

During the quarantine a number of new laws were adopted and amendments were made. In this letter we want to give you a brief overview of all the changes that have been implemented in the labor sphere by the Law of Ukraine No.530-IX "On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of the Coronavirus Disease (COVID-19)" (the "Law No.530-IX") and the Law of Ukraine No.540-IX "On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Extra Social and Economic Guarantees due to Spread of Coronavirus Disease (COVID-19)" (the "Law No.540-IX").

1. Changes regarding employment agreement

Under the Law No.540-IX the employment agreement on a remote work regime must be observed in a written form of the employment agreement. If the switch to the remote work regime is performed urgently and / or temporarily, such a switch may be performed by issuing a respective order in the company. The "new" employment agreement must be always observed in a written form of the employment agreement.

Also the employment agreement shall be deprived of such a feature as employee's compliance with the internal labor regulations. Obviously that within remote work regime the employee may not comply with all rules implemented in the company. At the same time, it would be more rational to point out that exactly employees, who work remotely, are freed from compliance with internal labor regulations.

The exclusion of this feature will create essential risks with regard to disputes arising between employers and controlling authorities (the State Labor Service of Ukraine, the State Fiscal Service of Ukraine), a matter of which is re-qualification of civil-law relations into labor. Compliance with the internal labor regulations has always been a determinative feature of labor relations. Absence of this feature in the Labor Code may hand a blank check to controlling authorities and result in increasing of unlawful penalties and additional accruals imposed for "hidden labor relations".

2. Flexible working hours and remote work regime

The Law No.540-IX has implemented flexible working hours and remote work regime that may be introduced when hiring or afterwards, and may last temporarily or for an indefinite term.

At the same time, by the employer's decision the company's standard work regime may be applied to the employees working under flexible working hours. This option may be applied as a temporary measure (for up to one month during the calendar year) and only in case of industrial and technical need and / or for performing urgent or contingent tasks. Given changes shall not be considered as change of essential working conditions or changes in production and labor organization.

Besides, the amended article stipulates certain exceptions when flexible working hours shall not be applied. They are as follows:

- in constantly operating enterprises, institutions, organizations, as well as in case of multiple shift operation of the company;
- if performance of the employee's labor duties requires presence of such an employee within working hours clearly defined by the internal labor regulations (trade, consumer services, cargo handling, transport services etc.);
- if such a regime is incompatible with the requirements for safe working conditions.

Flexible working hours regime provides compliance with established daily, weekly or other reporting period norms of a duration of working hours. Implementation of flexible working hours does not entail changes in labor rating and remuneration and does not affect the volume of employee's labor rights.

The obligation of working hours recording while working under flexible working hours shall be imposed on the employer. However, the Law No.540-IX does not contain any references to working hours recording within remote work regime.

The Law No.540-IX provides that switch to flexible working hours and remote work regime may be performed under an internal order in the company without execution of an employment agreement in writing in case of threat of epidemic and pandemic spread and (or) military, industrial, natural or other threat. However, the Law No.540-IX does not include references to any legal regulation specifying the circumstances mentioned above. Accordingly, the employer is entitled to determine at his sole discretion the existence and sufficiency of grounds for changing a work regime and specify them in the respective order.

Please note, that the issues connected to work accidents under the remote work regime are still not settled. The question is how the employer may be convinced that a work accident really occurred while performing the labor duties – when the employee works at home there is no certain knowledge on circumstances under which such an accident occurred.

One more big question is whether the employer and his officials are liable for the work accident if it is triggered by non-compliance of the employee's workplace at home with certain requirements. It's doubtful that now the employers will examine the required housing and living conditions of employees working at home. However, such examination and execution of the respective act upon results of the examination may give a helping hand to the employer while determining the employer's fault in case of the work accident.

We may conclude that the Law No.540-IX has been significantly focused on flexible working hours, while remote work regime has remained unaddressed despite its current applicability.

3. Change of working hours

The owner of the enterprise may change the working hours in particular as regards to visiting and service hours set for individuals and legal entities that shall be brought to the public's notice through websites and other means of communication. Please note, that change of the company's working hours causes change of the employees' working hours as well. Along with that, change of the employees' working hours is a change of essential working conditions of which the employee shall be informed not later than two months prior.

In this situation we advise to change the company's working hours by issuing a relevant order following prior approval of such decision by the general staff meeting or by specific employees who will be affected by the change in the working hours.

4. Shutdown

The Law No.540-IX confirmed the possibility of implementing a shutdown for the period of quarantine. For the shutdown period a payment to the employee should be at least 2/3 of the salary rate.

Therefore, any doubts on possibility of implementing a shutdown for the quarantine period were eliminated by this amendment.

5. Unpaid vacation

Another option for quarantine is to arrange an unpaid vacation. The Law No.540-IX establishes that unpaid vacation during quarantine shall not be included into the general vacation period (no more than 15 days pursuant to the Labor Code of Ukraine).

This provision may lead to coercing the employee to take an unpaid vacation without the actual consent of such employee. We remind you that an unpaid vacation may be taken only upon request of the employee.

We assume that introduction of a shutdown will be more reasonable move on behalf of the employers, while government should have introduced temporary assistance and support for business: reduction of tax rates, preferential loans, financial assistance to employers etc.

6. Bonuses

The Law No.530-IX has established and the Law No.540-IX has increased the amount of bonuses for certain categories of employees. According to current changes the amount of salary bonuses for healthcare workers shall be up to 300% of the salary and the amount of salary bonuses for social protection workers shall be up to 100% of the salary.

The procedure of implementation and execution of these provisions has not yet been decided by the Cabinet of Ministers of Ukraine.

7. Unemployment allowances

The Law No.540-IX has established the possibility of receiving unemployment allowances in the case “the employer takes measures to prevent the spread of the epidemic pursuant to the respective decision of the local state administration” including “within the period of taking measures aimed at preventing the occurrence and spread of the Coronavirus Disease (COVID-19), as provided by the quarantine being introduced by the Cabinet of Ministers of Ukraine”.

The employer is the one who may apply (but not obliged) to respective authorities for receiving the unemployment allowance for his employees. However, the unemployment allowance is only made if the following conditions are met:

- the employer is from among small and medium-sized business entities;
- there is no wage arrears or arrearage in the Unified Social Contribution;
- the employer takes measures aimed at preventing the spread of the epidemics pursuant to the respective decisions of the local or regional state administrations.

Please note, although these measures should be taken to the decisions of the state executive, but the list and types of such measures are not set out in the Law No.540-IX. This uncertainty and an ambiguous wording may be used to refuse payment for partial unemployment allowances in the future.

The amount of allowance shall be calculated per each hour by which working hours were shortened. However, this amount shall be calculated at 2/3 of the salary rate. Also, the Law No.540-IX provides that the amount of allowance shall not exceed the amount of minimum salary. Therefore, the maximum amount of partial unemployment allowance constitutes UAH 4 723 per month.

The allowance shall be paid within the term of suspension (reduction) of production but within up to the measures aimed at preventing the occurrence and spread of the Coronavirus Disease are completed. Therefore, if the company's work was suspended before the quarantine implementation or if the suspension will be extended over the quarantine period, the allowance shall not be paid within this time period.

In order to receive allowance, the employer shall apply to the territorial body of the central executive authority implementing state policy in the sphere of employment of population and labor migration at the place where the employer is registered as taxpayer of the Unified Social Contribution and shall file set of documents as provided by the law. The term of application for receiving partial unemployment allowance is limited and constitutes 30 calendar days from the date of suspension (reduction) of production.

8. Time limits for applying to the court

The time limits for applying to the court with a claim on labor matter (Article 233 of the Labor Code) renew for the quarantine period. Therefore, if during the quarantine period a labor dispute arises, the time limits for filing a lawsuit to the court shall be extended for the duration of the quarantine.

The above commentary presents the general statement for information purposes only and as such may not be practically used in specific cases without professional advice.