



# EMPLOYMENT

## The Arrangement of Employment Relations under the Martial Law: Key Changes to Be Expected

On 24 March 2022, the Law of Ukraine "On the Arrangement of Employment Relations under the Martial Law" No. 2136-IX of 15 March 2022 ("**Law No. 2136**"), which defines the peculiarities of employment relations during martial law, entered into force.

According to paragraph 2 of Section "Final Provisions" of Law No. 2136, Chapter XIX "Final Provisions" of the Labour Code of Ukraine (the "**Labour Code**") was supplemented by provisions stating that the restrictions and peculiarities defined by Law No. 2136 apply to the labour relations during the martial law, imposed in accordance with the Law of Ukraine "On Legal Regime of Martial Law". That said, in relation to certain labour issues during martial law the provisions of Law No. 2136 will prevail over the provisions of the Labour Code.

### 1. Form of an Employment Agreement and Probation Period

According to Article 2 of Law No. 2136, during martial law the parties can agree on the form of the employment agreement. Thus, temporarily, **the provisions of Article 24 of the Labour Code, according to which the employment agreement is generally concluded in writing, do not apply.**

In addition, Law No. 2136 amended the provisions of Article 26 of the Labour Code regarding the ban on setting the probation period for certain categories of employees (in particular, persons under the age of eighteen, pregnant women; single mothers with a child under the age of fourteen or a child with a disability, etc.). Specifically, during martial law, **any category of employees may be put on probation at the time of their recruitment.**

Also, according to Law No. 2136, the employer may enter into fixed-term employment agreements with new employees for the period of martial law or for the period of replacement of temporarily absent employees, including in cases of actual absence of employees who were evacuated to another area, employees on leave, employees during downtime, temporarily disabled employees or whose location is temporarily unknown.

## 2. Change of Essential Working Conditions

According to Article 3 of the Law No. 2136, **during martial law, the employer has the right to transfer the employee to another work, which is not stipulated in a respective employment agreement, without the employee's consent** (except for the transfer to work in another area where active hostilities are taking place). Also, **the requirement of Article 32 of the Labour Code to provide a 2-months' prior notice regarding a change of essential working conditions does not apply.**

Law No. 2136 provides for the following mandatory conditions for change of essential working conditions:

- such work shall not be contraindicated for the employee due to health reasons;
- such change is necessary solely to prevent or eliminate the consequences of hostilities and other circumstances that endanger or may endanger lives or normal living conditions of people; and
- the salary for the performed work under changed working conditions shall not be less than the average monthly salary for work under the previous working conditions.

## 3. Working Hours and Rest Period

According to Law No. 2136, the following provisions of the Labour Code do not apply during the martial law: Article 53 (work duration before holidays, non-working days, and weekends), part 1 of Article 65 (overtime limits), parts 3 to 5 of Article 67 (transfer of weekends), and Articles 71-73 (holidays and non-working days).

Importantly, during martial law **an employee's normal working hours shall not exceed 60 hours per week** and 50 hours per week for employees to whom the law applies the reduced working hours (such as employees involved in work with harmful working conditions – in accordance with Article 51 of the Labour Code, etc.).

The employer sets out the start and end time of a working day (shift) and may reduce **the duration of the weekly uninterrupted rest to 24 hours** (to compare, under Article 70 of the Labour Code the duration of the weekly uninterrupted rest must be at least 42 hours).

## 4. Vacations

Law No. 2136 introduces important alterations in relation to vacations, namely:

- if the employee works at critical infrastructure facilities, **the employer has a right to deny any kind of such employees' leave** (except for maternity leave and parental leave to care for a child up to the age of three); and
- **at the employee's request, the employer has a right to grant an unpaid leave and time restrictions**, established by part 1 of Article 26 of the Law of Ukraine "On Leaves", do not apply to such unpaid leave.

## 5. Suspension of Employment Agreement

Article 13 of the Law No. 2136 provides for a new concept of suspension of the employment agreement. According to Article 13 of the Law No. 2136, suspension of the employment agreement is a temporary release of the employer from the obligation to provide the employee with work and a temporary release of the employee from his/her obligation to perform work under the employment

agreement. The employment agreement may be suspended due to the military aggression against Ukraine which prevents the employee from performing his/her duties under the employment agreement.

As noted by the Ministry of Economy of Ukraine in its commentary to the Law No. 2136- (commentary as of 23 March 2022), the main condition for suspension of the employment agreement is an absolute impossibility for the employer to provide the work, and for the employee - to perform the same. Thus, any absence of work or downtime cannot serve as a reason for suspension of the employment agreement. Importantly, **suspension of the employment agreement does not entail termination of employment relations**, thus, the parties shall comply with other terms of the employment agreement (for instance, concerning confidentiality of information or intellectual property rights).

The Law No. 2136 does not establish neither a procedure for suspension of the employment agreement nor notification deadlines. At the same time, the Law No. 2136 provides that the employer and the employee should, to the extent possible, inform each other in any available way. Thus, **both the employer and the employee can initiate the suspension of the employment agreement**. Given that a lot of employment agreements were concluded in writing (which was the general rule before imposition of martial law in Ukraine), in our opinion, the suspension of the employment agreement should be formalised in writing as well (for instance, as applicable, by written notice to the relevant party, an additional agreement to the employment agreement (contract) or via e-mail).

The Law No. 2136 provides that expenses for reimbursement of salary, guarantee and compensation payments to employees for the period of suspension of the employment agreement shall be borne by the country conducting military aggression. However, the procedure and mechanism for such reimbursement is not established yet. In addition, in the case of non-payment of salary, the employer will face an issue regarding single social contribution (the "**single contribution**"). In the opinion of the Ministry of Economy of Ukraine, if in case of suspension of the employment agreement the employer suspends the payment of salary, there is no ground for charging the single contribution. At the same time, there are no additional official clarification from the tax authorities how to reflect the grounds for non-payment of the single contribution in case of suspension of the employment agreement.

## 6. Termination of Employment Agreement

### *Termination of the employment agreement at the initiative of the employee*

Law No. 2136 provides that **the employee may terminate the employment agreement upon employee's own initiative without two-weeks prior notice** due to the hostilities in areas where an enterprise, institution, or organisation is located, as well as due to the existence of a threat to life and health of the employee. In this case, the employee may terminate the employment agreement on its own initiative within the time specified in the employee's application.

As an exception, the abovementioned amendments do not apply to employees that are engaged to perform socially useful works during martial law or work at critical infrastructure facilities. According to the Law of Ukraine "On Critical Infrastructure" No. 1882-IX of 15 November 2021, critical infrastructure objects are infrastructure objects, systems, their parts, and totality, which are important for the economy, national security and defence, disruption of which may harm vital national interests, in particular, energy and water supply facilities, transport and information communications facilities, chemical and healthcare facilities, etc.

### *Termination of the employment agreement at the initiative of the employer*

**During martial law, the employee may be dismissed at the initiative of the employer even during an employee's leave or temporary disability** (except for maternity leave or parental leave to care for a child up to the age of three). The date of dismissal has to be the first working day after the end of the

temporary disability, specified in the document on temporary disability, or the first working day after the end of the employee's leave.



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