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► **EU-ILO PROJECT**

**“TOWARDS SAFE, HEALTHY
AND DECLARED WORK IN UKRAINE”**

Part-time work

**On-line training series
International and EU Labour Standards
Background paper**

June, 2020

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► EXECUTIVE SUMMARY

In recent years, Part-time work is experimenting an increased importance and a growing impact on employment, as a response to the demand for a more flexible organization of work, promoting the compatibility of the requirements of workers and employers for more flexible working time arrangements with job security.

The proliferation of Part-time work across several sectors and activities, however, has been raising some challenges. They mainly refer to the need for ensuring productive and freely chosen employment and the recognizing the important role of part-time work in promoting employment opportunities. They also include the need to guarantee the non-discrimination between part-time and full-time workers and to safeguard that part-time workers, in the areas of access to employment and working conditions, shall not be treated in a less favourable manner than comparable full-time workers solely because they work part-time.

It is expected that the present background paper can give a contribution in the efforts to address the above challenges.

It was prepared under the scope of the Activity 1.3.2 of the EU funded and ILO implemented technical cooperation project “Towards safe, healthy and declared work in Ukraine”¹.

It is aimed at supporting the projects’ online training series on International and EU Labour Standards, especially regarding its module on Part-time. It intends to provide project stakeholders, in particular policy decision makers and legal acts’ drafting experts, with insights and technical advice and guidance on how to better align Ukrainian legal framework with International and EU Labour Standards on part-time work².

¹ Additional information at: <https://ilo.org/shd4Ukraine> and <https://www.facebook.com/shd4Ukraine>.

² In particular, regarding ILO Part-Time Work Convention, 1994 (No. 175) and EU Directives 97/81/EC, 91/533/EEC and 2019/1152.

It is expected that it may also contribute to the development of more enabling conditions for the approximation of Ukrainian legislation with the aforesaid standards and, therefore, for promoting the transition from undeclared to declared work, for fostering the implementation of the EU-Ukraine Association Agreement and for the advancement of decent working conditions for all in Ukraine.

It starts by defining part-time work and highlighting its socio-economic relevance, followed by the presentation of the main provisions of the most relevant applicable International and EU Labour Standards and by the discussion around the importance of the legal institution of an appropriate part-time work regime.

The implications for policy decision-makers and legal acts' drafting experts are then discussed. The concepts of part-time work, part-time workers and comparable full-time worker are defined and the main aspects to consider in the institution of such a part-time work regime are presented.

The latter include, in particular:

- ▶ The convenience of establishing the employer's obligation to inform workers about the conditions applicable to the part-time labour contract or employment relationship;
- ▶ The suitability of instituting a legal presumption of the existence of a full-time work employment relationship, when the above information is missing;
- ▶ To consider the definition of the part-time minimum working conditions, in order to ensure the observance of the principles of non-discrimination between part-time and full-time workers and the application of the principle of pro rata temporis;
- ▶ The facilitation of the voluntary access to part-time, in particular, through the legal provision of the possibility of changes between work-time regimes and of specific employers' obligations in case of part-time work, especially in the domains of information.

It should not be seen, however, as an ILO code of practice or a set of official guidelines, nor as a replacement of the positions of the ILO supervisory bodies.

Київ, 23 червня 2020 року

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► BACKGROUND

Part-time work

Part-time work is the one that is performed during a weekly number of hours (or average number of hours in a given period) which is lower than the one performed during a full-time work in a comparable situation.

It has had an important impact on employment in recent years, as a response to the demand for a more flexible organization of work in a way which fulfils both the needs of employees and the requirements of competition and promoting the compatibility of flexible working time with job security (European Council, 1997).

The economic importance of part-time work is widely acknowledged today and it reveals to be an increasing feature of employment across several sectors and activity.

It allows more flexibility to employers in organizing and managing work and working time, enables the access to formal labour market to a wide range of workers that otherwise would be unemployed or engaged in the informal economy or undeclared work, facilitates the adaptation of work demands to special vulnerable groups of workers (e.g., unemployed, older workers, workers with disabilities, workers undergoing education or training, workers with family responsibilities, pregnant workers, workers who have recently given birth or are breastfeeding), securing their occupational safety and health, and eases the work-life balance and the participation in the formal labour market of workers with family responsibilities.

Its proliferation, however, raises some concerns, that should be addressed. They include, among others, the need to recognize the relevance of productive and freely chosen employment for all workers, the convenience of employment policies to take into account the role of part-time work in facilitating additional employment opportunities, and the necessity

to ensure protection for part-time workers in the areas of access to employment, working conditions and social security (ILO, 1994).

Part-Time Work Convention, 1994 (No. 175)

The above concerns justified the adoption, by the General Conference of the International Labour Organization, on 24 June 1994, of the Part-Time Work Convention, 1994 (No. 175).

This ILO Convention No. 175 (ILO, 1994) is aimed at ensuring that part-time workers receive the same protection as that conferred to comparable full-time workers, especially in terms of:

- ▶ The right to organize;
- ▶ The right to bargain collectively;
- ▶ The right to act as workers' representatives;
- ▶ OSH conditions; and
- ▶ Non-discrimination in employment and occupation.

It is also focused on ensuring that part-time workers do not receive a lower proportional basic wage than the basic wage of comparable full-time workers, solely because they work part time.

In addition, it intends to ensure:

- ▶ The adaptation of statutory social security schemes, so that part-time workers enjoy conditions equivalent to those of comparable full-time workers (this conditions may be determined, for example, in proportion to hours of work, contributions or earnings);
- ▶ That part-time workers receive conditions equivalent to those of comparable full-time workers (determined in proportion to hours of work or earnings) regarding:
 - Maternity protection;
 - Termination of employment;

- Paid annual leave;
 - Paid public holidays: and
 - Sick leave.
- That the transfer from full-time to part-time work, or vice versa, is voluntary.

This ILO Convention was not yet ratified by Ukraine.

Council Directive 97/81/EC

In 1997, with the purposes of preventing discrimination against part-time workers, improving the quality of part-time work, facilitating the development of part-time work on a voluntary basis and contributing to the flexible organization of working time in a manner which takes into account the needs of employers and workers, EU adopted the Council Directive 97/81/EC, of 15 December 1997, concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (European Council, 1997).

In essence, Directive 97/81/EC sets out the general principles and minimum requirements for part-time work and establishes a general framework for eliminating discrimination against part-time workers and to contribute to developing the potential for part-time work on a basis which is acceptable for employers and workers alike.

In particular, it establishes:

- The principle of non-discrimination between part-time and full-time workers — according to which, in matters of employment conditions, the part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part-time (unless different treatment is justified on objective grounds); and
- The application, where appropriate, of the principle of *pro rata temporis* — namely when defining proportionally the remuneration of part-time workers.

In addition, it also provides:

- ▶ That a worker's refusal to be transferred from full-time to part-time work or vice-versa should not in itself constitute a valid reason for termination of employment; and
- ▶ The following employers' obligations:
 - Consider workers' requests to be transferred from full-time to part-time work, or vice-versa, or to increase their working time;
 - Provide timely information on the availability of part-time and full-time positions (in order to facilitate transfers from full-time to part-time or vice versa);
 - Facilitate access to part-time work at all levels (including skilled and managerial positions);
 - Facilitate access by part-time workers to vocational training to enhance career opportunities and occupational mobility; and
 - Provide appropriate information to existing bodies representing workers about part-time work.

According to Article 424 and Annex XL to Chapter 21 of the EU-Ukraine Association Agreement, Ukraine undertook to gradually approximate its legislation to Council Directive 97/81/EC by 31 August 2020.

Directive (EU) 2019/1152

In the context of part-time work, it is also important to consider the 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 (European Parliament & European Council, 2019), which entered into force in 31 July 2019 and repeals Directive 91/533/EEC (with effect from 1 August 2022).

In fact, this directive provides for the institution of legal presumptions and settlement mechanisms that should be applied if the employer fails to provide workers in due time the information on the essential elements of the labour contract or employment relationship. In particular:

- ▶ The benefit from favourable presumptions which employers shall have the possibility to rebut;
- ▶ The possibility to submit a complaint to a competent authority or body and to receive adequate redress in a timely and effective manner.
- ▶ The possibility to access to effective and impartial dispute resolution and a right to redress in case of infringements of their rights (including for those workers whose employment relationship has ended).
- ▶ Measures to protect workers (including those who are workers' representatives) from any adverse treatment by the 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 their rights.

This is especially important when the employer fails to provide part-time workers with the written information on the nature of their working regime and conditions of work.

In fact, and according to the above directive, it is possible and convenient to establish in the labour law, for example, that in case employer fails to observe the written form to conclude a part-time labour contract, or fails to indicate in that contract (or in the written documents with the information which legally should be provided to worker) the normal daily and weekly working period with comparative reference to full-time work, the employment relationship is presumed to be for full-time work.

According to the Annex XL of the AA, Ukrainian legislation should be aligned with Council Directive 91/533/EEC [repealed and substituted by Directive (EU) 2019/1152] by 31 August 2021.

► THE RELEVANCE OF A PART-TIME WORK REGIME

Considering the economic and social benefits of part-time work, as an important and flexible tool to organize work and manage working time, which responds to the particular needs of workers and businesses, encourages the access to the formal labour market, enables the adaptation of work requirements to special vulnerable groups of workers, securing their safety and health, and which facilitates the work-life balance and the employment of workers with family responsibilities; and, at the same time, the need to ensure the non-discrimination between part-time and full-time workers, to improve the quality of part-time work, to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organization of working time according to the specific needs of both employers and workers; it is clear that it is relevant to legally institute a part-time work regime within national legislations.

Such part-time regime, moreover, should be properly aligned with the applicable International and EU Labour Standards, in particular with:

- ILO Convention No. 175, through the implementation of the measures foreseen in its Articles 4 to 7, in order to ensure that part-time workers receive the same protection and equivalent conditions to those of comparable full-time workers (ILO, 1994);
- Directive 97/81/EC, implementing the general principles and minimum requirements for part-time work and establishing a general framework for eliminating discrimination against part-time workers and to contribute to developing the potential for part-time work (European Council, 1997);
- Directive 91/533/EEC, implementing the provisions foreseeing the employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (European Council, 1991);

- ▶ Directive (EU) 2019/1152, implementing legal presumptions and settlement mechanisms to be applied if the employer fails to provide workers in due time with the information on the essential elements of the labour contract or employment relationship (European Parliament & European Council, 2019);
- ▶ Directive 89/391/EEC, which foresees, in its Article 15, the protection of particularly sensitive risk groups (e.g., young workers, older workers, workers with disabilities, pregnant workers and workers who have recently given birth or who are breastfeeding) against the dangers which specifically affect them (European Council, 1989); and
- ▶ Directive 92/85/EEC, through the implementation of its Article 5(1), foreseeing the obligation of the employer to take the necessary measures to avoid the exposition of pregnant workers and workers who have recently given birth or who are breastfeeding to occupational risks, namely the temporary adjustment of their working hours (European Council, 1992).

In this context, it is especially important that such part-time regime provides for, *inter alia*:

- ▶ The principle of non-discrimination between part-time and full-time workers (foreseen in Clause 4 of the Framework Agreement annexed to the Directive 97/81/EC and in Articles 4 to 7 of ILO Convention No. 175), according to which, in matters of employment conditions (e.g., right to organize, right to bargain collectively, right to act as workers' representatives, OSH, maternity protection, termination of employment, paid annual leave, paid public holidays, sick leave, wages, etc.), the part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part-time (unless different treatment is justified on objective grounds);
- ▶ The principle of *pro rata temporis*, in order to ensure that:
 - Part-time workers do not receive a basic wage which, calculated proportionately, is lower than the basic wage of comparable full-

time workers, solely because they work part-time (as provided for in Articles 5 and 7 of ILO Convention No. 175); and

- ▶ – When a comparable full-time employee is entitled to a specific remuneration or other benefit, the part-time employee shall also be entitled to it, in the amount directly proportional to the number of hours worked (weekly or during a given period) compared to the number of hours worked (weekly or during a given period) by the comparable full-time employee [as foreseen in Clause 4(2) of the Framework Agreement annexed to the Directive 97/81/EC].

The guarantees regarding the facilitation of the development of part-time work on a voluntary basis [foreseen in Article 10 of ILO Convention No. 175 and Clauses 1(b) and 5 of the Framework Agreement annexed to the Directive 97/81/EC], in particular regarding:

- The protection of workers who refuse to be transferred from or to part-time work;
- ▶ – The employers' obligation to:
 - Consider the workers' requests to be transferred from part-time work to full-time work or vice versa or the requests from part-time workers to increase their working time;
 - Provide workers with timely information on the availability of part-time and full-time positions;
 - Provide workers' representatives with appropriate information about part-time in employer's organization;
 - Facilitate access to part-time work at all levels of the employer's organization and the access by part-time workers to vocational training.

► IMPLICATIONS FOR POLICY DECISION-MAKERS AND LEGAL ACTS' DRAFTING EXPERTS

Concepts

Notion of part-time work

Part-time work should be understood as the one that corresponds to a normal weekly working period (or average working period over a period of employment up to one year) which is shorter than that practiced in full time work in a comparable situation.

It can be performed only in a few days per week, month or year, and the number of working days and working hours should be established by agreement.

Definition of part-time worker

According to ILO C175:

Part-time worker means an employed person whose normal hours of work (calculated weekly or on average over a given period of employment) are less than those of comparable full-time workers.

Full-time workers affected by a collective and temporary reduction in their normal hours of work for economic, technical or structural reasons, are not considered to be part-time workers.

According to the Framework Agreement on Part-Time Work, annexed to Council Directive 97/81/EC:

Part-time worker is an employee whose normal hours of work (calculated on a weekly basis or on average over a period of employment of up to one

year), are less than the normal hours of work of a comparable full-time worker.

Concept of comparable full-time worker

According to the ILO C175, the term comparable full-time worker refers to a full-time worker who:

- 1) Has the same type of employment relationship;
- 2) Is engaged in the same or a similar type of work or occupation;
and
- 3) Is employed in the same establishment or, when there is no comparable full-time worker in that establishment, in the same enterprise or, when there is no comparable full-time worker in that enterprise, in the same branch of activity, as the part-time worker concerned.

Comparable full-time worker is also defined in the Framework Agreement on Part-Time Work, annexed to Council Directive 97/81/EC, as a full-time worker:

- 1) In the same establishment:
 - a. Having the same type of employment contract or relationship;
and
 - b. Who is engaged in the same or a similar work/occupation; with
 - c. Due regard being given to other considerations which may include seniority and qualification/skills; or
- 2) Where there is no comparable full-time worker in the same establishment, the comparison shall be made by reference:
 - a. To the applicable collective agreement; or
 - b. Where there is no applicable collective agreement, to national law, collective agreements or practice.

Main aspects to consider in the institution of a part-time work regime

Information about the conditions applicable to the part-time labour contract or employment relationship

As foreseen in both EU Directives 91/533/EEC and 2019/1152, employers must provide employees with timely information about the essential aspects and conditions applicable to the part-time labour contract or employment relationship.

This practice, moreover, is an important measure to not only prevent the abuse of part-time workers' working time conditions but also, as recommended in ILO Employment Relationship Recommendation, 2006 (No. 198), to facilitate the determination of the existence of an employment relationship between the employer and the part-time worker, to ensure compliance with, and effective application of, laws and regulations concerning the employment relationship and to combat disguised employment relationships (European Council, 1991; European Parliament & European Council, 2019; ILO, 2016).

This can be done, for example, foreseeing a legal provision such as the following:

Part-time employment agreement

The part-time employment agreement is subject to written form and must contain, at least:

- 1) The identities of the parties to the employment relationship;*
- 2) The place of work; where there is no fixed or main place of work, the principle that the worker is employed at various places or is free to determine his or her place of work, and the registered place of business or, where appropriate, the domicile of the employer;*

- 3) *The title, grade, nature or category of work for which the worker is employed or a brief specification or description of the work;*
- 4) *The date of commencement of the part-time employment relationship;*
- 5) *In the case of a fixed-term part-time employment relationship, the end date or the expected duration thereof;*
- 6) *The duration and conditions of the probationary period, if any;*
- 7) *The remuneration, including the initial basic amount, any other component elements, if applicable, indicated separately, and the frequency and method of payment of the remuneration to which the worker is entitled;*
- 8) *If the work pattern is entirely or mostly predictable, the length of the worker's standard working day or week and any arrangements for overtime and its remuneration and, where applicable, any arrangements for shift changes;*
- 9) *If the work pattern is entirely or mostly unpredictable, the employer shall inform the worker of:*
 - a. *The principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours;*
 - b. *The reference hours and days within which the worker may be required to work;*
 - c. *The minimum notice period to which the worker is entitled before the start of a work assignment and, where applicable, the deadline for cancellation.*
- 10) *The normal daily and weekly working period has to be indicated with comparative reference to full-time work.*

Legal presumption of full-time work employment relationship

In order to facilitate the determination of the existence of a part-time employment relationship and to protect workers from abuse or from undue consequences resulting from measures taken to recognize their rights, legislation should also legally provide for a presumption of the existence of a full-time employment relationship, whenever the relevant information is missing, in particular when the written form has not been observed or the normal daily and weekly working period has not been indicated with comparative reference to full-time work, as foreseen in Directive 2019/1152 (points 35 and 39 and Article 11/b).

Such legal provision could be as follows:

Presumption of full-time employment

It is presumed to exist a full-time employment relationship when the part-time employment relationship agreement:

- 1) Did not observed the written form; or*
- 2) Does not indicate the normal daily and weekly working period with comparative reference to full-time work.*

Part-time working conditions

The legislation should also establish the principle of non-discrimination between part-time and full-time workers³ stipulating that, in matters of employment conditions (e.g., right to organize, right to bargain collectively, right to act as workers' representatives, OSH, maternity protection, termination of employment, paid annual leave, paid public holidays, sick leave, wages, etc.), the part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part-time, unless different treatment is justified on objective grounds.

³ Foreseen in Articles 4 to 7 of ILO C175 and in Clause 4 of the Framework Agreement annexed to the Directive 97/81/EC.

In addition, it should also institute the principle of *pro rata temporis*⁴, in order to ensure that part-time workers do not receive a basic wage which, calculated proportionately, is lower than the basic wage of comparable full-time workers, solely because they work part-time; and that, when a comparable full-time employee is entitled to a specific remuneration or other benefit, the part-time employee shall also be entitled to it, in the amount directly proportional to the number of hours worked (weekly or during a given period) compared to the number of hours worked (weekly or during a given period) by the comparable full-time employee.

To that effect, the national legislation should contain a provision as the following:

Part-time working conditions

- 1) *Part-time workers may not have less favourable treatment than the full-time workers in a comparable situation, unless different treatment is justified for objective reasons, which may be defined by a collective agreement.*
- 2) *Part-time workers are entitled to the basic remuneration and other benefits provided for by law or collective agreement or, where they are more favourable, to those received by full-time workers in a comparable situation, in the proportion of the respective normal weekly working period.*

Smoothing voluntary access to part-time

In addition, and in order to facilitate access to productive and freely chosen part-time work which meets the needs of both employers and workers and to ensure that transfers from full-time to part-time work or vice versa are voluntary (as foreseen in Articles 9/1 and 10 of ILO C175), contributing to the flexible organization of working time in a manner which takes into

⁴ As foreseen in Clause 4(2) of the Framework Agreement annexed to the Directive 97/81/EC.

account the needs of employers and workers (as provided for in Article 1/b of Directive 97/81/EC), legislation should foresee:

- ▶ The possibility of voluntary changes from a full-time work regime to part-time and vice-versa; and
- ▶ Specific measures aimed at facilitating these changes, namely through the consideration of worker's requests and increased information on opportunities for change of work-time regimes.

Changes in work-time regime

The possibility for voluntary changes from a full-time work regime to part-time and vice-versa can be achieved, for example, through the inclusion into national legislations of the legal provision that follows:

Changes in work-time regime

- 1) *Part-time worker may be transferred to full-time time work, or vice-versa, on a permanent basis or for a specified period, by written agreement with the employer.*
- 2) *Where the transfer from full-time work to part-time work, in accordance with paragraph 1, occurs for a specified period, the worker is entitled to resume the provision of full-time work after that period.*

Employers' specific obligations in case of part-time work

As for the specific measures intended to facilitate changes in the work-time regime, they may involve, for example, the inclusion into national legislations of the following legal provision:

Employers' specific obligations in case of part-time work

- 1) *Where possible, employer should:*
 - a. *Take into account the employee's request to change from full-time work to part-time work available at the establishment;*

- b. Take into account the employee's request to change from part-time work to full-time work, or for the increase of his/her working time;*
- c. Facilitate access to part-time work at all levels of the organization, including management positions.*

2) The employer shall also:

- a. Provide workers, in a timely manner, with information on the part-time and full-time jobs available in the establishment in order to facilitate the changes referred to in points (a) and (b) of the preceding paragraph;*
- b. Provide employee's representatives with adequate information on part-time work in the organization.*

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