed** by the employer of a work assignment **within the notice period** agreed.
 - Where one or both of the above requirements is **not fulfilled**, a worker shall have the **right to refuse** a work assignment without adverse consequences.
 - The worker shall be **entitled to compensation** if employer **cancels**, after a specified reasonable deadline, the work assignment previously agreed with the worker.

▶ Working conditions' minimum requirements

Complementary measures for on-demand contracts:

- ▶ Where is legally foreseen the **use of on-demand employment contracts** (or similar), one or more of the following (or equivalent) measures (to prevent abusive practices) should be introduced:
 - **Limitations** on their **use and duration**; and
 - **Rebuttable presumption** of the **existence of an employment relationship** with a **minimum amount of paid hours** based on the average hours worked during a given period.

▶ Working conditions' minimum requirements

Transition to another form of employment:

- ▶ A worker **may request** a **form** of employment with **more predictable and secure working conditions** where available and **receive** a reasoned written **reply within one month**, if worker:
 - Has at least **six months' service** with the same employer;
 - Completed the **probationary period** (if any).

 **Exception** (employer is a natural person, micro or SME):

- Deadline for reply: **up to 3 months**;
- Same request by same worker with unchanged situation: **oral** reply

▶ Working conditions' minimum requirements

Mandatory training:

- ▶ Where employers have the legal obligation to provide training to workers, it shall be provided:
 - Free of cost to workers;
 - Count as working time; and,
 - Take place during working hours (where possible).

▶ Working conditions' minimum requirements

Collective agreements:

- ▶ Social partners should be able to maintain, negotiate, conclude and enforce collective agreements establishing working conditions different from the above working conditions' minimum requirements, **if they respect the overall protection of workers.**

► Horizontal provisions

Legal presumptions and early settlement mechanism:

- If a worker did not receive in due time all or part of the documents s/he is entitled to, and eventually subjected to prior notification of the employer and his failure to provide the missing information in a timely manner, s/he:
 - Shall benefit from favourable presumptions, which employers shall have the possibility to rebut; and/or
 - S/he shall have the possibility to submit a complaint to a competent authority or body and to receive adequate redress in a timely and effective manner.

► Horizontal provisions

Right to redress:

- Member States have to ensure that workers (including those whose employment relationship has ended) have access to effective and impartial dispute resolution and a right to redress in the case of infringements of the above rights.

Protection against adverse treatment or consequences:

- Member States have to introduce measures to protect workers (including those who are workers' representatives) from any adverse treatment by employer and from any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with the above rights.

► Horizontal provisions

Protection from dismissal and burden of proof:

- Member States have to introduce measures to prohibit the dismissal (or its equivalent) and all preparations for dismissal of workers, on the grounds that they have exercised the above rights, including the transfer of the burden of the proof to employers.

Penalties:

- Member States have to introduce effective, proportionate and dissuasive penalties for violations of the above rights.

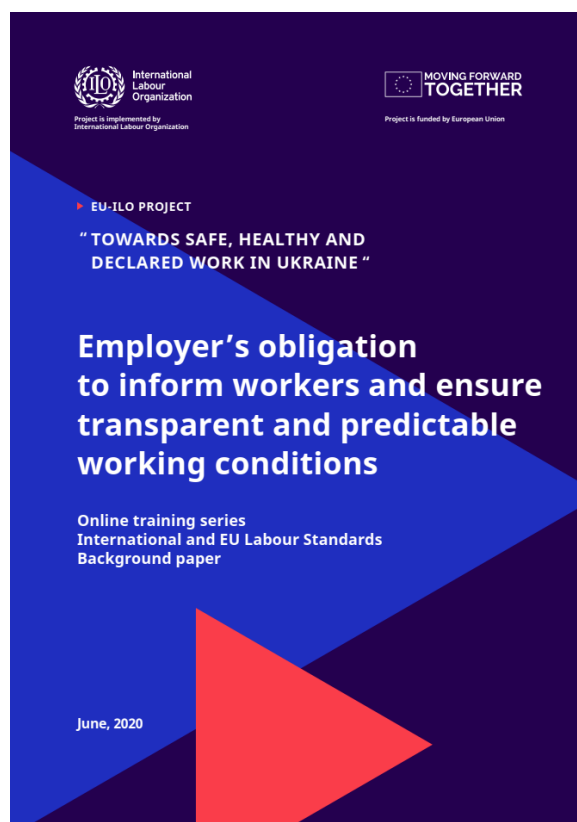
Resources on the EU-ILO Project site

ilo.org/shd4Ukraine

Background paper

Infographics

And more...



- Power Point Presentation
- EU Directive 91/533/EEC
- Directive (EU) 2019/1152



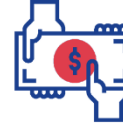
Yuriy

2nd year university student joined “We’re tasty” restaurant chain (delivery dep.) 1 year ago

Quid juris?



Delivers foods and drinks to domiciles/offices in Kyiv



Receives 250\$ /month, +5% commission + tips



Agreed work pattern: Mondays, Wednesdays and Fridays, 19:00-22:00 (to combine with studies)



Has to follow restaurants' procedures manual, use the uniform provided and report monthly on his performance



Uses his motorcycle and cell
Uses restaurant's software (to manage orders, deliveries, routes and control working time)



Receives instructions and is controlled by Serhiy (operations manager)



Has to ask Serhiy authorization for his absences, vacations, etc.



As he is planning to marry, he asked bank for a loan
Bank requested his labour contract



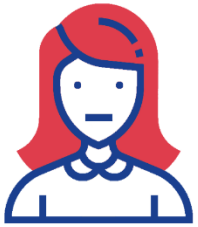
When Yuriy asked employer for his labour contract, the problems started



Employer replied that Yuriy is not really working there, that he was just trying to help Yuriy, so he cannot sign a labour contract



In addition, since that day, Serhiy stopped giving Yuriy work assignments (which prevents him from receiving commissions and tips)...



Nataliya



Works part-time for 5 years as supermarket cashier, with the work schedule: Monday-Friday, 14:00-18:00



Her husband passed away and her income is not enough to provide for 3 kids

Quid juris?



She asked her employer to move her to a full-time job



Employer replied NO, because there was no full-time job available



She took another job (Monday-Friday, 09:00-13:00) as a waitress at a bakery near the supermarket



When Andriy (supermarket manager) new about it, he told her to quit the other job



She argued that he could not prohibit her from working in another place outside her agreed working time



He then moved Nataliya's working time to Monday-Friday, 09:00-13:00

Q&A



Contacts

Дякую за увагу!

Thank you for your attention!





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