

## CHANGES IN THE LABOUR RELATIONS' ORGANIZATION UNDER MARTIAL LAW



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**Abstract.** The article deals with the peculiarities of labor relations under martial law in Ukraine. The current state of legal regulation of labor relations is described. The article analyses the issues of organization of labor relations under martial law regime, outlines the features of labor relations of employees of all institutions, organizations and enterprises in the country regardless of the type of activity, ownership and industry ownership. The lack of experience in regulating labour relations between the State, employers and employees under martial law makes the study relevant.

Martial law has had a dramatic impact on all spheres of life of Ukrainians including work. This in turn has had an impact on changes in labour legislation in particular with regard to: the conclusion of an employment contract under martial law; the grounds for the termination of an employment contract; the termination of an employment contract; legal regulation of working and rest time; the article is aimed at studying labour relations under the martial law regime in the territory of Ukraine and conducting research of actual changes. The article is aimed at the study of labor relations under the military situation in Ukraine. The study of the problem was carried out through the use of methods of comparison, abstraction, analysis and generalization as well as the method of system-structural research. In the course of the study, actual changes in labour legislation were summarized, the basis of legal support for the activities of individuals was identified as well as the features of regulation of legal relations were generalized.

**Keywords:** *employment relationship, employment contract, legal regulation, employee, employer, mobilization, martial law.*

### Introduction

The introduction of martial law in the territory of Ukraine under the Decree of the President of Ukraine "On the introduction of martial law in Ukraine" dated 24 February 2022 No. 64/2022 had a direct impact on the organization of labour relations in the war conditions which made it necessary for the Verkhovna Rada of Ukraine to review the legislation governing such attitudes to the beginning of the armed aggression of the Russian Federation against Ukraine.

The Law of Ukraine "On the Legal Regime of Martial Law" stipulates that martial law is "a special legal regime which is introduced in Ukraine or in its individual localities in the event of armed aggression or threat of attack, danger of the state independence of Ukraine, its territorial integrity and provides the relevant State authorities, military command, military administrations and local self-government bodies with the powers necessary to prevent a threat responding to armed aggression and ensuring national security, eliminating the threat to the State independence of Ukraine and its territorial integrity as well as temporarily threats to human and civil liberties and the rights and legitimate interests of legal persons, indicating the period of validity of these restrictions" (Law of Ukraine "On the legal regime of martial law" dated 12.05.2015).

The organization of labour relations under the martial law regime is a feature of the labour relations of employees of all institutions, organizations and enterprises in the country, regardless of the type of activity, form of ownership and branch affiliation as well as persons working under an

employment contract with individuals during the regime of martial law introduced in accordance with the Law of Ukraine "On the legal regime of martial law".

It is known that during the operation of martial law under the Law of Ukraine "On the legal regime of martial law" may occur temporary due to a threat restriction of constitutional human and civil rights and freedoms and the rights and legitimate interests of legal persons with an indication of the duration of these restrictions.

For the period of the legal regime of martial law according to the Decree of the President of Ukraine "On the introduction of martial law in Ukraine" dated 24 February 2022 No. 64/2022 may temporarily limit the constitutional rights and freedoms of man and citizen provided for in Articles 30–34, 38, 39, 41 – 44, 53 of the Constitution of Ukraine (Decree of the President of Ukraine "On the introduction of martial law in Ukraine" dated 24.02.2022).

### Research results.

In order to settle various aspects of labour relations during martial law the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On the organization of labour relations under martial law" dated 15 March 2022 No. 2136–IX. The law entered into force on 24 March 2022 and will be in force during martial law introduced in accordance with the Law of Ukraine "On the legal regime of martial law" dated 12.05.2015 No. 389–VIII. Some of its provisions namely Section 3 Art. 13 (compensation at the expense of the aggressor State) will continue until the completion of the process of compensation of wages, guarantees and compensation of employees by the State carrying out the military aggression against Ukraine.

The analysis of the Law No. 2136–IX reveals the following changes in labour legislation:

Relating to employment contracts:

- the form of the contract – with consent;
- probationary period – for all;
- temporary suspension of the contract – giving and doing work through military action if impossible.

Relating to working conditions:

- working week: normal – up to 60 hours; reduced to 50 hours.

Related to pay:

- timely – if the enterprise is working;
- late – if the enterprise does not work (after resumption of its activities).

Related to weekends:

- shortened holidays are cancelled;
- public holidays are cancelled;
- postponement of holidays are cancelled;
- weekend – minimum 24 hours.

Related to vacation:

- paid annually for 24 days;
- unpaid – indefinite.

Related to dismissal of employees:

- at the employee's initiative – if threatened (except for critical infrastructure workers or involved in community service) – 2 weeks without notice;

- at the employer's initiative – during sick leave – from the first working day (Taran, Pleskun, 2022, p. 354).

The Law specifies that the provisions of the Law of Ukraine "On the organization of labour relations under martial law" which regulate certain aspects of labour relations differently from the Labour Code and other labour legislation have priority for the period of martial law for employees of all enterprises, institutions, organizations in Ukraine regardless of the form of ownership, type of activity and branch belonging as well as persons working under an employment contract with individuals.

Norms of labour legislation contrary to the provisions of this Law shall not be applied during the period of martial law. However, other labour laws that do not contradict the provisions of Law No. 2136 can or should be applied between an employee and an employer also.

It is noted that Law No. 2136 applies only during martial law which is reflected in Article 1 of the Law. It is important that during the martial law regime restrictions are introduced on the constitutional rights and freedoms of individuals and citizens in accordance with Articles 43 and 44 of the Constitution of Ukraine (Taran, Pleskun, 2022, p. 354).

Article 43 of the Constitution of Ukraine states that: "Everyone has the right to work including the opportunity to earn for a living by work that he freely chooses or agrees to. The State shall create conditions for the full exercise by citizens of the right to work, guarantee equal opportunities in the choice of profession and employment and implement vocational training programs; training and retraining of personnel in accordance with

public needs. The use of forced labour is prohibited. Military or alternative (non-military) service as well as work or service performed by a person under a sentence or other court order or under the laws of martial law and emergency shall not be considered forced labour. Everyone has the right to adequate, safe and healthy working conditions, to a wage not lower than the legal wage. The employment of women and minors in work that is hazardous to their health is prohibited. Citizens are guaranteed protection against unlawful dismissal. The right to timely remuneration for work is protected by law" (Constitution of Ukraine, 1996, Art. 43).

Article 44 of the Constitution of Ukraine states: "Those who work have the right to strike to protect their economic and social interests. The procedure for exercising the right to strike is established by law taking into account the need to ensure national security, health care and the rights and freedoms of others. No one may be compelled to participate or not to participate in a strike. The prohibition of a strike is possible only on the basis of law" (Constitution of Ukraine, 1996, Art. 44).

The prohibition of a strike is possible only on the basis of law. (Constitution of Ukraine, 1996, Art. 43).

Thus, in war times there are restrictions on the right to free choice of work and the right to strike to protect one's own interests. This in turn is in accordance with the provisions of the Law of Ukraine "On the legal regime of martial law". Article 19 of this Law prohibits strikes and paragraph 2 of Section 2 of the Art. 8 allows the military command (military administrations) to introduce labour service for able-bodied persons (Law of Ukraine "On the legal regime of martial law" dated 12.05.2015).

The provisions of Law No. 2136 apply to employers, employees of all enterprises, institutions and organizations in Ukraine, irrespective of their form of ownership, type of activity and branch affiliation as well as to persons working under an employment contract with individuals.

Law No. 2136 does not expressly prohibit the granting of "more extended" rights and guarantees to employees, for example by voluntary decision of the employer or as a result of agreements made between the employer and the trade union. If this ensures better performance during martial law and the

rights of the parties to an employment contract are not oppressed. There will be no grounds for sanctions for non-compliance with the law.

Article 2 of Law No. 2136 regulates the question of determining the form of employment contracts during the period of martial law, setting the test when new employees are hired as well as the reasons for concluding fixed-term employment contracts in case of replacement of temporarily absent employees ("On the organization of labour relations under military conditions", 15.03.2022).

In the options provided by law a mandatory written form of employment contract was used. But under martial law the parties have the right to independently determine the form of employment contract (Kovalchuk B., 2022, Art.7).

Regardless of the form of employment contract chosen by the parties there is a statutory requirement to provide the Notification of acceptance of the employee/concluding a gig-contract.

At the same time regarding the submission of a notification to the bodies of the State Tax Service the obligation to submit which is provided for the owners of enterprises, institutions, organizations or their authorized bodies (persons) or individuals during the operation of martial law such a communication may not be submitted in the light of Law of Ukraine "On Protection of the Interests of Subjects Submitting Reports and Other Documents During Martial Law or a War State" accepted by the Verkhovna Rada's (Law of Ukraine "On Protection of the Interests of Subjects Submitting Reports and Other Documents During Martial Law or a War State", 03.03.2022)

Consequently, the sequence of actions to formalize labour relations during martial law is as follows:

- determination of the form of the labour contract (verbal or written). Written form is optional even in the cases provided by Section 1 of the Art. 24 of the Labour Code of Ukraine;
- conclusion of an employment contract: the employee shall write an application for employment and/or sign an employment contract;
- issuing an order for employment (arbitrary form or P-1 form);

– submission of the Notification of acceptance of the employee/concluding a gig-contract (mandatory before actually admitting an employee to work) to the STS body.

The legislator retained the possibility of setting tests for employment and for the duration of martial law for all categories of persons (Kovalchuk, 2022, Art. 6).

In order to quickly recruiting of new employees the Law No. 2136 provides employers with the opportunity to conclude fixed-term employment contracts with new employees during martial law or for the period of replacement of a temporarily absent employee (“On the organization of labour relations under martial law”, 15.03.2022).

For the duration of martial law an employer has the right to transfer an employee to another job not specified in the employment contract without his consent. Art. 33 of the Labour Code of Ukraine (1971) contains a similar provision. Still such work should not be contraindicated to the employee for health reasons. A ban has also been imposed on such transfers to another area where active hostilities continue (“On the organization of labour relations under martial law”, 15.03.2022, Section 1, Art. 3). At the same time the salary of the transferred worker has not been changed: for the finished work it is not lower than the average salary for the previous work.

During the period of martial law the employer is relieved of the obligation to notify the employee in advance (2 months in advance) of changes in essential working conditions as stipulated in Section 3 of the Art. 32 of the Labour Code of Ukraine (Labour Code of Ukraine, 1971, Section 3, Art. 32). However, significant changes in working conditions are still permitted if this is due to changes in the organization of production and work.

Employees may thus be warned of changes in essential working conditions as soon as the employer decides to make such a change but no later than to be allowed to work in changed working conditions.

According to the Commentary of the Ministry of Economy of Ukraine dated 23.03.2022 absence of a worker due to combat activities cannot be qualified as truancy without a valid reason (Commentary of the Ministry of Economy of Ukraine on the Law of Ukraine “On the organization of labour relations under martial law”, 15.03.2022).

It is therefore advisable to consider the absence of an employee for unclear or other reasons before ascertaining the reasons for his absence and obtaining written explanations from him.

The labour legislation does not provide for the obligation of an employee to inform the employer of his whereabouts and refugee status or to acquire temporary protection status. Considering the extremely difficult situation in the territory of Ukraine according to the Ministry of Economy of Ukraine the workers who is not working as a result of circumstances related to the fighting or who are unable to work due to the danger to life and health are not subject to automatic dismissal or for example dismissal under paragraph 4 of Section 1 of Art. 40 of the Labour Code of Ukraine for “truancy without a valid reason” (Kovalchuk, 2022, Art. 6)

If there is no communication with such an employee until the reasons and circumstances of the absence are clarified the position of the employee are retained. In this case the employment relationship is not terminated.

Article 36 of the Labour Code of Ukraine was supplemented by the following new paragraphs: 8–1) death of an employer – a natural person or entry into force of a court decision declaring such a natural person missing or deceased; 8–2) death of an employee, finding him missing or pronounced dead; 8–3) employee absenteeism and information on the reasons for absence for more than four consecutive months (Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Optimization of Labour Relations”, 01.07.2022).

Today, it is possible to terminate an employment contract on the initiative of an employee or an employer. (On the organization of labour relations under martial law, 15.03.2022). If possible the employer and the employee must notify each other of the suspension of the employment contract by any available means.

That is, notification in any messenger will be considered a proper notification by both the employer and the employee of the initiative to suspend the employment contract.

In addition, working and rest time standards change: normal working hours cannot exceed 60 hours per week (40 hours) and 50 hours per week with reduced working hours (24 and 36 hours) and weekly uninterrupted rest may be reduced to 24

hours. There are no restrictions on overtime work, no longer being allowed to work on weekends, public holidays or non-working days and the working day before public holidays, non-working days and working at night has been reduced (Analysis of the provisions on "organization of labour relations under martial law", Law No. 2136).

As far as wages are concerned, the issue is mostly settled: the employer has to carry out all possible wage payments. Art. 10 of Law No. 2136 describes the peculiarities of payment of wages to employees during martial law. However, during the martial law regime an employer is exempted from responsibility for late payment of wages if he proves that there are valid reasons for this: the legal regime of martial law, hostilities or other circumstances of force majeure. In addition even exemption from liability for late remuneration does not relieve the employer of the obligation to pay.

In a letter dated 28.08.2022 No. 2024/02.0-7.1 the Chamber of Commerce and Industry of Ukraine certified the force majeure circumstances (circumstances of force majeure) due to the military aggression of the Russian Federation against Ukraine. Ukrainian Chamber of Commerce and Industry confirms that these conditions from February 24, 2022 until their official end are extraordinary, unavoidable and objective circumstances for economic entities. The order should refer to the conclusions of this letter.

Article 12 of Law No. 2136 establishes a number of peculiarities in the context of the duration of vacation and the procedure for granting them to employees during martial law. From the date of entry into force of Law No. 2136 until the end of martial law, the maximum duration of the annual basic vacation will be 24 calendar days. In this case the employee may be granted annual additional vacation, social vacation and other vacation in accordance with the Law of Ukraine "On vacation". If the employee's annual basic vacation is more than 24 calendar days, the additional days of vacation shall not be lost but shall be granted after the end of martial law. During martial law an employer may refuse to grant an employee any type of vacation (other than maternity vacation and vacation to care for a child up to the age of three years) if the employee is engaged to perform work at the facilities of critical infrastructure.

If an employee is not involved in the work on critical infrastructure facilities it should be borne in mind that according to Art. 10 of the Law of Ukraine "On vacation", the priority of granting holidays is determined by schedules approved by the owner or his authorized body in agreement with the elected body of the primary trade union organization (union representative) or other authorized representative of the labour collective and shall be notified to all employees.

## Conclusions

Therefore, changes in the organization of labour relations under martial law make it clear that the legislative regulation of labour relations is the influence of a set of legal regulation documents and laws of Ukraine on the order of organization of relations between employee and employer. The military aggression of Russia against Ukraine and accordingly the conditions of martial law significantly complicated the interaction of the parties, the basis of which is reflected in the Law of Ukraine «On the organization of labor relations under martial law» which plays a priority role over other legislation regulating the regulation of employment in war time.

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