



# **GLOBAL EXPANSION GUIDEBOOK EMPLOYMENT**

*Ukraine*



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## INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Employment*.

### GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

### EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2024 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

To learn more about DLA Piper's global Employment practice, visit [www.dlapiper.com](http://www.dlapiper.com) or contact:

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## UKRAINE



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### LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the hryvnia (UAH). The official language is Ukrainian.

### CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot engage employees in Ukraine without a local corporate presence. Furthermore, the engagement of employees in Ukraine without a local corporate presence may give rise to a permanent establishment risk.

### PRE-HIRE CHECKS

#### Required

For non-Ukrainian citizens, employers must check for compliance with immigration requirements and obtain work permits unless either the employer or employee falls under a special category, as discussed in the “Immigration” section below.

Employees must provide a valid ID and – except for in the case of first-time employment – their labor book (if any; currently, it is an optional document) or information on labor activity from the register of insured persons of the State Register of Compulsory State Social Insurance. On a case-by-case basis, employers may request employees to provide documents confirming, for example, education (ie, specialty or qualification), health status to confirm compliance with requirements established for a specific profession, position or the work performed, as well as a relevant military registration document (where relevant).

#### Permissible

An employer cannot require candidates or employees to provide additional documents or information not specifically required by law as a condition precedent to the employment. The ability to conduct any pre-hire or post-hire checks is very limited by labor and personal data protection laws. In most cases, checks not expressly required by law are possible only with written consent.

## IMMIGRATION

Employers must generally obtain work permits to hire foreign individuals. There are exceptions for special categories of individuals who may be hired without a work permit and special categories of employers that can hire foreigners without a work permit. For example, employers do not need to obtain work permits for foreign employees with valid permanent residency permits, individuals performing teaching and scientific activity in higher educational institutions, individuals participating in the implementation of international technical assistance projects or foreigners who obtained a status of refugee according to Ukrainian law. Further, representative offices of foreign companies registered in Ukraine do not need to obtain work permits for foreign employees. An official card shall be obtained instead, which is a standard form document issued by the Ministry of Economy of Ukraine that confirms employment of a foreigner with a duly registered representative office in Ukraine.

In addition to a work permit, a foreign employee should obtain a temporary residency permit to stay in Ukraine on a long-term basis. This requirement falls on the individual and not the employer, though an employer may be required to provide supporting documents for the individual to obtain a temporary residency permit.

## HIRING OPTIONS

### Employee

Employment can be for part-time or full-time employment and for different durations. Employment may be:

- Indefinite (most commonly used)
- Fixed-term (restricted to specific cases – for example, when an employee is hired to perform the duties of a temporarily absent employee or is hired to a specific position, such as a state official or judge), or when an employee insists on the fixed-term employment agreement due to personal reasons)
- Until completion of an agreed-upon project, when it is impossible to determine the project's duration.

### Independent contractor

The use of independent contractors is permitted, but contractors may be reclassified as employees by the relevant authorities if misclassified. Penalties may be imposed in case of reclassification.

### Agency worker

Engaging agency workers is common for employers that need temporary employees from time to time or that cannot hire the employees directly due to global headcount reasons. A Ukrainian employer may engage agency workers only if:

- such engagement is directly allowed by the agency's collective agreement and is based on the consent of the relevant trade union
- the employer has not had a staff reduction within the year prior to commencement of such engagement
- the employer complies with the statutory ratio of employees of the main professions who are engaged in the technological processes of the main production

- the engaged agency workers will not perform the work of employees of the main professions of the technological process of the main production
- the agency workers will not work in a hazardous, physically demanding or dangerous work environment

Due to legal uncertainty in the regulation of agency workers, agency workers are often engaged under general services agreements.

## EMPLOYMENT CONTRACTS & POLICIES

### Employment contracts

An employment agreement must be made in writing and specify the employee's name and the terms and conditions of employment, including, for example, the position, duties, employment commencement date, place of work, working time, probationary period and wages.

There are special forms of employment agreements that may be used depending on the circumstances, including an employment agreement for work from home (rarely used), an employment agreement for remote work (widely used), an employment agreement with non-fixed working hours (similar to a zero-hour contract) and an employment agreement that may be concluded under the simplified regime of regulation of employment relations.

Additionally, a special IT industry regime called Diia City was adopted in Ukraine in 2021 and is now widely used in that sector. This regime is aimed at creating favorable conditions for companies operating in the tech sector. Under this regime, a new form of contract was introduced: a gig-contract (ie, a contract that combines elements of labor and civil relations). Employment contracts may be concluded with employees of Diia City residents.

### Probationary periods

Generally, probationary periods may not exceed 3 months; however, they may last 6 months in certain circumstances, subject to the applicable trade union's consent. The probationary period must be reflected in the employment agreement.

### Policies

Written internal policies, such as an internal labor regulation and labor safety regulation, are mandatory. Employers may adopt other policies and regulations. For global policies to be enforced in Ukraine, employers must incorporate these locally, including having them translated into Ukrainian and approved as outlined below.

### Third-party approval

Internal labor regulations must be developed by an employer and a trade union, if any, and further approved by the labor collective – that is, a general meeting of at least 50 percent of the employees.

Employment agreements do not require third-party approval, but changes to employment agreements and/or terminations may require notification and/or approval from the applicable trade union.



## LANGUAGE REQUIREMENTS

All employment documents and internal regulations must be in Ukrainian or bilingual, if needed.

## WORKING TIME, TIME OFF WORK & MINIMUM WAGE

### Employees entitled to minimum employment rights

All employees are entitled to the minimum statutory employment rights. Terms and conditions of employment agreements that do not meet Ukrainian labor law requirements are invalid.

### Working hours

Standard working hours must not exceed 40 hours per week. If an employee's work regime differs from the standard one (ie, 5 working days per week and 8 working hours per day), the calculation of maximum working hours per respective period is performed using a specific methodology. For instance, in certain cases, the working time may be calculated not on a weekly basis but based on another period (eg, month or half a year). In such cases, the working hours are considered overtime only if the number of hours of the relevant employee exceed the normal number of working hours for the relevant period.

For certain categories of employees (eg, those working under hazardous conditions or underage employees), the maximum number of working hours per week is less than 40 hours.

Some categories of employees (eg, pregnant women or women who have children under 14 years old) may request the employer to establish a decreased number of working hours.

Public holidays are not observed during periods of martial law. Normal working hours during martial law may be increased to 60 hours per week for employees working in critical infrastructure projects (eg, in the defense sector and public services). Other special terms apply during periods of martial law.

### Overtime

As a general rule, all hours worked in excess of 40 hours per week (and/or in excess of the number of working hours per day established by the employment agreement, internal regulations or collective agreement – usually 8 hours per day for a 5-day working week) are treated as overtime, with the exception of special work regimes and non-standard working regimes. Overtime is allowed only under the following exceptional circumstances defined in the Labor Code:

- Performance of work necessary for country defense or prevention of natural or civil disasters or industrial accidents as well as elimination of consequences of such accidents
- Performance of socially important work necessary for renewal of community facilities, which are disrupted due to unexpected or accidental circumstances
- Performance of work which was commenced but cannot be finished within normal working hours due to unexpected accidents or delays, if such work is needed to prevent damage or loss of property

- Performance of work necessary for urgent renovation of machines, if malfunctions of such machines results in the work stoppage for significant number of workers
- Performance of urgent cargo-handling operations for avoidance or prevention of demurrage of transport or accumulation of cargo in departure and destination points and
- Work continuation, if the employee who starts their shift is absent, when work cannot be interrupted. In this case, the employer shall immediately take actions to replace such employee who continues to work after their shift has ended.

Under normal circumstances, the maximum limit of overtime work is 120 hours per year and 4 hours over 2 consecutive days for the same employee. However, this limitation was lifted during martial law.

Overtime must be compensated at double the regular rate. Employers cannot compensate overtime with time off.

Some categories of employees may not be required to work overtime (eg, pregnant women or employees under 18) or may only be engaged in overtime work with their consent (eg, women who have children of the age from 3 to 14 years old or individuals with disabilities).

## Wages

Statutory minimum wages are established by law on a yearly basis. As of January 1, 2024, the minimum wage is approximately USD181 (UAH7,100) per month for full-time employment or USD1.108 (UAH42.6) per hour. Effective, April 1, 2024, the minimum wage is increased to approximately USD204 (UAH8,000) per month for full-time employment or USD1.22 (UAH48) per hour.

## Vacation

The general statutory minimum annual vacation is 24 calendar days. Special categories of employees (eg, employees under 18 years old or some categories of individuals with disabilities) and/or employees working under specific positions, regimes or conditions of work (eg, employees working under a non-standard working hours regime) are entitled to additional vacation days. There are additional statutory paid and non-paid social vacation days. For instance, women who have 2 or more children under 15 years old or have a child with disabilities are entitled to 10 calendar days of paid social vacation per year.

During martial law, among other things, the following peculiarities are established regarding vacations:

- An employee's annual main vacation may be limited to 24 calendar days for the current working year by the employer's decision. At the employer's decision, unused days of annual main vacation may be granted without pay.
- If the duration of an employee's annual main vacation is more than 24 calendar days, the days of such vacation not used during the period of martial law shall be postponed to the period after the termination or cancellation of martial law. A similar approach has been established for other statutory leaves, except for pregnancy and childbirth leave and adoption leave.



- At the request of an employee, an employer may grant unpaid leave without any time limit, without including the time of the leave in the period of service that gives the right to annual main leave.
- At the request of an employee who has left the territory of Ukraine or has acquired the status of an internally displaced person, the employer must grant him / her an unpaid leave for the duration specified in the application, but not more than 90 calendar days, without including the time of the leave in the period of service that gives the right to annual main leave.

## Sick leave & pay

The compensation of the first 5 days of the sick leave must be paid at the expense of employer. A portion of the employee's compensation starting from the 6th day of the sick leave and for the entire period until the restoration of ability to work or until the establishment of disability by the medical and social expert commission (ie, state commission responsible for determining disability) will be paid at the expense of the Pension Fund of Ukraine by the employer.

In general, employers cannot dismiss employees during the sick leave period. Ukrainian laws allow employers to dismiss an employee if their sick leave exceeds 4 continuous months, except for the leave for pregnancy and birth, unless a longer period of retention of a position is established by law for particular illnesses. Positions of employees who became temporarily disabled due to an occupational injury or a professional illness must be retained until restoration of working capacity or establishment of disability.

During martial law, an employee may be dismissed when on leave, including sick leave (except for maternity leave and childcare leave until the child reaches the age of 3), indicating the date of dismissal, which is the 1st working day following the day the leave ends.

As of now, Ukraine operates a sick-leave e-certificate system. Accordingly, employers may view information on an employee's illness in the e-certificate electronic register. At the end of the sick leave, employees are not required to present employers with a paper certificate from a medical institution as proof, except for the cases prescribed by the law.

## Maternity/parental leave & pay

Women are generally entitled to a maternity leave of 126 calendar days (ie, 70 calendar days prior to childbirth and 56 afterwards), or 140 calendar days (ie, 70 calendar days prior to childbirth and 70 afterwards) in the case of the birth of 2 or more children or complications in childbirth. Women who suffered from the Chernobyl disaster are entitled to 180 calendar days of leave (90 calendar days to be used prior to the childbirth and 90 calendar days after). At the request of the woman and in the absence of medical contraindications, part of the leave provided for before childbirth may be transferred and used by the woman partially or fully after childbirth, starting from the day of childbirth. In this case, the total duration of the leave remains unchanged.

The amount of compensation depends on the employee's salary as well as continuity of their work during the last 12 months prior to the maternity leave. The law sets maximum and minimum amounts of maternity leave compensation. Compensation for maternity leave is paid by the employer at the expense of funds provided by the Pension Fund of Ukraine.

After maternity leave, the mother or father is entitled to childcare leave until the child is 3 years old (in some cases, 6 years old – for instance, if a child requires home care). This leave can also be used in full or in part by

grandparents or other relatives who actually care for the child, or by a person who adopted or took custody of the child.

An employee may not be terminated by the employer during maternity or childcare leave and may start or stop childcare leave at any time before the child turns 3 (or, in certain cases, 6) years old.

## Other leave/time off work

Employees may also be entitled to leave for other purposes, such as additional annual paid leave, different types of social leave, educational leave, creative leave, leave related to preparation for competitions, additional leave for certain categories of employees (eg, war veterans) and donor leave.

## DISCRIMINATION & HARASSMENT

Discrimination based on any ground unrelated to ability to perform job duties is prohibited. Prohibited grounds include, for example, race, ethnic or social origin, political, religious or other beliefs, skin color, gender identity, sexual orientation, disability, family and property status, membership in a trade union or other civil group, participation in a strike, language attributes or age.

## WHISTLEBLOWING

An employee who has reported possible facts of corruption or corruption-related offenses or other violations of the Law of Ukraine "On Prevention of Corruption" committed by another person may not be dismissed or forced to resign, brought to disciplinary responsibility in connection with such report, or subjected to other negative measures or the threat of such measures. Corruption whistleblowers also enjoy other rights and guarantees of protection established by the Law of Ukraine "On Prevention of Corruption."

## BENEFITS & PENSIONS

Employers must make regular deductions from employees' salaries for contributions to the state pension fund. Private pension plans may be implemented at employers' discretion.

## DATA PRIVACY

In most cases, the processing of personal data requires the consent of the respective data subject. However, employers are allowed to process an employee's basic personal data without consent to the extent required to perform the employer's statutory obligations (eg, pay salary or statutory reporting).

Processing of sensitive data (eg, health status data, data related to religious beliefs or political views) is prohibited, unless the individual provides explicit consent or there is a statutory ground for processing these categories of data. The processing of sensitive data requires notification to the Ukrainian Parliament Commissioner for Human Rights.

Cross-border personal data transfers require documents such as an intercompany agreement on the transfer of data in addition to the data subject's consent.

## RULES IN TRANSACTIONS/BUSINESS TRANSFERS

In the event of a change of a company's ownership or a company's reorganization (eg, merger or spinoff), employment continues with the company or its successor without change in terms and conditions. In case of an asset deal, however, employment must be terminated and rehired.

## EMPLOYEE REPRESENTATION

Local trade unions may be established by any 3 employees of a company. According to the law, a trade union should notify an employer of its establishment. However, an employer cannot restrict or prohibit the establishment of a trade union. Employees' representatives are elected at the general meeting of employees. In practice, trade unions are usually not elected in small companies, and they are more influential for mid-sized and large companies, especially for those using special working regimes and have special conditions of work.

Trade unions must be notified and, in some cases, must consent or approve before employers take certain employment actions, including redundancy, dismissal of a trade union member (partially ineffective during martial law) or introduction of an unusual working regime. On the other hand, elected employee representatives have limited authority as compared to trade unions and usually act, if a trade union is not established.

Under Ukrainian laws, each Ukrainian entity that has employees shall conclude a collective agreement with its employees. If no collective bargaining is initiated by either an employer or employees (and, consequently, no CBA is concluded), no negative consequences would arise for an employer. Such agreement is negotiated by a trade union, if it exists, or employee's representatives and, after it is approved by all parties, must be registered by the local government. There are no work councils.

The new law "On Collective Bargaining Agreements" shall enter into force 6 months after the date of termination or lifting of martial law.

## TERMINATION

### Grounds

The following are the main grounds for termination under Ukrainian legislation:

- Termination by the employee with 2 weeks' prior notice (this notice period may be waived in certain cases)
- Termination by the employer's initiative based on grounds directly defined by law (eg, redundancy, non-compliance of the employee with the positions due to lack of qualification or issues with health or systematic violation of employment obligations)
- Termination on the basis of the agreement of the parties
- Expiration of the term as per the employment agreement

- Based on the grounds defined under the simplified regime of regulation of employment relations.

## Employees subject to termination laws

All employees.

## Restricted or prohibited terminations

The following categories of employees, among others, may not be dismissed except in the case of the company's liquidation:

- Pregnant women, women with children under 3 years old (or under 6 years old if the child requires home healthcare), single mothers of children with disabilities or a child under 14 years old
- Fathers bringing up a child with a disability or a child under 14 years old without a mother (including in case of long-term stay of a mother in a medical facility); this also applies to adoptive parents and foster parents
- Employees called for regular military service; mobilized employees; employees serving with the military based on contract, including those who concluded the contract with Territorial Defence Forces within the “special period;” and employees placed in medical institutions after being injured during military service or who were captured or are declared missing, among others

Special dismissal procedures are applicable to employees under 18 years old and members of a trade union's bodies.

## Third-party approval for termination/termination documents

As a general rule, employers must seek the applicable trade union's consent when terminating the employment of trade union members in the following cases:

- Changes in production and labor organization, including reorganization, bankruptcy or re-profiling of an employer, reduction of number of employees or positions (the consent is not required in case of liquidation);
- Revealed inconsistency of an employee with the occupied position as a result of insufficient qualification or health conditions which prevent work from continuing;
- Systematic failure to fulfil by an employee without good reasons obligations imposed on him/her under an employment agreement or internal regulations, if disciplinary actions have been previously applied thereto;
- Absence from work (including absence from work for over 3 hours during the working day) without good reasons;
- Absence from work within more than 4 continuous months as the result of sick leave, except for the leave for pregnancy and birth, unless a longer period of retention of a position is established by law for particular illnesses;

- Appearance at work intoxicated with alcohol, narcotics or other toxic substances;
- Guilty actions of an employee directly servicing monetary, commodity or cultural valuables, if these actions give reasons to lose trust thereto by an employer;
- Commitment of an immoral offense by an employee performing educational functions that is incompatible with the continuation of this work.

During martial law, the trade union's consent is not required, except for cases of dismissal of employees elected to trade union bodies.

Besides, changes to the terms of the employment agreement, remuneration, and disciplinary action against employees who are members of elected trade union bodies are allowed only with the prior consent of the elected trade union body of which they are members.

In case of liquidation, reorganization or partial termination of production which leads to the redundancy, the employer shall notify the trade unions (if any) in advance.

## Mass layoff rules

Mass layoff is defined as the termination of:

- 10 or more employees by an employer with 20 to 100 employees
- 10 percent or more of employees by an employer with 101 to 300 employees
- 30 or more employees by an employer with 301 to 1,000 employees
- 3 percent or more of employees by an employer with 1,001 or more employees.

The employer must notify the local office of the State Employment Center regarding the mass layoff at least 2 months prior to the layoffs.

## Notice

The period of mandatory notice to the employee varies and depends on the grounds for termination (eg, 2-month notice for redundancy, no notice period for termination based on the mutual consent of the parties and 2-week notice for termination if initiated by the employee).

## Statutory right to pay in lieu of notice or garden leave

No. Ukrainian law does not recognize garden leave or payment in lieu of notice.

## Severance

The amount of severance payment depends on the ground of termination and varies from 1 up to 6 average monthly salaries. Namely, the employee is entitled to severance payment in the amount:

- Not less than 1 average monthly salary in cases of changes in production and labor organization, including liquidation, reorganization, bankruptcy or re-profiling of an employer, reduction of number of employees or positions, refusal of the employee to continue their employment under changed work conditions, revealed inconsistency of the employee with the occupied position as a result of insufficient qualification or health conditions which prevent work from continuing or re-instatement of the employee who held the position earlier, the impossibility of providing the employee with the work specified in the employment agreement due to the destruction (absence) of production, organizational and technical conditions, means of production or property of the employer as a result of hostilities.
- In the amount of 2 minimum salaries in case of call-up or enlistment for military service, or assignment to alternative (non-military) service (except for the cases when the employee keeps their job and position according to the law).
- Not less than 3 average monthly salaries if the employment terminates due to employer's violation of labor legislation, collective bargaining agreement or employment agreement, mobbing (ie, harassment) of an employee or failure to take measures to stop it.
- Not less than 6 average monthly salaries if the employee is terminated due to termination of their authority as the company's officer (eg, CEO)

The applicable collective agreement or employment contracts may establish higher amounts of severance payments.

There are no special rules that regulate the severance payment in case of mass layoffs, and, under the general requirement, 1 month's average salary must be paid as severance.

## POST-TERMINATION RESTRAINTS

Post-termination restrictive covenants are generally unenforceable.

A possibility to conclude non-compete and confidentiality agreements was introduced for Diia City residents in respect of their employees/gig-contractors.

### Non-competes

Ukrainian labor laws permit employers to restrict their employees to work for specific employers or any employers during the term of employment. Additional restrictions are also applicable for the members of the executive body of limited liability and additional liability companies (eg, directors).

For instance, the members of the executive body cannot, without a consent of general meeting or supervisory board:

1. Carry out economic activity as a private entrepreneur in the field of the company's activity
2. Be a member of a general partnership or a full member of a limited partnership, which carries out activities in the field of the company's activity, or



3. Be a member of the executive body or supervisory board of another legal entity that carries out activities in the field of the company's activities.

Breach of these obligations by the members of the executive body shall lead to termination of employment relations.

At the same time, Diia City legislation allows for non-compete agreements between Diia City residents and their employees/gig-contractors. Such non-compete agreements should be concluded in writing and should include compensation for non-compete, the term length (maximum duration of 12 months upon termination of relations), the territory and an exhaustive list of competitive activities.

## Customer non-solicits

Generally unenforceable.

## Employee non-solicits

Generally unenforceable.

## WAIVERS

Waivers of statutory rights are unenforceable.

## REMEDIES

### Discrimination

There are no special remedies for employees in case of discrimination, but employees may bring claims for compensation for moral and material damages. Employment discrimination may be classified as labor law violations subject to fines.

### Unfair dismissal

Re-instatement on the previous terms and conditions and compensation for lost salary plus compensation for moral and material damage may be awarded in case of unfair dismissal. Moreover, company officers may face administrative and criminal liability.

### Failure to inform & consult

Failure to inform and consult with trade unions if required may be deemed a violation of dismissal procedures, and re-instatement may be ordered by a reviewing court.

## CRIMINAL SANCTIONS

Ukrainian labor law provides for the following categories of liability for violations of the labor law:

- Financial penalties, which may apply to the company as a legal entity.

- Administrative fines, which may be imposed on company officers (ie, the director).
- Criminal liability (up to imprisonment), which is applicable to the company officers (ie, the director).

## KEY CONTACTS

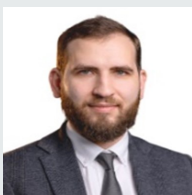


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