



International
Labour
Organization

Canada 

Technical Note

concerning

Draft Law on Amendments to Certain Legislative Acts Concerning Simplification of Labour Relations in the Sphere of Small and Medium Business and Reduction of Administrative Burdens on Entrepreneurial Activity.

[Registered](#) in the Parliament of Ukraine on 13.04.2021 under No. 5371.

Background and disclaimer

The comments therein have been prepared with a view to supporting the process of social dialogue on labour law reform in Ukraine. They represent technical expert opinions only and are provided without prejudice to any official comments that may be made by the Office on the final draft or by the ILO bodies responsible for supervising compliance of Ukrainian labour legislation with international labour standards. The present Technical Note does not constitute an endorsement by the International Labour Office of the opinions expressed therein.

ILO technical support in the drafting process of labour legislation seeks to increase the involvement of its primary beneficiaries – employers and workers – throughout the process of labour law reform. This reflects the core ILO principles of social dialogue and tripartism. It also expresses the letter and spirit of the ILO Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified by Ukraine. Paragraph 5(c) of the Tripartite Consultation (Activities of the International Labour Organization) Recommendation, 1976 (No. 152) also emphasizes the importance of consultations in relation to ‘the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations’.

In addition, some of the comments below are made in light of non-ratified ILO standards, as well as Recommendations. These particular comments are provided on the understanding that, in the present context, such standards are referred to not as binding instruments, but as a useful point of reference. ILO standards are adopted by a qualified majority of delegates attending the International Labour Conference; hence their content represents internationally accepted good practice, recommended by the ILO.

The current technical support is being provided in the framework of the technical cooperation project “Rights at Work: Improving Ukraine’s Compliance with Key International Labour Standards”¹.

Summary remarks

1. The reviewed draft law appears to exclude a significant share of the Ukrainian workforce from the application of the general labour law (Labour Code) through the establishment of a parallel and less protective regime for workers employed in small and medium sized enterprises, i.e enterprises employing fewer than 251 workers.
2. It allows individual negotiation over inalienable and non-negotiable labour rights protected by the Constitution of Ukraine, international treaties ratified by Ukraine and national labour law.
3. It provides for the possibility of the parties to the employment contract to deviate *in pejus* from the basic labour standards set out by law through individual negotiations.
4. It institutes termination of employment at will of the employer and unilateral change by the employer of essential terms and conditions of the employment contract, which infringe international labour standards and are in contradiction with the general principles of European law and practice.
5. Being mainly governed by the principle of equality of the contracting parties’ characteristic to the civil law, it diminishes considerably the protective role of the labour law in case of SMEs.

Specific technical comments are provided in the comparative table below.

¹ The views and opinions, expressed in this technical note, do not necessarily reflect the official policy or position of Canadian Government.

| No. | The provisions of current national legislation | The provisions of draft Law | The provisions of ILO conventions and recommendations | Discrepancies and gaps identified in draft Law |
|---|---|--|---|---|
| <u>Labour Code of Ukraine, 1971 (LC)</u> | | | | |
| 1. | <p>Chapter I. GENERAL PROVISIONS</p> <p>Article 3. Regulation of labour relations</p> <p>The labour legislation regulates labour relations of employees at all enterprises, institutions, organizations, regardless of their ownership, type of activities, or sectoral affiliation, as well as entities working under employment contract with individuals.</p> <p>Specifics of work of members of cooperatives and their associations, collective agricultural enterprises, farms, employees of enterprises with foreign investments shall be determined by the legislation and their statutes. However, guarantees regarding</p> | <p>Chapter I. GENERAL PROVISIONS</p> <p>Article 3. Regulation of labour relations</p> <p>The labour legislation regulates labour relations of employees at all enterprises, institutions, organizations, regardless of their ownership, type of activities, or sectoral affiliation, as well as entities working under employment contract with individuals.</p> <p>Specifics of work of members of cooperatives and their associations, collective agricultural enterprises, farms, employees of enterprises with foreign investments shall be determined by the legislation and their statutes. However,</p> | <p>There are no ratified conventions on this issue.</p> | <p>1. The proposed amendments to the Article 3 of LC do not require comments regarding their compliance with the provisions of ILO conventions and recommendations.</p> <p>2. It is necessary to pay attention to incorrectness of these amendments from the point of view of legal technique. So, the current edition of the Article 3 of LC is devoted to the issues of determining the scope of labour legislation and its application to certain types of social relations. In turn, the amendments</p> |

| | | | | |
|----|---|--|---|--|
| | <p>employment, occupational safety and health, labour of women, youth, and persons with disabilities shall be provided in the manner prescribed by labour legislation.</p> | <p>guarantees regarding employment, occupational safety and health, labour of women, youth, and persons with disabilities shall be provided in the manner prescribed by labour legislation.</p> <p>The specifics and the procedure for application of the contractual regime of regulation of employment relationships shall be governed by Chapter III-B hereof.</p> | | <p>in the Article 3 do not relate to these issues.</p> |
| 2. | <p>Article 9. Invalidation of labour agreement provisions that worsen the situation of employees</p> <p>The provisions of labour agreements that worsen the situation of employees compared with provisions of the labour legislation of Ukraine shall be deemed invalid.</p> | <p>Article 9. Invalidation of employment contract provisions that worsen the situation of employees</p> <p>The provisions of labour agreements that worsen the situation of employees compared with provisions of the labour legislation of Ukraine shall be deemed invalid.</p> | <p>Ukraine has ratified: Discrimination (Employment and Occupation) Convention, 1958 (No. 111).</p> <p><i>There are no comments from CEACR on this issue.</i></p> <p>Under the Article 2 of C111 each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by</p> | <p>1. Despite the fact that the proposed amendments to the Article 9 of LC narrow the scope of guarantees for employees of the contractual regime of regulation of employment relationships compared to other employees, they still do not fall under the</p> |

| | | | | |
|--|--|---|---|--|
| | | <p>Execution of employment contracts in view of the specifics indicated in Chapter III-B hereof shall not be deemed as worsening of the situation of employees.</p> <p>It shall be prohibited to force an employee to enter into an employment contract that contains terms and conditions on which no mutual agreement has been reached between the employee and the employer.</p> | <p>methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.</p> <p>Article 1 of C111 as bases of discrimination race, colour, sex, religion, political opinion, national extraction, social origin.</p> <p>ILO Declaration on Fundamental Principles and Rights at Work declares that all Members have an obligation to promote and to realize the principles concerning the fundamental rights, namely the elimination of discrimination in respect of employment and occupation.</p> | <p>definition of discrimination provided by C111.</p> <p>2. It should be noted that the amendments proposed to the title of the Article 9 of LC may adversely affect the implementation of its provisions. The term "labour agreement", currently in force in the title of the Article 9, is broader (it also covers collective agreements) than an employment contract. Thus, there may be a threat of narrowing the scope of guarantees provided by the existing edition of the Article 9 in terms of their extension only to employment contracts, and not to all labour agreements, as currently provided.</p> |
|--|--|---|---|--|

| | | | | |
|--|--|--|--|---|
| | | | | <p>3. In this case, it is also appropriate to pay attention to the Decision of the Constitutional Court of Ukraine № 6-r (II)/2019, of 04.09.2019, which states that the non-application of the Article 40 (3) of LC (prohibition of the employer to dismiss an employee who is temporarily incapacitated or on leave) on employment relations under the special form of employment contract is a violation of guarantees of protection of employees from illegal dismissal and puts them in unequal conditions compared to employees of other categories.</p> <p>That is, the Decision of the Constitutional Court of Ukraine focuses on the inadmissibility of</p> |
|--|--|--|--|---|

| | | | | |
|----|---|---|---|---|
| | | | | establishing unequal conditions for employees who have entered into a special form of employment contract compared to other employees. |
| 3. | <p>Article 21. Employment contract</p> <p>An employment contract shall be an agreement between an employee and the owner of an enterprise, institution, organization, or its authorized body or individual, under which the employee undertakes to perform the work specified in this contract, while the owner of the enterprise, institution, organization, or authorized body or individual undertakes to pay wages to the employee and provide for working conditions required for performance of the work at stipulated in labour legislation,</p> | <p>Article 21. Employment contract</p> <p>An employment contract shall be an agreement between an employee and the owner of an enterprise, institution, organization, or its authorized body or individual, under which the employee undertakes to perform the work specified in this contract, while the owner of the enterprise, institution, organization, or authorized body or individual undertakes to pay wages to the employee and provide for working conditions required for performance of the work at stipulated in labour legislation,</p> | There are no ratified conventions on this item. | <p>1. The commentary to this Article is reflected in the commentary to the Article 9.</p> <p>2. In draft Article 21 (6) of LC developers suggest wording that <i>“general provisions of the Civil Code of Ukraine on contractual relations shall apply to relations between the employee and the employer arising from the contract in the part that is not regulated of this Code”</i>.</p> <p>In this case, the developers do not take into account that the legal regulation of employment</p> |

| | | | |
|---|---|--|--|
| <p>the collective agreement, and agreement of the parties.</p> <p>An employee shall have the right to realize their capacity for productive and creative work by executing an employment contract at one or several enterprises, institutions, organizations simultaneously, unless otherwise stipulated by law, the collective agreement, or agreement of the parties.</p> <p>A special form of the employment contract is the contract in which terms and conditions, rights, duties, and responsibilities of the parties (including financial ones), conditions of material support and organization of the employee's work, conditions of contract termination, including early one, may be established by agreement of the parties. The scope of the special form of the</p> | <p>the collective agreement, and agreement of the parties.</p> <p>An employee shall have the right to realize their capacity for productive and creative work by executing an employment contract at one or several enterprises, institutions, organizations simultaneously, unless otherwise stipulated by law, the collective agreement, or agreement of the parties.</p> <p>A special form of the employment contract is the contract in which terms and conditions, rights, duties, and responsibilities of the parties (including financial ones), conditions of material support and organization of the employee's work, conditions of contract termination, including early one, may be established by agreement of the parties. The scope of the special form of the employment contract shall</p> | | <p>relationships is carried out not only by LC, but also by other acts of labour legislation. For example, the Law on Wages, the Law on the Professional Development of Employees, the Procedure for Investigating and Recording Occupational Diseases and Industrial Accidents, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 337, 17.04.2019 etc.</p> <p>3. It is necessary to pay attention to incorrectness of the offered edition of Article 21 (6) of LC in terms of legal technique. After all, draft Article 21 (6) does not specify the scope of its application. Thus, in practice, there</p> |
|---|---|--|--|

| | | | |
|--|---|--|--|
| <p>employment contract shall be determined by the laws of Ukraine.</p> | <p>be determined by the laws of Ukraine.</p> <p>Under the contractual regime of regulation of employment relationships governed by Chapter III-B hereof, the employment contract shall be the key means of regulating employment relationships between employees and employers (owners of privately owned enterprises), where the number of employees or wages meet the criteria set out in Article 495 hereof.</p> <p>If the contractual regime of regulation of employment relationships applies, by mutual consent of the parties the employment contract may specify additional rights, duties, and responsibilities of the parties, financial support and organization of an</p> | | <p>may be a position that it applies to all types of employment contracts, not just those concluded under the terms of the contractual regime of regulation of employment relationships.</p> <p>4. Reference to the parts of the Labour Code where general provisions of the Civil Code would apply is vague and the concerned subject matters are undefined. Moreover, as mentioned herein, some subject matters related to labour are regulated in other special laws.</p> |
|--|---|--|--|

| | | | | |
|----|---|---|--|--|
| | | <p>employee's work terms and conditions, terms and conditions for cancellation or early termination of the contract.</p> <p>General provisions of the Civil Code of Ukraine on contractual relations shall apply to relations between the employee and the employer arising from the contract in the part that is not regulated of this Code.</p> | | |
| 4. | <p>Article 24. Execution of an employment contract</p> <p>An employment contract shall usually be executed in writing. The written form of the contract shall be mandatory:</p> <ol style="list-style-type: none"> 1) in case of organized recruitment of employees; 2) in case of executing an employment contract for work in areas with specific natural geographical and geological | <p>Article 24. Execution of an employment contract</p> <p>An employment contract shall usually be executed in writing. The written form of the contract shall be mandatory:</p> <ol style="list-style-type: none"> 1) in case of organized recruitment of employees; 2) in case of executing an employment contract for work in areas with specific natural geographical and geological | <p>There are no ratified conventions on this item.</p> | <ol style="list-style-type: none"> 1. These amendments are of a declarative nature and have no practical application, thereby overloading the general perception of the Article 24 of LC. 2. The current edition of the Article 24 (1) of LC contains an exhaustive list of cases where compliance with the written form of employment contract is |

| | | | |
|---|---|--|---|
| <p>conditions and increased health risks;</p> <p>3) in case of execution of a special form of the employment contract;</p> <p>4) in cases where the employee insists on execution of the employment contract in writing;</p> <p>5) in case of executing an employment contract with a minor (Article 187 hereof);</p> <p>6) in case of executing an employment contract with an individual;</p> <p>6-1) in case of executing an employment contract for remote work or homework;</p> <p>7) in other cases, as stipulated by the legislation of Ukraine.</p> <p>When executing an employment contract, the citizen shall be obliged to submit a passport or another identity document, employment record book, and</p> | <p>conditions and increased health risks;</p> <p>3) in case of execution of special form of the employment contract;</p> <p>4) in cases where the employee insists on execution of the employment contract in writing;</p> <p>5) in case of executing an employment contract with a minor (Article 187 hereof);</p> <p>6) in case of executing an employment contract with an individual;</p> <p>6-1) in case of executing an employment contract for remote work or homework;</p> <p>7) in other cases, as stipulated by the legislation of Ukraine.</p> <p>When executing an employment contract, the citizen shall be obliged to submit a passport or another identity document,</p> | | <p>mandatory. The developers of draft Law did not include the contractual regime of regulation of employment relationships among such cases. Although, under the draft Article 49⁶(11) of LC, when applying the contractual regime of regulation of employment relationships an employment contract is concluded in writing.</p> |
|---|---|--|---|

| | | | |
|--|--|--|--|
| <p>in cases stipulated by law – also a document on education (specialty, qualification), on health status, or other documents.</p> <p>An employee shall not be admitted to start working without having executed an employment contract approved with an order of the owner or his authorized body and notified the central executive authority for development and implementation of the public policy on administration of the single compulsory state social insurance contribution about admission of the employee to work in the manner prescribed by the Cabinet of Ministers of Ukraine.</p> <p>A person invited to work by means of transfer from another enterprise, institution, organization by agreement</p> | <p>employment record book, and in cases stipulated by law – also a document on education (specialty, qualification), on health status, or other documents.</p> <p>An employee shall not be admitted to start working without having executed an employment contract approved with an order of the owner or his authorized body and notified the central executive authority for development and implementation of the public policy on administration of the single compulsory state social insurance contribution about admission of the employee to work in the manner prescribed by the Cabinet of Ministers of Ukraine.</p> <p>A person invited to work by means of transfer from another enterprise, institution,</p> | | |
|--|--|--|--|

| | | | | |
|----|--|--|---|--|
| | <p>between the enterprises, institutions, organizations shall not be denied execution of an employment contract.</p> <p>It shall be prohibited to execute an employment contract with a citizen to whom, according to a medical opinion, the job offered is contraindicated due to health reasons.</p> | <p>organization by agreement between the enterprises, institutions, organizations shall not be denied execution of an employment contract.</p> <p>It shall be prohibited to execute an employment contract with a citizen to whom, according to a medical opinion, the job offered is contraindicated due to health reasons.</p> <p>If the contractual regime of regulation of employment relationships applies, the employment contract shall be executed in compliance with the essential terms and conditions, in the manner and form specified in Chapter III-B hereof.</p> | | |
| 5. | <p><i>There is no Chapter III-B in the current LC.</i></p> | <p>Chapter III-B. Contractual regime of regulation of employment relationships</p> | - | <p>In Chapter III-B, the developers use the numbering of parts of the Articles in the format "1., 2., 3. ...". In turn, this</p> |

| | | | | |
|----|--|---|---|---|
| | | | | format does not correspond to the legal structure of the current LC which does not use the numerical designation of the relevant part of the Article. |
| 6. | <i>There is no Article 49⁵ in the current LC.</i> | <p>Article 49⁵. Specifics of application of the contractual regime of regulation of employment relationships</p> <p>1. The contractual regime of regulation of employment relationships (hereinafter – the contractual regime) shall apply to employment relationships arising:</p> <p>between an employee and an employer being a small or medium-sized enterprise in accordance with the law with the number of employees in the reporting period (calendar year) not more than 250 people;</p> | <p>Ukraine has ratified: Holidays with Pay Convention (Revised), 1970 (No. 132).</p> <p><i>There are no comments from CEACR on this issue.</i></p> <p>In accordance with the Article 7 of C132, every person taking the holiday envisaged in this Convention shall receive in respect of the full period of that holiday at least his normal or average remuneration (including the cash equivalent of any part of that remuneration which is paid in kind and which is not a permanent benefit continuing whether or not the person concerned is on holiday), calculated in a manner to be</p> | <p>1. The legal construction of the current LC does not provide for the possibility of shortening the terms using “(hereinafter – ...)”.</p> <p>2. The Paragraph 2 of the Article 49⁵ (2) that stipulates that the “<i>it shall not be allowed to establish the requirement for business entities to maintain and provide documents on issues regulated by the employment contract</i>” must be specified. Indeed, in the future, this edition of Paragraph 2 of the Article 49⁵ (2) may lead to complications in</p> |

| | | | |
|--|---|---|--|
| | <p>between an employer and an employee whose salary is more than eight times the minimum wage per month as established by law.</p> <p>The contractual regime may be applied on a voluntary basis in relations between employees and employers who are entitled to use it.</p> <p>2. The contractual regime provides for the possibility of establishing the employee's individual working conditions directly in the employment contract.</p> <p>It shall not be allowed to establish the requirement for business entities to maintain and provide documents on issues regulated by the employment contract.</p> <p>3. Under the terms and conditions of the contractual regime, the parties to the</p> | <p>determined by the competent authority or through the appropriate machinery in each country. The amounts due in pursuance of paragraph 1 of this Article shall be paid to the person concerned in advance of the holiday, unless otherwise provided in an agreement applicable to him and the employer.</p> <p>Under the Article 8 of C132, the division of the annual holiday with pay into parts may be authorised by the competent authority or through the appropriate machinery in each country. Unless otherwise provided in an agreement applicable to the employer and the employed person concerned, and on condition that the length of service of the person concerned entitles him to such a period, one of the parts shall</p> | <p>law enforcement, for example, when conducting inspections on compliance with labour legislation.</p> <p>3. The Article 49⁵(3) draws attention to the need to comply with <i>“the standards of the total length of the working week, duration of weekly rest, and other rights and guarantees as stipulated in this Code”</i>. In turn, the range of rights and guarantees of employees is determined not only by LC, but also by other acts of legislation.</p> <p>Moreover, the parties are allowed “at their own discretion” to deviate including in pejus from the basic labour rights set out by the Labour Code and applicable Collective Agreement.</p> |
|--|---|---|--|

| | | | |
|--|--|--|---|
| | <p>employment contract may, in compliance with Part Five of Article 21 hereof, at their own discretion and by mutual consent, regulate their relations regarding emergence and termination of employment relations, wages, labour standards, the salary rate in view of the limiting minimum amount, allowances, surcharges, bonuses, rewards, and other incentive, compensation and guarantee payments, working hours and rest as set by law, in compliance with the standards of the total length of the working week, duration of weekly rest, and other rights and guarantees as stipulated in this Code.</p> <p>4. Under the contractual regime, annual paid and unpaid leaves shall be granted to employees in</p> | <p>consist of at least two uninterrupted working weeks.</p> <p>At the same time, the Article 9 (1) of C132 provides that the uninterrupted part of the annual holiday with pay referred to in Article 8, paragraph 2, of this Convention shall be granted and taken no later than one year, and the remainder of the annual holiday with pay no later than eighteen months, from the end of the year in respect of which the holiday entitlement has arisen.</p> | <p>Given that the worker is in a subordination position towards the employer, contractual free will characteristic to the civil law is very likely to translate “at the employer’s discretion ” in practice. Non-negotiable labour rights become negotiable between two unequal parties and thus the labour law protection granted to the weakest party becomes an empty shell.</p> <p>4. The Paragraph 1 of the Article 49⁵ (4) notes that under the contractual regime, the annual leave at the request of the employee can be divided into portions of any duration. This provision contradicts the Article 8 of C132, according to which part</p> |
|--|--|--|---|

| | | | |
|--|---|--|---|
| | <p>accordance with the procedures and conditions as specified in Articles 79, 84, 115 hereof, taking into account the following:</p> <ol style="list-style-type: none">1) at the request of the employee, an annual leave can be divided into portions of any duration or granted to the employee for its full duration, in view with the standards of annual leave period as established hereby;2) due to family circumstances and for other reasons, the employee can be granted an unpaid leave for a period of more than 15 calendar days per year, if such possibility is stipulated in the employment contract;3) wages for the entire period of the annual leave shall be paid to employees no later than on the first day of the leave. | | <p>of the annual leave must consist of at least two uninterrupted working weeks.</p> <p>5. The Paragraph 2 of the Article 49⁵(4) notes that due to family circumstances and for other reasons, the employee can be granted an unpaid leave for a period of more than 15 calendar days per year.</p> <p>The developers do not take into account the provisions of the Article 84 of LC and the Articles 25 and 26 of the Law on Vacations, which are directly related to the regulation of unpaid leave, and to which should also be proposed appropriate amendments.</p> <p>According to the Article 84 (2) of LC and the Article</p> |
|--|---|--|---|

| | | | | |
|--|--|---|--|--|
| | | <p>5. Provisions of this Chapter shall not apply to employment relationships that arise between employees and employers that are legal entities under public law.</p> <p>6. The employment relationships between employees and employers under the terms of the contractual regime that are not regulated with provisions of this Chapter and/or terms and conditions of the employment contract shall be governed by the relevant provisions of this Code.</p> | | <p>26 (1) of the Law on Vacations, due to family circumstances and for other reasons, an employee may be granted unpaid leave for a period stipulated in the agreement between the employee and the employer, but not more than 15 calendar days per year.</p> <p>Legislative restrictions on the granting of unpaid leave with the consent of the parties should be seen as a guarantee against possible abuse. After all, how long the employee will be on this type of vacation, so long he will not receive wages.</p> <p>In turn, the Article 25 of the Law on Vacations establishes the exceptions – strict cases when unpaid leave is</p> |
|--|--|---|--|--|

| | | | | |
|--|--|--|--|--|
| | | | | <p>granted to an employee on a mandatory basis, even lasting more than 15 calendar days per year. For example, this leave can be granted to persons getting married (up to 10 calendar days) or mothers if the child needs home care (lasting no more than until the child reaches the age of six).</p> <p>6. The Paragraph 3 of the Article 49⁵ (4) notes that wages for the entire period of the annual leave shall be paid to employees no later than on the first day of the leave. In turn, in accordance with the provisions of the Article 7 of C132 wages for the time of leave shall be paid to the person concerned in advance of the holiday.</p> |
|--|--|--|--|--|

| | | | | |
|----|--|--|---|---|
| | | | | <p>7. Under the Article 49⁵ (6) “employment relationships between employees and employers under the terms of the contractual regime that are not regulated with provisions of this Chapter and/or terms and conditions of the employment contract shall be governed by the relevant provisions of this Code”. But the developers do not specify which Chapter of LC is meant. In addition, it should be emphasized once again that the legal regulation of employment relationships is carried out not only by LC but also by other acts of legislation.</p> |
| 7. | <p>There is no Article 49⁶ in the current LC.</p> | <p>Article 49⁶ The employment contract in the situation of the contractual regime of</p> | <p>Ukraine has ratified: Forty-Hour Week Convention, 1935 (No. 47);</p> | <p>1. The draft Article 49⁶(2) does not correspond to C158 and R166, due to the</p> |

| | | | | |
|--|--|--|---|--|
| | | <p>regulation of employment relationships</p> <p>1. Employment relationships between employees and employers, owners of enterprises covered by the contractual mode shall be regulated with an employment contract.</p> <p>2. With the mutual consent of the employee and the employer, an indefinite term or fixed-term employment contract may be executed. A fixed-term employment contract shall be executed for a specified period or for the duration of a certain job. A fixed-term contract, with the consent of the parties, may provide for the possibility of its extension for a new term.</p> <p>The terms and conditions and the procedure for extension of a fixed-term</p> | <p>Holidays with Pay Convention (Revised), 1970 (No. 132); Termination of Employment Convention, 1982 (No. 158).</p> <p>1. Under the Article 2 (3) of C158, adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention. In accordance with the Paragraph 3 (2) of Termination of Employment Recommendation, 1982 (No. 166), to this end, for example, provision may be made for one or more of the following: (a) limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the</p> | <p>fact that it deprives employees of the protection against abuse of fixed-term employment contracts.</p> <p>2. The commentary to the clause 9 of the Article 49⁶ (3) is reflected in the commentary to the Article 49⁸.</p> <p>3. The clause 14 of the Article 49⁶ (3) indicates that one of the essential provisions of an employment contract is the provision of occurrence of and procedures for resolving conflicts of interest.</p> <p>Such a category as “conflicts of interest” is not disclosed in the provisions of LC, and therefore may lead to further complications in law enforcement.</p> |
|--|--|--|---|--|

| | | | |
|--|--|--|---|
| | <p>employment contract shall be determined by the employee and the employer in view of the specifics defined by this Code.</p> <p>If a fixed-term employment contract does not specify the terms and conditions of its extension, such employment contract shall be considered terminated within the period agreed and indicated by the parties in the contract.</p> <p>3. The essential provisions of an employment contract shall be the following:</p> <p>1) place of work (indicating the structural unit of the employer being a legal entity) or another place of work, if performance of work tasks or functional duties of the employee is performed on the terms of remote work;</p> <p>2) the date of the employment contract's entry</p> | <p>interests of the worker, the employment relationship cannot be of indeterminate duration; (b) deeming contracts for a specified period of time, other than in the cases referred to in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration; (c) deeming contracts for a specified period of time, when renewed on one or more occasions, other than in the cases mentioned in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration. Under the Paragraph 2 (1) of R166, the Recommendation applies to all branches of economic activity and to all employed persons.</p> <p>2. In accordance with the Article 1 of C47, each Member which ratifies this Convention declares its approval of the</p> | <p>4. The Part 4 of the Article 49⁶ indicates that an employment contract, as agreed between the employee and the employer, may establish grounds and procedures for involving the employee in overtime work.</p> <p>In accordance with the Article 50 (1) of the current edition of LC, the normal working hours of employees may not exceed 40 hours per week. The Article 62 of LC emphasizes that overtime work is generally not allowed. The employer may use overtime work only in exceptional cases specified by law. Under the Article 65 of LC, overtime work should not exceed four hours for each employee for two</p> |
|--|--|--|---|

| | | | |
|--|--|---|--|
| | <p>into force, and in the case of executing an employment contract for a specified period - the term of the contract and the terms and conditions for its extension;</p> <p>3) functional duties of the employee;</p> <p>4) terms of remuneration (including the tariff rate or wage amount of the employee, surcharges, bonuses, allowances, incentive and compensation payments);</p> <p>5) duration of working hours, night work, procedures and amounts of pay for overtime work, work on holidays, non-business days and weekends, in view of the specifics as stipulated hereby;</p> <p>6) the mode of work and rest, the procedures for granting leaves in</p> | <p>principle of a forty-hour week applied in such a manner that the standard of living is not reduced in consequence.</p> <p>The Paragraph 17 of Reduction of Hours of Work Recommendation, 1962 (No. 116) provides that except for cases of force majeure limits to the total number of hours of overtime which can be worked during a specified period should be determined by the competent authority or body in each country.</p> <p>In Direct Request (CEACR), adopted in 2013, the Committee recalls paragraph 79 of its General Survey of 1984 on working time in which it pointed out that undue facilitation of overtime, for example, by not limiting the circumstances in which it may be permitted or by allowing relatively high maximums could, in the most egregious</p> | <p>consecutive days and 120 hours per year.</p> <p>The proposed wording of the Part 4 of the Article 49⁶ does not actually comply with R116, because this provision does not provide for the permissible amount of overtime hours. Also, in this case, attention should be paid to the Article 49⁵(3), in which the developers note the need to comply with the standards of the total length of the working week, duration of weekly rest, and other rights and guarantees as stipulated in LC. But, at the same time, the correlation between the Articles 49⁵(3) and 49⁶(4) in the draft Law cannot be traced.</p> <p>5. The Part 8 of the Article 49⁶ indicates that</p> |
|--|--|---|--|

| | | | | |
|--|--|--|--|--|
| | | <p>compliance with the legislation, duration of the paid leave, the procedures and amount of payment for it;</p> <p>7) guarantees and compensations for work with harmful and/or hazardous working conditions, if the employee is hired under the respective conditions, indicating characteristics of working conditions at the workplace;</p> <p>8) working conditions;</p> <p>9) notification terms for termination of the employment contract, the amount of compensation payments in case of early termination of the employment contract at the initiative of the employer in the cases stipulated in Part Two of Article 49⁸ hereof;</p> | <p>cases, tend to defeat the Recommendation's objective of a social standard of a 40-hour week and make irrelevant the provisions as to normal working hours.</p> <p>3. In accordance with the Article 9 (2) of C132, any part of the annual holiday may be postponed, with the consent of the employed person concerned.</p> | <p>the annual leave can be transferred at the employer's initiative without the employee's consent, if the possibility and grounds for such transfer are determined in the employment contract. In turn, the Article 9 (2) of C132 indicates the need to obtain the consent of the employee to postpone any part of the annual holiday.</p> <p>The draft of this provision also indicates that duration of the annual leave shall be determined by the employment contract in compliance with the requirements set out by LC. In turn, the developers in the draft Article do not take into account that in addition</p> |
|--|--|--|--|--|

| | | | |
|--|---|--|--|
| | <p>10) the procedure and format of information exchange between the employer and the employee on the terms of employment relationships;</p> <p>11) the procedure and terms of notification of the employee of a change in the essential working conditions (in case of their worsening). The employee must be notified of a change in essential working conditions no later than within the period specified in Article 32 of this Code;</p> <p>12) terms and conditions and the procedures for amending the employment contract, as well as notifying of changes in employment relationships;</p> <p>13) terms and conditions for non-disclosure of trade secrets, ensuring protection</p> | | <p>to LC, the details of the duration of annual leave is disclosed in Chapter II of the Law on Vacations.</p> <p>6. The Part 9 of the Article 49⁶ indicates that in case of worsening of essential working conditions, the employer shall be obliged to notify the employee in the manner specified in the employment contract, not later than two months in advance.</p> <p>In accordance with the Article 32 (3) of the current edition of LC, due to with changes in the organization of production and labour, it is allowed to change essential working conditions while continuing to work in the same specialty, qualification or position.</p> |
|--|---|--|--|

| | | | | |
|--|--|--|--|---|
| | | <p>of intellectual property and use of copyright objects (if they are used or created in the course of the work) and liability for their violation;</p> <p>14) conditions of occurrence of and procedures for resolving conflicts of interest.</p> <p>4. An employment contract, as agreed between the employee and the employer, may establish grounds and procedures for involving the employee in overtime and night work, work on holidays, weekends, and non-business days, indicating the amount of payment for such work. In this case, the amount of payment for such work shall not be less than the amount guaranteed by law, as stipulated in Articles 72, 106, 107, 108 hereof.</p> | | <p>The employee must be notified of changes in essential working conditions (systems and amounts of remuneration, benefits, work schedule, establishment or cancellation of part-time work, combination of professions, changes in grades and titles of positions, etc.) no later than two months in advance.</p> <p>According to the existing judicial practice, a change in essential working conditions can be recognized as legal only if the employer has changes in the organization of production and labour.</p> <p>Thus, the proposed Part 9 of the Article 49⁶ of will significantly worsen the position of employees,</p> |
|--|--|--|--|---|

| | | | |
|--|--|--|---|
| | <p>Involvement of an employee in overtime work on the terms and in the manner prescribed by the employment contract shall be performed without a permission of the elected body of the primary trade union organization (trade union representative) at the enterprise.</p> <p>5. The start and end time of a break may be stipulated in the employment contract or separately set by the employer.</p> <p>6. Duration of night work, the amount of payment for it shall be determined in the employment contract by agreement between the employee and the employer. The amount of payment for night work shall be determined in compliance with Article 108 of this Code.</p> | | <p>working under a contractual regime, in comparison with other categories of employees. After all, the draft of this provision allows the employer to unilaterally, without restrictions, change the essential working conditions of the employee.</p> |
|--|--|--|---|

| | | | |
|--|--|--|--|
| | <p>7. The start and end time of daily work (shift), the duration of daily work (shift) shall be stipulated in the employment contract or separately set by the employer.</p> <p>8. The specific period when annual leaves are granted shall be agreed between the employee and the employer. The succession of granting leaves may be determined based on a schedule approved by the employer upon the agreement with the employees.</p> <p>The need and procedures for notifying the employee of the start date of their leave shall be stipulated in the employment contract.</p> <p>The annual leave can be transferred to another period at the employer's initiative with the written</p> | | |
|--|--|--|--|

| | | | | |
|--|--|---|--|--|
| | | <p>consent of the employee, without coordination with the elected body of the primary trade union organization (trade union representative) at the enterprise, provided that a part of the leave of at least 24 calendar days will be used in the current working year. The annual leave can be transferred at the employer's initiative without the employee's consent, if the possibility and grounds for such transfer are determined in the employment contract.</p> <p>Duration of the annual leave shall be determined by the employment contract in compliance with the requirements set out by the Code.</p> <p>9. In case of worsening of essential working conditions, the employer shall be obliged</p> | | |
|--|--|---|--|--|

| | | | | |
|--|--|--|--|--|
| | | <p>to notify the employee in the manner specified in the employment contract, not later than two months in advance. The need to notify the employee of a change in essential working conditions not resulting in their worsening shall be determined by agreement of the parties at execution of the employment contract.</p> <p>10. The employment contract shall contain information on working conditions, presence/absence of hazardous or harmful production factors at the employee's workplace, possible consequences of their impact on health, and shall determine the employee's statutory rights to benefits and compensation for work in</p> | | |
|--|--|--|--|--|

| | | | | |
|----|--|--|---|---|
| | | <p>harmful conditions. The employee shall be deemed informed about working conditions and presence/absence of hazardous factors at their workplace at the moment of their signing the employment contract.</p> <p>11. The employment contract shall be executed in writing in the state language in two copies (one copy for each party) or in the electronic form using the electronic signature. By agreement of the parties, the employment contract may be translated into another language.</p> | | |
| 8. | <p><i>There is no Article 49⁷ in the current legislation.</i></p> | <p>Article 49⁷. Terms of payment of wages in the conditions of the contractual regime of regulation of employment relationships</p> | <p>Ukraine has ratified: Protection of Wages Convention, 1949 (No. 95).</p> <p>1. In accordance with the Article 12 (1) of C95, wages shall be paid regularly. Except</p> | <p>1. The first part of draft Article 49⁷ does not comply with ILO standards and national legislation.</p> |

| | | | | |
|--|--|--|---|---|
| | | <p>1. Under the conditions of the contractual regime of regulation of employment relationships, wages are paid to the employee within the terms specified in the employment contract, but at least once a month.</p> <p>2. By mutual agreement of the parties, an employment contract may determine the rate of the employee's wages in foreign currency, indicating the equivalent of its amount in the monetary unit of Ukraine.</p> | <p>where other appropriate arrangements exist which ensure the payment of wages at regular intervals, the intervals for the payment of wages shall be prescribed by national laws or regulations or fixed by collective agreement or arbitration award</p> <p>In <u>Observation (CEACR), adopted 2020</u>, the Committee recalls that the application of Article 12 of C95 in practice comprises three essential elements: (1) efficient control and supervision; (2) appropriate sanctions; and (3) the means to redress the injury caused, including fair compensation for the losses incurred by the delayed payment. The Committee requests the Government of Ukraine to take the necessary measures to ensure efficient control and supervision of the regular payment of wages in</p> | <p>The Paragraph 4 of R85 provides for the payment of wages at least once a month only for employed persons whose remuneration is fixed on a monthly or annual basis. In all other cases, the wages are paid at least twice a month.</p> <p>In accordance with the current edition of the Article 97 (1) of LC remuneration of employees is carried out by hourly, piece-work or other remuneration systems. Under the Article 115 (1) of LC and the Article 24 (1) of the Law on Wages, wages are paid to employees on a regular basis on working days within the time frame established by the collective agreement or the employer's normative</p> |
|--|--|--|---|---|

| | | | | |
|--|--|--|---|---|
| | | | <p>the country and provide information on any progress made in the adoption of measures to ensure that sanctions in case of non-payment or irregular payment of wages are appropriate. Also, the Committee requests the Government to provide its comments concerning means to redress the injury, incurred by the delayed payment.</p> <p>Under the Paragraphs 4 and 5 (1) of the Protection of Wages Recommendation, 1949 (No. 85), the maximum intervals for the payment of wages should ensure that wages are paid: (a) not less often than twice a month at intervals not exceeding sixteen days in the case of workers whose wages are calculated by the hour, day or week; and (b) not less often than once a month in the case of employed persons whose remuneration is fixed on a</p> | <p>act agreed with the trade union or other body authorized for representation by employees (and, in the absence of such bodies, by representatives elected and authorized by employees), but at least twice a month after a period of time not exceeding sixteen calendar days, and not later than seven days after the end of the period for which the payment is made.</p> <p>The provision of the draft Article 49⁷ (1) worsens the position of the employees in comparison with the current legislation that provides for the payment of wages twice a month.</p> <p>It should also be noted that the draft Law</p> |
|--|--|--|---|---|

| | | | | |
|--|--|--|--|---|
| | | | <p>monthly or annual basis. In the case of workers whose wages are calculated on a piece-work or output basis, the maximum intervals for the payment of wages should, so far as possible, be so fixed as to ensure that wages are paid not less often than twice a month at intervals not exceeding sixteen days.</p> <p>2. In accordance with the Article 3 (1) of C95, wages payable in money shall be paid only in legal tender, and payment in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, shall be prohibited.</p> | <p>introduces changes only to LC and ignores the provisions of a special law – the Law on Wages, which creates differences in law enforcement.</p> <p>2. The second part of the draft Article 49⁷ complies with ILO standards and national legislation.</p> <p>In accordance with the Article 23(1) of the Law on Wages, wages to employees on the territory of Ukraine are paid in currency unit that have legal circulation on the territory of Ukraine.</p> <p>In Ukraine, it is not prohibited to determine in an employment contract wages in foreign currency, which must be converted into national currency (hryvnia), at the exchange rate of the</p> |
|--|--|--|--|---|

| | | | | |
|--|--|--|--|---|
| | | | | <p>National Bank of Ukraine that is valid at the time of payment of wages. This conclusion is confirmed by judicial practice, e.g. Resolution of the Supreme Court No. 761/21776/16-ц, of 26.06.2019.</p> <p>3. The general shortcomings of the legal structure of draft Article 49⁷ (2) include the fact that it does not indicate that the direct payment of wages must necessarily be carried out in the national currency.</p> <p>Also, the second part of the Article indicates the possibility of determining in an employment contract wages in foreign currency only for a certain category of employees (those to whom Chapter III-B of LC applies),</p> |
|--|--|--|--|---|

| | | | | |
|----|---|---|---|--|
| | | | | although this is possible for all employees of private sector. |
| 9. | <i>There is no Article 49⁸ in the current legislation.</i> | <p>Article 49⁸. Termination of the employment contract in the situation of the contractual regime of regulation of employment relationships</p> <p>1. Termination of the employment contract, cancellation of the employment contract at the initiative of the employee or employer shall be performed on the grounds and in the manner prescribed hereby, taking into account the features specified in this Chapter.</p> <p>2. The employer shall have the right to terminate an employment contract with an employee at own initiative, unless otherwise</p> | <p>Ukraine has ratified: Termination of Employment Convention, 1982 (No. 158); Workers' Representatives Convention, 1971 (No. 135).</p> <p>1. In accordance with the Article 4 of C158, the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.</p> <p>Provisions of the Articles 5 and 6 of C158 refer to invalid reasons for termination: union membership, absence from work during maternity leave, temporary absence from work because of illness or injury, etc.</p> | <p>1. The provisions of the draft Article 49⁸ of LC do not comply with C158 and R166 because they deprive employees working under a contractual regime of regulation of employment relationships of the guarantees provided for this acts.</p> <p>It should be noted that the exclusion from the scope of all or some of the provisions of C158 is possible in the presence of: 1) valid reasons for exclusion; 2) consultations with the organizations of workers and employers; 3) providing the excluded categories of workers</p> |

| | | | | |
|--|--|--|---|---|
| | | <p>specified in the employment contract.</p> <p>3. Unilateral termination of an employment contract at the initiative of the employer shall be carried out with provision of compensation to the employee in the amount and in the manner prescribed by the employment contract, but no less than the amount of three minimum wages.</p> <p>4. A employment contract shall be terminated at the initiative of the employer by signing an additional agreement to terminate the employment contract or unilaterally by sending an official notice of termination to the employee in the manner specified in the employment contract or by registered mail with a description of the content.</p> | <p>The procedures applied before and during the termination of employment at the initiative of the employer are detailed in the Termination of Employment Recommendation, 1982 (No. 166). For instance, under the Paragraph 7 of Recommendation, the employment of a worker should not be terminated for misconduct of a kind that under national law or practice would justify termination only if repeated on one or more occasions, unless the employer has given the worker appropriate written warning.</p> <p>Paragraph 8 of the Recommendation states that the employment of a worker should not be terminated for unsatisfactory performance, unless the employer has given the worker appropriate instructions and written</p> | <p>with protection at least equivalent to that offered by the C158.</p> <p>2. The provisions of the Article 49⁸ also deprives workers' representatives, work under the in the contractual regime of regulation of employment relationships, of the appropriate protections against dismissal (based on their status or activities as a workers' representative or on union membership or participation in union activities) provided for by C135.</p> <p>3. It should also be noted the inconsistency of the legal technique of certain provisions of the Article 49⁸.</p> <p>Thus, LC enshrines all existing grounds for</p> |
|--|--|--|---|---|

| | | | | |
|--|--|---|--|--|
| | | <p>If the employee is notified of termination of the employment contract by mail, the employment contract shall be deemed terminated starting on the next working day after the date of service to the employee of the employer's official notice of termination of the employment contract or five calendar days after the date of receipt of the employer's mail at post office by the employee's address.</p> <p>5. A consent of the elected body of the primary trade union organization to termination of an employment contract at the initiative of the employer with an employee who is a member of the trade union functioning at the enterprise shall not be required if such a</p> | <p>warning and the worker continues to perform his duties unsatisfactorily after a reasonable period of time for improvement has elapsed.</p> <p>C158 and R166 apply to all branches of economic activity and to all employed persons.</p> <p>2. The Parts 2, 4 and 5 of the Article 2 of C158 indicate cases of exclusion the certain categories of employed persons from all or some of the provisions of this Convention.</p> <p>The Direct Request (CEACR), adopted 1997, states that there are special provisions in national law concerning the work of members of cooperatives, workers in collective agricultural enterprises, private or state farms, and enterprises with foreign capital. In this case, the Committee requests indicate whether spreads these provisions ensure application</p> | <p>termination of the employment contract in the Article 36. In turn, the developers have not proposed amendments to this Article, in terms of reflecting in it the specifics of termination of an employment contract in situation of the contractual regime of regulation of employment relationships.</p> <p>In the draft Article 49⁸ (4) of LC the developers note that <i>"employment contract shall be terminated at the initiative of the employer by signing an additional agreement to terminate the employment contract or unilaterally by sending an official notice of termination to the employee"</i>. But in this case, there are actually</p> |
|--|--|---|--|--|

| | | | | |
|--|--|---|---|--|
| | | <p>condition is stipulated in the employment contract.</p> <p>6. The employee and the employer by their mutual consent may also stipulate in the employment contract other grounds for termination or cancellation of the employment contract, other than those established hereby.</p> | <p>of the C158 to these categories of workers or if they are excluded from its scope.</p> <p>If some of these categories are excluded, the Committee requests indicate: a) reasons for exclusion; b) whether the organizations of workers and employers concerned have been consulted; c) whether these categories of workers are provided with protection at least equivalent to that offered by the C158.</p> <p>3. Under the Article 1 of C135 workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal.</p> <p>Also, the Paragraph 7 of R166 states that the employer may consult workers' representatives before a final decision is taken on individual cases of termination of employment.</p> | <p>two independent grounds for terminating the employment contract: the initiative of the employer and the agreement of the parties. After all, the signing of an additional agreement is a mutual decision of the parties to an employment contract, and not a unilateral action of employer.</p> <p>By the way, the concept of signing an additional agreement to terminate the employment contract is not provided by other provisions of LC, which are based on the issuance of an order by the employer (see, for example, the Article 47 of the Code).</p> |
|--|--|---|---|--|

| | | | | |
|-----|---|---|--|--|
| 10. | <p>Article 115. Terms and conditions of payment of wages</p> <p>Wages shall be paid to employees on a regular basis on working days within the time limits set by the collective agreement or a regulatory act of the employer agreed with the elected body of the primary trade union organization or another body authorized to represent the employees (and in the absence of such bodies – representatives elected and authorized by employees), but not less than twice a month for a period not exceeding sixteen calendar days, and not later than seven days after the end of the period for which the payment is made.</p> <p>If the day of payment of wages coincides with a day off, holiday, or non-business day,</p> | <p>Article 115. Terms and conditions of payment of wages</p> <p>Wages shall be paid to employees on a regular basis on working days within the time limits set by the collective agreement or a regulatory act of the employer agreed with the elected body of the primary trade union organization or another body authorized to represent the employees (and in the absence of such bodies – representatives elected and authorized by employees), but not less than twice a month for a period not exceeding sixteen calendar days, and not later than seven days after the end of the period for which the payment is made.</p> <p>If the day of payment of wages coincides with a day off, holiday, or non-business day,</p> | <p>Information on ratified conventions is contained in the commentary to the Articles 49⁶ and 49⁷.</p> | <p>1. The commentary to this Article is reflected in the commentary to the Articles 49⁶ and 49⁷.</p> <p>2. In the draft Law, there is an inconsistency between the Articles 49⁵ (4) and 115 (4).</p> <p>So, according to the Article 49⁵ (4), <i>“wages for the entire period of the annual leave shall be paid to employees <u>no later than on the first day of the leave</u>”</i>, in turn, in the Article 115 (4) it is noted that <i>“wages for the entire period of the annual leave shall be paid to employees <u>no later than one day before the start of the leave</u>”</i>.</p> |
|-----|---|---|--|--|

| | | | |
|--|---|--|--|
| <p>wages shall be paid on the day preceding it.</p> <p>The amount of wages for the first half of the month shall be determined in the collective agreement or a regulatory act of the employer agreed with the elected body of the primary trade union organization or another body authorized to represent the employees (and in the absence of such bodies - representatives elected and authorized by the employees), but no less than payment for the time actually worked based on the employee's tariff rate (salary).</p> | <p>wages shall be paid on the day preceding it.</p> <p>The amount of wages for the first half of the month shall be determined in the collective agreement or a regulatory act of the employer agreed with the elected body of the primary trade union organization or another body authorized to represent the employees (and in the absence of such bodies - representatives elected and authorized by the employees), but no less than payment for the time actually worked based on the employee's tariff rate (salary).</p> <p>Under the contractual regime of regulation of employment relationships, the wage amount shall be determined in the employment contract in view of the statutory minimum wage, and wages shall be</p> | | |
|--|---|--|--|

| | | | | |
|--|---|---|---|---|
| | <p>Wages for the entire period of the annual leave shall be paid to employees no later than three days before the start of the leave.</p> | <p>paid to employees within the time limits set by this Article and specified in the employment contract, but at least once a month.</p> <p>Wages for the entire period of the annual leave shall be paid to employees no later than one day before the start of the leave.</p> | | |
| <p><u>Law on Occupational Safety and Health, 1992</u></p> | | | | |
| 11. | <p>Chapter II. Guarantees of the rights to occupational safety and health</p> <p>Article 5. Rights to occupational safety and health when executing an employment contract</p> <p>Terms and provisions of the employment contract shall not contain provisions that contradict laws and other occupational safety and health regulations.</p> | <p>Chapter II. Guarantees of the rights to occupational safety and health</p> <p>Article 5. Rights to occupational safety and health when executing an employment contract</p> <p>Terms and provisions of the employment contract shall not contain provisions that contradict laws and other occupational safety and health regulations.</p> | <p>There are no ratified conventions on this issue.</p> | <p>The proposed amendments to the Article 5 of the Law on Occupational Safety and Health do not require comments regarding their compliance with the provisions of ILO conventions and recommendations.</p> |

| | | | |
|---|--|--|--|
| <p>When executing employment contracts (except for an employment contract for remote work, homework), the employer shall inform the employee against signed receipt about working conditions and presence at their workplace of hazardous or harmful production factors that have not yet been eliminated, their possible health impacts, and the employee's rights to benefits and compensation for work in such conditions in compliance with the law and the collective agreement.</p> <p>An employee shall not be offered a job that is medically</p> | <p>When executing employment contracts (except for a employment contract for remote work, homework), the employer shall inform the employee against signed receipt about working conditions and presence at their workplace of hazardous or harmful production factors that have not yet been eliminated, their possible health impacts, and the employee's rights to benefits and compensation for work in such conditions in compliance with the law and the collective agreement and in view of specifics of the contractual regime of regulation of employment relationships, as defined in Chapter III-B of the Labour Code of Ukraine.</p> <p>An employee shall not be offered a job that is medically contraindicated due to their</p> | | |
|---|--|--|--|

| | | | | |
|---|--|---|---|--|
| | <p>contraindicated due to their health status. Individuals shall be allowed to perform high-risk work and work that requires professional selection provided a psychophysiological examination opinion is available.</p> <p>According to the law, all employees shall be subject to compulsory state social insurance against accidents at work and occupational diseases that cause disability.</p> | <p>health status. Individuals shall be allowed to perform high-risk work and work that requires professional selection provided a psychophysiological examination opinion is available.</p> <p>According to the law, all employees shall be subject to compulsory state social insurance against accidents at work and occupational diseases that cause disability.</p> | | |
| <p><u>Law on Vacations, 1996</u></p> | | | | |
| 12. | <p>Article 10. The procedures for granting annual leaves</p> <p>...</p> <p>The owner or their authorized body shall be obliged to keep records of leaves granted to employees.</p> <p>...</p> | <p>Article 10. The procedures for granting annual leaves</p> <p>...</p> <p>The owner or their authorized body shall be obliged to keep records of leaves granted to employees.</p> <p>Under the terms of the contractual regime of regulation of employment</p> | <p>Information on ratified conventions is contained in the commentary to Articles 49⁵, 49⁶ and 115.</p> | <p>The commentary to this Article is reflected in the commentary to the Articles 49⁵, 49⁶ and 115.</p> |

| | | | | |
|---|--|---|--|---|
| | | relationships, leaves shall be granted in the manner prescribed hereby, in view of the specifics as stipulated in Chapter III-B of the Labour Code of Ukraine. ... | | |
| <u>Law on Trade Unions, their Rights and Guarantees for Activities, 1999</u> | | | | |
| 13. | <p>Article 38. The mandate of the elected body of a primary trade union organization at an enterprise, institution, organization</p> <p>The elected body of the primary trade union organization at an enterprise, institution, or organization shall:</p> <p style="text-align: center;">...</p> <p>4) jointly with the employer decide on working hours and rest time, agree on schedules of shifts and leaves, introduction of summary accounting of working hours,</p> | <p>Article 38. The mandate of the elected body of a primary trade union organization at an enterprise, institution, organization</p> <p>The elected body of the primary trade union organization at an enterprise, institution, or organization shall:</p> <p style="text-align: center;">...</p> <p>4) jointly with the employer decide on working hours and rest time, agree on schedules of shifts and leaves, introduction of summary accounting of working hours, give permission for overtime</p> | Information on ratified conventions is contained in the commentary to Article 498. | <p>1. The commentary to this Article is reflected in the commentary to the Article 498.</p> <p>2. Attention should be paid to the incorrectness of the proposed amendments to the clause 4 of the Article 38 (1) of the Law, because the draft Article 498 of LC deals exclusively with the termination of an employment contract, and not with questions of working hours, rest time, schedules of shifts and leaves, etc.</p> |

| | | | | |
|--|--|---|--|--|
| | <p>give permission for overtime work, work on days off, etc.;</p> <p>10) give consent or refuse to give consent to termination of an employment contract at the initiative of the employer with an employee who is a member of the trade union operating at the enterprise, institution, organization, in cases stipulated by the law;</p> | <p>work, work on days off, etc., in view of specifics of application in this part of the contractual regime of regulation of employment relationships in compliance with Article 49⁸ of the Labour Code of Ukraine;</p> <p>...</p> <p>10) give consent or refuse to give consent to termination of an employment contract at the initiative of the employer with an employee who is a member of the trade union operating at the enterprise, institution, organization, in cases stipulated by the law and in view of specifics of application in this part of the contractual regime of regulation of employment relationships, in compliance with Article 49⁸ of the Labour Code of Ukraine;</p> <p>...</p> | | <p>3. The last wording (in bold) basically nullifies the competences of TU listed above.</p> |
|--|--|---|--|--|

Aspects of European comparative law

A recent ILO study² has identified as a general trend in labour law reforms in the last 15 years the extension of the labour law protection to micro, small and medium sized enterprises (MSMEs). In Europe, such reforms took place in Germany (2015, 2017) and Spain (2019). Medium-sized enterprises are rarely excluded from the application of labour laws. Most selective exclusions or special regimes apply to micro (employing fewer than 10 workers) and small enterprises (employing fewer than 50 workers). The most common exclusion in the countries studied concerns the requirement to set up an occupational safety and health (OSH) committee or to appoint OSH delegates.

Special exclusion from the general regime of protection against unfair dismissal: the case of Germany

Germany excludes enterprises with fewer than ten employees from protection against individual dismissal. The German system provides relatively low levels of employment protection for workers in small enterprises. However, low protection is compensated for through unemployment insurance and strong labour market and social policies (Herr and Nettekoven 2018). If dismissal occurs, a certain protective cushion can be provided by unemployment insurance, and so it is important that workers be eligible regardless of the size of the enterprise. The legal procedure for collective dismissals applies to enterprises with more than 20 employees.

Obligation of information and consultation: In the European Union, Directive 2002/14/EC requires employers to inform and consult with workers on at least three important areas, regardless of the size of the enterprise: (a) company development and economic situation; (b) the development of employment; and (c) decisions leading to substantial changes in the organization of work. Sweden, Germany and Spain have different consultation mechanisms, which operate via trade unions or works councils.

In Germany, works councils are constituted in enterprises with more than five employees. In Spain, there are company committees in workplaces with more than 50 employees and staff delegates in workplaces employing fewer than 50 but more than 5 workers. In Sweden, there are several mechanisms for employee consultation and a long history of cooperation between workers and management. Since most workers are unionized, representation is mainly channelled through the unions, which must be consulted on important decisions affecting workers and the company. Moreover, each enterprise with more than 25 employees must have representatives from the union on its board.

² Vargas, A. 2020. *Applying labour law to micro, small and medium sized enterprises: A comparative study in 16 countries*, ILO Working Paper 9 (Geneva, ILO)

Regulation of non-standard forms of employment (NSFE) in Central and Eastern European countries³

Centered around the policy goals of maximizing the flexibility of labour relations and curbing informal employment and undeclared work, recent labour law reforms have placed the regulation of NSFE at their core. While the standard employment relationship (SER) has been maintained as the foundation of labour law, a range of legal solutions for regulating temporary work have been legislated or are contemplated, whether an expansion of the scope of fixed-term contracts (FTC) or the registration of casual and seasonal workers for social security purposes.

When well-regulated and properly enforced, some non-standard forms of employment can help enterprises adjust quickly to market dynamics and tackle labour shortages. On the labour supply side, they can facilitate access to the labour market by marginalized groups, such as youth, women, older workers, migrants and, in some instances, can be a “stepping stone” to better jobs. However, when misused as a means to reduce labour costs at the expense of fundamental labour rights, NSFE deprive workers of fair pay and decent working conditions; limit their access to social security; increase inequality, job and income insecurity; and create social dumping.⁴

Temporary work has been regulated primarily through the fixed-term contract (FTC). Domestic legislations in CEE countries have transposed international standards laid down in Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (hereinafter the Directive), ILO Termination of Employment Convention, 1982 (No. 158) (hereinafter the Convention), and ILO Termination of Employment Recommendation, 1982 (No. 166) (hereinafter the Recommendation).

³ ILO. 2021. *Non-standard forms of employment in selected countries in Central and Eastern Europe – A critical glance into regulation and implementation*; ILO Decent Work Technical Support Team and Country Office for Central and Eastern Europe (DWT/CO-Budapest). – Budapest: ILO, 2021

⁴ *Non-standard Employment Around the World – Understanding challenges, shaping prospects*, ILO report, 2016.

The Convention requires that adequate safeguards be provided in law and practice against using fixed-term contracts, with the only purpose of avoiding the protection against unfair dismissal. The Recommendation suggests limitations on FTC only to work which is temporary by nature.

Equal treatment of fixed-term workers, as compared to permanent workers, and prevention of the abuse of FTC are the objectives of the EU Directive. It applies to fixed-term workers, including seasonal workers, with the exception of those placed by a temporary work agency at the disposition of a user enterprise. The Directive defines the fixed-term worker as “a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event”. Thus, although it does not require explicitly the objective reason for the conclusion of an FTC, the Directive indicates the objective conditions which shall justify a fixed-term employment arrangement, namely a specific duration, task or occurrence of an event.

In order to prevent the abuse of successive FTCs, EU Directive requires the EU member states to put in place, after consultations with social partners, one or more of the following limits to the renewal of FTC: a) objective reasons that would justify the renewal of fixed-term contracts or relationships; b) maximum total duration of successive fixed-term employment contracts and relationships; c) permitted number of renewals.

Most domestic legislations define the FTC as a type of employment contract to be used only for specific, temporary tasks, for which the duration or purpose is predetermined. For instance, FTC is allowed by law to replace an employee on a leave of absence, maternity or sick leave; in the event of a temporary increase in the activity of a company; seasonal work and project-based tasks. FTC ends *ex lege* on the date set *a priori* or when the purpose for which it was concluded is fulfilled. Generally, labour law reforms in jurisdictions examined have expanded the scope and extended the duration of FTC. It is renewable at least once provided that

there is an objective reason, for a maximum duration lasting up to three successive years on average, with variations between two and five years.

Simplified forms of employment have been devised and implemented in some cases as policies to boost employment of vulnerable workers, such as youth, women, low-skilled and older workers, but they proved to fall short of meeting the minimum labour rights floor. Instead of offering these workers the chance to exit poverty, informality and precarious employment, such “cheap” employment is rather often than not a path to never-ending job insecurity.